

**FEDERAL REGISTER: 54 FR 116 (January 4, 1989)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 756

Approval of the Abandoned Mine Land Reclamation Plan of the Crow Tribe  
Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA)

ACTION: Final rule.

**SUMMARY:** In 1982, the Crow Tribe (the Tribe) submitted its proposed Abandoned Mine Land Reclamation Plan entitled "Crow Tribe of Indians Abandoned Mine Lands Reclamation Plan" (the Plan) to OSMRE under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSMRE published notice of its receipt and requested public comments on the adequacy of the proposed Plan on May 18, 1982 in the Federal Register, (FR) 47 FR 21274-21276. The public comment period remained open since 1982, and no further action was taken at that time due to the lack of authorizing legislation under section 710 of SMCRA.

On July 11, 1987, legislation was enacted authorizing the Crow, Hopi, and Navajo Tribes to obtain abandoned mine land reclamation programs without prior approval of Tribal surface mining regulatory programs. On October 25, 1988 OSMRE published notice of proposed rule and closing of comment period, 53 FR 42976-42977, for consideration of adequacy of the Crow Tribe's Abandoned Mine Land Reclamation (AMLR) Plan. After consideration of the comments received and minor revisions the Tribe made to the Plan, the Assistant Secretary for Land and Minerals Management of the Department of the Interior has determined that the Crow Tribe AMLR Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Crow Tribe AMLR Plan.

This final rule is being made effective January 4, 1989, in order to expedite the granting of abandoned mine land reclamation funds to the Crow Tribe so that it can implement its AMLR Program and undertake Tribal reclamation projects to protect the public health and safety.

EFFECTIVE DATE: January 4, 1989.

ADDRESSES: Copies of the full text of the Crow Tribe AMLR Plan are available for review during regular business hours at the following locations:

Crow Tribal Council, Crow Office of Reclamation, P.O. Box 159, Crow Agency, Montana 59022.

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Room 2128, 100 East B Street, Casper, Wyoming 82601-1918.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918; Telephone: (307) 261-5776.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Proposed AMLR Plan
- III. Assistant Secretary's Findings
- IV. Public Comment
- V. Assistant Secretary's Decision
- VI. Procedural Matters

**I. BACKGROUND**

Title IV of SMCRA, establishes an Abandoned Mine Land Reclamation (AMLR) program for the purpose of reclaiming land and water resources adversely affected by past mining. This program is funded by a reclamation fee

imposed on coal production. Lands and waters eligible for reclamation under Title IV include those that were mined or were affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing responsibility for reclamation under State, Federal, or Tribal laws.

Title IV provides for State or Tribal submittal to OSMRE of an AMLR program. The Secretary adopted regulations in 30 CFR Part 870 through 888 that implement Title IV of SMCRA. Under those regulations the Secretary is required to review reclamation plans and solicit and consider comments of State and Federal agencies and the public. Based on such comments and review, the Secretary will determine if a State or Tribe has the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary may approve a State or Tribal program and grant the State or Tribe exclusive authority to administer its approved program.

Ordinarily, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR program to OSMRE as required by Section 405 of SMCRA. However, on July 11, 1987, President Reagan signed legislation that authorized the Crow, Hopi, and Navajo Tribes to obtain Abandoned Mine Land Reclamation programs without prior approval of regulatory programs.

States and Indian Tribes are also allowed to request authority to conduct emergency response reclamation activities. Guidelines for AMLR Plan provisions concerning assumption of emergency response authority were published on September 29, 1982, *47 FR 42729* and provide the applicable criteria by which to judge the adequacy of AMLR Plan provisions. Emergency reclamation activities are set forth in Section 410 of SMCRA. The Crow Tribe has not requested emergency response authority.

## **II. PROPOSED AMLR PLAN**

In 1982 the Crow Tribe submitted to OSMRE its proposed Abandoned Mine Land Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 CFR Chapter 7, Subchapter R) as published in the Federal Register on June 30, 1982, *47 FR 8574-28604*. OSMRE requested public comment on the adequacy of the Tribe's Plan, *47 FR 21274-21276* (May 18, 1982), and left the comment period open pending authorizing legislation.

On July 11, 1987 legislation was enacted authorizing the Crow, Hopi, and Navajo Tribes to obtain abandoned mine land reclamation program without first having to obtain approval of a Tribal surface mining regulatory program. In response to the newly enacted legislation, OSMRE reopened its review of the Crow Tribe's Plan. OSMRE reviewed the Plan in September 1987 and provided the Tribe suggestions for revising and updating the Plan to meet the requirements of SMCRA. The Tribe made a number of revisions to the Plan and on September 9, 1988, resubmitted a revised and updated Abandoned Mine Land Reclamation Plan. On the October 25, *1988 Federal Register*, *53 FR 42976-42977*, OSMRE announced the proposed rule and gave notice for closing the comment period. At the end of the comment period, November 25, 1988, some comments were received but no requests were received for a hearing or meetings. In response to minor internal comments from OSMRE the Crow Tribe revised its Plan in accordance with OSMRE's suggestions.

All of the events described above are documented in the Title IV Administrative Record of the Crow Tribe. The Administrative Record is available for public review at the OSMRE Casper Field Office in Wyoming, whose address is listed above.

The proposed AMLR Plan would provide authority for the Crow Tribe to conduct a reclamation program on Crow (Indian) lands as that term is defined in section 701(9) of SMCRA (see reference to "Indian lands" in 30 CFR 872.11(b)(3)). Indian lands occur within and outside traditional Reservation boundaries. Although there may be certain jurisdictional limitations to the Tribe's authority to undertake certain reclamation actions outside the Reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake its reclamation program without violating the jurisdictional rights of other parties.

## **III. ASSISTANT SECRETARY'S FINDINGS**

The Assistant Secretary finds that the Crow Tribe submitted a Plan for the reclamation of abandoned mine lands pursuant to the provisions of Pub. L. 100-71 and SMCRA. Based on a review of that submission, the Assistant Secretary also finds that:

1. Adequate provisions were made for public comment in the development of the Plan;
2. Views of other Federal agencies having an interest in the Plan were solicited and considered;
3. The Tribe has the legal authority, policies, and administrative structure necessary to carry out the proposed Plan;
4. The Plan meets all the requirements of Subchapter R of 30 CFR Chapter VII regulations and of SMCRA;
5. The Plan meets all the requirements of all applicable Tribal and Federal laws and regulations;
6. The Crow Tribe has not requested authority to assume emergency response authority as set forth in Section 410 of SMCRA.
7. The Crow Tribe AMLR Plan, including amendments thereto, addresses all Plan requirements specified in 30 CFR 884.13.

#### **IV. PUBLIC COMMENT**

The following comments on the Crow Tribe's Plan were received by OSMRE and considered by the Assistant Secretary in making the determination that the Crow Tribe AMLR Plan will be approved:

1. A comment was received questioning the definition of Crow Tribal lands and inquired to what extent the jurisdiction of the Crow Tribe AMLR Plan affect fee and allotted owners within the reservation boundaries.

OSMRE's responds that the proposed AMLR Plan would provide authority to the Crow Tribe to conduct reclamation activities on Crow lands as defined in the Crow Code at Section 701(a)(4). This AMLR Plan cannot, however, confer to the Tribe jurisdictional rights over lands beyond those encompassed in the definition of Indian Lands as found at Section 701(9) of SMCRA and as interpreted by its regulations.

According to the SMCRA definition, Indian lands may be located either within or outside the exterior boundaries of any Federal Indian reservation. With regard to lands located within the reservation boundaries, the SMCRA definition expressly provides that " \* \* \* all land, including mineral interests, within the exterior boundaries of any Federal Indian reservation \* \* \*" are Indian lands. Therefore, within the reservation boundaries, all lands, including mineral interests whether they represent individual Indian allotments or lands owned in fee, are Indian lands.

With regard to lands located outside the reservation boundaries, the SMCRA definition does not provide clear guidance as to whether individual Indian allotments and Tribal fee lands are to be considered Indian lands. This issue has been and still is a source of continuing litigation. In an effort to clarify some of the controversy surrounding the jurisdictional status under SMCRA of individual Indian allotments and Tribal fee lands, OSMRE is in the process of promulgating a final Indian lands rule which should provide further guidance on this issue.

Although there may be certain jurisdictional limitation to the Tribe's authority to undertake certain reclamation activities outside the reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake the reclamation program without violating the jurisdictional rights of other parties.

2. Another comment questioned if the Crow Tribe AMLR Plan defined the nature of experience necessary for staff members who will be administering the program.

OSMRE's and the Crow Tribe response is that experienced management personnel currently exist within the Crow Office of Reclamation (COR) of the Crow Tribe's Abandoned Mine Lands (AML) Program. It is the intention of OSMRE to provide AML funds to be used to provide adequate training to the COR staff members associated with the AML administrative and construction activities. In addition, the AMLR Plan requires that an independent Certified Public Accountant (CPA) participate and oversee all financial management activities to assure that accountability is maintained within the Crow Tribe AML Program.

3. A third comment raised a concern relative to what type of review and audit strategy would be implemented to assure that a competent program is administered.

OSMRE's response is that the Crow Tribe's AML activities will be reviewed periodically by OSMRE's oversight. The oversight activities within the Crow Tribe's financial management area will be complimented by a monthly status report prepared by the independent CPA responsible for reviewing the financial management system. In addition, the Crow Tribe's AML Program will fall within the purview of the Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments. The Circular requires that annual audits be performed by an independent auditor in accordance with generally accepted auditing standards.

OSMRE presented to the Tribe comments of an editorial nature and for consistency purposes requested minor modifications to the Plan. The Tribe subsequently made all the minor revisions suggested and resubmitted the affected pages of the Plan. The Assistant Secretary has determined that these revisions are insignificant in nature and accordingly require no further public comment.

## **V. ASSISTANT SECRETARY'S DECISION**

The Assistant Secretary for Land and Minerals Management, based on the above findings and review and consideration of public comments, is approving the Crow Tribe AMLR Plan under the provisions of 30 CFR 884.14, as submitted in 1982 and revised in September 1988. A new Section 756.17 of Part 756 is being added to 30 CFR Chapter VII, Subchapter E -- Indian Lands Program -- to implement this decision. This approval, however, does not encompass the emergency response authority set forth in section 410 of SMCRA.

## **VI. PROCEDURAL MATTERS**

### **1. Executive Order No. 12291 and the Regulatory Flexibility Act**

OSMRE examined this final rulemaking under Executive Order 12291 and has determined that on November 23, 1987, the OMB granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State reclamation plans or amendments. Therefore, the action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*), and the Department of Interior determined that this document will not have a significant economic effect on a substantial number of small entities. No burden will be imposed on entities operating in compliance with the Act.

### **2. Compliance With the National Environmental Policy Act**

Furthermore, OSMRE determined that the approval of State and Tribal AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

### **3. Paperwork Reduction Act of 1980**

This rule does not contain information collection requirements which require approval from the Office of Management and Budget under *44 U.S.C. 3507*.

### **Effective Date**

The final rule is effective upon date of publication. Under *5 U.S.C. 553(d)*, a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because: (1) The Crow Tribe is staffed and prepared to administer the abandoned mine land reclamation program, and (2) OSMRE wishes to expedite grant assistance to the Tribe to initiate reclamation work.

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

Indian lands, Abandoned Mine Land Reclamation Program.

James E. Carson, Deputy Assistant Secretary -- Land and Minerals Management.

Date: December 21, 1988.

**PART 756 -- INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS**

1. The Authority citation for Part 756 is revised to read as follows:

Authority: *30 U.S.C. 1201* et seq. and Pub. L. 100-71.

2. A new Section 756.17 is added to read as follows:

**SECTION 756.17 - APPROVAL OF THE CROW TRIBE'S ABANDONED MINE LAND RECLAMATION PLAN.**

The Crow Tribe's Abandoned Mine Land Reclamation Plan as submitted in 1982, and resubmitted in September, 1988 is approved. Copies of the approved Plan are available at the following locations:

Crow Tribal Council, Crow Office of Reclamation, P.O. Box 159, Crow Agency, Montana 59022.

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Room 2128, 100 East B Street, Casper, Wyoming 82601-1918.

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