

FEDERAL REGISTER: 59 FR 29719 (June 9, 1994)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Part 756

Hopi Tribe Abandoned Mine Land Reclamation (AMLR) Plan

ACTION: Final rule.

SUMMARY: The Secretary of the Interior concurs with the Hopi Tribe's certification that the Tribe has abated or reclaimed all coal-related abandoned mine land problems under the Hopi Tribe AMLR plan (hereinafter, referred to as the "Hopi Tribe plan"). The Hopi Tribe made the certification in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Hopi Tribe is now authorized to utilize AMLR funds for noncoal reclamation purposes.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmet, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND ON TITLE IV OF SMCRA

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Lands and water eligible for reclamation under Title IV are those that were mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, Tribal, or other laws.

Title IV provides for State or Tribal submittal to OSM of an AMLR plan. The Secretary adopted regulations in 30 CFR part 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the plans submitted by States and Tribes and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a State or Tribe had the ability and necessary legislation to implement provisions of Title IV. After making such a determination, the Secretary decided whether to approve the State or Tribe program. Approval granted the State or Tribe exclusive authority to administer its approved plan.

Ordinarily, under section 405 of SMCRA, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR plan to OSM. However, on July 11, 1987, the President signed a supplemental appropriations bill (Pub. L. 100-71) that authorized the Crow and Hopi Tribes and the Navajo Nation to adopt AMLR programs without approval of Tribal surface mining regulatory programs.

Upon approval of a State's or Tribe's plan by the Secretary, the State or Tribe may submit to OSM, on an annual basis, an application for funds to be expended by that State or Tribe on specific projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR part 886.

II. BACKGROUND ON THE HOPI TRIBE PLAN

On June 28, 1988, the Secretary of the Interior approved the Hopi Tribe plan as submitted on June 10, 1982, and revised on July 25, 1983, and March and May 1988. General background information on the Hopi Tribe plan, including the Secretary's findings, the disposition of comments, and the approval of the Hopi Tribe plan can be found in the June 28, 1988, Federal Register (53 FR 24262). Approval of the Hopi Tribe plan is codified at 30 CFR 756.15.

III. REQUEST FOR CERTIFICATION

By letter dated February 2, 1994, the Chairman and Chief Executive Officer of the Hopi Tribe notified the Secretary that the Tribe had satisfied the requirements of SMCRA in regard to abandoned coal mine reclamation and was, therefore, requesting the Secretary's concurrence with certification of completion of all known coal-related problems (administrative record No. HO-135).

OSM announced receipt of the Hopi Tribe's request for the Secretary's concurrence with its certification in the April 14, 1994, Federal Register (*59 FR 17748*), provided an opportunity for a public hearing on the Tribe's certification, and invited public comments concerning any known or suspected unreclaimed lands and water resources on Hopi lands that may have been adversely impacted by coal mining practices prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, Tribal, or other laws (administrative record No. HO-140). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 16, 1994.

IV. DIRECTOR'S FINDINGS

Since the Secretary's approval of the Hopi Tribe AMLR plan, the Tribe has conducted reclamation to correct or mitigate the problems caused by post coal mining. The Tribe completed this reclamation in the order of priority set forth in section 403(a) of SMCRA. Based upon the Hopi Tribe's February 2, 1994, certification, and the absence of any known unreclaimed coal-related impacts, the Director of OSM, on behalf of the Secretary, concurs with the Hopi Tribe's certification that all coal-related abandoned mine land problems have been abated or reclaimed, and finds that the Hopi Tribe has satisfied the requirements of section 403 of SMCRA. If a coal problem occurs or is identified in the future, the Hopi Tribe would have to seek immediate funding to reclaim the coal-related problem.

Furthermore, the Director finds, pursuant to 30 CFR 884.14(a), that (1) the public was given adequate notice and opportunity to comment; (2) views of other Federal, State, and Tribal agencies were solicited; (3) the Hopi Tribe has the legal authority, policies, and administrative structure necessary to implement the Tribe's AMLR program; (4) the request for the Secretary's concurrence with certification of completion of coal reclamation meets all requirements of OSM's AMLR program provisions; and (5) the certification is in compliance with all applicable State, Federal, and Tribal laws and regulations.

Because the Hopi Tribe has, as discussed above, reclaimed all lands adversely impacted by past coal mining, the Hopi Tribe may submit annual grant requests for AMLR funds to address eligible lands, waters, and facilities impacted by noncoal mining and construction of new facilities in accordance with the provisions of section 411 of SMCRA.

V. SUMMARY AND DISPOSITION OF COMMENTS

1. PUBLIC COMMENTS

In accordance with section 411 of SMCRA and the Federal regulations at 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited public comments and provided an opportunity for a public hearing on the Hopi Tribe's request for the Secretary's concurrence with the Tribe's certification of completion of coal reclamation. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. AGENCY COMMENTS

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited comments from other Federal, State, and Tribal agencies with an actual or potential interest in the Hopi Tribe's AMLR plan. No agency comments were received.

VI. DIRECTOR'S DECISION

Based on the above findings, the Director, on behalf of the Secretary, concurs with the Hopi Tribe's certification, as submitted by the Tribe on February 2, 1994, that all abandoned coal mine-related problems have been abated or reclaimed under its AMLR program in accordance with Title IV of SMCRA. The effect of the Director's concurrence with the Tribe's certification is to allow the Hopi Tribe to use its AMLR funds for noncoal reclamation and construction

of public facilities in areas of the Hopi Reservation impacted by coal development, mining, or processing as provided in section 411 of SMCRA.

The Director is codifying this AMLR plan decision at 30 CFR 756.16. This final rule is being made effective immediately to expedite the Indian Tribe AMLR plan amendment process.

VII. PROCEDURAL DETERMINATIONS

1. 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).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that 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 or Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed State or Tribal AMLR plans and revisions thereof 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 the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal AMLR plans and revisions thereof 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)).

4. 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.*).

5. 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 Tribal submittal that is the subject of this rule is based upon 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 established by SMCRA or previously promulgated by OSM will be implemented by the Tribe. 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.

VIII. LIST OF SUBJECTS IN 30 CFR PART 756

Indian lands, Abandoned mine land reclamation program.

Dated: June 2, 1994.

Russell F. Price, Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter E of the Code of Federal Regulations is amended as set forth below:

PART 756-INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAM

1. The authority citation for part 756 continues to read as follows:

Authority: *30 U.S.C. 1201 et seq.* and Pub. L. 100-71.

2. Section 756.16 is added to read as follows:

SECTION 756.16 -- APPROVAL OF AMENDMENTS TO THE HOPI TRIBE'S ABANDONED MINE LAND RECLAMATION PLAN.

The Hopi Tribe certification of completion of coal reclamation, as submitted on February 2, 1994, is approved effective June 9, 1994.

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