

(bbbb) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program by adding implementing rules no less effective than 30 CFR 785.13, and no less stringent than SMCRA Section 711 and which clarify that experimental practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards, and that each experimental practice receive the approval of the Secretary.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX-040-FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Texas regulatory program and abandoned mine land reclamation (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of recodification of the Texas Coal Mining Regulations into the Texas Administrative Code at Title 16, Chapter 12. The amendment is intended to conform the Texas Coal Mining Regulations to Texas Administrative Code formatting syntax, to correct typographical errors, and to allow for the publication of the rules in the Texas Administrative Code in full text rather than by reference.

EFFECTIVE DATE: April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

- I. Background on the Texas 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 Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

On June 23, 1980, the Secretary of the Interior approved the Texas plan. Background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the June 23, 1980, **Federal Register** (45 FR 41937). Subsequent actions concerning the Texas plan and amendments to the plan can be found at 30 CFR 943.25.

II. Submission of the Proposed Amendment

By letter dated January 23, 1998 (Administrative Record No. TX-645), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to repeal § 11.221 at Title 16 of the Texas Administrative Code (TAC), which adopts by reference the Texas Coal Mining Regulations (TCMR), and to recodify these regulations into the Texas Administrative Code at Title 16, Chapter 12 in full text.

OSM announced receipt of the proposed amendment in the February 13, 1998, **Federal Register** (63 FR 7356), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on March 16, 1998. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to minor wording errors, typographical errors, and citation reference errors. OSM notified Texas of these concerns by fax dated March 5, 1998, and by letter dated March 10, 1998 (Administrative Record Nos. TX-645.05 and TX-645.07, respectively). By letter dated March 25, 1998 (Administrative Record No. TX-645.10), Texas responded to OSM's concerns by submitting revisions to its proposed program amendment that correct all of the errors identified. Because the revisions pertained to the correction of nonsubstantive editorial-type errors,

OSM did not reopen the public comment period.

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.

Recodification of Texas' Regulations. Texas proposed to codify TCMR Parts 700 through 850, pertaining to surface coal mining and reclamation operations, at 16 TAC §§ 12.1 through 12.710. Texas also proposed to codify TCMR §§ 051.800 through 051.817, pertaining to the Texas abandoned mine land reclamation program, at 16 TAC §§ 12.800 through 12.817. Texas proposed the simultaneous repeal of 16 TAC § 11.221 and adoption of the new sections at 16 TAC Chapter 12 for the purpose of renumbering the existing regulations and incorporating the text into the Texas Administrative Code. No requirements were proposed to be added to or deleted from the existing regulations. Minor changes to the existing regulations were proposed to conform them to the Texas Administrative Code formatting syntax; to update information on addresses; to correct grammar, punctuation, and capitalization errors; and to update internal references.

The Director finds that the proposed recodification is nonsubstantive in nature and Texas' proposed regulations at 16 TAC Chapter 12 are no less effective than the Federal regulations. Therefore, the Director is approving the recodification of Texas' regulations.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

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 Texas program (Administrative Record No. TX-645.03). On February 23, 1998 (Administrative Record No. TX-645.08), the U.S. Army Corps of Engineers' commented that the proposed amendment was satisfactory.

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.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. TX-645.01). The EPA responded on March 6, 1998 (Administrative Record No. TX-645.09), with the following comments relating to impacts to streams and wetlands.

§ 12.134 Soil Resources Information. EPA commented that when the soils are delineated and identified, it would be helpful if they were listed as hydric or non-hydric.

Texas' regulations at § 12.134 are substantively identical to the Federal regulations at 30 CFR 779.21. Therefore, no changes to Texas' regulations may be required by OSM.

§ 12.144 Fish and Wildlife Plan. EPA commented that this section mentions wetlands in the requirements for protection and enhancement of wildlife habitat and recommended that a separate section be included specifically dealing with wetlands and streams. EPA commented that the separate section should include a description of how the operator will avoid and minimize impacts to wetlands and streams and steps that will be taken to compensate for unavoidable impacts to wetlands and streams, with at least one-to-one compensation for all lost wetland functions.

Texas' regulations at § 12.144 are substantively identical to the Federal regulations at 30 CFR 780.16(b). Therefore, no changes to Texas' regulations may be required by OSM.

General. EPA commented that discharge of dredged or fill material into waters of the U.S. (including most streams and wetlands) require authorization from the U.S. Army Corps of Engineers under § 404 of the Clean Water Act. The operators should be required to contact the nearest Corps office before beginning operations to obtain the necessary authorization.

The Texas program includes substantively identical counterparts to the Federal regulations relating to protection of the hydrologic balance and sediment control measures. This includes counterparts to the Federal regulations at 30 CFR 816.42 and 817.42 that require discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations.

Therefore, no changes to Texas' regulations may be required by OSM.

Texas proposed only to renumber and add its regulations to the Texas Administrative Code in this amendment. No substantive changes to the previously approved regulations were proposed. However, EPA's comments were forwarded to Texas for consideration in a future rulemaking.

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

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX-645.02). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on January 23, 1998, and as revised on March 25, 1998.

The Director approves the regulations as proposed by Texas with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment 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

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 10, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

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

2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
January 23, 1998.	April 22, 1998.	Recodification; 16 TAC 12.1 through 12.710.

3. Section 943.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

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Original amendment submission date	Date of final publication	Citation/description
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January 23, 1998.	April 22, 1998.	Recodification; 16 TAC 12.800 through 12.817.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 042-1042(a); FRL-5979-4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions submitted by the state of Missouri on March 20, 1997, which are designed to consolidate applicable requirements contained in its State Implementation Plan (SIP). These revisions will simplify compliance for Part 70 installations and many other Missouri sources.

DATES: This action is effective June 22, 1998 unless by May 22, 1998 relevant adverse comments are received. Should the agency receive such comment, it will publish notification withdrawing this rule.

ADDRESSES: Comments must be mailed to Joshua Tapp at EPA, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551-7606.

SUPPLEMENTARY INFORMATION: With the advent of the Clean Air Act (CAA) operating permit program, the EPA, the Missouri Department of Natural Resources (MDNR), the City of St. Louis—Division of Air Pollution Control, the St. Louis County Department of Health, the Kansas City Health Department—Air Pollution Control Program, and the City of Springfield—Air Pollution Control Program have coordinated the review of the local agency codes and ordinances contained in the current Federally approved SIP. Consistency between these codes and ordinances and the state regulations contained in the SIP has always been important, but the operating permit program has brought this issue to the forefront. The basic concept of the operating permit program is to combine all air requirements to which one particular source is subject into one cohesive document so that the

public, the source, and the regulatory agencies can clearly understand the compliance obligations. However, when the SIP contains outdated, overlapping, and sometimes conflicting applicable requirements, combining all requirements into one document may not achieve this goal.

This coordinated review revealed numerous discrepancies between Federally approved local ordinances and Federally approved state rules. The review also uncovered the fact that some local agencies have long since revised their regulations and, in many cases, the current version of the local agency regulations is very different from the Federally approved version.

In response to this review, MDNR and its local agencies developed recommendations for SIP action to correct these issues. This request is for the retention of some sections, the removal of some sections, and the addition of other sections. Five criteria were used to determine which sections should be recommended for removal from the SIP: (1) The sections are administrative only, (2) the sections apply to no known sources, (3) the requirements of the sections are covered by equivalent or more stringent Federally approved state rules, (4) the sections have no bearing on attainment or maintenance of the National Ambient Air Quality Standards, or (5) the sections are being concurrently replaced by current local ordinance, code, or permit requirements. Sections not meeting these criteria were recommended for retention. MDNR and its local agencies also requested that certain sections located in new or revised ordinances be added to replace outdated versions of Federally approved sections.

The following are examples of local ordinance provisions which are being retained in the SIP. MDNR and the City of Springfield Air Pollution Control Department have requested that Air Pollution Control Standard No. 1890, Chapter 2A, section 35 entitled "Maximum Emission Limitations from Incinerators" and related sections be retained in the SIP. These sections were retained because the state does not have an equally stringent rule in place which addresses incinerator emissions.

The following are examples of local ordinance provisions which are being removed from the SIP. MDNR and the city of St. Louis have requested that St. Louis Ordinance 50163 be completely removed from the SIP. Sections such as section 4 entitled "Division of Air Pollution Control Created" and section 19 entitled "Labels to be Affixed to Approved Installations" are