

**FEDERAL REGISTER: 60 FR 20193 (April 25, 1995)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 756

Navajo Nation Abandoned Mine Land Reclamation (AMLR) Plan

ACTION: Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Navajo Nation AMLR plan (hereinafter referred to as the "Navajo plan") under the Surface Mining Control Reclamation Act of 1977 (SMCRA). The Navajo Nation proposed revisions to its AMLR Code of 1987 pertaining to the reclamation of interim program coal sites. The amendment is intended to revise the Navajo plan to be consistent with SMCRA, and to improve operational efficiency.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, 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. Generally, lands and waters eligible for reclamation under Title IV are those that are mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibilities under State, Federal, Tribal, or other laws. Lands and waters abandoned or inadequately reclaimed after August 3, 1977, are also eligible for reclamation under provisions at sections 402(g)(4) and 404 of SMCRA.

Title IV provides for State or Tribal submittal to OSM of an AMLR plan. The Secretary of the Interior adopted regulations at 30 CFR 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 the provisions of Title IV. After making such a determination, the Secretary decided whether to approve the State or Tribal program. Approval granted the State or Tribe exclusive authority to administer its 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 Navajo Nation to adopt AMLR programs without approval of Tribal surface mining regulatory programs.

Upon approval of a State or Tribal 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 NAVAJO PLAN**

On May 16, 1988, the Secretary of the Interior approved the Navajo plan. General background information on the Navajo plan, including the Secretary's findings, the disposition of comments, and the approval of the Navajo plan can be found in the May 16, 1988, Federal Register (53 FR 17186). Approval of the Navajo plan is codified at 30 CFR 756.13. Subsequent actions concerning the Navajo plan and plan amendments can be found at 30 CFR 756.14.

### **III. PROPOSED AMENDMENT**

By letter dated January 12, 1995, the Navajo Nation submitted a proposed amendment to its AMLR plan pursuant to SMCRA (administrative record No. NA-227). The Navajo Nation submitted the proposed amendment at its own initiative and in response to the final rule Federal Register notice acknowledging that the Navajo Nation would amend its AMLR Code of 1987 to provide for the reclamation of interim program coal sites (*59 FR 49178, 48181*, finding No. 1(f), September 27, 1994; administrative record No. NA-225). The Navajo Nation proposed the addition of new language at section 404(b) of its AMLR Code to provide for such reclamation.

OSM announced receipt of the proposed amendment in the February 10, 1995, Federal Register (*60 FR 7926*), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NA-232). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 10, 1995.

During its review of the proposed amendment, OSM identified concerns relating to the provisions of the Navajo AMLR Code of 1987 at section 404(b)(2) pertaining to the dates used to define interim program coal sites, and the lack of a provision requiring a determination that there are insufficient funds to provide for adequate reclamation or abatement at the site. OSM notified the Navajo Nation of the concerns in a telephone conversation of February 23, 1995 (administrative record No. NA-233).

The Navajo Nation responded in a letter dated February 23, 1995, by submitting a revised amendment (administrative record No. NA-234). Based upon the revisions to the proposed plan amendment submitted by the Navajo Nation, OSM reopened the public comment period in the March 10, 1995, Federal Register (*60 FR 13086*, administrative record No. NA-236). The public comment period ended on March 27, 1995.

### **IV. DIRECTOR'S FINDINGS**

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed Navajo plan amendment as submitted by the Navajo Nation on January 12, 1995, and as revised by it on February 23, 1995, is not inconsistent with SMCRA and is in compliance with the corresponding Federal regulations at 30 CFR 884.14 and 884.15. Thus, the Director approves the proposed amendment.

#### **1. NONSUBSTANTIVE REVISIONS TO THE NAVAJO NATION AMLR CODE OF 1987**

The Navajo Nation proposed to recodify sections 404 (a) and (c), eligible lands and water, of its AMLR Code of 1987, (corresponding provisions at section 404 of SMCRA).

Because the recodification of this previously-approved section of the Navajo Nation's AMLR Code is nonsubstantive in nature, the Director finds it is not inconsistent with SMCRA. The Director approved the proposed recodification.

#### **2. RECLAMATION OF INTERIM PROGRAM COAL SITES**

The Navajo Nation proposed the addition of provisions at section 404(b) of its AMLR Code to provide for the reclamation of interim program coal sites. Such sites were left in either unreclaimed or inadequately reclaimed condition (1) between August 4, 1977, and September 28, 1984, and the amount of the bond or other financial guarantee is insufficient to provide for adequate reclamation or abatement at the site, or (2) where the mining occurred between August 4, 1977, and November 5, 1990, and the surety of the mining operator became insolvent, and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any other source were insufficient to provide adequate reclamation or abatement at the site. In addition, to qualify for reclamation or abatement, such sites must be either priority 1 or 2 sites pursuant to section 403(a) (1) and (2) of SMCRA, and priority will be given to those sites in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

Proposed section 404(b) of the Navajo Nation AMLR Code contains the same requirements as the counterpart Federal requirements at section 402(g)(4) of SMCRA. Therefore, the Director finds that the proposed AMLR Code

provisions are consistent with the counterpart SMCRA provisions. The Director approves proposed section 404(b) of the Navajo Nation AMLR Code.

## **V. SUMMARY AND DISPOSITION OF COMMENTS**

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

### **1. PUBLIC COMMENTS**

OSM invited public comments on the proposed amendment, but none were received.

### **2. AGENCY COMMENTS**

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Navajo plan (administrative record Nos. NA-231 and NA-235).

(a) Arizona State Historic Preservation Officer (SHPO). On March 13, 1995, the Arizona SHPO agreed with OSM's determination that no aspects of the proposed amendment pertain to cultural or historic resources (administrative record No. NA-239). As such, the Arizona SHPO determined that the amendment would have no effect on cultural resources under the National Historic Preservation Act of 1966 and 36 CFR part 800.

(b) Navajo Nation Historic Preservation Department.

By letter dated February 21, 1995, the Department agreed with OSM's determination that the proposed changes to the Navajo Nation AMLR Code of 1987 do not pertain to cultural resources. Therefore, it stated that the amendment will have no effect on cultural resources (administrative record No. NA-237).

(c) U.S. Bureau of Indian Affairs. The Bureau of Indian Affairs stated in a memorandum dated March 13, 1995, that a technical review had been completed by its Area Real Estate Services, Rights Protection Section, and that it had no comments (administrative record No. NA-238).

## **VI. DIRECTOR'S DECISION**

Based on the above findings, the Director approves the Navajo Nation's proposed plan amendment as submitted on January 12, 1995, and as revised on February 23, 1995.

As discussed in finding No. 1, the Director approves nonsubstantive revisions to the Navajo Nation AMLR Code of 1987 at sections 404(a) and (c), eligible lands and water.

As discussed in finding No. 2, the Director approves substantive revisions to the Navajo Nation AMLR Code of 1987 at section 404(b), reclamation of interim program coal sites.

The Director approves the proposed revisions of the Navajo Nation AMLR Code of 1987 with the provision that they be fully promulgated in identical form to the code submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 756, codifying decisions concerning the Navajo plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the Tribal plan amendment process and to encourage Tribes to bring their plans into conformity with the Federal standards without undue delay. Consistency of Tribal and Federal standards is required by SMCRA.

## **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 which 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.

**LIST OF SUBJECTS IN 30 CFR PART 756**

Abandoned mine land reclamation program, Indian lands.

Dated: April 19, 1995.

Charles E. Sandberg, 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 PROGRAMS**

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 756.14 is amended by adding paragraph (c) to read as follows:

**SECTION 756.14 -- APPROVAL OF AMENDMENTS TO THE NAVAJO NATION'S ABANDONED MINE LAND PLAN.**

\* \* \* \* \*

(c) Revisions to sections 404 (a), (b), and (c) of the Navajo Nation Abandoned Mine Land Reclamation (AMLR) Code of 1987, pertaining to eligible lands and water, as submitted to OSM on January 12, 1995, and as subsequently revised on February 23 1995, are approved effective April 25, 1995.

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