

FEDERAL REGISTER: 62 FR 15112 (March 31, 1997)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 756

Hopi Tribe Abandoned Mine Land Reclamation Plan

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Hopi Tribe abandoned mine land reclamation (AMLR) plan (hereinafter, the "Hopi plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Hopi Tribe proposed to revise, add, or delete plan provisions pertaining to the preface to amended reclamation plan; purpose of the Hopi plan; eligible lands and water subsequent to certification; land acquisition, management, and disposal; rights of entry; Hopi Department of Natural Resources policy on public participation; organization of the Hopi Tribe; a description of aesthetic, cultural and recreational conditions on the Hopi Reservation; and a description of the flora and fauna found on the Hopi Reservation. The amendment revised the Hopi plan to meet the requirements of the corresponding Federal Regulations and to be consistent with SMCRA; to incorporate the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended; to clarify ambiguities; and to improve operational efficiency.

EFFECTIVE DATE: March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248-5070, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND ON THE HOPI PLAN

On June 28, 1988, the Secretary of the Interior approved the Hopi plan. General background information on the Hopi plan, including the Secretary's findings and the disposition of comments, can be found in the June 28, 1988, Federal Register (53 FR 24262). Subsequent actions concerning the Hopi Tribe's plan and plan amendments can be found at 30 CFR 756.17 and 756.18.

II. PROPOSED AMENDMENT

By letter dated September 23, 1996, the Hopi Tribe submitted a proposed amendment to its plan (administrative record No. HO-156) pursuant to SMCRA (30 U.S.C. 1201 et seq.). The Hopi Tribe submitted the proposed amendment at its own initiative and in response to the required plan amendments at 30 CFR 756.18 (a) through (h). The provisions of the Hopi plan that the Hopi Tribe proposed to revise, add, or delete were: Preface to amended reclamation plan; section I, A, purpose of the Hopi plan; section II, A(1), coal reclamation after certification, and section II, A(1)(i), limited liability (coal reclamation); sections II, B(1)(d) and (d)(ii), noncoal reclamation after certification and the construction of public facilities, and sections II, B(1) (h), (i), and (j), limited liability, contractor responsibility, and reports (noncoal reclamation); section IV, A(1), land acquisition, and section IV, B, management of required land; sections VI, A(1) and B(1), consent to entry and public notice; section XII, description of aesthetic, cultural and recreational conditions of the Hopi Reservation; and section XIV, flora and fauna of the Hopi Reservation.

OSM announced receipt of the proposed amendment in the October 16, 1996, Federal Register (61 FR 53884), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. HO-159). Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 15, 1996.

III. DIRECTOR'S FINDINGS

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed plan amendment submitted by the Hopi Tribe on September 23, 1996, meets the requirements of the corresponding Federal

regulations and is consistent with SMCRA. Thus, the Director approves the proposed amendment.

1. NONSUBSTANTIVE REVISIONS TO THE HOPI PLAN PROVISIONS

The Hopi Tribe proposed revisions to the following previously-approved plan provisions that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding SMCRA provisions and Federal regulations are listed in parentheses):

Preface to amend reclamation plan, (sections 411(e) and (f) of SMCRA and 30 CFR 875.15), eligible projects;

Section II, A(1)(a), (30 CFR 874.12)(c)), eligible coal lands and water;

Section II, A(1)(g), (30 CFR 874.16), contractor responsibility (coal reclamation);

Section II, B(1)(d), (30 CFR 874.15(b)), noncoal reclamation after certification;

Deletion of sections II, E, F, and G, (30 CFR 874.15 and .16, 875.19 and .20, and 886.23(b)), limited liability, contractor responsibility, and reports;

Section II, E, (sections 411(e) and (f) of SMCRA and 30 CFR 875.15(d) and (e) and 884.13(c)(2)), description of needs, proposed construction and activities;

Section VII, B(8), (30 CFR 884.13(c)(7)), public participation;

Section VIII, (30 CFR 884.13(d)(1)), organization of the Hopi Tribe; and

Section XIV, (30 CFR 884.13(f)), flora and fauna.

Because the proposed revisions to these previously-approved Hopi plan provisions are nonsubstantive in nature, the Director finds that they are consistent with the corresponding provisions of SMCRA and meet the requirements of the Federal regulations. Therefore, the Director approves the proposed revisions to these plan provisions.

2. SUBSTANTIVE REVISIONS TO THE HOPI PLAN PROVISIONS THAT ARE SUBSTANTIVELY IDENTICAL TO THE CORRESPONDING PROVISIONS OF SMCRA AND THE FEDERAL REGULATIONS

The Hopi Tribe proposed revisions to the following plan provisions that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding provisions of SMCRA and the Federal regulations (listed in parentheses):

Preface to amended reclamation plan, (title IV of SMCRA and 30 CFR subchapter R), introductory paragraph;

Section II, A(1)(i), (30 CFR 874.15), limited liability (coal reclamation);

Section II, B(1)(h), (30 CFR 875.19), limited liability (noncoal reclamation);

Section II, B(1)(i), (30 CFR 875.20), contractor responsibility (noncoal reclamation); and

Section II, B(1)(j), (30 CFR 886.23(b)), reports (noncoal reclamation);

Because these proposed revisions to the Hopi plan provisions are substantively identical to the corresponding provisions of SMCRA and the Federal regulations, the Director finds that they are consistent with the corresponding provisions of SMCRA and meet the requirements of the Federal regulations. Therefore, the Director approves the proposed revisions to these plan provisions.

3. REVISIONS TO THE HOPI PLAN PROVISIONS SUBMITTED IN RESPONSE TO REQUIRED AMENDMENTS

In response to the required plan amendments at 30 CFR 756.18(d) through (h) (April 23, 1996, *61 FR 17833, 17836-38*, finding Nos. 5, 6, 7, and 9), the Hopi Tribe proposed to revise its plan provisions at section II, A(1), concerning coal reclamation after certification; section II, B(1)(d)(ii), concerning noncoal reclamation after certification; section IV, A(1), concerning land acquisition; section IV, B(1), concerning management of acquired lands; and section XII, concerning description of aesthetic, cultural and recreational conditions of the Hopi Reservation.

Section II, A(1). -OSM at 30 CFR 756.18(d) (finding No. 5(b), *61 FR 17833, 17836*) required the Hopi Tribe to revise section II, A(1) to require that any coal reclamation activities subsequent to certification of coal reclamation are subject to the provisions of sections 401 through 410 of SMCRA.

In response to the required amendment, the Hopi Tribe proposed to add such language to its plan at section II, A(1) to provide for coal reclamation after certification. In addition, the Hopi Tribe corrected a reference in this section to the effective date of the Hopi Tribe's certification that all known abandoned coal mine problems had been addressed. For the reasons discussed in the April 23, 1996, Federal Register, the Director finds that the proposed revisions at section II, A(1) of the Hopi plan meet the requirements of the Federal regulations at 30 CFR 875.13(b) and 875.14(b)). Accordingly, the Director approves the proposed revisions to section II, A(1) and removes the required amendment at 30 CFR 756.18(d).

Section II, B(1)(d)(ii). -OSM at 30 CFR 756.18(e) (finding No. 6(a), *61 FR 17833, 17836*) required the Hopi Tribe to revise section II, B(1)(d)(ii) to delete the word "property" for priority two noncoal reclamation.

In response to the required amendment, the Hopi Tribe revised section II, B(1)(d)(ii) to provide for the protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices. For the reasons discussed in the April 23, 1996, Federal Register, the Director finds that the proposed revision at section II, B(1)(d)(ii) of the Hopi plan meets the requirements of the Federal regulations at 30 CFR 875.15(b)(2). Accordingly, the Director approves the proposed revision to section II, B(1)(d)(ii) and removes the required amendment at 30 CFR 756.18(e).

Section IV, A(1). -OSM at 30 CFR 756.18(f) (finding No. 7(a), *61 FR 17833, 17837*) required the Hopi Tribe to revise section IV, A(1) to delete the word "coal" from the phrase "coal refuse thereon" to ensure that lands eligible for acquisition included those on which refuse from both coal and noncoal mining practices are located.

In response to the required amendment, the Hopi Tribe revised section IV, A(1) to provide that noncoal lands and water may be acquired in the same manner as coal lands and water. For the reasons discussed in the April 23, 1996, Federal Register, the Director finds that the proposed revision at section IV, A(1) of the Hopi plan meets the requirements of the Federal regulations at 30 CFR 875.17 and 879.11(a). Accordingly, the Director approves the proposed revision to section IV, A(1) and removes the required amendment at 30 CFR 756.18(f).

Section IV, B(1).-OSM at 30 CFR 756.18(g) (finding No. 7(c), *61 FR 17833, 17837*) required the Hopi Tribe to revise section IV, B(1) to reinstate the phrase "may be used pending" to its provisions concerning the management of acquired lands.

In response to the required amendment, the Hopi Tribe revised section IV, B(1) to provide that land acquired under rules of the Hopi plan may be used pending concurrence of the Hopi AMLR program and Tribal Council for any lawful purpose that is not inconsistent with the reclamation activities and post reclamation uses for which it was acquired. For the reasons discussed in the April 23, 1996, Federal Register, the Director finds that the proposed revision at section IV, B(1) of the Hopi plan meets the requirements of the Federal regulations at 30 CFR 879.14. Accordingly, the Director approves the proposed revision to section IV, B(1) and removes the required amendment at 30 CFR 756.18(g).

Section XII.-OSM at 30 CFR 756.18(h) (finding No. 9, *61 FR 17833, 17838*) required the Hopi Tribe to revise its plan to include information concerning significant aesthetic, historic or cultural, and recreational values.

In response to the required amendment, the Hopi Tribe added section XII to provide a description of aesthetic, cultural and recreational conditions of the Hopi Reservation. For the reasons discussed in the April 23, 1996, Federal Register, the Director finds that the proposed addition at section XII of the Hopi plan meets the requirements of the Federal regulations at

30 CFR 884.13(f)(2). Accordingly, the Director approves the proposed revision to section IV, B(1) and removes the required amendment at 30 CFR 756.18(h).

4. SECTION I, A, PURPOSE OF HOPI TRIBE AMLR PLAN

The Hopi Tribe proposed to revise section I, A, of its plan in response to required amendments at 30 CFR 756.18 (a) through (c) (April 23, 1996, *61 FR 17833, 17835*, finding Nos. 4 (a), (d), and (e)). OSM required the Hopi Tribe to revise section I, A to (1) provide separate provisions for coal and noncoal reclamation activities, (2) ensure that the provisions listed in the purpose of the Hopi plan are consistent with the Hopi Tribe's certification of completion of reclamation of known coal-related problems, and (3) provide appropriate provisions for reclamation of eligible lands, waters and facilities under a noncoal reclamation program.

The Hopi Tribe chose not to respond specifically to the required amendments, but rather proposed revisions to section I, A to provide that the Hopi plan's purpose is to "protect the health, safety, and general welfare of members of the Hopi Tribe and members of the general public from the harmful effects of past coal mining practices and past mineral mining and processing practices." In addition, the Hopi Tribe proposed other purposes at section I, A to (1) address adverse effects of mining and processing practices on public facilities; (2) provide for public facilities in communities impacted by coal or other mineral mining and processing practices; and (3) address needs for activities or public facilities related to the coal or minerals industry on Hopi lands impacted by coal or minerals development.

The first purpose at section I, A of the Hopi plan is similar to the provisions of sections 403(a)(2) and 411(c)(2) of SMCRA, which provide, respectively, for the protection of health, safety, and general welfare from the adverse effects of coal mining practices, and from the adverse effects of mineral mining and processing practices. The additional purposes at section I, A are similar to the provisions of section 411(e) of SMCRA and 30 CFR 875.15(a), which provide for the protection, repair, replacement, construction, or enhancement of utilities and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

Because the Hopi Tribe previously certified that it had completed the reclamation of all known coal-related problems (*59 FR 29719*, June 9, 1994), its plan appropriately provides for both coal and noncoal reclamation. Therefore, the Director finds that section I, A of the Hopi plan, which provides a general description of the purpose of the Hopi Tribe's AMLR program, including descriptions of coal and noncoal reclamation activities, is not inconsistent with sections 403 and 411 of SMCRA and meets the requirements of the Federal regulations at 30 CFR parts 874 and 875. Accordingly, the Director approves the proposed revisions at section I, A and removes the required amendments at 30 CFR 756.18 (a) through (c).

5. SECTIONS VI, A(1) (a) through (c) and B(1), CONSENT TO ENTER AND PUBLIC NOTICE

The Hopi Tribe proposed to revise its plan provisions at sections VI, A(1) (a) through (c), by deleting provisions concerning the ability to enter lands for emergency reclamation. The Hopi Tribe also proposed to revise section VI, B(1) by deleting the phrase "except in emergency situations," from the requirement for the public notice when written consent for entry cannot be obtained.

Deletion of the references to emergency reclamation and emergency situations is consistent with the fact that the Hopi Tribe is unable to exercise emergency powers on Hopi lands, because the Hopi Tribe did not request authority to conduct emergency response reclamation under the original Hopi plan submission (*53 FR 24262*, June 28, 1988), and it has not subsequently sought emergency powers through the amendment process. For these reasons, only OSM, and its agents, employees, and contractors, are authorized to conduct emergency reclamation activities on Hopi lands. Based upon OSM's exclusive emergency reclamation authority on Hopi lands, the Director finds that the deletions of references to emergency reclamation and emergency situations at sections VI, A(1)(c) and B(1) are consistent with section 410 of SMCRA and meet the requirements of 30 CFR 877.14. Therefore, the Director approves these proposed plan revisions.

IV. 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. FEDERAL 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 Hopi plan (administrative record No. HO-157).

(a) Bureau of Indian Affairs (BIA), Hopi Agency.-BIA commented on October 11, 1996, that the "Preface to Amended Reclamation Plan" section of the Hopi plan should be revised to clarify the order of priority for future coal AMLR projects (administrative record No. HO-158). Specifically, BIA recommended that the last paragraph on page iii, which provides a description of the Hopi Tribe's priority system, should be revised to indicate that projects with the most adverse impacts to the public are of the highest priority.

OSM responds that the preface of the Hopi plan provides for both coal and noncoal reclamation projects, and that the order of priority provided by the preface is consistent with the Federal regulations at 30 CFR part 875. Even though the Hopi Tribe provided certification of completion of all known coal-related problems (*59 FR 29721*, June 9, 1994), it continues to have a responsibility to give any coal-related problems that are found or that occur after certification top priority for AMLR funding. The preface of the Hopi plan reflects this requirement by stating that "newly discovered projects adversely affected by coal mining" (emphasis added) would receive the highest priority for AMLR funding. The Director finds that the language contained in the preface of the Hopi plan concerning the priority of coal projects is consistent with the counterpart Federal regulations at 30 CFR 875.13(a)(3), and is not requiring the Hopi Tribe to provide any additional clarification about priorities as suggested by BIA.

(b) Arizona State Historic Preservation Officer (SHPO).- On November 14, 1996, the Arizona SHPO responded that it was their opinion that the proposed amendment should have no effect on any property listed on the National Register of Historic Places or any project eligible for listing (administrative record No. HO-160).

V. DIRECTOR'S DECISION

Based on the above findings, the Director approves the Hopi Tribe's proposed plan amendment as submitted on September 23, 1996.

The Director approves, as discussed in: Finding No. 1, the preface to the amended reclamation plan, concerning eligible projects, section II, A(1)(a), concerning eligible coal lands and water, section II, A, (1)(g), concerning contractor responsibility for coal reclamation, section II, B(1)(d), concerning noncoal reclamation after certification, deletion of sections II, E, F, and G, concerning limited liability, contractor responsibility, and reports for noncoal reclamation, section II, E, concerning description of needs, proposed construction and activities, section VII, B(8), concerning public participation, section VIII, concerning organization of the Hopi Tribe, and section XIV, concerning flora and fauna; finding No. 2, the preface to the amended reclamation plan, concerning the introductory paragraph, section II, A(1)(i), concerning limited liability for coal reclamation, section II, B(1)(h), concerning limited liability for noncoal reclamation, section II, B(1)(i), concerning contractor responsibility for noncoal reclamation, and section II, B(1)(j), concerning reports for noncoal reclamation; finding No. 3, section II, A(1), concerning coal reclamation after certification, section II, B(1)(d)(ii), concerning noncoal reclamation after certification, section IV, A(1), concerning land acquisition, section IV, B(1), concerning management of acquired lands, and section XII, concerning description of aesthetic, cultural and recreational conditions of the Hopi Reservation; finding No. 4, section I, A, concerning the purpose of Hopi plan; and finding No. 5, sections VI, A(1) (a) through (c) and B(1), concerning consent to entry and public notice.

The Director approves the plan provisions as proposed by the Hopi Tribe with the provision that they be fully promulgated in identical form to the plan provisions submitted to and reviewed by OSM and the public.

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

VI. 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 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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 Indian tribe AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Indian tribe, not by OSM. Decisions on proposed State or Indian tribe AMLR plans and revisions thereof submitted by a State or Indian 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 Indian tribe 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 State or Indian tribe 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 State or Indian 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.

6. Unfunded Mandates Reform Act

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or private sector.

LIST OF SUBJECTS IN 30 CFR PART 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: March 13, 1997.

James F. Fulton, Acting Regional Director, Western Regional Coordinating 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 756.17 is amended by adding paragraph (c) to read as follows:

SECTION 756.17 -- APPROVAL OF HOPI TRIBE ABANDONED MINE LAND RECLAMATION PLAN AMENDMENTS.

* * * * *

(c) Revisions to, additions of, or deletions of the following plan provisions, as submitted to OSM on September 23, 1996, are approved effective March 31, 1997:

Preface to Amended Reclamation Plan-Introductory paragraph and Eligible Projects;

Section I, A-Purpose of Hopi plan;

Section II, A(1)-Certification of Completion of Coal Sites;

Section II, A(1)(a)-Eligible Coal Lands and Water;

Section II, A, (1)(g)-Contractor Responsibility (for coal reclamation);

Section II, (A)(1)(i)-Limited Liability (for coal reclamation);

Sections II, (B)(1)(d) and (d)(ii)-Noncoal Reclamation After Certification;

Sections II, (B)(1)(h), (i), and (j)-Limited Liability, Contractor Responsibility, and Reports (for noncoal reclamation);

Deletion of sections II, E, F, and G-Limited Liability, Contractor Responsibility, and Reports (for noncoal reclamation);

Section II, E-Description of Needs, Proposed Construction and Activities;

Sections IV, (A)(1) and (B)(1)-Acquisition and Management of Acquired Lands;

Sections VI, A(1) (a) through (c) and B(1)-Consent to Entry and Public Notice;

Section VII, B(8)-Public Participation;

Section VIII-Organization of the Hopi Tribe;

Section XII-Description of Aesthetic, Cultural and Recreational Conditions of the Hopi Reservation; and

Section XIV-Flora and Fauna.

SECTION 756.18 -- [Amended]

3. Section 756.18 is amended by removing and reserving paragraphs (a) through (b) and removing paragraphs (c) through (h).