

**Surface Mining Reclamation and Enforcement, Interior**

**§ 948.30**

FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
May 20, 1985 .....	July 11, 1985 .....	Transfer of program authority to the Department of Energy (HB 1850).
December 30, 1987 ..	August 26, 1988 .....	Agency structure, public participation procedures, assumption of emergency reclamation program.
September 17, 1991, October 25, 1991.	March 26, 1993 .....	Amendments contained in House Bill 2492; Expanded eligibility criteria; Acid mine drainage treatment and abatement program.
June 27, 2006 .....	January 17, 2007 ...	Amendment includes AML enhancement requirements and other revisions to West Virginia's AMLR Plan dated June 16, 2006.

[62 FR 9958, Mar. 5, 1997, as amended at 72 FR 1937, Jan. 17, 2007]

**§ 948.26 Required abandoned mine land reclamation program/plan amendments. [Reserved]**

**§ 948.30 State-Federal Cooperative Agreement.**

**COOPERATIVE AGREEMENT**

This is a Cooperative Agreement (Agreement) between the State of West Virginia (State) acting by and through the Governor, and the United States Department of the Interior (Department), acting by and through the Secretary of the Interior (Secretary).

**ARTICLE I: INTRODUCTION, PURPOSE AND RESPONSIBLE ADMINISTRATIVE AGENCY**

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (the Federal Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of surface coal mining and reclamation operations on Federal lands within that State. This Agreement provides for such regulation within West Virginia except on lands containing leased Federal coal consistent with the State and Federal Acts, the West Virginia State Program (State program), and the Federal Lands Program (section 523(a) of the Federal Act and 30 CFR parts 740-745).

B. *Purpose:* The purpose of the Agreement is to: (1) Foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations on Federal lands; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide uniform and effective application of the State program on all lands except those containing leased Federal coal in West Virginia.

C. *Responsible Administrative Agencies:* The Department of Natural Resources, Reclamation Division (DNR) is responsible for administering this Agreement on behalf of the

Governor on Federal lands throughout the State. The Office of Surface Mining Reclamation and Enforcement (OSM) is responsible for administering this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII. The Federal lands in West Virginia covered by this Agreement are predominantly those under the jurisdiction of the United States Department of Agriculture, Forest Service. It is understood by all parties that the Forest Service or the Federal land management agency, if other than the Forest Service, will continue to govern mining operations on Federal lands covered by this agreement pursuant to laws, regulations, agreements, and restrictions for which the respective agency is responsible. These requirements are in addition to the requirements discussed in this Agreement.

**ARTICLE II: EFFECTIVE DATE**

After it has been signed by the Governor and the Secretary, the Agreement shall take effect upon publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article X.

**ARTICLE III: DEFINITIONS**

Terms and phrases used in this Agreement which are defined in 30 CFR parts 700, 701 and 740, and the State program shall be given the meanings set forth in said definitions.

**ARTICLE IV: APPLICABILITY**

A. *Applicability to Federal Lands:* In accordance with the Federal Lands Program in 30 CFR part 740, the laws, rules, terms, and conditions of the State program (as conditionally approved effective January 21, 1981, 30 CFR part 948, or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to Federal lands within West Virginia. This Agreement does not apply to operations on Federal lands containing leased Federal coal.

B. *Filing of Appeals:* Orders and decisions issued by DNR in accordance with the State

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program that are appealable shall be appealed to the State of West Virginia's Reclamation Board of Review. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

### ARTICLE V: REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Authority of State Agency:* DNR has and shall continue to have authority under State law to carry out this Agreement.

B. *Funds:* Upon application by the DNR and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. If sufficient funds have not been appropriated to OSM, OSM and DNR shall promptly meet to decide on measures that will insure that mining operations are regulated in accordance with the State program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with Article X. Funds provided to the State shall be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E, and shall be reduced by the amount of fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. *Reports and Records:* DNR shall make annual reports to OSM pursuant to 30 CFR 745.12(d), containing information respecting its compliance with the terms of this Agreement. Upon request, DNR and OSM shall exchange information developed under this Agreement except where prohibited by Federal law. OSM shall provide DNR with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

D. *Personnel:* DNR shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State program.

E. *Equipment and Laboratories:* DNR shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

F. *Permit Application Fees:* The amount of the fee accompanying an application for a permit shall be determined in accordance with Section 20-6-9(f) of the Code of West Virginia (1931), as amended. All permit and

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civil penalty fees collected from operations on Federal lands shall be retained by the State and deposited with the State Treasurer. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations, and OMB Circular No. A-102, Attachment E.

### ARTICLE VI: REVIEW OF A PERMIT APPLICATION PACKAGE

A. *Contents of Permit Application Package:* DNR and the Secretary shall require an operator proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit a permit application package in an appropriate number of copies to DNR. DNR will furnish OSM a copy if OSM so requests. The permit application package shall be in the form required by DNR and include any supplemental information required by OSM or the Federal land management agency. The permit application package shall include the information required by, or necessary for, DNR to make a determination of compliance under 30 CFR 740.4(c)(2) with any conditions or special requirements imposed by the Federal land management agency and with the requirements of the State program, including:

1. *W. Va. Code*, Section 20-6-1 *et seq.*, as amended;

2. Applicable regulations of the West Virginia Surface Mining Reclamation Regulations, 20-6-Series VIII (1981);

3. Requirements of the West Virginia DNR Reclamation Division "Technical Handbook of Standards and Specifications for Mining Operations (1981)."

B. *Review Procedures:* 1. DNR shall assume primary responsibility for the analysis, review, and approval or disapproval of permit application packages required by 30 CFR 740.13 for surface coal mining and reclamation operations on Federal lands in West Virginia except those containing leased Federal coal. DNR shall be the primary point of contact for operators regarding decisions on the permit application package and will be responsible for informing the applicant of all joint State-Federal or Federal determinations.

2. Upon receipt of a permit application package that involves surface coal mining and reclamation operations on Federal lands covered by this agreement, DNR shall (1) transmit a copy of the complete permit application package to the Federal land management agency with a request for review pursuant to 30 CFR 740.13(b)(4), and (2) provide OSM with relevant information to allow OSM to determine whether or not the proposed surface coal mining and reclamation

operation is prohibited or limited by the requirements of section 522(e) of the Federal Act (30 U.S.C. 1272(e)) and 30 CFR parts 760-762 with respect to Federal areas designated by Congress as unsuitable for mining. DNR shall be responsible for obtaining, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a permit application package in West Virginia.

3. OSM will provide technical assistance to DNR when requested if available resources allow and will process requests for determinations of compatibility and valid existing rights under 30 CFR part 761 relating to Federal areas designated by Congress as unsuitable for mining. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to DNR. OSM shall have access to DNR files concerning mines on Federal lands. The Secretary reserves the right to act independently of DNR to carry out his responsibilities under laws other than the Federal Act. A copy of all resulting correspondence with the applicant that may have a bearing on decisions regarding the permit application package shall be sent to the State.

4. DNR shall prepare the required technical analysis and written findings on the permit application package. If requested by the Federal land management agency, a draft of these documents shall be sent to it for review and comment.

5. The permit issued by DNR shall incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and shall condition the initiation of surface coal mining operations on compliance with the requirements of the Federal land management agency. After DNR issues the decision on the permit application package, it shall send a notice to the applicant, the Federal land management agency, and OSM with a statement of findings and conclusions in support of the action.

#### ARTICLE VII: INSPECTIONS

DNR shall conduct inspections on Federal lands covered by this agreement and prepare and file inspection reports in accordance with the approved Program

A. *Inspection Reports:* DNR shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. *DNR Authority:* DNR shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the require-

ments covered by this Agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. *OSM Authority:* OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands for the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met. In order to facilitate a joint Federal-State inspection, OSM will ordinarily give DNR notice of its intent to conduct an inspection. When OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact DNR if circumstances and time allow, prior to the Federal inspection. OSM may conduct any inspections necessary to comply with 30 CFR part 842. If an inspection is made without DNR inspectors, OSM shall provide DNR with a copy of the inspection report within 15 days after inspection. The Secretary reserves the right to conduct inspections without prior notice to DNR to carry out his responsibilities under the Act.

D. *Witness Availability:* Personnel of the State and of the Department of the Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

#### Article VIII: Enforcement

A. *DNR Enforcement:* DNR shall have primary enforcement authority on Federal lands covered by this agreement in accordance with the State program and this Agreement. During any joint inspection by OSM and DNR, DNR shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation.

B. *Notification:* DNR shall promptly notify the Federal land management agency of all violations of applicable laws, regulations, orders, and approved permits subject to this Agreement and of all actions taken with respect to such violations.

C. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce provisions of laws other than the Act. (2) During an inspection made solely by OSM or any joint inspection where DNR and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the Act or the substantive requirements of the State program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

## ARTICLE IX: BONDS

A. *Performance Bond*: DNR shall require all operators on Federal lands to submit a performance bond to cover the operator's responsibilities under the Federal Act and the State program, payable to both the United States and West Virginia. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law, and release of the performance bond shall be conditioned upon compliance with all applicable requirements. DNR may release the operator from any obligation under the performance bond with the concurrence of the Federal land management agency. If this Agreement is terminated: (1) The bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by DNR to OSM if only Federal lands are covered by the bond.

B. *Forfeiture*: In the event of forfeiture by an operator of the performance bond for surface coal mining and reclamation operations on Federal lands covered by this agreement, the State shall use funds received from bond forfeiture and, where necessary, funds from the West Virginia Special Reclamation Fund (pursuant to Section 20-6-12(h) of the West Virginia Surface Coal Mining and Reclamation Act) to ensure that reclamation is accomplished in accordance with the State program and the approved permit.

## ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

## ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16.

## ARTICLE XII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

## ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

A. *Time for Changes*: The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and DNR shall immediately inform each other of any final changes and of any effect such changes may have on the cooperative agreement. If it is determined to be necessary to keep this Agreement in force, DNR shall request nec-

essary State legislative action and each party shall change or revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the approved State program and sections 501 and 523 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes*: The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

## ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

DNR and the Secretary shall, consistent with 30 CFR part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. DNR and OSM shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

## ARTICLE XV: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations.

(Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*))

Dated: February 16, 1984.

William Clark,  
*Secretary of the Interior.*

Dated: February 24, 1984.

John D. Rockefeller IV,  
*Governor of West Virginia.*

[49 FR 8917, Mar. 9, 1984]

## PART 950—WYOMING

Sec.

950.1 Scope.

950.10 State regulatory program approval.

950.12 State program provisions and amendments not approved.

950.15 Approval of Wyoming regulatory program amendments.