This document has been
Rescinded and is located
in our Archive files.

For Active files, visit
http://www.osmre.gov/directiv.htm

	U. S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: AML-13 Transmittal Number: 423 Date: 2/16/88

Subject: Disposition of Receipts From the Sale of Coal Recovered Incidental to an Abandoned Mine Lands (AML) Federal Reclamation Program (FRP) Project

Approval: Jed D. Christensen | Title: Director

1. Purpose. This directive establishes policy and procedures for the disposition of receipts from the sale of coal recovered incidental to an abandoned mine land (AML) reclamation project conducted under the Federal Reclamation Program (FRP) of the Office of Surface Mining Reclamation and Enforcement (OSMRE).

Note: This directive does not address the issue of coal ownership.

2. Definitions.

a. Abandoned Mine Reclamation Fund. A special fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Act.

b. Federal Reclamation Program Project. Emergency or high priority AML abatement or reclamation project funded from the Secretary's Discretionary Share of the AML Fund, and undertaken through a Federal contract, a cooperative agreement with a State/Tribe r an interagency agreement with another Federal agency.

3. Policy/Procedures.

a. Background. On occasion OSMRE, in conducting AML FRP reclamation construction, has extracted coal incidental to accomplishing a reclamation project objective. An example of this is the extraction of coal incidental to abating or controlling an underground mine fire in an abandoned coal mine. Where the recovered coal is sold, the issue has been raised as to whether the OSMRE portion of the monies are to be deposited in the Abandoned Mine Reclamation Fund (Fund) established in Section 401 of SMCRA, 30 U.S.C. 1231, or deposited in the U.S. Treasury as miscellaneous receipts under 31 U.S.C. 3302(b).

Two concerns have been presented relative to this situation. The first one has to do with the procedures to be followed by OSMRE personnel relative to the collection of receipts and the second one related to the final disposition of the recovered monies.

In 1985 a U.S. District Court ordered OSMRE to deposit the agency's portion of the proceeds of the sale of coal recovered incidental to a reclamation project into the Fund. In an effort to further clarify the issue, OSMRE requested the Comptroller General's Office concurrence that depositing the proceeds of the agency's share of the sale of coal into the Fund conforms with statutory requirements. In a decision dated September 26, 1986, File B-219257, the Comptroller General concluded that such funds were "recovered monies" and, therefore, should be deposited in the Fund.

b. Policy. It is the policy of OSMRE that once a decision is made to sell coal recovered incidental to a reclamation project, only authorized agents of the agency may receive the receipts from the sale of the coal. The sale of the coal will be made through a third party and under no circumstances will OSMRE be involved in any direct sale, brokerage or marketing of the coal. The receipts from the sale will be deposited in a special project escrow account (one escrow account per project) and maintained in that account until a final accounting and disposition of the receipts are made.

It is also the policy of OSMRE that once the appropriate legal determinations have been made regarding the disposition of the receipts, the OSMRE share, if any, will be deposited into the Fund.

c. Responsibilities.

(1) The Assistant Directors for Eastern/Western Field Operations (AD/E/WFO) will be responsible for:

(a) Making the final decision on the disposition (sell, stockpile, etc.) of the recovered coal (the decision should be made in close coordination with the Solicitor's Office);

(b) Maintaining adequate records related to the coal recovered (tonnages, etc.) incidental to an AML FRP project;

(c) Assuring that the recovered monies are properly collected and deposited in the appropriate project escrow account; and

(d) Assuring that OSMRE field operations personnel involved with the AML FRP are knowledgeable of relevant policy and procedures.

(2) The Division of Financial Management at the Denver Finance Center will be responsible for:

(a) Establishing an escrow account for each project for which OSMRE realizes receipts;

(b) Providing an accounting of the receipts when a disposition plan is approved for each escrow account;

(c) Providing appropriate instructions to the OSMRE AML FRP project staff and contractors to insure the integrity of the operations; and

(d) Providing to the coal sales agent or broker a copy of the escrow instructions requiring payment of all receipts into the appropriate escrow account.

d. Procedures.

(1) Once a determination has been made that coal may be recovered and sold incidental to an AML FRP project, mineral ownership must be established and distribution of the part of the proceeds from the sale of the coal, if any, to the legal owner(s) negotiated and agreed upon. The agreement must be in writing, specify the terms and conditions for the distribution, and be part of the required right-of-entry document. OSMRE AML FRP program personnel must consult with the Solicitor's Office for advice and counsel on matters related to the negotiation of any agreement on coal sales proceeds with mineral rights owner(s).

No reclamation project will be initiated until the coal ownership and distribution of receipts issues have been resolved, unless the project addresses an emergency situation and the owner(s) of the mineral rights (a) cannot be located, or (b) if located are not willing to enter into an agreement (in which case police powers must be exercised for right-of-entry).

(2) Upon the extraction and sale of the coal, the proceeds will be placed in an project escrow account established for that specific purpose by the Division of Financial Management. The Chief of the Division or Branch responsible for the AML FRP program at the E/WFO Office, as appropriate, will coordinate, through the Financial Unit of the Administrative Service Center of the E/WFO Office, with the Chief, Division of Financial Management, OSMRE, at the Denver Finance Center, the establishment of a project escrow account. The Division of Financial Management will provide to the coal sales agent or broker a copy of the escrow instructions requiring payment of all receipts into the appropriate escrow account.

(3) Distribution of any part of the proceeds from the sale of coal to the legal owner(s) of the mineral resource will be based on the pre-reclamation project written agreement with the owner(s) or as directed by court decree.

(4) Upon completion of the reclamation project OSMRE AML FRP program personnel will coordinate, through the Financial Unit of the Administrative Service Center of the E/WFO Office, with the Chief, Division of Financial Management, OSMRE, to determine the amounts to be disbursed to the mineral owner(s), if applicable, and the proceeds of the OSMRE share to be deposited in the Fund.

4. Reporting Requirements.

The AD/E/WFO Offices will generate a reclamation project(s) quarterly report (for those projects from which incidental coal has been recovered)

showing tonnages of coal recovered, sales price, name and address of coal broker(s), buyer(s) of the coal and any other relevant information. The report should also include a brief narrative statement on the progress of any legal issues or disputes over the ownership of the mineral rights. The report will be mailed to the Division of Financial Management of the Denver Finance Center, with a copy to the Headquarters Division of Abandoned Mine Land Reclamation (AMLR) - Program Policy.

The Division of Financial Management of the Denver Finance Center will generate a quarterly report of the special project(s) escrow account(s) reflecting all the transactions relative to the sale of the recovered coal. The report will be sent to appropriate AD/E/WFO Office, with a copy to the Headquarters Division of AMLR - Program Policy.

5. References.

a. Public Law 95-87, Surface Mining Control and Reclamation Act, Sections 401 and 528.

b. Comptroller General Decision, File # B-219257 dated September 26, 1986.

c. Federal Register Notice of March 23, 1980, AML Program Guidelines.

6. Effect on Other Documents. None.

7. Effective Date. Date of Issuance.

8. Contact. Division of Abandoned Mine Land Reclamation - Program Policy. (202) 343-5365