STATE OF ILLINOIS

DEPARTMENT OF MINES AND MINERALS

LAND RECLAMATION DIVISION

BRAD EVILSIZER
Director

227 SOUTH 7TH ST. — RM. 204
SPRINGFIELD, ILLINOIS 62706
TELEPHONE: (217) 782-4970

LAND RECLAMATION DIVISION MEMORANDUM NO. 83-5

TO: Recipients of Illinois Rules and Regulations
The Surface Coal Mining Land Conservation & Reclamation Act

FROM: Douglas Downing, Supervisor
Land Reclamation Division

DATE: July 25, 1983

RE: Proposed Amendments, Sections 1816.46, 1816.103, 1817.46
Illinois State Program Rules and Regulations

In the March 11, 1983, Illinois Register, the Department published a notice of rulemaking proposing changes to Sections 1816.46, 1816.103 and 1817.46 in accordance with the Department of Interior's conditional approval of its permanent regulatory program. The Department requested that all comments on the proposed changes be submitted at the April 20, 1983, public hearing or in writing no later than April 25, 1983. No persons appeared at the public hearing and only one set of comments was received.

The Office of Surface Mining has approved a six month extension for final submittal of these rule changes. The extension period is to facilitate further notice of and public comment on this rulemaking.

A copy of the original Notice of Proposed Rulemaking is attached. All comments regarding this proposal must be received in writing by the Department at the following address, no later than September 2, 1983:

Illinois Department of Mines and Minerals
Land Reclamation Division
227 South 7th, Room 204
Springfield, Illinois 62706

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DEPT. OF MINES AND MINERALS
LAND RECLAMATION DIV.

Illinois Department of Mines and Minerals

NOTICE OF PROPOSED RULEMAKING

Agency: Illinois Department of Mines and Minerals.

Title or Name of Rule(s) and Proposed Action: Surface Coal Mining Land Conservation and Reclamation Act, State Program Rules and Regulations, Amendment.

Statutory Authority: Ill. Rev. Stat., Ch. 96 1/2, par. 7909.01.

Summary and Purpose of Proposed Rulemaking: The Department of Mines and Minerals is proposing to amend its permanent program in accordance with the conditions imposed on the approval of the permanent program by the Secretary of the U.S. Department of the Interior on May 17, 1982, (47 FR 23883, No. 105, June 1, 1982).

The State of Illinois submitted its revised program for consideration on December 22, 1981. Review of this program is described in the June 1, 1982, Federal Register.

When the Secretary of Interior announced his decision on the conditional approval of the Illinois program, he included his findings and an analysis of those findings. The Secretary required that "minor deficiencies" in the Illinois program be corrected. The deficiencies were explained in the June 1, 1982, Federal Register and are summarized as follows:

1. Illinois regulations allow for covering the pit floor and highest seam with four feet of water. Federal requirements do not allow for cover with water. The Secretary found that the concept of covering coal seams with water has merit; however, the Secretary did not agree with the depth of water cover required by the Illinois regulation.

   The Secretary could not find that the Illinois regulation was consistent with the Federal regulation. As a condition of the Illinois program approval, the Secretary is requiring Illinois to promulgate or otherwise amend its regulations to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water.

2. Illinois regulations would allow variances from the requirement of a sedimentation pond if an operator demonstrates that the best technology currently available in a given situation is a siltation structure other than a sedimentation pond. The Federal regulations require the use of sedimentation ponds as the best technology currently available.

   The Secretary found that Illinois' intention to retain the language currently used in its regulations and submit any proposals for

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NOTICE OF PROPOSED RULEMAKING

methods other than sediment pond to OSM for review was not sufficient to assure that the Illinois rule would be consistent with Federal rules. As a condition of Illinois program approval, the Secretary is requiring Illinois to submit to the Secretary a policy statement or otherwise amend its program to indicate that Illinois understands that at the present time the best technology currently available for sediment control is sedimentation ponds if Illinois wishes to approve a siltation structure other than a sediment pond, it must first send the proposal to OSM for review and approval as either an experimental practice or program amendment.

Illinois is making these changes under protest and subject to the outcome of all discussions with the Department of Interior and resolutions of Illinois Department of Mines and Minerals v. Watt, 82-3152, a petition for review filed in U.S. District Court, Central District of Illinois.

With respect to the condition concerning the use of water as a cover for coal seams, Illinois has submitted documentation to OSM supporting its position that four feet of water over an exposed coal seam is sufficient to prevent the formation of acid water. Additionally, studies have shown that there is less available oxygen when water is used than when soil is used as cover.

With respect to the condition concerning sediment ponds, OSM has established that at this time the best technology currently available for sediment control are sedimentation ponds. Illinois solicits comments concerning the use of means to control sediment other than sediment ponds which, in certain instances would be the best technology currently available.

Details concerning these rules are available for public review at the Land Reclamation Division, 227 South 7th Street, Room 204, Springfield, Illinois.

Illinois wants to make clear that this does not preclude an operator from proposing the use of a siltation structure other than a sediment pond; any such proposal must then be reviewed and approved by Illinois and OSM as an experimental practice.

In order to assure the maintenance of its regulatory authority, Illinois is required to submit to the Secretary of Interior copies of promulgated regulations or otherwise amend its program by June 1, 1983, with respect to the subjects of this rulemaking. If for any reason this proposed rulemaking is not complete by June 1, 1983, the Department expects to take emergency rulemaking or other actions necessary in order to meet the conditions of the Secretary's approval.

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Will this Proposed Rulemaking Replace and Emergency Rule Currently in Effect? No.

Statement of Statewide Policy Objectives (if applicable): N/A.

Submission of Comments: All comments must indicate the identity and address of the commenter. A brief description of the commenter's interest is helpful. Comments must specify the regulatory paragraph to which they are directed. If possible, please submit two copies of your comments, and begin comments on each specific regulatory paragraph on a separate sheet of 8 1/2 x 11 inch paper. (This will ease the job of record assembly and review.) Comments should be sent to:

Permanent Program Regulation Comment Docket
Land Reclamation Division
Illinois Department of Mines and Minerals
Room 204
227 South Seventh Street
Springfield, Illinois 62706

Submittals may include data, views, arguments and other comments relevant to the proposal and issues noted in the summary and purpose discussion thereof. All comments are due in Springfield at the above address no later than 5:00 p.m., on April 25, 1983. Comments received thereafter may not be considered in this rulemaking. Persons desiring the opportunity to present oral testimony and data, views, arguments or other comment may do so at a public hearing on April 20, 1983. Comments in written form may also be presented at these hearings. A public hearing will be held in Springfield on April 20, 1983, at 11:00 a.m. in Room C-1 of the Stratton Office Building, 401 S. Spring Street. Persons wishing to comment at the hearings should register in advance, by notifying the Department by mail received before the day of the hearing at the above mailing address in Springfield, or by telephone (217-782-4970: Mary Jo Murray). Commenters may also register at the hearing. The hearing is subject to adjournment when no person is present who has not commented or had the opportunity to do so. Questions about the hearing may be telephoned to the Department. Everyone is encouraged to submit his comments in advance of the April 20, 1983, hearing, to better enable questioning and understanding by the Department.

The Department reserves the right to limit the time for each commenter to make oral comments to 15 minutes, and to continue the hearing upon notice posted or given at the hearing. The right to cross-examine witnesses will be granted to interested persons if requested, as provided by law. All written comments received by April 25, 1983, and all oral comments made at the hearings, will be reviewed and considered fully by the Department.

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Initial Regulatory Flexibility Analysis: N/A.

The full text of the Proposed Amendment is as follows:

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TEXT OF PROPOSED AMENDMENT

§1816.46 Hydrologic balance: Siltation structures.

(b) Sediment pond design criteria shall be published as technical guidelines by the Department, shall be subject to the Administrative Procedure Act, and shall be no less stringent than current criteria of U.S. Environmental Protection Agency and Office of Surface Mining. The current criteria used by U.S. EPA and OSM is "best technology currently available" which is, for sediment control, sedimentation ponds.

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(i) The Department will treat proposals from operators to use sediment control methods other than sedimentation ponds as an experimental practice request under Section 1785.13.

§1816.103 Backfilling and grading: Covering or treating coal and acid- and toxic-forming materials.

(a) Cover or treatment

(1) A person who conducts a surface mining activities shall treat, or shall cover, with a minimum or 4 feet of the best available nontoxic and noncombustible earthen material, all acid-forming materials, toxic-forming materials, combustible materials, or any other materials identified by the Department as exposed, used or produced during mining; provided, that the pit floor and the highest coal seam may be covered with a minimum of ~~4 feet~~ 10 meters of water. If earthen material is used as cover, such material shall be sloped to a maximum of 30 percent slope.

§1817.46 Hydrologic balance: Siltation structures.

(b) Sediment pond design criteria shall be published as technical guidelines by the Department, shall be subject to the Administrative Procedure Act, and shall be no less stringent than current criteria of U.S. Environmental Protection Agency and Office of Surface Mining. The current criteria used by U.S. EPA and OSM is "best technology currently available" which is, for sediment control, sedimentation ponds.

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(i) The Department will treat proposals from operators to use sediment control methods other than sedimentation ponds as an experimental practice request under Section 1785.13.