

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

Mining + Reclamation

AGENCY: WV Division of Environmental Protection TITLE NUMBER: 38

RULE TYPE: Legislative; CITE AUTHORITY: _____

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20

TITLE OF RULE BEING AMENDED: Rules and Regulations Relating to
Abandoned Lands and Reclamation

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: N/A

TITLE OF RULE BEING PROPOSED: N/A

DATE OF PUBLIC HEARING: August 15, 1994 TIME: 9 a.m.

LOCATION OF PUBLIC HEARING: Division of Environmental Protection
Directors' Conference Room
10 McJunkin Road
Nitro, WV 25143

COMMENTS LIMITED TO: ORAL _____, WRITTEN _____, BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Div. of Environmental
Protection
10 McJunkin Road
Nitro, WV 25143

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Roger T. Hall

Roger T. Hall

8.00

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations Relating to Abandoned Mine Land Reclamation

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency WV Division of Environmental Protection

Address # 10 McJunkin Road

Nitro WV, 25143

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
ESTIMATED TOTAL COST	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-
CURRENT EXPENSE	0	0	0	0	-0-
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

The Amendments to the existing rule will not increase or decrease revenue to the state.

3. Objectives of these rules:

Technical clean-up Amendment in response to passage of H.B. 4065 and to confirm with Federal requirements.

Rule Title: Rules and Regulations Relating to Abandoned Mine Lands & Reclamation

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

none

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

none

C. Economic Impact on Citizens/Public at Large.

none

Date: July 13, 1994

Signature of Agency Head or Authorized Representative

Roger T. Mall

BRIEFING DOCUMENT - RULES AND POLICY

BUREAU OF ENVIRONMENT DIVISION OF ENVIRONMENTAL PROTECTION

July 13, 1994

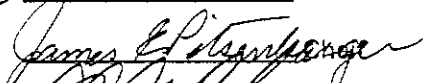
- A. AUTHORITY:** West Virginia Code: § 22-1-3 and § 22-1-3a
- B. SCOPE** This filing contains amendments to the existing rules relating to the Abandoned Mine Land Reclamation program. The amendments are primarily technical clean-up in nature. One substantive amendment reflects changes in the procedures for grant applications, which conform to new federal requirements.
- C. JUSTIFICATION** The amendments contained herein arise from revisions to state environmental law (HB - 4065).
- D. CSR CITE** CSR 38-2D
- E. FEDERAL CITE** 30 CFR Subchapter R
- The federal counterpart regulation sets forth procedures to be followed by the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) in administering the Abandoned Mine Land Reclamation program to the States. It also establishes some general procedures to be followed by eligible states to conform to federal guidelines. Development of specific criteria and procedures are left to the State, but with federal oversight. Because of their general nature, the federal counterpart regulations do not lend themselves well to incorporation by reference.
- The amendments contained herein are no more or no less stringent than the federal counterpart regulation.
- F. TIME SCHEDULE** July 13, 1994 File with Secretary of State - Public Notice

August 15, 1994 File Agency approved rule with Legislative Rule Making Review Committee.

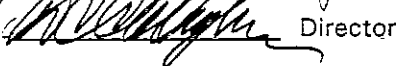
Prepared By:



Approved By:



Authorized By:

 Director

Office Of: Abandoned Mine Land Reclamation
10 McJunkin Road
Nitro, W.VA. 25143
304 - 759-0515

TITLE 38
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 2D
RULES AND REGULATIONS PERTAINING TO
ABANDONED MINE LANDS AND RECLAMATION

FILED

JUL 13 3 26 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

38-2D-1. General.

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

1.2 Filing Date

1.3 Effective Date.

1.4 Authority W. Va. Code 22-1-3 and 22-1-3a

1.5 Incorporation by Reference. Federal Counterpart Regulations - This rule-making consists of a number of amendments to existing State rules which are either of a technical cleanup nature arising from recodification of State environmental law (HB4065), or as styled to satisfy required state program revisions arising from federal oversight. The cleanup amendments have no federal counterpart regulations. Most, if not all, of the required program revision amendments have federal counterpart regulations. However, the federal regulations generally only set criteria whereby the State is to develop specific provisions which are "as effective as" the federal counterpart regulation. Therefore, the nature of the federal regulations do not lend themselves well to incorporation by reference. Where the federal regulation requires the State to develop a rule in more specific detail the amendments are structured to be as effective as the federal counterpart regulation.

1.6 Determination of Stringency. Federal Counterpart Regulation - this rule-making consists of a number of amendments to the existing rule. The amendments are either of a technical cleanup nature arising from recodification of environmental law (HB4065), or are styled to satisfy required state program revisions arising from federal oversight. The technical cleanup amendments relate only to the West Virginia Code 22-2-1 et seq. The required program revision amendments are no more nor less stringent than the federal counterpart regulations.

1.7 Constitution Taking Determination. This rule-making consists of a number of amendments to the existing rule. The amendemts are either of a technical cleanup nature arising from recodification of environmental law (HB4065), or the styled to satisfy required state program revvisions arising from federal oversight. The technical amendents relate only to the West Virginia Code 22-2-1 et seq. The Director has determined that none of the amendments to the existing rule constitutes a taking of real property.

38-2D-2. General Regulations.

2.1. Definitions.

(a) "The abandoned mine reclamation fund" means 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 Reclamation and Enforcement of moneys in the fund for a 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 land and water.

1.) Where all mining process 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) "OSMRE" means 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 OSMRE criteria.

(j) "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.

(k) "~~WVDEP~~^{WVDOE}" means the West Virginia Division of Environmental Protection 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 section are to provide an overview of the Abandoned Mine Land Reclamation Program responsibilities and to provide detailed procedures for administration of the Abandoned Mine Reclamation Fund.

3.2. Responsibilities.

(a) The Division of Environmental Protection Department of Natural Resources is responsible for administration of the Abandoned Mine Reclamation Fund and Abandoned Mine Land Reclamation Program for the State of West Virginia.

(b) The West Virginia Division of Environmental Protection Department of Natural Resources is responsible for:

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

(2) Preparing and submitting a state reclamation plan to the Office of Surface Mining Reclamation and Enforcement for the Abandoned Mine Land Reclamation Program;

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

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

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

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

(7) Consulting with state and federal agencies as necessary and developing cooperative agreements with the appropriate surface management agency state or federal lands are considered for inclusion in a state reclamation program; and

(8) Submitting reports annually to the 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 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 or use in West Virginia under an approved state reclamation plan.

(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 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 seating 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 OSMRE criteria and at

the request of the Governor of the State of West Virginia.

(C) Contract for studies 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 IV 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 plans, as 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.

38-2D-4. General Reclamation Requirements.

4.1. Objectives. - The objectives of this section are to establish conditions for the use of the Abandoned Mine Reclamation Fund that are common to approved state reclamation programs and the reclamation activities conducted or funded directly by OSMRE

4.2. Applicability. - The provisions of this section apply to all reclamation projects to be carried out with money from the 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 forfeited 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 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 within 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 past 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 purpose, 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 environment 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 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 the 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 the 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 benefit, 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 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.

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

(C) If the Division~~Department~~ determines that the coal or other mineral resource is or may be economical to mine, the Division~~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 Division~~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 Division~~Department~~:

(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 DivisionDepartment whenever the DivisionDepartment determines that reclamation should be accomplished sooner.

(E) If the DivisionDepartment approves a proposed reclamation project under subsection (b) or (c) of this section, the DivisionDepartment 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 DivisionDepartment the waiver will facilitate the reclamation project. The DivisionDepartment 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 recovery, duration and area, to assure that coal recovery is restricted to only what is necessary and incidental to completion of the reclamation project. The DivisionDepartment 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;

(ii) Burying the refuse or waste, laying 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 the refuse pile may 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 Division~~Department~~.

(G) Where the refuse pile, impoundment, or abandoned mine workings contains recoverable coal, the Division~~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;

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

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

(H) The Division~~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 Division~~Department~~ may waive or modify any or all of the contract.

(8) The acceptability 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 postreclamation management, maintenance and control of the area consistent with the reclamation completed.

(b) WVDEPWVDOE shall incorporate the evaluation factors stated in subsection (a) of this section 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 subsection (a) of this section. All evaluation factors are subject to the plan approval process.

38-2D-5. Rights Of Entry.

5.1. Consent to entry. -- The WVDEPWVDOE 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 agent 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 land and any special conditions for entry. The statement shall not include any commitment by the WVDEPWVDOE to perform reclamation work not to compensate the owner for entry.

5.2. Entry for studies or exploration.

(a) The WVDEPWVDOE 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 WVDEPWVDOE will 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 WVDEPWVDOE 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 WVDEPWVDOE 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 WVDEPWVDOE 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 WVDEPWVDOE 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) WVDEPWVDOE, 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 WVDEPWVDOE 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 accordance with the requirements set forth in section 2D-5 of these regulations. Notice to any owner shall not be required prior to the entry of the WVDEP, its agents, employees, and/or contractors upon any property for emergency reclamation activities.

(f) Prior to entry under this section, WVDEP 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 the public 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 past coal mining practices.

(g) Such entry shall be construed as an exercise of the police power of the State for the protection of the public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereof. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of interest in such premises for any alleged damages by virtue of such entry: provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

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

6.1. Land eligible for acquisition.

(a) Land adversely affected by past coal mining practices may be acquired with moneys from the Abandoned Mine Reclamation Fund if approved in advance by OSMRE. Prior to approval of the acquisition of such land, the 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 OSMRE. Prior to approval of the acquisition of such sites, OSMRE shall find 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 adversely affected by past mining practices may be acquired by WVDEP ~~WVDOE~~ if 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:

(1) Persons disabled as the result of employment in the mines or work incidental thereto,

(2) Persons displaced by acquisition of land under these regulations,

(3) Persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency for which OSMRE has made the determination.

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

(d) The WVDEP ~~WVDOE~~ may acquire such land in the name of the State of West Virginia directly or through any Division~~Department~~, agency, or instrumentality of the state or any public body or nonprofit organization designated by the WVDEP ~~WVDOE~~.

(e) Land or interest 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 WVDEP ~~WVDOE~~ if the Director finds that acquisition is necessary.

(f) The WVDEP ~~WVDOE~~ acquiring land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned. 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 WVDEPWVDOE. 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 WVDEPWVDOE 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 SR.M 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 WVDEPWVDOE shall be in the name of the State of West Virginia for the use and benefit of WVDEPWVDOE and shall be recorded in accordance with applicable State law and regulation.

6.3. Acceptance of gifts of land.

(a) The Director, ~~in accordance with Department of Justice procedures for the acquisition of real property, or the 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 WVDEP ~~WVDOE~~ if the donation is to West Virginia.

6.4. Management of acquired lands.

(a) Land acquired under this section may be used pending disposition under 6.5 of this section 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 user 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 WVDEP WVDOE for providing the benefit, whichever is appropriate. The WVDEPWVDOE 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 WVDEPWVDOE shall:

(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 WVDEPWVDOE 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 regulation which apply.

(b) The WVDEPWVDOE may transfer, with approval of OSMRE, the administrative responsibility and 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 WVDEPWVDOE which acquired the land if, at any time in the future, the land is not used for the purposes specified.

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

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

(1) Before reclaimed land is sold to the WVDEPWVDOE, 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 WVDEPWVDOE 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 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) OSMRE may transfer or sell land acquired under 6.1, with or without monetary consideration, to the WVDEPWVDOE for political subdivision of West Virginia or to any person, firm, association or corporation.

(1) The transfer or sale shall not be made unless 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 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.

(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 rights, title and interest in such land shall revert to the United States.

(f) The WVDEPWVDOE, with the approval of 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 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 section 5,3 of this rule.

(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 WVDEPWVDOE

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 Requisition" (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 of this section.

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

7.3 Liens

(a) The ~~WVDEPWVDOE~~ 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 of this section, except as follows:

(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 ~~WVDEPWVDOE~~ may waive the lien if the cost of filing it, including indirect costs to the ~~WVDEPWVDOE~~, exceeds the increase in fair market value as a result of reclamation activities.

(3) The lien may be waived by the ~~WVDEPWVDOE~~ if the reclamation work performed on private land primarily benefits the 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 WVDEPWVDOE 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 of this section. 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 WVDEPWVDOE 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 Grants.

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

8.2. Authority. -- WVDEPWVDOE may make application for grants under this section 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. OSMRE is responsible for assuring that any required approvals are obtained before the grant is made.

8.3. Eligibility for grants. -- WVDEPWVDOE is eligible for grants under this section if it has a state reclamation plan approved by OSMRE.

8.4. Coverage and amount of grant.

(a) WVDEPWVDOE may use moneys granted under this section 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 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 8.13 of this section and the incremental cost of filling voids and seating 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 8.4(b) of this section.

8.5. Grant period. -- The grant funding period may not exceed three (3) years. However the grant period for administrative costs of the WVDEPWVDOE may be for one (1) year.

8.6. Submission of estimated annual budgets. - The WVDEPWVDOE shall cooperate with OSMRE in the development of advance budget estimates for use by OSMRE in the preparation of request for appropriation of moneys from the fund. The schedule for such estimates shall be determined by the OSMRE on an annual basis.

8.7. Grant application procedures.

(a) The WVDEPWVDOE shall submit its grant application to 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.

~~(1) Part I of the application shall be a single standard form 424 covering all administrative costs and project costs included in the the grant application. Section 4 of the form shall include a listing of the individual projects to be funded. Those 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. OSMRE may review such plans and specifications in its 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.~~

(b) The WVDEP 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.

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

8.8. Audit. -- The WVDEP WVDOE shall arrange for an 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.

8.9. Administrative procedures. - The WVDEP 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.

8.10. 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) 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.

8.11. Financial management.

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

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

(c) The WVDEPWVDOE 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 WVDEPWVDOE 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 WVDEPWVDOE shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendation.

8.12. Reports.

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

(b) The WVDEP WVDOE shall, in each year after the first grant, submit to 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 Reclamation Fund.

8.13. Records.

(a) The WVDEP ~~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 WVDEP~~WVDOE~~ of all assistance received for the program; and

(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 book; documents, papers, maps and records which are pertinent to a specific grant award.