



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

**[SATS No. IN-164-FOR; Docket ID: OSM-2016-0004;
S1D1S SS08011000 SX064A000 178S180110;
S2D2S SS08011000 SX064A000 17XS501520]**

Indiana Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Indiana Abandoned Mine Land Reclamation (AML) Plan (Indiana Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Updates to the Indiana Plan were proposed to be consistent with changes required by the 2006 amendment to SMCRA.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Plan
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
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I. Background on the Indiana Plan

The Abandoned Mine Land Reclamation Program (AML) was established by Title IV of the Act, in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within

the State or on Indian lands if they develop and submit, to the Secretary of the Interior for approval, a program (often referred to as a Plan) for the reclamation of abandoned coal mines. You can find background information on the Indiana Plan, including the Secretary's findings, the disposition of comments, and the approval of the Plan in the July 26, 1982, Federal Register (47 FR 32108). You can find later actions concerning the Indiana Plan and amendments to the Indiana Plan at 30 CFR 914.20 and 914.25.

II. Description of the Proposed Amendment

By letter dated March 14, 2016 (Administrative Record No. IN-1773), Indiana sent OSMRE an amendment to the Indiana Plan at its own initiative.

On July 14, 2016, we announced receipt of the proposed amendment in the Federal Register (81 FR 45425). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 15, 2016. We did not receive any public comments.

III. OSMRE's Findings

We are approving the amendment as described below. The following are the findings we

made concerning Indiana's amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the Plan amendment available at www.regulations.gov.

Indiana Plan

1. Letter of Designation from the Governor [30 CFR 884.13(a)(1)]

Indiana resubmitted a 1981 letter from the Governor designating the Indiana Department of Natural Resources (Indiana DNR) as the agency responsible for the abandoned mine lands reclamation program in the state of Indiana. This letter was submitted and approved as part of the original proposed Indiana Plan and is consistent with the Federal requirements of 30 CFR 884.13(a)(1).

2. Legal Opinion [30 CFR 884.13(a)(2)]

Indiana resubmitted a 1981 legal opinion from the Attorney General of Indiana authorizing the Indiana DNR, under the legal authority of the Indiana Code, to conduct its reclamation program in accordance with the requirements of Title IV of the Act. This legal opinion was submitted and approved as part of the original proposed Indiana Plan and is consistent with the Federal requirements of 30 CFR 884.13(a)(2).

3. Goals and Objectives [30 CFR 884.13(a)(3)(i)]

Part 884.13(c)(1) of the Indiana Plan, states that the goal of its AML program is to address the adverse effects of past coal mining conducted prior to August 3, 1977, which impact public health, safety, or general welfare, and cause environmental degradation.

The stated objectives of the AML program are to identify and prioritize these adverse impacts, provide planning procedures, and ensure their ultimate reclamation. Indiana also stated that, although the primary purpose of the program is the reclamation of coal mine lands, any non-coal AML issues will be dealt with in accordance with OSMRE policies.

Indiana DNR sets aside a percentage of each year's allocation of AML funds into separate funds for both the restoration of eligible lands and waters and for the abatement of the causes and treatment of the effects of acid mine drainage. Both funds are used in accordance with the requirements and priorities of SMCRA. These program goals and objectives are consistent with the Federal requirements of 30 CFR 884.13(a)(3)(i).

Therefore, we are approving their inclusion.

4. Reclamation Project Ranking and Selection Procedures [30 CFR 884.13(a)(3)(ii)]

Part 884.13(c)(2) of the Indiana Plan, describes the priority system and the specific criteria for identifying and ranking all sites eligible for reclamation under Title IV of the Act. Examples of eligible site problems include: open and unprotected mine entries;

water filled, or partially filled shafts; dangerous highwalls and other steep embankments; hazardous mine structures; underground mine subsidence; trash dumps; water bodies impaired by coal mine drainage; coal refuse areas; spoil areas; and any other mine related danger. The sites given highest priority are those exhibiting extreme danger of adverse effects of coal mining practices. The sites given the second highest priority are those adversely impacting public health and safety. The sites given third priority are those which cause the environmental degradation of soil, water, air quality, woodlands, fish and wildlife, recreational resources, and agricultural productivity. Indiana also describes Indiana DNR's data acquisition procedures in determining site eligibility, which include the review of past mining records, surveys, field investigations, and public input. Indiana explains that site priority will be determined for all eligible sites, regardless of resource recovery potential, and that any resource recovery will be undertaken in accordance with Federal rules. Any remined sites will remain eligible for AML reclamation. Part 884.13(e)(1)(2) of the Indiana Plan, includes a list of documents and data sources concerning known or suspected eligible lands and waters within the state of Indiana. These descriptions are consistent with the Federal requirements of 30 CFR 884.13(a)(3)(ii). Therefore, we are approving their inclusion.

5. Coordination with Other Programs [30 CFR 884.13(a)(3)(iii)]

Part 884.13(c)(3) of the Indiana Plan describes Indiana DNR's coordination with other agencies. Indiana DNR coordinates with the Sycamore Trails Resource Conservation &

Development Group, a non-profit organization that maintains its own AML program. The two programs share information via a liaison and an Abandoned Mine Land Inventory System database, which lists sites identified by personnel from both programs. Eligibility of these potential sites for the expenditure of AML funds is determined by committee review. Additional coordination with local tribes is not necessary because there are no known Indian lands within the Indiana Coal Region. Indiana also describes the purpose of its AML Emergency Program, which is to stabilize the emergency aspects of an AML problem by eliminating the immediate danger to public health, safety, or general welfare. The AML Emergency Program is discussed further in Section 8, “Rights of Entry.” This description of agency coordination is consistent with the Federal requirements of 30 CFR 884.13(a)(3)(iii). Therefore, we are approving its inclusion.

6. Land Acquisition, Management, and Disposal [30 CFR 884.13(a)(3)(iv)]

Part 884.13(c)(4) of the Indiana Plan describes its policies and procedures regarding land acquisition, management, and disposal. Under the Indiana Plan, all lands that have been adversely affected by coal mining activity are eligible for acquisition, if deemed necessary. These acquisition, management, and disposition policies and procedures are consistent with the Federal requirements of 30 CFR 884.13(a)(3)(iv). Therefore, we are approving their inclusion.

7. Reclamation of Private Land [30 CFR 884.13(a)(3)(v)]

Part 884.13(c)(5) of the Indiana Plan describes Indiana's policies and procedures for reclamation on private land. Under the Indiana Plan, the Indiana DNR has the authority to place or waive a lien against private property if the owner has consented to, participated in, or exercised control over the mining operation, and if reclamation will result in a significant increase in property value. If an initial evaluation suggests an increase in property value of \$25,000 or more, the land appraisal may be conducted by an independent appraiser. These policies and procedures are consistent with the Federal requirements of 30 CFR 884.13(a)(3)(v). Therefore, we are approving their inclusion.

8. Rights of Entry [30 CFR 884.13(a)(3)(vi)]

Part 884.13(c)(6) and Part 884.13(c)(3) of the Indiana Plan states its policies and procedures regarding rights of entry to lands or property. Indiana DNR will take all reasonable actions to obtain advanced written consent from the property owner for the purposes of reclamation. In the event that permission cannot be obtained on property where reclamation is needed and there is an immediate danger to public health, safety, or general welfare, police power entry is authorized under the AML Emergency Program. If police power entry is necessary, a written notice shall be mailed to the property owner at least 30 days prior to entry. If the property owner's address is not known, the notice shall be posted on the property and advertised in the newspaper. These policies and procedures are consistent with the Federal requirements of 30 CFR 884.13(a)(3)(vi). Therefore, we

are approving their inclusion.

9. Public Participation Policies [30 CFR 884.13(a)(3)(vii)]

Part 884.13(c)(7) of the Indiana Plan, describes its public participation policies in the development and operation of the Indiana Plan. Indiana DNR encourages the public to contact their office with any questions or concerns regarding mining related problems or the AML program. For future projects, Indiana DNR distributes informational letters to Federal, State, and local elected officials, and publishes public notices to news outlets within the county where the proposed activity is located. If sufficient public response is received, DNR will offer public meetings to provide information on proposed activities. Additional public involvement in the preparation of any revisions or amendments to the Indiana Plan will be coordinated and executed by OSMRE during the public comment and review period. These policies and procedures are consistent with the Federal requirements of 30 CFR 884.13(a)(3)(vii). Therefore, we are approving their inclusion.

10. Organization of the Designated Agency [30 CFR 884.13(a)(4)(i)]

Part 884.13(d)(1) of the Indiana Plan describes the organization of the Indiana DNR and its relationship to other state organizations that may become involved in Indiana's AML program. The Indiana DNR Division of Reclamation reports to the DNR Director, via the Deputy Director to the Regulatory Management Team. The Indiana DNR Director

reports directly to the Governor. The AML program also coordinates with other DNR divisions on proposed projects and reclamation activities. This description of agency organization is consistent with the Federal requirements of 30 CFR 884.13(a)(4)(i). Therefore, we are approving its inclusion.

11. Personnel Staffing Policies [30 CFR 884.13(a)(4)(ii)]

Part 884.13(d)(2) of the Indiana Plan describes Indiana's personnel staffing policies that will govern the assignment of personnel to its AML program. The program's staff is selected on the basis of applicable academic and professional experience. The Indiana DNR will be responsible for complying with all pertinent Federal and State laws. This description of agency personnel policies is consistent with the Federal requirements of 30 CFR 884.13(a)(4)(ii). Therefore, we are approving its inclusion.

12. Purchasing and Procurement [30 CFR 884.13(a)(4)(iii)]

Part 884.13(d)(3) of the Indiana Plan states that the purchasing and procurement systems used by the Indiana DNR will be in accordance with the requirements of the Office of Management and Budget (OMB) Circular A-102, Attachment 0 and the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (43 CFR part 12, subpart C). Indiana also described its AML Applicant/Violator System, which ensures that no company owners, director, or major

shareholders bidding on AML federally-funded projects have any Federal coal mining violations or state cessation orders that would render them ineligible. These systems are consistent with the Federal requirements of 30 CFR 884.13(a)(4)(iii). Therefore, we are approving their inclusion.

13. Accounting [30 CFR 884.13(a)(4)(iv)]

Part 884.13(d)(4) of the Indiana Plan describes Indiana DNR's accounting system, including procedures for the operation of the Indiana Abandoned Mine Reclamation Fund. AML projects are grant-funded, and detailed financial records are maintained for auditing purposes, in accordance with 30 CFR 886 and OMB Circular A-102. This system description is consistent with the Federal requirements of 30 CFR 884.13(a)(4)(iv). Therefore, we are approving its inclusion.

14. Environmental Problems and Reclamation Techniques [30 CFR 884.13(a)(5)(ii)]
[30 CFR 884.13(a)(5)(iii)]

Part 884.13(e)(3) of the Indiana Plan describes the problems occurring on known or suspected lands and waters which require reclamation. A report published by Indiana DNR describes these problems and the suggested reclamation techniques to restore the site to an environmentally stable condition. These descriptions are consistent with the Federal requirements of 30 CFR 884.13(a)(5)(ii) and 30 CFR 884.13(a)(5)(iii).

Therefore, we are approving their inclusion.

15. The Economic Base [30 CFR 884.13(a)(6)(i)]

Part 884.13(f)(1) of the Indiana Plan, describes the economic base for Indiana's primary coal producing region, including population size, market accessibility, economic activities, such as agricultural products and manufacturing, and available mining resources. This description is consistent with the Federal requirements of 30 CFR 884.13(a)(6)(i). Therefore, we are approving its inclusion.

16. Significant Aesthetic, Historic, or Cultural, and Recreational Values [30 CFR 884.13(a)(6)(ii)]

Part 884.13(f)(2) of the Indiana Plan describes the aesthetic, historic, and recreational values of southwestern Indiana. Indiana DNR stated that, to ensure that all potential impacts of the reclamation process are mitigated, the Division of Reclamation will consult with the Division of Historic Preservation and Archaeology. This statement is consistent with the Federal requirements of 30 CFR 884.13(a)(6)(ii). Therefore, we are approving its inclusion.

17. Flora and Fauna of Southwestern Indiana [30 CFR 884.13(a)(6)(iii)]

Indiana stated that, during the planning stages of proposed AML reclamation projects, evaluations are conducted by Indiana DNR to determine the presence of wetlands, endangered species, and other environmental concerns. Recommendations are then provided to enhance or improve wetlands and critical wildlife habitat. During this process, Indiana DNR consults with the U.S. Fish and Wildlife Service to determine whether the project will adversely affect any Federally-listed threatened or endangered species. Indiana DNR also coordinates with the Indiana Division of Nature Preserves to identify any unique natural habitats for protection and mitigation. These descriptions are consistent with the Federal requirements of 30 CFR 884.13(a)(6)(iii). Therefore, we are approving their inclusion.

18. Locations of Documented Surface and Underground Coal Mines in Southwestern Indiana [30 CFR 884.13(a)(5)(i)]

Indiana included a map showing the general location of known or suspected eligible lands and waters within Indiana which require reclamation. This map is consistent with the Federal requirements of 30 CFR 884.13(a)(5)(i). Therefore, we are approving its inclusion.

IV. Summary and Disposition of Comments

Public Comments

OSMRE solicited public comments and provided an opportunity for a public hearing on the amendment of the Indiana Plan. No public comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

On May 4, 2016, under 30 CFR 884.14(a)(2), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana plan (Administrative Record No. IN-1773). We did not receive any comments.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

On May 4, 2016, we requested comments on the Indiana Plan amendment (Administrative Record No. IN-1773), from the SHPO and the ACHP, but neither responded to our request.

V. OSMRE's Decision

Based on the above findings, we approve the amendment Indiana sent us on March 14, 2016 (Administrative Record No. IN-1773).

To implement this decision, we are amending the Federal regulations at 30 CFR part 914, which codify decisions concerning the Indiana Plan. In accordance with the

Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 - Takings

This rulemaking does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866 - Regulatory Planning and Review

This rulemaking is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rulemaking meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AML programs and program amendments because each program is drafted and promulgated by a specific state, not by OSMRE. Under section 405 of SMCRA (30 U.S.C. 1235) and the Federal regulations at 30 CFR

884.14 and 884.15, decisions on proposed State AML 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 part 884 have been met.

Executive Order 13132 - Federalism

This rulemaking does not have Federalism implications. SMCRA delineates the roles of the Federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rulemaking on Federally-recognized Tribes and have determined that the rulemaking does not have substantial direct effects on one or more Tribes, on the relationship between the Federal government and Tribes, or on the distribution of power and responsibilities between the Federal government and Tribes. The basis for this determination is that our decision is on a state AML program and does not involve Federal regulations involving

Indian lands.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 of May 18, 2001, requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rulemaking is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because it is deemed a categorical exclusion within the meaning of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). It is documented in the DOI Departmental Manual 516 DM 13.5(B)(29), that agency decisions on approval of state reclamation plans for abandoned mine lands do not constitute major Federal actions.

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 certifies that this rulemaking 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 rulemaking, is based upon counterpart 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. 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 counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rulemaking.

Unfunded Mandates

This rulemaking will not impose an unfunded mandate on state, local, or Tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 2017.

Alfred L. Clayborne, Regional Director

Mid-Continent Region

For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914 - INDIANA

1. The authority citation for part 914 continues to read as follows:

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

2. Section 914.25 is amended in the table by adding an entry in chronological order by

“Date of final publication” to read as follows:

§ 914.25 Approval of Indiana abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * March 14, 2016	* * <u>[Insert date of publication in the Federal Register]</u>	Abandoned Mine Land Reclamation Plan for the State of Indiana

[FR Doc. 2017-20265 Filed: 9/21/2017 8:45 am; Publication Date: 9/22/2017]