

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 925****[Docket No. MO-738]****Termination of Federal Enforcement for Parts of the Missouri Permanent Regulatory Program and Return of Full Regulatory Authority to the State of Missouri****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Final rule.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing our decision under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to terminate direct Federal enforcement for those parts of the Missouri permanent regulatory program (Missouri program) for which we substituted Federal enforcement. We announced our decision to substitute Federal enforcement for parts of the Missouri program on August 22, 2003. On June 2, 2005, the Governor of Missouri petitioned us to consider returning to the Missouri Land Reclamation Commission (MLRC) the authority to enforce those parts of the Missouri program for which we substituted Federal enforcement. The Missouri Land Reclamation Program (MLRP), within the Missouri Department of Natural Resources (MDNR), implements and enforces the Missouri program for the MLRC. Based on the Missouri Governor's petition for return of the Missouri program and MLRP's completion of the required remedial actions, we are terminating Federal enforcement for those parts of the Missouri program for which we substituted Federal enforcement and returning full enforcement authority to Missouri. This document also removes those sections of the Federal regulations that address: Direct Federal enforcement for parts of the Missouri program; the remedial actions required of Missouri to regain full enforcement authority; and the requirements and procedures for terminating direct Federal enforcement.

**DATES:** *Effective Date:* February 1, 2006.**FOR FURTHER INFORMATION CONTACT:**

Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463-6460. E-mail: *IFOMAIL@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Missouri Program

- II. OSM's Findings on Missouri's Responses to Required Remedial Actions
- III. Summary and Disposition of Comments
- IV. OSM's Decision
- V. Procedural Determinations

**I. Background on the Missouri 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 State 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 Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, 925.16, 925.17, 925.18, and 925.19.

On June 19, 2003, MLRP notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. In HB 6, the Missouri Legislature did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Missouri Legislature only appropriated funds for bond forfeiture reclamation activities. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO-664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record No. MO-664.1). During the meeting, MLRP made a presentation describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. MLRP advised us that the moneys that were available for the regulatory program could only be used for bond forfeiture reclamation activities. Also, MLRP advised us that the State Legislature appropriated Federal funds for the abandoned mine land reclamation (AMLR) program. In

addition, MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that MLRP would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were authorized by the State Legislature. MLRP indicated that it would try to gain full program funding from the Missouri Legislature for its 2005 fiscal year (FY).

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri was experiencing difficult budget and revenue shortfalls (Administrative Record No. MO-664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri had adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for parts of the Missouri program. We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities (Administrative Record No. MO-664.4).

In accordance with the provisions of 30 CFR 733.12(f), we announced our decision, effective August 22, 2003, to institute direct Federal enforcement for those parts of the Missouri program that were not fully funded and staffed. We suspended the authority of Missouri to enforce all portions of the Missouri program except bond forfeiture reclamation activities. We determined that MLRP had sufficient funding and staff to implement and maintain bond forfeiture reclamation activities. We did not provide additional grant funds to the MLRP for initiating new projects under the approved Missouri AMLR program under Title IV of SMCRA. We withheld further AMLR grant awards in accordance with 30 CFR 886.18(a)(3),

which requires us to terminate AMLR grants if an agency fails to implement, enforce, or maintain any part of an approved State regulatory program. With this substitution of Federal enforcement authority, we outlined a process, including remedial actions, by which Missouri could regain full authority for its program (68 FR 50944).

On April 15, 2004, we clarified our substitution of Federal enforcement for parts of the Missouri program and made findings on the status of the Missouri program (69 FR 19927).

On May 3, 2004, MLRP notified us that the Missouri Legislature failed to fully fund the Missouri program for the period beginning July 1, 2004, and ending June 30, 2005 (Administrative Record No. MO-664.22). In the same letter, MLRP outlined its financial and organizational plans to submit a request to its division and department legislative staff to propose funding and staffing that would be needed to reassume authority of the complete active coal regulatory program beginning July 1, 2005. On May 25, 2004, we notified MLRP that based on its May 3, 2004, submittal, we would continue the current Federal substitution plan for one more year (Administrative Record No. MO-664.24).

By letter dated May 2, 2005, MLRP notified us that the Director of the MDNR had agreed to seek full return of the regulatory program to Missouri. MLRP also requested a meeting with us to discuss the plan for the return of the program to Missouri. MLRP noted that the State budget includes the necessary funding and staffing allocations and that it plans to use remaining past coal fee funds to match the Federal regulatory grant for FY 2006 (Administrative Record No. MO-664.39).

By letter dated May 12, 2005, we advised MLRP that before Missouri can reassume full authority to implement and enforce the Missouri program, MLRP must complete the remedial measures specified in 30 CFR 925.18. In accordance with 30 CFR 925.18(c), we requested that MLRP submit a detailed description of the past coal fee funds that it proposed to use to match the Federal regulatory grant. We also requested that MLRP provide us with a Missouri Attorney General's opinion on the legality of using these funds for implementation of its permanent regulatory program (Administrative Record No. MO-664.40).

On May 26, 2005, we met with the Deputy Director of MDNR to discuss (1) funding; (2) current staff for the forfeiture program and AMLR plan; (3) cooperative agreement funding

beginning July 1, 2005, and ending on December 31, 2005, or until we approve or disapprove the return of authority to Missouri; (4) procedural matters; (5) program issues; and (6) bond forfeiture site reclamation progress (Administrative Record No. MO-664.44).

By letter dated May 27, 2005, the Governor of Missouri petitioned us to consider returning to Missouri the authority to implement and enforce those parts of the Missouri program for which we substituted Federal enforcement (Administrative Record No. MO-664.42).

On June 28, 2005, the Director of MDNR submitted information on the funding and staffing plans that MLRP would use to assume full enforcement authority for the Missouri program as required by 30 CFR 925.18(c). The Director of MDNR also provided the Missouri Attorney General's written opinion on the legality of the funding proposal (Administrative Record No. MO-664.48).

Also on June 28, 2005, we awarded a cooperative agreement to MDNR for a period of six months to facilitate startup activities for MLRP, to hire and train staff, and to take other actions necessary to resume full regulatory program authority. This cooperative agreement was effective July 1, 2005. On September 15, 2005, MDNR received an amendment to its Title V cooperative agreement, which extended the cooperative agreement through June 30, 2006, or such time that we approve or disapprove Missouri's petition to assume full enforcement authority. We also awarded Missouri an FY 2005 AML Simplified Grant on June 28, 2005. The FY 2005 AML grant was initially funded for the period July 1, 2005, to June 30, 2006, to facilitate startup operations. No non-emergency project construction funds were included (Administrative Record No. MO-664.53A).

OSM and the State met face to face on nearly a monthly basis and held numerous conference calls between meetings to discuss actions required under the cooperative agreement. To date, Missouri inspectors are accompanying OSM on all inspections. Missouri staff is working with OSM on permitting requests, and the State and OSM are working on a plan to complete reclamation of the forfeiture sites. Missouri has made leadership and organizational changes as part of its implementation of the cooperative agreement (Administrative Record No. MO-664.63), and has met with coal mining operators to discuss these changes.

## II. OSM's Findings on Missouri's Responses to Required Remedial Actions

A. In order for MLRP to demonstrate its intent and capability to fully implement and enforce the Missouri program as approved by the Secretary, we required MLRP to complete certain remedial actions, which we codified at 30 CFR 925.18(a) through (e). The Federal regulation at 30 CFR 925.19 provides that we will consider returning to Missouri the authority suspended under 30 CFR 925.17 provided that the State has accomplished all remedial actions specified under 30 CFR 925.18; and petitions us in writing to consider returning authority to the State. On May 27, 2005, we received a written petition from the Governor of Missouri requesting that we return, to the State, the enforcement authority that was suspended under 30 CFR 925.17 (Administrative Record No. MO-664.42). We reviewed the current status of Missouri's responses to the required remedial actions at 30 CFR 925.18, and we are making the following findings:

B. *30 CFR 925.18 State Remedial Actions.* 1. 30 CFR 925.18(a)—We required MLRP to submit to us, by August 22, 2003, a list of all outstanding enforcement actions specifying the abatement date set for each cited violation. On July 22, 2003, the Missouri Attorney General's office provided us with a copy of all outstanding enforcement actions (Administrative Record No. MO-664.13). The notices of violation and cessation orders specified the abatement date set for each cited violation. On April 15, 2004, we found that MLRP had satisfied this required remedial action, and we removed paragraph (a) from 30 CFR 925.18. See 69 FR 19932, dated April 15, 2004.

2. 30 CFR 925.18(b)—In accordance with the requirements of the approved Missouri program, MLRP was to complete administrative disposition of all enforcement actions that were initiated before August 22, 2003. As applicable, MLRP was to conduct penalty assessments, hold informal conferences and hearings, collect penalties, and terminate or vacate enforcement actions. On November 25, 2003, MLRP notified us that it had completed administrative disposition of five enforcement actions that were initiated before August 22, 2003 (Administrative Record No. MO-664.17). Additionally, on February 18, 2004, MLRP notified us that it had completed administrative disposition of the balance of its enforcement actions (Administrative Record No. MO-664.18A). Based on the above

discussion, we find that MLRP has satisfied this required remedial action, and we are removing 30 CFR 925.18(b).

3. 30 CFR 925.18(c)—Within 30 days of the date on which OSM has received and acknowledged an accurate description of available funding for the regulatory program, MLRP must submit to OSM a plan to reassume full authority for the Missouri program. At a minimum, the proposal must provide specific and adequate provisions that address funding, staffing, and adherence to the approved program. On June 28, 2005, the Director of MDNR submitted information on the funding and staffing plans that MLRP would use to assume full enforcement authority for the Missouri program as required by 30 CFR 925.18(c). The Director of MDNR also provided the Missouri Attorney General's written opinion on the legality of the funding proposal (Administrative Record No. MO-664.48). Based on the above discussion and upon our knowledge of the level of staffing and the various expertise necessary to fully implement a successful program, we find that MLRP has satisfied this required remedial action. Therefore, we are removing 30 CFR 925.18(c).

4. 30 CFR 925.18(d)—Starting on April 1, 2004, MLRP was to submit to us a report once a month on its progress in obtaining full funding for the Missouri program. MLRP is submitting monthly update reports on its progress in obtaining the funding and staffing needed to reassume its program (Administrative Record Nos. MO-644.22, MO-664.23, MO-664.26—MO.664.34, MO-664.36—MO-664.45, MO-664.50, and MO-664.54). Based on these monthly submittals, we find that MLRP has satisfied this required remedial action, and we are removing 30 CFR 925.18(d).

5. 30 CFR 925.18(e)—Effective September 8, 2003, MLRP was to take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. were made secure and to supply copies of all documents to us upon request. Beginning in July 2003, MLRP provided access to all materials that we requested (Administrative Record No. MO-664.13). MLRP also provided us with copies of all items, such as permit review documents and bond release applications, that were pending when it lost funding for the State program. On April 15, 2004, we found that MLRP had satisfied this required remedial action, and we removed paragraph (e) from 30 CFR 925.18. See 69 FR 19932, dated April 15, 2004.

### III. Summary and Disposition of Comments

#### *Public Comments*

On August 22, 2005 (70 FR 48925), we announced receipt of the Governor of Missouri's petition to consider returning to Missouri the authority to enforce those parts of the Missouri program for which we substituted Federal enforcement. In that document, we opened the public comment period and provided for a public hearing. We also published notice of the public hearing in three newspapers located within the areas of active mining operations and one newspaper located in the city of the Missouri regulatory authority. We held the public hearing on September 22, 2005. The public comment period ended on September 29, 2005. The public comment period and hearing provided interested persons an opportunity to comment on matters relevant to whether OSM should grant the Governor of Missouri's petition to reassume authority for those parts of the Missouri regulatory program currently being enforced by OSM. Three persons representing two State agencies attended the public hearing and two of them registered to speak at the hearing. We received written comments from two State agencies and the Interstate Mining Compact Commission (IMCC).

#### 1. Public Hearing Oral Comments

The first person to speak at the public hearing represented the Missouri Department of Natural Resources, Division of Environmental Quality (MDEQ) and commented that MDEQ supported OSM's action to return full enforcement authority for the Missouri program back to MLRP (MO-664.60).

The second person to speak at the public hearing represented MLRP and supported OSM's action to return full enforcement authority for the Missouri program (MO-664.60). The speaker commented on the following:

(1) The loss of funding and staffing in 2003 that prevented Missouri from operating the approved State program. Missouri and OSM entered into a cooperative agreement to fund startup of the State program in July 2005, so that Missouri could work toward assuming full responsibility for the State program. [See Section I, Background on the Missouri Program, for more information on the July 2005 cooperative agreement (Administrative Record No. MO-664.53A);

(2) Missouri's realization that changes in its operation are appropriate. The new program will have a much smaller and different staff. It will be one set of staff that will work on coal, bond

forfeiture, and abandoned mine land reclamation activities;

(3) The intent to change the Missouri regulations to phase out the regulatory process known as the bond pool and to convert to full cost bonding;

(4) The need to reclaim abandoned mine lands for future generations; and

(5) Missouri looking forward to once again implementing the full regulatory and reclamation programs.

#### 2. Written Comments

By letters dated September 15, 2005, the Executive Director of IMCC and the Chairman of MLRC, commented that they strongly endorse and support the petition submitted by Governor Blunt to allow Missouri to reassume authority for those parts of the Missouri regulatory program that have recently been enforced by OSM. The IMCC and MLRC believe that Missouri has demonstrated its intent and capability to reassume full authority to implement and enforce its regulatory program (Administrative Record Nos. MO-664.56 and MO-664.57).

By letter dated September 19, 2005, the Director of MDEQ also commented that the MDEQ strongly endorses and supports the petition submitted by Governor Blunt to allow Missouri to reassume authority for those parts of the Missouri regulatory program that have recently been enforced by OSM. The MDEQ also believes that Missouri has demonstrated its intent and capability to reassume full authority to implement and enforce its regulatory program (Administrative Record No. MO-664.58).

#### 3. Response to All Commenters

We agree that OSM should approve Governor Blunt's petition to allow Missouri to reassume authority for the State program. See Section IV, OSM's Decision.

### IV. OSM's Decision

After a review of all available information on Missouri's actions to seek return of the Missouri program, we found that Missouri has demonstrated that it has the resources, capability, policy, procedures, and commitment necessary to assure proper implementation of the program. Therefore, we are approving the Governor of Missouri's petition to return full regulatory authority to MLRP for implementation and enforcement of the Missouri program, and we are terminating Federal enforcement of the Missouri program. This finding and decision are based on the following:

1. The Governor of Missouri submitted a petition to consider

returning authority to the State and signed legislation that appropriated the necessary funds for MLRP to implement and enforce the Missouri program.

2. MLRP provided a satisfactory source of funding for implementation and enforcement of the Missouri program.

3. MLRP provided us a staffing plan and has made good progress in hiring and training staff to implement and enforce the Missouri program.

4. Our staff has worked with the Missouri staff and management during the period beginning on July 1, 2005, and our observations and review of assignments made to Missouri indicate both staff and management are ready to assume full enforcement responsibilities.

5. MLRP accomplished to our satisfaction all required remedial actions at 30 CFR 925.18.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective February 1, 2006. Section 503(a)(3) of SMCRA requires that a State's program demonstrate that the State regulatory authority has sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. Missouri is now in compliance with the requirements of section 503(a)(3).

## V. Procedural Determinations

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based upon the nature of the action being taken.

### *Executive Order 12866—Regulatory Planning and Review*

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

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs must be based solely on a determination of whether the

program is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that there are no Federally-recognized Indian tribes in the State of Missouri and that the Missouri program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Missouri program has no effect on Federally-recognized Indian tribes.

### *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory programs do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### *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 certifies that the return of regulatory authority to the State of Missouri for those portions of the Missouri permanent regulatory program for which we are currently substituting Federal enforcement 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 rule is not expected to result in additional costs to the regulated industry.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the rule is not expected to result in additional costs to the regulated industry.

### *Unfunded Mandates*

The return of regulatory authority to the State of Missouri for those portions of the Missouri permanent regulatory program for which we are currently substituting Federal enforcement will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the nature of the action being taken.

**List of Subjects in 30 CFR Part 925**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 6, 2006.

**R.M. "Johnnie" Burton,**

*Acting Assistant Secretary, Land and Minerals Management.*

■ For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

**PART 925—MISSOURI**

- 1. The authority citation for part 925 continues to read as follows:

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

- 2. Part 925 is amended by removing §§ 925.17, 925.18, and 925.19 in their entirety.

[FR Doc. 06-883 Filed 1-31-06; 8:45 am]

**BILLING CODE 4310-05-P**