DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–033–FOR]

Maryland Regulatory Program

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

ACTION: Final rule; approval of amendment; removal of required amendments.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to the Maryland regulations pertaining to excess spoil disposal, conditions of surety and collateral bonds, and procedures for release of general bonds. The amendment is intended to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned unreclaimed area outside of the permit area, and to revise the Maryland program regarding conditions and procedures for collateral bonds and release of bonds to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, **Federal Register** (47 FR 7217). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15 and 920.16.

II. Description of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding placement of excess spoil on adjacent abandoned mine lands on March 11, 1994. OSM completed its reviews of the informal amendment and requested a formal proposal from Maryland in a letter dated August 6, 1996. By letter dated January 7, 1997 (Administrative Record No. MD–576–00), Maryland submitted a proposed amendment to its program pursuant to SMCRA at OSM's request, and to comply with the required amendment identified at 30 CFR 920.16(o).

Additionally, by letter dated January 14, 1997 (Administrative Record No. MD–552–13), Maryland submitted proposed amendments to its program pursuant to SMCRA. These amendments pertain to conditions of collateral bonds, and procedures for release of general bonds, and are intended to comply with required program amendments identified in 30 CFR 920.16 (k) and (m). By letter dated February 4, 1997 (Administrative Record No. MD–552–16), Maryland clarified certain provisions of the proposed amendment. Because the information in this letter only reverted part of the proposed amendment to its previous form, it did not constitute a major revision of the original submission. Therefore, OSM did not reopen the comment period at that time.

OSM announced receipt of the proposed amendments in the January 30, 1997, **Federal Register** (62 FR 4502), and in the same document opened the public comment period and provided an opportunity for public hearing on the adequacy of the proposed amendment. The public period closed on March 3, 1997. OSM's review of the proposed amendment determined that several items contained in the proposed amendments required clarification. As a result, a letter requesting clarification on four items was sent to Maryland dated June 13, 1997 (Administrative Record No. MD–576–05). Maryland responded in its letter dated June 27, 1997, (Administrative Record No. MD 576–06), by requesting a meeting with OSM and stating that additional information would not be available until after that meeting. A meeting was held on August 14, 1997, and a response was received from Maryland in its letter dated December 8, 1997 (Administrative Record No. MD–576–07). Because of the clarifications provided by Maryland, OSM announced a reopening of the public comment period until February 4, 1998, in the January 20, 1998, **Federal Register** (63 FR 2919).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern nonsubstantive wording changes and paragraph notations to reflect organizational changes resulting from this amendment.

1. COMAR 26.20.26, Excess Spoil Disposal

Specifically, Maryland proposes to add new regulation .05 entitled ''Placement of Excess Spoil on Abandoned Mine Land'' to Chapter 26, Excess Spoil Disposal as follows:

a. New subparagraph A and items (1) through (5) state that excess spoil from a permitted coal mining operation may be placed on abandoned mine land outside of the permit area if Maryland Department of the Environment, the regulatory authority in Maryland (Department) determines that the abandoned mine land is eligible for funding under Environment Article, Title 15, Subtitle 11, Annotated Code of Maryland; the abandoned mine land is referenced in the permit application and identified on the permit map; the plan for the placement of such spoil meets the design requirements of Maryland's approved program; the legal right to enter upon the abandoned mine land and to place excess spoil on the area has been obtained from the surface owner; and the excess spoil will be placed in accordance with the provisions of a contract executed between the Department and the permittee for reclamation of the abandoned mine land. In its letter of clarification dated December 8, 1997 (Administrative Record No. MD–576–07), Maryland stated that as an additional safeguard any default by the operator on a contract or a failure to perform reclamation could be funded by specially earmarking a portion of Maryland's AML grant funds to complete the reclamation.

b. New subparagraph B, entitled ''Reclamation Standards'', and items (1) through (4), are added to require that excess spoil beyond the amount required to restore the abandoned mine land to its original contour may not be placed on the abandoned mine land; the final configuration of the excess spoil that is placed on the abandoned mine land area outside of the permit area shall be compatible with the natural surroundings and be suitable for the

intended land use; valley, head of hollow, or durable rock fills may not be constructed on the abandoned mine land; and that placement of excess spoil from a permit area on abandoned mine land shall be planned and implemented in accordance with the requirements of Maryland's approved program.

c. New subparagraph C and items (1) through (5) provide that placement of excess spoil from a permit area on abandoned mine land outside of a permit area may not be approved unless the Department finds in writing, on the basis of information set forth in the plan or otherwise available, that: placement of the excess spoil and reclamation of the abandoned mine land can be feasibly accomplished in accordance with the plan submitted by the operator; the excess spoil placement operation has been designed to prevent damage to the hydrologic balance outside of the abandoned mine land; the excess spoil placement operation will not adversely affect any publicly owned parks or places included in the National Register of Historic Places, unless approved by the appropriate jurisdictional agency; the applicant has submitted documentation establishing a legal right to enter and conduct the proposed reclamation of the abandoned mine land; and the proposed activities will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act.

d. New subparagraph D and items (1) through (3) state that placement of excess spoil from a permitted coal mining operation on abandoned mine land outside of the permit area shall be accomplished in accordance with a contract between the Department and the permittee that contains conditions that document the method of placement of the excess spoil and reclamation on the area; require the operator to permit and bond the abandoned mine land area in the event the operator defaults on the contract; and authorize the Department to issue a cessation order to cease all mining operations on the adjacent permit area until the operator submits an application for a permit and the required amount of bond for the abandoned mine land area in the event the operator defaults on the contract. In its December 8, 1997, letter (Administrative Record No. MD–0576–07), Maryland further stated that a field review during the application review process would verify conditions at the AML site and will determine which requirements are necessary to ensure that the excess spoil is placed in an environmentally sound manner.

e. New subparagraph E is added to state that the Department will monitor the placement of the excess spoil and the reclamation of the abandoned mine land area to ensure that the work is performed in accordance with the contract. In the event the operator fails to meet the terms of the contract, the Department shall issue a cessation order to stop the work on the area until the failure has been corrected.

In telephone conversations with OSM representatives, a Maryland regulatory program official stated that the operator would be required to submit a reclamation plan for each abandoned site proposed to be used for excess spoil placement. Each site will have a reclamation plan. Additionally, for existing permits where an operator decides to use an abandoned site for excess spoil disposal, the operator must apply for and receive approval of a permit revision. This permit revision process includes public participation. In its December 8, 1997, letter (Administrative Record No. MD–576–07), Maryland stated that environmental reviews and public participation for these sites will be handled through the State's Title V surface mining regulatory program.

Placement of excess spoil on adjacent abandoned mine land has been addressed previously in other rulemaking. Specifically, in his July 9, 1991, letter to Ohio, (Administrative Record No. MD–576–09) the Director of OSM clarified OSM's position concerning the standards and requirements which apply to the usage of excess spoil for reclamation of abandoned mine land sites. SM focused on the parameters for excess spoil disposal outside the permit area as established, in part, in several final rules approving such a provision in the West Virginia program (45 FR 69254–69255, October 20, 1980; 46 FR 5919, January 21, 1981); and 55 FR 21328–21329, May 23, 1990).

In the January 21, 1981, **Federal Register** announcing approval of the West Virginia program (46 FR 5919), the Secretary found that, for purposes of excess spoil disposal, a reclamation contract governing work to be performed on a Federal AML reclamation grant project is the equivalent of permit and bond under Title V of SMCRA. In the May 23, 1990, **Federal Register** (55 FR 21329), OSM found that disposal of excess spoil on a Federally funded AML reclamation project is approvable provided the spoil is not necessary to restore approximate original contour (AOC) on or otherwise reclaim the active mine. In addition, as stated in the May 23, 1990, **Federal Register,** fills are not to be created on AML reclamation projects. Spoil deposited on such sites may be used only to complete reclamation and to return the site to its AOC. OSM restricted eligibility for such spoil deposition to AML reclamation projects funded through the Federal AML grant process. The May 23, 1990, finding, however, did not prohibit the possibility that ''no-cost reclamation'' contracts, which allow spoil disposal on AML sites not included in Federally funded grants, could be approved in the future. In order to gain OSM approval, however, ''no-cost reclamation'' amendments would have to contain meaningful performance incentives or safeguards to ensure that spoil is placed only where it is needed to restore AOC and where it will not destroy or degrade features of environmental value. In addition, the amendments must require that spoil be placed in an environmentally and technically sound fashion. See OSM Director's July 9, 1991, letter to Ohio (Administrative Record No. MD–576–09). In short, ''no cost reclamation'' amendments must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project. The Director finds that Maryland's proposed regulations, at COMAR 26.20.26.05, meet these requirements, for the reasons set forth below.

First, Maryland's proposed regulations require that the amount of excess spoil placed on an abandoned site will not exceed that required to restore that site to AOC. Moreover, valley, head of hollow and durable rock fills may not be constructed on abandoned, unpermitted sites. (COMAR 26.20.26.05 B(1), (3)).

Second, the proposed regulations require that the plan for excess spoil placement meet the design requirements of Maryland's approved program, and that the actual placement of excess spoil be implemented in accordance with the approved program. (COMAR 26.20.26.05 A(3), B(4)). The approved Maryland regulatory program already contains backfilling requirements for permitted and bonded areas which ensure that spoil is placed in an environmentally sound fashion, and that such placement will not destroy or degrade features of environmental value. See, for example, COMAR 26.20.28 (backfilling).

Third, and finally, the Director finds that the proposal contains sufficient performance incentives to require compliance with all applicable requirements, since the permittee risks

issuance of a cessation order if it defaults on the contract for excess spoil placement. Because this cessation order would stop all mining on the active permit, and could, presumably, lead to permit revocation and bond forfeiture if the abandoned mine land area is not subsequently permitted, bonded and reclaimed adequately, the operator should have ample incentive to comply with the contract.

Essentially, Maryland will apply its Title V regulatory program performance standards, public participation and enforcement provisions to these abandoned, excess spoil disposal sites, even though the sites will not be permitted or bonded. In addition, Maryland has provided performance incentives to ensure compliance with these Title V requirements, and, finally, has indicated that Abandoned Mine Land grant funds will be available to reclaim these sites in the event that the operator defaults on the terms of its contract. Based upon all of the above considerations, the Director is approving COMAR 26.20.26.05 to the extent that Maryland requires that the placement of excess spoil on abandoned sites comply with the provisions of its approved regulatory program pertaining to spoil placement, including the requirements pertaining to backfilling. The Director also finds that the required amendment at 30 CFR 920.16(o) has been satisfied and it is, therefore, removed.

2. COMAR 26.20.14.06, Conditions of Bonds

a. Subparagraph (B)(3) is amended to state that certificates of deposit be made payable to the Bureau in writing and upon the books of the bank issuing these certificates. This paragraph formerly stated that such certificates of deposit shall be assigned to the Bureau in writing and upon the books of the bank issuing these certificates.

b. Subparagraph (B)(4) is amended by changing the maximum acceptable amount of an individual certificate of deposit from $40,000 to $100,000.

c. New subparagraph (8) is added to require that the bank give prompt notice to the Bureau and the permittee of any notice received or action filed alleging the insolvency or bankruptcy of the bank or the permittee, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business.

The Director finds that the proposed changes in 2.a, b., and c. are substantively identical to the Federal regulations at 30 CFR 800.21(a)(3) and (a)(4), and 30 CFR 800.16(e)(1), respectively. The Director also finds that the required amendment at 30 CFR 920.16(k) has been satisfied and it is, therefore, removed.

3. COMAR 26.20.14.09, Procedures for Release of General Bonds

a. Subparagraph (B)(2)(b) is revised by substituting the word ''identify'' for ''show'' and by adding the requirement to identify the approval date of the permit.

b. Subparagraphs (B)(2)(c) and (d) are revised by substituting the word ''identify'' for ''show'' and (d) is further revised by adding the requirement to identify the type and amount of bond filed on the permit.

c. Subparagraph (B)(2)(e) is revised by requiring that the type and appropriate dates of the work performed be summarized.

The Director finds that the proposed changes in 3.a, b., and c. are substantively identical to the Federal regulations at 30 CFR 800.40(a)(2). The Director also finds that the required amendment at 30 CFR 920.16(m) has been satisfied and it is, therefore, removed.

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), The Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. The Mine Safety and Heath Administration responded that no action was anticipated on the amendment. No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Also, EPA did not respond to OSM's request for comments.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendments as submitted by Maryland on January 7, 1997, January 14, 1997, revised on February 4, 1997 and clarified on December 8, 1997. In particular, the Director is approving COMAR 26.20.26.05 to the extent that Maryland requires that the placement of excess spoil on abandoned sites comply with the provisions of its approved regulatory program pertaining to spoil placement, including the requirements pertaining to backfilling. The Director is approving the proposed regulations with the understanding that they be promulgated in a form identical to that submitted to OSM including the clarifications. Any differences between these regulations and the State's final regulations will be processed as a separate amendment subject to public review at a later date. The Director is also removing the required amendments at 30 CFR 920.16 (k), (m), and (o) because the Maryland program will now include those requirements at paragraph B(8) of COMAR 26.20.14.06, paragraph B(2) of COMAR 26.20.14.90, and COMAR 26.20.26.05, respectively. The required amendments were initially included in the December 5, 1991, **Federal Register** (56 FR 63660), and in the December 30, 1992, **Federal Register** (57 FR 62220).

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendments process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 since each such

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 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.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
January 7, 1997	March 23, 1998	COMAR 26.20.26.05 A (1) through (5), B (1) through (4), C (1) through (5), D (1) through (3), E, 26.20.14.06 B(3), B(4), B(8), 26.20.14.09 B(2) (b), (c), (d), and (e).

§ 920.16 [Amended]

3. Section 920.16 is amended by removing and reserving paragraphs (k), (m) and (o).

[FR Doc. 98–7415 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL167–1a; FRL–5978–8]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On May 5, 1995, and May 26, 1995, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the EPA regarding rules for controlling Volatile Organic Material (VOM) emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor processes and distillation operations in the Chicago and Metro East (East St. Louis) areas. VOM, as defined by the State of Illinois, is identical to ''Volatile Organic Compounds'' (VOC), as defined by EPA. VOC is an air pollutant which combines with nitrogen oxides in the atmosphere to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. This plan was submitted to meet the Clean Air Act (Act) requirement for States to adopt Reasonably Available Control Technology (RACT) rules for sources that are covered by Control Techniques Guideline (CTG) documents. This rulemaking action approves, through direct final, the Illinois SIP revision request.

DATES: The ''direct final'' approval is effective on May 22, 1998, unless EPA receives adverse or critical written comments by April 22, 1998. If the effective date is delayed timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(2) of the Act requires all moderate and above ozone