

Surface Mining Reclamation and Enforcement, Interior

§ 946.30

Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.

[62 FR 9957, Mar. 5, 1997, as amended at 62 FR 35968, July 3, 1997; 63 FR 5891, Feb. 5, 1998; 65 FR 1065, Jan. 7, 2000]

§ 946.30 State-Federal Cooperative Agreement.

This is a Cooperative Agreement (Agreement) between the Commonwealth of 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 (SMCRA or the Act), 30 U.S.C. 1273(c), which provides that any State with a permanent regulatory program approved under 30 U.S.C. 1253 may enter into an agreement with the Secretary to assume the responsibilities of regulating surface coal mining and reclamation operations on Federal lands within that State. This Agreement provides for such regulation within the Commonwealth of Virginia (State) consistent with SMCRA, the Virginia State Program, and the Federal Lands Program (30 CFR Chapter VII, Subchapter D).

B. *Purpose:* The purpose of this Agreement is to (1) foster State-Federal cooperation in the regulation of coal mining including coal exploration on Federal lands containing non-Federal coal; (2) minimize intergovernmental overlap and duplication; and (3) provide uniform and effective application of the Virginia State Program (State Program) on all Federal lands except those containing leased Federal coal. This agreement does not apply on Indian lands.

C. *Responsible Administrative Agencies:* The Division of Mined Land Reclamation (DMLR) of the Department of Mines, Minerals and Energy is responsible for administering the Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) is responsible for administering this Agreement on behalf of the Secretary. The Federal lands in Virginia covered by this Agreement are predominantly administered by the U.S. Department of Agriculture, Forest Service, and include in part the Jefferson National Forest and the George Washington National Forest. It is understood by all parties that the Forest Service or the applicable Federal agency will continue to regulate mining operations on lands under its jurisdiction pursuant to the laws, regulations, agreements, and re-

strictions governing those lands. These requirements are in addition to the requirements discussed in this Agreement.

ARTICLE II: EFFECTIVE DATE

The Agreement shall take effect May 7, 1987. This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR Chapter VII, and the approved State Program shall be given the meanings set forth in said definitions. Where there is a conflict among the above referenced State and Federal definitions, the definitions used in the approved State Program will apply unless prohibited by Federal law.

The term "Federal lands covered by the agreement" means all Federal lands in Virginia except those lands containing leased Federal coal or those consisting of Federal surface over unleased Federal coal.

ARTICLE IV: APPLICABILITY

The laws, rules, terms, and conditions of the State Program are applicable to all Federal lands in Virginia. The State is authorized to conduct regulatory activities on all Federal lands with cooperative agreement.

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 the Agreement.

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

B. *Funds:* Upon application by the DMLR 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 by section 705(c) of the SMORA and 30 CFR part 735. If sufficient funds have not been appropriated to OSMRE, OSMRE and DMLR shall meet promptly 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 XI.

Funds provided to the State shall be adjusted in accordance with the Office of Management and Budget Circular A-102, Attachment E.

C. *Reports and Records:* DMLR shall make annual reports to OSMRE pursuant to 30 CFR 745.12(d) on the results of the State's implementation and administration of this cooperative agreement. DMLR and OSMRE

shall exchange, upon request, information developed under this Agreement except where prohibited by Federal law. OSMRE shall provide DMLR with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

D. *Personnel*: DMLR 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*: DMLR shall have access to equipment, laboratories, and facilities necessary to carry out inspections, investigations, studies, tests, and analyses necessary to implement this Agreement.

F. *Permit Application Fees*: The amount of the fee accompanying an application for a permit shall be determined in accordance with the Virginia Coal Surface Mining Control and Reclamation Act of 1979 and 19 CV 45.1-235 (E). All permit fees, including fees for permits, permit revisions, renewals, transfers, sales or assignments, application fees, and civil penalties collected from operations on Federal lands covered by this agreement 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 the permit application and other 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 PERMIT APPLICATION PACKAGE(S)

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

As requested, OSMRE will assist DMLR in identifying Federal agencies which may be affected by the proposed mining operation.

B. *Review Procedures*: 1. DMLR shall assume primary responsibility for the analysis, review, and approval or disapproval of PAPs for a permit, permit revision, or permit renewal for operations on Federal lands cov-

ered by this agreement. DMLR shall also assume primary responsibility for the review and analysis of applications for transfer, assignment or sale of permit rights required by 30 CFR 740.13 for surface coal mining operations on Federal lands covered by this agreement. DMLR shall be the primary point of contact for operators regarding PAPs and applications for the transfer, sale, or assignment of permit rights and will be responsible for informing the applicant of all joint State-Federal or Federal determinations.

2. Upon receipt of PAP that involves surface coal mining and reclamation operations on lands covered by this Agreement, DMLR shall (a) transmit a copy of the complete PAP to the Federal land management agency with a request for review pursuant to 30 CFR 740.13(c)(4); (b) provide OSMRE with information necessary to allow OSMRE to determine whether or not a proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of Section 522(e) of SMORA (30 U.S.C. 1272(e)) and 30 CFR part 761 and part 762; (c) determine whether leased Federal coal or Federal surface over unleased Federal coal is involved and immediately inform OSMRE in these situations; and (d) obtain, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a PAP in Virginia. These consultation comments shall be forwarded to OSMRE to be considered in any compatibility or valid existing rights determination;

3. OSMRE will provide technical assistance when requested, if available resources allow, and will process requests for determinations of compatibility and valid existing rights under 30 CFR part 761 and part 762. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DMLR. OSMRE shall have access to DMLR files concerning mines on Federal lands. The Secretary reserves the right to act independently of DMLR to carry out his responsibilities under laws other than SMORA. A copy of all correspondence with the applicant that may have a bearing on decisions regarding the PAP shall be sent to the State.

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

5. Any permit including permit revisions, renewals, transfers, sales, or assignments approved or issued by DMLR shall incorporate any terms or conditions imposed by OSMRE or the Federal land management agency, including conditions relating to post mining land use. After DMLR reaches a decision on a PAP, it shall send a notice to the applicant, the Federal land management agency, and OSMRE with a statement of all findings

Surface Mining Reclamation and Enforcement, Interior

§ 946.30

and conclusions on which the decision is based.

ARTICLE VII: INSPECTIONS

A. *DMLR Authority:* DMLR shall be the point of contact and primary inspection authority in dealing with the operator concerning operations on lands covered by this Agreement, except as described in this Agreement and the Secretary's regulations. DMLR must conduct inspections on Federal lands covered by this agreement and shall, within 30 days of conducting an inspection on Federal lands, prepare and file with OSMRE a legible copy of the State's completed inspection report. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies.

B. *DOI Authority:* The Secretary reserves the right to conduct inspections without prior notice of DMLR to carry out his responsibilities under SMORA. For the purposes of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSMRE may periodically conduct inspections of surface coal mining and reclamation operations on Federal lands. OSMRE will attempt to give DMLR notice of its intent to conduct inspections and encourage joint inspections. However, pursuant to 30 CFR part 842 or 30 CFR part 877, OSMRE may conduct an inspection without the State when responding to information that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources. If an inspection is made without DMLR inspectors, OSMRE shall provide DMLR with a copy of the inspection report within 15 days after inspection.

ARTICLE VIII: ENFORCEMENT

A. *DMLR Enforcement:* DMLR shall have primary enforcement authority on Federal lands covered by this Agreement in accordance with the State Program and this Agreement, and DMLR shall take appropriate enforcement action whenever necessary, including issuance of orders of cessation and notices of violation.

DMLR 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.

B. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce provisions of laws other than the SMORA. (2) During an inspection made solely by OSMRE or any joint inspection where DMLR and OSMRE fail to agree

regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843 and 845 or with SMORA. Such enforcement action shall be based on the substantive standards included in the approved State Program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845. (3) Nothing in this agreement shall preclude the Secretary from performing his responsibilities in *Save Our Cumberland Mountains v. Hodel*, No. 81-2238 (D.D.C.).

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

ARTICLE IX: BONDS

A. DMLR shall require all operators on Federal lands covered by this Agreement to submit a performance bond, payable to both the United States and Virginia. The performance bond shall be of sufficient amount to comply with the bonding requirements of both SMORA and the State Program. Such bond shall provide that if this Cooperative 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 DMLR to OSMRE if only Federal lands are covered by the bond. The DMLR shall also advise OSMRE of adjustment to the performance bond, pursuant to the Program.

B. Release of the performance bond shall be conditioned upon compliance with all applicable requirements. Prior to releasing the operator from any obligation under such bond, the DMLR shall obtain the concurrence of the Federal land management agency. Such bond shall be subject to forfeiture, with the concurrence of OSMRE, in accordance with the procedures and requirements of the State Program

ARTICLE X: FILING OF APPEALS

Orders and decisions issued by DMLR in accordance with the State Program that are appealable shall be appealed to the Commonwealth of Virginia in accordance with the State Program. 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 XI: TERMINATION OF COOPERATIVE AGREEMENT

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

§ 946.30

30 CFR Ch. VII (7-1-23 Edition)

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

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

ARTICLE XIII: 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 XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. Notification of Changes: The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised permitting or performance standards, or administrative and enforcement procedures. OSMRE and DMLR shall immediately inform each other of any final changes in their respective laws or regulations as provided in 30 CFR part 732. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the State Program and section 501 of the SMORA for changes to the Federal lands program.

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

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

DMLR 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 department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. DMLR and OSMRE 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. This provision does not apply to Department of the Interior personnel performing activities under Save Our Cumberland Mountains v. Hodel referenced in Article VIII of this Agreement.

ARTICLE XVI: 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, including but not limited to those listed in appendix A.

Approved:

Dated: March 18, 1987.

Signed:

Jerold L. Bailes, Governor of Virginia.

Dated: January 29, 1987.

Signed:

Donald Paul Hodel, Secretary of the Interior.

(Reporting and recordkeeping requirements approved by the Office of Management and Budget under control numbers 1029-0013, 1029-0026, and 1029-0051)

APPENDIX A

- 1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 et seq., and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 et seq., and implementing regulations including 43 CFR parts 3480-3487.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 et seq., and implementing regulations, including 50 CFR part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., and implementing regulations, including 36 CFR part 800.
6. The Clean Air Act, 42 U.S.C. 7401 et seq., and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., and implementing regulations.
9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 et seq.
10. Executive Order 1593 (May 13, 1971), Cultural Resources Inventories on Federal Lands.
11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protection.
12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 et seq., and implementing regulations.
13. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa et seq.
14. The Constitution of the United States.

Surface Mining Reclamation and Enforcement, Interior

§ 947.700

15. The Constitution of the State and State Law.

[52 FR 11049, Apr. 7, 1987]

PART 947—WASHINGTON

Sec.

947.700 Washington Federal program.

947.701 General.

947.702 Exemption for coal extraction incidental to the extraction of other minerals.

947.707 Exemption for coal extraction incidental to government-financed highway or other construction.

947.761 Areas designated unsuitable for surface coal mining by act of Congress.

947.762 Criteria for designating areas as unsuitable for surface coal mining operations.

947.764 Process for designating areas unsuitable for surface coal mining operations.

947.772 Requirements for coal exploration.

947.773 Requirements for permits and permit processing.

947.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

947.775 Administrative and judicial review of decisions.

947.777 General content requirements for permit applications.

947.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

947.779 Surface mining permit applications—minimum requirements for information on environmental resources.

947.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

947.783 Underground mining permit applications—minimum requirements for information on environmental resources.

947.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

947.785 Requirements for permits for special categories of mining.

947.795 Small operator assistance.

947.800 Requirements for bonding of surface coal mining and reclamation operations.

947.815 Performance standards—coal exploration.

947.816 Performance standards—surface mining activities.

947.817 Performance standards—underground mining activities.

947.819 Special performance standards—auger mining.

947.822 Special performance standards—operations on alluvial valley floors.

947.823 Special performance standards—operations on prime farmland.

947.824 Special performance standards—mountaintop removal.

947.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

947.828 Special performance standards—in situ processing.

947.842 Federal inspections.

947.843 Federal enforcement.

947.845 Civil penalties.

947.846 Individual civil penalties.

947.955 Certification of blasters.

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

SOURCE: 48 FR 7883, Feb. 24, 1983, unless otherwise noted.

§ 947.700 Washington Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Washington which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Most of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Washington Federal program.

(c) The rules in this part apply to all surface coal mining operations in Washington conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Washington.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Washington laws generally provide for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Surface Mining Control and Reclamation Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not generally be construed to be inconsistent with the Act, unless in a particular instance the rules in this Chapter are found by OSM to establish more stringent environmental controls:

(1) Washington Clean Air Act, RCW 70.94.