

§ 875.20

carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section does 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 the preceding sentence, reckless, willful, or wanton misconduct will constitute gross negligence or intentional misconduct.

[80 FR 6446, Feb. 5, 2015]

§ 875.20 Contractor eligibility.

Every successful bidder for any contract by an uncertified State or Indian tribe under this part, or for any contract by a certified State or Indian tribe to undertake a noncoal reclamation project under this part, 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. This section applies only to any contracts by a certified State or Indian tribe that are for coal reclamation or that are for a noncoal reclamation project under this part.

[80 FR 6446, Feb. 5, 2015]

PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

Sec.

876.1 Scope.

876.10 Information collection.

876.12 Eligibility.

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

SOURCE: 59 FR 28174, May 31, 1994, unless otherwise noted.

§ 876.1 Scope.

This part establishes the requirements and procedures for the preparation, submission and approval of State or Indian tribe Acid Mine Drainage Treatment and Abatement Programs.

§ 876.10 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 876 and assigned it control number 1029-0104. OSM will use the information

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to determine if the State's or Indian tribe's Acid Mine Drainage Abatement and Treatment Programs is in compliance with legislative mandate. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. 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 67641, Nov. 14, 2008]

§ 876.12 Eligibility.

(a) Beginning December 20, 2006, any uncertified State or Indian tribe having an approved reclamation program may receive and retain, without regard to the limitation in section 402(g)(1)(D) of SMCRA, up to 30 percent of the total of the funds distributed annually to that State or Indian tribe under section 402(g)(1) of SMCRA (State or Tribal share) and section 402(g)(5) of SMCRA (historic coal funds). For funds awarded before December 20, 2006, any uncertified State or Indian tribe may retain up to 10 percent of the funds distributed to it for an acid mine drainage fund. All amounts set aside under this section must be deposited into an acid mine drainage abatement and treatment fund established under State or Indian tribal law.

(b) Before depositing funds under this part, an uncertified State or Indian tribe must:

(1) Establish a special fund account providing for the earning of interest on fund balances; and

(2) Specify that moneys in the account may only be used for the abatement of the causes and treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units (as defined in paragraph (c) of this section) affected by coal mining practices.

(c) As used in paragraph (b) of this section, "qualified hydrologic unit" means a hydrologic unit:

(1) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(2) That contains lands and waters that are:

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(i) Eligible under section 404 of SMCRA and include any of the priorities described in section 403(a) of SMCRA; and

(ii) The subject of the expenditure from the forfeiture of a bond required under section 509 of SMCRA or from other State sources to abate and treat acid mine drainage.

(d) After the conditions specified in paragraphs (a) and (b) of this section are met, OSM may approve a grant and the State or Indian tribe may deposit moneys into the special fund account. The moneys so deposited, together with any interest earned, must be considered State or Indian tribal moneys.

[73 FR 67641, Nov. 14, 2008]

PART 877—RIGHTS OF ENTRY

Sec.

877.1 Scope.

877.10 Information collection.

877.11 Written consent for entry.

877.13 Entry and consent to reclaim.

877.14 Entry for emergency reclamation.

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

SOURCE: 47 FR 28597, June 30, 1982, unless otherwise noted.

§ 877.1 Scope.

This part establishes procedures for entry upon lands or property by OSMRE, States, and Indian tribes for reclamation purposes. For certified States or Indian tribes conducting noncoal reclamation projects under the provisions of part 875, the term “noncoal” replaces all references to “coal” in this part.

[80 FR 6446, Feb. 5, 2015]

§ 877.10 Information collection.

The information collection requirements contained in §§ 877.11 and 877.13(b) were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1029-0055. This information is being collected to meet the mandate of section 407 of the Act, which provides that States or Indian tribes, pursuant to an approved reclamation program, may use the police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's

consent is refused or the landowner is not available.

This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to conduct reclamation activities on private lands. The obligation to respond is mandatory.

§ 877.11 Written consent for entry.

Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

§ 877.13 Entry and consent to reclaim.

(a) OSM, the State, or Indian tribe or its agents, employees, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained.

(b) If consent is not obtained, then, prior to entry under this section, the OSM, State, or Indian tribe shall find in writing, with supporting reasons that—

(1) Land or water resources have been or may be adversely affected by past coal mining practices;

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for OSM, State, or Indian tribe or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(c) If consent is not obtained, OSM, State, or Indian tribe shall give notice of its intent to enter for purposes of conducting reclamation at least 30