

SMCRA for a future set-aside fund if such amounts were awarded before December 20, 2006. The State or Indian tribe must deposit all set-aside funds awarded into a special fund established under State or Indian tribal law. The State or Indian tribe must expend amounts awarded (together with all interest earned on such amounts) solely to achieve the priorities stated in section 403(a) of SMCRA.

(b) Moneys the State or Indian tribe deposited in the special fund account, together with any interest earned, are considered State or Indian tribal moneys.

[73 FR 67638, Nov. 14, 2008]

## PART 874—GENERAL RECLAMATION REQUIREMENTS

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

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

### § 874.1 Scope.

This part establishes land and water eligibility requirements, reclamation objectives and priorities, and reclamation contractor responsibility.

[59 FR 28171, May 31, 1994]

### § 874.5 Definitions.

As used in this Part—

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67638, Nov. 14, 2008]

### § 874.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and

Budget (OMB) has approved the information collection requirements of part 874 and assigned it control number 1029-0113. This information is used to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67639, Nov. 14, 2008]

### § 874.11 Applicability.

You must comply with the requirements in this part for—

(a) Reclamation projects using moneys from the Fund;

(b) Reclamation projects using prior balance replacement funds provided to uncertified States and Indian tribes under § 872.29 of this chapter; or

(c) Coal reclamation projects by certified States and Indian tribes required to maintain certification under section 411(a) of SMCRA and the agreement required by §§ 875.13(a)(3) and 875.14(b) of this chapter to maintain that certification.

[73 FR 67639, Nov. 14, 2008]

### § 874.12 Eligible coal lands and water.

Coal lands and water are eligible for reclamation activities if—

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

(b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys

from the Fund or any prior balance replacement funds provided under § 872.29 of this chapter may be used.

(d) Notwithstanding paragraphs (a), (b), and (c) of this section, coal lands and waters in a State or on Indian lands damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Secretary finds in writing that:

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

(2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and:

(i) The date on which the Secretary approved a State regulatory program pursuant to section 503 of the Act (30 U.S.C. 1253) for a State or September 28, 1994, for an Indian tribe, and that 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

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

(3) The site qualifies as a priority 1 or 2 site pursuant to section 403(a)(1) and (2) of the Act. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(e) An uncertified State or Indian tribe may expend funds made available under paragraphs 402(g)(1) and (5) of SMCRA and prior balance replacement funds under section 411(h)(1) of SMCRA for the reclamation and abatement of any site eligible under paragraph (d) of this section, if the State or Indian tribe, with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and the State or Indian tribe determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible under paragraphs (a), (b),

or (c) of this section that qualify as a Priority 1 or 2 site under section 403(a) of SMCRA.

(f) With respect to lands eligible under paragraph (d) or (e) of this section, moneys available from sources outside the Fund or that are ultimately recovered from responsible parties must either be used to offset the cost of the reclamation or transferred to the 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 Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Land Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor a State or Indian tribe performing reclamation under paragraph (d) or (e) of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the Act.

(h) Surface coal mining operations on lands eligible for remining pursuant to section 404 of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by § 800.40 of this chapter. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his/her authority under section 410 of the Act.

[47 FR 28596, June 30, 1982, as amended at 59 FR 28171, May 31, 1994; 73 FR 67639, Nov. 14, 2008]

#### **§ 874.13 Reclamation objectives and priorities.**

(a) When you conduct reclamation projects under this part you may follow OSM's "Final Guidelines for Reclamation Programs and Projects" (66

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FR 31250, June 11, 2001) and the expenditures must reflect the following priorities in the order stated:

(1) *Priority 1:* The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.

(2) *Priority 2:* The protection of public health and safety from adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of coal mining practices.

(3) *Priority 3:* The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1)(ii) or (a)(2)(ii) of this section.

(b) This paragraph applies to State or Tribal share funds available under §§ 872.14 and 872.17 of this chapter and historic coal funds available under § 872.21 of this chapter. You may expend these funds to reclaim Priority 3 lands and waters, if either of the following conditions applies:

(1) You have completed all of the Priority 1 and Priority 2 reclamation in the jurisdiction of your State or Indian tribe; or

(2) The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for Priority 1 or Priority 2 reclamation projects including past, current, and future Pri-

ority 1 or Priority 2 reclamation projects. Expenditures under this paragraph must either:

(i) Facilitate the Priority 1 or Priority 2 reclamation; or

(ii) Provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within the jurisdiction of your State or Indian tribe.

[73 FR 67639, Nov. 14, 2008]

### § 874.14 Water supply restoration.

(a) Any State or Indian tribe that has not certified completion of all coal-related reclamation under section 411(a) of SMCRA may expend funds under §§ 872.16, 872.19, 872.23, and 872.31 of this chapter for water supply restoration projects. For purposes of this section, “water supply restoration projects” are those that protect, repair, replace, construct, or enhance facilities related to water supplies, including water distribution facilities and treatment plants that have been adversely affected by coal mining practices. For funds awarded before December 20, 2006, any uncertified State or Indian tribe may expend up to 30 percent of the funds distributed to it for water supply restoration projects.

(b) If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) If the adverse effect on water supplies referred to in this section occurred both prior to and after the dates (and under the criteria) set forth under section 402(g)(4)(B) of the Act, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.

(d) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local,

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State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

[59 FR 28171, May 31, 1994, as amended at 73 FR 67639, Nov. 14, 2008]

### § 874.15 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

[59 FR 28172, May 31, 1994]

### § 874.16 Contractor eligibility.

To receive moneys from the Fund or Treasury funds provided to uncertified States and Indian tribes under § 872.29 of this chapter or to certified States or Indian tribes for coal AML reclamation as required to maintain certification under section 411(a) of SMCRA, every successful bidder for an AML contract must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations.

[73 FR 67639, Nov. 14, 2008]

### § 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.

This section tells you, the AML agency, what to do when considering an abandoned mine land reclamation project as government-financed construction under part 707 of this chapter. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) *Consultation with the Title V regulatory authority.* In consultation with

the Title V regulatory authority, you must make the following determinations:

(1) You must determine the likelihood of the coal being mined under a Title V permit. This determination must take into account available information such as:

(i) Coal reserves from existing mine maps or other sources;

(ii) Existing environmental conditions;

(iii) All prior mining activity on or adjacent to the site;

(iv) Current and historic coal production in the area; and

(v) Any known or anticipated interest in mining the site.

(2) You must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) You must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) *Concurrence with the Title V regulatory authority.* If, after consulting with the Title V regulatory authority, you decide to proceed with the reclamation project, then you and the Title V regulatory authority must concur in the following determinations:

(1) You must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under the part 707 exemption or counterpart State/Indian Tribe laws and regulations.

(2) You must concur in the delineation of the boundaries of the AML project.

(c) *Documentation.* You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) *Special requirements.* For each project, you must:

(1) Characterize the site in terms of mine drainage, active slides and slide-

prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) *Limitation.* If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA for such coal.

[64 FR 7483, Feb. 12, 1999]

## PART 875—CERTIFICATION AND NONCOAL RECLAMATION

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

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

### § 875.1 Scope.

This part establishes land and water eligibility requirements and for noncoal reclamation.

### § 875.5 Definitions.

As used in this part—

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we ap-

proved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67640, Nov. 14, 2008]

### § 875.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 875 and assigned it control number 1029–0103. This information establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation under abandoned mine land funding. The information is needed to assure compliance with SMCRA and the Omnibus Budget Reconciliation Act of 1990. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67640, Nov. 14, 2008]

### § 875.11 Applicability.

(a) If you are a State or Indian tribe that has not certified under section 411(a) of SMCRA, you must follow these noncoal reclamation requirements when you use State share funds under § 872.16, Tribal share funds under § 872.19, or historic coal funds under § 872.23 to conduct reclamation projects on lands or water affected by mining of minerals and materials other than coal.

(b) If you are a State or Indian tribe that has certified under section 411(a) of the Act—

(1) You must use State share or Tribal share funds distributed to you under section 402(g)(1) of the Act before October 1, 2007, in accordance with this part; and

(2) You may use prior balance replacement funds distributed to you under section 411(h)(1) of the Act, certified in lieu funds distributed to you under section 411(h)(2) of the Act, or both, to—

(i) Maintain certification as required by §§ 875.13 and 875.14 of this part; or

(ii) Conduct a noncoal reclamation project in accordance with the requirements of this part.

[73 FR 67640, Nov. 14, 2008, as amended at 80 FR 6446, Feb. 5, 2015]