



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY-049-FOR; Docket No. OSM-2021-0003; S1D1S SS08011000

SX064A000 245S180110; S1D1S SS08011000 SX064A000 24XS501520]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Wyoming regulatory program (hereinafter, the Wyoming Program or Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On its own initiative, the Wyoming Land Quality Division (LQD), in response to State legislative changes enacted in 2020, proposed rules to its Program that facilitate the disposal of inert decommissioned wind turbine blades and towers as backfill in end walls or the final pit voids in surface coal mining operations. In addition, Wyoming has updated Chapter 2 of its Coal Rules, titled “Permit Application Requirements for Surface Coal Mining Operations,” to provide consistency with the Wyoming Secretary of State’s Rules on Rules, as well as correct grammatical errors.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

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I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval in the November 26, 1980, *Federal Register* (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.11, 950.12, 950.15, 950.16, and 950.20.

II. Submission of the Amendment

By letter dated June 4, 2021 (Administrative Record No. WY-49-01), Wyoming LQD sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the amendment in response to legislative changes made through Wyoming House Bill HB0129 during the 2020 legislative session, to Wyoming Statute (W.S.) § 35-11-402(a)(xiii). These changes outlined rules regarding how noncoal, non-

mining waste, in the form of inert decommissioned wind turbine blades and towers, could be used as backfill in open surface coal mine pits in order to facilitate disposal of those materials. The proposed revisions to Chapter 2 of the Program allow for inert wind turbine blades and towers to be placed in the final pit voids or end walls of surface coal mining operations during reclamation. In addition, Wyoming has proposed grammatical changes to Chapter 2 as well as minor edits to provide consistency with the Wyoming Secretary of State's Rules on Rules.

Wyoming stated in its submission that the Wyoming Legislature tasked LDQ with developing rules and regulations about the disposal of noncoal, non-mining-generated solid wastes at surface coal mining and reclamation operations because of the large volume of decommissioned wind turbine blades and towers, a lack of scalable recycling methods to facilitate their disposal, and limited guidance in SMCRA about this type of disposal. Wyoming's submission seeks to address issues associated with the resulting stockpile of decommissioned wind turbine blades and towers as a result of wind energy generation, upgrades, and routine maintenance.

We announced receipt of the proposed amendment in the August 4, 2021, *Federal Register* (86 FR 41907). With that announcement, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. We did not hold a public hearing or meeting because none was requested. We did not receive any comments regarding the amendment. The public comment period ended on September 3, 2021.

On September 27, 2024, OSMRE sent a letter to the Environmental Protection Agency's Office of Land and Emergency Management (EPA) for comment on Wyoming's proposed amendment. On October 24, 2024, EPA responded that it does not see a conflict between Wyoming's proposed revisions and the Resource Conservation and Recovery Act (RCRA) as long as the facilities are permitted and subject to

Wyoming's Construction and Demolition Landfill Regulations under Chapter 4 of Wyoming's Solid Waste Division Rules, and meet the Federal criteria at 40 C.F.R. 257, Subpart A. To further assist us in making a final determination on Wyoming's submission, by letter dated November 26, 2024, OSMRE sent Wyoming a letter requesting clarification on certain issues (Administrative Record No. WY-049-12; www.regulations.gov Docket No. OSM-2021-0003-0009). Wyoming responded by letter dated December 3, 2024 ("Clarification Letter") (Administrative Record No. WY-049-13; www.regulations.gov Docket No. OSM-2021-0003-0010).

III. OSMRE's Findings

We are approving the revisions to Wyoming's State program. We made the following findings about Wyoming's amendment as provided under SMCRA and the Federal regulations at 30 CFR 730.5, 732.15, and 732.17.

1. Discussion of regulatory changes submitted by Wyoming

a. WCWR 020-0006-2 Section 1(a); Section 2(a); Section 3 (b)-(d), (f), (j)-(k); Section 4(a); and Section 5(a) - Minor corrections

In these sections, Wyoming proposed grammatical changes to Chapter 2 as well as minor edits to provide consistency with the Wyoming Secretary of State's Rules on Rules. These revisions were non-substantive changes. Therefore, we are approving Wyoming's proposed changes to WCWR 020-0006-2 Section 1(a); Section 2(a); Section 3 (b)-(d), (f), (j)-(k); Section 4(a); and Section 5(a) because they are consistent with SMCRA and no less effective than the Federal regulations.

b. WCWR 020-0006-2 Section 6 – Wind turbine blades and towers as backfill

Wyoming's proposed rule changes WCWR 020-0006-2 Section 6(b)(ii), primarily by adding paragraph (F), which describes what information is required in the reclamation plan where an operator intends to dispose of "inert decommissioned wind turbine blades and towers" as backfill. Neither SMCRA nor the Federal regulations expressly provide for the disposal of noncoal, non-mining solid waste, such as inert decommissioned wind

turbine blades and towers, on surface coal mining and reclamation operations as part of reclamation. The lack of Federal counterpart, however, does not automatically determine whether Wyoming's proposed changes to its State program are consistent with SMCRA and no less effective than the Federal regulations. Any material placed in mine pits or otherwise used to reclaim a permitted mine site must comply with SMCRA permitting requirements and performance standards, regardless of whether the material originates within the permit area or whether it is imported from outside the permit area, and the regulatory authority has the authority to establish monitoring and analysis requirements for those materials. *See, e.g., Pacific Coal Co. v. OSM*, Civ. No. 03-0260Z, (W.D. Wash. Feb. 2, 2004). So, to ensure Wyoming's proposed amendment meets our approval standards, we must conduct a comparison of Wyoming's proposed rules to SMCRA and the Federal regulations.

WCWR 020-0006-2 Section 6(b)(ii)(F) has six requirements, which specify: (I) that "only inert base material from decommissioned wind turbine blades and towers" are allowed to be disposed of in the backfill; (II) "[n]acelles and nacelle housings" and "mechanical, electrical, and other materials" are not permitted to be disposed of in the backfill and must be removed before disposal; (III) as described in more detail below, the material disposed of may only be placed in approved locations that meet certain criteria with certain disclosures; (IV) certain placement requirements, including how the material must be placed in the pits and groundwater monitoring; (V) final surface reclamation requirements; and (VI) the operator pay Wyoming, on a quarterly basis, 25 percent of any revenues collected by the operator for disposal of this material.

WCWR 020-0006-2 Section 6(b)(ii)(F)(I) and (II) simply describe the types of noncoal, non-mining solid wastes that may be placed in the backfill under this section. As proposed, WCWR 020-0006-2 Section 6(b)(ii)(F)(III) contains six requirements for locations where inert decommissioned wind turbine blades and towers are authorized as

part of the backfill. The first two requirements provide the location within the backfill area in which inert decommissioned wind turbine blades and towers may be placed. Specifically, these materials can be placed in “end walls” or “final pit voids” and placed “a minimum of twenty feet above the pre-mining potentiometric surface of the coal aquifer and a minimum of twenty feet below the final regraded spoils surface[.]” WCWR 020-0006-2 Section 6(b)(ii)(F)(III)(1.) and (2.)

Neither SMCRA nor the Federal regulations nor Wyoming’s regulations contain definitions of “end wall” or “final pit voids.” However, the end wall and final pit are commonly understood to refer to the final cut of an open pit or the last pit excavation in a mining area. Therefore, OSMRE interprets this to mean that Wyoming intends to allow disposal of certain types of inert decommissioned wind turbine blades and towers in the open space, or void, left in the final mining cut and not the first or middle cuts on a mine site.

Similarly, SMCRA, the Federal regulations, and Wyoming’s regulations do not contain a definition or explanation of the phrase “pre-mining potentiometric surface of the coal aquifer.” OSMRE interprets this to mean that any disposal would only be allowed in the area 20 feet above the pre-mining potentiometric surface of the coal aquifer. If the disposal is occurring above a pre-mining unconfined coal aquifer, OSMRE interprets this to mean that the material would be placed at least 20 feet above the top of the coal seam aquifer. It is OSMRE’s understanding that this is designed to ensure that when groundwater returns to the backfilled area, the wind turbines and blades will not come in contact with groundwater. As such, we find that these provisions are in accordance with SMCRA and consistent with the Federal regulations; any implementation of this phrase by Wyoming that is inconsistent with this interpretation may require OSMRE to reevaluate this approval.

Because SMCRA and the Federal regulations do not contemplate disposal of any noncoal, non-mine waste in backfill areas on SMCRA sites, there are no existing corresponding statutory or regulatory requirements for this type of disposal. While this type of disposal is not explicitly authorized under SMCRA, the fact that Wyoming's proposed changes do not exempt the areas accepting this waste material from any other requirements of either SMCRA or the Federal regulations indicates that the practice should not result in mining or reclamation that is not in accordance with the minimum requirements of SMCRA or inconsistent with the Federal regulations. Furthermore, the proposed changes requiring that the specific types of waste be placed only in limited areas, a minimum of 20 feet above the pre-mining potentiometric surface of the coal aquifer and a minimum of 20 feet below the final regraded spoils surface should reduce the potential for this material to come into contact with water. This requirement should reduce the potential for leachate and not conflict with the existing SMCRA performance standards.

WCWR 020-0006-2 Section 6(b)(ii)(F)(III) sections (3.) and (5.) require that the backfill disposal location be mapped with a legal description, with backfill locations and groundwater monitoring locations updated annually, and that a disclosure be placed on the real property deed for the described lands before final bond release. Again, because SMCRA and the Federal regulations do not contemplate disposal of such noncoal, non-mine waste in backfill areas on SMCRA sites, there are no corresponding Federal statutory or regulatory requirements for this type of disposal under SMCRA. Instead, OSMRE evaluated this proposal to ensure that Wyoming's proposed changes are in accordance with SMCRA and consistent with the Federal regulations, which raised two potential concerns.

First, the wording of WCWR 020-0006-2 Section 6(b)(ii)(F) appears to require all applicants to include a plan to dispose of inert decommissioned towers and blades in

their reclamation plan. For example, WCWR 020-0006-2 Section 6(b)(ii)(B) and (C) each contain a preface that reclamation plans for terraces & benches and permanent water impoundments are required only when those features “are proposed” by the applicant; in contrast, WCWR 020-0006-2 Section 6(b)(ii)(F) has no such preface. In the Clarification Letter, Wyoming stated that disposal of inert decommissioned wind turbine blades and towers on a SMCRA mine site is “a voluntary requirement” and will only be included in the reclamation plan if “the operator chooses to accept and use the towers and blades as backfill.”

Second, the proposed rules do not address what would happen if a mineral or surface owner does not consent to a proposal to place inert decommissioned wind turbine blades and towers in the excavated pits. In the Clarification Letter, Wyoming responded that: “[t]he rules apply regardless of surface ownership (private, state or federal) but surface owner consent would be required before the disposal of any wind turbine blades or towers would be allowed under WS § 35-11-406(b)(xi) and (xii).” *See, e.g.*, WS § 35-11-406(b)(xii) (which “requires an instrument of consent from the surface landowner, if different from the owner of the mineral estate, be included to the mining and reclamation plans. If consent cannot be obtained, the applicant can request a hearing on the issue before the Environmental Quality Council. The Council is required to issue an order in lieu of consent if certain findings are made.”). Wyoming also noted that WCWR 020-0006-2 Section 6(b)(ii)(F)(III)(5.) would require that where inert decommissioned wind turbine blades and towers have been disposed of on a SMCRA site, a disclosure of such must be placed on the real property deed, “which would also require surface owner consent.” Furthermore, Wyoming has clarified that consent from surface owners, including the Federal government, is required before such disposal can occur. We note, however, that Federal lands, as defined in SMCRA, applies to “any land, including mineral interests, owned by the United States” 30 U.S.C. 1291(4). To the extent that

Wyoming seeks to apply this rule to Federal lands (including lands with either Federal surface or mineral ownership) through its State-Federal Cooperative Agreement (30 CFR 950.20), Wyoming must receive all necessary Federal agency approvals before any disposal occurs.

After clarification of these two points, we find that these provisions are in accordance with SMCRA and consistent with the Federal regulations; any implementation of this regulations by Wyoming that is inconsistent with these clarifications may require OSMRE to reevaluate this approval.

WCWR 020-0006-2 Section 6(b)(ii)(F)(III)(4.) allows the reclaimed land above an approved backfill disposal location to be designated as a joint or alternative land use as long as the applicant provides the required demonstration in Section 6(b)(x)(C) of the same Chapter and the disposal supports the approved land use as required in Section 6(b)(x).

Under the Federal regulations at 30 CFR 816.133, all disturbed lands are required to be restored in a timely manner to conditions capable of supporting the uses they were capable of supporting before any mining or to a higher or better use. If the postmining land use is different than the pre-mining uses of land, a regulatory authority may approve an “alternative land use” if it is a higher or better use. Wyoming’s currently approved regulations at WCWR 020-0006-2 Section 6(b)(x)(B)-(C) are substantially similar to the Federal regulations. Wyoming’s proposed amendment states that “[t]he approved backfill disposal location may be designed as a joint or alternative land use in the approved reclamation plan (WCWR 020-0006-2 Sec. 6(b)(x)(B)). Approval of alternative land uses requires a demonstration as required in WCWR 020-0006-2 Sec. 6(b)(x)(C) [of WYDEQ’s Coal Rules]. The disposal of inert towers and blades must support the postmining land use identified in accordance with the requirements of Section 6(x) of this Chapter.” In its Clarification Letter, Wyoming confirmed that the inert decommissioned

wind turbine tower and blade disposal will occur contemporaneously with reclamation and that it is not creating a new postmining land use for waste disposal areas.

Specifically, Wyoming noted that the wind turbine blades and towers “would only be part of the backfill plan and not contemporaneous with final reclamation.”

We understand Wyoming’s response to mean, as required by the proposed changes to their reclamation plan requirements, wind turbine blade and tower disposal would only occur during the backfill stage of the reclamation once the operation has met an end wall or final void. As required by the performance standards in both the Federal regulations at 30 CFR 816.100 and the Wyoming regulations at WCWR 020-0006-4 Section 2(b)(i), all coal mine operators are required to reclaim land as contemporaneously as practicable with mining operations, including but not limited to backfilling, grading, topsoil replacement, and revegetation. Nothing in Wyoming’s proposed amendment would remove or alter the existing contemporaneous reclamation requirement from Wyoming’s performance standards. Operators who elect to dispose of wind turbine blades and towers must still reclaim their land as contemporaneously as possible with their mining operation. Thus, with this understanding, Wyoming’s proposed amendment is in accordance SMCRA and consistent with the Federal regulations in relation to contemporaneous reclamation requirements.

WCWR 020-0006-2 Section 6(b)(ii)(F)(III)(6.) requires that any “backfill disposal location approved by the Division shall comply with Chapter 4, Section 4 of the Solid and Hazardous Waste Division Rules. As enacted in 1977, SMCRA states that “[n]othing in this Act shall be construed as superseding, amending, modifying, or repealing . . . The Solid Waste Disposal Act . . .” 30 U.S.C. 1292(a)(5). One year prior, RCRA amended the Solid Waste Disposal Act on October 21, 1976. Pub. L. No. 94-580, Oct. 21, 1976, 90 Stat. 2795. Therefore, SMCRA does not permit an action that has the

effect of superseding, amending, modifying, or repealing RCRA or the Solid Waste Disposal Act.

In Wyoming's June 4, 2021, submission letter for this proposed amendment, Wyoming stated that its proposed rules for the disposal of decommissioned inert towers and blades would be compliant with the Wyoming Solid Waste Diversion Rules Chapter 4 Construction and Demolition Landfill Regulations. However, Wyoming's proposed rules do not require a permit under the Construction and Demolition Landfill Regulations and only provide cross-references to Chapter 4, Sections 4 and 8(b)(iv)(A) of the Solid and Hazardous Waste Division Rules, which are subsets of Wyoming's Construction and Demolition Landfill within WCWR 020-0009-4 Section 2(a) and the Federal requirements of 40 CFR Part 257, Subpart A.

OSMRE acknowledges that an LQD permit issued pursuant to SMCRA can, in certain circumstances, substitute for the separate permit required by Wyoming's Construction and Demolition Landfill requirements. As noted earlier and as discussed below under "Section IV. Summary and Disposition of Comments," OSMRE sought consultation from EPA because Wyoming's proposal would authorize disposal of waste material normally regulated under RCRA on SMCRA sites. EPA's response indicated that a facility receiving decommissioned inert towers and blades, including SMCRA coal mines, would need to meet all requirements of Wyoming's Construction and Demolition Landfill regulations within WCWR 020-0009-4, Section 2(a), and the Federal criteria at 40 CFR Part 257, Subpart A. The EPA notes that Section 2(a) of Wyoming's Construction and Demolition Landfill regulations requires RCRA permit applications to contain applicable information related to Sections 3 through 17, which include criteria for the location, design and construction, operating, monitoring, and corrective action standards, among others. The EPA concluded that it does not see a conflict between Wyoming's proposed rule and the RCRA program, so long as these proposed rules are

implemented such that they meet Wyoming's Construction and Demolition Landfill regulations within WCWR 020-0009-4, Section 2(a) and the Federal requirements of 40 CFR Part 257, Subpart A.

In its Clarification Letter, Wyoming stated that “[a]lthough specific sections of Solid Waste Rule, Chapter 4 are listed in the Land Quality Rule, facilities are required to meet all applicable standards in all rules.” Based on this representation that all facilities, including SMCRA sites receiving wind turbine and blade waste materials, are required to satisfy all Construction and Demolition Landfill regulations within WCWR 020-0009-4 Section 2(a) and the Federal requirements of 40 CFR Part 257, Subpart A, OSMRE determined that these provisions would be in accordance with SMCRA and consistent with Federal regulations; any implementation of this section that is inconsistent with this interpretation may require OSMRE to reevaluate its approval.

As proposed, WCWR 020-0006-2 Section 6(b)(ii)(F)(IV) contains three closure requirements for locations where inert decommissioned wind turbine blades and towers are authorized as part of the backfill. The first outlines how this material should be placed in lifts to prevent subsidence, the second outlines groundwater monitoring requirements, and the third relates to bond releases. WCWR 020-0006-2 Section 6(b)(ii)(F)(IV).

WCWR 020-0006-2 Section 6(b)(ii)(F)(IV)(1.) requires that inert decommissioned wind turbine blades and towers be placed in lifts not to exceed 10 feet and covered with a minimum of 15 feet of suitable backfill “dry tomb placement.” The Federal regulations at 30 CFR 780.18(b)(3) require a plan for backfilling, soil stabilization, grading, and compacting, with contour maps or cross sections to show the anticipated final surface configuration in accordance with 30 CFR 816.102. Federal regulation 30 CFR 816.102(c) requires the operator to compact spoil to ensure stability or to prevent leaching of toxic material. Under Wyoming's rules at WCWR 020-0006-2

Section 6(b)(ii)(E), a mine operator's reclamation plan must be designed to ensure stability of the reclaimed land surface.

A lift is a method in which an operator puts dirt above and below an area or object. Typically, these areas are compacted. This placement configuration stabilizes the surrounding area and helps to prevent leaching of material throughout the surrounding soil; thus, assuming the lift uses compacted dirt, this section is in accordance with SMCRA and consistent with the Federal regulations.

While lifts are helpful in preventing subsidence, Wyoming's proposed amendment does not specify whether this proposed regulation requires the lifts to be compacted or if loose fill is allowed. Wyoming's proposed regulations do not address if or how inert decommissioned wind turbine blades and towers will be processed before disposal. Inert towers and blade casings are generally rigid and hollow and are made of fiberglass and epoxy resin. While the material is durable, over an extended period of time it will break down. In addition, unprocessed inert turbine blades and casings are hollow, so the breakdown of material could potentially cause soil instability and subsidence, which could be worsened if multiple inert turbine blades and towers are stacked together. Therefore, there is potential that surface and postmining land use activities will be affected by a subsidence issue in the future, after bond release.

In its Clarification Letter, Wyoming stated that Chapter 4, Section 2(b) of the Wyoming's Coal Rules (Coal Chapter 2, Section 6(b)(ii)(F)(IV)(1)), which details the requirements for a plan for backfilling, grading, and contouring all affected lands, requires an applicant to provide procedures for assuring stability of the reclaimed land surface. Wyoming's response indicates that Wyoming intends for its rules to require an operator to reclaim areas, including wind turbine disposal sites, in a way that prevents subsidence. Thus, Wyoming's proposed rules are in accordance with SMCRA and consistent with the Federal regulations in preventing subsidence in reclaimed areas; any

implementation of this section that is inconsistent with this interpretation may cause OSMRE to reevaluate its approval.

WCWR 020-0006-2 Section 6(b)(ii)(F)(IV)(2.) and (3.) require that the groundwater monitoring plan required by Wyoming's existing coal rules also include monitoring wells to be installed and monitored in accordance with Chapter 4, Section 8(b)(iv)(A) of the Solid and Hazardous Waste Division Rules, and that this groundwater monitoring and vegetation monitoring continue until final bond release.

Under SMCRA at 30 U.S.C. 1259, a coal mine operator is required to obtain a performance bond once their permit has been approved by the regulatory authority. The amount of the bond is calculated by determining the cost to fully reclaim a mine site. To obtain full release of its performance bond, an operator must meet the requirements of 30 CFR 800.40, which includes rules for re-vegetation and water monitoring, among others. Wyoming has equivalent requirements under its own Coal Program at WCWR 020-0006-15. Wyoming's proposed amendment does not explicitly require recalculating bond amounts to account for potential impacts or uncertainty related to the disposal of inert decommissioned wind turbines and towers on their permit.

While Wyoming did not specifically indicate how the proposed amendment will affect its bonding calculations, Wyoming reiterated in its Clarification Letter that operators are required to meet all of the existing and approved bonding rules in WCWR 020-0006-11, as well as those prescribed by SMCRA and the Federal regulations. Under Wyoming's existing rules, if disposal of wind turbine blades or towers caused unanticipated impacts, Wyoming would be required to adjust the bond amounts and order an operator to correct the issue without any further revision to its regulations.

Wyoming's proposal adds the requirement that any additional groundwater monitoring requirements under Chapter 4, Section 8(b)(iv)(A) of the Solid and Hazardous Waste Division Rules be added to LDQ's permit. Wyoming's proposal does not remove

any existing groundwater monitoring requirements or bond requirements already approved by OSMRE. Consequently, Wyoming's proposed amendment is in accordance with SMCRA and consistent with the Federal regulations with regard to groundwater monitoring and bonding.

As proposed, WCWR 020-0006-2 Section 6(b)(ii)(F)(V) contains two final surface reclamation requirements. First, Section 6(b)(ii)(F)(V)(1.) requires that the final reclamation surface must blend with the surrounding mine reclamation and have a permanent vegetative cover in accordance with Chapter 4, Section 2(d) of the Division's Coal Chapter 4 requirements. Second, Section 6(b)(ii)(F)(V)(2.) requires that the final reclamation must drain properly and not impound water in accordance with the Division's Coal Chapter 4 requirements.

Under the Federal regulations at 30 CFR 816.102, areas disturbed by surface coal mining operations must be backfilled and graded to achieve approximate original contour (AOC), except in limited cases. Wyoming's regulations, at WCWR 020-0006-4 Sec. 2 (b)(iii), also require all affected lands to be returned to AOC, with some exceptions. Wyoming defines AOC to mean "surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed land surface closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain." WCWR 020-0006-1 Sec. 2 (h). Under its proposed regulations for the disposal of inert towers and blades within surface coal mining sites, Wyoming would require the reclaimed surface to not exceed the approximate pre-mining slopes, WCWR 020-0006-2 Sec. 6 (b)(ii)(D), and the lands to blend with the surrounding mine reclamation. WCWR 020-0006-2 Sec. 6 (b)(ii)(F)(V)(1). To clarify this matter, we asked Wyoming if it could describe how its proposed regulations will ensure that the surface configuration achieved by backfilling and grading of the areas receiving inert towers and blades will closely resemble the

general surface configuration of the land prior to mining and blend into and complement the drainage pattern of the surrounding terrain. (Administrative Record No. WY-049-12).

In its Clarification Letter, Wyoming confirmed that the requirements in Sections 6(b)(ii)(F)(V)(1.) and (2.) are in addition to the requirement that the entire mine, including areas receiving disposal of inert towers and blades, must achieve approximate original contour as required by Chapter 4, Section 2(b)(iii) of the Division's Coal Rules. Because this provision does not remove any existing requirements related to achieving approximate original contour and only adds the requirement that the disposal areas must blend with the surrounding mine and drain properly, Wyoming's proposed amendment is in accordance with SMCRA and consistent with the Federal regulations in ensuring that these sites will be reclaimed to achieve approximate original contour.

2. Conclusion

As explained above, with the information contained in its initial submission and the Clarification Letter, we conclude that the proposed amendment is in accordance with SMCRA and consistent with the Federal regulations. We therefore approve Wyoming's changes to its State program.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but we did not receive any.

Federal Agency Comments

On June 16, 2021, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Wyoming program (Administrative Record No. WY-49-04). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence

from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Wyoming proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on June 16, 2021, under 30 CFR 732.17(h)(11)(i), we requested comments from EPA Region 8 on the amendment (Administrative Record No. WY-049-04). The EPA did not respond to this request.

OSMRE identified that Wyoming's proposed amendment may have RCRA implications because Wyoming's proposal would authorize the disposal of waste material normally regulated under RCRA in SMCRA sites. So, pursuant to 30 CFR 732.17(h)(11)(i), on September 27, 2024, we sent a letter to the EPA's Office of Land and Emergency Management requesting comment. (Administrative Record No. WY-049-07). The EPA responded on October 24, 2024. (Administrative Record No. WY-049-10). These letters are posted on www.regulations.gov (Docket Nos. OSM-2021-0003-00007 and OSM-2021-0003-0008).

The EPA commented that, under RCRA, the EPA establishes a national minimum standard for non-hazardous waste, the states are delegated the lead role in overseeing the disposal of non-hazardous waste, and the generator of waste is ultimately responsible for determining whether the waste qualifies as non-hazardous. The EPA explained that, if wind turbine blades and towers are appropriately characterized as non-hazardous waste and no other waste is accepted at these wind turbine disposal facilities, then such facilities would be subject to 40 CFR Part 257, Subpart A, entitled "Classification of Solid Waste Disposal Facilities and Practices."

As explained in more detail above, the EPA interpreted Wyoming's proposed amendment to mean that the wind turbine disposal facilities are permitted and subject to Wyoming's Construction and Demolition Landfill Regulations under Chapter 4 of

Wyoming's Solid Waste Division Rules. Accordingly, a facility under these proposed rules would need to meet both the Wyoming criteria and Federal criteria at 40 CFR Part 257, Subpart A. The EPA concluded its comment by stating that, so long as these criteria are met, it does not anticipate a conflict between Wyoming's proposed amendments and RCRA.

OSMRE Response:

OSMRE appreciates EPA's response. As explained above, SMCRA provides that nothing in SMCRA can be construed as superseding, amending, modifying, or repealing various environmental laws, including the Solid Waste Disposal Act, which RCRA amended. In its June 4, 2021, submission letter for this proposed amendment, Wyoming stated that its proposed rules for the disposal of decommissioned inert towers and blades would be compliant with Wyoming Solid Waste Diversion Rules Chapter 4, "Construction and Demolition Landfill Regulations." In our November 26, 2024, letter to Wyoming, we asked Wyoming to describe how its proposed regulations will comply with all of Chapter 4 of Wyoming's Solid Waste Diversion Rules. Wyoming's Clarification Letter stated: "The standards found in Wyoming Solid Waste Rule Chapter 4 are state standards and there is no federal oversight for this type of waste disposal under [RCRA] and as verified in US EPA's October 24, 2024, letter. Although specific sections of Solid Waste Rule, Chapter 4 are listed in the Land Quality Rule, facilities are required to meet all applicable standards in all rules."

Based on EPA's response and Wyoming's commitment that "facilities are required to meet all applicable standards in all rules[.]" we conclude that this amendment does not supersede, amend, modify, or repeal RCRA so long as the disposal facilities authorized under this amendment are permitted and subject to all of Wyoming's Construction and Demolition Landfill Regulations under Chapter 4 of Wyoming's Solid Waste Division Rules and meet the Federal criteria at 40 CFR Part 257, Subpart A.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 16, 2021, we requested comments on Wyoming's amendment (Administrative Record No. WY-054-04). We did not receive comments from the SHPO or ACHP. Nevertheless, OSMRE determined there will be no effect on historic or cultural resources as a result of this amendment because wind turbine blades and towers will be disposed of in pits as backfill material within the footprint of areas disturbed by coal mining activities.

V. OSMRE's Decision

Based on the above findings, we are approving Wyoming's amendment submitted to us on June 4, 2021. To implement this decision, we are amending the Federal regulations at 30 CFR part 950, which codify decisions concerning the Wyoming program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required.

Executive Order 12866 - Regulatory Planning and Review, 13563 – Improving Regulation and Regulatory Review, 14094 – Modernizing Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance dated October 12, 1993 (OMB Memo M-94-3), the approval of state program amendments is exempted from OMB review under Executive Order 12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this *Federal Register* document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this *Federal Register* document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Wyoming drafted.

Executive Order 13132 - Federalism

This rule has potential Federalism implications as defined under Section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States. Wyoming, through its approved regulatory

program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an amendment to the Wyoming program submitted and drafted by the State and, thus, is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined that, although no Indian lands, as defined under SMCRA, are implicated by this rule, this State program amendment may have substantial direct effects on 49 Federally-recognized Tribes because of the potential implications for the Tribe or Tribal members, Tribal treaty rights, reserved rights, trust resources, or ancestral lands. Therefore, on September 27, 2024, we sent invitation letters to consult to these 49 Tribes (Administrative Record No. WY-049-08).

In response to our invitation, we received one request for Tribal consultation, one request for an informational meeting, and two written comments. Despite the request for Tribal consultation, we did not receive a response to our follow-up communication to set up a date and time, so the Tribal consultation did not go forward. In response to the request for an informational meeting, we met with a representative of the Shoshone Paiute Tribe on October 28, 2024. During the meeting, we explained Wyoming's proposed amendment to the Tribe in further detail. At the end of the meeting, the Shoshone Paiute decided to not pursue Tribal consultation.

We received a written comment from the Northern Cheyenne Tribe on October 22, 2024 (Administrative Record No. WY-049-09). The Tribe recognized that this proposed amendment would allow for the disposal of wind turbines and blades without

the need to seek out any new undisturbed land; however, the Tribe expressed concern with how Tribal governments are included in the determination of potential impacts to archaeological resources. The Northern Cheyenne Tribe stated that Wyoming does not include Tribes as part of the state SMCRA permit review process and that the best outcome would be to include Tribes in the reviews and approvals on State-owned lands with the applicable coal mine areas for disposition of wind turbine blades and towers.

We also received a written comment from the Comanche Nation on October 25, 2024 (Administrative Record No. WY-049-11). In their comment, the Comanche Nation's Historic Preservation Officer stated that no prehistoric or historic archaeological materials for the Tribe were identified within areas of mineable coal in Wyoming.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1291 (d) respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partner, or corporation to obtain information and report it to a Federal agency. As this rule does not

contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*) is not required.

Regulatory Flexibility Act

Although there is no Federal counterpart for Wyoming's proposed amendment, based on OSMRE's collaboration with State regulatory authorities and years of experience, OSMRE certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of \$100 million per year. Although there is no Federal counterpart for Wyoming's proposed amendment, OSMRE's determination regarding unfunded mandates is based on OSMRE's collaboration with State regulatory authorities and years of experience.

List of Subjects in 30 CFR part 950

Intergovernmental relations, Surface mining, Underground mining.

David A. Berry,
Regional Director,
Unified Regions, 5, 7-11

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950 – Wyoming

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 950.15 amend the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * June 4, 2021	* * [Insert date of publication in the Federal Register]	State initiative outlining rules regarding how decommissioned wind turbine blades and towers can be used as backfill in open surface coal mine pits, while updating Chapter 2 Permit Application Requirements for Surface Coal Mining Operations to provide consistency with the Wyoming Secretary of State’s Rules on Rules and correct grammatical errors.

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