

By Direction of the Commission.

Donald S. Clark,

Secretary.

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-239-FOR]

#### Kentucky Abandoned Mine Land (AML) Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed amendment to the Kentucky abandoned mine land reclamation plan (the "Kentucky plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).

**EFFECTIVE DATE:** November 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Telephone: (859) 260-8400, Internet address: [bkovacic@osmre.gov](mailto:bkovacic@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Submission of the Proposed Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

#### I. Background on the Kentucky Program

The Abandoned Mine Land (AML) Reclamation Program was established by Title IV of SMCRA (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 of the Interior (Secretary) for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the

Kentucky plan on May 18, 1982. You can find background information on the Kentucky plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 18, 1982, **Federal Register** (47 FR 21435). You can find later actions concerning the Kentucky plan and amendments to the plan at 30 CFR 917.20 and 917.21.

#### II. Submission of the Proposed Amendment

By letter dated April 29, 2002 (Administrative Record No. KY-70), Kentucky sent us a proposed amendment to its plan under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky submitted the amendment to propose comprehensive changes to the plan. The formal amendment was preceded by two informal submissions in September 1997, and March 16, 2000 (Administrative Record No. KY-67). OSM reviewed the informal submissions and reported findings to Kentucky on March 30, 2001 (Administrative Record No. KY-69).

It should be noted that Kentucky's formal submission on April 29, 2002, did not identify the specific changes being proposed. We subsequently reviewed the 635-page amendment to determine what revisions were made from the original plan. We completed our review on December 19, 2002. The proposed rule was published in the February 11, 2003, **Federal Register** (68 FR 6838). Due to the voluminous nature of the submission, only major changes or those that may otherwise be of interest to the public were identified in the proposed rule notice. Any revisions not identified in the proposed rule concern nonsubstantive wording, organizational changes, or editorial changes. A complete description of the changes addressed in this rule notice can be found in the corresponding proposed rule, published in the February 11, 2003, **Federal Register** (68 FR 6838). However, we note that in some instances, the proposed rule described certain changes as "added sections" when, in fact, they consisted of language that had been moved from the OSM-approved Errata Sheet of the original 1981 Plan into the main text of the Plan.

#### III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive

wording or editorial changes. Except where otherwise indicated below, we find that these amendments do not change the objectives, scope or major policies followed by Kentucky in the conduct of its reclamation program.

#### *Acquisition, Management, and Disposal of Lands (p. 6-9)*

The subtitle "Management of Acquired Lands" has been added. This subtitle provides that land acquired "may be used for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired." It also establishes that users of acquired lands will be charged a use fee and that all fees collected "which are not used for the specific purpose of operating and maintaining improvement of the land will be deposited in the Abandoned Mine Reclamation Fund."

These proposed changes meet the criteria of the counterpart Federal regulations found at 30 CFR 879.14, which provide that "[l]and acquired under this part may be used for any lawful purpose that is consistent with the necessary reclamation activities." The State's proposed changes has this same requirement as well as the additional caveat that acquired land may be used for any lawful purpose not inconsistent with the post-reclamation uses for which it was acquired. Additionally, Kentucky's proposed change meets the Federal requirement, also at 30 CFR 879.14, that procedures for the collection of user fees provide that all user fees collected be deposited in the appropriate Abandoned Mine Reclamation Fund. Therefore, we are approving the proposed changes.

#### *Organization (p. 10-17)*

The subtitle "Environmental Scientist Principal" has been added. Chapter 10 of Kentucky's AML plan describes the title, class, duties, and minimum requirements of various employment positions within the organization. These provisions were previously approved by OSM because they meet the requirements of the counterpart Federal regulation found at 30 CFR 884.13(d). The addition of the description of the Environmental Scientist Principal position further clarifies the organization of the Plan and the responsibilities of individual employees. Therefore, we find that the proposed addition also meets the requirements of the counterpart Federal regulations, and we are approving it.