Surface Mining Reclamation and Enforcement, Interior

§ 948.25 Approval of West Virginia abandoned mine lands reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director’s decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

<table>
<thead>
<tr>
<th>Original amendment submission date</th>
<th>Date of final publication</th>
<th>Citation/description</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 20, 1985</td>
<td>July 11, 1985</td>
<td>Transfer of program authority to the Department of Energy (HB 1850).</td>
</tr>
<tr>
<td>September 17, 1991, October 25, 1991</td>
<td>March 26, 1993</td>
<td>Amendments contained in House Bill 2492: Expanded eligibility criteria; Acid mine drainage treatment and abatement program.</td>
</tr>
<tr>
<td>June 27, 2006</td>
<td>January 17, 2007</td>
<td>Amendment includes AML enhancement requirements and other revisions to West Virginia’s AMLR Plan dated June 16, 2006.</td>
</tr>
</tbody>
</table>

§ 948.30 State-Federal Cooperative Agreement.

COOPERATIVE AGREEMENT

This is a Cooperative Agreement (Agreement) between the State of West Virginia (State) acting by and through the Governor, and the United States Department of the Interior (Department), acting by and through the Secretary of the Interior (Secretary).

ARTICLE I: INTRODUCTION, PURPOSE AND RESPONSIBLE ADMINISTRATIVE AGENCY

A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (the Federal Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of surface coal mining and reclamation operations on Federal lands within that State. This Agreement provides for such regulation within West Virginia except on lands containing leased Federal coal in West Virginia. The Office of Surface Mining Reclamation and Enforcement (OSM) is responsible for administering this Agreement.

B. Purpose: The purpose of the Agreement is to: (1) Foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations on Federal lands; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide uniform and effective application of the State program on all lands except those containing leased Federal coal in West Virginia.

C. Responsible Administrative Agencies: The Department of Natural Resources, Reclamation Division (DNR) is responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Office of Surface Mining Reclamation and Enforcement (OSM) is responsible for administering this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII. The Federal lands in West Virginia covered by this Agreement are predominantly those under the jurisdiction of the United States Department of Agriculture, Forest Service.

ARTICLE II: EFFECTIVE DATE

After it has been signed by the Governor and the Secretary, the Agreement shall take effect upon publication in the Federal Register as a final rule. This Agreement shall remain in effect until terminated as provided in Article X.
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30 CFR Ch. VII (7–1–10 Edition)

ARTICLE III: DEFINITIONS

Terms and phrases used in this Agreement which are defined in 30 CFR parts 700, 701 and 740, and the State program shall be given the meanings set forth in said definitions.

ARTICLE IV: APPLICABILITY

A. Applicability to Federal Lands: In accordance with the Federal Lands Program in 30 CFR part 740, the laws, rules, terms, and conditions of the State program (as conditionally approved effective January 21, 1981, 30 CFR part 948, or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to Federal lands within West Virginia. This Agreement does not apply to operations on Federal lands containing leased Federal coal.

B. Filing of Appeals: Orders and decisions issued by DNR in accordance with the State program that are appealable shall be appealed to the State of West Virginia’s Reclamation Board of Review. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior’s Office of Hearings and Appeals.

ARTICLE V: REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. Authority of State Agency: DNR has and shall continue to have authority under State law to carry out this Agreement.

B. Funds: Upon application by the DNR and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. If sufficient funds have not been appropriated to OSM, OSM and DNR shall promptly meet to decide on measures that will assure that mining operations are regulated in accordance with the State program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with Article X. Funds provided to the State shall be adjusted in accordance with Office of Management and Budget Circular A–102, Attachment E, and shall be reduced by the amount of fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. Reports and Records: DNR shall make annual reports to OSM pursuant to 30 CFR 745.12(d), containing information respecting its compliance with the terms of this Agreement. Upon request, DNR and OSM shall exchange information developed under this Agreement except where prohibited by Federal law. OSM shall provide DNR with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

D. Personnel: DNR shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State program.

E. Equipment and Laboratories: DNR shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

F. Permit Application Fees: The amount of the fee accompanying an application for a permit shall be determined in accordance with Section 20–6–9(c) of the Code of West Virginia (1931), as amended. All permit and civil penalty fees collected from operations on Federal lands shall be retained by the State and deposited with the State Treasurer. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations, and OMB Circular No. A–102, Attachment E.

ARTICLE VI: REVIEW OF A PERMIT APPLICATION PACKAGE

A. Contents of Permit Application Package: DNR and the Secretary shall require an operator proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit a permit application package in an appropriate number of copies to DNR. DNR will furnish OSM a copy if OSM so requests. The permit application package shall include the information required by, or necessary for, DNR to make a determination of compliance under 30 CFR 740.4(c)(2) with any conditions or special requirements imposed by the Federal land management agency and with the requirements of the State program, including:

1. W. Va. Code, Section 20–6–1 et seq., as amended;
3. Requirements of the West Virginia DNR Reclamation Division "Technical Handbook of Standards and Specifications for Mining Operations (1981)."

B. Review Procedures: 1. DNR shall assume primary responsibility for the analysis, review, and approval or disapproval of permit application packages required by 30 CFR
740.13 for surface coal mining and reclamation operations on Federal lands in West Virginia except those containing leased Federal coal. DNR shall be the primary point of contact for operators regarding decisions on the permit application package and will be responsible for informing the applicant of all joint State-Federal or Federal determinations.

2. Upon receipt of a permit application package that involves surface coal mining and reclamation operations on Federal lands covered by this agreement, DNR shall (1) transmit a copy of the complete permit application package to the Federal land management agency with a request for review pursuant to 30 CFR 740.13(b)(4), and (2) provide OSM with relevant information to allow OSM to determine whether or not the proposed surface coal mining and reclamation operations are prohibited or limited by the requirements of section 522(e) of the Federal Act (30 U.S.C. 1272(e)) and 30 CFR parts 760–762 with respect to Federal areas designated by Congress as unsuitable for mining. DNR shall be responsible for obtaining, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a permit application package in West Virginia.

3. OSM will provide technical assistance to DNR when requested if available resources allow and will process requests for determinations of compatibility and valid existing rights under 30 CFR part 761 relating to Federal areas designated by Congress as unsuitable for mining. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to DNR. OSM shall have access to DNR files concerning mines on Federal lands. The Secretary reserves the right to act independently of DNR to carry out his responsibilities under laws other than the Federal Act. A copy of all resulting correspondence with the applicant that may have a bearing on decisions regarding the permit application package shall be sent to the State.

4. DNR shall prepare the required technical analysis and written findings on the permit application package. If requested by the Federal land management agency, a draft of these documents shall be sent to it for review and comment.

5. The permit issued by DNR shall incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and shall condition the initiation of surface coal mining operations on compliance with the requirements of the Federal land management agency. After DNR issues the decision on the permit application package, it shall send a notice to the applicant, the Federal land management agency, and OSM with a statement of findings and conclusions in support of the action.

### Article VII: Inspections

DNR shall conduct inspections on Federal lands covered by this agreement and prepare and file inspection reports in accordance with the approved Program.

A. **Inspection Reports:** DNR shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. **DNR Authority:** DNR shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary’s regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. **OSM Authority:** OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands for the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met. In order to facilitate a joint Federal-State inspection, OSM will ordinarily give DNR notice of its intent to conduct an inspection. When OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact DNR if circumstances and time allow, prior to the Federal inspection. OSM may conduct any inspections necessary to comply with 30 CFR part 842. If an inspection is made without DNR inspectors, OSM shall provide DNR with a copy of the inspection report within 15 days after inspection. The Secretary reserves the right to conduct inspections without prior notice to DNR to carry out his responsibilities under the Act.

D. **Witness Availability:** Personnel of the State and of the Department of the Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

### Article VIII: Enforcement

A. **DNR Enforcement:** DNR shall have primary enforcement authority on Federal lands covered by this agreement in accordance with the State program and this Agreement. During any joint inspection by OSM...
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and DNR, DNR shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation.

B. Notification: DNR shall promptly notify the Federal land management agency of all violations of applicable laws, regulations, orders, and approved permits subject to this Agreement and of all actions taken with respect to such violations.

C. Secretary's Authority: (1) This Agreement does not affect or limit the Secretary’s authority to enforce provisions of laws other than the Act. (2) During an inspection made solely by OSM or any joint inspection where DNR and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the Act or the substantive requirements of the State program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

ARTICLE IX: BONDS

A. Performance Bond: DNR shall require all operators on Federal lands to submit a performance bond to cover the operator's responsibilities under the Federal Act and the State program, payable to both the United States and West Virginia. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law, and release of the performance bond shall be conditioned upon compliance with all applicable requirements. DNR may release the operator from any obligation under the performance bond with the concurrence of the Federal land management agency. If this Agreement is terminated: (1) The bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by DNR to OSM if only Federal lands are covered by the bond.

B. Forfeiture: In the event of forfeiture by an operator of the performance bond for surface coal mining and reclamation operations on Federal lands covered by this agreement, the State shall use funds received from bond forfeiture and, where necessary, funds from the West Virginia Special Reclamation Fund (pursuant to Section 20-6-12(h) of the West Virginia Surface Coal Mining and Reclamation Act) to ensure that reclamation is accomplished in accordance with the State program and the approved permit.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.
ARTICLE XV: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations.

(Pub. L. 95–87 (30 U.S.C. 1201 et seq.))


William Clark,
Secretary of the Interior.


John D. Rockefeller IV,
Governor of West Virginia.

[49 FR 8917, Mar. 9, 1984]

PART 950—WYOMING

§ 950.1 Scope.

This part contains all rules applicable only within the State of Wyoming which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(Sec. 503, Pub. L. 95–87 (30 U.S.C. 1253))

[56 FR 3219, Jan. 29, 1991]

§ 950.10 State regulatory program approval.

The Wyoming permanent program as submitted on August 15, 1979 and as revised on October 23, 1979 and May 30, 1980, is approved effective November 26, 1980. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, room 2128, Casper, Wyoming 82002–1018, Telephone: (307) 261–5776.

(b) Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7756.

[56 FR 3219, Jan. 29, 1991]

§ 950.12 State program provisions and amendments not approved.

(a) The following provisions of the Rules and Regulations of the Land Quality Division of the Wyoming Department of Environmental Quality, as submitted on May 1, 1986, are hereby disapproved:

1. The phrases “run-of-the-mine” and “to separate the coal from its impurities” within the definition of “coal preparation plant” at Chapter I, section 2(m);
2. [Reserved]
3. Deletion of the requirement at Chapter II, section 3(a)(vi)(H)(II)(3) to collect baseline surface water data on acidity;
4. Deletion of the locational data requirements for monitoring stations at Chapter II, section 3(a)(vi)(M);
5. [Reserved]
6. Replacement of the word “is” with the phrase “the vegetative cover and total ground cover are” in Chapter IV, section 2(d)(vi);
7. Addition of the phrase “or an alternative success standard approved by the Administrator” to Chapter IV, section 2(d)(vi);
8.–9. [Reserved]
10. All revisions to Chapter IV, section 3(a)(ix) concerning cut-and-fill terraces;
11. Addition of section 1(a)(I)(I)(C), section 2(c), and section 3 to Chapter IX, which would have provided a general variance from the approximate original requirements; and
12. All revisions to Chapter XVII, which would have introduced a new enforcement scheme.

(b) Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7756.