

FEDERAL REGISTER: 49 FR 31412 (August 7, 1984)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Part 870

Abandoned Mine Reclamation Fund; Fee Payment Responsibility

ACTION: Notice of clarification.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is providing further guidance regarding fee collection requirements for the Abandoned Mine Reclamation Fund. The notice clarifies which persons are responsible for payment of reclamation fees.

FOR FURTHER INFORMATION CONTACT: Dr. Phyllis G. Thompson, Chief, Abandoned Mine Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Room 5401-L, Washington, D.C. 20240, Telephone (202) 343-7937.

SUPPLEMENTARY INFORMATION:

On July 5, 1984, the Office of Surface Mining (OSM) published regulations (*49 FR 27493*) implementing certain debt collection and record keeping requirements relating to payment of Abandoned Mine Reclamation Fees. Section 402 of the Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201* et seq. (SMCRA), requires that all operators pay a reclamation fee based on coal produced, and section 701(13) defines "operator" as the person * * * engaged in coal mining who removes * * * the coal. OSM recognizes, however, that in light of the number and variety of business arrangements employed in the coal industry, the term operator is not limited to the party which actually removes the coal. Congress intended the burden of fee payment to fall upon the person or persons who stand to benefit directly from the sale, transfer, or use of coal. This intent will continue to guide the office in making decisions as to who is liable for the fee. The identification will continue to be made in light of the realities of the business world and will not necessarily turn solely on a literal interpretation of the word "removes."

The preamble to the final rules stated that OSM would use the operator-mine identification numbers currently assigned by the Mine Safety and Health Administration (MSHA) as an identifier for persons or entities engaged in coal production under SMCRA. OSM wishes to clarify that the MSHA identification number is assigned by MSHA for purposes of the Federal Mine Safety and Health Act of 1977. That number will not necessarily identify every entity responsible for payment of Abandoned Mine Land (AML) fees under SMCRA. OSM will use the MSHA identification number as an administrative and record maintenance tool. This system will aid OSM in making an initial identification of parties involved in removal of coal, either as a contract operator or as owner of the mineral exercising control over its removal. OSM's use of the MSHA operator-mine identification number should not be construed as an intent to consider the entity listed on the OSM-1 form as solely responsible for payment of AML fees.

OSM will consider as responsible for payment of AML fees, any or all of the following persons: The person or entity who stands to benefit directly from the sale, transfer or use of the coal; the MSHA-identified operator; or a person or entity having a contract with the MSHA-identified operator. This list is not all-inclusive. Moreover, it should be recognized that OSM will not be bound by private arrangements. Thus OSM will continue to pursue a policy of joint and several liability of involved parties for recovery of AML fees where appropriate.

Dated: July 30, 1984.

J. Lisle Reed, Deputy Under Secretary.

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