

FEDERAL REGISTER: 48 FR 41018 (September 13, 1983)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 872

Withdrawal of Unexpended Abandoned Mine Land Reclamation Funds From the State of Washington

ACTION: Rule related notice.

SUMMARY: The Office of Surface Mining is withdrawing abandoned mine land reclamation (AMLR) funds allocated to the State of Washington under the authority of Section 402(g)(2) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (SMCRA) and 30 CFR 872.11 of the Secretary's regulations. The State of Washington failed to adopt a regulatory program for active mining pursuant to Section 503 of SMCRA or a reclamation plan for the restoration of lands previously degraded by past coal mining practices pursuant to Section 404 of SMCRA. Without these programs the State is ineligible to receive the State share allocation of AMLR funds collected within the State of Washington. Failure to expend these funds within the time limits allocated by SMCRA and the Secretary's regulations can result in the transfer of these funds to the Secretary's discretionary share for expenditure in any eligible area of the country.

Notice of OSM's intent to withdraw unexpended abandoned mine land reclamation funds was published on August 4, 1983 (*48 FR 35399*). An opportunity for public participation in OSM's decision was provided. Comments received are discussed below under "Disposition of Comments."

EFFECTIVE DATE: This action will be effective October 13, 1983.

FOR FURTHER INFORMATION CONTACT: Jim Fary, Division of Abandoned Mine Land Reclamation, 1951 Constitution Avenue, NW., Washington, D.C. 20240, telephone (202) 343-7921.

SUPPLEMENTARY INFORMATION:

The Abandoned Mine Land Fund was established by the Surface Mining Control and Reclamation Act of 1977 in response to concern over extensive environmental damage caused by past coal mining activities. The Abandoned Mine Land Fund derives its financing from Title IV of the Act which establishes a fee on coal production for the purpose of financing specified Federal, State, and Indian reclamation programs. Programs funded by Congressional appropriations include grants to States and Indian Tribes to plan and carry out reclamation programs and projects, Federal Reclamation projects carried out by the Secretary of Interior through OSM, and the Rural Abandoned Mine Program (RAMP) administered by the Secretary of Agriculture and carried out by the Soil Conservation Service. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Title IV of SMCRA provides that fifty percent of the AMLR funds collected within a State or on Indian lands are to be allocated to that State or Indian Tribe to accomplish the purpose of this title. "Allocate" means the administrative identification in the records of OSM of monies in the Fund for a specific purpose, e.g., identification of monies for exclusive use by a State.

States and Tribes are eligible to receive such allocated funds only after they have received approved regulatory programs pursuant to Section 503 of the Act and approved reclamation plans under Section 405. If allocated funds have not been expended within three years of their allocation by the States or Indian tribes, Section 402 of the Act provides the Secretary authority to withdraw such funds from the States' accounts and utilize them in any eligible area of the county.

On June 30, 1982, OSM published revised final regulations concerning the implementation and administration of the Abandoned Mine Land Program. (*47 FR 28574*.) Under 30 CFR 872.11(b)(2), OSM set out two procedures concerning the withdrawal of allocated but unexpended State or Indian tribal funds. First, if a State advises OSM in writing that is

does not intend to submit a State reclamation plan, no monies will be allocated to that State. Secondly, amounts allocated to a State that have not been granted to the State within three years from the date of allocation shall be available to the Director for other purposes as set out in 30 CFR 872.11(b)(5) and Section 401(c) of the Act.

DISPOSITION OF COMMENTS

The Department of Natural Resources of the State of Washington commented that: "the Federal Register text is incorrect in saying that the State had no intentions of regulating surface mining and reclamation operations. The converse is true as the State has a great environmental awareness and has had a Surface Mined Land Reclamation Act in place since 1970. What your notice should have said is that we have not implemented a Federal Program." OSM has reviewed the text of the Federal Register notice (*48 FR 35399-35400*, August 4, 1983) and cannot find where it has indicated that the State of Washington "had no intentions of regulating surface mining and reclamation operations." OSM does not question that the State of Washington "has a great environmental awareness and has had a Surface Mined Land Reclamation Act in place since 1970." OSM contends that it has said in the Federal Register text that the State of Washington has not implemented a Federal Program.

The relevant text reads as follows: "Both States (i.e., Georgia and Washington) have failed to adopt regulatory programs for active mining pursuant to Section 503 of SMCRA. . . ." (*48 FR 35399*). Section 503 of SMCRA is the Federal program. Moreover, the Federal Register text indicates: "The State of Washington, on the other hand, has never formally advised OSM in writing concerning its intentions not to regulate surface mining and reclamation operations. However, since the State has not made reasonable efforts to assume primacy over these areas and thereby become eligible for AMLR grants, the Director is proposing to withdraw all State AMLR funds which have been allocated but left unexpended for more than three years." Perhaps the Washington Department of Natural Resources has read the Federal Register text regarding the State of Georgia as applicable to Washington as well. The State of Georgia has indicated its intentions in writing to OSM that it does not wish to assume regulatory responsibility over surface mining. In conclusion, the OSM has not indicated that the State of Washington, "had no intentions of regulating surface mining and reclamation operations" but rather that since Washington has never formally advised OSM in writing concerning its intentions not to regulate surface mining and reclamation operations under SMCRA, the Director of OSM can and is withdrawing all State AMLR funds which have been allocated but left unexpended for more than three years.

The Washington Department of Natural Resources also commented that: "we disagree with the concept that monies collected in a State by the Federal government from coal mining can be withdrawn and used elsewhere at the discretion of the Secretary of the Interior. If a Federal program is in place, such as here in Washington State, OSM should utilize these funds for the benefit of Washington." OSM's response is that Section 402(g)(2) of SMCRA explicitly gives the Secretary the discretion to withdraw funds allocated to a State reclamation program that have not been expended within three years after their allocation and to use these withdrawn funds for expenditure in any eligible area as determined by the Secretary. To allow funds allocated by an Act of Congress for the specific purpose of abandoned mine land reclamation by States to remain idle because a State has not made reasonable efforts to become eligible for the funds, would be incompatible with the Secretary's responsibilities for management of public funds and resources. OSM will be developing a Federal abandoned mine land reclamation program for the State of Washington using available Federal funds to reclaim high priority abandoned mine land sites.

The Washington Irrigation and Development Company (WIDCO) requested that the Secretary "defer action on the withdrawal of the subject funds, pending meetings (by WIDCO) with the State" regarding the interest of the State of Washington to implement a State program. OSM declines to defer action on withdrawal of funds because it believes that the State has not made reasonable efforts to assume primacy over surface mining and thereby become eligible for AMLR grants. Moreover, the Washington Department of Natural Resources' response to the notice of intent to withdraw funds indicates that the State is still not making any efforts to assume primacy over surface mining and thereby become eligible for AMLR grants.

WIDCO further commented that: "If funds must be withdrawn now, perhaps a mechanism could be established for re-allocation if primacy was achieved by some future date." OSM declines to establish, at this time, a mechanism for re-allocation if primacy is achieved by the State at some later date. It should be noted that the action withdrawing funds allocated to Washington is limited to funds left unexpended for more than three years. Therefore, Washington will have available to it three years of funds to expend on a State AMLR program if it should decide, at some future date, to seek

primacy. Moreover, as indicated above, OSM will be developing a Federal program for Washington using available Federal funds to reclaim high priority abandoned mine land sites.

AGENCY'S FINDINGS

The State of Washington has never formally advised OSM in writing concerning its intentions not to regulate surface mining and reclamation operations. However, since the State has not made reasonable efforts to assume primacy over these areas and thereby become eligible for AMLR grants, the Director is withdrawing all State AMLR funds which have been allocated but left unexpended for more than three years pursuant to the authority in Section 402 and 412(a) of the Act and 30 CFR 872.11(b)(2) of the Secretary's regulations.

Dated: September 7, 1983.

James R. Harris, Director, Office of Surface Mining.

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