

Supporting Statement for Reporting Requirements Contained in 30 CFR 877 – Rights of Entry

OMB Control Number 1029-0055

Terms of Clearance: None

A. Justification

1. Statutory authority for this requirement is found in Section 407 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Section 407 requires that nonconsensual (police power) entry can be obtained where land or water resources have been adversely affected by past coal mining practices, and that the adverse effects are at a stage where public interest, action to restore, reclaim, abate, control or prevent should be taken. Section 407 of SMCRA requires that notice be given by mail to the owners, if known, or if not known, by posting a notice upon the premises and advertising once in a newspaper of general circulation in the municipality in which the land lies.
2. 30 CFR 877.13(b) requires, if consent is not obtained, then, prior to entry, the OSM, State or Indian tribe shall find in writing and provide to the landowner, with supporting reasons that -- (1) Land or water resources have been or may be adversely affected by past coal mining practices; (2) The adverse effects are at a state where, in the interest of public health, safety, or the general welfare, action to restore, reclaim, abate, control or prevent should be taken; and (3) The owner of the land or water resources where entry must be made to accomplish the action stated in (1) is not known or readily available, or the owner will not give permission for the OSM, State or Indian tribe or its agents, employees or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices. The written notice to the landowner provides a standardized administrative vehicle for entry on private lands by the agents of OSM, the State or Indian tribe and makes it necessary for them to provide the landowner with the reasons why the entry and the reclamation activity/exploration are necessary. It also gives the landowner an opportunity to object to the entry or to otherwise oppose it by legal means.
3. The letters, notices and newspaper announcements must be delivered in paper format, although they are prepared on computers. It is not possible to supply the information by electronic means.
4. No similar information pertaining to site-specific entry for reclamation purposes is collected by OSM or by other Federal agencies.
5. Small businesses are not affected by this regulation.
6. Not applicable. This is normally a one-time information collection conducted

only in the event of potential adverse effects to public health, safety and welfare.

7. There are no circumstances that require the collection of information to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5(d)(2).
8. Consultations were held with State / OSM officials as noted below:

Date of consultation: January 18, 2007

Name: Hugh Vann Weaver, Jr.
State: Pennsylvania
Title: Division Chief, Federal Reclamation Program
Address: Office of Surface Mining
Three Parkway Center
Pittsburgh, PA 15220
Phone: 412-937-2858

Summary: Mr. Weaver believes that 30 CFR 877 is an extremely important aspect of the surface mining program, especially when access is needed to properties that are critical to the success of the program. The information collection requirements do not pose an undue burden. The states have timely procedures in place to handle appeals resulting from non-consensual entry.

On February 5, 2008, OSM published in the Federal Register (73 FR 6738) a notice requesting comments from the public regarding the need for the collection of information, the accuracy of the burden estimate, ways to enhance the information collection, and ways to minimize the burden on respondents. This notice gave the public 60 days in which to comment. However, no comments were received.

9. Not applicable. No payments or gifts are provided to respondents.
10. Not applicable. No confidential information is requested.
11. Not applicable. Sensitive questions are not asked.
12. **Estimated Hour Burden**

These estimates are based upon consultation between OSM and state staff familiar with these requirements and discussions with the individual identified in item 8 above.

There are 24 regulatory authorities and 4 Indian tribes, or 28 potential respondents. Of the 28 potential respondents, police powers were used to enter onto private property to conduct AML emergency activities in three states, Kentucky, Pennsylvania and Tennessee for a total of 12 times per year, requiring

2 hours per notice = 24 hours.

Estimated Annualized Wage Cost

We estimate that a reclamation specialist would require 2 hours to prepare the notice and supporting documentation. Using U.S. Department of Labor's Bureau of Labor statistics from http://www.bls.gov/oes/current/naics4_999200.htm#b19-0000, a reclamation specialist, using the environmental engineer salary, would have a wage cost of approximately \$44 per hour (including benefits calculated at 1.5 of hourly wages).

Therefore, the estimated total annual cost for industry would be \$44 per hour x 24 hours = \$1,056.

13. **Estimated Total Annual Non-wage Cost**

There are not significant or distinct non-wage operation or maintenance costs associated with compliance with the information collection requirements of 30 CFR 877.10, other than the newspaper notice required by 30 CFR 877.13(c) at least 30 days before entry upon the property. OSM estimates that the 3 state regulatory authorities would incur a total annual cost of \$1,080 (12 notices x \$90 for publication of each notice).

14. **Estimate of Cost to the Federal Government.**

Oversight: In keeping with the current guidance concerning oversight of State program implementation, which de-emphasizes process reviews, OSM does not anticipate conducting any significant oversight review of compliance with the State program counterparts to the requirements of 30 CFR 877 in the absence of any indication of problems. Assuming that OSM conducts an oversight review of this topic for one State program per year and that the review requires an average of 2 hours, the annual cost to the Federal government for this oversight activity is an estimated \$98 (2 hours x \$49 per hour for the OSM employee at the GS 13, step 1 salary derived from OPM's Website http://www.opm.gov/oca/08tables/html/gs_h.asp, including a rate of 1.5 for benefits).

Federal Programs: OSM is the regulatory authority under Federal programs not administered by a primacy State. OSM did not prepare any notices for this part.

Therefore the total cost to the Federal Government would be \$98.

15. The estimate below is based on OSM staff expertise in reclamation projects and the information provided by the individual identified in item 8 above. There has been a reduction in the number of instances where states used their right-of-entry powers, but a moderate increase in the amount of time required to prepare the documentation. Therefore, the following applies:

103 Hours currently approved by OMB
- 79 Hours due to an adjustment
24 Hours requested

16. There are no plans for publication of this information.
17. Not applicable. Approval number is displayed in 30 CFR 877.10.
18. Not applicable. No exception is requested.