

CHAPTER 15. OKLAHOMA'S ABANDONED MINE LAND RECLAMATION PROGRAM

Section

- 155:15-1-1. Purpose
- 155:15-1-2. Definitions
- 155:15-1-3. Responsibilities
- 155:15-1-4. Oklahoma Abandoned Mine Land Reclamation Fund
- 155:15-1-5. Eligible lands and water
- 155:15-1-6. Reclamation objectives and priorities
- 155:15-1-7. Reclamation project evaluation
- 155:15-1-8. Reclamation of private lands
- 155:15-1-9. Acquisition of land and water for reclamation
- 155:15-1-10. Procedures for acquisition
- 155:15-1-11. Acceptance of gifts of land
- 155:15-1-12. Management of acquired lands
- 155:15-1-13. Disposition of lands
- 155:15-1-14. Utilities and other facilities
- 155:15-1-15. Future set-aside
- 155:15-1-16. Acid mine drainage treatment and abatement

[**Authority:** 45 O.S., Sections 740.1 through 740.7]

[**Source:** Codified 12-31-91]

155-15-1-1. Purpose

This Chapter sets forth requirements for Oklahoma's Abandoned Mine Land Reclamation Program pursuant to Title 45, Sections 740.1 through 740.7 of the Oklahoma Statutes.

155:15-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Surface Mining Control and Reclamation Act of 1977, known as Public Law 95-87.

"**Commission**" means the Oklahoma Conservation Commission as created by the Conservation District Act of 1971.

"**Conservation District**" means a governmental subdivision of this State, and a public body corporate and politic organized in accordance with the provisions of the Conservation District Act of 1971.

"**Director**" means the Director of the Office of Surface Mining, United States Department of the Interior.

"**Eligible Land and Water**" means those lands and waters that are eligible, under the criteria outlined in Section 155:15-1-5, for reclamation activities.

"**Emergency**" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

"**Extreme Danger**" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

"**Fund**" or "**Oklahoma Abandoned Mine Land Reclamation Fund**" means the fund established by the State for the purpose of accounting for moneys granted by the Director of the Office of Surface Mining under an approved State Abandoned Mine Land Reclamation Program and other moneys authorized by these regulations to be deposited in the Fund.

"**Office**" means the Office of Surface Mining of the United States Department of the Interior.

"**Plan**" or "**State Abandoned Mine Land Reclamation Plan**" means the plan submitted by the State to the Office for the reclamation of land and water adversely affected by past coal mining activities.

"**Program**" or "**Oklahoma Abandoned Mine Land Reclamation Program**" means the program established by the State for the reclamation of land and water adversely affected by past coal mining, operated under the provisions of the State Abandoned Mine Land Reclamation Plan including annual application for grants under the State Plan.

"**Secretary**" means the Secretary of the United States Department of the Interior.

155:15-1-3. Responsibilities

The Oklahoma Conservation Commission shall:

- (1) Participate in the Federal Abandoned Mine Land Reclamation Program through the establishment of the Oklahoma Abandoned Mine Land Reclamation Program.
- (2) Establish the Oklahoma Abandoned Mine Land Reclamation Fund for use in conducting the Program.
- (3) Request, receive, and administer grant moneys and other moneys for use in this Program.
- (4) Ensure that every successful bidder for an abandoned mine land reclamation contract

must be declared eligible to receive funds by using the Office's automated Applicant/Violator System for each contract to be awarded.

155:15-1-4. Oklahoma Abandoned Mine Land Reclamation Fund

Revenue to the Fund shall include:

- (1) Amounts granted to the State by the Office for the purpose of conducting the Program.
- (2) Moneys collected by the State from charges for use of land acquired or reclaimed with moneys from the Fund.
- (3) Moneys recovered by the State through the satisfaction of liens filed against privately owned lands that had been reclaimed with moneys from the Fund.
- (4) Moneys recovered by the State from the sale of lands acquired with moneys from the Fund.
- (5) Such other moneys as the State decides should be deposited in the Fund for use in carrying out the Program.

155:15-1-5. Eligible lands and water

- (a) Coal mined lands and associated waters are eligible for reclamation activities if:
 - (1) They were mined or affected by mining processes before August 3, 1977.
 - (2) They were left or abandoned either unreclaimed or inadequately reclaimed.
 - (3) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government, or the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought.
 - (4) There is a continuing condition that substantially degrades the quality of the environment, prevents or damages the beneficial use of the land or water resources, or endangers the health or safety of the public.
- (b) Notwithstanding subsection (a) of this Section, coal lands and waters in a State or on Indian lands damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Secretary finds in writing that:
 - (1) They were mined for coal or affected by coal mining processes.
 - (2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and ending either of the following dates:
 - (A) On or before January 19, 1981, and that 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.
 - (B) On November 5, 1990, and that the surety of the mining operator became insolvent during such period and that, 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.
 - (3) The site qualifies as a priority one by the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices or a priority two site by the protection of public health, safety, and general welfare from adverse effects of coal mining practices. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.
- (c) If reclamation of a site covered by an interim or permanent program permit is carried out

under the Program, the permittee of the site shall reimburse the Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor the Commission performing reclamation under subsection (b) of this Section shall be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the Act.

(d) Surface coal mining operations on lands eligible for re-mining pursuant to Section 404 of the Act shall not affect the eligibility of such lands for reclamation activities 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 re-mining is forfeited, 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 conditions warrant, the Secretary shall immediately exercise his/her authority under Section 410 of the Act.

155:15-1-6. Reclamation objectives and priorities

Reclamation projects should be accomplished in accordance with the Office's "Final Guidelines for Reclamation Programs and Projects" as printed in Volume 45 of the Federal Register, pages 14810-14819, on March 7, 1980. Generally, projects lower than a priority two 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 the Secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a priority one or two site. Reclamation projects shall meet one or more of the objectives stated in this Section. Preference among those projects competing for available resources shall be given to projects meeting higher priority objectives. The following objectives are stated in the order of priority with the highest priority first:

- (1) Protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past coal mining practices.
- (2) Protection of public health, safety, and general welfare from adverse effects of past coal mining practices that do not constitute an extreme danger.
- (3) Restoration of eligible land and water and the environment degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife habitat, recreation resources, and agricultural productivity.
- (4) Protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.
- (5) Development of publicly owned land adversely affected by past coal mining practices, including land acquired under this Program for recreation, historic and conservation purposes and open space benefits.

155:15-1-7. Reclamation project evaluation

Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this Section. This evaluation will be undertaken by the Commission and by the Conservation District in which the reclamation activity takes place. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the objectives in terms of factors set forth below as a means of identifying conditions, that should be avoided, corrected, or improved in plans for

future reclamation work. The factors shall include:

- (1) The need for reclamation work to accomplish one or more specific reclamation objectives.
- (2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.
- (3) The specific benefits to be considered when evaluating reclamation projects shall include but are not limited to:
 - (A) Protection of human life, health, or safety.
 - (B) Protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources.
 - (C) Protection of public or private property.
 - (D) Abatement of adverse social and economic impacts of past coal mining on persons or property including employment, income, and land values or uses, or assistance to persons disabled, displaced or dislocated by past coal mining practices.
 - (E) Improvement of environmental conditions that may be considered to enhance the quality of human life.
 - (F) Improvement of the use of natural resources, including postreclamation land uses that:
 - (I) Increase the productive capability of the land to be reclaimed.
 - (ii) Enhance the use of surrounding lands consistent with existing land use plans.
 - (iii) Provide for construction or enhancement of public facilities.
 - (iv) Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.
 - (G) Demonstration to the public and industry of methods and technologies that can be used to reclaim areas disturbed by coal mining.
- (4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.
- (5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.
- (6) The availability of additional coal or other mineral or material resources within the project area that:
 - (A) Indicates a reasonable probability that the desired reclamation will be accomplished during the process of future mining.
 - (B) Requires special consideration to ensure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.
- (7) The acceptability of postreclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable State, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located.
- (8) The probability of post reclamation management, maintenance, and control of the area consistent with the reclamation completed.

155:15-1-8. Reclamation of private lands

(a) **Criteria.** Reclamation activities may be carried out on private land if a consent to enter is obtained or if entry is required and made.

(b) **Rights of entry.** This subsection outlines the Commission's (or its agents, employees, or contractors) rights-of-entry for purposes of study and reclamation.

(1) **Consent to enter.** The Commission (or its agents, employees, or contractors) shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of entry for study or reclamation. The consent shall be in the form of a signed statement by the owner of record or his authorized agent that, at a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the land, and any special conditions for entry. This statement shall not include any commitment by the Commission to compensate the owner for entry or to perform reclamation work. The entry shall not be construed as an act of condemnation of property nor of trespass.

(2) **Non consent.** If the owner of the land to be entered under this subsection will not provide consent to entry, the Commission shall give notice in writing to the owner of its intent to enter for purposes of study or reclamation. The notice shall be sent by mail, certified, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

(c) **Entry for studies or exploratory work.** The Commission (or its agents, employees, or contractors) shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Rights-of-entry for studies or exploratory work are governed by the provisions outlined in subsection (b) of this Section.

(d) **Entry for reclamation.**

(1) The Commission shall give notice of its intent to enter for the purpose of conducting reclamation at least 30 days before entry upon the property. Otherwise, rights-of-entry for reclamation shall be governed by the provisions of subsection (b) of this Section.

(2) Prior to entry under this subsection, when the landowner is not known or readily available or the landowner will not give permission for reclamation, the Commission shall find in writing with supporting reasons that:

(A) Land or water resources have been adversely affected by past coal mining practices.

(B) Adverse effects from past coal mining activities are at a stage where, in the interest of the public health, safety, or the general welfare, action should be taken to restore, reclaim, abate, control or prevent these adverse conditions.

(e) **Entry for emergency study or reclamation.**

(1) Emergency studies or reclamation can be performed with either State or Federal monies from the Fund. When Federal source monies are used, a declaration of an emergency must come from the Office. When the Office declares an emergency, the Commission may serve as the agent to perform emergency study or reclamation work.

(2) The Commission (or its agents, employees, or contractors) shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land

where the emergency exists to study, investigate, restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare.

(3) Notice to the owner shall not be required prior to entry for emergency studies or reclamation. The Commission shall make reasonable efforts to notify such owner and obtain consent prior to entry consistent with the emergency conditions that exist. Written notice shall be sent by mail, certified, return receipt requested, to the owner, if known, and shall include a copy of the findings required by paragraph (4) of this subsection. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property entered in one or more places where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement that an emergency existed and where the findings required by this subsection may be inspected or obtained.

(4) Prior to entry for emergency reclamation, the Commission shall make a written finding with supporting reasons that:

(A) An emergency exists constituting a danger to the public health, safety, or general welfare.

(B) Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining is necessary.

(C) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(5) The moneys expended for such work, and the benefits accruing to any such premises so entered, shall be chargeable against such land and shall mitigate or offset any claim in, or any action brought by any owner of any interest in such premises for any alleged damages as a result of the entry.

(f) **Appraisals.** When private land is to be reclaimed and is subject to a lien under subsection (g) of this Section, a notarized appraisal shall be obtained from an independent appraiser.

(1) The appraisal shall state:

(A) The estimated market value of the property in its unreclaimed condition.

(B) The estimated market value of the property as reclaimed.

(2) The appraisal shall be made prior to the start of reclamation work. The Commission shall furnish to the appraiser information of sufficient detail to make such appraisals. The Commission shall provide appraisal standards consistent with generally accepted appraisal practices.

(g) **Liens.**

(1) The Commission shall place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the pre- and postconstruction appraisals.

(A) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the coal mining operation which necessitated the reclamation work.

(B) The Commission shall waive the lien if the cost of filing it, including indirect costs, exceeds the increase in fair market value as a result of reclamation work;

(C) The lien shall be waived if the reclamation work performed on private land primarily benefits health, safety, or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the

market value of the land as it existed immediately before the occurrence.

(2) If a lien is to be filed, the Commission shall, within six months after completion of the reclamation work, file a statement in the County Clerk's office for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded.

(3) Within 60 days after the lien is filed, the landowner may request a hearing before the Commission to determine the increase in the market value as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The increase in value shall constitute the amount of the lien and shall be recorded with the statement filed under paragraph (2) of this subsection. Any party aggrieved by the decision may appeal as provided by law.

(4) The Commission shall maintain or renew liens from time to time as may be required under State law.

(h) **Satisfaction of liens.** Liens placed on private property under the provisions of [Subsection \(g\)](#) of this Section shall be satisfied in one of the following ways:

(1) At the time of transfer of ownership.

(2) At any time the landowner chooses prior to transfer of ownership.

155:15-1-9. Acquisition of land and water for reclamation

(a) Land and/or water adversely affected by past coal mining practices may be acquired with moneys from the Fund if:

(1) The acquired land and/or water will serve recreation, historic, conservation, and reclamation purposes, or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(2) Permanent facilities, such as a mine drainage treatment plant or a relocated stream channel, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund if the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Program or if public ownership is desirable to meet an emergency situation and prevent reoccurrence of adverse effects of past coal mining practices.

(c) The Commission shall acquire only such interests in the land and/or water as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

(1) Such interests are necessary to the reclamation work planned or the postreclamation use of the land.

(2) Adequate written assurance cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

155:15-1-10. Procedures for acquisition

(a) An appraisal of the fair market value of all land or interest in land to be acquired shall state the fair market value of the land as adversely affected by past mining.

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past coal mining.

- (c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.
- (d) Title to all interest in land acquired shall be in the name of the State and shall be recorded in accordance with applicable State law.
- (e) Prior approval by the Director of the Office is required on lands acquired with Federal source monies from the Fund. Acquisition procedures shall follow all appropriate Federal requirements.

155:15-1-11. Acceptance of gifts of land

The Commission may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the Program.

(1) Offers to make a gift of such land or interests in land shall be in writing and shall include:

- (A) A statement of the interest that is being offered.
- (B) A legal description of the land and a description of any improvements on it.
- (C) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.
- (D) A statement that:
 - (i) The donor is the record owner of the interest being offered.
 - (ii) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
 - (iii) There are no adverse claims against the interest offered.
 - (iv) There are no unredeemed tax warrants outstanding against the interest offered.
 - (v) There is no continuing responsibility by the operator under State or Federal statutory law for reclamation.
- (E) An itemization of any unpaid taxes or assessments levied, assessed, or due which could operate as a lien on the interest offered.

(2) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Oklahoma Abandoned Mine Reclamation Act of 1981." Title to all donated land shall be in the name of the State of Oklahoma.

155:15-1-12. Management of acquired lands

- (a) Land acquired under 155:15-1-9 and 155:15-1-11 may be used pending disposition under 155:15-1-13 for any lawful purpose that is not inconsistent with the reclamation activities and postreclamation uses for which it was acquired.
- (b) Any user of land acquired under Sections 155:15-1-9 and 155:15-1-11 shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the State for providing the benefit, whichever is appropriate. The Commission may waive the fee if found in writing that such a waiver is in the public interest.
- (c) All use fees collected shall be deposited in the Fund, unless previously appropriated or otherwise authorized by the Legislature, for the specific purpose of operating and maintaining improvement of the land.

155:15-1-13. Disposition of lands

- (a) Disposition of lands acquired with Federal monies from the Fund by the Commission must receive prior approval from the Director of the Office. Disposition of lands acquired by the Commission with either State or Federal monies will be governed by subsections (b) through (f) of this Section.
- (b) Prior to disposition of any acquired land the Commission shall:
- (1) Publish a notice that describes the proposed disposition of the land in a newspaper of general circulation in the area where the land is located for a minimum of four successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held.
 - (2) Schedule such hearings at a time and place that affords local citizens and governments the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located at least 30 days before the hearing.
 - (3) Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, State, or Federal laws or regulations that apply.
- (c) The Commission may transfer administrative responsibility for land acquired under this part to any agency or political subdivision of the State with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:
- (1) The purposes for which the land may be used consistent with the authorization under which the land was acquired.
 - (2) The administrative responsibility for the land will revert to the Commission if, at any time in the future, the land is not used for the purpose specified.
- (d) The Commission, with the approval of the Oklahoma Legislature, may transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by the Office, and maintain a preference right to the purchase of such land from the Office after reclamation is completed. The price shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the Commission.
- (e) The Commission may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, State, or Federal land use plans for the area in which the land is located.
- (1) Land shall be sold by public sale only if it is found that retention by the State, or disposal under other paragraphs of this Section, is not in the public interest.
 - (2) Land shall be sold for not less than fair market value under a system of competitive bidding that includes at a minimum:
 - (A) Publication of a notice once a week for four weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants that will be a condition of the sale, and state the time and place of the sale.
 - (B) Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.
- (f) All moneys received from disposal of land under this Section shall be deposited in the Fund.

155:15-1-14. Utilities and other facilities

- (a) If the Commission has not certified the completion of all coal-related reclamation under

Section 411(a) of the Act, the Commission may expend up to 30 percent of the funds granted annually to the Commission, pursuant to the authority in Sections 402(g) (1) and (5) of the Act, 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.

(b) If the adverse effect on water supplies referred to in this Section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified under 155:15-1-5 (a) (1) and (2), if the Commission finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) If the adverse effect on water supplies referred to in this Section occurred both prior to and after the dates (and under the criteria) set forth under Section 402(g)(4)(B) of the Act, the project shall remain eligible, notwithstanding the criteria specified under 155:15-1-5 (a) (1) and (2), if the Commission finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.

(d) Enhancement of facilities or utilities under this Section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

155:15-1-15. Future set-aside

This Section provides requirements for the award of grants to the Commission for the establishment of special trust accounts that will provide funds for coal reclamation purposes after September 30, 1995.

(1) The Commission may receive and retain without regard to the three-year limitation referred to in Section 402(g)(1)(D) of the Act, up to 10 percent of the total of the grant funds made annually to the Commission, pursuant to the authority in Sections 402(g) (1) and (5) of the Act, if such amounts are deposited into either of the following:

(A) A special fund established under State or Indian tribal law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State or Indian tribe solely to achieve the priorities stated in Section 403(a) of the Act after September 30, 1995.

(B) An acid mine drainage abatement and treatment fund pursuant to 155:15-1-16.

(2) Prior to receiving a grant pursuant to this Section, the Commission must:

(A) Establish a special fund account providing for the earning of interest on fund balances.

(B) Specify that monies in the account may only be used after September 30, 1995, by the Commission to achieve the priorities stated in Section 403(a) of the Act.

(3) After the conditions specified in (1) and (2) of this Section are met, a grant may be approved and monies deposited into the special fund account. The monies so deposited, together with any interest earned, shall be considered State monies.

155:15-1-16. Acid mine drainage treatment and abatement

In order to establish an Acid Mine Drainage Treatment and Abatement Program, the Commission must meet certain criteria to be eligible.

(1) The Commission may receive and retain, without regard to the three-year limitation set

forth in Section 402(g)(1)(D) of the Act, up to 10 percent of the total of the grants made under Section 402(g) (1) and (5) of the Act for the purpose of abandoned mine land reclamation if such amounts are deposited into either:

(A) A special fund established under State law pursuant to which such amounts (together with all interest earned) are expended by the Commission solely to achieve the priorities stated in Section 403(a) after September 30, 1995 or

(B) An acid mine drainage abatement and treatment fund established under State law.

(2) The Commission may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the Commission to implement, in consultation with the United States Department of Agriculture's Natural Resources Conservation Service, acid mine drainage abatement and treatment plans approved by the Director.

(3) Acid Mine Drainage Abatement Plan shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The Acid Mine Drainage Abatement Plan shall include, but shall not be limited to, each of the following:

(A) An identification of the qualified hydrologic unit.

(B) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.

(C) An identification of the sources of acid mine drainage within the hydrologic unit;

(D) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit.

(E) The cost of undertaking the proposed abatement and treatment measures.

(F) An identification of existing and proposed sources of funding for such measures.

(G) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.