

the proposed program amendment submitted by Kentucky, OSM reopened the public comment period in the February 17, 1995, Federal Register (60 FR 9314) and provided an opportunity for a public hearing on the adequacy of the revised amendment. The public comment period closed on March 20, 1995.

### 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.

#### A. 405 KAR 16:010—General Provisions/Surface Mines

Kentucky proposes to revise 405 KAR 16:010 to add provisions for the protection of unmined barriers of coal left by underground mining. At new section (8), Kentucky is prohibiting the removal of coal from an unmined barrier of coal left by an underground mine where the underground workings dip toward and approach the land surface, unless the Natural Resources and Environmental Protection Cabinet (Cabinet) has otherwise approved the removal. The Cabinet shall approve the removal if all other applicable requirements of 405 KAR Chapters 7–24 and KRS Chapter 350 are met and at least one of the following conditions is met: (a) The removal will not adversely affect the stability of the unmined barrier of coal; (b) the removal will completely eliminate or significantly reduce underground workings; (c) the removal will eliminate or significantly reduce an existing or potential threat to the health or safety of the public resulting from the existing underground workings; (d) the removal will eliminate or significantly reduce existing or potential adverse impacts to the quantity or quality of ground or surface water resulting from the existing underground workings; or (e) the unmined barrier of coal is not necessary to protect the health or safety of the public or to protect the quantity or quality of ground or surface water.

Kentucky's intent behind this regulation is to reduce the occurrences of a "blowout," which is a rapid release to the land of a large volume of water impounded in underground mine workings. (Administrative Record No. KY–1305.) While there is no Federal counterpart to the Kentucky regulation, the regulation's intent is not inconsistent with section 102 of SMCRA which established SMCRA to protect,

*inter alia*, society and the environment from the adverse effects of surface coal mining operations. Therefore, the Director finds the proposed regulation at 405 KAR 16:010, section (8) not inconsistent with SMCRA and the Federal regulations.

#### B. 405 KAR 18:010—General Provisions/Underground Mines

Kentucky proposes to revise 405 KAR 18:010 to add provisions for protection against the sudden release of water accumulated in underground workings to the land surface. At new section (6), Kentucky is requiring that, except where surface openings are approved in the permit, an unmined barrier of coal shall be left where the underground workings dip toward and approach the land surface. The Cabinet shall waive this requirement if it determines that the proposed operation meets the applicable requirements of 405 KAR Chapters 7–24 and KRS 350 and either of the following provisions: (a) The applicant has demonstrated in the permit application to the satisfaction of the Cabinet, based upon the geologic and hydrologic conditions in the permit area, that accumulation of water in the underground workings cannot be reasonably expected to occur; or (b) adequate measures to prevent accumulation of water in the underground workings have been included in the permit application and have been approved by the Cabinet. Kentucky is also requiring that if an unmined barrier of coal is required, it shall be of sufficient width to prevent failure and sudden release of water accumulated in underground workings to land surface. The Cabinet may determine, on a case-by-case basis, the width of the unmined barrier of coal. The width shall not be less than that given by the formula:  $W = 50 + H$ , where W is the minimum width in feet and H is the maximum hydrostatic head in feet that can build up on the unmined barrier of coal. The Cabinet may approve a width less than the minimum indicated by the formula if the applicant has demonstrated in the permit application to the Cabinet's satisfaction that the lesser width will achieve the purpose of this regulation.

While there is no direct Federal counterpart to the Kentucky regulation, the Director finds as more fully stated in the previous finding that the proposed regulation at section (6) of 18:010 to not be consistent with SMCRA and the Federal regulations.

### IV. Summary and Disposition of Comments

#### Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment submitted on August 2, 1994. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

The Director reopened the public comment period and provided an opportunity for a public hearing on the revised amendment submitted on January 11, 1995. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

One public comment was received. The Kentucky Resources Council, Inc. generally supported the amendment but recommended that the outcrop barrier width potentially be increased based on site-specific data to prevent the discharge of water through any existing fractures and bedding planes to prevent surface instability and slides. The Director notes that Kentucky may determine, on a case-by-case basis, the width of the outcrop barrier needed to prevent the discharge of water. Kentucky, in its October 14, 1994, Statement of Consideration stated that the width may be potentially increased if Kentucky deems it necessary.

#### Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment submitted on August 2, 1994, and revised on January 11, 1995, from various Federal agencies with an actual or potential interest in the Kentucky program. The U.S. Department of the Interior, Fish and Wildlife Service and the Bureau of Mines, and the U.S. Department of Agriculture, Forest Service, concurred without comment.

The U.S. Department of the Interior, Bureau of Land Management, commented that leaving outcrop barriers in place serves a useful purpose but where feasible, drifts should be located updip to prevent drainage from improperly sealed openings. It cited a situation in West Virginia where a blowout occurred which created acid mine drainage. Kentucky's proposed regulations at 405 KAR 16:010 and 18:010 both require that before an unmined coal barrier is removed, the operation must meet all applicable requirements of 405 KAR Chapters 7–24. Section 8(1) of 405 KAR 18:060 allows gravity discharges of water, except for those drift mines subject to section 8(2), if the discharge complies with the performance standards and any