

**FEDERAL REGISTER: 53 FR 24262 (June 28, 1988)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 756

Approval of the Abandoned Mine Land Reclamation Plan of the Hopi Tribe  
Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA)

ACTION: Final rule.

**SUMMARY:** In 1982, the Hopi Tribe (the Tribe) submitted its proposed Abandoned Mine Land Reclamation Plan (the Plan) to OSMRE under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSMRE published notice of its receipt of the draft Plan and requested public comments. The comment period remained open, but no further action was taken at that time due to the lack of authorizing legislation under section 710 of SMCRA.

On July 11, 1987, legislation was enacted that authorized the Crow, Navajo and Hopi Tribes to adopt abandoned mine land reclamation (AMLR) programs without prior approval of Tribal surface mining regulatory programs. OSMRE reopened the comment period for consideration of adequacy of the Hopi Tribe's Plan. No public comments on the Hopi Plan were received. After consideration of revisions the Tribe made to the Plan in response to OSMRE's review comments, the Assistant Secretary for Land and Minerals Management of the Department of the Interior has determined that the Hopi Tribe's Abandoned Mine Land Reclamation Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Hopi Plan.

EFFECTIVE DATE: June 28, 1988.

ADDRESSES: Copies of the full text of the Hopi Plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, S.W., Suite 310, Albuquerque, NM 87102

Hopi Abandoned Mine Land Program, The Hopi Tribe, Hopi Tribal Complex, Honahni Building, Kykotsmovi, AZ 86039

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director of the Albuquerque Field Office, at (505) 766-1486.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Proposed AMLR Plan
- III. Assistant Secretary's Findings
- IV. Public Comment
- V. Assistant Secretary's Decision
- VI. Procedural Matters

**I. BACKGROUND**

Title IV of SMCRA establishes an AMLR program for the purpose of reclaiming land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed on coal production. Lands and waters eligible for reclamation under Title IV include those that were mined or were affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing responsibility for reclamation under State, Federal, or Tribal laws.

Title IV provides for State or Tribal submittal to OSMRE of an AMLR program. The Secretary adopted regulations in 30 CFR Parts 870 through 888 that implement Title IV of SMCRA. Under those regulations the Secretary is required to review reclamation plans and solicit and consider comments of State and Federal agencies and the public. Based on

such comments and review, the Secretary will determine if a State or Tribe has the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary may approve a State or Tribal program and grant the State or Tribe exclusive authority to administer its approved program.

Ordinarily, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR program to OSMRE as required by section 405 of SMCRA. However, on July 11, 1987, President Reagan signed legislation that authorized the Crow, Navajo, and Hopi Tribes to obtain AMLR programs without prior approval of regulatory programs.

States and Indian Tribes are also allowed to request authority to conduct emergency response reclamation activities. Guidelines for AMLR Plan provisions concerning assumption of emergency response authority were published on September 29, 1982 in the Federal Register, *47 FR 42729*, and provide the applicable criteria by which to judge the adequacy of the AMLR Plan provisions. Emergency reclamation activities are set forth in section 410 of SMCRA. The Hopi Tribe's AMLR Plan does not request emergency response authority.

## **II. PROPOSED AMLR PLAN**

The Hopi Tribe submitted a Plan to OSMRE on June 10, 1982. OSMRE announced receipt of the draft Plan and requested public comments in the July 22, 1982 *Federal Register*, *47 FR 31709-31711*. No closing date for that comment period was set.

The Hopi Tribe submitted a revised draft AMLR Plan on July 25, 1983, but further action on the Plan was postponed pending authorizing legislation under section 710 of SMCRA.

On July 11, 1987, President Reagan signed a supplemental appropriations Bill, Pub. L. 100-71, which authorized the Crow, Navajo, and Hopi Tribes to obtain AMLR programs without prior approval of surface mining regulatory programs as ordinarily required by section 405 of SMCRA. In response to that legislation, OSMRE notified the Hopi Tribe that it would reopen its review of the Tribe's Plan. OSMRE reviewed the Plan in September 1987 and provided the Tribe with suggestions for revising it to meet the requirements of SMCRA. A request for public comments and a closing date for the comment period was announced in the December 4, 1987 *Federal Register*, *52 FR 46095-46097*. No public comments or requests for a hearing or meeting were received, and the comment period closed on January 4, 1988. The Hopi Tribe submitted revisions to the draft plan in March and May, 1988, in accordance with OSMRE's September 1987 review suggestions.

All of the events described above are documented in the Title IV Administrative Record of the Hopi Tribe. The Administrative Record is available for public review at the Albuquerque, New Mexico address of OSMRE listed above.

The proposed AMLR Plan would provide authority for the Hopi Tribe to conduct a reclamation program on Hopi (Indian) lands as the term "Indian lands" is defined in section 701(9) of SMCRA [see reference to "Indian lands" in 30 CFR 872.11(b)(3)]. Indian lands occur within and outside traditional reservation boundaries. Although there may be certain jurisdictional limitations to the Tribe's authority to undertake certain reclamation activities outside the Reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake its reclamation program without violating the jurisdictional rights of other parties.

## **III. ASSISTANT SECRETARY'S FINDINGS**

The Assistant Secretary for Land and Minerals Management finds that the Hopi Tribe submitted a Plan for the reclamation of abandoned mine lands pursuant to the provisions of Pub. L. 100-71 and SMCRA. Based on a review of that submission, the Assistant Secretary also finds that:

1. Adequate provisions were made for public comment in the development of the Plan;
2. Views of other Federal agencies having an interest in the Plan were solicited and considered;
3. The Tribe has the legal authority, policies, and administrative structure necessary to carry out the AMLR Plan;
4. The AMLR Plan meets all the requirements of Subchapter R of 30 CFR Chapter VII regulations and of SMCRA;

5. The AMLR Plan meets all the requirements of all applicable Tribal and Federal laws and regulations;

6. The Hopi AMLR Plan has not requested authority to assume emergency response authority as set forth in Section 410 of SMCRA;

7. The Hopi Tribe's AMLR plan, including amendments thereto, addresses all Plan requirements specified in 30 CFR 884.13.

#### **IV. PUBLIC COMMENT**

No comments were received by OSMRE concerning the Hopi AMLR Plan during the period between December 4, 1987 and January 4, 1988 when comments and requests for a meeting or hearing were solicited. No requests for a hearing or a meeting were received during that period either.

#### **V. ASSISTANT SECRETARY'S DECISION**

Based on the above findings and review, the Assistant Secretary for Land and Minerals Management is approving the Hopi Tribe's AMLR Plan under the provisions of 30 CFR 884.14, as the Plan was submitted in July 1983 and revised in March and April 1988. A new Section 756.15 of Part 756 is being added to 30 CFR Chapter VII, Subchapter E -- Indian Lands Program -- to implement this decision. This approval does not encompass the emergency response authority set forth in Section 410 of SMCRA.

#### **VI. PROCEDURAL MATTERS**

##### **1. Executive Order 12291 and the Regulatory Flexibility Act**

OSMRE has examined this final rulemaking under Executive Order 12291 and has determined that on November 23, 1987, the Office of Management and Budget granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State reclamation plans or amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*), and the Department of the Interior determined that the rule will not have significant economic effect on a substantial number of small entities. No burden will be imposed on entities operating in compliance with the Act.

##### **2. Compliance with the National Environmental Policy Act**

Furthermore, OSMRE determined that the approval of State and Tribal AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

##### **3. Paperwork Reduction**

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under *44 U.S.C. 3507*.

##### **4. Effective Date**

Good cause exists under *5 U.S.C. 553(d)* to make this rule effective upon publication. This will expedite the granting of abandoned mine land reclamation funds to the Hopi Tribe so that it can implement its AMLR program immediately and undertake Tribal reclamation projects to protect the public health and safety.

#### **LIST OF SUBJECTS IN 30 CFR PART 756**

Indian lands, Abandoned Mine Land Reclamation Program.

Accordingly, Part 756 is amended as set forth below.

Dated: June 22, 1988.

J.S. Griles, Assistant Secretary, Land and Minerals Management.

**PART 756 -- INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS**

1. The authority citation for Part 756 continues to read as follows:

Authority: Pub. L. 95-87 (*30 U.S.C. 1201* et seq.) and Pub. L. 100-71.

2. Section 756.15 is added to read as follows:

**SECTION 756.15 - APPROVAL OF THE HOPI TRIBE'S ABANDONED MINE LAND RECLAMATION PLAN.**

The Hopi Tribe's Abandoned Mine Land Reclamation Plan as submitted in July 1983, and amended in March and May 1988, is approved. Copies of the approved Plan are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102

Hopi Abandoned Mine Land Program, The Hopi Tribe, Hopi Tribal Complex, Honahni Building, Kykotsmovi, AZ 86039.

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