



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[SATS No. OH-259-FOR; Docket ID: OSM-2017-0002; S1D1S SS08011000

SX064A000 190S180110 S2D2S SS08011000 SX064A000 19XS501520]

Ohio Abandoned Mine Land Program and Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Ohio Reclamation Plan (the Ohio Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Ohio seeks to amend its Abandoned Mine Land (AML) program by revising certain statutory provisions and modifying its AML reclamation plan. The revisions involve incorporating changes to SMCRA requirements (i.e., project eligibility and prioritization), eliminating the 50% match requirement for watershed groups, implementing changes to grant administration requirements, updating organizational changes, and incorporating other program changes. This document gives the times and locations that the Ohio program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. OH-259-FOR, by any of the following methods:

- Mail/Hand Delivery: Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pa 15220
- Fax: (412) 937-2177
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours,

Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Division or the full text of the program amendment is available for you to read at www.regulations.gov.

Mr. Ben Owens, Chief

Pittsburgh Field Division

Office of Surface Mining Reclamation and Enforcement

3 Parkway Center

Pittsburgh, Pa 15220

Telephone: (412) 937-2827

Email: bowens@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Lanny E. Erdos, Chief

Ohio Department of Natural Resources

Division of Mineral Resources Management

2045 Morse Road, Building H2

Telephone: (614) 265-6893

Email: lanny.erdos@dnr.state.oh.us

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Chief, Pittsburgh Field Division, 3 Parkway Center, Pittsburgh, Pa. 15220. Telephone: (412) 937-2827, email: bowens@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Ohio Plan
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Ohio Plan

A. Regulatory Program (Title V of SMCRA): Section 503(a) of the Act, *State Programs*, permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34717). You can also find later actions concerning the Ohio program and program amendments at 30 CFR 935.10, *State Regulatory Program Approval*; 935.11, *Conditions of State Regulatory Program Approval*; and 935.15, *Approval of Ohio Regulatory Program Amendments*.

B. AML Program (Title IV of SMCRA): Section 405 of the Act, *State Reclamation Programs*, permits a state to implement an AML reclamation program for the purposes of reclaiming and restoring eligible land and water resources adversely affected by past

mining. *See* 30 U.S.C. 1235. This section prescribes the eligibility requirements for approval of State AML programs, minimum content requirements of an AML reclamation plan, submission requirements for the annual AML project listing, and general AML grant requirements. The Federal regulations at 30 CFR part 884 establish the procedures and requirements for the preparation, submission, and approval of state reclamation plans.

On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio AML program on August 10, 1982. You can find background information on the Ohio AML program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio AML program in the August 10, 1982, **Federal Register** (47 FR 37421). You can also find later actions concerning the Ohio AML program at 30 CFR 935.20, *Approval of Ohio AML Reclamation Plan*, and 935.25, *Approval of Ohio AML Plan Amendments*.

II. Description of the Proposed Amendment

By letter dated March 17, 2017 (Administrative Record No. OH-2195-01), Ohio sent us an amendment that includes statutory changes to its Ohio Revised Code (ORC) as well as changes to its AML reclamation plan under SMCRA (30 U.S.C. 1235) and its implementing regulations at 30 CFR 884.15, *State Reclamation Plan Amendments*. At our request and by letter dated September 15, 2017 (Administrative Record No. OH-2195-04), Ohio resubmitted the amendment to provide additional clarity regarding the changes to the AML plan. On October 1, 2018, Ohio submitted additional changes to the 2016 updated AML plan, which involve public notification of environmental documents

related to AML projects (Administrative Record No. OH-2195). The changes to the program as submitted are described below.

A. Statutory Changes - Ohio Revised Code: Ohio submitted Substitute House Bill 471 of the 131st General Assembly (effective December 19, 2016), which affected ORC Section 1513.37, *Abandoned Mine Reclamation Fund*. The statutory revisions of this section reflect revisions to Federal SMCRA provisions, eliminate the 50% match requirement for watershed groups that administer AML reclamation projects, and incorporate changes in AML grants administration and organizational units. The bill also terminated the Council on Unreclaimed Strip Mined Land at 1513.29. The Council was established by law in 2000 and was responsible for reviewing and setting applicable expenditure limits on AML reclamation projects identified by the Ohio Department of Natural Resources. This change was made to implement the recommendations of Ohio's Sunset Review Committee.

B. Ohio AML Plan Changes: Ohio is also seeking to replace its last AML reclamation plan on record with an updated version (2016 Ohio State Reclamation Plan). The last AML reclamation plan amendment was approved on March 26, 1997, and, taken together with the original plan and previously approved amendments, is considered the current approved plan of record. These previously approved amendments, codified at 935.25, *Approval of the Ohio Reclamation Plan Amendments*, involved statutory changes and changes involving the Rural Abandoned Mined Lands Program, staff reorganizations, the AML emergency program, acid mine drainage reclamation, and the project selection process.

The 2016 plan addresses various aspects of the reclamation program, including, but not limited to: project information (eligibility, ranking and selection); coordination with OSMRE and other agencies; policies regarding reclamation on private land, land acquisition, and rights of entry; public participation; and program management and administration. The plan has been modified to reflect Federal statutory changes, regulatory changes, and changes to Federal grants administration policies and procedures. In addition, changes to Ohio statutory provisions and other program changes, such as organizational changes, are also reflected in the revision. This revised plan replaces the old plan and is revised in parts; redesignated in parts; removed in parts, and added in parts. Minor revisions such as organizational name changes and editorial changes are also included. Federal changes effecting the plan revision are described below.

1. Federal Statutory Changes: There was one major statutory change affecting Title IV of the Act (SMCRA) that occurred since 1997. The change occurred in 2006 through the AML Reauthorization Bill of 2006. This bill extended the AML fee collection authority from 2007 to 2021 and revised the AML program in areas such as the appropriation of funds, allocation formulas, fund objectives and priorities, reclamation lien waivers, AMD set aside accounts, water supply projects, state share payments, remaining incentives, and minimum program funding.

2. Federal Regulatory Changes: Changes made to the Federal regulatory provisions, as a result of the aforementioned statutory changes, affecting Ohio's current AML Reclamation Plan of record are as follows: 30 CFR Part 872, *Moneys Available to Eligible States and Indian Tribes*; Part 874, *General Reclamation Requirements*; Part

876, *Acid Mine Drainage Treatment and Abatement Program*; Part 879, *Management and Disposition of Lands and Water*; Part 882, *Reclamation on Private Land*; Part 884, *State Reclamation Plans*, and Part 886, *Reclamation Grants for Uncertified States and Indian Tribes*. These regulatory changes involved changes to the definitions of eligible lands and water, interim program eligibility requirements, reclamation objectives and priority designations, reclamation contractor responsibilities, state reclamation grant reporting, grant requirements, water supply projects, AMD set-aside accounts, and government-financed construction projects. *See* 73 FR 67638.

3. *Federal Grants Management Changes*: The Federal changes affecting Ohio's current AML Reclamation Plan of record involve changes to the President's Office of Management and Budget's (OMB's) Circular A-102, "Grants and Cooperative Agreements with State and Local Governments." The OMB, working cooperatively with Federal agencies and non-Federal parties, establishes government-wide grants management policies and guidelines through circulars and common rules. Currently, Federal grant funds (including AML grant funds) are governed by the guidelines issued by the OMB. On March 12, 1987, all agencies were directed to issue a common grants management rule to adopt Government-wide terms and conditions for financial assistance to state and local governments (referred to as the Grants Management Common Rule). As a result of the Presidential Order, the grants management guidelines were codified for the Department of the Interior grant programs at 43 CFR part 12 and extensive revisions were made to OSMRE's Federal Assistance Manual (FAM). In addition to the changes to OMB Circular A-102 that resulted from the Common Rule and subsequent revisions

that were made to the circular, OSMRE had simplified the AML grant process in 1993, and these changes were also incorporated into the FAM.

C. State/Federal AML Project Coordination: In addition to the statutory changes and plan changes described above, Ohio also submitted changes that involve Federal and State program coordination of AML project responsibilities. Ohio submitted a programmatic agreement between OSMRE, the Ohio History Connection, the State Historic Preservation Office, and the Ohio Department of Natural Resources, Division of Mineral Resources Management. The agreement was signed on January 25, 2017, and formalizes the agreed-upon process for carrying out the responsibilities pursuant to section 106 and section 110(f) of the National Historic Preservation Act and the regulations at 36 CFR part 800.

Ohio asserts that execution and implementation of this agreement is evidence that OSMRE and Ohio have afforded the Advisory Council on Historic Preservation a reasonable opportunity to comment on the AML program, as administered by OSMRE, and that Ohio has taken into account the effects of the program on historic properties under the National Historic Preservation Act (NHPA), associated regulations, and other related statutes. This programmatic agreement describes how AML funds are transferred from OSMRE to the State for the AML program and how coordination regarding NHPA responsibilities will be carried out. This agreement outlines the review and consultation process and includes delegations, personnel, project review procedures, treatment, and resolution of adverse effects. It also addresses post-review discoveries, treatment of human remains, public participation/notification/objections, monitoring and annual

reporting/review, dispute resolution, training and technical assistance, and terms of the agreement. It also provides the delegated responsibility to Ohio to make decisions regarding eligibility for properties.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

We are seeking your comments on whether the amendment satisfies the applicable plan approval criteria of 30 CFR 884.14 and 884.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.d.t. on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of State plan amendments are exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a state submits a plan amendment to OSMRE for review, our regulations at 30 CFR 884.14 and 884.15, and agency policy require public notification and opportunity for public comment. We accomplish this by publishing a proposed rule notice in the Federal Register indicating receipt of the proposed amendment and its text or a summary of its terms. We conclude our review of the proposed amendment after the close of the

public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 16, 2018.

Thomas D. Shope, Regional Director
Appalachian Region

Editorial note: This document was received for publication by the Office of the Federal Register on May 6, 2019.

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