

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Substituted Federal Enforcement of Portions of Missouri's Permanent Regulatory Program and Findings on the Status of Missouri's Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: On November 21, 1980, the Secretary of the Interior (the Secretary) conditionally approved the Missouri permanent regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On August 4, 2003, we, the Office of Surface Mining Reclamation and Enforcement (OSM), notified the Governor of Missouri that serious problems exist that are adversely affecting implementation and enforcement of the Missouri program. The Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) is the regulatory authority responsible for implementing and enforcing the Missouri program. We also told the Governor that because of the severity of these problems, we must immediately substitute Federal enforcement for portions of the Missouri program in the areas of inspection, enforcement, permitting, and bonding activities. Therefore, in accordance with the provisions of our regulations, we are instituting direct Federal enforcement for those portions of the Missouri program that the MLRP is not adequately implementing or enforcing.

Because we believe that it is preferable that States hold the primary responsibility for regulating surface coal mining and reclamation operations, we will provide the MLRP with assistance and guidance, as necessary, to resolve the issues and to regain full authority for those portions of the Missouri program that are not being adequately implemented or enforced. This document also sets forth our findings regarding this action and the status of those portions of the Missouri program that the MLRP will continue to administer.

EFFECTIVE DATE: August 22, 2003.

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SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

II. OSM's Findings on the Status of the Missouri Program

III. OSM's Decision

IV. OSM's Actions and State Remedial Actions

V. Procedural Determinations

I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, and 925.16.

The Abandoned Mine Land Reclamation (AMLR) Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. Section 405(c) of the Act also requires States to have an approved State regulatory program before the Secretary can approve a State program for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Missouri plan on January 29, 1982. You can find background information on the Missouri plan, including the Secretary's findings, the disposition of

comments, and the approval of the plan in the January 29, 1982, **Federal Register** (47 FR 4253). You can find later actions concerning the Missouri plan and amendments to the plan at 30 CFR 925.25.

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. In a **Federal Register** notice dated September 29, 1982 (47 FR 42729), we invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf. We approved Missouri's assumption of the AMLR emergency program on June 24, 1998. You can find background information, including our findings, the disposition of comments, and the approval of the Missouri AMLR emergency program in the June 24, 1998, **Federal Register** (63 FR 34277).

On June 19, 2003, the MLRP notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. HB 6 did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO-664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record No. MO-664.1). During the meeting, the MLRP made a presentation, including a series of slides, describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. The MLRP advised us that the moneys that are available for the regulatory program would only be used for bond forfeiture reclamation activities. Also, the MLRP advised us that the State Legislature appropriated funds for the AMLR program. In addition, the MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that it would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were funded by the State Legislature. The MLRP indicated that it