

FEDERAL REGISTER: 51 FR 23790 (July 1, 1986)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 800

Availability of Decision; Surface Coal Mining and Reclamation Operations,
Bonding and Insurance Requirements; Denial of Petition

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available to the public its final decision on a petition for rulemaking from Mr. Terrance M. Toole. The petition requested that OSMRE revise 30 CFR 800.60 to allow for the filing of a certificate of liability insurance at the same time that a bond is filed with the regulatory authority. The Director made a decision to deny the petition.

ADDRESS: Copies of the petition, and other relevant materials comprising the administrative record of this petition are available for public review and copying at OSMRE, Administrative Record, Room 5315 L, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Mancino, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; telephone 202-343-5143.

SUPPLEMENTARY INFORMATION:

I. PETITION FOR RULEMAKING PROCESS

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (the Act), any person may petition the Director of OSMRE for a change in OSMRE's regulations. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, the Director must first determine whether the petition has a reasonable basis. If the petition has a reasonable basis, notice is published in the Federal Register seeking comments on the petition and the Director may hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted. When a petition is granted, the Director initiates a rulemaking proceeding. However, when a petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under 30 CFR 700.12, the Director's decision constitutes the final decision for the Department of the Interior.

II. THE TOOLE PETITION

OSMRE received a letter dated November 14, 1985, from Mr. Terrance M. Toole presenting a petition for revision of the requirement for the filing of a certificate of liability insurance found at 30 CFR 800.60. The proposed amendment would allow operators to file the certificate of liability insurance at the same time that a bond is filed with the regulatory authority, thus providing a cost savings for the operator.

On November 27, 1985, the Director determined that the petition for amendment of the regulations had a sufficient basis to seek comments on the proposed rule changes. Accordingly, on December 11, 1985, OSMRE published a request for public comments on the petition in the Federal Register (*50 FR 50631*). The comment period began December 11, 1985, and closed on January 27, 1986. Six persons submitted written comments during the public comment period.

In a letter to the petitioners dated June 10, 1986, the Director made a decision to deny the petition to amend 30 CFR 800.60. The decision notes that the present regulation allows the State regulatory authorities the flexibility needed to achieve the objective sought by the petition.

The Director's letter of response to the petitioner on this rulemaking petition appears as an appendix to this notice. This letter reports the Director's decision to the petitioner. It also contains a summary description of the issue raised by

the petitioner, a discussion of OSMRE's current regulatory program as it relates to the issue of the petition, an analysis of the petitioner's proposed regulatory change and a discussion of the comments received on the petition.

Dated: June 25, 1986.

Jed O. Christensen, Director, Office of Surface Mining Reclamation and Enforcement.

APPENDIX

Mr. Terrance M. Toole, President
Geological Consultants, Inc., P.O. Box 745, Ft. Payne, Alabama 35967

June 10, 1986.

Dear Mr. Toole: This letter is in response to the November 14, 1985, petition for rulemaking to the Office of Surface Mining Reclamation and Enforcement (OSMRE) requesting an amendment to the regulation concerning submittal of the certificate of liability insurance.

On November 27, 1985, the Director determined that the petition for rulemaking had sufficient basis to seek comments on whether the regulations should be revised. Accordingly, OSMRE published a request for comments on the petition on December 11, 1985, in the Federal Register (50 FR 50631). The comment period closed on January 27, 1986. Six comments were received by OSMRE during the comment period.

This letter is divided into five parts. The first part summarizes this decision. The second part is a discussion of the issue raised by your petition. The third part discusses the current OSMRE regulatory program as it relates to your proposed revision. The fourth part analyzes the proposal of the petition. The fifth part discusses comments submitted by persons other than the petitioner.

FINAL DECISION

I am denying the petition to amend 30 CFR 800.60 to provide for filing of the liability insurance certificate at the time of bond filing. As discussed below, the present regulation already includes sufficient flexibility to allow the certificate of insurance to be filed late in the permitting process, thus providing savings similar to the proposal of the petition. As provided in 30 CFR 700.12(d), my decision constitutes the final decision for the Department of the Interior.

SUBSTANCE OF THE PETITION

The petition proposed that 30 CFR 800.60 be amended to allow permit applicants to file the certificate of liability insurance at the same time that the bond is filed with the regulatory authority. A bond is filed after a permit is approved but before it is issued. The petitioner proposed the change in the time of the filing of the certificate of liability insurance in order to achieve savings in the premium costs paid by permit applicants during the time when the application is pending.

CURRENT OSMRE REGULATORY PROGRAM

OSMRE's regulation at 30 CFR 800.60 establishes the terms and conditions for liability insurance. The requirements of 30 CFR 800.60 state that the regulatory authority shall require an applicant to submit the certificate of liability insurance "as part of its permit application." This section requires that such a policy shall cover at least \$300,000 for bodily injury and property damage for each occurrence and \$500,000 aggregate.

These requirements implement section 507(f) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) which states that "each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate . . . (of) liability insurance."

ANALYSIS OF THE PETITION'S RECOMMENDED AMENDMENT

The petition recommended amending 30 CFR 800.60 to provide for the filing of the certificate of liability insurance at the time of the filing of the bond in order for permit applicants to achieve savings in premium costs. Bond filing is usually

after a permit has been approved, but before it is issued.

To begin processing the permit application, the application must be administratively complete. This means that the application contains information addressing each application requirement and all information necessary to initiate processing and public review. Therefore, a permit application need not contain the certificate of liability insurance at the earliest point in the permit application process. Permit applications are evaluated in conjunction with State program regulations which specify minimum liability coverage for bodily injury and property damage which must be met by the operator. Such information will ensure that there is a meaningful opportunity for public comment on the adequacy of insurance coverage during the permit review process. Therefore, under the current OSMRE regulations, a permit applicant does not have to provide the certificate of insurance at the initial point in the permit application and review process. However, the applicant must submit the actual proof of liability insurance before the application can be found to be complete and accurate and a permit issued by the regulatory authority. Therefore, the existing regulation already provides sufficient flexibility as to when the insurance certificate may be filed. Moreover, the specific proposal of the petition raises concerns regarding section 507(f) of SMCRA.

COMMENTS RECEIVED

OSMRE received six comments on the petition for rulemaking. These comments can be divided into two groups: those favoring the proposed change and those opposed to the proposed change. Those commenters in favor of the petition supported the change on the basis of savings in the cost of insurance premiums incurred during permit review. In addition, one commenter stated that satisfaction of both bonding and insurance requirements at the same time is administratively desirable. Those commenters opposed to the petition stated that changing the requirement for filing the certificate of insurance could lead to delay in issuing permits. This commenter, who is a regulatory authority, stated that errors in insurance policies were common in its State and that the certificate of insurance was needed during the permit review process to correct such errors.

Another commenter stated that the proposed change would not affect operators of existing mines which already have insurance policies for the mines.

Based upon the above analysis, I have concluded that the current OSMRE regulation already provides the flexibility to allow the filing of the insurance certificate later in the application process, thereby achieving the same end sought by the petition. Therefore, I have determined that there is no need to amend the Federal regulation.

OSMRE thanks you for your interest in this area of the regulations and welcomes any other suggestion you may care to make on the program.

Sincerely,
Robert E. Boldt, Acting Director.

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