

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 904**

[SATS No. AR-040-FOR; Docket ID: OSM-2012-0017; S1D1SSS08011000 SX064A000 189S180110; S2D2SSS08011000 SX064A000 18XS501520]

**Arkansas Regulatory Program and Abandoned Mine Land Reclamation Plan**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing the withdrawal of a proposed rule pertaining to an amendment to the Arkansas regulatory program (Arkansas program) and the Arkansas Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter, the plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Arkansas submitted the amendment to revise substantial portions of its regulatory program and AMLR Plan to be no less effective than the counterpart Federal regulations, as well as to clarify ambiguities, improve operational efficiency, correct grammar and punctuation, revise dates, and delete and add citations and subsections.

**DATES:** The proposed rule published September 10, 2012, at 77 FR 55430, is withdrawn March 12, 2018.

**ADDRESSES:** Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128.

**FOR FURTHER INFORMATION CONTACT:** William L. Joseph, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128. Telephone: (918) 581-6430. Email: [bjoseph@osmre.gov](mailto:bjoseph@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Arkansas Program and AMLR Plan
- II. Submission of the Withdrawal

**I. Background on the Arkansas Program and AMLR Plan**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program

includes, among other things, state laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Arkansas program effective November 21, 1980. You can find background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program, in the November 21, 1980, **Federal Register** (45 FR 77003). You can find later actions on the Arkansas program at 30 CFR 904.10, 904.12, and 904.15.

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Arkansas Plan effective May 2, 1983. You can find background information on the Arkansas Plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 2, 1983, **Federal Register** (48 FR 19710). You can find later actions concerning the Arkansas Plan at 30 CFR 904.25 and 904.26.

**II. Submission of the Withdrawal**

By letter dated June 25, 2012 (Administrative Record No. AR-572), Arkansas submitted a proposed amendment to its program and plan pursuant to SMCRA. Arkansas submitted the amendment in response to a September 30, 2009, letter (Administrative Record No. AR-571) from OSMRE in accordance with 30 CFR 732.17 (c), concerning multiple changes to ownership and control requirements. Arkansas also proposed substantive and nonsubstantive revisions to other sections of its regulatory program and its abandoned mine land reclamation plan at its own initiative.

We announced receipt of the proposed amendment in the September

10, 2012, **Federal Register** (77 FR 55430). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because neither was requested. The public comment period ended on October 10, 2012. We did not receive any public comments.

OSMRE reviewed the proposed amendment, and in a letter dated January 3, 2013 (Administrative Record No. AR-572.03), requested clarifications and suggested revisions to some provisions. Arkansas responded with minor revisions to their submittal by a letter dated January 11, 2013 (Administrative Record No. AR-572.04). OSMRE requested additional clarifications from Arkansas by email on February 28, 2013 (Administrative Record No. AR-572.05), and on March 5, 2013 (Administrative Record No. AR-572.06). Arkansas responded by email on March 5, 2013 (Administrative Record No. AR-572.07). On April 24, 2013 (Administrative Record No. AR-572.10), OSMRE notified Arkansas that our technical review was complete. On April 25, 2013, Arkansas submitted a revised version of the proposed amendment reflecting all clarifications and edits made during the technical review period (Administrative Record No. AR-572.09). On March 6, 2014, Arkansas submitted a revised amendment that withdrew the proposed changes to Reg. 20.817.57 (Administrative Record No. AR-572.11). On July 1, 2014, Arkansas submitted a final version of the proposed amendment with minor corrections regarding page numbering and typographical errors (Administrative Record No. AR-572.12). On July 11, 2014, Arkansas requested the withdrawal of sections related to its Abandoned Mine Land and Administrative sections from its original amendment request (Administrative Record No. AR 572.14).

The Office of the Solicitor, upon their review of the proposed amendment, found additional inconsistencies with the Federal rule. In a letter dated August 7, 2017, Arkansas notified us that they were withdrawing the proposed amendment at this time (Administrative Record No. AR-572.15). Arkansas stated in the letter that they would submit a new proposed amendment after working with OSMRE informally to address the deficiencies.

**List of Subjects in 30 CFR Part 904**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 1, 2017.

**Alfred L. Clayborne,**

*Regional Director, Mid-Continent Region.*

**Editorial Note:** The Office of the Federal Register received this document on March 7, 2018.

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## DEPARTMENT OF INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 938

[PA-166-FOR, Docket ID: OSM-2017-0008; S1D1S SS08011000 SX064A000 189A180110 S2D2S SS08011000 SX064A000 18XS501520]

#### Pennsylvania Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Pennsylvania program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Pennsylvania seeks to revise its Bituminous Mine Subsidence and Land Conservation Act to include language clarifying the circumstances where a finding of presumptive evidence of pollution is warranted under the Commonwealth's Clean Streams Law.

This document gives the locations and times where the Pennsylvania program documents and this proposed amendment to that program are available for your inspection, establishes the comment period during which you may submit written comments on the amendment, and describes the procedures we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), April 11, 2018. If requested, we will hold a public hearing on the amendment on April 6, 2018. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on March 27, 2018.

**ADDRESSES:** You may submit comments, identified by SATS No. PA-166-FOR;

Docket ID: OSM-2017-0008 by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* In addition to obtaining copies of documents at [www.regulations.gov](http://www.regulations.gov), you may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Division. To access the docket to review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you may visit the address listed below during normal business hours, Monday through Friday, excluding holidays.

Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937-2827, Email: [bowens@osmre.gov](mailto:bowens@osmre.gov).

Thomas Callaghan, P. G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, PA 17105-8461, Telephone: (717) 787-5015, E-Mail: [tcallaghan@pa.gov](mailto:tcallaghan@pa.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement 3 Parkway Center, Pittsburgh, PA 15220; Telephone: (412) 937-2827; Email: [bowens@osmre.gov](mailto:bowens@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

#### I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program

includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program, effective July 31, 1982.

You can find additional background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register**, at 47 FR 33050. You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

#### II. Description of the Proposed Amendment

By letter dated August 4, 2017 (Administrative Record No. PA 899.00), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The Pennsylvania General Assembly recently amended the BMSLCA to include language clarifying the circumstances where a finding of presumptive evidence of pollution is warranted under the Commonwealth's Clean Streams Law.

A. By way of State Bill 624, Pennsylvania proposes additional language to the BMSLCA, Section 5 (i) that states:

In a permit application to conduct bituminous coal mining operations, subject to this act, planned subsidence in a predictable and controlled manner which is not predicted to result in the permanent disruption of premining existing or designated uses of surface waters of the Commonwealth shall not be considered presumptive evidence that the proposed bituminous coal mining operations have the potential to cause pollution as defined in section 1 of the act of June 22, 1937 (P.L. 1987, No. 394), known as "The Clean Streams Law.

B. Further, Pennsylvania proposes additional language to BMSLCA, Section 5 (j) as follows:

The provisions of subsection (i) shall only apply if: (1) A person submits an application to conduct bituminous mining operations subject to this act to the department that provides for the restoration of the premining range of flows and restoration of premining biological communities in any waters of this Commonwealth predicted to be adversely affected by subsidence. The restoration shall be consistent with the premining existing and designated uses of the waters of this Commonwealth; and (2) the application is approved by the department.