

Specifically, Indiana's proposed rules at 312 IAC 25-6-12.5(c) for surface mining and 25-6-76.5(c) for underground mining provide that coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well. The operations must prevent impacts to the ground water that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. These rules also provide remedies if a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from mining activities. Indiana's rules at 312 IAC 25-4-33 and 312 IAC 25-6-25 govern water replacement for surface mining activities and 312 IAC 25-4-74 and 312 IAC 25-6-88 govern water replacement for underground mining activities. Although Indiana did not add a definition for non-drinking water supply wells, neither did the Water Pollution Control Board in its rules at 327 IAC 2-11.

HEC Comment 2

The rule sets no provisions for minimizing ground water contamination within the mine itself. Indiana's Surface Mining Control and Reclamation Act (I-SMCRA), Ind. Code § 14-34 *et seq.*, requires mine operators to 'Minimize disturbances to the prevailing hydrologic balance at the mine site and associated offsite areas and to the quality and quantity of water in surface and ground water system during and after surface coal mining and reclamation operations.' (IC 14-34-10-2(13)) Under the proposed rule, no standards will apply within the ground water management zone. Under the IDEM [Indiana Department of Environmental Management] ground water standards, the standard for these areas becomes the amount of pollution caused by mining upon bond release. Thus these rules do not enforce the requirement to minimize the pollution of mine waters within mined properties.

Response to Comment 2. Indiana's proposed rules are in addition to Indiana's existing rules for the protection of the hydrologic balance at 312 IAC 25-6, which apply to the entire permit area and adjacent areas. The proposed rules do not replace or restrict the requirements of IC 14-34-10-2(13) or of Indiana's implementing rules at 312 IAC 25-6-12 and 25-6-21 through 25-6-23.

HEC Comment 3

The provisions of federal and state mining law in concerns to ground water contamination will be enforced by the standards set by this proposed rule. Under its

current language, it does not comply with the requirements of SMCRA and I-SMCRA of minimizing pollution within the mine boundaries and preventing pollution outside of the permit boundary.

Response to Comment 3. We disagree with the commenter. As discussed in our response to Comment 2 above, the proposed rules do not replace or restrict Indiana's existing rules concerning protection of the hydrologic balance, including ground water. Although Indiana's proposed rules at 312 IAC 25-6-12.5 and 25-6-76.5 will specifically enforce the ground water quality standards under 327 IAC 2-11, Indiana's existing rules enforce the hydrologic balance standards, including ground water, required by SMCRA and I-SMCRA.

Federal Agency Comments

On September 9, 2003, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND-1720). The U.S. Fish and Wildlife Service responded on October 8, 2003 (Administrative Record No. IND-1721), that it had no specific comments on the program amendment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to these air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On September 9, 2003, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IND-1720). EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 9, 2003, we requested comments on Indiana's amendment (Administrative Record No. IND-1720), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Indiana sent us on September 3, 2003.

We approve the rules proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 914, which codify decisions concerning the Indiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

The revisions made at the initiative of the State that do not have Federal counterparts have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions have no substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.