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**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 938**

[SATS No. PA–170–FOR; Docket ID: OSM–2108–0007; S1D1S SS08011000 SX064A000 234S180110 S2D2S SS08011000 SX064A000 23XS501520]

**Pennsylvania Regulatory Program****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Final rule.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving a request from Pennsylvania for the removal of a required amendment to the Pennsylvania regulatory program (hereinafter, the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required amendment directed Pennsylvania to submit regulations requiring that siltation structures (e.g., sedimentation ponds) not be removed any sooner than two years after the last augmented seeding.

**DATES:** The effective date is September 9, 2024.**FOR FURTHER INFORMATION CONTACT:** Ben Owens, Acting Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, Telephone: (412) 937–2827. Email: [bowens@osmre.gov](mailto:bowens@osmre.gov).**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Pennsylvania Program**

Subject to OSMRE oversight, 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). Based on these criteria, the Secretary of the Interior conditionally approved the

Pennsylvania program on July 30, 1982. You can find 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** (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. Submission of the Amendment**

By letter dated August 9, 2018 (Administrative Record No. PA 903.00), Pennsylvania requested removal of a required amendment from its program. This amendment, 30 CFR 938.16(rrr), requires Pennsylvania to amend three subsections in title 25 of the Pennsylvania Code (Pa. Code), specifically subsections 87.108(c), *Hydrologic balance: sedimentation ponds* (applicable to surface coal mining), 89.24(c), *Performance Standards: Sedimentation ponds* (applicable to underground coal mining), and 90.108(c), *Hydrologic balance: sedimentation ponds* (applicable to coal refuse disposal sites), or otherwise to amend its program to require, without exception, that sedimentation ponds not be removed sooner than two years after the last augmented seeding.

We gave notice of receipt of Pennsylvania's August 9, 2018, request in the May 1, 2019, **Federal Register** (84 FR 18435). In the same notice, 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 none was requested. The public comment period ended on May 31, 2019. We received no comments.

**III. OSMRE's Findings**

We are approving Pennsylvania's request to eliminate the required amendment as described below and approving language we previously rejected as being less effective than the Federal regulations. The following are findings we made concerning Pennsylvania's request under SMCRA at 30 U.S.C. 1253, *State Programs*, and the Federal regulations at 30 CFR 732.15, *Criteria for approval or disapproval of State programs*, and 732.17, *State program amendments*.

**A. Pennsylvania's Rationale**

With this request, Pennsylvania presents a number of reasons why the required amendment should be removed and why previously submitted language revising 25 Pa. Code 87.108(c)—

Sedimentation Ponds: Surface Coal Mines; 89.24(c)—Sedimentation Ponds: Underground Mines and Coal Preparation Facilities; and 90.108(c)—Sedimentation Ponds: Coal Refuse Disposal should be approved. The previously submitted revised language required that sedimentation ponds be maintained until the disturbed area has been stabilized and revegetated and removal is approved by the Department, and that the ponds may not be removed sooner than 2 years after the last augmented seeding unless the Department finds that the disturbed area has been sufficiently revegetated and stabilized.

**1. Use of Best Technology Currently Available (BTCA)**

In support of removing the required amendment and accepting the revised language, Pennsylvania identifies the 1985 court decision in *In re Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519 (D.D.C.), as well as our 1986 rule suspending 30 CFR 816.46(b)(2) and 817.46(b)(2), and reasons that 30 CFR 816.46(b)(1) now governs sediment control. Pennsylvania also notes that when a pond is removed prior to two years after the last augmented seeding, its program requires that sediment control measures that have been determined by the Pennsylvania Department of Environmental Protection (PADEP) to constitute BTCA must at that point be in place. 25 Pa. Code 87.108(i), 90.108(j). Pennsylvania also notes that its program establishes vegetation standards (25 Pa. Code 87.147–87.153, 87.155, 87.156, 89.86, 90.151–90.157, 90.159, and 90.160) as the BTCA. For example, 25 Pa. Code 87.147(b) requires the establishment of “a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area. . . .”

Pennsylvania's submission also references Montana and Ohio as successfully amending their programs and receiving OSMRE approval to allow removal of sedimentation ponds sooner than two years after last augmented seeding if replaced by BTCA. See 55 FR 19727 (May 11, 1990) (regarding the Montana program); 59 FR 58778 (November 15, 1994) (regarding the Ohio program).

**2. Approval Required Prior to Removal**

In support of removing the required amendment and accepting the revised language, Pennsylvania also indicates that 25 Pa. Code 87.108(c), 89.24(c), and

90.108(c) require the regulatory authority to approve the removal of the ponds as required by 30 CFR 816.46(b)(5), which we infer reflects Pennsylvania's view that the required approval provides a safeguard against the possibility that sedimentation ponds would be removed prematurely.

### 3. Revegetation Experience

In further support of removing the required amendment and accepting the revised language, Pennsylvania recounts its experience with revegetation and notes that revegetation is often established in less than two years. Pennsylvania adds that because siltation structures pose reclamation liability and, in some cases, a potential public safety hazard, they should be removed as soon as they are no longer necessary, which is often less than two years.

### 4. No Statutory Prohibition

Finally, in support of removing the required amendment and accepting the revised language, Pennsylvania states that there is no statutory prohibition to Pennsylvania's approach.

In conclusion, Pennsylvania asserts that its program's approach, with the revised language and without the required amendment, is no less effective than the Federal program for the reasons mentioned above. Therefore, Pennsylvania is requesting that the required program amendment at 30 CFR 938.16(rrr) be removed and proposed revisions to 25 Pa. Code sections 87.108(c), 89.24(c), and 90.108(c) be approved.

### B. Background of Regulatory Scheme

The Federal regulations at 30 CFR parts 816 and 817 (Permanent program performance standards for surface mining and underground mining, respectively) require operators to minimize disturbance of the hydrologic balance within the permit and adjacent areas and to prevent material damage to the hydrologic balance outside the permit area during mining and reclamation activities. 30 CFR 816.41(a) and 817.41(a). The standards address groundwater and surface water protections and include a requirement that additional contributions to streamflow of suspended solids or runoff outside the permit area be prevented to the extent possible using the BTCA. 30 CFR 816.45(a)(1) and 817.45(a).

To assist in achieving these objectives, operators often construct siltation structures for sediment control of surface drainage. The Federal regulations define a siltation structure as "a sedimentation pond, a series of

sedimentation ponds, or other treatment facility." 30 CFR 701.5. Siltation structures were originally considered by OSMRE to be the BTCA. They are designed, constructed, and maintained to provide adequate sediment storage volume and adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations. As discussed below, the Federal regulation at 30 CFR 816.46(b)(5) specifically prohibits removal of siltation structures sooner than two years after the last augmented seeding.

Challengers of a 1983 Federal rule that, in part, expanded the definition of "siltation structure" to include "other treatment facilities" (51 FR 41952) asserted in litigation that, in certain circumstances, siltation structures of any type can cause adverse effects on the hydrologic balance. The court concluded that the preamble to the final rule failed to provide sufficient rationale for requiring siltation structures in every instance. *In re Permanent Surface Mining Reclamation Litigation*, 620 F. Supp. 1519, 1568 (D.D.C. 1985). Consequently, the court remanded the challenged regulations at 30 CFR 816.46(b)(2) and 817.46(b)(2) to the Secretary for further analysis and explanation. In response, OSMRE suspended the remanded rules. 51 FR 41952, 41957–41958 (November 20, 1986). The effect of this suspension was to require that sediment control of surface drainage be governed by BTCA rather than requiring such drainage to be passed specifically through siltation structures. We concluded that when measures other than siltation structures (which under Federal regulations include vegetation, *see* 30 CFR 701.5) are determined to be BTCA, the performance standards of 30 CFR 816.45 and 817.45 will control. 51 FR 41957–41958. We also concluded that where siltation structures are determined to be BTCA, the performance standards in 30 CFR 816.46(b)–(d) and 817.46(b)–(d) will continue to apply. *Id.*

Since the suspension in 1986, OSMRE has approved revisions to two State programs (Montana and Ohio) to allow the removal of siltation structures sooner than two years after last augmented seeding if replaced by BTCA. In 1990, OSMRE approved a revision to Montana's program and the two-year retention requirement for sedimentation ponds and siltation structures. *See* 55 FR 19727 (May 11, 1990). Montana proposed to require that sedimentation ponds and other treatment facilities not be removed sooner than two years after the last augmented seeding within the drainage

unless otherwise approved by the State in compliance with water quality performance standards/regulations and sediment control standards/regulations. The revision required that a pond removed sooner than two years after the last augmented seeding within the drainage area must be replaced by a sediment control measure determined by the regulatory authority to constitute BTCA. In 1994, OSMRE approved a revision to Ohio's program and the two-year retention requirement for sedimentation ponds and siltation structures. *See* 59 FR 58778 (Nov. 15, 1994). OSMRE approved Ohio's proposal revising its regulations to authorize removal of siltation structures sooner than two years after the last augmented seeding, upon a demonstration that revegetation is the BTCA for sediment control.

The required amendment Pennsylvania seeks to remove here was imposed by OSMRE in response to a 1996 proposed amendment by PADEP. The proposed amendment covered a number of provisions and a range of topics including revisions to 25 Pa. Code sections 87.108(c), 89.24(c), and 90.108(c), which would have allowed reclamation of sedimentation ponds in less than two years. *See* 62 FR 60169 (November 7, 1997). Specifically, the 1996 proposal required that sedimentation ponds be maintained until the disturbed area is stabilized and revegetated and removal is approved by PADEP. Pennsylvania also proposed to delete related references to "other treatment facilities." We presumed at the time that this deletion was proposed because the Pennsylvania regulations at 25 Pa. Code sections 87.108, 89.24, and 90.08 require all draining to be passed through sedimentation ponds rather than by any other treatment method. 62 FR 60172. OSMRE approved the removal of references to "other treatment facilities." *Id.*

Unlike the Montana and Ohio revisions, referenced above, Pennsylvania's 1996 submission made no reference to any requirement that removal of siltation structures sooner than two years after the last augmented seeding would be approved upon a demonstration that revegetation is the BTCA for sediment control.

Because Pennsylvania's proposal presumptively precluded the use of any "other treatment facilities" and required the use of sedimentation ponds rather than any other treatment method, OSMRE did not approve an exception to the temporal requirement related to siltation structure removal. Therefore, OSMRE did not approve revisions to 25 Pa. Code sections 87.108(c), 89.24(c),

and 90.108(c) and further directed the State to amend its program to address the perceived deficiencies.

### C. OSMRE Findings

In its request to remove required amendment 30 CFR 938.16(rrr), Pennsylvania presents a more robust justification for why the required amendment should be removed and why Pennsylvania's approach, including the revisions to 25 Pa. Code sections 87.108(c), 89.24(c), and 90.108(c), should be approved.

#### 1. Use of BTCA

The Federal regulation at 30 CFR 816.46(b)(5) requires that siltation structures not be removed sooner than two years after the last augmented seeding. However, the Federal regulations at 30 CFR 816.46(b)(2) and 817.46(b)(2), which mandated use of siltation structures, were suspended on November 29, 1986 (51 FR 41952) because the preamble failed to provide a sufficient rationale for requiring siltation structures in every instance. Explaining the effect of the suspensions, OSMRE stated that the "regulatory authority must determine on a case-by-case basis what constitutes the 'best technology currently available' as required by the Act and 30 CFR 701.5 which defines BTCA." 51 FR 41957.

The effect of this suspension is to require that sediment control of surface drainage be governed by BTCA rather than requiring such drainage to be passed specifically through siltation structures for two years. In the 1986 rulemaking, OSMRE announced, in light of the change, that when measures other than siltation structures (which would include vegetation) are determined to be BTCA, the performance standards of 30 CFR 816.45 will control. 51 FR 41957. OSMRE then explained that where siltation structures are determined to be BTCA, the performance standards in 30 CFR 816.46(b)–(d) will control. 51 FR 41957–41958.

Under Pennsylvania's current program, if PADEP determines that a disturbed area featuring a siltation structure has been sufficiently revegetated and stabilized, it may conclude that vegetation has become BTCA, regardless of whether the siltation structure has been in place for two years from the last augmented seeding. This conclusion is consistent with the 1986 rulemaking, in which we indicated that "the regulatory authority must determine on a case-by-case basis what constitutes the 'best technology currently available.'" 51 FR 41957. It is also consistent with our determinations in the Montana and Ohio rulemakings

where we approved rules that allowed removal of siltation structures in less than two years if replaced by measures determined to be BTCA. BTCA is defined in the Federal regulations at 30 CFR 701.5 as:

equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable.

30 CFR 701.5 adds that BTCA includes use of "vegetative selection and planting requirements" and provides that the regulatory authority has "discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter." We recognize that a State may employ different types of BTCA to address effluent limitations and sediment storage requirements. We also recognize that the Pennsylvania program, without the required amendment at 30 CFR 938.16(rrr), still requires that water quality criteria and effluent limitations be satisfied, whether by use of siltation structures or another form of BTCA. 25 Pa. Code 87.106 (BTCA requirement); 25 Pa. Code 87.102(a) (water quality criteria); 25 Pa. Code 87.102(b) (effluent limitations).

#### 2. Approval Required Prior to Removal

The Federal regulations require the approval of the regulatory authority before siltation structures can be removed. As noted, Pennsylvania's submission points out that siltation structures must be maintained until the regulatory authority finds the disturbed area has been stabilized and revegetated. See 25 Pa. Code 87.108(c), 89.24(c), 90.108(c). Although Pennsylvania's submission does not explicitly say so, we think this requirement, in conjunction with use of BTCA, provide an adequate safeguard against the possibility that sedimentation ponds would be removed prematurely.

#### 3. No Statutory Prohibition

Pennsylvania asserts that there are no Federal statutory prohibitions that preclude approval of its request to allow removal of siltation structures sooner than two years following last augmented seeding. We recognize that the SMCRA provisions at 30 U.S.C. 1265(b)(10)(B)(i) and 1266(b)(9)(B) do not prescribe the type of BTCA to be used to control

sediment. As discussed in the November 20, 1986, **Federal Register** notice, we anticipated that siltation structures will most likely constitute the "Best Technology Currently Available"; however, case-by-case determinations should be made by the regulatory authority to determine if siltation structures are necessary to control surface water runoff. Pennsylvania's submission references revegetation standards that must be met before the regulatory authority determines that any siltation structures are not required on the site. Through this determination, if the site has been successfully reclaimed and revegetated with no surface runoff exceeding Federal or State effluent standards, then removal of the siltation structures would be approved because they would not be required to collect surface runoff from the site. Under these standards, Pennsylvania's program would establish reclamation and revegetation as the BTCA for controlling surface runoff.

For the reasons explained above, we find that removal of the required amendment at 30 CFR 938.16(rrr) and approval of the revised language to 25 Pa. Code sections 87.108(c), 89.24(c), and 90.108(c), would result in a program that is no less effective than the Federal regulations at 30 CFR 816.46(b)(1) and 816.46(b)(5) and that is consistent with SMCRA, and we are thus approving the request to remove the required amendment and approving the proposed revisions to 25 Pa. Code sections 87.108(c), 89.24(c), and 90.108(c).

## IV. Summary and Disposition of Comments

### Public Comments

In the May 1, 2019, **Federal Register** notice announcing our receipt of this amendment, we asked for public comments (Administrative Record No. PA–903.05). The comment period closed on May 31, 2019. No requests for public meetings or hearings were received. We did not receive any comments.

### Federal Agency Comments

On August 27, 2018, 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 Pennsylvania program (Administrative Record No. PA 903.01). We did not receive any comments.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain 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.*). Although we sought EPA concurrence in the Montana and Ohio rulemakings, we do not interpret section 30 CFR 732.17(h)(11)(ii) (including the undefined phrase “relate to . . . water quality standards”) to apply in this instance because the Pennsylvania program’s requirement that operators comply with State water quality and effluent standards (25 Pa. Code 87.106, 87.102) is not affected by this rule. Without the required amendment at 30 CFR 938.16(rrr), the program still mandates that water quality criteria and effluent limitations in section 87.102 be met through some form of BTCA. *See* 25 Pa. Code 87.106. Nonetheless, on August 27, 2018, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. PA 900.01). No comments were received.

**V. OSMRE’s Decision**

Based on the above findings, we are approving the request from Pennsylvania sent to us on August 6, 2018 (Administrative Record No. PA 903.00). To implement this decision, we are amending the Federal regulations at 30 CFR 938.16 that codify decisions concerning the Pennsylvania program by removing subsection 938.16(rrr). We are also approving the proposed revisions to 25 Pa. Code sections 87.108(c), 89.24(c), and 90.108(c). In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. 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. SMCRA requires consistency of State and Federal standards, and we have determined that Pennsylvania’s program, without the required amendment, achieves this.

**VI. Statutory and Executive Order Reviews**

*Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights*

This rule would not effect a taking of private property or otherwise have

taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

*Executive Orders 12866—Regulatory Planning and Review, 13563—Improving Regulation and Regulatory Review, and 14094—Modernizing Regulatory Review*

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M–94–3), the approval of State program and/or plan amendments is exempted from OMB review under Executive Order 12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency’s legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program and/or plan to the program and/or amendment that Pennsylvania drafted.

*Executive Order 13132—Federalism*

This rule has no potential Federalism implications as defined under Section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States.

Pennsylvania, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule only corrects the CFR to reflect our prior approvals of the Pennsylvania program submitted and drafted by the State and, thus, has no effect on the maximum administrative discretion we are directed to give to States.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal Government and Tribes. The basis for this determination is that our decision on the Pennsylvania program does not include Indian lands as defined by SMCRA or other Tribal lands and it does not affect the regulation of activities on Indian lands or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable Federal Indian program. The Department’s consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with minable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

*Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively, and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not 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 include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

*Regulatory Flexibility Act*

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. 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.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or

unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

**Thomas D. Shope,**  
*Regional Director, North Atlantic—Appalachian Region.*

For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

**PART 938—PENNSYLVANIA**

■ 1. The authority citation for part 938 continues to read as follows:

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

■ 2. Section 938.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

**§ 938.15 Approval of Pennsylvania regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
August 9, 2018	September 8, 2024	25 Pa. Code 87.108(c), 89.24(c), and 90.108(c); removal of sedimentation ponds before 2 years if replaced by BTCA.

**§ 938.16 [Amended]**

■ 3. Section 938.16 is amended by removing paragraph (rrr).

[FR Doc. 2024-17330 Filed 8-7-24; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 948**

[SATS No. WV-127-FOR; Docket No. OSM-2020-0003; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

**West Virginia Regulatory Program**

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

**ACTION:** Final rule.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). This amendment revises West Virginia’s regulatory program provisions related to entities authorized to issue surety bonds and the repair and compensation of damage resulting from subsidence.

**DATES:** Effective September 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Castle, Acting Director, Charleston Field Office Telephone: (304) 347-7158. *Email:* [osm-chfo@osmre.gov](mailto:osm-chfo@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the West Virginia Program
- II. Submission of the Amendment

- III. OSMRE’s Findings
- IV. Summary and Disposition of Comments
- V. OSMRE’s Decision
- VI. Statutory and Executive Order Reviews

**I. Background on the West Virginia 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 approved 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 West Virginia program on January 21, 1981. You can find additional background