

**RULES
OF THE
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES**

**0400-44-01
ABANDONED MINE LANDS RECLAMATION PROGRAM**

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0400-44-01-.01 SCOPE.

This regulation describes the Federal Abandoned Lands Reclamation Program and governs the procedures for reclaiming lands and waters affected by past mining practices using the Federal Abandoned Mine Reclamation Fund.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.02 GOALS AND OBJECTIVES.

- (1) The primary objective of the Abandoned Lands Reclamation Program is the protection of public health, safety, general welfare and property from the adverse effects of past mining practices.
- (2) Socio-Economic Objectives include:
 - (a) The utilization, whenever possible, of the services of local contractors for reclamation work.
 - (b) The improvement of the local forest and agricultural economy by putting abandoned mine land back into production.
 - (c) The preservation of historical, cultural, and archaeological resources that have been affected or threatened by past mining practices by applying reclamation treatment that is compatible with these resources.
- (3) Recreation Objectives include:
 - (a) the restoration of recreational areas adversely affected by past mining to as near their undisturbed condition as possible.
 - (b) the coordination of reclamation activities and project areas with those of other state and federal agencies concerned with recreational areas affected by abandoned mine lands.
- (4) Flora and Fauna Objectives include:

(Rule 0400-44-01-.02, continued)

- (a) the restoration or enhancement of the adversely affected habitats of plants and animals to a condition equal to or greater than their premining condition, with particular attention to the habitats of endangered or threatened species of plants and animals.
 - (b) the coordination of abandoned mine land reclamation activities with the Tennessee Wildlife Resources Agency.
 - (c) the avoidance to the fullest extent practicable of any significant adverse impacts to fish or wildlife species or their habitats as a result of reclamation activities.
- (5) A major objective of the AML Program will be to control toxic runoff that is a result of past mining practices.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.03 RESPONSIBILITIES.

The Division shall:

- (1) Identify all abandoned mine land problem areas in the Tennessee coalfields.
- (2) Conduct a site investigation on those problem areas that are eligible for further development.
- (3) Rank and select reclamation projects.
- (4) Conduct a site evaluation including a proposal of reclamation alternatives.
- (5) Prepare an environmental assessment for each project site.
- (6) Select a preferred reclamation alternative.
- (7) Make a lien determination on the project site as required by T.C.A. § 59-8-325.
- (8) Obtain a right of entry for reclamation.
- (9) Apply for the administrative and construction grants to carry out the proposed projects.
- (10) Procure reclamation contractors upon receipt of grant.
- (11) Monitor all reclamation activities.
- (12) Prepare a final report on all projects.
- (13) Maintain project sites until a stable condition is achieved.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.04 DEFINITIONS.

When used in this Chapter the following terms have the meanings given below:

- (1) "Adverse effects" means those effects of coal mining practices which are harmful to human health, safety, general welfare or the environment.

(Rule 0400-44-01-.04, continued)

- (2) "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.
- (3) "Public facilities" means publicly owned utilities, roads, recreation and conservation facilities or any other such publicly owned facilities which provide a service or commodity to the general public.
- (4) "Publicly owned land" means any land which is financed by public funds and managed for the benefit or use of the general public.
- (5) "Research and demonstration project" means any projects relating to the development of surface mining reclamation and water quality control program methods and techniques.
- (6) "Restoration" means the act of putting something into a prior condition or as near that prior condition as possible.
- (7) "Eligible lands and waters" means lands and waters eligible for reclamation under this program (whether on private, state or federal property) are defined as follows:
 - (a) Lands and water are eligible for reclamation activities if:
 1. (i) They were mined or affected by mining operations which occurred prior to August 3, 1977, and were left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
 - (ii) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government. Bond forfeiture will render lands or water ineligible to the extent that the amount collected under the forfeiture is sufficient to pay the total cost of the necessary reclamation. In cases where the amount collected under the forfeited bond is insufficient to pay the total cost of reclamation, the additional funding necessary may be sought under the provisions of 30 CFR 886 and 888; or
 2. Notwithstanding part 1 of this subparagraph, coal lands and waters in Tennessee damaged and abandoned after August 3, 1977, by coal mining processes are also eligible if the Commissioner of the Department of Environment and Conservation finds in writing that:
 - (i) The mining occurred and the site was left in an unreclaimed or inadequately reclaimed condition between:
 - (I) August 4, 1977 and August 10, 1982, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or
 - (II) August 4, 1977 and 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.

(Rule 0400-44-01-.04, continued)

- (b) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities under a State Reclamation Program if the Director finds in writing that-
 - 1. The conditions of subparagraph (a) of this paragraph have been met;
 - 2. The reclamation has been requested by the Governor; and
 - 3. Moneys allocated to the State or Indian tribe under 872.12(b)(2) and (3) are available for the work. (30 CFR 872.13)

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.05 PROJECT DEVELOPMENT PROCEDURES.

This regulation outlines in chronological order the entire process of reclamation project development from initial site identification through selection of preferred alternative.

- (1) Adversely affected areas are located and identified in the following ways:
 - (a) From The Tennessee Reclamation Plan For Lands and Waters Affected By Past Mining.
 - (b) From problem and site specific information gathered through field investigations conducted under the Abandoned Lands National Inventory (Tennessee).
 - (c) From information supplied by other federal, state and local agencies.
 - (d) From individuals who may be adversely affected by past mining operations.
 - (e) From information supplied by field inspection and technical personnel within the Division of Surface Mining.
- (2) Upon identification of a possible adversely affected area, an on site visit by Division personnel will be initiated to determine eligibility of a potential project including identification of landowners and problem awareness by local residents.
- (3) Investigative Report
 - (a) If it is determined at the time of the initial site visit and evaluation that a particular problem area is eligible for further development, an Investigative Report is initiated which contains such background information as project area location; mining history; existing adverse impacts; proposed correction alternatives; and a discussion of the possible impacts of the proposed corrective actions.
 - (b) This Investigative Report should also contain a letter from a Department of Environment and Conservation attorney rendering an opinion as to the eligibility of a particular project for reclamation activities.
 - (c) A complete identification will also be made of principal and adjacent landowners (plat map of project area), including interviews with identified landowners and other adjacent residents in order to solicit overall problem awareness and participation.

(Rule 0400-44-01-.05, continued)

- (4) Upon completion of detailed site evaluations, Potential Project Investigative Reports are submitted to the Office of Surface Mining (O.S.M.), Abandoned Lands Section for further evaluation
- (5) The purpose of this paragraph is to establish the policies and procedures to be utilized in the ranking and selection of potential reclamation projects which have been identified and evaluated initially on a site by site basis. Those procedures include:
 - (a) Grouping according to the priorities listed in 30 CFR 874.13, once a number of potential projects have been initially identified and evaluated.
 - (b) Project evaluation and scoring within a given priority group using the Project Evaluation Matrix (Ranking and Selection Section of the Tennessee Reclamation Plan for Lands and Waters Affected by Past Mining).
 - (c) Determination of project preference based on the score derived from the Project Evaluation Matrix.
- (6) A detailed "pre-engineering" design plan will be developed, either in-house by Division Personnel or by contract. This plan will include a collection of technical data on such parameters as soils, hydrology, ground water conditions, flora and fauna, geology, threatened or endangered species, and enough additional information as is reasonably necessary to determine what reclamation alternatives would be feasible to correct the problems related to an individual project.
- (7) An environmental assessment shall be conducted after a pre-engineering plan has been developed for a project.
 - (a) Each environmental assessment shall include the following information:
 1. Summary,
 2. Purpose of and need for the action,
 3. Alternatives for solving the problem,
 4. Description of the affected environment,
 5. Environmental consequences,
 6. Extent of consultation and coordination with others.
- (8) When all phases of project investigation, evaluation and prioritization have been completed, and a preferred alternative has been selected through evaluation and public input, a final decision document will be prepared. This document will identify the preferred alternative and the rationale behind its selection, which will include at a minimum the following:
 - (a) impact discussions from the environmental assessment versus suggested alternatives,
 - (b) all public concerns and the State's response,
 - (c) cost considerations,
 - (d) possible engineering and construction problems,

(Rule 0400-44-01-.05, continued)

- (e) all expected benefits resulting from the selected alternative versus those alternatives not selected,
- (f) the possible adverse impacts which may be encountered during construction under the selected alternative.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.06 LIEN DETERMINATION, FILING, SATISFACTION.

Tennessee lien policy in respect to the Abandoned Mine Program provides that no windfall profits should inure to the benefit of private landowners as a result of reclamation work on their land. To that effect, the following provisions shall apply:

(1) Applicability of Lien.

- (a) If the surface owner or owners did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation, then a lien is not appropriate.
- (b) If the landowner consented to, participated in, or exercised control over the mining, then a lien should be considered.

(2) Amount of Lien

Liens shall be based on the results of property value increases, as determined by Before and After Appraisals, prepared by qualified contract appraisers and reviewed by qualified review appraisers. Appraisals for liens should be notarized.

(3) Preparation and Filing of Lien

If a lien is to be filed, the State shall file within six months after completion of the reclamation work which includes a compilation of all cost data on the project as well as notarized copies of the appraisals. The amount reported by the appraisals as the increase in value shall constitute the lien to be recorded. This package along with the prepared legal document that constitutes a lien will be submitted to the Attorney General's office for review within three months after completion of reclamation work. The lien should be filed in the Office of the Court Clerk having the responsibility for recording judgments against land in the jurisdiction where the land lies.

- (a) Within 60 days of lien date filing the owner may petition for a determination of market value attributable to the reclamation. Any aggrieved party may appeal in the manner provided by local law.
- (b) Preparation and filing of liens (releases, renewals, extensions, etc.) shall be made by a Department of Environment and Conservation attorney with the concurrence of the State Attorney General.

(4) Satisfaction of Liens.

- (a) Liens shall be satisfied at the time of transfer of ownership or earlier at the election of the owner. Liens shall be renewed and extended as required.

(Rule 0400-44-01-.06, continued)

- (b) Satisfaction of liens can be in the form of total payment or can be in installments. If payments in satisfaction of lien cover only a portion of the lien amount, the lien shall remain in full force and effect on the land records until satisfaction in full is made.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.07 RIGHTS OF ENTRY.

- (1) Entry for Studies or Exploration

The State 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 the adverse effects of past mining and the feasibility of projects for restoration, reclamation, abatement, control or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare, and shall not be construed as an act of condemnation of property nor trespass thereon.

- (2) Entry for Reclamation

When the State's project assessment includes a finding that lands or waters have been adversely affected by past coal mining practices and the effects constitute a danger to public health, safety or general welfare, the State may elect to proceed with reclamation. The State shall then attempt to obtain a voluntary lien or non-lien consent, as applicable, from the affected landowners.

- (a) The State of Tennessee, its agents, employees, or contractors may enter upon land to perform reclamation activities, if the consent of the owner cannot be obtained or the owners of the land are not readily available, and the following requirements are met:

1. Land or water resources have been adversely affected by past coal mining practices; and
2. The adverse effects are such that it would be in the public interest to take action to restore, reclaim, abate, control, or prevent such adverse affects.

- (b) The State shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entering upon the property as follows:

1. Notice shall be in writing and shall be mailed, return receipt requested to the owner, if known, with a copy of the Finding of Fact.
2. If the owner is unknown, or if the current mailing address is unknown, notice shall be posted in one or more places on the property and advertised once in a local newspaper.
3. The posted notice and newspaper advertisement shall include a statement specifying where the Findings of Fact may be inspected or obtained.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.08 LANDS ELIGIBLE FOR ACQUISITION.

The State of Tennessee may acquire any property which is adversely affected by past coal mining

(Rule 0400-44-01-.08, continued)

practices if the Commissioner of the Department of Environment and Conservation determines that acquisition of such land is necessary to successful reclamation and;

- (1) That the acquired land will serve recreation, conservation or reclamation purposes; or
- (2) That permanent facilities such as a treatment plant or relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices; or
- (3) That acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this part or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of coal mining practices; or
- (4) That the state may acquire property or accept property transferred by the Secretary of the Department of Interior if either is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency, or persons dislocated as the result of natural disasters or catastrophic failures from any cause; or
- (5) That land or interests in land needed to fill voids, seal abandoned tunnels, shafts and entryways, or reclaim surface impacts of underground or surface mines may be acquired by the state by purchase, donation, or transfer if found that such interests in the land are necessary for reclamation work planned or the post reclamation use of the land.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.09 METHODS AND PROCEDURES FOR ACQUISITION AND DISPOSITION OF ACQUIRED LAND.

- (1) The State of Tennessee may acquire land for the previously mentioned reasons by either acquisition, donation or transfer. When all reasonable effort to purchase land or interests in land from a willing seller fail, such rights may be acquired by condemnation.
- (2) Procedures for all methods of acquisition will generally follow those established by the Tennessee Department of Environment and Conservation as listed below:
 - (a) Complete information regarding survey and legal description is submitted to the State Building Commission. After Building Commission approval, invitations for bids on title work are issued, and then awarded on lowest bid consistent with the title company's ability to perform as required. After title commitment is obtained, appoint and execute agreements with appraisers. Next, appraisal review with documented establishment of fair market value. Commence option contract negotiations at fair market value. Present signed option to Building Commission for approval unless prior approval has been obtained. Prepare warranty deed and closing statement.
 - (b) Donations, as necessary for reclamation activities, to the State of Tennessee should be consistent with objectives and requirements of the Abandoned Mined Lands Program.
- (3) Where land acquired is considered suitable for industrial, commercial, residential or recreational development, the State, when authorized by O.S.M., may sell such land by public sale under a system of competitive bidding, at not less than the market value.

(Rule 0400-44-01-.09, continued)

- (a) The State shall publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of four successive weeks. The notice shall provide for at least 30 days of public comment and it shall state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments or plans should be submitted. The notice shall also state that a public hearing will be held if requested by any person.
- (b) The State shall hold a public hearing if requested as a result of a public notice and the State may determine that a hearing is appropriate even if a request has not been received.
- (c) Hearings shall be scheduled to conform with 30 CFR 879.15.
- (d) Following hearings the State shall make a written finding that the disposal of reclaimed lands is appropriate, considering all comments received, and that the disposal is consistent with State and Federal rules and laws which apply.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.10 COST OF ACQUISITION/CONDEMNATION.

(1) Source of Funds

The purchase price, in the case of a negotiated acquisition, or the damages as finally determined in the case of acquisition by condemnation, and the necessary expenses incidental thereto, shall be paid from the Tennessee Surface Mine Reclamation Fund, the Federal Abandoned Mine Reclamation Fund with the approval of the Secretary of Interior, or from appropriations made by the General Assembly for such purpose.

(2) Determination of Price

The State shall acquire title by direct purchase through negotiations based on an independent fee appraisal of the property. The purchase price paid shall be consistent with the fair market value of the interests acquired as adversely affected by past coal mining practices when applicable. In the case of acquisition by condemnation, the purchase price shall also be based on an independent fee appraisal to determine fair market value as well as the necessary expenses incidental thereto.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.11 DEVELOPMENT OF RECLAMATION PLAN SPECIFICATIONS.

This rule outlines the procedures on development and procurement of reclamation specifications for those projects that involve comprehensive reclamation practices.

- (1) Upon selection of a preferred reclamation alternative for a given project an outline of required specifications shall be constructed. Items for consideration include:
 - (a) An existing site map.
 - (b) Earthwork specifications.
 - 1. Mobilization.

(Rule 0400-44-01-.11, continued)

2. Construction Staking.
 3. Clearing and Grubbing.
 4. Backfill.
 5. Sediment Structures.
 6. Grading.
 7. Diversion Ditches.
 8. Special Conditions.
- (c) Water treatment and disposal specifications.
- (d) Revegetation specifications.
- (e) Bid schedule.
- (f) A proposed grade map.
- (g) Any other special conditions.
- (2) Upon completion of the specification outline, the specifications will be constructed, either by in-house state personnel, other government agency personnel, consultants, or a combination of the above.
- (3) The specifications will then be utilized in the procurement of reclamation contractors and in the actual reclamation process.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.12 PROCUREMENT OF RECLAMATION SERVICES.

Once reclamation specifications have been completed for a project, a reclamation contractor will be procured by one of the following methods.

(1) Requisitioning Process

When services to be procured are appropriate for bidding and are subject to uniform and impersonal criteria for bid evaluation, the Department of General Services, Purchasing Division, All procure those services through the normal requisitioning process. All requisitioning processes will comply with T.C.A. § 4-330.

(2) Request for Proposal

This procedure shall be followed where justification does not exist for the use of either verbal competitive negotiation or sole source negotiation. It involves the written solicitation of proposals from potential vendors. All requests for proposals will comply with the Rules of the Department of Finance and Administration Rule 0620-03-03-.03.

(3) Verbal Competitive Negotiation-This procedure involves the verbal negotiation of the terms of a contract, and it shall be performed in a manner which maximizes free and open competition

(Rule 0400-44-01-.12, continued)

among vendors. All verbal competitive negotiation procedures will comply with the Rules of the Tennessee Department of Finance and Administration Rule 0620-03-03-.03.

- (4) Sole Source Negotiation-This procedure involves the verbal negotiation of a contract with a single vendor. It shall be performed in a manner which results in the most economical arrangement for the State. All sole source negotiation procedures will comply with the Rule of the Tennessee department of Finance and Administration Rule 0620-03-03-.03.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.13 CONTRACTOR DEFAULT.

- (1) If a contractor fails in a timely and proper manner his obligations under a contract with the Tennessee Department of Environment and Conservation, or if the contractor violates any of the terms of a contract, the Commissioner shall have the right to immediately terminate this contract and withhold payments in excess of fair compensation for work completed.
- (2) The contractor shall not be relieved of liability to the State for damages sustained by any breach of this contract by the contractor.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.

0400-44-01-.14 PUBLIC PARTICIPATION.

Public participation, including input from individual citizens and landowners, professional and social organizations, civic groups, local officials, and other state and federal agencies shall be included in each phase of project development.

- (1) Public input shall play an important role in the identification of specific problem areas.
- (2) During the initial site evaluation phase, sufficient public input will be gathered to determine the public awareness of the problem and to answer the following questions:
 - (a) Does an extreme danger to the public exist?
 - (b) Are there adverse effects on the public?
 - (c) Are there impacts to public or private property?
- (3) During the intensive site evaluation phase, more detailed input shall be solicited from landowners and local residents along with evidence of project support by the community.
- (4) Public input acquired during the intensive site evaluation phase will be utilized in the project ranking and selection process referred to in Rule 0400-44-01-.05.
- (5) The environmental assessment will incorporate public input into the development of the various reclamation alternatives.
- (6) In depth public input will be solicited in the selection of the preferred reclamation alternative. This shall be accomplished by;
 - (a) placing a public notice in the newspaper of greatest general circulation in the proposed project area,

(Rule 0400-44-01-.14, continued)

- (b) conducting a public meeting should a particular proposed project exhibit extensive adverse impacts to a large number of people or a community; or if the project presents conflicts (post reclamation land use, ongoing programs, etc.); or high costs.
- (7) In the event a particular project is larger and more complex than most, with high public interest, the Commissioner may determine it necessary to extend public participation through project engineering design and construction.
- (8) Land acquired and authorized for disposition may be sold by public sale under a system of competitive bidding. Disposition shall necessitate;
 - (a) placing a public notice in the newspaper of greatest general circulation in the area where the land is located,
 - (b) conducting a public hearing if requested as a result of a public notice or if determined that hearing is appropriate even though a request has not been received.
- (9) Public participation will also be included in determining post-reclamation benefits and in developing a maintenance plan when necessary.

Authority: T.C.A. §§ 59-8-324 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed April 9, 2013; effective July 8, 2013. Rule renumbered from 0400-01-24.