

[The text of this proposed paragraph is the same as the text of § 40.6302(c)-1T(c)(2)(iv) published elsewhere in this issue of the **Federal Register**.]

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(f) * * * (1) * * * Also, no deposit is required in the case of any floor stocks tax described in § 40.0-1(a).

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Par. 5. In § 40.6302(c)-2, add paragraph (b)(2)(iii) to read as follows:

§ 40.6302(c)-2 Special rules for use of Government depositories under section 4681.

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(b) * * *

(2) * * *

(iii) *Modification for new chemicals.*

[The text of this proposed paragraph is the same as the text of § 40.6302(c)-2T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**.]

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Michael P. Dolan,

Acting Commissioner of Internal Revenue.
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-121-FOR]

Pennsylvania Abandoned Mine Land Reclamation Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Pennsylvania Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Pennsylvania Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment adds a new section "F" entitled Government Financed Construction Contracts (GFCC) to authorize the incidental removal of coal at AML sites that would not otherwise be mined and reclaimed under the Title V program. The proposed amendment also includes the Program Requirements and Monitoring Requirements related to the use of GFCC for that purpose. The proposed amendment is intended to improve the

efficiency of the Pennsylvania program by allowing the Government-financed construction exemption in Section 528 of SMCRA to be applied in cases involving less than 50% financing only in the limited situation where the construction constitutes a government approved and administered abandoned mine land reclamation project under Title IV of SMCRA.

DATES: Written comments must be received on or before 4:00 p.m. on January 28, 1998. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on January 23, 1998. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on January 13, 1998.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center (Amtrack), 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation, 400 Market Street, P.O. Box 8476, Harrisburg, Pennsylvania 17101, Telephone: (717) 783-2267.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director Harrisburg Field Office, Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 **Federal Register** (47 FR 33079). Subsequent actions concerning the AMLR program amendments are identified at 30 CFR 938.20 and 938.25.

II. Discussion of the Proposed Amendment

By letter dated November 21, 1997 (Administrative Record No. PA-855.00), the Pennsylvania Department of Environmental Protection (PADEP) submitted proposed Program Amendment No. 2 to the Pennsylvania Abandoned Mine Reclamation Plan. In addition, PADEP also submitted the following documents: Introduction; Basis of Authority for the Proposed Amendment; AML Amendment Conformance with 30 CFR Section 884.13; Assistant Counsel's Opinion of Authority for GFCC; PADEP Organization Chart and the Office of Mineral Resources Management Organization Chart. The proposed amendment is intended to improve the efficiency of the Pennsylvania program by allowing the Government-financed construction exemption in Section 528 of SMCRA to be applied to certain cases involving less than 50% financing.

The proposed amendment consists of new Part F, Program Requirements and Monitoring Program for GFCC's to be added as follows:

Part F: Government Financed Construction Contracts

(1) *Incidental Coal Removal*—PADEP proposes to authorize the incidental removal of coal at AML sites that would not otherwise be mined and reclaimed under the Title V program. Through its management of the permitting process and knowledge of the status of the AML lands in Pennsylvania, PADEP plans to enter into agreements with mining companies and adjacent permit holders to direct the reclamation of AML lands which involve some incidental removal of coal. Following are (3) examples of situations where PADEP proposes to utilize the GFCC to address AML liabilities.

(a) *Refuse Pile Reclamation*—As a result of an extensive history of mining in Pennsylvania, thousands of coal refuse piles are scattered throughout the state in both the bituminous and anthracite fields. In many cases these piles are unsightly, unsafe and are adding to the sedimentation and mine drainage pollution of Pennsylvania streams in areas that are economically deprived because of poor water quality and general aesthetics.

Depending on the method used to clean the coal and the volume of material available, these piles have varying degrees of value. Those piles that are larger in volume and higher in quality have traditionally been permitted under the Title V program while the smaller, poorer quality have

remained virtually untouched and are not and will not be likely candidates for permitting. These are the types of piles that are generally suitable for use in fluidized-bed combustion processes employed at cogeneration plants and the types of piles that will be reclaimed under the proposed program.

(b) *Reclamation of Abandoned Deep Mines*—An example specific to this initiative would be represented by an abandoned deep mine that includes subsidence problems and acid mine drainage discharges. The reclamation of this type of site would involve the daylighting of the deep mined area, the incidental and necessary removal of any coal encountered, the placement of alkaline material over the area of deep mine affected, and the construction of some type of passive treatment system to insure the reduction of pollutional loading from the discharges. Because of the limited amount of coal available, and the potential water quality liability for the discharges, this sample site would not be a candidate for a surface mine permit under the Title V program. This type of site would particularly appeal to the watershed organizations that have been formed to deal with exactly these reclamation opportunities with the potential to significantly increase water quality in a given watershed.

(c) *Unreclaimed High Walls Adjacent to Active Mine Sites*—Nearly all permits issued under the Title V program include varying levels of remaining or are located within close proximity to previously affected areas located outside of permit boundaries. In some cases coal along the crop barrier may have gone unmined because of poor quality or high moisture content. In other cases an additional cut taken off the highwall may facilitate a reclamation plan that results in a more suitable post-mining land use or may facilitate an abatement project (alkaline addition—highwall drains, etc.) that will result in improved water quality. In those situations where a Title V permit is impractical due to limited coal recovery or poor coal quality, PADEP proposes to direct reclamation of these sites through a GFCC which allows for the incidental removal of coal to complete reclamation of the AML lands.

(2) *Placement of Excess Spoil on Adjacent AML Lands*—PADEP proposes to authorize the placement of excess spoil from active mining operations on AML sites that would not otherwise be mined and reclaimed under the Title V program. Through its management of the permitting process and the knowledge of the status of AML lands in Pennsylvania, PADEP plans to enter

into agreements with mining companies and adjacent permit holders to direct the reclamation of AML lands adjacent to permitted operations. The institution of this program will allow PADEP to maximize its reclamation efforts on AML lands at no expense to the funding sources for PADEP's AML program. Savings to the AML program would be used for reclamation at other sites throughout the Commonwealth.

The proposed program amendment would offer solutions to the following problems that exist throughout Pennsylvania's coal field:

(1) Conditions which create a risk of fire, landslide, subsidence, cave-in or other unsafe, dangerous or hazardous conditions, including but not limited to any unguarded or unfenced open pit area, highwall, water pool, spoil bank and culm bank, abandoned structure, equipment, machinery, tools, or other property used in or resulting from surface mining operations, or other serious hazards to public health or safety.

(2) AMD pollution and sedimentation into Pennsylvania's streams.

(3) Unightly, and unproductive property that has been largely unreclaimed through either the AML or active mining programs.

(4) Inadequate funding to address the above three Pennsylvania reclamation liabilities.

Generally speaking, the above conditions exist in areas that are economically depressed and environmentally damaged. The necessary reclamation represents an AML liability well in excess of hundreds of millions of dollars. The proposed program offers an additional solution to Pennsylvania's obligation to provide clean water and a safe and health environment to its citizens.

Program Requirements

A. The Department will solicit and accept proposals to enter into a GFCC for the purpose of reclamation of abandoned mine lands some of which may involve the incidental and necessary removal of coal.

To be an "eligible person" the person must clear the Department's standard compliance with the Applicant Violator System (AVS) checks. In addition, the person must clear a check through the Commonwealth's contractor responsibility program.

A GFCC under the terms of this amendment, is limited to those situations where a contractor proposes to enter into an agreement to perform reclamation on abandoned mine lands with the incidental and necessary removal of coal or to use excess spoil

from a permitted site to reclaim an abandoned mine land. Reclamation should also include, where feasible, the installation of passive treatment systems and/or other measures to mitigate pre-existing discharges. No processing of coal will be conducted on-site.

Coal refuse ash may be returned to the site consistent with a general permit issued by the Department.

Sewage sludge may be utilized for site reclamation consistent with a beneficial use order or land reclamation permit.

PADEP will conduct an expeditious review of the proposal for adequacy of the monitoring plan, erosion and sedimentation control plan, operation plan, and reclamation plan. Particular attention will be given to the feasibility of installing passive treatment systems and/or other measures to mitigate pre-existing discharges. Any deficiencies are to be communicated to the contractor in writing.

Even though reclamation activities under a GFCC are not subject to the barrier prohibitions of 86.102, precautions will be designed in the operation and reclamation plans to minimize any potential adverse impacts on areas that would be considered prohibited areas under a coal mining permit.

A performance bond in an amount determined by the PADEP shall be submitted on forms provided by the PADEP for all GFCC sites where bond is required.

B. A proposal for a GFCC will consist of a face sheet and the following modules as applicable:

- Module #1—Ownership and Right of Entry
- Module #2—Ownership and Right of Entry
- Module #3—Hydrology
- Module #4—Operational Information
- Module #5—Streams
- Module #25—Flyash
- Module #27—Sewage Sludge

(a) The ownership and control information is to be entered into LUMIS and a compliance check/AVS check run. If a "bar" is found, the proposal is to be returned. If "no bar" is found, the proposal will be accepted and given on ID number.

(b) All proposals will be subject to the consultation requirements with other state agencies as prescribed by PA's approved AML plan.

(c) The PADEP will advertise receipt of the proposal (see draft notice). This notice shall be run once a week for two weeks in a newspaper local to the project area.

(d) The municipality and the county in which the site is located will be

noticed, by certified letter, that the PADEP received a proposal for a GFCC to perform reclamation activities within the municipality.

(e) Upon final execution of the contract, PADEP will notify the host municipality and county by certified mail of the action (see draft notice); notify any agencies who submitted comments; notify appropriate state Legislators, in writing, of the action; and issue a press release of the action (Regional Community Relations Coordinator to assist in preparation of this release). If a Small Projects Permit is issued with the executed contract, notice must be made in the PA Bulletin.

Monitoring Program for GFCC's

The PADEP will conduct monthly inspections of all GFCC's until the site is determined to be stabilized by vegetation. At that time, the PADEP will continue to conduct regular inspections on a quarterly basis until the contract receives final approval and final bond release.

The inspections forms and related instructions to be utilized to monitor the GFCC program are part of the amendment.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is now seeking comment on whether the amendment proposed by Pennsylvania satisfies the applicable requirements for the approval of State AMLR program amendments. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administration Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on January 13, 1998. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in

advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposal rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the

National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this 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.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX-039-FOR]

Texas Abandoned Mine Land Reclamation Plan

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