

II. Background on the Montana Plan

On November 24, 1980, the Secretary of the Interior approved the Montana plan. General background information, including the Secretary's findings, the disposition of comments, and the approval of the Montana plan can be found in the November 24, 1980, **Federal Register** (45 FR 70445). Subsequent actions concerning Montana's plan and plan amendments can be found at 30 CFR 926.25.

III. Proposed Amendment

By letter dated March 22, 1995 (administrative record No. MT-AML-01), and memorandum dated April 5, 1995 (administrative record No. MT-AML-02), Montana submitted a proposed amendment to its AMLR plan pursuant to SMCRA. Montana submitted the proposed amendment at its own initiative to provide for the implementation of several initiatives established under the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101-508). Montana proposed to revise its AMLR plan to allow abandoned mine reclamation funds to be used to reclaim interim program sites and insolvent surety coal mine sites meeting certain criteria where available funds are insufficient to provide for adequate reclamation or abatement at such site. Montana also proposed the addition of new provisions to allow setting aside up to 10 percent of the annual abandoned mine reclamation grants made to Montana to provide for restoration of eligible lands and waters after expiration of the Federal abandoned mine land program and implementation of an acid mine drainage program. Finally, Montana proposed to limit the expenditure of its allocated AMLR funds up to 30 percent for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, and to replace water supplies adversely affected by past mineral mining practices. The amendment also contains updated policies and procedures concerning purchasing, equal opportunity in employment, Americans With Disabilities Act, compliance with the National Oil and Hazardous Substances Contingency Plan, and coordination and consultation with other State and Federal agencies.

OSM announced receipt of the proposed amendment in the April 25, 1995, **Federal Register** (60 FR 20251), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment

on its adequacy (administrative record No. MT-AML-013). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 25, 1995.

IV. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed Montana plan amendment as submitted by Montana on March 22, and April 5, 1995, is consistent with SMCRA and is in compliance with the corresponding Federal regulations at 30 CFR subchapter R. Thus, the Director approves the proposed amendment.

1. New Initiatives Submitted in Response to the Abandoned Mine Reclamation Act of 1990

a. *Reclamation of Interim Program and Bankrupt Surety Coal Sites.* Montana proposed to revise its AMLR plan by adding new language to provide—

(B) [a]bandoned coal mine sites mined after August 3, 1977, where bonds have been forfeited, may now be eligible for funding, if the Department [of Environmental Quality (DEQ), formerly the Department of State Lands (DSL)] makes either of the following findings:

(1) [t]he coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before April 1, 1980, the date in which the Secretary [of the Interior] approved Montana's program pursuant to section 503 [of SMCRA], and funds for reclamation or abatement which 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,

(2) [t]he coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, the date of enactment of P.L. 101-508 [the Abandoned Mine Reclamation Act of 1990], and the surety of such mining operator became insolvent during such period, and funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

[i]n determining which sites to reclaim, the Department shall follow the priorities stated in paragraphs (1) and (2) of Section 403 (a) of P.L. 95-87[SMCRA]. The Department shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon the community. As per the conditions of Montana's Certification of Completion of Coal Reclamation of Coal-Related Impacts (Federal Register July 9, 1990) [see 55 FR 28022; July 9, 1990] if a site is determined to be eligible under this initiative it must be reclaimed ahead of eligible non-coal projects.

At Section A, I(B)(1), Montana's proposed language cites April 1, 1990,

as the date the Secretary approved Montana's regulatory program. Elsewhere in this amendment this date is correctly cited as April 1, 1980.

Section 402(g)(4) of SMCRA and the implementing Federal regulations at 30 CFR 874.12 (d) and (e) provide similar restrictions concerning the reclamation and abatement of interim program and bankrupt surety board forfeiture coal sites. According to the Federal requirements, such sites must have been mined for coal or affected by coal mining processes and the site was left in either an unreclaimed or inadequately reclaimed condition (1) between August 4, 1977, and the date on which the Secretary of the Interior approved a State's regulatory program pursuant to section 503 of SMCRA, and any funds pursuant to a bond or other financial guarantee or from any other source that would be available for reclamation and abatement are not sufficient to provide for adequate reclamation or abatement at the site, or (2) between August 4, 1977, and November 5, 1990, and the surety of the mining operator became insolvent during such period, and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site. In addition, to qualify for reclamation or abatement, such sites must be either priority 1 or 2 sites pursuant to section 403(a) (1) and (2) of SMCRA. Priority will be given to those sites in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

The proposed language for reclamation and abatement of interim program and bankrupt surety bond forfeiture sites to be added to the Montana plan contains the same requirements as the counterpart Federal requirements at section 402(g)(4) of SMCRA and 30 CFR 870.12(d) and (e). Therefore, the Director finds that the proposed AMLR plan provisions are consistent with the counterpart Federal provisions. The Director approves the addition to the Montana AMLR Plan of the provisions concerning reclamation of interim program and bankrupt surety bond forfeiture site.

b. *Set-Aside Program.* Montana proposed to revise its AMLR plan by adding new language to provide—

C. [a]cid mine drainage (AMD) projects may now be eligible for funding. Montana may receive and retain up to 10 percent of the total of the grants made annually to Montana where such amounts are deposited into an acid mine drainage abatement and