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West Ridge Experimental Practices / Monitoring

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Wed, Sep 21, 2016 at 5:24 PM

To: OGMCOAL DNR <ogmcoal@utah.gov>, Karen Madsen <kmadsen@utah.gov>

Cc: Lisa Reinhart <lreinhart@utah.gov>, Daron Haddock <daronhaddock@utah.gov>, Christine Belka <cbelka@osmre.gov>

According to the federal register, the required monitoring of an experimental practice is developed on a case by case basis in the permitting process.

The requirements of the experimental practice described in MRP, Vol. 1, Section 231.100 (p. 2-10 and 2-11) and in App. 2-6 (page 21) requires quantitative sampling for five years after the test plot reclamation. Test plots were reclaimed in 2005. Quantitative monitoring of the test plots from 2006 through 2016 provides confirmation of success of the experimental practice demonstration. Therefore, West Ridge has exceeded the monitoring requirement in the MRP and may now discontinue the monitoring of the test plots. As discussed with Christine Belka by telephone today, OSM is in agreement with this conclusion.

The mid-term review includes a request to revise the MRP narrative accordingly.

—— Forwarded message ——

From: **Belka, Christine** <cbelka@osmre.gov>

Date: Mon, Sep 19, 2016 at 4:11 PM

Subject: Experimental Practices / Monitoring

To: Priscilla Burton <priscillaburton@utah.gov>

Hi Priscilla,

I'm so sorry I haven't gotten back to you sooner. I haven't forgotten you!

Federal Register preambles summarize all comments OSM received on a proposed rule and include OSM's response. These discussions can help frame what OSM envisioned for implementation of a specific reg even if it doesn't directly address a particular current-day question.

I have attached all excerpts that discuss monitoring from the Federal Register when we approved the experimental practice regs. It's pretty quick (2.5 pages). It seems to boil down to the need for monitoring to be sufficient to allow for evaluation of the effectiveness of the experimental practice and to identify (at the earliest possible time) any potential environmental risk or threat to public health or safety. This isn't exactly insightful because that is actually in the regulation language. However, we do discuss why monitoring programs need to be site-specific (and may extend beyond the time of the operation, or not, as specified in the permit).

Please have a look and see if it sheds any light on your question. And definitely give me a call if you'd like to discuss this further.

Thanks for your patience.

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**Experimental Practice Monitoring Req History.docx**

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48 FR 9478 (March 4, 1983)

Section 785.13(b) sets forth information that shall be provided by an operator in a permit application for an experimental practice. Among other things, this information shall include a description of the variances from performance standards that are being requested, show how use of the practice will encourage advances in mining or reclamation technology or allow alternative postmining land uses on an experimental basis, provide assurances that the practice is potentially more or at least as environmentally protective as required under Subchapter K and set out the monitoring efforts which the operator shall undertake. In the case of the monitoring efforts, the data collected shall be reliable and sufficient to enable the regulatory authority and OSM to evaluate the effectiveness of the experimental practice and to identify at the earliest possible time potential risk to the environment and public health and safety which may be caused by the experimental practice.

One commenter objected to the monitoring requirement which would enable the regulatory authority and the Director to evaluate the effectiveness of the practice. The commenter believed that this was not required by the Act, that it would be extremely expensive and that the same purpose could be accomplished by other monitoring requirements. The recommendation to delete this requirement is rejected because OSM thinks that such data will enable the regulatory authority and the Director to evaluate the effectiveness of an experimental practice for purposes of allowing further experimental practices and possibly changing existing regulatory standards and is also needed to identify potential risks to the environment. Furthermore, the monitoring requirements provided under other rules may not be sufficient for activities covered by this rule. Since an experimental practice is conducted pursuant to a variance from promulgated performance standards, it must be more closely observed than standard mining practices. As for any additional expenses incurred due to monitoring, OSM believes that these may well be offset by economic advantages obtained as a result of successful experimental practices. Finally, OSM considers it has sufficient authority under the Act to require the monitoring data.

Two commenters recommended deleting language in proposed Sec. 785.13(b)(4) referring to monitoring "during and after the operation involved." Instead, they thought that the regulatory authority should set the monitoring requirement in the experimental practice permit. The commenters wished to do away with open-ended monitoring requirements after the experimental practice was completed.

OSM rejects this suggestion in part because the degree of monitoring being specified follows the Act which provides for the experimental practice potentially to be "more or at least as environmentally protective, during and after mining operations" [emphasis added] as the promulgated performance standards. In order to ensure that this mandate is followed, a monitoring program both before and after the operation may be necessary. However, OSM agrees that the extent and scope of required monitoring should be determined and established in the experimental practices permit. For this reason the language has been revised by not adopting the proposed phrase "during and after the operation involved" in the first sentence of Sec. 785.13(b)(4). Instead, the phrase "during and after mining" has

been added to Sec. 785.13(b)(4)(ii). This will assure that postmining monitoring need only be conducted if necessary to identify the risk to the environment and public health and safety during and after mining. Whether monitoring after mining may be required to meet this objective can be determined within the context of the individual experimental practices permit.

One commenter thought that the proposed language in Sec. 785.13(b)(4)(i) would create a major loophole to compliance with the performance standards by deleting the previous requirement for a monitoring program to evaluate and compare experimental practices. Another commenter believed the proposal was in direct conflict with the Section 711 limitation on experimental practices to be "not larger or more numerous than necessary" to determine their effectiveness and economic feasibility. According to that commenter, unless the monitoring data were given in a form to enable comparison with other experimental practices, the regulatory authority or Director might approve practices more numerous than necessary or approve one already shown to be ineffective or infeasible.

OSM rejects these comments because the regulatory authority and the Director will have sufficient information from the experimental practice permit application to evaluate a given experimental practice on its own merit as well as in comparison with other similar experiments. Under this provision, reviewers are provided with data as to the effectiveness of the practice. Likewise, under Sec. 785.13(b)(1), all performance standards for which variances are requested are identified, thus providing reviewers with a basis for comparison if and when necessary.

F. SECTION 785.13(f) Monitoring/Additional Requirements

Section 785.13(f) will require that anyone undertaking an approved experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application as well as fulfill any additional steps the regulatory authority or the Director may require to ensure protection of the public health and safety and the environment.

One commenter recommended deleting proposed Sec. 785.13(f) as being redundant with the monitoring requirements of paragraph 785.13(b)(4). OSM has rejected this suggestion because new Sec. 785.13(f) serves a different purpose than the referenced paragraph. Section 785.13(b)(4) concerns information which an operation must provide in an application for an experimental practice. On the other hand, Sec. 785.13(f) indicates that the operator shall perform monitoring activities as well as any other requirements the regulatory authority or the Director may specify. OSM has adopted the word change recommended by another commenter in order to make it clear that the paragraph involves two distinct requirements.

H. MISCELLANEOUS RECOMMENDATIONS

One commenter recommended several new provisions. One of these would require a regulatory authority to designate contact persons on its technical staff for monitoring experimental practices who would be immediately notified by an operator in the event problems developed in the course of an experiment. The proposed provision would also authorize the issuance of a notice of violation only if an experimental practice plan were not followed or if appropriate action as required by the regulatory authority were not taken.

OSM believes that regulatory authorities will set up appropriate contact arrangements and therefore specific directions to this effect are not warranted in this rulemaking. With respect to the issuance of notices of violation, the experimental practice variance becomes part of the surface mining permit and, if followed, would not lead to the issuance of a notice of violation or a cessation order with regard to those standards from which a variance was granted.

The same commenter proposed including provisions which would identify what constitutes a successful experimental practice; would require a regulatory authority to notify all operators in the State of a practice that was deemed successful; would permit the practice's use on a case-by-case basis; and would require the Director to circulate to the State regulatory authorities technical memoranda informing them of practices deemed to be successful.

OSM has not adopted any of these suggestions in this rulemaking, because it believes that whether an experimental practice is completely or partially successful will be apparent. As for how dissemination of the new information will be accomplished within a State, OSM believes that those decisions are within the prerogative of the regulatory authority. Since an experimental practice permit is issued to allow a variance from performance standards, it will be necessary to revise regulations before widespread use of a successful practice can occur. Merely circulating notices or technical memoranda would not be sufficient.