

732.15. If the amendment is approved, it will become part of the Illinois program.

#### Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. We may not consider in the final rulemaking or include in the administrative record any comments we receive after the close of the comment period (see DATES) or at locations other than the Indianapolis Field Office.

#### IV. Procedural Determinations

##### Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

##### Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

#### Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

#### List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1998.

#### Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

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### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 913

[SPATS No. IL-093-FOR]

#### Illinois Abandoned Mine Land Reclamation Plan

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Illinois abandoned mine land reclamation plan (Illinois plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois is proposing revisions and additions to the Illinois

plan relating to agency reorganization, legal opinion, definitions, project priorities, utilities and other facilities, eligible coal lands and water, eligible non-coal lands and water, project selection, annual grant process, liens, rights of entry, public participation, bidding requirements and conditions, contracts, and contractor responsibility. Illinois intends to revise the Illinois plan to be consistent with the corresponding Federal regulations and SMCRA and to improve operational efficiency.

**DATES:** Written comments must be received by 4:00 p.m., e.s.t., December 16, 1998. If requested, we will hold a public hearing on the amendment on December 11, 1998. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on December 1, 1998.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204.

Illinois Department of Natural Resources, 524 South Second Street, Springfield, Illinois 62701-1787.

#### FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226-6700. Internet: agilmore@mcrwgw.osmre.gov.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on Title IV of SMCRA

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters that were mined or affected by mining and abandoned or left in an inadequate reclamation status before August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal

law, are eligible for reclamation. The AML Reclamation Act of 1990 (Pub. L. 101-508, Title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AML Plan has the responsibility and primary authority to implement the program.

## II. Background on the Illinois Plan

On June 1, 1982, the Secretary of the Interior approved the Illinois plan. You can find background information on the Illinois plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 1, 1982, **Federal Register** (47 FR 23886). You can find later actions concerning the Illinois plan and amendments to the plan at 30 CFR 913.25.

## III. Description of the Proposed Amendment

By letter dated October 22, 1998 (Administrative Record No. IL-5022), Illinois sent us an amendment to its plan under SMCRA. Illinois sent the amendment in response to a letter dated September 26, 1994 (Administrative Record No. IL-700-AML), that we sent to Illinois under 30 CFR 884.15(d). The amendment also includes changes made at Illinois' own initiative. Illinois proposes to amend the narrative and policy sections of its plan and its regulations at Title 62 Part 2501 and Title 44 Part 1150 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.

### A. Changes in the Narrative of the Illinois Abandoned Mine Reclamation Plan.

#### 1. Introduction

Illinois revised this section to describe the history of the Illinois Abandoned Mined Lands Reclamation Program, the creation of the Department of Natural Resources, and the requirements of Title V of the Surface

Mining Control and Reclamation Act of 1977.

#### 2. State Reclamation Plan.

*a. General.* Illinois reorganized its State reclamation plan. Illinois also removed references to the Soil Conservation Service (SCS) and replaced them with references to the Natural Resource Conservation Service (NRCS).

*b. Eligible Coal Lands and Water.* Illinois added this section in response to 30 CFR 874.12(e). Illinois stated that 62 IAC 2501.10, Eligible Coal Lands and Water, provides the eligibility guidelines that correspond to this citation.

*c. Exclusion of Certain Non-coal Reclamation Sites.* Illinois added this section in response to 30 CFR 875.16. Illinois states that 62 IAC 2501.11, Eligible Non-coal Lands and Water, provides the eligibility guidelines that correspond to this citation.

*d. Authorization by the Governor.* Illinois revised this section by stating that P.A. 81-1020, the Abandoned Mined Lands and Water Reclamation Act, as amended, contains the Governor's authorization required by 30 CFR 884.13(a).

*e. Legal Opinion.* Illinois revised this section by providing a letter from the chief legal officer of the Department of Natural Resources as the legal opinion required by 30 CFR 884.13(h).

*f. Project Selection.* Illinois revised this section by stating that Sections 2501.7, 2501.8, 2501.10, 2501.11, 2501.13, 2501.16, and 2501.34 of the rules entitled "Abandoned Mined Lands Reclamation" provide the guidelines for project selection required by 30 CFR 884.13(c)(2).

*g. Coordination of Reclamation Activities.* Illinois revised the existing language in this section by changing the word "semi-annual" to "annual."

*h. Reclamation of Private Land.* Illinois revised this section to include an explanation of language found at 62 IAC 2501.25(b)(2).

*i. Public Participation.* Illinois revised the public participation sections for preparation of the original state plan, promulgation of rules and plan amendments, public participation in the reclamation program, compliance with Executive Order 12372, and the list of regional clearinghouses.

*j. Administration.* Illinois revised the administration section to reflect the reorganization of the Division of Abandoned Mined Lands Reclamation, within the Office of Mines and Minerals, Department of Natural Resources. They also updated the list of other State offices and agencies.

*k. Personnel.* Illinois revised the description of its administrative and management structure and its personnel staffing policies.

*l. Procurement.* Illinois removed a paragraph about Section 9.01 of the Illinois Purchasing Act.

*m. Reclamation Activity.* Illinois revised the amount of acreage in need of reclamation and the amount of acreage funded through the emergency response program. They also added a new paragraph on the reclamation activity entitled "Reclamation of Mine Subsidence."

*n. Reports.* Illinois added this section as a response to 30 CFR 884.13(f). Illinois states that the Department will submit the OSM-76 Form, or its electronic counterpart, in the Abandoned Mine Land Inventory System at the time of project completion as 30 CFR 884.13(f) requires.

*o. Priorities.* Illinois added this section in response to 20 ILCS 1920/2.03(4). Illinois states that legislative measures will be taken to ensure compatibility between state statutes and Federal regulations.

### B. Changes in 62 IAC 2501

#### 1. Reference Changes

Illinois made the following statutory reference changes throughout 62 IAC 2501: Ill. Rev. Stat. 1991, ch 96½, pars. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1985, ch. 96½, par. 8001.03(a)(7) was changed to 20 ILCS 1920/1.03(5); Ill. Rev. Stat. 1985, ch. 96½, par. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1991, ch. 127, par. 1001-1 *et seq.* was changed to 5 ILCS 100; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.02(a) was changed to 20 ILCS 1920/1.02; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.03(a) was changed to 20 ILCS 1920/2.03(a); Ill. Rev. Stat. 1985, ch. 96½, par. 8003.05 was changed to 20 ILCS 1920/3.05; Ill. Rev. Stat. 1989, ch. 96½, par. 8002.09(b) was changed to 20 ILCS 1920/2.09; Ill. Rev. Stat. 1983, ch. 96½, par. 800.04(d) was changed to 20 ILCS 1920/2.04(d); and Ill. Rev. Stat. 1985, ch. 127, pars. 133b1 *et seq.* was changed to 30 ILCS 605.

Illinois also made the following title changes throughout 62 IAC 2501: all references to the "Council" have been changed to the "Department"; and all references to "Soil Conservation Service" have been changed to "Natural Resource Conservation Service."

#### 2. Section 2501.1, Scope

In this section, Illinois removed the existing language and replaced it with the following:

This Part implements the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920], which provides that the Department of Natural Resources shall administer a program for the reclamation of Abandoned Mined Lands ("AML"). This act is complementary to Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, P.L. 95-87, as amended).

### 3. Section 2501.4, Definitions

Illinois removed the definition of "Council," added a definition for "Department," and revised the definition of "Federal Office."

### 4. Section 2501.7, Objectives and Priorities

Illinois removed the language found at section 2501.7(c)(4). They also added new sections 2501.7(d) and (e) to read as follows:

(d) Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by OSM, except in those instances where such lower priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (61 FR 68777-68785, December 30, 1996).

(e) When the Department finds in writing that the adverse effects of coal mining practices have an adverse economic impact upon a community, a project shall be designated as a priority 1 or 2 threat to the general welfare, regardless of the nature of the problem conditions.

Finally, at Section 2501.7(f), Illinois changed the date by which the Department may make expenditure obligations on lands mined for substances other than coal. The date was changed from August 14, 1994, to August 31, 1999.

### 5. Section 2501.8, Utilities and Other Facilities

In this new section, Illinois provides guidance on use of AML funds for water supplies. Section 2501.8(a) allows the Department to use up to 30 percent of the annual AML funds for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. Section 2501.8(b) provides that adverse effects on water supplies that occurred both before and after August 3, 1977, are eligible for AML funds, in spite of the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are

caused predominantly by mining processes undertaken and abandoned before August 3, 1977. Section 2501.8(c) provides that adverse effects on water supplies that occurred both before and after the dates (and under the criteria) set forth in Section 2501.10(d) are eligible for AML funds, notwithstanding the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominately by mining processes undertaken and abandoned before those dates. Finally, section 2501.8(d) provides that enhancement of facilities or utilities includes upgrading to meet any local, State, or Federal public health or safety requirement. Enhancement does not include service area expansion not necessary to address a specific abandoned mine land problem.

### 6. Section 2501.10, Eligible Coal Lands and Water

In this section, Illinois removed section 2501.10(b) and redesignated section 2501.10(a) as Section 2501.10. Sections 2501.10 (a)(1) through (3) were redesignated as sections 2501.10(a) through (c). Illinois added new sections 2501.10(d) through (h) to read as follows:

(d) Notwithstanding subsections (a), (b) and (c) of this section, coal lands and waters damaged and abandoned after August 3, 1997 by coal mining processes are also eligible if the Department, with the concurrence of OSM, finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(A) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and June 1, 1982, and any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site, or

(B) The mining occurred between August 4, 1977 and November 5, 1990 and the surety of the mining operator became insolvent during that period, and as of November 5, 1990, funds immediately available from proceedings relating to insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site; and

(2) The site qualifies as a priority 1 or 2 site under Section 2501.7(c) and (e) of this Part.

(e) The Department may expend funds available under subsections 402(g)(1) and (5) of the Surface Mining Control and Reclamation Act for reclamation and abatement of any site eligible under Subsection (d) above, if the Department, with concurrence of OSM, makes the findings required in subsection (d) above and the Department determines that the reclamation priority of the site is the same or more urgent

that the reclamation priority for the lands and water eligible pursuant to subsections (a), (b) or (c) above that qualify as a priority 1 or 2 site under Section 403(a) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1233(a)).

(f) With respect to lands and waters eligible pursuant to subsection (d) or (e) above, monies available from sources outside the Abandoned Mine Reclamation Federal Trust Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Federal Trust Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the AML program, the permittee of the site shall reimburse the AML Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. The Department, when performing reclamation under subsection (d) above shall not be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act, or in the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720], nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in those Acts.

(h) Surface coal mining operations on lands eligible for reclamation shall not affect the eligibility of such lands for reclamation and restoration after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining operation on lands eligible for reclamation is forfeited, AML funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if emergency conditions warrant, the Department shall immediately exercise its authority under the Emergency program.

### 7. Section 2501.11, Eligible Non-Coal Lands and Water

Illinois added this new section to provide reclamation eligibility guidelines for non-coal lands and water. Non-coal lands and water are eligible for reclamation activities if they were mined or affected by mining processes; they were mined before August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; the operator, permittee, or agent of the permittee has no continuing responsibility for reclamation under statutes of the State or Federal Government due to bond forfeiture, and the forfeited bond is insufficient to pay the total cost of reclamation; the Governor agrees that reclamation is necessary and submits a letter of request to the Federal Office; it is necessary for the protection of the public health and safety, general welfare and property; and the lands and water are not designated for remedial action under the

Uranium Mill Tailings Radiation Control Act of 1978 or have been listed for remedial action under the Comprehensive Response Compensation and Liability Act of 1980.

#### 8. Section 2501.13, Preliminary Project Selection

Illinois revised the language in section 2501.13(a). Currently, this section requires the Department to select reclamation projects from an abandoned mine site database that contains all known abandoned mine sites in the State affected prior to August 3, 1977 and which contain problem conditions. Illinois revised section 2501.13(a) to require the Department to select reclamation projects from a database that contains all known abandoned mine sites in the State which are eligible under Sections 2501.10 and 2501.11.

In section 2501.13(b), Illinois revised the list of problem conditions the Department is to use to determine which sites are in the most need of reclamation. New section 2501.13(b)(9) provides that flooding of roads or improved property caused by sedimentation from AML sites is a problem condition. New section 2501.13(b)(10) provides that hazardous recreational water bodies is a problem condition. Existing sections 2501.13(b)(9) and (10) were redesignated as sections 2501.13(b)(11) and (12). Finally, Illinois added new section 2501.13(b)(13) to provide that coal refuse material or spoilbanks adversely affecting lands or water resources is a problem condition.

Illinois made minor wording changes in section 2501.13(c)(3).

#### 9. Section 2501.16, Final Selection and Project Deferment

Illinois revised section 2501.16(a) to require the Department to select from those abandoned mine sites identified under section 2501.13 projects for reclamation. The Department must base its selection upon the following criteria and consideration: satisfactory funding levels to complete reclamation; a complete application from the owner(s) of property that contains the significant portion of problem conditions on a site; and evidence that a timely Consent for Entry can be obtained from the owner(s) of the project site. Finally, Illinois removed section 2501.16(c).

#### 10. Section 2501.19, Annual Grant Process

Illinois removed the language found in this section and replaced it with language requiring the Department to submit an annual grant application to

OSM in accordance with the requirements of 30 CFR 886 to cover allowable costs of the AML program. These allowable costs include the actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs, and up to 90 percent of the costs of acquisition of land. This section also requires the Department to provide copies of the annual AML grant application to the public upon written request to the Department. Finally, the Department must circulate notices of annual AML grant applications through the Illinois State Library System and the Illinois State Clearinghouse.

#### 11. Section 2501.22, Reclamation Activities

Illinois revised this section to allow the Department to enter into cooperative agreements, as necessary and appropriate, with any person or governmental entity to reclaim abandoned land. The cooperative agreements may concern the furnishing of services, plans, layouts, materials, or any incidental services needed to reclaim the land. All parties that enter into a cooperative agreement must agree to comply with all applicable requirements of State and Federal law.

#### 12. Section 2501.25, Reclamation on Private Lands

Illinois added new language at 2501.25(b)(3) to allow the Department to waive a lien if it finds, before construction, that the reclamation work is being undertaken solely to seal, fill, or mark an open or settled mine shaft, drift or slope entry, adit or other mine opening or a subsidence pit. In section 2501.25(b)(5), Illinois revised the existing language to allow landowners to file petitions for a hearing to determine the increase in market value of reclaimed land. The landowners are to file the petitions with the Department through the Director of the Office of Mines and Minerals. At section 2501.25(c)(2), Illinois added language to provide that a reclamation lien created under Section 2.09 of the State Act will continue to exist until satisfied, subject only to the 40-year limitation period and the requirements of Sections 13-118 through 13-121 of the Code of Civil Procedure [735 ILCS 5/13-118 *et seq.*]. Finally, Illinois added new section 2501.25(c)(3) to allow the Department to request appropriate foreclosure action by the Attorney General to satisfy the lien if the reclaimed property is transferred for an actual consideration in excess of the fair market value of the

property after reclamation, and the lien is not satisfied at the time of transfer.

#### 13. Section 2501.28, Rights of Entry

Illinois made minor word changes in section 2501.28(a).

#### 14. Section 2501.40, Public Participation

Illinois added this new section to provide for public participation in the AML program and projects. Section 2501.40(a) provides that any interested party may submit information and comments to the Director of the Department, the Director of the Office of Mines and Minerals, or the Manager of the AML Division at any time. Section 2501.40(b) requires that the Department handle verbal and written requests for information as quickly as possible, and that requests made under the Freedom of Information Act (5 ILCS 140) be made and handled in accordance with the generally applicable procedures of the Department of Natural Resources. Section 2501.40(c) requires the Department to have available, upon request, copies of the Illinois State Reclamation Plan for Abandoned Mined Lands, Office of Mines and Minerals Annual and Bi-Annual Reports, specific project reports, and brochures and program materials. However, the availability of such reports, brochures and program materials can not be deemed a waiver of the Department's right to charge fees for its actual cost of reproducing and certifying public records requests under the Freedom of Information Act. Further, the Department may charge fees for its actual cost for providing multiple copies of free publications. Finally, section 2501.40(d) was added to read as follows:

(d) The Department shall hold such public meetings as it determines necessary and appropriate to advise the public of planned or ongoing AML projects, and to solicit input and participation in the AML program. Any interested person may request, in writing, that the Department hold a public meeting in connection with any AML project or program activity. Upon receipt of a written request to hold a public meeting, the Department shall contact the landowners directly involved in the project, as well as the local government bodies that may be interested. The Department shall schedule a public meeting if it determines that sufficient public interest exists to warrant the public meeting.

#### C. Changes in 44 IAC 1150

##### 1. Reference Changes

Illinois made the following statutory reference changes throughout 44 IAC 1150: Ill. Rev. Stat. 1985, ch. 96½, pars. 8001.01 *et seq.* and Ill. Rev. Stat. 1991, ch. 127, par. 1005-75 were changed to

20 ILCS 1920 and 5 ILCS 100/5–75, respectively.

Illinois made the following title changes throughout 44 IAC 1150: all references to the “Abandoned Mined Lands Reclamation Council” and “Council” have been changed to the “Illinois Department of Natural Resources” or “Department”; all references to “him” have been revised to “him/her” or some other gender neutral reference; and all references to the “Executive Director” have been changed to the “Director of the Office of Mines and Mineral,” “Director of the Department,” or “Director,” as appropriate.

## 2. Section 1150.10, Purpose

Illinois revised the language in this section to read as follows:

The Abandoned Mined Lands and Water Reclamation Act (“Act”) [20 ILCS 1920] provides that the Illinois Department of Natural Resources shall administer a program for the reclamation of abandoned lands and waters in accordance with the Act. This Part describes standard procedures for the Department’s Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation, for advertising, bidding and awarding contracts for construction on abandoned mined lands (“AML”) reclamation projects. This Part also prescribes standard procedures for obtaining the necessary outside professional services as needed in the administration of the AML program. The purpose is to prescribe procedures which will implement the AML program in a way which satisfies the requirements of the various State of Illinois purchasing laws, as well as federal grant requirements for funding pursuant to the Surface Mining Control and Reclamation Act of 1977, as amended (30 USC 1201 *et seq.*).

## 3. Section 1150.20, Scope

Illinois removed the first sentence in this section and made minor word changes.

## 4. Section 1150.30, Applicability

Illinois removed the existing language in this section, and replaced it with applicability guidelines for this part and its subparts. Section 1150.30(a) states that this part applies to all contracts by the Division of Abandoned Mined Lands Reclamation for reclamation construction and professional services contracts. Section 1150.30(b) states that subpart B applies to the advertising, bidding and awarding of contracts for construction on planned reclamation projects that have been designed in the normal course of the AML program. Section 1150.30(c) states that subpart C applies to construction contracts that are needed to minimize emergency conditions which involve public health and safety danger and cannot wait for

normal program abatement procedures. Finally, section 1150.30(d) states that subpart D applies to the selection of Consultants to provide professional services covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selections Act [30 ILCS 535].

## 5. Section 1150.100, Definition of Terms

Illinois removed the following definitions: “Council” and “Executive Director.”

Illinois added the following definitions: “AML”; “AVS”; “bid”; “Department”; “OSM”; “subconsultant”; and “subcontractor.”

Illinois revised the following definitions: “advertisement”; “award”; “Contract”; “contract bond”; “Department of Transportation”; “equipment”; “plans”; “specifications”; and “proposal.”

## 6. Section 1150.200, Bidding Requirements and Conditions

Illinois revised section 1150.200(a)(1) to require the Department of Transportation to prequalify each bidder as provided in 44 Ill. Adm. Code 650. In section 1150.200(a)(4), Illinois revised the language to require the Department to send a written Notice of its action to the Contractor. Minor word changes were made at sections 1150.200(a)(4)(B), 1150.200(a)(4)(H), and 1150.200(a)(4)(K). At section 1150.200(a)(4)(M), a recommendation from OSM that the contractor is not eligible for an AML contract under 30 CFR 874.16 is added to the list of grounds for contractor suspension.

Illinois revised section 1150.200(a)(5) to read as follows:

In all actions suspending a contractor’s eligibility to bid on reclamation project contracts, the Contractor may protest the Department’s action by submitting to the Director of the Department a written statement of objection setting forth the facts and circumstances of the action which are alleged to be legally or otherwise objectionable. The written statement of objection must be received by the Director within 14 calendar days of the objectionable action. The Director shall provide the Contractor with a hearing in accordance with procedures set forth in 17 Ill. Adm. Code 2530. Notwithstanding the provisions of Sections 2530.320–2530.350 concerning initiation of proceedings by the Department, the Contractor shall initiate the proceedings.

In section 1150.200(b)(1), Illinois revised the language to require the Department to publish notice to bidders and advertisement for bids in the Illinois Procurement Bulletin once, no less than 14 days before the bid opening. Section 1150.200(b)(2) was revised to provide that the Department

of Transportation will publish the Illinois Procurement Bulletin. Finally, at section 1150.200(b)(3), Illinois made minor wording changes.

In section 1150.200(c)(1), Illinois removed the existing language and replaced it with language requiring the Department of Transportation to furnish a proposal form to prequalified, prospective bidders, stating the location and description of the contemplated construction, showing the estimate of the various quantities and kinds of work to be performed and/or materials to be furnished, and having a schedule of items for which unit bid prices are invited. The proposal form also will state the time in which the work must be completed, the amount of the proposal guaranty, labor requirements, and the date, time and place of the opening of proposals. Finally, the form will include Special Provisions and requirements that adapt the Standard Specifications to AML projects and provide for project specific conditions and requirements.

Illinois revised section 1150.200(g)(1) to read as follows:

The prospective bidder shall, before submitting a bid, carefully examine the provisions of the contract. The bidder shall inspect in detail the site of the proposed work, investigate and become familiar with all the local conditions affecting the contract and fully acquaint itself with the detailed requirements of construction. Submissions of a bid shall be a conclusive assurance and warranty that the bidder has made these examinations and that the bidder understands all requirements for the performance of the work. If his/her bid is accepted, the bidder will be responsible for all errors in the proposal resulting from his/her failure or neglect to comply with this subsection (g)(1). The Department will, in no case, be responsible for any costs, expenses, losses, or change in anticipated profits resulting from such failure or neglect of the bidder to make these examinations.

Illinois added a new section 1150.200(g)(2) which prohibits bidders from taking advantage of any error or omission in the proposal and advertised contract. If bidders want an explanation or interpretation of the plans, specifications or any contract documents, they may submit requests in writing to the Supervisor of Project Management. The requests must allow sufficient time for the Department to respond in writing to all prospective bidders before submission of their bids. All responses to bidder requests will be supplied to all prospective bidders in the form determined by the Department if the Department determines that the information would aid competition. Oral explanations, interpretations, or instructions given before the submission

of bids unless at a pre-bid conference will not be binding on the Department.

Illinois made minor word changes in section 1150.200(h) and 1150.200(i)(1). New section 1150.200(i)(2) was added to require bidders to submit separate proposals on each individual contract if a combination bid is submitted on two or more proposals. If separate bids are not submitted, the Department will not consider the combination bid. If the bidder wants to submit a combination bid, the bidder must state the amount of the combination bid for the entire combination in the place provided in the proposal form. Illinois added new section 1150.200(i)(3) to read as follows:

(3) If a combination bid is submitted on any stipulated combination, and errors are found to exist in computing the gross sum bid on any one or more of the individual proposals, corrections shall be made, by the Department and the amount of the combination bid shall be corrected so that it will be in the same proportion to the sum of the corrected gross sum bid as the combination bid submitted was to the sum bid submitted.

The following provisions shall govern combination bidding:

(A) A combination bid which is submitted for 2 or more proposal and awarded on that basis shall have the bid prorated against each proposal in proportion to the bid submitted for each proposal.

(B) Separate contracts shall be executed for each individual proposal included in the combination.

(C) The completion date for all contracts awarded on a combination bid shall be the latest completion date designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts. The working days for all contracts awarded on a combination bid shall be the largest number of working days designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts.

(D) An extension of time for any one or more contracts awarded on a combination bid shall automatically extend all contracts awarded on the combination.

(E) In the event the Contractor fails to complete any one or all of the contracts on the combination bid by the contract completion date plus any authorized extension, or the contract working days plus any authorized extension, the liquidated damages shall be determined from the schedule of deductions for each day of overrun in contract time as provided in the contract, based on the combination bid total, and shall be computed on the combination and prorated against the 2 or more individual contracts based on the dollar value of each.

(F) The plans and Special Provisions for each separate contract shall be construed separately for all requirements, except as described in subsections (a) through (e) above.

Finally, at section 1150.200(m), Illinois removed language prohibiting a

bidder from resubmitting a withdrawn proposal at the same letting.

#### 7. Section 1150.300, Award and Execution of Contract

At section 1150.300(a)(2), Illinois revised the language to allow the Department to reject any or all proposals, to waive technicalities, or to advertise for new proposals if the Department believes that it will serve the best interests of the Department.

Illinois revised section 1150.300(b)(1) to require the Department to award the contract within 45 days after the opening of proposals to the lowest responsible and qualified bidder. The Department must notify the successful bidder that his/her bid has been accepted and, subject to sections 1150.300(b)(2) and (3), he/she will be the Contractor. New section 1150.300(b)(2) states that the State is not bound by a contract until the Department executes it. The Department may cancel the award any time before execution in order to protect the public interest and integrity of the bidding process or for any reason if, in the judgement of the Department, the best interest of the Department will be served. Finally, section 1150.300(b)(3) was revised to allow a bidder to withdraw his/her bid 45 days after the opening of proposals, or the time specified on the Notice to Bidders.

Illinois added a new section 1150.300(c), entitled "Notice of Contract Award," to require the Department to publish each and every contract that is let or awarded in the next available Illinois Procurement Bulletin.

Illinois revised section 1150.300(d)(1) require the Department to return the guaranty checks promptly. Section 1150.300(d)(2) was revised to allow the two lowest bidders to substitute bid bonds for their guaranty checks after a period of three working days after the date of opening proposals has elapsed.

Illinois added new section 1150.300(e), entitled "Applicant Violator System" to read as follows:

(1) Under 30 CFR 874.16, every successful bidder for a federally funded AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by the federal Office of Surface Mining, Reclamation and Enforcement's automated Applicant/Violator System (AVS) for each contract to be awarded.

(2) At the time the successful bidder is notified by letter of intent that his/her bid will be accepted, the Department will provide to the bidder an Ownership/Control ("O/C") information package. The bidder shall completely fill out the forms and return the completed forms to the Department. The

Department will forward the completed forms to OSM at the Lexington, Kentucky AVS office for data entry and compliance check.

(3) All subcontractors who will receive 10% or more of the total contract funding will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check, prior to receiving the Department's approval of subcontractor.

(4) Any contract inspector, selected through a bidding process, regardless of the percentage of contract funding, will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check.

(5) The Department shall deny a contract and cancel the award upon OSM's recommendation that the successful bidder is not eligible for an AML contract. The Department shall deny approval of a subcontractor upon OSM's recommendation that the subcontractor is not eligible for an AML contract. The Department shall deny an inspection contract upon OSM's recommendation that the contract inspector is not eligible for an AML contract.

(6) Any person denied an AML contract or participation in an AML funded project, shall appeal the decision and recommendation of OSM directly to OSM. Appeal should be made to establish eligibility for future AML projects. The Department will not delay a project pending appeal. The Department's role in the AVS compliance check process is ministerial and does not involve exercise of independent judgement or review of OSM's decision and recommendation. The Department shall not be responsible for any damages sustained by any person by reason of OSM's determination as to eligibility for AML contracts.

(7) After a Contractor, subcontractor, or contract inspector has once submitted an O/C information package and has been entered into the AVS in connection with an AML project, the Department may, in connection with subsequent projects, provide dated AVS printouts reflecting the information submitted and the current AVS recommendation, along with an AML Contractor O/C Data Certification form. The Contractor, subcontractor, or contract inspector shall complete and submit the certification in place of the O/C information package, in the same manner as provided above.

(8) Any potential AML Contractor, subcontractor or contract inspector may submit O/C information directly to OSM and the Lexington AVS Office, to predetermine eligibility for AML contracts.

Illinois removed the existing language at section 1150.300(f) and replaced it with language requiring the Contractor to furnish a performance and payment bond with good and sufficient sureties in the full amount of the contract as the penal sum to the Department. The surety shall be acceptable to the Department, shall waive notice of any changes and extensions of time, and shall submit its bond on the form furnished by the Department.

#### 8. Section 1150.400, Contracts Involving Expenditures of \$30,000.00 or Less

Illinois revised this section to allow the Department to waive the prequalification and bidding requirements of Section 1150.300 when the reclamation project expenditures are \$30,000.00 or less.

#### 9. Section 1150.500, Emergency Contracting

In section 1150.500(b)(1), Illinois made minor word changes. This section requires the Department to maintain a list of prequalified contractors for the type of construction work encountered in AML Emergency reclamation projects. Illinois proposes to add language requiring the Department to include on this list those contractors who have demonstrated responsibility and competence through past performance on AML Emergency reclamation projects. Finally, Illinois removed the word "prequalified" from the remaining text in this section and replaced it with the word "listed."

#### 10. Section 1150.700, Applicability

Illinois revised this section to state that this subpart applies to all architectural, engineering, or land surveying professional services provided to the Department under a contract. This section does not apply to those services covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selections Act [30 ILCS 535] and related services that may be performed by persons not required to be licensed under the Illinois Architecture Practice Act of 1989 [225 ILCS 305]; the Professional Engineering Practice Act of 1989 [225 ILCS 325]; the Structural Engineering Licensing Act of 1989 [225 ILCS 340]; or the Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330].

#### 11. Section 1150.800, Prequalification

Illinois removed the existing language in this section and replaced it with language requiring the Department of Transportation to prequalify all architectural, engineering, or land surveying consultants wanting to provide services to the Department of Natural Resources relating to the AML program.

#### 12. Section 1150.900, Subcontracting

Illinois removed the existing language in this section and replaced it with the following:

(a) Professional Services Consultants may subcontract no more than 50 percent of the project work.

(b) The Professional Services contract shall include the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the contract [30 ILCS 505/9.04].

(c) If at any time a Professional Services Consultant who had not intended to utilize the services of a subconsultant, decides to utilize a subconsultant, the Department and the Consultant shall file an amendment to the original contract with the Comptroller stating the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the original contract [30 ILCS 505/9.04].

#### 13. Section 1150.1000, Requests for Proposals

In this section, Illinois removed the existing language and replaced it with language requiring a selection committee, consisting of the Director of the Office of Mines and Mineral, the Manager of the AML Reclamation Division, and the Supervisor of the Project Management Section, or their designees, to select firms to provide architectural, engineering, and land surveying services on AML reclamation projects. When evaluating the proposals, the committee must take into consideration the following qualification factors: the ability of professional personnel; the past record and experience on AML projects and projects with similar professional disciplinary requirements; the firm's performance data on file; the willingness of the firm to meet time requirements; the location of the Consultant's office in relation to the project site and the Department's AML office that will be managing the project; the workload of the consultant; and any other qualifications based on factors that the Department may determine in writing are applicable on a project specific basis. The committee must also assign knowledgeable technical staff to provide preliminary technical review, as necessary and appropriate, to assure that all project considerations are taken into account. Formal and informal submissions of verbal and written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation may not be solicited before the committee selects a firm for negotiation. Finally, the committee can conduct discussions and require public presentations by the Consultants, deemed to be the most qualified, regarding their qualifications, approach to the project, and ability to furnish the required services.

#### 14. Section 1150.1200, Selection Procedure

Illinois removed the existing language in this section, and replaced it with guidelines for selecting a consultant to provide architectural, engineering, and land surveying services on AML reclamation projects. Section 1150.1200(a) requires the committee to select, on the basis of evaluations, discussions and any presentations, at least three qualified Consultants to provide services for the project. The Consultants must be ranked in order of qualifications, and the committee must contact the Consultant ranked most preferred to negotiate a contract for fair and reasonable compensation. Section 1150.1200(b) provides that if less than three Consultants submit letters of interest and are determined to be qualified, the Department may proceed to contract negotiation as described in section 1150.1200(a). Section 1150.1200(c) states that the decision of the Department shall be final and binding. Finally, section 1150.1200(d) requires the Department to publish each and every contract awarded by the Department in the next available Illinois Procurement Bulletin.

#### 15. Section 1150.1300, Contract Negotiations

The existing language in this section was removed and replaced with the following:

(a) The Department shall prepare a written description of the scope of the proposed services, entitled "Scope of Work," to be used as a basis for negotiations and shall negotiate a contract with the highest ranked qualified Consultant at a compensation that the Department determines in writing to be fair and reasonable. In making this decision, the Department shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered.

(b) If the Department is unable to negotiate a satisfactory contract with the Consultant that is most preferred, negotiations with that Consultant will be terminated. The Department shall then begin negotiations with the next ranked Consultant. If the Department is unable to negotiate a satisfactory contract with that Consultant, negotiations with that Consultant shall be terminated. The Department shall then begin negotiations with the next ranked Consultant.

(c) If the Department is unable to negotiate a satisfactory contract with any of the selected Consultants, the Department shall re-evaluate the architectural, engineering, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements. The Department shall then compile a second list of not less than three qualified Consultants and proceed in accordance with the provisions of the Subpart.

(d) A Consultant negotiating a contract with the Department shall negotiate any approved subcontracts for architectural, engineering, and land surveying services at compensation that the Consultant determines in writing to be fair and reasonable based upon a written description of the proposed services of the subconsultant.

#### 16. Section 1150.1325, Exemptions

Illinois added this new section to provide that the provisions of Sections 1150.1000, 1150.1100, and 1150.1200 of this Part do not apply to architectural, engineering, and land surveying contracts of less than \$25,000. The provisions also do not apply to the procurement of these services by the Department when the Department determines in writing that it is in the best interests of the State to proceed with the immediate selection of a firm, or in emergencies when immediate services are necessary to protect the public health, safety and general welfare from the adverse effects of mining.

#### 17. Section 1150.1350, Firm Performance Evaluations

Illinois added this new section to require the Department to evaluate the performance of each consultant upon completion of a contract. The evaluation must be made available to the Consultant when he/she requests it. The Consultant may respond in writing to the evaluation, and the evaluation and response must be retained solely by the State. The evaluation and response cannot be made available to any other person or firm and is exempt from disclosure under the Freedom of Information Act [54 ILCS 140].

### IV. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Illinois plan.

#### Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

#### 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.s.t. on December 1, 1998. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodation to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been 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 all persons scheduled to speak and persons present in the audience who wish to speak have spoken.

#### Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, 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 also make a written summary of each meeting a part of the Administrative Record.

### V. Procedural Determinations

#### Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

#### Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of

whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and 30 CFR Part 884.

#### National Environmental Policy Act

This rule does not require an environmental impact statement since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

#### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

#### Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

### List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1998.

#### Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

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