

revise the revegetation document in response to this comment.

With respect to production on land reclaimed for use as native grazingland, the NRCS commented that

[NRCS] production values represent potential for given range sites and may not be representative of the actual pre-mined yields. Range condition would influence yields on both the reference area and pre-mined area.

North Dakota's revegetation document at Chapter II, Section D requires an evaluation of the range condition, for all range sites and the reference area, according to the methodology specified by the NRCS. And as discussed above, North Dakota requires proper management of the reference area for attainment of the postmining land use; in addition, the reference area must be representative of the geology, soil, slope, and vegetation in the permit area. While the permittee may elect to use either NRCS estimated yield values or actual yield values from the reference area to determine a productivity standard, North Dakota requires that the permittee demonstrate restoration of the production potential of the soils in the permit area. For these reasons, the Director is not requiring that North Dakota further revise its revegetation document in response to these comments.

With respect to NRCS pasture and hayland yields, NRCS commented that

[c]urrently, pasture and hayland yields are under evaluation for revision. Some yields are apparently too high. Revisions will be based on available research data.

North Dakota's revegetation document at Chapter II, Section E requires the use of NRCS estimates yield figures for setting a technical productivity standard by which the success of revegetation will be measured on land reclaimed for use as pastureland. North Dakota also states in its revegetation document at Chapter II, Section B, concerning data sources, that when new data are published by the NRCS, updated tables will be forwarded to the mining companies and OSM. The permittee will therefore be using the most current NRCS estimated yields to determine any technical standards used in demonstrating the success of productivity on lands reclaimed for use as tame pastureland. Where the permittee elects to use a reference area to determine the productivity standard, the actual yield measurements will be used. For these reasons, the Director is not requiring that North Dakota further revise the revegetation document in response to this comment.

On May 22, 1995, the U.S. NRCS responded that it had no comments on the revised proposed amendment (administrative record No. ND-U-19).

b. *Other Federal agencies.* The U.S. Mine Safety and Health Administration (MSHA) responded on March 16, 1994, that the proposed amendment did not conflict MSHA regulations (administrative record No. ND-U-04).

The U.S. Fish and Wildlife Service responded on March 29, 1994, and June 1, 1995, that (1) the proposed amendment was logical and reasonable and (2) it did not anticipate any significant impacts to fish and wildlife resources as a result of the proposed amendment (administrative record Nos. ND-U-07 and ND-U-21).

The U.S. Bureau of Mines responded on April 11, 1994, that it had no comments on the proposed amendment (administrative record No. ND-U-08).

The U.S. Rural Economic and Community Development responded on May 23, 1994, that it had no comments on the proposed amendment (administrative record No. ND-U-20).

The U.S. Agricultural Research Service, Northern Great Plains Research Laboratory, responded on May 30, 1994, that it had no comments on the proposed amendment (administrative record No. ND-U-22).

The U.S. Army Corps of Engineers responded on June 5, 1995, that it found the proposed amendment to be satisfactory (administrative record No. ND-U-24).

3. *Environmental Protection Agency (EPA) Concurrence and Comments*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of 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 North Dakota proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. ND-U-03). EPA responded on March 21, 1994, that it had no comments on the proposed amendment (administrative record No. ND-U-06).

4. *State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed

amendment from the SHPO and ACHP (administrative record No. ND-U-03). Neither SHPO nor ACHP responded to OSM's request.

V. *Director's Decision*

Based on the above findings, the Director approves, with certain exceptions and additional requirements, North Dakota's proposed amendment as submitted on February 17, 1994, and as revised and supplemental with additional explanatory information on December 21, 1994, and May 11, 1995.

With the requirement that North Dakota further revise its rules and/or the revegetation document, the Director approves, as discussed in Finding No. 3.a, Chapter II, Section C, the requirements to demonstrate the success of productivity prior to third-stage bond release on land reclaimed for use as prime farmland, and Finding No. 3.e, Chapter II, Section I, the requirements to demonstrate the success of revegetation on areas developed for recreation, residential, or industrial and commercial land uses.

The Director approves, as discussed in: Finding No. 1, the proposed revisions in the revegetation document not otherwise specifically discussed, Finding Nos. 2.a. through 2.i, various revisions in the revegetation document made in response to required amendments; Finding No. 3.b, Chapter II, Section E, the required evaluation of reclaimed vegetation for diversity, seasonality, and permanence on areas developed for use as tame pastureland; Finding No. 3.c, Chapter II, Section E, the use of estimated yields to develop a productivity standard for soils that are not rated for use as pastureland on land reclaimed for use as tame pastureland; Finding No. 3.d, Chapter II, Section H, wetland classification and replacement requirements; Finding No. 3.f, Chapter III, Section C, sample design and sample size adequacy; Finding No. 3.g, Chapter III, Section D, the use of entire field harvest, combined sampling, hand sampling, or representative strips as procedures for demonstrating productivity on land reclaimed for use as cropland or prime farmland; Finding No. 3.h, Appendix A, the use of restricted interseeding as a normal conservation practice on land reclaimed for use as native grassland; and Finding No. 3.i, Appendix A, the voluntary plantings of trees and shrubs on agricultural land at the request of the landowner or to enhance fish and wildlife habitat as a normal conservation practice.

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota Program, are being