

adequately covered or treated as required at 30 CFR 816.102(f) and (2) explaining why these two groups of materials, i.e., acid- and toxic-forming materials and exposed coal seams and combustible materials, are treated differently and clarify what is required to be demonstrated if less than 4 feet of cover is proposed (Finding No. 7, 58 FR 64142, 64144, December 6, 1993).

Missouri proposed to revise 10 CSR 40-3.110(3)1 to require that exposed coal seams, acid-forming and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material or treated to control the impact on surface and ground water in accordance with 10 CSR 40-3.040, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use. Missouri proposed to delete from 10 CSR 40-3.110(3)1 the allowance for an exception to a 4 foot cover requirement for exposed coal seams and materials, and combustible materials. Missouri also proposed to add at 10 CSR 40-3.110(3)1 a reference to its rules for covering coal processing waste and noncoal waste at 10 CSR 40-3.080.

Proposed 10 CSR 40-3.110(3)1 is substantively identical to the Federal regulation at 30 CFR 816.102(f) with the exception of the reference to Missouri's rules for covering coal processing waste and noncoal waste at 10 CSR 40-3.080. This reference does not affect the requirements in proposed 10 CSR 40-3.110(3)1 concerning exposed coal seams, acid-forming and toxic forming materials, and combustible materials.

The Director finds that proposed 10 CSR 40-3.110(3)1 is not less effective than the Federal regulation at 30 CFR 816.102(f), and satisfies the program amendment requirement at 30 CFR 925.16(q)(1). The Director approves proposed 10 CSR 40-3.110(3)1 and removes the required amendment at 30 CFR 925.16(q)(1).

b. 10 CSR 40-3.110(6)(B), Stabilization of Rills and Gullies After Backfilling and Grading

OSM required at 30 CFR 925.16(q)(2) that Missouri revise 10 CSR 40-3.110(6)(B) to require for previously mined areas, that an operator identify the best suited material available for topsoil replacement and segregate that material for later use as a topsoil substitute (Finding No. 9, 58 FR 64142, 64144, December 6, 1993).

Missouri proposed to revise 10 CSR 40-3.110(6)(B) to require, on areas that have been previously mined where

topsoil or a topsoil substitute are not available, stabilization of rills and gullies pursuant to subsection (6)(A) after final grading. Missouri's rule at 10 CSR 40-3.110(6)(A) requires stabilization of rills and gullies deeper than 9 inches on areas that have been regraded and topsoiled. Although Missouri proposed to delete at 10 CSR 40-3.110(6)(B) the provision that the area need not be topsoiled, Missouri's revised 10 CSR 40-3.110(6)(B) continues to require topsoil or a topsoil substitute *if available* on reclaimed areas that have been previously mined (emphasis added).

The counterpart Federal regulations at 30 CFR 816.106, concerning previously mined areas, require that these areas comply with the requirements of 30 CFR 816.102 through 816.107. The Federal regulations at 30 CFR 816.102(d)(2) requires topsoil removal, storage, and redistribution in accordance with 30 CFR 816.22. The Federal regulations at 30 CFR 816.22 require, among other things, the removal of the topsoil, material approved as a topsoil substitute, or the topsoil and the unconsolidated materials immediately below the topsoil. There is no Federal provision for an exception to the identification of topsoil or topsoil substitutes on areas that have been previously mined.

Therefore, the Director finds that proposed 10 CSR 40-3.110(6)(B) remains less effective than the Federal regulations at 30 CFR 816.102 and 816.22 and does not satisfy the program amendment requirement at 30 CFR 925.16(q)(2). The Director approves the revisions proposed at 10 CSR 40-3.110(6)(B), and revises the required amendment at 30 CFR 925.16(q)(2) to require that Missouri further revise 10 CSR 40-3.110(6)(B) to clearly require, for areas that have been previously mined, either topsoil or a topsoil substitute, in accordance with its rules at 10 CSR 40-3.030.

c. 10 CSR 40-3.140(1)(A), Control or Prevention of Air Pollution Attendant to Erosion at Surface Mining Operations

OSM required at 30 CFR 925.16(p)(9) that Missouri amend its program at 10 CSR 3.140(1)(A) by requiring that all exposed surfaces be stabilized in accordance with current prudent engineering practices (Finding No. 32, 57 FR 44660, 44669, September 29, 1992).

Missouri proposed to revise 10 CSR 40-3.140(1)(A), concerning the control or prevention of air pollution attendant to erosion at surface mining operations, to remove the word "road" from the phrase "other exposed road surfaces."

However, Missouri proposed to remove the word "road" only from the list of possible measures by which to control or prevent air pollution. The word "road" still exists in the portion of proposed 10 CSR 40-3.140(1)(A) that requires control or prevention of air pollution attendant to erosion, including dust occurring "on other exposed road surfaces" (emphasis added).

The Federal regulations at 30 CFR 816.150(b)(1) require that each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices. To fully satisfy the required amendment, Missouri must further revise proposed 10 CSR 40-3.140(1)(A) to delete the first occurrence of the word "road" in the phrase "other exposed road surfaces."

Therefore, the Director finds that (1) proposed 10 CSR 40-3.140(1)(A) remains less effective than the Federal regulations at 30 CFR 816.150(b)(1) and (2) Missouri has not satisfied the program amendment requirement at 30 CFR 925.16(p)(9). The Director approves the revisions proposed at 10 CSR 40-3.140(1)(A), but does not remove the required amendment at 30 CFR 925.16(p)(9).

d. 10 CSR 40-6.050(7)(C), 40-6.050(7)(D), 40-6.120(12)(C), and 40-6.120(12)(D), Surface and Underground Coal Mining and Reclamation Operations Permit Application Requirements for Protection of Fish and Wildlife

OSM required at 30 CFR 925.16(b)(4) that Missouri amend its program to indicate that the informational requirements of the rules, concerning a description of protective measures that will be used during the active mining phase of operations, must be included in the fish and wildlife plan; require a description of the enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat; and require the fish and wildlife protection and enhancement plan requirements also apply to species or habitats protected by State laws similar to the Endangered Species Act of 1973 and to threatened or endangered species or plants or animals proposed as well as listed