

**FEDERAL REGISTER: 53 FR 16016 (May 4, 1988)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 845

Surface Coal Mining and Reclamation Operations; Permanent Program Inspections and Enforcement Procedures; Civil Penalties

ACTION: Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) is amending its regulations to allow OSMRE to use money collected from the payment of Federal civil penalties levied under section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act) to reclaim lands that have been mined, abandoned, or left inadequately reclaimed, since the passage of the Act and therefore are ineligible for Title IV (Abandoned Mine Land Reclamation) funding. This rule is necessary to implement a provision of the Omnibus Continuing Resolution for Fiscal Year 1988.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond E. Aufmuth, PG, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-1514 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of Final Rule
- III. Procedural Matters

**I. BACKGROUND**

Congress, in the continuing resolution appropriating funds for fiscal year 1988 (Pub. L. 100-202), authorized the Secretary of the Interior to utilize any money collected pursuant to the payment of civil penalties under section 518 of the Act to reclaim lands adversely affected by coal mining practices after August 3, 1977. The continuing resolution provides: "Provided, that notwithstanding any other provision of law, the Secretary of the Interior, pursuant to regulations may utilize directly or through grants to the States in fiscal year 1988, moneys collected pursuant to the assessment of civil penalties under section 518 of the Office of Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268) (SMCRA) to reclaim lands adversely affected by coal mining practices after August 3, 1977." This rule implements these provisions.

Under this direction, the Secretary is working with the Office of Management and Budget and the Department of the Treasury to set up an appropriate tracking system for funds used to finance reclamation of lands adversely affected by coal mining practices after August 3, 1977. These lands are ineligible for funding under the abandoned mine land program established in Title IV of SMCRA.

SMCRA requires reclamation bonds for all permitted surface coal mining operations. These bonds are intended to cover the cost of reclamation should the permitted entity not be able to complete the required reclamation. However, bonding was not required under the interim regulatory program. In addition, there are instances where "Post-Act" sites have not been fully reclaimed or were inadequately reclaimed. Under this rule, Federal civil penalties collected because of violations of the Act, may be used for reclamation of "Post-Act" sites.

This rule will afford the Secretary the option of accomplishing reclamation of Post-Act sites directly through OSMRE or through grants to the States where appropriate. The allocation of Federal civil penalty money for reclamation parallels a similar practice followed in several States that assign State-collected penalties for reclamation. In fiscal 1987 the total civil penalties collected were \$1,017,847.

Under this rule the selection and mechanism of funding will be at the discretion of the Director, OSMRE. Approved projects will be conducted either directly by OSMRE or through grants to the States. Projects will be selected for funding on a priority basis and will employ in part the priorities from the Abandoned Mine Reclamation Fund. The highest priority will be emergency projects as that term is defined in 30 CFR 870.5. The next priority will be given to projects which would qualify as priority 1 and then priority 2 as these priorities are described in section 403 of the Act. If there are residual funds, they will be available for Federal bond forfeiture sites. The prioritization of sites using Congressionally described criteria from the Abandoned Mine Reclamation Program is a proven methodology for such disbursement and ensures that the limited funds are allocated to the sites which are most in need of reclamation.

## **II. DISCUSSION OF FINAL RULE**

Taking into consideration the language of the continuing resolution for fiscal year 1988, it is clearly the intent of Congress to allow OSMRE to utilize civil penalty money for the purpose of reclamation of lands adversely affected by coal mining practices after August 3, 1977. Therefore, OSMRE has amended its regulations dealing with civil penalties at 30 CFR Part 845 by adding a new section, 30 CFR 845.21, to address "Use of the civil penalties for reclamation."

Paragraph 845.21(a) authorizes the Director to use money collected pursuant to civil penalties levied under Section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977.

Paragraph 845.21(b) identifies the priorities which will be used to allocate the funds collected. Under Section 845.21(b)(1) top priority will be given to emergency projects as that term is defined in 30 CFR 870.5. This will be followed under Section 845.21(b)(2) by projects which would qualify as priority 1 and then under Section 845.21(b)(3), as priority 2, as these terms are defined in Section 403 of the Act. Although terminology used in the rule is derived from the Abandoned Mine Land Program, the moneys disbursed under Section 845.21 will be used only to reclaim lands adversely affected by coal mining practices after August 3, 1977.

Paragraph 845.21(b)(4) provides that after addressing the priorities set forth in Section 845.21(b)(1) through (b)(3), funds may be made available for reclamation of Federal bond forfeiture sites.

Paragraph 845.21(c) provides the Director some flexibility in the selection process to account for unforeseen circumstances and provides authority to the Director to allocate funds for any other project which constitutes a danger to the environment or to the public health and safety.

## **III. PROCEDURAL MATTERS**

### **Federal Paperwork Reduction Act**

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under *44 U.S.C. 3407*.

### **Executive Order 12291 and Regulatory Flexibility Act**

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, *5 U.S.C. 601* et seq. The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

### **National Environmental Policy Act**

OSMRE has prepared a final environmental assessment (EA), and has determined that the final rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), *42 U.S.C. 4332(2)(C)*. A finding of No Significant Impact has been approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record.

#### Administrative Procedure Act

This regulation is exempt from the public notice rulemaking requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) and 553(b)(3). The regulation deals primarily with contracts and grants to benefit the public. Additionally, the legislation deals solely with monies collected during fiscal year 1988 and therefore it is essential that OSMRE move as rapidly as possible to ensure that reclamation projects are selected and bid before the end of the fiscal year. Similarly, good cause exists to make this rule effective immediately under the authority of 5 U.S.C. 553(d). OSMRE must move rapidly to select and design projects to ensure that the fiscal year 1988 penalty monies are obligated within the fiscal year.

#### Author

The principal author of this rule is Raymond E. Aufmuth, PG, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-1514 (Commercial or FTS).

#### LIST OF SUBJECTS IN 30 CFR PART 845

Administrative practice procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: March 4, 1988.

J. Steven Griles, Assistant Secretary for Land and Minerals Management.

Accordingly 30 CFR Part 845 is amended as set forth below.

#### PART 845 -- CIVIL PENALTIES

1. The authority citation for Part 845 is revised to read:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., Pub. L. 100-34, and Pub. L. 100-202

2. Part 845 is amended by adding Section 845.21 as follows:

#### SECTION 845.21 - USE OF CIVIL PENALTIES FOR RECLAMATION.

(a) The Director of OSMRE may utilize money collected by the United States during fiscal year 1988 pursuant to the assessment of civil penalties under section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977.

(b) The Director may allocate funds at his discretion for reclamation projects on lands within any State or on Federal lands or Indian lands based on the following priorities:

- (1) Emergency projects as defined in Section 870.5 of this chapter;
- (2) Reclamation projects which qualify as priority 1 under section 403 of the Act;
- (3) Reclamation Projects which qualify as priority 2 under section 403 of the Act; and
- (4) Reclamation of Federal bond forfeiture sites.

(c) Notwithstanding paragraph (b) of this section, at his discretion, the Director may allocate funds for any other reclamation project which constitutes a danger to the environment or to the public health and safety.