to A in the amount of $100,000 for A's attorney's fees and the other payable to C in the amount of $200,000. P writes the checks in accordance with A's instructions and delivers both checks to A. P must file an information return with respect to A for $100,000 under paragraph (a)(1) of this section.

Example 4. Check made payable to claimant, but delivered to nonpayee attorney. Corporation P, a defendant in a suit for damages knows that C, the plaintiff, has been represented by attorney A throughout the proceeding. P settles the suit for $500,000. Pursuant to a request by A, P writes the $500,000 settlement check payable solely to C and delivers it to A at A's office. P is not required to file an information return under paragraph (a)(1) of this section with respect to A, because there is no payment to an attorney within the meaning of paragraph (d)(4) of this section.

Example 5. Multiple attorneys listed as payees. Corporation P, a defendant, settles a lost profits suit brought by C, for $1,000,000 by paying a check naming C's attorneys, Y, A, and Z, as payees in that order. Y, A, and Z are not related parties. P delivers the payment to A's office. A deposits the check proceeds into a trust account and makes payments by separate checks to Y of $100,000 and to Z of $50,000, for their attorneys' fees. A also makes a payment by check of $550,000 to C. P must file an information return for $1,000,000 with respect to A under paragraphs (a)(1) and (b)(1)(i) of this section. A, in turn, must file information returns with respect to Y of $100,000 and to Z of $50,000 under paragraphs (a)(1) and (b)(2) of this section if A is not required to file information returns under section 6041 with respect to A's payments to Y and to Z.

Example 6. Amount of the payment—attorney does not provide TIN. Corporation P, a defendant, settles a suit brought by C for $1,000,000 of damages. C's attorney, A, did not furnish P with A's TIN. P is required to deduct and withhold tax from the $1,000,000 under section 3406(a)(1)(A) and paragraph (e) of this section. Therefore, P makes the payment by a $720,000 check naming C and C's attorney, A, as joint payees. P must also file an information return with respect to A under paragraph (a)(1) of this section in the amount of $1,000,000, as prescribed in paragraph (d)(5) of this section.

Example 7. Home mortgage lending transaction. (i) Individual P agrees to purchase a house that P will use solely as a residence. P obtains a loan from lender L to finance a portion of the cost of acquiring the house. L disburses loan proceeds of $325,000 to attorney A, who is the settlement agent, by a check naming A as the sole payee. A, in turn, writes checks from the loan proceeds and from other funds provided by P to the persons involved in the purchase of the house, including a check for $800 to attorney B, whom P hired to provide P with legal services relating to the closing.

(ii) P, not L, is the payor of the payment to A under paragraph (d)(3) of this section. P, however, is not required to file an information return with respect to A under paragraph (a)(1) of this section because the payment was not made in the course of P's trade or business. Even if P made the payment in the course of P's trade or business, P would not be required to file an information return under section 6045(f) with respect to A because P is excepted under paragraph (c)(6) of this section.

(iii) A is not required to file an information return under paragraph (a)(1) of this section with respect to the payment to B because A is not the payor as that term is defined under paragraph (d)(3) of this section. Also A is not required to file an information return under paragraph (b)(2) with respect to the payment to B because A was listed as sole payee on the check it received from P. See section 6041 and its regulations for whether A or L must file information returns under that section. See section 6045(e) and § 1.6045–4 for whether A is required to file an information return under that section.

Example 8. Business mortgage lending transaction. The facts are the same as in *Example 7* except that P buys real property that P will use in a trade or business. P, not L, is the payor of the payment to A under paragraph (d)(3) of this section. P, however, is not required to file an information return under section 6045(f) with respect to A because P is excepted under paragraph (c)(6) of this section. A is not required to file an information return under paragraphs (a) or (b)(2) of this section with respect to the payment to B. See section 6041 and its regulations for whether P or L must file information returns under that section. See sections 6041 and 6045(e) for rules regarding whether A is required to file information returns under those sections.

Example 9. Qualified settlement fund. Corporation P agrees to settle for $100,000,000 a class action lawsuit brought by attorney A on behalf of a claimant class. Pursuant to the settlement agreement and a preliminary order of approval by a court, A establishes a bank account in the name of Q Settlement Fund, which is a qualified settlement fund (QSF) under § 1.468B–1. A is also designated by the court as the administrator of the QSF. Corporation P writes a $100,000,000 check in 2003 to A, who deposits the check proceeds into the Q Settlement Fund. In 2004, the court approves an award of attorneys' fees of $35,000,000 for A. In 2004, Q Settlement Fund delivers a $35,000,000 check payable to A. P is required to file an information return under paragraph (a) of this section with respect to A for the year 2003 for the $100,000,000 payment it made to A. The Q Settlement Fund is required to file an information return under section 6041(a) and § 1.468B–2(l)(2) with respect to A for the year 2004 for the $35,000,000 payment it made to A.

Example 10. Bankruptcy trustee—wage garnishment. Individual C files for bankruptcy under Chapter XIII of the Bankruptcy Code, 11 U.S.C. sections 1301–1330. Pursuant to a wage garnishment order, C's employer, P, withholds $800 from C's earnings. P remits a check for $800 payable to A, an attorney who was appointed by the United States Bankruptcy Court to act as the trustee of C's bankruptcy estate. P is required to file an information return under section 6045(f) with respect to the $800 payment it made to A.

(g) *Cross reference to penalties.* See the following sections regarding penalties for failure to comply with the requirements of section 6045(f) and this section:

(1) Section 6721 for failure to file a correct information return.

(2) Section 6722 for failure to furnish a correct payee statement.

(3) Section 6723 for failure to comply with other information reporting requirements (including the requirement to furnish a TIN).

(4) Section 7203 for willful failure to supply information (including a taxpayer identification number).

(h) *Effective date.* The rules in this section apply to payments made during the first calendar year that begins at least two months after the date of publication of these regulations as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–12464 Filed 5–16–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773, 780, 784 and 800

RIN 1029–AC05

Bonding and Other Financial Assurance Mechanisms for Treatment of Long-Term Pollutional Discharges and Acid/Toxic Mine Drainage (AMD) Related Issues

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are seeking comments on what types of financial guarantees will best ensure adequate funding for the treatment of unanticipated long-term pollutional discharges, including acid or toxic mine drainage (collectively referred to as AMD), that develop as a result of surface coal mining operations. Specifically, we are interested in views from all parties on how we can best address the proper level of treatment and number of years to use in calculating financial assurance amounts for AMD, appropriate financial mechanisms to cover treatment costs, and suggestions on appropriate enforcement in cases where financial assurance is not fully adequate for the long term, but AMD is still being treated. We also invite comment on

whether codification of our AMD policy statement would be helpful.

DATES: To ensure consideration, we must receive your comments on or before July 16, 2002.

ADDRESSES: You may mail or hand carry comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240. You may also e-mail comments to *osmrules@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: Ruth Stokes, Program Support Directorate, Office of Surface Mining Reclamation and Enforcement, on 202–208–2611.

SUPPLEMENTARY INFORMATION:

I. Background

What Do the Law and Related Regulations Require?

Section 509(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), requires that each applicant for a permit to conduct surface coal mining operations file a performance bond to guarantee compliance with all requirements of the Act and the permit. The Act specifies that the bond amount must reflect the probable difficulty of reclamation, considering a number of factors, one of which is hydrology. It also requires that the bond be sufficient to assure completion of the reclamation plan if the work had to be performed by the regulatory authority.

Paragraphs (b) through (d) of section 509 of the Act specifically recognize surety bonds, self-bonds, cash, negotiable Federal or State bonds, and negotiable certificates of deposit as acceptable forms of bond. Section 509(e) of the Act requires that the regulatory authority adjust the bond terms and amount from time to time as affected acreage increases or decreases or when the cost of future reclamation changes. Our regulations implementing the requirements of the Act may be found in the Code of Federal Regulations at 30 CFR part 800.

When a regulatory authority issues a permit, the regulatory authority envisions that the permittee will conduct mining in accordance with the approved permit and the operation will meet all requirements of the Act and the regulatory program. In practice we have found that events occur during mining and reclamation that were not anticipated during development of the reclamation plan. Some of those events result in violations of the Act or regulatory program and corrective actions can be taken to eliminate the violation. Other unanticipated events, such as the formation of acid or toxic mine drainage, require long-term treatment and are not easily addressed. For purposes of this Advance Notice, the acronym ''AMD'' includes both acid and toxic drainage from surface coal mining and reclamation operations, consistent with our AMD Policy Statement.

We have been involved in litigation in recent years pertaining to, among other things, the requirement for financial assurance for the long-term treatment of AMD, and the evaluation of the adequacy of the financial guarantee for long-term treatment. Our current regulations recognize certain acceptable forms of bond. We did not envision the complexity of the issues associated with financial assurances for long-term treatment of AMD. Those complexities suggest the need for financial mechanisms more appropriate to address a long-term commitment to treat AMD.

We are issuing this Advance Notice of Proposed Rulemaking to seek comment on whether we should codify the following requirements: (1) That only permits where the operation is designed to prevent off-site material damage to the hydrologic balance and minimize both on- and off-site disturbances to the hydrologic balance will be approved, and (2) that financial responsibility associated with AMD should be fully addressed. We are also requesting input from all parties on how we can best address the proper level of treatment and number of years to use in calculating financial assurance amounts for AMD, appropriate financial mechanisms to cover costs, and suggestions on appropriate enforcement in cases where financial assurance is absent or not fully adequate for the long-term, but AMD is still being treated.

How Does This Notice Relate to our AMD Policy Statement?

The prevention of future AMD from coal mining operations into surface and ground waters and the remediation of mining-related pollutional discharges are high priorities of the Office of Surface Mining Reclamation and Enforcement. To advance these priorities, we developed policy goals, objectives, and strategies to protect the hydrologic balance in coal mining areas from the effects of AMD. This was done after extensive input from primacy States, other Federal agencies, the environmental community, industry representatives and coalfield citizens concerned about AMD. The policy statement adopted in March 1997 can be found in its entirety on our home page at *http://www.osmre.gov/amdpol.txt,* or a copy may be obtained from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Our policy statement identified goals for environmental restoration and environmental protection. Under each goal were objectives. The policy principles that we are considering codifying under this effort pertain to Objectives 1 and 2 under the goal ''Environmental Protection'' as follows.

Objective 1: Only approve permits where the operation is designed to prevent off-site material damage to the hydrologic balance and minimize both on- and off-site disturbances to the hydrologic balance. In no case should a permit be approved if the determination of probable hydrologic consequences or other reliable hydrologic analysis predicts the formation of a postmining pollutional discharge that would require continuing long-term treatment without a defined endpoint.

Strategy 1.1—Predictive techniques should be used to identify and characterize the site-specific acid-or toxic-forming conditions posing a risk of AMD formation.

Strategy 1.2—Each mining and reclamation plan should specifically address identified acid- and toxic-forming conditions and demonstrate how off-site material damage will be prevented and on- and off-site disturbances minimized without the use of techniques that require long-term discharge treatment without a defined endpoint.

Strategy 1.3—Each permit should include adequate measures, such as prevention and mitigation technologies, to control and manage identified acid- or toxic-forming AMD conditions and to protect the quality and quantity of surface and ground water systems during mining and reclamation.

Strategy 1.4—Regulatory authorities should establish criteria to measure and assess material damage. Material damage guidelines, to be applied on a case-by-case basis, are necessary to effectively assess the adequacy of mining and reclamation plans in addressing AMD prevention.

Strategy 1.5—Approved permits should include a monitoring plan for determining whether the operation and reclamation plans are being effectively implemented.

Objective 2: Financial responsibility associated with AMD should be fully addressed.

Strategy 2.1—Prior to permit issuance, adequate financial assurance should be provided to ensure completion of the hydrologic reclamation plan.

Strategy 2.2—If, subsequent to permit issuance, monitoring identifies acid- or toxic-forming conditions which were not anticipated in the mining and operation plan, the regulatory authority should require the operator to adjust the financial assurance.

Strategy 2.3—Where inspections conducted in response to bond release requests identify surface or subsurface water pollution, bond in an amount adequate to abate the pollution should be held as long as water treatment is required, unless a financial guarantee or some other enforceable contract or mechanism to ensure continued treatment exists.

This is our long-standing policy, which we believe correctly interprets the law. We invite comment on whether codification of these principles would be helpful to the public.

II. Level of Treatment To Use in Calculating Financial Assurance Amounts for AMD

Both section 509(a) of SMCRA and the implementing regulations at 30 CFR 800.14(b) require that the amount of bond posted for a permit be sufficient to assure completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture. If post-mining pollutional discharges develop, the permittee's reclamation liability extends to the abatement or long-term treatment of the discharge and continues as long as treatment is needed. Before treatment costs can be calculated, the appropriate treatment standard must be established.

Under section 702(a) of SMCRA and court decisions interpreting that provision, we have no authority to deviate from effluent limits and other water quality standards established under the Clean Water Act. In our experience, National Pollutant Discharge Elimination System (NPDES) permitting authorities generally establish effluent limits for bond forfeiture sites on a case-by-case basis after forfeiture has occurred. The SMCRA regulatory authority will not know what those limits are at the time that treatment costs must be determined to establish the appropriate amount of the bond or other financial assurance. However, the SMCRA regulatory authority does have an independent responsibility under sections 510(b)(3) and 515(b)(10) of SMCRA to protect the hydrologic balance. Accordingly, we are seeking input on the appropriate level of treatment upon which financial assurance amounts should be calculated.

Specifically:

(1) What standards should be used to determine water treatment, such as effluent limits or other water quality standards, in the calculation of financial assurance amounts?

(2) What role should we, States, and permittees have in calculating treatment costs?

III. Number of Years To Use in Calculating Financial Assurance Amounts for AMD

Another major factor in the calculation of financial assurance amounts for AMD is the length of time. In rare cases, technical analysis of a given discharge may be able to define (predict) the time over which pollution loading will cease so that treatment will no longer be needed. Absent that determination, the discharge is an indefinite or ''perpetual'' liability for the permittee.

Over the past several years, we have been discussing this issue with state regulatory authorities. The application of bonding to treatment of discharges requires that the length of time be specified in calculating overall long-term treatment costs. This is necessary in order to establish revenue needs based upon the present value of future annual treatment costs. We, in Tennessee, and several state regulatory authorities have been working with bond adjustment requirements to address the cost of long-term treatment of pollutional discharges, including interest-bearing options such as trust funds. At this time, we are seeking input on the appropriate number of years upon which financial assurance amounts should be calculated.

Specifically:

(1) What timeframe should be used to calculate long-term treatment costs for those sites without a defined endpoint? Please provide a detailed rationale for your suggested timeframe.

(2) What role should we, States, and permittees have in determining the timeframe for calculating treatment costs?

IV. Financial Mechanisms Available To Assure Funding for Long-Term Treatment of AMD

The bond forms prescribed in 30 CFR 800.12 (collateral bond, surety bond, and self-bond) do not necessarily lend themselves well to bonds for water treatment costs because of the lengthy timeframes involved and uncertainties associated with the AMD treatment obligations. In addition, surety and collateral bonds may involve high up-front costs or collateral requirements.

We discussed the acceptance of other types of financial mechanisms when we stated in the preamble to 30 CFR 700.11(d) that jurisdiction over a mine site with a pollutional discharge may be terminated only if ''a contract or other mechanism enforceable under other provisions of law'' provides for treatment and all other performance standards are met. *See* 53 FR 44361–62; November 2, 1988. We also recognized this principle in our March 31, 1997, AMD Policy Statement.

We are seeking input on what types of financial instruments or combinations of instruments are both appropriate and available for financial assurance of long-term treatment of AMD. We encourage commenters to address the following questions:

(1) What types of financial instruments are available to cover long-term AMD treatment costs? How do they work? What are the optimal terms for each? What is the estimated annual cost to the permittee?

(2) Is insurance coverage an option to cover unanticipated AMD costs? If so, please provide the details, estimated cost, and the timing of when a policy should be obtained.

(3) If available, should an insurance policy be considered as a backup to other forms of financial assurance?

(4) What types of contracts and other enforceable mechanisms would provide adequate assurance of continuing treatment?

(5) Please describe any changes in, or new, regulations and/or statutory provisions that you believe would be necessary to implement your suggestions.

V. Enforcement

At present, when a postmining pollutional discharge requiring long-term treatment develops, our AMD Policy and regulations (30 CFR 800.15) provide that the regulatory authority must order the permittee to adjust the bond to reflect the increased reclamation costs. However, this approach may not be the most effective or environmentally beneficial strategy. First, there may no longer be any active mining within the permit area when the discharge develops. Under those conditions, the regulatory authority has less leverage to obtain the increased bond amount because the prohibition in 30 CFR 800.11(c) against disturbance of areas before posting the required performance bond has no impact. Second, insisting on immediate posting of the increased bond amount may provide permittees who are treating the discharge but cannot afford the increased bond an incentive to cease operations and abandon the site rather

than continue the treatment of the discharge.

We are seeking comments on appropriate enforcement of the financial assurance requirement for treatment of discharges that occur after mining begins. Specifically:

(1) What enforcement action should be taken in situations where a pollutional discharge develops while mining is still occurring and the permittee is treating the discharge but the bond or other financial assurance is inadequate to ensure treatment of the discharge in the event of forfeiture?

(2) What enforcement action should be taken in situations where a pollutional discharge develops after mining is completed and the permittee is treating the discharge but the bond or other financial assurance is inadequate to ensure treatment in the event of forfeiture?

(3) Should we develop timeframes for bond adjustment (and sanctions for non-adjustment) similar to those of the bond replacement regulations at 30 CFR 800.16?

We welcome your comments on these and other relevant issues on the costs of AMD treatment and forms of financial assurance.

Dated: May 10, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–12462 Filed 5–16–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[IL–099–FOR]

Illinois Regulatory Program

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

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

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Illinois Department of Natural Resources, Office of Mines and Minerals (Department or Illinois) is proposing revisions to and additions of regulations about definitions, areas designated by Act of Congress, criteria for designating areas as unsuitable for surface coal mining operations, requirements for permits and permit processing, coal exploration, and performance bond release. Illinois also proposes to correct or remove outdated references in several regulations. Illinois intends to revise its program to be consistent with the corresponding Federal regulations and to clarify ambiguities.

This document gives the times and locations that the Illinois program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.s.t., June 17, 2002. If requested, we will hold a public hearing on the amendment on June 11, 2002. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on June 3, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

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. Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, 300 W. Jefferson Street, Suite 300, Springfield, Illinois 62701. Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: *IFOMAIL@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Illinois program in the June 1, 1982, **Federal Register** (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated April 8, 2002 (Administrative Record No. IL–5077), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Illinois sent the amendment in response to a letter dated August 23, 2000 (Administrative Record No. IL–5060), that we sent to Illinois in accordance with 30 CFR 732.17(c). Illinois also included some changes at its own initiative. Illinois proposes to amend its surface coal mining and reclamation regulations at Title 62 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. 62 IAC 1701 Appendix A Definitions

1. Illinois proposes to delete its definition of ''Interagency Committee.'' Illinois is removing this definition because Illinois Public Act 90–0490 abolished the Interagency Committee in 1997.

2. Illinois proposes to remove the existing language from its definition of ''valid existing rights'' and to add a reference to the new definition of ''valid existing rights'' at 62 IAC 1761.5.