

CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g).

*Example 1.* The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

*Example 2.* Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals's determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals—*

(1) *In general.* The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals's determination. Once a taxpayer has exhausted his other remedies, Appeals's retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals's original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A-H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods to which the unpaid tax relates. Any subsequent

consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a subsequent hearing appealable to the Tax Court or a district court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing—(1) In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and will generally follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q-I1. What issues will Appeals consider at an equivalent hearing?

A-I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-levy CDP Notice, that is, CDP hearings.

Q-I3. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A-I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-I4. What will the Decision Letter state?

A-I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A-I5. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals's denial of relief under section 6015(b) or (c). Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any levy which occurs on or after January 19, 1999, and before January 21, 2002.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: January 13, 1999.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 913

[SPATS No. IL-093-FOR]

#### Illinois Abandoned Mine Land Reclamation Plan

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

**ACTION:** Final rule; approval of amendment.

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**SUMMARY:** OSM is approving a proposed amendment to the Illinois abandoned mine land reclamation plan (Illinois plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed revisions and additions to the Illinois plan relating to agency reorganization, legal opinion, definitions, project priorities, utilities and other facilities, eligible coal lands and water, eligible non-coal lands and water, project selection, annual grant process, liens, rights of entry, public participation, bidding requirements and conditions, contracts, and contractor responsibility. The amendment is intended to revise the Illinois plan to be consistent with the corresponding

Federal regulations and SMCRA and improve operational efficiency.

**EFFECTIVE DATE:** January 22, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204-1521, Telephone (317) 226-6700.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Illinois Plan
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Illinois Plan**

On June 1, 1982, the Secretary of the Interior approved the Illinois plan. You can find background information on the Illinois plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 1, 1982, **Federal Register** (47 FR 23886). You can find later actions concerning the Illinois plan and amendments to the plan at 30 CFR 913.25.

**II. Submission of the Proposed Amendment**

By letter dated October 22, 1998 (Administrative Record No. IL-5022), Illinois submitted a proposed amendment to its plan under SMCRA. The amendment consisted of new and revised narrative discussions and implementing regulations. Illinois sent the amendment in response to a letter dated September 26, 1994 (Administrative Record No. IL-700-AML), that we sent to Illinois under 30 CFR 884.15(d). The amendment also includes changes made at Illinois' own initiative.

We announced receipt of the proposed amendment in the November 11, 1998, **Federal Register** (63 FR 63630). In the same document, we opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on December 16, 1998.

During our review of the amendment, we identified concerns relating to nonsubstantive editorial errors in Personnel (30 CFR 884.13(d)(2)); Procurement (30 CFR 884.13(d)(3)); 62 IAC 2501.10, Eligible Coal Lands and Water; 62 IAC 2501.11, Eligible Non-coal Lands and Water; 62 IAC 2501.16, Final Selection and Project Deferment; 62 IAC 2501.19, Annual Grant Process; 62 IAC 2501.25, Reclamation on Private Lands; 44 IAC 1150.40, Severability; 44

IAC 1150.200, Bidding Requirements and Conditions; 44 IAC 1150.300, Awards and Execution of Contract; and 44 IAC 1150.1300, Contract Negotiations. We notified Illinois of these concerns by letter dated December 16, 1998 (Administrative Record No. IL-5034). However, because the editorial errors were nonsubstantive, we are proceeding with this final rule.

**III. Director's Findings**

Set forth below, under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are our findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

**1. General Changes**

a. Illinois made the following reference changes throughout its narrative and implementing regulations: all references to the "Abandoned Mined Lands Reclamation Council" and "Council" have been changed to the "Illinois Department of Natural Resources" or "Department"; all references to the "Executive Director" have been changed to the "Director of the Office of Mines and Mineral," "Director of the Department," or "Director," as appropriate; all references to "Soil Conservation Service" have been changed to "Natural Resources Conservation Service"; and all references to "him" have been revised to "him/her" or some other gender neutral reference.

Illinois also made the following statutory reference changes throughout 62 IAC 2501: Ill. Rev. Stat. 1991, ch. 96½, pars. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1985, ch. 96½, par. 8001.03(a)(7) was changed to 20 ILCS 1920/1.03(5); Ill. Rev. Stat. 1985, ch. 96½, par. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1991, ch. 127, par. 1001-1 *et seq.* was changed to 5 ILCS 100; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.02(a) was changed to 20 ILCS 1920/1.02; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.03(a) was changed to 20 ILCS 1920/2.03(a); Ill. Rev. Stat. 1985, ch. 96½, par. 8003.05 was changed to 20 ILCS 1920/3.05; Ill. Rev. Stat. 1989, ch. 96½, par. 8002.09(b) was changed to 20 ILCS 1920/2.09; Ill. Rev. Stat. 1983, ch. 96½, par. 800.04(d) was changed to 20 ILCS 1920/2.04(d); and Ill. Rev. Stat. 1985, ch. 127, pars. 133b1 *et seq.* was changed to 30 ILCS 605.

Finally, Illinois made the following statutory reference changes throughout

44 IAC 1150: Ill. Rev. Stat. 1985, ch. 96½, pars. 8001.01 *et seq.* and Ill. Rev. Stat. 1991, ch. 127, par. 1005-75 were changed to 20 ILCS 1920 and 5 ILCS 100/5-75, respectively.

We approve the above revisions because they do not alter the substance of the Illinois plan.

b. 62 IAC 2501.1, *Scope*. Illinois revised the scope of this section to reflect the creation of the IDNR. We approve the revision because it merely reflects agency reorganization.

c. 62 IAC 2501.4, *Definitions*. Illinois removed the definition of "council" and added the definition of "department" to reflect the creation of the IDNR. We approve the removal and addition of these definitions because they merely reflect agency reorganization.

Illinois also expanded the definition of "Federal Office" to refer to "OSM." We approve the revised definition because it merely clarifies the existing approved definition.

**2. Plan Narrative: Introduction**

Illinois revised this section of its plan narrative to describe the history of the Illinois Abandoned Mined Lands Reclamation Program, the creation of the Department of Natural Resources, and the requirements of Title V of the Surface Mining Control and Reclamation Act of 1977. We approve Illinois' revised narrative because it does not alter the substance of the Illinois plan.

**3. Eligible Coal Lands and Water**

*Eligible Coal Lands and Water*, (30 CFR 874.12(e)). Illinois added this new section to its plan narrative to state that the provisions of 62 IAC 2501.10 detail the eligibility of coal lands and waters for reclamation and abatement. We approve the addition of this section to the Illinois plan narrative because it is not inconsistent with the requirements of 30 CFR 884.13.

*Section 2501.10, Eligible Coal Lands and Water*. Illinois added new paragraphs (d) through (h) to its implementing regulations at 62 IAC 2501.10 to read as follows:

(d) Notwithstanding subsections (a), (b) and (c) of this section, coal lands and waters damaged and abandoned after August 3, 1997 by coal mining processes are also eligible if the Department, with the concurrence of OSM, finds in writing that:

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

(A) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and June 1, 1982, and 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

(B) The mining occurred between August 4, 1977 and November 5, 1990 and the surety of the mining operator became insolvent during that period, and as of November 5, 1990, funds immediately available from proceedings relating to insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site; and

(2) The site qualifies as a priority 1 or 2 site under Section 2501.7(c) and (e) of this Part.

(e) The Department may expend funds available under subsections 402(g)(1) and (5) of the Surface Mining Control and Reclamation Act for reclamation and abatement of any site eligible under Subsection (d) above, if the Department, with concurrence of OSM, makes the findings required in subsection (d) above and the Department 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 subsections (a), (b) or (c) above that qualify as a priority 1 or 2 site under Section 403(a) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1233(a)).

(f) With respect to lands and waters eligible pursuant to subsection (d) or (e) above, monies available from sources outside the Abandoned Mine Reclamation Federal Trust 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 Federal Trust 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 AML program, the permittee of the site shall reimburse the AML Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. The Department, when performing reclamation under subsection (d) above shall not be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act, or in the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720], nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in those Acts.

(h) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, AML funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if emergency conditions warrant, the Department shall immediately exercise its authority under the Emergency program.

We approve the addition of the above provisions at 62 IAC 2501.10(d) through (h) because they are substantively

identical to the counterpart Federal provisions found at 30 CFR 874.12(d) through (h).

#### 4. Exclusion of Certain Non-coal Reclamation Sites

*Exclusion of Certain Non-coal Reclamation Sites, (30 CFR 875.16).* Illinois added this new section to its plan narrative to state that the provisions of 62 IAC 2501.11 detail the eligibility of non-coal lands and waters for reclamation and abatement. We approve the addition of this section to the Illinois plan narrative because it is not inconsistent with the requirements of 30 CFR 884.13.

*Section 2501.11, Eligible Non-coal Lands and Water.* Illinois added this new section to its implementing regulations at 62 IAC 2501.11 to provide reclamation eligibility guidelines for non-coal lands and water. Non-coal lands and water are eligible for reclamation activities if they were mined or affected by mining processes; they were mined before August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; the operator, permittee, or agent of the permittee has no continuing responsibility for reclamation under statutes of the State or Federal Government due to bond forfeiture, and the forfeited bond is insufficient to pay the total cost of reclamation; the Governor agrees that reclamation is necessary and submits a letter of request to the Federal Office; it is necessary for the protection of the public health and safety, general welfare and property; and the lands and water are not designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 or have been listed for remedial action under the Comprehensive Response Compensation and Liability Act of 1980.

We approve the addition of the above provisions at 62 IAC 2501.11 because paragraphs (a) through (e) are substantively identical to the counterpart Federal provisions found at 30 CFR 875.12(a) through (e) and paragraph (f) is substantively identical to the counterpart Federal provision found at 30 CFR 875.16. Paragraph (f) also satisfies a requirement of OSM's September 26, 1994, letter.

#### 5. Authorization by the Governor

Illinois revised this section of its plan narrative to reflect the creation of the Illinois Department of Natural Resources (IDNR). Previously, this section consisted of a letter from the Governor designating the Abandoned Mined Lands Reclamation Council as the agency responsible for administering

the State Abandoned Mined Lands program. Illinois' revised narrative states that authority for administering the State Abandoned Mined Lands program is established by statute. The Abandoned Mined Lands and Water Reclamation Act, as amended, establishes that IDNR's Office of Mines and Minerals is responsible for administering the State reclamation program and receiving and administering grants under 30 CFR Part 886. We approve Illinois' revised narrative because it meets the requirement of 30 CFR 884.13(a), which requires the State reclamation plan to have a designation by the Governor of the State of the agency authorized to administer the State reclamation program and to receive and administer grants under 30 CFR Part 886.

#### 6. Legal Opinion

Illinois revised this section of its plan narrative by replacing a letter from the chief legal officer of the Abandoned Mined Lands Reclamation Council with a letter from the chief legal officer of IDNR. We approve Illinois' revised narrative because it meets the requirement of 30 CFR 884.13(b), which requires the State reclamation plan to have a legal opinion from the State Attorney General or the chief legal officer of the State agency that the designated agency has the authority under State law to conduct the State reclamation program.

#### 7. Project Selection

Project Selection, (30 CFR 884.13(c)(2))

Illinois revised this section of its plan narrative to state that sections 2501.7, 2501.8, 2501.10, 2501.11, 2501.13, 2501.16, and 2501.34 of the rules entitled "Abandoned Mined Land Reclamation" detail Abandoned Mined Lands project selection. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(c)(2), which requires a State reclamation plan to have a description of the policies and procedures that the designated agency will follow in conducting the reclamation program, including the specific criteria for ranking and identifying projects to be funded.

Section 2501.7, Objectives and Priorities

Illinois revised its implementing regulations at 62 IAC 2501.7(c) by removing a priority concerning the expenditure of Abandoned Mined Lands money on research and demonstration projects relating to the development of surface mining reclamation and water quality control program and methods

and techniques. We approve the revision of the above provision because it is substantively identical to the counterpart Federal provision found at Section 403(a) of SMCRA.

Illinois also added new paragraphs (d) and (e) to its implementing regulations at 62 IAC 2501.7. Paragraph (d) concerns the order in which projects are addressed. Paragraph (e) concerns the designation of projects that have an adverse economic impact upon a community. We approve the addition of the above provisions because they are substantively identical to the counterpart Federal provisions found at 30 CFR 874.13(b) and 30 CFR 874.12(d)(3), respectively.

Finally, at section 2501.7(f), Illinois revised the date by which the Department may make expenditure obligations on lands mined for substances other than coal. The date was changed from August 14, 1994, to August 31, 1999. We approve the revision of the above provision because it is not inconsistent with the provisions of 30 CFR 875.12, which detail when non-coal lands and waters are eligible for reclamation.

#### Section 2501.8, Utilities and Other Facilities

Illinois added this new section to its implementing regulations to provide guidance on use of Abandoned Mined Lands funds for water supplies. Section 2501.8(a) allows the Department to use up to 30 percent of the annual Abandoned Mined Lands funds 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. Section 2501.8(b) provides that adverse effects on water supplies that occurred both before and after August 3, 1977, are eligible for Abandoned Mined Lands funds, in spite of the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominantly by mining processes undertaken and abandoned before August 3, 1977. Section 2501.8(c) provides that adverse effects on water supplies that occurred both before and after the dates (and under the criteria) set forth in Section 2501.10(d) are eligible for Abandoned Mined Lands funds, notwithstanding the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominately by mining processes undertaken and abandoned

before those dates. Finally, section 2501.8(d) provides that enhancement of facilities or utilities includes upgrading to meet any local, State, or Federal public health or safety requirement. Enhancement does not include service area expansion not necessary to address a specific abandoned mine land problem.

We approve the addition of the above provisions at 62 IAC 2501.8 because they are substantively identical to the counterpart Federal provisions found at 30 CFR 874.14.

#### Section 2501.13, Preliminary Project Selection

Illinois revised its implementing regulations at 62 IAC 2501.13(b) to require the Department to select reclamation projects from a database that contains all known abandoned mine sites in the State which are eligible under Sections 2501.10 and 2501.11. Also, at 62 IAC 2501.13(b), Illinois revised the list of problem conditions the Department is to use to determine which sites are in the most need of reclamation. New section 2501.13(b)(9) provides that flooding of roads or improved property caused by sedimentation from Abandoned Mined Lands sites is a problem condition. New section 2501.13(b)(10) provides that hazardous recreational water bodies is a problem condition. Existing sections 2501.13(b)(9) and (10) were redesignated as sections 2501.13(b)(11) and (12). Finally, Illinois added new section 2501.13(b)(13) to provide that coal refuse material or spoilbanks adversely affecting lands or water resources is a problem condition.

We approve the revision and addition of the above provisions at 62 IAC 2501.13(a) and (b) because they meet the requirements of 30 CFR 874.13, which requires States to conduct reclamation projects in a manner that is consistent with OSM's "Final Guidelines for Reclamation Programs and Projects" (61 FR 68777—68785, December 30, 1996), and reflect the priorities of Section 403(a) of SMCRA.

#### Section 2501.16, Final Selection and Project Deferment

Illinois revised its regulations at 62 IAC 2501.16(a) to further detail the criteria by which the Department will identify and rank Abandoned Mined Lands projects. We approve the revision of the above provision because it provides additional satisfaction of the requirements of 30 CFR 874.13.

#### 8. Coordination of Reclamation Activities

Illinois revised this section of its plan narrative to require that Abandoned Mined Lands staff meet with Natural Resource Conservation Service Rural Abandoned Mine Program coordinators on an annual basis to coordinate reclamation activities. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(c)(3), which requires a State reclamation plan to include a description of the policies and procedures that the designated agency will follow in conducting the reclamation program, including the coordination of reclamation work among the State reclamation program and the Rural Abandoned Mine Program administered by the Natural Resource Conservation Service.

#### 9. Reclamation of Private Land

##### Reclamation of Private Land, (30 CFR 884.13(c)(5))

Illinois revised this section of its plan narrative to include an explanation of language found at 62 IAC 2501.25(b)(2). We find that the addition of this explanatory language merely clarifies the existing provision. Therefore, this section of the plan narrative continues to meet the Federal requirements at 30 CFR 884.13(c)(5) to describe the policies and procedures regarding reclamation on private land under 30 CFR Part 882.

##### Section 2501.25, Reclamation on Private Lands

Illinois added new paragraph (b)(3) to its implementing regulations at 62 IAC 2501.25 to allow the Department to waive a lien if it finds, before construction, that the reclamation work is being undertaken solely to seal, fill, or mark an open or settled mine shaft, drift or slope entry, adit or other mine opening or a subsidence pit. We approve the addition of the above provision because it is consistent with the provisions of 30 CFR 882.13(a)(3), which allows a state to waive a lien if findings made prior to construction indicate that the reclamation work primarily benefits health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence.

Illinois also revised its implementing regulations at 62 IAC 2501.25(c)(2) and (3). At 2501.25(c)(2), Illinois added

language to provide that a reclamation lien created under Section 2.09 of the State Act will continue to exist until satisfied, subject only to the 40-year limitation period and the requirements of Sections 13–118 through 13–121 of the Code of Civil Procedure [735 ILCS 5/13–118 *et seq.*]. At 2501.25(c)(3), Illinois revised the language to allow the Department to request appropriate foreclosure action by the Attorney General to satisfy the lien if the reclaimed property is transferred for an actual consideration in excess of the appraised fair market value of the property after reclamation, and the lien is not satisfied at the time of transfer. We approve the addition and revision of the above provisions because they are consistent with the provision at 30 CFR 882.14(b), which requires states to maintain or renew liens from time to time as required under State or local law.

### 10. Public Participation

Public Participation, (30 CFR 884.13(c)(7))

Illinois revised this section of its plan narrative concerning preparation of the original state plan, promulgation of rules and plan amendments, public participation in the reclamation program, compliance with Executive Order 12372, and the list of regional clearinghouses. Included in the revision to “public participation in the reclamation program” is a reference to the newly proposed provisions at 62 IAC 2501.40.

Section 2501.40, Public Participation

Illinois added this new section to its implementing regulations at 62 IAC 2501.40 to provide for public participation in the Abandoned Mined Lands program and projects. Section 2501.40(a) provides that any interested party may submit information and comments to the Director of the Department, the Director of the Office of Mines and Minerals, or the Manager of the Abandoned Mined Lands Division at any time. Section 2501.40(b) requires that the Department handle verbal and written requests for information as quickly as possible, and that requests made under the Freedom of Information Act (5 ILCS 140) be made and handled in accordance with the generally applicable procedures of the Department of Natural Resources. Section 2501.40(c) requires the Department to have available, upon request, copies of the Illinois State Reclamation Plan for Abandoned Mined Lands, Office of Mines and Minerals Annual and Bi-Annual Reports, specific

project reports, and brochures and program materials. However, the availability of such reports, brochures and program materials can not be deemed a waiver of the Department’s right to charge fees for its actual cost of reproducing and certifying public records requests under the Freedom of Information Act. Further, the Department may charge fees for its actual cost for providing multiple copies of free publications. Finally, section 2501.40(d) was added to read as follows:

(d) The Department shall hold such public meetings as it determines necessary and appropriate to advise the public of planned or ongoing AML projects, and to solicit input and participation in the AML program. Any interested person may request, in writing, that the Department hold a public meeting in connection with any AML project or program activity. Upon receipt of a written request to hold a public meeting, the Department shall contact the landowners directly involved in the project, as well as the local government bodies that may be interested. The Department shall schedule a public meeting if it determines that sufficient public interest exists to warrant the public meeting.

We approve Illinois’ revised plan narrative and the addition of 62 IAC 2501.40 because they meet the requirements of 30 CFR 884.13(c)(7), which requires a State reclamation plan to have a description of the policies and procedures that the designated agency will follow in conducting the reclamation program, including public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

### 11. Administration

Illinois revised this section of its plan narrative to reflect the reorganization of the Division of Abandoned Mined Lands Reclamation, within the Office of Mines and Minerals, Department of Natural Resources. They also updated the list of other State offices and agencies. We approve Illinois’ revised plan narrative because it meets the requirement of 30 CFR 884.13(d)(1), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program, including the organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency’s reclamation capacity.

### 12. Personnel

Illinois revised this section of its plan narrative to reflect changes in its administrative and management structure and its personnel staffing

policies. We approve Illinois’ revised plan narrative because it meets the requirement of 30 CFR 884.13(d)(2), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program, including the personnel staffing policies which will govern the assignment of personnel to the State reclamation program.

### 13. Procurement

Procurement, (30 CFR 884.13(d)(3))

Illinois revised this section of its plan narrative by changing all references to the Illinois Purchasing Act to the Illinois Procurement Code. They also removed language about the provisions of Section 5 and Section 9.01 of the Illinois Purchasing Act. Finally, Illinois revised its discussion about the exceptions to the competitive bidding requirements of the Illinois Procurement Code. We approve Illinois’ revised plan narrative because it meets the requirement of 30 CFR 884.13(d)(3), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program, including the purchasing and procurement systems to be used by the agency.

44 IAC 1150. Illinois revised the following sections of its implementing regulations at 44 IAC 1150: Section 1150.10, Purpose; Section 1150.20, Scope; Section 1150.30, Applicability; Section 1150.100, Definition of Terms; Section 1150.200, Bidding Requirements and Conditions; Section 1150.300, Award and Execution of Contract; Section 1150.400, Contracts Involving Expenditures of \$30,000.00 or Less; Section 1150.500, Emergency Contracting; Section 1150.700, Applicability; Section 1150.800, Prequalification; Section 1150.900, Subcontracting; Section 1150.1000, Requests for Proposals; and Section 1150.1300, Contract Negotiations. In addition, Illinois added the following sections to its implementing regulations at 44 IAC 1150: Section 1150.1100, Evaluation Procedure; Section 1150.1200, Selection Procedure; Section 1150.1325, Exemptions; and Section 1150.1350, Firm Performance Evaluations.

We approve the revisions to and additions of the above provisions because they meet the requirements of 30 CFR 884.13(d)(3), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program,

including the purchasing and procurement systems to be used by the agency.

#### Section 1150.300(e)

Illinois added paragraph (e) to its implementing regulations at 44 IAC 1150.300 to read as follows:

(1) Under 30 CFR 874.16, every successful bidder for a federally funded AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by the federal Office of Surface Mining, Reclamation and Enforcement's automated Applicant/Violator System (AVS) for each contract to be awarded.

(2) At the time the successful bidder is notified by letter of intent that his/her bid will be accepted, the Department will provide to the bidder an Ownership/Control ("O/C") information package. The bidder shall completely fill out the forms and return the completed forms to the Department. The Department will forward the completed forms to OSM at the Lexington, Kentucky AVS office for data entry and compliance check.

(3) All subcontractors who will receive 10% or more of the total contract funding will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check, prior to receiving the Department's approval of subcontractor.

(4) Any contract inspector, selected through a bidding process, regardless of the percentage of contract funding, will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check.

(5) The Department shall deny a contract and cancel the award upon OSM's recommendation that the successful bidder is not eligible for an AML contract. The Department shall deny approval of a subcontractor upon OSM's recommendation that the subcontractor is not eligible for an AML contract. The Department shall deny an inspection contract upon OSM's recommendation that the contract inspector is not eligible for an AML contract.

(6) Any person denied an AML contract or participation in an AML funded project, shall appeal the decision and recommendation of OSM directly to OSM. Appeal should be made to establish eligibility for future AML projects. The Department will not delay a project pending appeal. The Department's role in the AVS compliance check process is ministerial and does not involve exercise of independent judgement or review of OSM's decision and recommendation. The Department shall not be responsible for any damages sustained by any person by reason of OSM's determination as to eligibility for AML contracts.

(7) After a Contractor, subcontractor, or contract inspector has once submitted an O/C information package and has been entered into the AVS in connection with an AML project, the Department may, in connection with subsequent projects, provide dated AVS printouts reflecting the information

submitted and the current AVS recommendation, along with an AML Contractor O/C Data Certification form. The Contractor, subcontractor, or contract inspector shall complete and submit the certification in place of the O/C information package, in the same manner as provided above.

(8) Any potential AML Contractor, subcontractor or contract inspector may submit O/C information directly to OSM and the Lexington AVS Office, to predetermine eligibility for AML contracts.

We approve the addition of the above provisions because they meet the requirements of 30 CFR 874.16 and 30 CFR 875.20 and satisfy a requirement of the September 26, 1994, letter we sent to Illinois under 30 CFR 884.15(d).

#### 14. Reclamation Activity

Illinois revised the amount of acreage in need of reclamation and the amount of acreage funded through the emergency response program in this section of its plan narrative. Illinois also added a new paragraph on the reclamation activity entitled "Reclamation of Mine Subsidence." We approve Illinois revised plan narrative because it meets the requirement of 30 CFR 884.13(e), which requires a State reclamation plan to have a general description, derived from available data, of the reclamation activities to be conducted under the State reclamation plan, including the known or suspected eligible lands and waters within the State which require reclamation.

#### 15. Reports

Illinois added this new section to its plan narrative to state that the Department will submit the OSM-76 Form, or its electronic counterpart in the Abandoned Mine Land Inventory System, at the time of project completion. We approve the addition of this section to Illinois' plan narrative because it satisfies a requirement of the September 26, 1994, letter we sent to Illinois under 30 CFR 884.15(d). It is also consistent with 30 CFR 886.23(b), which requires a State agency to submit a completed Form OSM-76 and any other closeout reports specified by OSM upon completion of a project.

#### 16. Priorities, (20 ILCS 1920/2.03(4))

Illinois added this new section to its plan narrative to state that legislative measures will be taken to ensure compatibility between state statutes and federal regulations. This section recognizes that section 2.03(a) of the Abandoned Mined Lands and Water Reclamation Act is inconsistent with section 403(a) of SMCRA and 62 IAC 2501.7 and ensures that legislative action will be taken to correct this

disparity. We approve the addition of this section to the plan narrative because it is not inconsistent with the requirements of 30 CFR 884.13.

#### 17. 62 IAC 2501.19, Annual Grant Process

Illinois removed the language found in this section and replaced it with language requiring the Department to submit an annual grant application to OSM in accordance with the requirements of 30 CFR Part 886 to cover allowable costs of the Abandoned Mined Lands program. We find that Illinois' definition of allowable costs is substantively the same as the counterpart Federal definition of allowable costs found at 30 CFR 886.21. We further find that Illinois' requirement for an annual submission of a grant application is not inconsistent with the requirements of 30 CFR Part 886. Therefore, we approve Illinois' revision of this section.

### IV. Summary and Disposition of Comments

#### Public Comments

We asked for public comments on the amendment, but did not receive any.

#### Federal Agency Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois plan (Administrative Record No. IL-5027). No comments were received.

#### U.S. Environmental Protection Agency (EPA)

Under 30 CFR 884.14(a)(6), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

#### U.S. Fish and Wildlife Service (FWS)

Under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), we are required to ask the FWS to determine whether those provisions of the program amendment that relate to fish, wildlife, or plants and their habitat are likely to jeopardize the continued existence of species listed as endangered or threatened (under the authority of section 4 of the Endangered Species Act of 1973) or result in the

destruction or adverse modification of their habitat. None of the revisions that Illinois proposed to make in this amendment pertain to fish, wildlife, or plants and their habitat. Therefore, we did not ask the FWS for its determination under section 7 of the Endangered Species Act of 1973.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 884.14(a)(6), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 6, 1998, we requested comments on Illinois' amendment (Administrative Record No. IL-5027), but neither responded to our request.

**V. Director's Decision**

Based on the above findings, we approve the proposed plan amendment as submitted by Illinois on October 22, 1998.

We approve the rules as proposed by Illinois with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 913, codifying decisions concerning the Illinois plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations**

*Executive Order 12866*

This 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 since each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions 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 Part 884.

*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 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 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. 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*

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

**List of Subjects in 30 CFR Part 913**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 8, 1999.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center. For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:*

**PART 913—ILLINOIS**

1. The authority citation for Part 913 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 913.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

**§ 913.25 Approval of Illinois abandoned mine land reclamation plan amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
*	*	*
October 22, 1998 .....	January 22, 1999 .....	Illinois Plan Narrative; 62 IAC 2501.1, .4, .7, .8, .10, .11, .13, .16, .19, .22, .25, .28, .31, and .40; 44 IAC 1150.10, 20, .30, .100, .200, .300, .400, .500, .700, .800, .900, .1000, .1100, .1200, .1300, .1325, and .1350.

[FR Doc. 99-1444 Filed 1-21-99; 8:45 am]  
BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 936**

[SPATS No. OK-024-FOR]

**Oklahoma Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving an amendment to the Oklahoma regulatory program (from now on referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to and additions of regulations pertaining to definitions; reclamation plan: siltation structures, impoundments, banks, dams, and embankments; permit variances from approximate original contour restoration requirements; small operator assistance; bond release applications; hydrologic balance: siltation structures; impoundments; disposal of excess spoil: preexisting benches; coal mine waste: general requirements; state inspections and monitoring; and request for hearing. Oklahoma intended that the amendment revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** January 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolf from, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430, E-mail mwolf from@mcr gw.osmre.gov.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Oklahoma Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Oklahoma Program**

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 936.15 and 936.16.

**II. Submission of the Proposed Amendment**

By letter dated December 18, 1997 (Administrative Record No. OK-981), Oklahoma sent us an amendment to its program under SMCRA. Oklahoma sent the amendment in response to a June 17, 1997, letter (Administrative Record No. OK-979) that we sent to Oklahoma under 30 CFR 732.17(c). We announced receipt of the amendment in the January 6, 1998, **Federal Register** (63 FR 454). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on February 5, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to definitions (OAC 460:20-3-5); permitting requirements (OAC 460:20-27-14 and 460:-20-31-9); small operator assistance (OAC 460:20-35-1, -6, -7, and -8); hydrologic balance: siltation structures—definitions (OAC

460:20-43-12); impoundments (OAC 460:20-43-14 and 460:20-45-14); coal mine waste: general requirements (OAC 460:20-43-29 and 460:20-45-29); backfilling and grading: thin overburden (OAC 460:20-43-39); disposal of excess spoil: preexisting benches (OAC 460:20-45-27); and state inspections and monitoring (OAC 460:20-57-2). We notified Oklahoma of these concerns by faxes dated June 5 and 30, and October 21, 1998 (Administrative Record Nos. OK-981.13, OK-981.08, and OK-981.11, respectively). By letters dated June 22, August 10, September 24, and November 5, 1998 (Administrative Record Nos. OK-981.06, OK-981.09, OK-981.10, and OK-981.12, respectively), Oklahoma sent us additional explanatory information and revisions to its program amendment.

Based upon Oklahoma's additional explanatory information and revisions to its amendment, we reopened the public comment period in the November 25, 1998, **Federal Register** (63 FR 65149). The public comment period closed on December 10, 1998.

**III. Director's Findings**

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. Any revisions that we do not discuss are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*A. Revisions to Oklahoma's Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation—Oklahoma administrative code (OAC)	Federal counterpart regulation—30 Code of Federal Regulation (CFR)
Definitions: "Other treatment facilities," "Previously mined area," and "Siltation structure."	460:20-3-5 .....	701.5.
Reclamation plan: siltation structures, impoundments, banks, dams, and embankments. (Surface mining activities).	460:20-27-14(a), (a)(2), (a)(3), and (f).	780.25(a), (a)(2), (a)(3), and (f).
Reclamation plan: siltation structures, impoundments, banks, dams, and embankments. (Underground mining activities).	460:20-31-9(a), (a)(2), (a)(3), and (f).	784.16(a), (a)(2), (a)(3), and (f).
Permits incorporating variances from approximate original contour restoration requirements.	460:20-33-6(a) .....	785.16(a).
Program services and data requirements .....	460:20-35-6(a), (b)(1), and (b)(3)—(b)(5).	795.9(a), (b)(1), and (b)(4)—(b)(6).
Applicant liability .....	460:20-35-7(a) .....	795.12(a).
Assistance funding .....	460:20-35-8 .....	795.11.
Requirement to release performance bonds .....	460:20-37-15(a)(3) .....	800.40(a)(3).
Hydrologic balance: siltation structures. (Surface mining activities) .....	460:20-43-12(a)—(a)(2) .....	816.46(a)—(a)(2).