

would try to gain full program funding from the Missouri Legislature next year.

On July 11, 2003, the MLRP notified the Missouri coal operators that the Legislature had decided, through the budget process, to withhold funding and staffing for the Missouri program. The MLRP also notified the operators that after July 18, 2003, it would no longer be available for surface coal mining and reclamation regulatory issues (Administrative Record No. MO-664.2).

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls (Administrative Record No. MO-664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri continues to have adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed (Administrative Record No. MO-664.4). We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities.

All Missouri Administrative Record documents from MO-664 (June 19, 2003) through MO-664.4 (August 4, 2003) are being considered in this rulemaking.

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

On the basis of the record described above, we are making the following findings in accordance with sections 504 and 521(b) of SMCRA and 30 CFR 733.12.

A. Inspection and Enforcement

The MLRP currently has approximately 46 active and inactive mine sites to inspect. By State law, each active site requires four complete and eight partial inspections per year. Inactive sites require four complete inspections per year and sufficient

partial inspections to ensure compliance with the State program. On July 2, 2003, the MLRP notified us that effective July 18, 2003, existing regulatory program staff, including inspection and enforcement staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its inspection and enforcement provisions in the Code of State Regulations (CSR) at 10 CSR 40-8.030 or its civil and criminal penalty provisions at 10 CSR 40-8.040 and 40-8.045. Thus, the MLRP cannot effectively implement, maintain, or enforce the inspection and enforcement aspects of the approved Missouri program and has not demonstrated that it intends to administer these aspects of the program.

B. Permitting

The MLRP currently has one new permit and several permit revisions that are pending review for possible approval. On July 2, 2003, the MLRP notified us that effective July 18, 2003, existing regulatory program staff, including permitting staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its permitting provisions at 10 CSR 40-6.010 through 40-6.120. Thus, the MLRP cannot effectively implement, maintain, or enforce this permitting aspect of the approved Missouri program and has not demonstrated that it intends to administer this aspect of the program.

C. Bonding

1. Performance Bond Requirements

On July 2, 2003, the MLRP told us that effective July 18, 2003, existing regulatory program staff, with the exception of bond forfeiture reclamation staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its general bonding provisions at 10 CSR 40-7.011, bond release provisions at 10 CSR 40-7.021, or bond forfeiture provisions at 10 CSR 40-7.031, with the exception of 10 CSR 40-7.031(3) concerning bond forfeiture reclamation activities. Thus, the MLRP cannot effectively implement, maintain, or enforce all of the bonding aspects of the approved Missouri program and has not demonstrated that it intends to administer these aspects, with the exception of bond forfeiture reclamation activities.

2. Bond Forfeiture Reclamation Activities

On July 2, 2003, Missouri told us that the Missouri Legislature appropriated funds for bond forfeiture reclamation. Missouri indicated that it would use the funds to provide four full-time regulatory program staff to implement this activity. Missouri had approximately 33 sites with bonds forfeited and collected that were unreclaimed as of September 30, 2002. In our 2002 annual evaluation report for Missouri, we found that the State took several actions to improve the effectiveness of its bond forfeiture reclamation. The MLRP developed a work plan for completing reclamation at several forfeiture sites and instituted changes in its internal procedures for handling forfeiture projects. Therefore, we find that Missouri has the program staff necessary to implement, maintain, and enforce the bond forfeiture reclamation requirements of the approved Missouri program.

III. OSM's Decision

Having reviewed and considered all available information on the MLRP's capability and intent to implement, maintain, and enforce the Missouri program, we made the following determinations.

Missouri has indicated its intent to take steps to resolve the funding and staffing issues for the entire program. For this reason, we find that, at this time, withdrawing approval of Missouri's program is not justified.

We determined that the MLRP does have sufficient funding and staff to implement and maintain bond forfeiture reclamation activities. We also determined that the MLRP does not have adequate staff and resources to implement all other aspects of its program. To ensure that the adverse effects of surface mining are controlled as required under SMCRA, we must assume the responsibility for enforcement of parts of the Missouri program until the MLRP is able to administer all segments of its program.

We will directly enforce the inspection and enforcement provisions, the permitting provisions, and the bonding and insurance provisions, with the exception of bond forfeiture reclamation activities.

We have developed a process by which the MLRP could resume full authority for all aspects of the approved Missouri program. Failure by the MLRP to seek and obtain full authority for the Missouri program or failure by the MLRP to perform satisfactorily in the areas in which it retains enforcement