



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

25 MAY 1978

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OFFICE OF ENFORCEMENT

MEMORANDUM

TO : Regional Administrators  
: NPDES State Directors

FROM : Deputy Assistant Administrator  
for Water Enforcement (EN-335)

SUBJECT: Coal Mining Under the Surface Mining Control and  
Reclamation Act of 1977 and its Relationship to  
EPA's Current Responsibilities for Coal Mining  
Operations

Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) was passed on August 3, 1977. The SMCRA authorizes the Department of Interior to issue permits to control all aspects of water pollution from coal mining operations through the newly created Office of Surface Mining (OSM). The purpose of this memorandum is to acquaint the states and EPA Regions with some of the highlights of the SMCRA as well as summarizing certain initial permit activities and requirements for coal mining operations.

Sources of Pollution Regulated by OSM and EPA

EPA's present regulatory authority is based primarily on the EPA Coal Mining Point Source Category effluent limitations guidelines for "Best Practicable Control Technology Currently Available" (promulgated in May 1977) and for "New Source Performance Standards" (proposed in September 1977) and is restricted to surface water pollution during the active mining stage. There are no "Best Available Technology Economically Achievable" effluent limitations at this time. The OSM regulation on the other hand, has performance standards that apply to all sources of coal mining operation pollution, underground as well as surface waters, and continues even after mining operations cease (until the bond is released). The OSM permits will require that the coal mining operations meet very specific environmental protection performance standards,

which include in addition to technology-based effluent limitations, restoration of land to original or alternate use and approximate original contour; removal, segregation, and replacement of topsoil; stabilization of waste piles; control of mine waste disposal and use of access roads; and revegetation of mined land.

#### OSM State Permanent Programs

The OSM permanent program, which is based on sections 503 and 504 of SMCRA, is greatly dependent on the states; however, only seven out of the 39 coal mining states are expected to have the program at the end of fiscal 1978. To be delegated the OSM program, the states must submit to the OSM within 18 months (February 3, 1979) from the date the SMCRA was passed (August 3, 1977), a program which demonstrates that the state has the capability of carrying out the provisions of the SMCRA. The program must include: (1) a surface mining law requiring permits and sanctions for violations in accordance with the Federal program; (2) sufficient administrative authority; (3) a plan for designating areas as unsuitable for surface mining; and (4) rules and regulations consistent with Federal permanent regulations. If a state does not submit a program within 34 months (June 3, 1980) of the enactment of the SMCRA, a Federal program will be developed for the state. It is noteworthy that each state making an application will have to address coordination of state-wide activities related to approvals for coal mining operations. The permanent Federal regulations are currently scheduled for promulgation on November 1, 1978.

#### Responsibilities Under OSM and NPDES Regulations

OSM published final interim or "initial" regulations establishing an initial regulatory program for coal mining operations on December 13, 1977. Thirty-seven of the 39 coal-producing states, have or will shortly have, authority to require a coal mining operator to obtain a coal mining permit. After February 3, 1978, these state-issued permits must include provisions equivalent to those of the OSM regulations. This is true whether the state has the OSM program or not. Since the OSM provisions encompass substantially more regulatory authority than NPDES provisions, OSM provisions would only be incorporated into NPDES permits indirectly, i.e. effluent limitations which are the same under both the OSM and the NPDES regulations.

Typically, where EPA has the NPDES program, the NPDES permit would only cover point sources discharging from the mining operation and limitations would be in accordance with the effluent limitations promulgated under section 301 of the Clean Water Act of 1977. Additionally, the EPA limitations only apply to the active coal mining area and EPA would not be in a position to impose OSM performance standards such as the OSM requirement that all discharges from the entire disturbed area pass through a sedimentation pond. However, EPA would be required to review and issue permits for any point source discharges from the disturbed area and conditions for these permits would be assigned based on best engineering judgment (there are no effluent limitations for disturbed areas or similar activities) and the existing OSM effluent limitations.

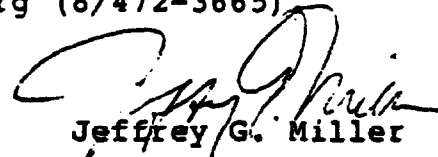
If there is a potential for runoff of toxics or hazardous materials (sections 307(a) and 311) to surface waters from coal mining activities, section 304(e) of the Clean Water Act authorizes EPA to control this non-point source runoff by imposing best management practices. Due to the comprehensive authority of the SMCRA and the OSM regulations, the regulation of non-point sources will, for the majority of cases, be left to OSM.

In addition to the February date which calls for OSM requirements in state coal permits, May 3, 1978, is also significant because after this date all existing coal mining operations are subject to the provisions of the OSM interim regulations either as a result of amendments to existing state permits or as a result of Federally initiated actions by the OSM. The interim regulation is also subject to citizen suits. The OSM actions might result where some states do not have the required statutory authority necessary to regulate coal mining operations. OSM will, however, have inspections and enforcement programs for all 37 states covered by the interim program.

Memorandum of Understanding

To avoid duplication of efforts in issuing permits, making inspections and taking enforcement actions, a Memorandum of Understanding is being developed by EPA and OSM that delineates the responsibilities of each Agency with respect to the issuance of point source discharge permits and coal mining permits. It is believed that this Memorandum will be drafted encouraging EPA Regional Offices to develop more detailed agreements with the appropriate OSM Regional Offices reducing regulatory duplication wherever possible.

If you have any questions or need further information please call Richard Sternberg (8/472-3665)

  
Jeffrey G. Miller

cc: Enforcement Division Directors  
Permit Branch Chiefs