

Notice of Emergency Rule (cont'd)

The new rule is needed to allow involved people the right to enter property immediately, in the event of an AML emergency situation if owners will not give them consent. As matters presently stand, a thirty day notification period is required.

The status of acquiring this program at present is that we are in the process of submitting an amendment to the West Virginia Abandoned Mine Lands Reclamation Plan. We hope to acquire the program responsibilities by December of 1987. One of the stipulations that the Federal Office of Surface Mining (OSM) has given us to acquire the program is that this rule must be adopted.

OSM will not allow the State to assume the previously described program responsibilities unless these rules are adopted. The adoption of these rules are necessary to prevent substantial harm to the public interest in that it is in the West Virginia public interest for the State to assume the emergency reclamation program. The State will be able to more efficiently effect reclamation of coal mines abandoned prior to August 3, 1977 for which there is no continuing reclamation responsibility.

At present these emergency responsibilities rest with the Federal Office of Surface Mining, and any decision to categorize a problem as an emergency rests with the OSM's Eastern Field Office located in Pittsburgh. This can create an unacceptable time lag between discovery of a potential emergency situation and actual designation of money from the Abandoned Mine Land Fund to address the problem.

Specifically 38-2D-5.3 is being proposed to be amended. This submittal also contains the following "clean-up" revisions - West Virginia Department of Natural Resources to West Virginia Department of Energy, Director to Commissioner, Citation: WV Code Section 20-6(c) to WV Code Section 22-3, Federal Office of Surface Mining to Federal Office of Surface Mining Reclamation and Enforcement.



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October 13, 1987

KENNETH R. FAERBER
COMMISSIONER

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
Charleston, West Virginia 25305

Dear Mr. Secretary:

The attached proposed emergency rules (38-2D-5.3, d, e, f) have been reviewed and approved by myself and appropriate individuals in this agency.

These new rules are a mandatory requirement for the West Virginia Department of Energy to assume program responsibilities for emergency reclamation of problems created by coal mines abandoned prior to August 3, 1977. A more detailed explanation of this program is found on the attached filing notice. If the State assumes this program, emergency abandoned mine land problems will be addressed more efficiently.

If you need additional information regarding this matter, please contact me.

Sincerely,

Kenneth R. Faerber
Commissioner

KRF/rvw/ddc

Attachment

FILED
OCT 21 1987
DEPT. OF ENERGY

TITLE 38
LEGISLATIVE RULES
DEPARTMENT OF ENERGY
SERIES 2D
RULES AND
REGULATIONS
PERTAINING TO
ABANDONED MINE LAND RECLAMATION

38-2D-1. General.

1.1 Scope. Legislative regulations pertaining to abandoned mine land reclamation fund, objectives, responsibilities, funds, definitions, general reclamation requirements, eligibility, project evaluation, rights of entry, acquisition management and disposition of lands and water, procedures therefor and gifts, reclamation on private land, appraisals, liens, state reclamation plan and grants, audit, administrative procedures, costs and records.

- 1.2 Authority.-- W. Va. Code 22-1-15
- 1.3 Filing Date.-- October 21, 1987
- 1.4 Effective Date.--

38-2D-2 General Regulations.

2.1 Administration.

(a) Obtaining moneys from the source and using said moneys to administer the abandoned mine land program.

(b) Conduct the abandoned mine land reclamation program.

(c) Select the work to be performed with moneys from the fund including land and eligibility requirements, reclamation project objectives and standards, and project selection and evaluation factors.

(d) Entries to land or property under an approved reclamation plan for conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices, and for performing reclamation work.

(e) Acquire, manage, and dispose of eligible land and water for reclamation purposes under an approved reclamation plan. Administer collection of charges for the use of acquired land and disposition of the proceeds from the use or sale of acquired land.

(f) Reclamation on private land and establish procedures for recovery of the cost of reclamation activities conducted on privately owned land.

(g) Prepare and submit state reclamation plans to the Office-of-Surface-Mining Office of Surface Mining Reclamation and Enforcement for approval: and

(h) Receive grants for the reclamation of eligible land and water and other activities necessary to carry out the plan as approved.

2.2 Definitions.

(a) The abandoned mine reclamation fund, is a trust fund established on the books of the U. S. Treasury for the purpose of accumulating revenue designated for reclamation of abandoned mine lands and other activities authorized by Title 4 of the Act, Public Law 95-87.

(b) Allocate means the administrative identification in the records of the Office-of-Surface-Mining Office of Surface Mining Reclamation and Enforcement of moneys in the fund for a

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specific purpose; e.g., identification of moneys for exclusive use by West Virginia.

(c) Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

(d) Expended means that moneys have been paid out by West Virginia for work that has been accomplished or services rendered.

(e) Extreme danger means a condition that could reasonably be expected to cause substantial physical harm to persons property, or the environment and to which persons or improvements on real property are currently exposed.

(f) Left or abandoned in either an unreclaimed or inadequately reclaimed condition means lands and water:

(1) Where all mining processes ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, it has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and

(2) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

(g) OSM OSMRE means Office-of-Surface-Mining Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(h) Reclamation activities means restoration, reclamation, abatement, control, or prevention of adverse effects of mining.

(i) Reclamation plan means a plan submitted and approved under OSM OSMRE criteria.

(j) State abandoned mine reclamation fund or state fund, means a separate fund established by West Virginia for the purpose of accounting for moneys granted by OSM OSMRE under an approved state reclamation program and other moneys authorized by these regulations to be deposited in the state fund.

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(k) State reclamation program means a program established by West Virginia in accordance with this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

(l) WVDNR WVDOE means West-Virginia Department-of-Natural Resources West Virginia Department of Energy the agency as designated by the Governor of West Virginia to administer the State reclamation program and to receive and administer grants under this part.

38-2D-3 Abandoned Mine Reclamation Funds.

3.1 Objectives. The objectives of this part are to provide an overview of the Abandoned Mine Land Reclamation Program responsibilities and to provide detailed procedures for administration of the State Abandoned Mine Land Reclamation Funds.

3.2 Responsibilities.

(a) The West Virginia Department of Energy is responsible for administration of the State Abandoned Mine Reclamation Fund and Abandoned Mine Land Reclamation Program for the State of West Virginia.

(b) The West Virginia Department of Energy is responsible for:

(1) Conducting reclamation activities where work is performed by the Department using the funds available from the Office-of-Surface-Mining Office of Surface Mining Reclamation and Enforcement:

(2) Preparing and submitting a state reclamation plan to the Office-of-Surface-Mining Office of Surface Mining Reclamation and Enforcement for abandoned mine land reclamation program;

(3) Establishing a state abandoned mine reclamation fund for use in conducting the state reclamation program;

(4) Submitting annual applications for grants, including descriptions of proposed projects;

(5) Submitting requests to the Office-of-Surface Mining Office of Surface Mining Reclamation and Enforcement for work to be done on non coal mined lands;

(6) Submitting requests to the Office-of-Surface Mining Office of Surface Mining Reclamation and Enforcement for construction of specific facilities in communities impacted by coal development;

(7) Conducting reclamation work in accordance with grant agreements;

(8) Consulting with state and federal agencies as necessary and developing cooperative agreements with the

appropriate surface management agency when state or federal lands are considered for inclusion in a state reclamation program; and

(9) Submitting reports annually to the Office of Surface Mining Office of Surface Mining Reclamation and Enforcement describing progress on previously funded projects.

3.3 Abandoned Mine Reclamation Fund.

(a) Revenue to the fund shall include all sources collected by OSM OSMRE under Public Law 95-87.

(b) Moneys deposited in the fund and appropriated by the Congress shall be used for the following purpose:

(1) An amount not exceeding ten percent (10%) of the reclamation fees collected each quarter, up to a maximum of ten million dollars (\$10,000,000) each year, shall be used to finance the Small Operator Assistance Program.

(2) An amount equal to fifty percent (50%) of the reclamation fees collected from within West Virginia shall be allocated at the end of the fiscal year in which they are collected for use in West Virginia under an approved state reclamation plan. If West Virginia advised OSM OSMRE in writing that it does not intend to submit a state reclamation plan, no moneys shall be allocated to West Virginia. Amounts allocated to West Virginia that have not been granted to West Virginia within three (3) years from the date of allocation shall be available to the OSM OSMRE for other purposes. Amounts allocated and granted to West Virginia that have not been expended within three (3) years from the date of allocation may be withdrawn from West Virginia if the OSM OSMRE finds in writing:

(A) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(B) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(3) An amount not exceeding twenty percent (20%) of the moneys deposited in the fund annually may be transferred to the Secretary of Agriculture to carry out the Rural Lands Reclamation Program.

(4) All amounts not used for the above purposes shall be available to the OSM OSMRE for the following purposes:

(A) Acquisition, reclamation, and restoration of land and water resources adversely affected by past coal mining

(B) Filling of voids and sealing of tunnels, shafts, and entryways and the reclamation of the adverse surface impacts of underground or surface mining for other minerals and materials, including acquisition of land and water if required. This work shall be done only with those moneys allocated or available for allocation to a state under OSM OSMRE criteria and at the request of the Governor of the State of West Virginia.

(C) Studies of contract with public or private organizations to provide information, advice, or technical assistance, including research, development, and demonstration projects.

(D) Reclamation fee collection activities and other administrative expenses necessary to accomplish the purposes of Title 4 of the Act, Public Law 95-87.

(E) Reclamation grants to West Virginia in excess of amounts provided under paragraph b, (2) of this section.

(F) Cooperative projects to compile information required for the preparation of West Virginia reclamation projects specified. This work shall be done only with those moneys allocated or available for allocation to West Virginia and at the request of the Governor of West Virginia.

3.4 State Abandoned Mine Reclamation Funds.

(a) An account to be known as the West Virginia Abandoned Mine Reclamation Fund shall be established in West Virginia with an approved state reclamation plan. The West Virginia Fund shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the West Virginia fund shall include:

(1) Amounts granted to West Virginia by the office for purposes of conducting the approved West Virginia reclamation plan.

(2) Moneys collected by West Virginia from charges for uses of lands acquired or reclaimed with moneys from the West Virginia fund.

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(3) Moneys recovered by West Virginia through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the West Virginia fund.

(4) Moneys recovered by West Virginia from the sale of lands acquired with moneys from the West Virginia fund.

(5) Such other moneys as West Virginia decides should be deposited in the West Virginia fund for use in carrying out the West Virginia reclamation program.

(c) Moneys deposited in the West Virginia fund shall be used to carry out the West Virginia reclamation plan.

38-2D-4- General Reclamation Requirements.

4.1 Objectives. The objectives of this part are to establish conditions for the use of abandoned mine reclamation funds that are common to approved state reclamation programs and the reclamation activities conducted or funded directly by OSM OSMRE.

4.2 Applicability. The provisions of this part apply to all reclamation projects to be carried out with money from the West Virginia fund.

4.3 Eligible Lands and Water.

(a) Lands and water are eligible for reclamation activities if:

- (1) They were mined or affected by mining processes;
- (2) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
- (3) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government, or the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeiture is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the West Virginia fund may be sought.

(b) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities under a West Virginia reclamation program if:

- (1) The conditions of paragraph a of this section have been met;
- (2) The reclamation has been requested by the Governor of West Virginia;
- (3) All reclamation with respect to abandoned coal mine land and water has been accomplished with West Virginia or the reclamation is necessary for the protection of the public health and safety; and

(4) Moneys allocated to West Virginia are available for the work.

4.4 Reclamation Objectives and Priorities. Reclamation projects shall meet one (1) or more of the objectives stated in this section. The objectives are stated in the order of priority with the highest priority first. Preference among those projects competing for available resources shall be given to projects meeting higher priority objectives.

(a) Protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past coal mining practices.

(b) Protection of public health, safety, and general welfare from adverse effects of coal mining practices which do not constitute an extreme danger.

(c) Restoration of eligible land and water and the environment previously degraded by adverse effects of past coal mining practices, including measures for the consideration and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.

(d) Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques.

(e) Protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.

(f) Development of publicly owned land adversely affected by past coal mining practices, including land acquired for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(g) Protection of the public from hazards endangering life and property resulting from the adverse effects of past noncoal mining practices. However, upon the request of the Governor of West Virginia such work may be undertaken before the priorities related to past coal mining have been fulfilled.

(h) Protection of the public from hazards to health and safety from the adverse effects of past noncoal mining practices.

(i) Restoration of the environments degraded by the adverse effects of past noncoal mining.

(j) Construction of public facilities in communities impacted by coal development if the Governor of West Virginia certifies that all other objectives of the fund have been met, the available impact funds are inadequate for such construction and the OSM OSMRE concurs.

4.5 Reclamation Project Evaluation.

(a) Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this section. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under preceding section. Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

(1) The need for reclamation work to accomplish one (1) or more specific reclamation objectives as stated in preceding section.

(2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.

(3) The specific benefits or reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to:

(A) Protection of human life, health, or safety.

(B) Protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources.

(C) Protection of public or private property.

(D) Abatement of adverse social and economic impacts of past mining on persons or property including employment, income, and land values or uses, or assistance to

persons disabled, displaced or dislocated by past mining practices.

(E) Improvement of environmental conditions which may be considered to generally enhance the quality of human life.

(F) Improvement of the use of natural resources, including post-reclamation land uses which:

(i) Increase the productive capability of the land to be reclaimed.

(ii) Enhance the use of surrounding lands consistent with existing land use plans.

(iii) Provide for construction or enhancement of public facilities.

(iv) Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.

(G) Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.

(4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.

(5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.

(6) The availability of additional coal or other mineral or material resources within the project area which:

(A) Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

(B) Requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.

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(7) Remining or secondary recovery in conjunction with reclamation projects.

(A) Prior to approving proposed reclamation projects on land containing coal refuse piles, coal waste impoundments, or abandoned mine workings, the Department shall make a written determination as to whether coal or other mineral resources within such pile, impoundment or working is economical to mine during the reclamation project. In making this determination, the Department shall:

(i) Perform a mineral content analysis of the coal refuse or waste to determine economic feasibility of remining;

(ii) Identify any coal preparation, washing, and loading operations located within reasonable proximity of the site;

(iii) Consider the feasibility of re-entering the site to mine a seam of coal other than that which has been previously mined;

(iv) Identify persons with the capability of performing any remining or other coal recovery operation believed to be feasible; and

(v) Make a written statement as to its findings on its potential for resource recovery as a function of reclamation.

(B) If the Department determines that the coal or other mineral resource is not economical to mine, the Department may approve and proceed with the proposed reclamation project.

(C) If the Department determines that the coal or other mineral resource is or may be economical to mine, the Department shall decide whether to approve and proceed with the proposed reclamation project, or to defer reclamation until it can be accomplished during the process of future mining. In making its decision, the Department may consider any relevant information, including but not limited to the following:

(i) The desirability of completing the reclamation project within the timetable established by the Department;

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(ii) The effects of delaying reclamation until future mining might occur;

(iii) The resources required and available for the proposed reclamation project;

(iv) The quantity and quality of the coal or other mineral resource;

(v) The mine plans of permittees;

(vi) The likelihood and expected timetable of future mining and reclamation in conjunction therewith; and

(vii) Information received from the owners or lessees of the surface and mineral estates.

(D) Any decision under subsection (c) of this section to defer reclamation until future mining occurs may be reconsidered by the Department whenever the Department determines that reclamation should be accomplished sooner.

(E) If the Department approves a proposed reclamation project under subsection (b) or (c) of this section, the Department shall waive any requirement that the reclamation contractor obtain a permit to extract or remove coal from the reclamation area if, in the opinion of the Department, the waiver will facilitate the reclamation project. The Department may prescribe such limitations and conditions in the waiver as it deems appropriate, including but not limited to limitations and conditions as the quantity and disposition of coal, methods of recover, duration and area, to assure that coal recovery is restricted to only what is necessary and incidental to completion of the reclamation project. The Department may revoke the waiver at any time.

(F) In the reclamation of land containing coal refuse piles, coal waste impoundments, or abandoned mine workings, pursuant to an approved reclamation project, many techniques may be acceptable. If the mineral estate under the area to be reclaimed contains other coal seams that are currently uneconomical to mine, provisions should be made allowing the coal to be mined in the future. Methods of reclaiming land containing land coal refuse or waste and abandoned workings are:

(i) Removing the coal refuse or coal waste to an environmentally acceptable site;

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(i) Removing the coal refuse or coal waste to an environmentally acceptable site;

(ii) Burying the refuse or waste, layering the refuse material, sealing it with clay or other impervious material to prevent water infiltration and contamination, revegetation of the disposal area, and diversion of water from the reclaimed area;

(iii) In-place treatment of refuse pile to include: (1) Diversion ditching to divert water around coal refuse and/or waste; (2) Collecting and conveying drainage from the refuse pile for disposition in an approved water pollution control facility; (3) Treating the refuse with lime or using other material to prevent acid or other toxic drainage; or (4) Any combination of the above treatments.

(iv) Opening old underground mine workings to reclaim the area;

(v) Sealing underground mine entries to preclude polluted water discharged; or

(vi) Other appropriate methods approved by the Department.

(G) Where the refuse pile, impoundment, or abandoned mine workings contain recoverable coal, the Department may approve recovery and disposition of the coal by one (1) or more of the following ways:

(i) Coal may be temporarily stored on site for later sale and removal from the site within the time frame of the reclamation project, by the mineral owner;

(ii) If authorized by the owner of the mineral estate, the contractor performing reclamation may remove and sell the coal, thereby reducing the cost of reclamation and paying the mineral estate a royalty on the coal;

(iii) After notice to the owner of the mineral rights, the reclamation contractor may be required to remove and sell the coal, placing the receipts in escrow for the determination and equitable distribution of the proceeds, with the contractor collecting an appropriate fee for coal removed; or

(iv) The State may acquire the mineral rights in accordance with applicable State law.

(v) Other appropriate combinations of processing, collection and royalty payments.

(H) The Department may contract with a permittee to carry out reclamation projects to reclaim eligible lands and water which impact adversely on the permittee's disturbed area when such reclamation can be accomplished expeditiously and economically because of the proximity of the permittee's equipment and personnel to the proposed reclamation area. The Department may waive or modify any or all of the contract.

(8) The acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable state, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located.

(9) The probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed.

(b)--WVBNR WVDCE shall incorporate the evaluation factors stated in paragraph (a) into the procedures and processes for selecting projects in a manner which they deem appropriate. Additional factors may be developed to meet specific or unique needs. Specific values may be assigned to the factors stated in paragraph (a). All evaluation factors are subject to the plan approval process.

38-2D-5 Rights of Entry.

5.1 Consent to Entry. The WVBNR WVDOE shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or his authorized agency which, as a minimum, includes a legal description of the land to be entered, the projected nature of the work to be performed on the lands and any special conditions for entry. The statement shall not include any commitment by the WVBNR WVDOE to perform reclamation work nor to compensate the owner for entry.

5.2 Entry For Studies Or Exploration.

(a) The WVBNR WVDOE or its agents, employees, or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

(b) If the owner of the land to be entered under this section will not provide consent to entry, the WVBNR WVDOE shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one (1) or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least thirty (30) days before entry.

5.3 Entry and Consent to Reclaim.

(a) The WVBNR WVDOE or its agents, employees, or contractors, may enter upon land to perform reclamation activities if the consent of the owner cannot be obtained.

(b) Prior to entry under this section, the WVBNR WVDOE shall find in writing with supporting reasons that:

(1) Land or water resources have been adversely affected by past coal mining practices;

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available; or

(4) The owner will not give permission for the WVBNR WVDOE or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) The WVBNR WVDOE shall give notice of its intent to enter for purposes of conducting reclamation at least thirty (30) days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

(d) WVDOE, its agents, employees, and/or contractors shall have the right to immediately enter upon any land or property without the owner's consent where an emergency exists and any other property to have access to such property to do all things necessary or expedient to study, restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(e) The WVDOE shall make reasonable efforts relative to the emergency conditions that exist to obtain written consent from the owner of the land and/or property to be entered in advance of such entry. If the owner of the land to be entered under this section will not grant written consent to entry or is not known or readily available then written notice of such entry shall be provided the owner within a reasonable period and in a manner in

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accordance with the requirements set forth in Section 2D-5 of these regulations. Notice to any owner shall not be required prior to WVDOE, its agents, employees, and/or contractors entry upon any property for emergency reclamation activities.

(f) Prior to entry under this section, WVDOE shall make a written finding with supporting reasons that the situation qualifies as an emergency, which is defined as follows:

(1) An emergency exists constituting a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, and general welfare of people before the danger can be abated under normal program operating procedures.

(2) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

38-2D-6 Acquisition, Management and Disposition of Lands and Water.

6.1 Land Eligible for Acquisition.

(a) Land adversely affected by past coal mining practices may be acquired with moneys from State Fund if approved in advance by OSM OSMRE. Prior to approval of the acquisition of such land, the OSM OSMRE shall find in writing that acquisition is necessary for successful reclamation and that:

(1) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; and,

(2) Permanent facilities such as a mine drainage treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund by West Virginia if approved in advance by OSM OSMRE. Prior to approval of the acquisition of such sites, OSM OSMRE shall find in writing that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Land Reclamation Program or that public ownership is desirable to meet an emergency situation and prevent recurrence of adverse effects of past coal mining practices.

(c) Land.

(1) Land adversely affected by past mining practices may be acquired by WVDNR WVDOE if OSM OSMRE finds in writing that acquisition with moneys from the Fund is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for:

(A) Persons disabled as the result of employment in the mines or work incidental thereto;

(B) Persons displaced by acquisition of land under these regulations;

(C) Persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency for which ~~OSM~~ OSMRE has made the determination required by 1c.4;

(D) Persons dislocated as the result of natural disasters or catastrophic failures from any cause.

(2) The WVBNR WVDOE may acquire such land in the name of the State of West Virginia directly or through any department, agency, or instrumentality of the state or any public body or nonprofit organization designated by the WVBNR WVDOE.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entryways or reclaim surface impacts of underground or surface mines may be acquired by the WVBNR WVDOE if the ~~Director~~ Commissioner finds that acquisition is necessary.

(e) The WVBNR WVDOE acquiring land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land, mineral rights, or associated water rights may be acquired if:

(1) The customary practices and laws of the State will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary to the reclamation work planned or the post-reclamation use of the land; and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

6.2 Procedures for Acquisition.

(a) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser by the WVBNR WVDOE. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-agency Land Acquisition Conference 1973).

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The WVBNR WVDOE acquiring land under this part shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Solicitor of the Interior's regulations for Approval of Title to Lands and Condemnation, 1 SRM 6.1 et seq. and regulations of the Attorney General Under Order No. 440- 70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for Federal public purposes.

(e) Title to all interests in land acquired by WVBNR WVDOE shall be in the name of the State of West Virginia for the use and benefit of WVBNR WVDOE and shall be recorded in accordance with applicable State law and regulation.

6.3 Acceptance of Gifts of Land.

(a) The ~~Director~~ Commissioner, in accordance with Department of Justice procedures for the acquisition of real property, or the WVBNR WVDOE under an approved Reclamation Plan, may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

(b) Offers to make a gift of such land or interest in land shall be in writing and shall include:

(1) A statement of the interest which is being offered.

(2) A legal description of the land and a description of any improvements on it.

(3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.

(4) A statement that:

(A) The offerer is the record owner of the interest being offered.

(B) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.

(C) There are no adverse claims against the interest offered.

(D) There are no unredeemed tax deeds outstanding against the interest offered.

(E) There is no continuing responsibility by the operator under State or Federal statutory law for reclamation.

(5) An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Surface Mining Control and Reclamation Act of 1977." Title to donated land shall be in the name of the WVBNR WVDOE if the donation is to West Virginia.

6.4 Management of Acquired Lands.

(a) Land acquired under this part may be used pending disposition under 1e.5 for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired.

(b) Any user of land acquired under this part shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the WVBNR WVDOE for providing the benefit, whichever is appropriate. The WVBNR WVDOE may waive the fee if found in writing that such a waiver is in the public interest.

(c) All use fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund unless previously appropriated or otherwise authorized by the State legislature, for the specific purpose of operating and maintaining improvement of the land.

6.5 Disposition of Reclaimed Lands.

(a) Prior to the disposition of any land acquired under this Part, the WVBNR WVDOE shall:

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(1) Publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of four (4) successive weeks. The notice shall provide at least thirty (30) days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by any person.

(2) Hold a public hearing if requested as a result of the public notice. The WVBNR WVDOE may determine that a hearing is appropriate even if a request is not received. It shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located at least thirty (30) days before the hearing. All comments received at the hearing shall be recorded.

(3) Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, State, or Federal laws or regulations which apply.

(b) The WVBNR WVDOE may transfer, with approval of ESM OSMRE, the administrative responsibility for land acquired under this part to any agency or political subdivision of the State with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(1) The purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(2) That the administrative responsibility for the land will revert to the WVBNR WVDOE which acquired the land if, at any time in the future, the land is not used for the purposes specified.

(c) The WVBNR WVDOE may, with approval by ESM OSMRE, transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by ESM OSMRE. The WVBNR WVDOE which transfers land to OSMRE under this paragraph shall have a preference right to purchase such land from ESM OSMRE after reclamation is completed. The price to be paid by the WVBNR WVDOE shall be the fair market value of the land in its

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reclaimed condition less any portion of the land acquisition price paid by the WVBNR WVDOE.

(d)--OSM OSMRE may sell any land acquired and reclaimed under PL 95-87, Title IV except that acquired under 6.1 to the WVBNR WVDOE of local Government.

(1) Before reclaimed land is sold to the WVDOE, the purchaser shall state in writing the public purposes for which the land is to be used. The public purpose shall be considered valid if it is authorized as a public function by appropriate State law and is consistent with the conditions under which the land was acquired.

(2) The price to be paid by WVBNR WVDOE or local government shall be the fair market value of the land in its reclaimed condition. The land may be sold at a lower price negotiated by OSM OSMRE, but the price shall not be less than the cost to the United States for acquiring and reclaiming the land.

(3) The sales agreement for land sold under this paragraph shall state valid public purposes for which the land may be used. If, at any time in the future, the land is not used for the purposes stated, all right and title to or interest in such land shall revert to the United States.

(e)--OSM OSMRE may transfer or sell land acquired under 6.1, with or without monetary consideration, to the WVBNR WVDOE or political subdivision of West Virginia or to any person, firm, association or corporation.

(1) The transfer or sale shall not be made unless OSM OSMRE finds in writing that the transfer or sale is an integral and necessary element of an economically feasible plan for the project for which the land was acquired.

(2) The price at which land is sold under paragraph (e) of this section shall be negotiated between OSM OSMRE and the purchaser. The price may be below the fair market value if economically necessary for the success of the project.

(3) If the price at which the land is sold is below the fair market value of the land, or if the land is transferred at no cost to the recipient, the recipient shall agree in advance that no portion of the difference between the amount paid and the fair market value will accrue as a profit, or as an offset to other business losses, to any private person, firm, association or corporation.

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(4) The transfer or sales agreement for land disposed of under paragraph (e) of this section shall state the purpose for which the land was acquired and will be used. If, at any time in the future, the land is not used for the purposes stated, all right, title and interest in such land shall revert to the United States.

(f) The WVBNR WVDOE, with the approval of OSM OSMRE, may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, State, or Federal land use plans for the area in which the land is located.

(1) Land shall be sold by public sale only if it is found that retention by WVBNR WVDOE, or disposal under other paragraphs of this section, is not in the public interest.

(2) Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum:

(A) Publication of a notice once a week for four (4) weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale.

(B) Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(C) All moneys received from disposal of land under this part shall be deposited in the appropriate abandoned mine reclamation fund.

38-2D-7 Reclamation on Private Land.

7.1 Operations on Private Land. Reclamation activities may be carried out on private land if a consent to enter is obtained or if entry is required and made under 5.3.

(a) All moneys received from disposal of land under this part shall be deposited in the appropriate abandoned mine reclamation fund.

7.2 Appraisals.

(a) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained by the WVBNR WVDOE from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in the handbook on "Uniform Appraisal Standards for Federal Land Acquisition" (Interagency Land Acquisition Conference 1972). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related non emergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with paragraph (a) of this section and shall state the market value of the land as reclaimed.

(c) The landowner is to be provided with a statement of the increase in market value, an itemized statement of reclamation expenses and notice that a lien will or will not be filed in accordance with 7.3.

(d) Appraisals for privately owned land which fall under 7.3(a)(1), (2), or (3) may be obtained from either an independent, staff or other state or federal agency professional appraiser.

7.3 Liens

(a) The WVBNR WVDOE shall place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the appraisals obtained under 7.2, except as follows:

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(1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(2) The WVBNR WVDOE may waive the lien if the cost of filing it, including indirect costs to the WVBNR WVDOE, exceeds the increase in fair market value as a result of reclamation activities.

(3) The lien may be waived by the WVBNR WVDOE if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

(b) If a lien is to be filed, the WVBNR WVDOE shall, within six (6) months after completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments against land and for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained under 7.2. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(c) Within sixty (60) days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

7.4 Satisfaction of Liens.

(a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this paragraph.

(b) The WVBNR WVDOE when filing a lien on private property, shall maintain or renew it from time to time as may be required under State or local law.

(c) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate Abandoned Mine Reclamation Fund.

38-2D-8 State Reclamation Plans.

8.1 Objectives. The objectives of this part are to encourage maximum participation by West Virginia in the reclamation of eligible land and water through effective use of moneys in the abandoned mine reclamation fund and to:

(a) Establish uniform guidelines and procedures for preparation and submission of proposed state reclamation plans; and

(b) Insure that state reclamation plans meet the requirements of Title 4 of Public Law 95-87.

8.2 State Eligibility. West Virginia is eligible to submit a state reclamation plan if it has eligible land and water within its boundaries. West Virginia is eligible for a state reclamation plan to be approved by OSM OSMRE if it has an approved state regulatory program under Section 503 of Public Law 95-87 and meets the other requirements of this Chapter and the Act.

8.3 Activities Eligible for Inclusion in State Reclamation Plan. The state reclamation plan may provide for any or all of the following activities;

(a) Acquisition and reclamation and restoration of land and water resources adversely affected by past coal mining practices in accordance with the reclamation objectives.

(b) Acquisition and filling of voids and sealing tunnels, shafts and entryways and the reclamation of the adverse surface impacts of underground or surface mining for minerals and materials other than coal. The plan shall not, however, provide for reclamation of such land with moneys from the state fund until all reclamation with respect to coal mining has been accomplished or the Governor of West Virginia has requested and OSM OSMRE has determined that reclamation is necessary for the protection of the public health and safety.

(c) Acquisition of land which is an integral and necessary part of an economically feasible plan to construct or rehabilitate housing.

(d) Construction of specific public facilities in communities impacted by coal development. The plan shall not, however, provide for construction of such facilities with moneys

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from the state fund until the Governor of West Virginia has certified, and OSM OSMRE has concurred that:

(1) All reclamation with respect to past coal mining and with respect to the mining of other minerals and materials has been accomplished:

(2) The specific public facilities are required as a result of coal development; and

(3) Impact funds which may be available under the Federal Mineral Leasing Act of 1920, as amended, or the act of October 20, 1976, Public Law 94-565 are inadequate for such construction.

8.4 Content of Proposed State Reclamation Plan. WVBNR's WVDOE's state reclamation plan shall be submitted to OSM OSMRE in writing and shall include as a minimum the following information:

(a) The Governor of West Virginia shall designate the WVBNR WVDOE as the agency to administer the state reclamation program and to receive and administer grants.

(b) An opinion of the state's chief legal officer that the WVBNR WVDOE has the authority under state law to conduct the program in accordance with the requirements of Title 4 of the Act, the regulations of this subchapter and the state reclamation plan.

(c) A detailed description of the policies and procedures to be followed by the WVBNR WVDOE in conducting the reclamation program including, but not limited to:

(1) The goals and objectives of the state reclamation program;

(2) Reclamation project ranking and selection procedures;

(3) Policies regarding the coordination of reclamation work among the state reclamation program, the rural lands reclamation program administered by the Soil Conservation Service;

(4) Policies and procedures regarding land acquisition, management and disposal;

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(5) Policies and procedures regarding reclamation on private land;

(6) Policies and procedures regarding rights of entry;

(7) Policies regarding public participation and involvement in the state reclamation program.

(d) A detailed description of the administrative and management structure to be used in conducting the reclamation program including, but not limited to:

(1) A description of the organization of the WVBNR WVDOE and of its relationship to other state organizations or officials which will participate in conducting or managing the state reclamation program;

(2) A description of personnel staffing policies which will govern the assignment of personnel to the state reclamation program;

(3) A description of the purchasing and procurement systems to be used by the WVBNR WVDOE. Such systems shall meet the requirements of Office of Management and Budget Circular No. A-102, Attachment O;

(4) A description of the accounting system to be used by the WVBNR WVDOE including specific procedures for the operation of the state fund.

(e) A detailed description of the extent of public involvement in the preparation of the proposed state reclamation plan. At a minimum, the public shall be given an opportunity to inspect and comment on the proposed plan in the counties having eligible land and water within their boundaries before it is submitted for approval. The comments shall be recorded and considered.

(f) A general description of the reclamation activities to be conducted under the state reclamation plan, including as a minimum:

(1) A general description of the known or suspected eligible land and water within West Virginia which requires reclamation, including a map showing their general location at a scale of 1:250,000 or larger;

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(2) A general description of the problems occurring on the eligible land and water identified on the map and how the plan proposes to deal with each;

(3) A general description of how the land to be reclaimed and the proposed reclamation relates to the existing and planned uses of lands in surrounding areas;

(4) A table summarizing the quantities (e.g. acres, miles) of land and water affected by the problems identified under paragraph (f)(2) of this section and an estimate of the quantities proposed for reclamation during each year covered by the plan;

(5) A general narrative description of the social, economic and environmental conditions prevailing in the different geographic areas of West Virginia where reclamation is planned including, but not limited to:

(A) The economic base;

(B) The primary sociologic and demographic characteristics;

(C) Significant esthetic, historic or cultural, and recreational values;

(D) Hydrology, including any surface or underground water quality or quantity problems associated with past mining;

(E) Flora and fauna, including endangered or threatened plants, fish, or wildlife and their habitats;

(F) Underlying or adjacent beds of commercially mineable coal and other minerals and materials and projected methods of extraction; and

(G) Anticipated benefits from reclamation.

38-2D-9 State Reclamation Grants.

9.1 Objectives. The objectives of this part are to assure that adequate information is provided by WVBNR WVDOE to support its application for a grant and that funds granted to WVBNR WVDOE are handled in accordance with applicable federal laws and regulations.

9.2 Authority. WVBNR WVDOE may make application for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress and specifically allocated to West Virginia under Public Law 95- 87. OSM OSMRE is responsible for assuring that any required approvals are obtained before the grant is made.

9.3 Eligibility for Grants. WVBNR WVDOE is eligible for grants under this part if it has a state reclamation plan approved by OSM OSMRE.

9.4 Coverage and Amount of Grant.

(a) WVBNR WVDOE may use moneys granted under this part to administer the approved state reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover direct costs to the agency for services and materials obtained from other state agencies or local governments if approved by OSM OSMRE.

(b) Grants shall be approved for one hundred percent (100%) of the total agreed upon costs for reclamation of eligible land and water, construction of public facilities, program administration as specified in 9.13 and the incremental cost of filling voids and sealing tunnels with waste from mine waste piles reworked for conservation purposes.

(c) Grants shall be approved for up to ninety percent (90%) of the total agreed upon costs for acquisition of land or interest in land and any mineral or water rights associated with the land. Grants for proposed reclamation projects on these lands shall be approved in accordance with Section 9.4b.

9.5 Grant Period. The grant funding period shall not exceed three (3) years. However, the grant period for administrative costs of the WVBNR WVDOE shall be for one (1) year.

9.6 Submission of Estimated Annual Budgets. The WVBNR WVDOE shall cooperate with ESM OSMRE in the development of advance budget estimates for use by ESM OSMRE in the preparation of request for appropriation of moneys from the fund. The schedule for such estimates shall be determined by the ESM OSMRE on an annual basis.

9.7 Grant Application Procedures.

(a) The WVBNR WVDOE shall submit its grant application to ESM OSMRE no later than July 1 for funding during the fiscal year commencing October 1. An application for funding during the fiscal year in which the state reclamation plan is approved may be submitted with the proposed plan for approval when the plan is approved. Office of Management and Budget Circular No. A-95 notification and review requirements shall be fulfilled for each project included in the grant application, unless otherwise waived.

(b) The WVBNR WVDOE shall use the application format for Federal Assistance Application for Construction Programs and other procedures specified in Office of Management and Budget Circular No. A-102 Attachment M. A preapplication is not required if the total of the grant requested is within the amounts of WVBNR WVDOE.

(1) Part 1 of the application shall be a single standard form 424 covering all administrative costs and projects included in the grant application. Section 4 of the form shall include a listing of the individual projects to be funded. Those individual projects that are part of the multi-phased project should include information relative to the scope, magnitude and total costs of the entire project proposed for funding. Program administration cost may be considered as program administration costs.

(2) Parts 2, 3, and 4 of the application shall be completed for each individual project in accordance with Office of Management and Budget Circular No. A-102.

(A) Complete copies of plans and specifications for projects shall not be required before the grant is approved. ESM OSMRE may review such plans and specifications in the agency office or on the project site.

(B) A description of the actual or planned public involvement in the decision to undertake the work, in the planning of the reclamation activities, and in the decision on

how the land will be used after reclamation shall be included in Part 4 of the application.

(c) OSM OSMRE shall notify the WVBNR WVDOE of the status of the application within thirty (30) days after receipt of a complete application. If the application is not approved, OSM OSMRE shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The WVBNR WVDOE may resubmit the application or appropriate revised portions of the application.

9.8 Audit. The WVBNR WVDOE shall arrange for independent audit at least once every two (2) years, pursuant to the requirements of Office of Management and Budget Circular No. A-102. The audit will be performed in accordance with the standards for audit of Governmental Organizations, Programs, Activities, Functions published by the Comptroller General of the United States and audit guides provided by the Department of the Interior.

9.9 Administrative Procedures. The WVBNR WVDOE shall follow administrative procedures governing accounting, payment, property and related requirements contained in Office of Management and Budget Circular No. A-102 and the State of West Virginia.

9.10 Allowable Costs.

(a) Reclamation project costs which shall be allowed include actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs and up to ninety percent (90%) of the costs of the acquisition of land.

(b) OSM OSMRE shall determine costs which may be reimbursed according to Federal Management Circular 74-4.

(c) Costs must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement.

(d) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.

(e) Costs must not be allocated or included as a cost of any other federally assisted program.

9.11 Financial Management.

(a) The WVBNR WVDOE shall account for grant funds in accordance with requirements of Office of Management and Budget Circular No. A-102. WVBNR WVDOE shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The WVBNR WVDOE shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The WVBNR WVDOE shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter of credit method, the WVBNR WVDOE shall make drawdowns from the United States Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The WVBNR WVDOE shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

9.12 Reports.

(a) The WVBNR WVDOE shall, for each grant made under this part, submit annually to OSM OSMRE a financial status report in accordance with Office of Management and Budget Circular No. A-102, Attachment H.

(b) The WVBNR WVDOE shall, in each year after the first grant, submit to OSM OSMRE, no later than September 1, a performance report prepared according to Office of Management and Budget Circular No. A-102, Attachment H. The report shall include:

(1) For each project previously funded and completed during the year, a brief description of the project and the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed, and a summary of achieved benefits.

(2) For each project previously funded but not yet completed, a brief description of the project and the status of reclamation work, the project location, landowner's name, and a summary of expected benefits.

(3) For any land previously acquired but not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land.

(4) For any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location, and any revenues derived from the use of the facility.

(c) The reports required under this section shall reflect revenue deposited in the State Abandoned Mine Reclamation Fund.

9.13 Records.

(a) The WVBNR WVDOE shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102, Attachment C. This includes, but is not limited to books, documents, maps and other evidence and accounting procedures and practices, sufficient to reflect properly:

(1) The amount and disposition by the WVBNR WVDOE of all assistance received for the program;

(2) The total direct and indirect costs of the program for which the grant was awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps and records which are pertinent to a specific grant award.

*10 TITLE 38 - LEGISLATIVE RULES DEPARTMENT OF ENERGY
SERIES 2D - RULES AND REGULATIONS PERTAINING
TO ABANDONED MINE LAND RECLAMATION

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help we can get)

December 2, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Energy

RULE: Amendments to Series 2D, Abandoned Mine Reclamation

DATE FILED AS AN EMERGENCY RULE: October 21, 1987

DECISION NO. 28-87

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Dec 2, 1987
ADMINISTRATIVE LAW DIVISION

KEN HECHLER
Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision (ERD 27-87)

AGENCY: Department of Energy
RULE: Amendments to Series 2D, Abandoned Mine Reclamation
DATE FILED AS AN EMERGENCY RULE: October 21, 1987

- par. 1 The Department of Energy (DNR) has filed emergency amendments to the above rule.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The DOE has filed this emergency rule with supporting documents with the Secretary of State on October 21, 1987, and with the LRMRC on October 23, 1987.
- par. 7 It is the determination of the Secretary of State that the DOE has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §22-3-9(a) reads:

(a) The commissioner is authorized to engage in any work and to do all things necessary and proper, including promulgation of rules and regulations, to implement and administer the provisions of this article.

par. 9 It is the determination of the Secretary of State that the DOE has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the DOE are as follows:

The reasoning behind the rule change is that this agency is in the process of acquiring emergency abandoned mine land reclamation responsibilities from the Federal Office of Surface Mining. This program would allow the State to expend money from the Abandoned Mine Land Fund on emergency problems created by abandoned coal mines without going through lengthy grant submittal process. For example, if an abandoned refuse pile slide onto a highway, blocking it, the State would be able to immediately have access to AML money to re-open the road and would then have "breathing room" to apply for AML money through the grant process to reclaim the entire refuse pile.

The new rule is needed to allow involved people the right to enter property immediately, in the event of an AML emergency situation if owners will not give them consent. As matters presently stand, a thirty day notification period is required.

The status of acquiring this program at present is that we are in the process of submitting an amendment to the West Virginia Abandoned Mine Lands Reclamation Plan. We hope to acquire the program responsibilities by December of 1987. One of the stipulations that the Federal Office of Surface Mining (OSM) has given us to acquire the program is that this rule must be adopted.

OSM will not allow the State to assume the previously described program responsibilities unless these rules are adopted. The adoption of these rules are necessary to prevent substantial harm to the public interest in that it is in the West Virginia public interest for the State to assume the emergency reclamation program. The State will be able to more efficiently effect reclamation of coal mines abandoned prior to August 3, 1977 for which there is no continuing reclamation responsibility.

At present these emergency responsibilities rest with the Federal Office of Surface Mining, and any decision to categorize a problem as an emergency rests with the OSM's Eastern Field Office located in Pittsburgh. This can create an unacceptable time lag between discovery of a potential emergency situation and actual designation of money from the Abandoned Mine Land Fund to address the problem

Specifically 38-2D-5.3 is being proposed to be amended. This submittal also contains the following "clean-up" revisions - West Virginia Department of Natural Resources to West Virginia Department of Energy, Director to Commission, Citation: WV Code Section 20-6(c) to WV Code Section 22-3, Federal Office of Surface Mining to Federal Office of Surface Mining Reclamation and Enforcement.

par. 13 It is the determination of the Secretary of State that this proposal qualifies as an emergency under the "substantial harm" definition.

par. 14 This decision shall be cited as Emergency Rule Decision 28-87 or ERD 28-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the DOE, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____

THIS DATE Dec 2, 1987
ADMINISTRATIVE LAW DIVISION