

PART 874 -- GENERAL RECLAMATION REQUIREMENTS

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AUTHORITY: 30 U.S.C. 1201 et seq., as amended.

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

[For the list of Final Rules affecting these sections, as published in the Federal Register, see ["Regulation History - Changes to the Regulations Parts 700-890, 3/13/79 - 6/30/00".](#)]

**30 CFR Sec. 874.1 Scope.**

This part establishes land and water eligibility requirements, reclamation objectives and priorities, and reclamation contractor responsibility.

[59 FR 28171, May 31, 1994]

**30 CFR Sec. 874.10 Information collection.**

(a) In accordance with 44 U.S.C. 3501 et seq., the Office of Management and Budget (OMB) has approved the information collection requirements of this part. The OMB clearance number is 1029-0113. This information is needed to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of Section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards. Persons must respond to obtain a benefit.

(b) OSM estimates that the public reporting burden for this part will average 60 hours per project, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Please refer to OMB Control Number 1029-0113 in any correspondence.

[64 FR 7482, Feb. 12, 1999]

[EFFECTIVE DATE NOTE: 64 FR 7470, 7482, Feb. 12, 1999, added this section, effective Mar. 15, 1999.]

**30 CFR Sec. 874.11 Applicability.**

The provisions of this part apply to all reclamation projects carried out with monies from the AML Fund.

[59 FR 28171, May 31, 1994]

**30 CFR Sec. 874.12 Eligible coal lands and water.**

Coal lands and water are eligible for reclamation activities if --

(a) They were mined for coal or affected by coal mining processes;

(b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under parts 886 or 888 of this chapter.

(d) Notwithstanding paragraphs (a), (b), and (c) of this section, coal lands and waters in a State or on Indian lands damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Secretary finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and:

(i) The date on which the Secretary approved a State regulatory program pursuant to Section 503 of the Act (30 U.S.C. 1253) for a State or September 28, 1994, for an Indian tribe, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(ii) November 5, 1990, that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

(3) The site qualifies as a priority 1 or 2 site pursuant to Section 403(a)(1) and (2) of the Act. Priority will be given to those sites that

are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(e) Any State or Indian tribe may expend funds may available under paragraphs 402(g)(1) and (5) of the Act (30 U.S.C. 1232(g)(1) and (5)) for reclamation and abatement of any site eligible under paragraph (d) of this section, if the State or Indian tribe, with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and the State or Indian tribe determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to paragraphs (a), (b) or (c) of this section that qualify as a priority 1 or 2 site under Section 403(a) of the Act (30 U.S.C. 1233(a)).

(f) With respect to lands eligible pursuant to paragraph (d) or (e) of this section, monies available from sources outside the Abandoned Mine Reclamation Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Land Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor a State or Indian tribe performing reclamation under paragraph (d) or (e) of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the Act.

(h) Surface coal mining operations on lands eligible for remining pursuant to Section 404 of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by Sec. 800.40 of this chapter. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his/her authority under Section 410 of the Act.

[47 FR 28596, June 30, 1982, as amended at 59 FR 28171, May 31, 1994]

**30 CFR Sec. 874.13 Reclamation objectives and priorities.**

(a) Reclamation projects should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

(b) Reclamation projects shall reflect the priorities of Section 403(a) of the Act (30 U.S.C. 1233). Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower priority projects may be undertaken in

conjunction with a priority 1 or 2 site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects."

[59 FR 28171, May 31, 1994]

**30 CFR Sec. 874.14 Utilities and other facilities.**

(a) Any state or Indian tribe that has not certified the completion of all coal-related reclamation under Section 411(a) of the Act, 30 U.S.C. 1241(a), may expend up to 30 percent of the funds granted annually to such State or Indian tribe pursuant to the authority in Sections 402(g) (1) and (5) of the Act for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

(b) If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) If the adverse effect on water supplies referred to in this section occurred both prior to and after the dates (and under the criteria) set forth under Section 402(g)(4)(B) of the Act, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.

(d) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

[59 FR 28171, May 31, 1994]

**30 CFR Sec. 874.15 Limited liability.**

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

[59 FR 28172, May 31, 1994]

**30 CFR Sec. 874.16 Contractor eligibility.**

To receive AML funds, every successful bidder for an AML contract must be eligible under Secs. 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or provisionally issued permit to conduct surface coal mining operations.

[65 FR 79671, Dec. 19, 2000]

[EFFECTIVE DATE NOTE: 65 FR 79582, 79671, Dec. 19, 2000, revised this section, effective Jan. 18, 2001.]

**30 CFR Sec. 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.**

This section tells you, the AML agency, what to do when considering an abandoned mine land reclamation project as government-financed construction under Part 707 of this chapter. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) Consultation with the Title V Regulatory Authority. In consultation with the Title V regulatory authority, you must make the following determinations:

(1) You must determine the likelihood of the coal being mined under a Title V permit. This determination must take into account available information such as:

- (i) Coal reserves from existing mine maps or other sources;
- (ii) Existing environmental conditions;
- (iii) All prior mining activity on or adjacent to the site;
- (iv) Current and historic coal production in the area; and
- (v) Any known or anticipated interest in mining the site.

(2) You must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) You must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) Concurrence with the Title V Regulatory Authority. If, after consulting with the Title V regulatory authority, you decide to proceed with the reclamation project, then you and the Title V regulatory authority must concur in the following determinations:

(1) You must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under the Part 707 exemption or counterpart State/Indian Tribe laws and regulations.

(2) You must concur in the delineation of the boundaries of the AML project.

(c) Documentation. You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) Special requirements. For each project, you must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) Limitation. If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA for such coal.

[64 FR 7470, 7483, Feb. 12, 1999]

[EFFECTIVE DATE NOTE: 64 FR 7470, 7483, Feb. 12, 1999, added this section, effective Mar. 15, 1999.]