

FEDERAL REGISTER: 54 FR 51904 (December 19, 1989)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 715

Surface Coal Mining and Reclamation Operations; Postmining Use of Land; Denial of Petition

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is making available to the public its final decision on a petition for rulemaking from Mr. J. Nathan Noland, President of the Indiana Coal Council. The petition, submitted pursuant to the Surface Mining Control and Reclamation Act (SMCRA), requested that OSM amend its regulations governing the criteria for alternative postmining land use applicable to coal mining operations permitted under the Initial Regulatory Program. The Director has decided to deny the petition.

ADDRESS: Copies of the petition and other relevant materials comprising the administrative record of this petition are available for public review and copying at OSM's administrative Record, Room 5131, 1100 L St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-5950 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

Pursuant to section 201(g) of SMCRA, and applicable regulations, 30 CFR 700.12, any person may petition the Director of OSM for a change in OSM's regulations. On June 20, 1989, OSM received a petition dated June 15, 1989, from Mr. J. Nathan Noland, President of the Indiana Coal Council, suggesting that paragraph (d) of 30 CFR 715.13, which contains the criteria for postmining land use applicable to Initial Program sites, be replaced with the language in paragraph (c) of 30 CFR 816.133, which contains the criteria for postmining land use applicable to Permanent Program sites.

OSM announced receipt of the petition in the Federal Register with a 30-day comment period on July 6. By the close of the comment period, OSM had received five comments.

Following an analysis of the petition and the public comments, the Director decided to deny the petition. OSM will, instead, propose a different rule that the agency believes would achieve what the petitioner has requested.

In a letter to the petitioner dated December 5, 1989, the Director reported his decision and the basis for that decision, as well as briefly summarizing the comments received during the comment period. That letter appears as an appendix to this notice.

In accordance with the Director's decision on this petition, OSM has initiated rulemaking proceedings. A proposed rule will be published in the Federal Register for public comment prior to any final rulemaking.

Dated: December 12, 1989.

Harry M. Snyder, Director, Office of Surface Mining Reclamation and Enforcement.

APPENDIX

The text of the Director's letter of December 5, 1989, to Mr. J. Nathan Noland, is as follows:

Mr. J. Nathan Noland,
President, Indiana Coal Council, Inc.
701 Harrison Bldg. -- 143 W. Market St.
Indianapolis, Indiana 46204.

Dear Mr. Noland:

This is to inform you of my decision on your June 15, 1989, petition for rulemaking. In that petition, you requested that the Initial Program criteria for approving alternative postmining land use at 30 CFR 715.13(d) be removed and replaced with the Permanent Program criteria found in 30 CFR 816.133(c).

The Office of Surface Mining Reclamation and Enforcement (OSM) announced receipt of the petition in the Federal Register with a 30-day comment period on July 6. By the close of the comment period on August 7, OSM had received five comments, all supporting the petition for rulemaking.

DECISION ON THE PETITION

Based on the substance of the petition and the comments submitted, I have decided to deny your petition. We will, however, proceed with a proposed rulemaking that we believe will accomplish the goal of the petition. Although we will not be proposing an actual change in 30 CFR 715.13(d), we will propose rule changes that would authorize regulatory authorities to apply the criteria for alternative postmining land use in 30 CFR 816.133(c) to operations permitted under the Initial Program. The proposed rule would also authorize regulatory authorities to apply other Permanent Program performance standards to operations permitted under the Initial Program in lieu of applying the Initial Program standards. This would allow Initial Program sites to be reclaimed to the latest technical and environmental standards of the Permanent Program and would help Initial Program permittees obtain bond release.

I have directed my staff to begin preparation of the proposed rule for publication in the Federal Register before the end of 1989. At that time, the public will be given a reasonable opportunity to comment on the proposal prior to final publication.

Although your petition makes a persuasive case for replacing the Initial Program criteria for alternative postmining land use at 30 CFR 715.13(d) with provisions identical to the Permanent Program criteria at 30 CFR 816.133(c), such a proposed rulemaking would address the problem of continued applicability of Initial Program performance standards for postmining land use only. It would not address numerous other areas where the Initial Program standards are similarly deficient, and where application of the Permanent Program standards would result in reclamation superior to that which would be achieved under the Initial Program standards. OSM will discuss some examples of deficient Initial Program performance standards in the preamble to the proposed rulemaking.

SUBSTANCE OF THE PETITION AND COMMENTS

Essentially, the petition cited (1) the confusion of having two different sets of postmining land use provisions in the regulations; (2) the fact that OSM had acknowledged the inadequacy of the Initial Program rules for postmining land use when the current Permanent Program rules were developed in 1982/83 (even though the Initial Program rules were left intact); and (3) the legal basis for such a change, supported by court decisions.

Three of the commenters based their support primarily on a contention that having two sets of postmining land use rules caused confusion, and that the permanent requirements are more logical to apply because they reflect OSM's current policy on postmining land use. One of the commenters noted a situation in Indiana where the U.S. Fish and Wildlife Service continues to assert its authority to approve or disapprove postmining land use changes under 30 CFR 715.13(d)(8) -- authority they don't have under the Permanent Program rules at 30 CFR 816.133.

The two remaining commenters presented detailed legal analyses, including citing past OSM stated policies and recent court decisions, in support of the petition.

In addition to providing you with this notification, we will soon announce the decision in the Federal Register.

I appreciate your interest in OSM's rulemaking process, and I welcome your suggestions on improvements that we can make in our regulations.

Sincerely,
Harry M. Snyder.

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