

PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

Sec.

876.1 Scope.

876.10 Information collection.

876.12 Eligibility.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 59 FR 28174, May 31, 1994, unless otherwise noted.

§ 876.1 Scope.

This part establishes the requirements and procedures for the preparation, submission and approval of State or Indian tribe Acid Mine Drainage Treatment and Abatement Programs.

§ 876.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 876 and assigned it control number 1029-0104. OSM will use the information to determine if the State's or Indian tribe's Acid Mine Drainage Abatement and Treatment Programs is in compliance with legislative mandate. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67641, Nov. 14, 2008]

§ 876.12 Eligibility.

(a) Beginning December 20, 2006, any uncertified State or Indian tribe having an approved reclamation program may receive and retain, without regard to the limitation in section 402(g)(1)(D) of SMCRA, up to 30 percent of the total of the funds distributed annually to that State or Indian tribe under section 402(g)(1) of SMCRA (State or Tribal share) and section 402(g)(5) of SMCRA (historic coal funds). For funds awarded before December 20, 2006, any uncertified State or Indian tribe may retain up to 10 percent of the funds distributed to it for an acid mine drainage fund. All amounts set aside under this section must be deposited into an acid mine drainage abatement and treat-

ment fund established under State or Indian tribal law.

(b) Before depositing funds under this part, an uncertified State or Indian tribe must:

(1) Establish a special fund account providing for the earning of interest on fund balances; and

(2) Specify that moneys in the account may only be used for the abatement of the causes and treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units (as defined in paragraph (c) of this section) affected by coal mining practices.

(c) As used in paragraph (b) of this section, "qualified hydrologic unit" means a hydrologic unit:

(1) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(2) That contains lands and waters that are:

(i) Eligible under section 404 of SMCRA and include any of the priorities described in section 403(a) of SMCRA; and

(ii) The subject of the expenditure from the forfeiture of a bond required under section 509 of SMCRA or from other State sources to abate and treat acid mine drainage.

(d) After the conditions specified in paragraphs (a) and (b) of this section are met, OSM may approve a grant and the State or Indian tribe may deposit moneys into the special fund account. The moneys so deposited, together with any interest earned, must be considered State or Indian tribal moneys.

[73 FR 67641, Nov. 14, 2008]

PART 877—RIGHTS OF ENTRY

Sec.

877.1 Scope.

877.10 Information collection.

877.11 Written consent for entry.

877.13 Entry and consent to reclaim.

877.14 Entry for emergency reclamation.

AUTHORITY: Secs. 201(c), 407 (a) and (b), 410, and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, and 466 (30 U.S.C. 1211, 1237, 1240, and 1242).

SOURCE: 47 FR 28597, June 30, 1982, unless otherwise noted.

Surface Mining Reclamation and Enforcement, Interior

§ 877.14

§ 877.1 Scope.

This part establishes procedures for entry upon lands or property by OSM, States, and Indian tribes for reclamation purposes.

§ 877.10 Information collection.

The information collection requirements contained in §§ 877.11 and 877.13(b) were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1029-0055. This information is being collected to meet the mandate of section 407 of the Act, which provides that States or Indian tribes, pursuant to an approved reclamation program, may use the police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's consent is refused or the landowner is not available.

This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to conduct reclamation activities on private lands. The obligation to respond is mandatory.

§ 877.11 Written consent for entry.

Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

§ 877.13 Entry and consent to reclaim.

(a) OSM, the State, or Indian tribe or its agents, employees, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained.

(b) If consent is not obtained, then, prior to entry under this section, the OSM, State, or Indian tribe shall find in writing, with supporting reasons that—

(1) Land or water resources have been or may be 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 the owner will not give permission for OSM, State, or Indian tribe or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(c) If consent is not obtained, OSM, State, or Indian tribe shall give notice of its intent to enter for purposes of conducting reclamation at least 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.

§ 877.14 Entry for emergency reclamation.

(a) OSM, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(b) Prior to entry under this section, OSM shall make a written finding with supporting reasons that the situation

qualifies as an emergency in accordance with the requirements set out in section 410 of the Act.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. OSM shall make reasonable efforts to notify the owner and obtain consent prior to entry, consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical in accordance with the requirements set out in §877.13(c) of this chapter.

PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

Sec.

879.1 Scope.

879.5 Definitions.

879.11 Land eligible for acquisition.

879.12 Procedures for acquisition.

879.13 Acceptance of gifts of land.

879.14 Management of acquired land.

879.15 Disposition of reclaimed land.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 47 FR 28597, June 30, 1982, unless otherwise noted.

§ 879.1 Scope.

This part establishes procedures for acquisition of eligible land and water resources for emergency abatement activities and reclamation purposes by you, a State or Indian tribe with an approved reclamation program which has not certified completion of coal reclamation, or by us. It also provides for the management and disposition of lands acquired by the OSM, State, or Indian tribe.

[73 FR 67641, Nov. 14, 2008]

§ 879.5 Definitions.

As used in this part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67641, Nov. 14, 2008]

§ 879.11 Land eligible for acquisition.

(a) We may acquire land adversely affected by past coal mining practices with moneys from the Fund. If ap-

proved in advance by us, you, an uncertified State or Indian tribe, may also acquire land adversely affected by past coal mining practices with moneys from the Fund or with prior balance replacement funds provided under §872.29 of this chapter. Our approval must be in writing, and we must make a finding that the land 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 will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. For the purposes of this paragraph, “permanent facility” means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the site that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

(b) You, an uncertified State or Indian tribe, if approved in advance by us, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with prior balance replacement funds provided under §872.29 of this chapter. We, OSM, also may use moneys from the Fund to acquire coal refuse disposal sites, including the coal refuse.

(1) Before the approval of the acquisition, the reclamation program seeking to acquire the site will make a finding in writing that the acquisition is necessary for successful reclamation and will serve the purposes of their reclamation program.

(2) Where an emergency situation exists and a written finding as set out in §877.14 of this chapter has been made, we may acquire lands where public ownership is necessary and will prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by us if the acquisition is an integral