

FEDERAL REGISTER: 59 FR 60317 (November 23, 1994)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 870

Abandoned Mine Reclamation Fund-Fee Collection and Coal Production Reporting

ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is suspending a portion of its permanent program regulations found at 30 CFR 870.5 which defines the term Qualified hydrologic unit. This action is being taken in order to assure that the language of this definition comports with the language of Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, as amended by the Omnibus Budget Reconciliation Act of 1990 (November 5, 1990) which included the Abandoned Mine Reclamation Act of 1990, as amended, and by the Energy Policy Act of 1992 (October 24, 1992).

EFFECTIVE DATE: November 23, 1994.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, DC 20240, Telephone: 202-208-2949.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Definition Suspended
- III. Procedural Matters

I. BACKGROUND

The Abandoned Mine Land (AML) Reclamation Program was established by SMCRA, Public Law 95-87, *30 U.S.C. 1201 et seq.*, in response to concern over extensive environmental damage caused by past coal mining activities. On October 25, 1978, OSM published final regulations implementing an AML Reclamation Program incorporating the provisions of Title IV of SMCRA. OSM published revisions to these regulations on June 30, 1982, in response to the Administration's request for regulatory review. On November 5, 1990, the President signed into Law the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, which included the Abandoned Mine Reclamation Act of 1990, as amended. In addition to extending the authority to collect reclamation fees, the amendments to Title IV contained several significant provisions. OSM published proposed rules at *56 FR 57376-57401* (November 8, 1991) implementing the 1990 amendments to Title IV of SMCRA and requested comments from the public. On October 24, 1992, the President signed into law the Energy Policy Act of 1992, Public Law 102-486. Included in this law were several additional amendments to the AML Reclamation Program under Title IV of SMCRA. These amendments were incorporated into the rulemaking and the Abandoned Mine Land Reclamation Fund Reauthorization Implementation final regulations were published at *59 FR 28136-28174* (May 31, 1994).

II. DISCUSSION OF DEFINITION SUSPENDED

The final rule noted above amended the definitions in Section 870.5 for "eligible lands and water," and "left or abandoned in either an unreclaimed or inadequately reclaimed condition," and added new definitions for "mineral owner" and "qualified hydrologic unit." The new definitions updated these terms so that they would be consistent with the recent amendments to SMCRA. The definitions reflect additional eligibility for lands adversely affected by mining between August 3, 1977 and November 5, 1990; for noncoal lands after certification of the reclamation of all known coal problems; for water projects; and finally for lands affected by qualifying operations.

The term Qualified hydrologic unit has been defined at Section 870.5 of the final regulation. Statutory language contained in SMCRA Section 402(g)(7)(D) stipulates that a qualified hydrologic unit must include lands and waters which are eligible pursuant to Section 404 and include any of the first three priorities as stated in Section 403(a), and (2)

proposed to be the subject of expenditures by the State/Indian tribe (from amounts available from the forfeiture of bonds required under Section 509 or from other State/Indian tribe sources) to mitigate acid mine drainage. In Section 870.5 of the regulation, OSM substituted or for and thereby making both categories independently eligible for funding. Concern has been raised as to whether the language of the regulation is consistent with the language of the statute in that it inappropriately broadens the definition beyond that allowed by the statute. Due to this concern, the definition of Qualified hydrologic unit contained in Section 870.5 of the regulations is suspended in so far as it does not require a hydrologic unit to be both (1) eligible pursuant to Section 404 and include any of the first three priorities stated in Section 403(a), and (2) proposed to be the subject of expenditures by the State (from amounts available from the forfeiture of a bond required under Section 509 or from other State sources) to mitigate acid mine drainage in order to be considered a qualified hydrologic unit.

III. PROCEDURAL MATTERS

Federal Paperwork Reduction Act

This Notice of Suspension does not contain collections of information which require approval by the Office of Management and Budget under *44 U.S.C. 3501* et seq.

Executive Order 12866

This Notice of Suspension has been reviewed under Executive Order 12866.

Regulatory Flexibility Act

DOI has conducted an analysis of the underlying final regulations published at *50 FR 28136-28174* (May 31, 1994) and determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that the final rule will not have a significant economic impact on a substantial number of small entities. The legislation enacted by Congress extends an existing program, and the resulting costs to the regulated industry and to consumers are not expected to vary from current levels. Further, it has also been determined that this Notice of Suspension will have no material effect on small business entities.

National Environmental Policy Act

The effect of the regulation being suspended by this Notice of Suspension was included in an environmental assessment (EA) prepared by OSM for the underlying final regulations. That EA made a finding that the final regulations would not significantly affect the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act, *42 U.S.C. 4332(2)(C)*. The EA and finding of no significant impact are on file in the OSM Administrative Record, room 660, 800 N. Capitol St., NW., Washington, DC.

Author

The principal author of this Notice of Suspension is Norman J. Hess, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-208-2949.

LIST OF SUBJECTS

30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: October 28, 1994.

Bob Armstrong, Assistant Secretary, Land and Minerals Management.

Accordingly, a portion of the definition of Qualified hydrologic unit contained in 30 CFR 870.5 is suspended as set forth below:

PART 870 - ABANDONED MINE RECLAMATION FUND-FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for Part 870 continues to read as follows:

Authority: *30 U.S.C. 1201* et seq., as amended; and P.L. 100-34.

SECTION 870.5 -- [Partially Suspended]

2. The definition of Qualified hydrologic unit contained in Section 870.5 Definitions is suspended in so far as it does not require a hydrologic unit to be both: (1) Eligible pursuant to Section 404 and include any of the first three priorities stated in Section 403(a), and (2) proposed to be the subject of expenditures by the State (from amounts available from the forfeiture of a bond required under Section 509 or from other State sources) to mitigate acid mine drainage in order to be considered a qualified hydrologic unit.

[FR Doc. 94-28937 Filed 11-22-94; 8:45 am]
BILLING CODE 4310-05-M