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Rescinded and is located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-16

Transmittal Number: 563

Date: JUL 3 1 1989

Subject: Implementation of Lien Requirements on Federal Reclamation Projects

Approval: [signature] Title: Director

1. Purpose. This directive is intended to provide guidance to Federal Reclamation Program (FRP) personnel regarding the implementation of lien regulations (30 CFR Part 882) on private lands. The scope of this directive is limited to only prospective implementation of lien provisions to Federal abandoned mine land reclamation projects under the FRP. Lien provisions do not apply to post-Act projects reclaimed through use of civil penalties.

2. Summary. This directive outlines the policy and responsibilities associated with recovery of the cost of reclamation activities on private lands through an appraisal and lien placement process. The primary role resides with the Assistant Director Eastern/Western (E/W) Field Operations who are responsible for lien placement, lien exemption, and lien exemption documentation. The directive describes what constitutes a significant increase in fair market value, as well as the various criteria for community benefit lien waiver, cost of lien placement waiver, and area-wide project lien waiver.

3. Definitions.

a. Federal Reclamation Program Project. Emergency or high priority abandoned mine land abatement or reclamation projects undertaken through a Federal contract, a cooperative agreement with a State/Tribe or an interagency agreement with another Federal agency, and funded through the Abandoned Mine Land Fund.

b. Lien Exemption. A statutory provision to exclude property from the lien provision of Surface Mining Control and Reclamation Act (SMCRA) under certain circumstances.

c. Lien Waiver. A written determination that a lien will not be placed for one or more of the reasons listed in 30 CFR 882.13(a).

4. Policy/Procedures.

a. Background. Section 408 of SMCRA provides that a lien may be placed on privately owned lands whenever reclamation work results in a significant increase in property value, except that no lien shall be filed against the property of any person who owned the surface prior to May 2, 1977, and who neither consented to nor participated in, or exercised control over the mining operation which necessitated the reclamation work. The regulations at 30 CFR 882.13 provide that such a lien may be waived under certain specific circumstances.

The primary purposes of the lien provisions are to protect the interest and to prevent windfall profits from accruing to private landowners when reclamation activities result in increasing the fair market value of private lands. This directive clarifies Office of Surface Mining Reclamation and Enforcement (OSMRE) policy regarding liens.

b. Responsibilities.

(1) Lien Exemption Documentation. The Assistant Director E/W Field Operations, or his designee, shall have the authority to approve a lien exemption. All lien exemptions must be documented in writing. The Assistant Director E/W Field Operations must verify and document in writing when title was acquired and whether the landowner participated in the mining. This may be accomplished by conducting a search of the appropriate land and other records verifying ownership, title transfers, and whether the owner had leased the land for mining, received royalties or was involved in any capacity whatsoever with the mining company. Copies of such deeds and any other pertinent documents and documentation shall be maintained in the project files.

(2) Placement of Liens. The Assistant Director E/W Field Operations shall be responsible for the placement of liens. A lien shall be placed against the property of a landowner who consented to, participated in, or exercised control over the mining operation which necessitated the reclamation work, or who acquired title after May 2, 1977, unless properly waived under the regulatory provisions governing lien waivers (30 CFR Part 882).

c. Policy.

(1) Significant Increase in Fair Market Value Definition. Section 408 (a) of SMCRA requires placement of a lien where the moneys expended on a reclamation project result in a "significant increase" in property value. Significant increase in fair market value is herein defined as $5,000 or a 25 percent increase from before reclamation fair market value of the property, whichever is less, as documented in the notarized appraisals required by 30 CFR 882.12.

(2) Community Benefit Lien Waiver. The community benefit lien waiver is applicable following an analysis that the reclamation work primarily benefits the health, safety or environmental values of the community or area as a whole. Copies of the analysis and associated documentation shall be maintained in the project files. The following guidelines should be applied in making the determination of community wide benefit.

(a) There is public access to the land for public use such as recreation.

(b) The restored condition of the land has removed a significant visual or environmental blight which has improved the visual and environmental condition of the surrounding area thereby stabilizing or enhancing property values in the surrounding area.

(3) Cost of Lien Placement Waiver. A lien may be waived if the cost of filing it exceeds the increase in fair market value of the property as a result of the reclamation activity. Therefore, the following factors shall, at a minimum, be included in determining the cost of filing a lien:

a) The cost of all pre and post-reclamation appraisals;

b) filing costs; and

c) the cost of any other item required by local, State or Federal law or otherwise approved by OSMRE.

Copies of all documentation and supporting data shall be maintained in the project files.

(4) Area-Wide Project Lien Waiver. A lien may be waived if the reclamation agency finds in writing and documents that an area-wide project meets the following criteria:

a) the project does not intend to benefit any private properties;

b) the project affects numerous private properties;

c) the cost of individual appraisals and the administrative expense of individual lien determinations is substantial; and

d) the time needed to perform formal individual appraisals and lien determinations could result in delay in the start of the project.

Such written documentation shall be maintained in the project files.

5. Reporting Requirements. None.

6. Effect on Other Documents. None.

7. References.

a. Section 408 of SMCRA.

b. 30 CFR Part 882.

c. "A Study of the Office of Surface Mining's Abandoned Mine Land Reclamation Lien Regulations and Policies," December 31, 1984, prepared by Office of Surface Mining Lien Task Force.

8. Effective Date. Upon issuance.

9. Contact. Chief, Headquarters Division of Abandoned Mine Land Reclamation, (202)-343-5365.

10. Keywords. Lien, reclamation, private lands.

11. Appendices. None.