

**FEDERAL REGISTER: 57 FR 8102 (March 6, 1992)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 701, 780, 784, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Availability of Decision; Permanent and Temporary Impoundments; 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 Stuart A. Sanderson, Senior Counsel, and Harold P. Quinn, Jr., Vice President and Counsel, representing the Joint NCA/AMC Committee on Surface Mining Regulations, Coal Building, 1130 17th St., NW., Washington, DC. The petition suggests that OSM amend its rules to incorporate the statutory distinction between temporary and permanent impoundments as it pertains to the incorporation of standards issued under Public Law 83-566 (*16 U.S.C. 1006*) including Technical Release Number 60 (TR-60) published by the Soil Conservation Service (SCS).

DATES: On March 2, 1992, the Director denied the petition.

ADDRESSES: Copies of the petition, and other relevant materials comprising the Administrative Record of this petition are available for public review and copying at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert A. Wiles, P.E., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-1502 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

I. Petition for Rulemaking Process

II. The NCA Petition

**I. PETITION FOR RULEMAKING PROCESS**

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), any person may petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any of the regulations implementing SMCRA. The regulations governing the handling of rulemaking petitions are found at 30 CFR 700.12. Under the rules, the Director may publish a notice in the Federal Register seeking comments on the petition and hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted. If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before a final rulemaking notice appears. If the petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under 30 CFR 700.12, the Director's decision constitutes the final decision for the Department of the Interior.

**II. THE NCA PETITION**

OSM received a letter on September 12, 1991, from Stuart A. Sanderson, Senior Counsel, and Harold P. Quinn, Jr., Vice President and Counsel, representing the Joint NCA/AMC Committee on Surface Mining Regulations, Coal Building, 1130 17th Street NW., Washington, DC, as a petition for rulemaking. The petitioners requested that the agency reevaluate and propose for comment a rulemaking which will incorporate the statutory distinction between temporary and permanent impoundments as it pertains to the incorporation of standards issued under Public Law 83-566 including TR-60. In response to that petition, on October 21, 1991, OSM published a notice in the Federal Register of the petition's availability and requested comments. [*56 FR 52494*].

For the reasons discussed in the appendix to this notice, the Director has denied the petition to amend the rules to incorporate the statutory distinction between temporary and permanent impoundments. Therefore, no rulemaking will occur on this petition.

The Director's letter of response to the petitioners on this rulemaking petition appears as an appendix to this notice. This letter reports the Director's decision to the petitioners. As noted in the appendix, a full discussion of the issues in the petitioners letter will be analyzed concurrently with the comments to the proposed rule to amend portions of the permanent program regulations governing permanent and temporary impoundments published June 28, 1991. (56 FR 29774) The preamble will evaluate the issues raised by the petitioners, an analysis of the petitioners' proposed regulatory changes, and a discussion of the comments received on the petition.

Dated: March 2, 1992.  
Harry M. Snyder, Director.

## APPENDIX

Date

Mr. Harold P. Quinn, Jr. and Mr. Stuart A. Sanderson,  
Joint NCA/AMC Committee on Surface Mining Regulation  
Coal Building, 1130 17th Street NW.  
Washington, DC 20036.

Gentlemen:

This letter is in response to your petition dated August 26, 1991 (received September 12, 1991), to the Office of Surface Mining Reclamation and Enforcement (OSM) requesting that the agency reevaluate and propose for comment a rulemaking which will incorporate the statutory distinction between temporary and permanent impoundments as it pertains to the incorporation of standards issued under Public Law 83-566 including Technical Release No. 60 (TR-60), "Earth Dams and Reservoirs" published by the Soil Conservation Service (SCS).

Following the receipt of your letter, OSM published on October 21, 1991, a notice in the Federal Register of the availability and requested comments on that petition. [56 FR 52494] The official administrative record log lists four comments entered in response to the petition. The comment period closed on November 21, 1991.

The comment period for the petition coincided with the third comment period on a proposed rule to amend portions of the permanent program regulations governing permanent and temporary impoundments published June 28, 1991. (56 FR 29774) The proposed rule of June 28, 1991, would apply certain specific technical standards found in TR-60 for both permanent and temporary impoundments. The proposed rule would adopt the SCS Class B and C criteria for dams, and the freeboard hydrograph criteria and emergency spillway hydrograph criteria in the Minimum Emergency Spillway Hydrologic Criteria table in TR-60 to both temporary and permanent impoundments. The application of design storm criteria to both permanent and temporary impoundments will be evaluated during the review of the comments.

A separate rulemaking is unnecessary to enable OSM to consider the issues you raise in the petition. The issues addressed by your petition including OSM's authority to regulate temporary impoundments will be fully considered in OSM's pending rulemaking in which OSM proposed to apply certain SCS standards to temporary impoundments. The basis for any decision we make on the distinction between permanent and temporary impoundments will be fully discussed in the preamble to rulemaking on any final rule.

In addition for hazardous structures, we see no difference between temporary or permanent impoundments since the potential harm to downstream areas is the same for either type of structure. Also, temporary sediment control structures used for large surface or underground operations may remain operational for many years blurring the practical distinction between permanent and temporary structures.

For these reasons, I am denying your request to initiate a rulemaking to amend the rules to incorporate the distinction between temporary and permanent impoundments.

As provided in 30 CFR 700.12(d), my decision constitutes the final decision for the Department of the Interior.

Sincerely,  
Harry M. Snyder,  
Director.

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