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	U.S. DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	**Subject Number:** GMT-10-7 **Transmittal Number:** 869 **Date:** APR 28 1997

Subject: **Federal Assistance Manual**

Approval: Kathrine L. Henry **Title: Acting Director**

The purpose of this change notice to the Federal Assistance Manual is to revise Chapter 4-30, Characteristics of Grantee-Administered Emergency Reclamation Activities." Specifically, changes were made to:

1. Increase from $10,000 to $50,000 the amount of emergency funds that can be used to complete a project which requires non-emergency work. This allows flexibility to finish a small project without having to re-bid the project. It was clarified that the 6 months/$50,000 limits were guidelines and not rigid.

2. Add four appendices which provide guidance on declaring an emergency, compliance with the National Historic Preservation Act, and gathering complaint information.

3. Incorporate other edits and clarifications based on comments received.

FILING INSTRUCTIONS:

Remove:	Insert:
Chapter 4-30, pages 1	Chapter 4-30, pages 1-24

CHANGE NOTICE

CHAPTER 4-30
CHARACTERISTICS OF GRANTEE-ADMINISTERED EMERGENCY RECLAMATION ACTIVITIES

4-30-00 Background
10 Definitions
20 Policy
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4-30-00 BACKGROUND

Grantees are encouraged to undertake emergency reclamation programs on behalf of the Secretary of the Interior. Reference Federal Register notice on the "Opportunity to Amend State/Tribal Reclamation Plans to Include Provisions for Emergency Reclamation Activities" (47 FR 42729, September 29, 1982) and the guidelines for submission of amended reclamation plans issued on March 7, 1983. On February 24, 1992, the Director sent a letter to each program State which had encountered emergencies but which was not managing its own emergency program, encouraging it to do so. This chapter sets forth procedures to be followed in applying for emergency reclamation funds from OSM and administering the program. While OSM and the grantees must follow the procedures set out in this section, the key to a successful emergency program is a good working relationship between the RD/FOD and the grantee based on mutual trust and respect.

4-30-10 DEFINITIONS

A. Emergency - 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.

B. Finding of Fact - An OSM-prepared document for emergency projects (used in place of the Authorization to Proceed) containing a finding of fact that a problem meets the criteria of an emergency and therefore qualifies for available funding.

4-30-20 POLICY

A. Only those grantees with OSM approved emergency reclamation programs are eligible to receive and expend funds for emergency projects in accordance with the provisions outlined at Section 401(c)(7),(8) of SMCRA. When it is determined that a problem should be reclaimed using both emergency and non-emergency project funds, the Finding of Fact will also include the scopes of work to be funded with emergency funds. OSM will define the extent of the emergency, in consultation with the grantee, and will make the final determination regarding the allocation of emergency funds. The State will determine the extent and scope of non-emergency work. Management of the emergency funds to ensure that funding levels are not exceeded will be the responsibility of the grantee. OSM's monitoring of the use of emergency funds will be similar to the monitoring of the grantee's use of other AML funds.

B. Sites mined and abandoned after August 3, 1977 (interim program sites) are not eligible for emergency funding under the AML program. If a site is eligible for AML funding under the post August 3, 1977 criteria, it should be addressed with State/Tribe non-emergency program funds.

4-30-20B. (Continued)

C. One of a RD/FOD's key responsibilities relative to the emergency program is deciding, in consultation with the grantee, the proper split between the use of emergency and non-emergency AML funds to reclaim a problem when the use of emergency funds is required to expeditiously address the problem.

Emergency reclamation procedures need not resemble final reclamation products. The objective of emergency reclamation is not to fully reclaim the area but to stabilize the problem and eliminate the danger to public health, safety, and welfare. Additional reclamation may be carried out under non-emergency reclamation programs at a later date.

However, OSM recognizes that sometimes it is cost effective to use small amounts of emergency program funds to complete the reclamation of an emergency problem even though such reclamation goes beyond that set out in the guidelines on reclamation programs.

Six months and $50,000 are used as factors to be considered when determining if a portion of the reclamation of an emergency problem should be funded using a grantee's non-emergency project funds (see Exhibit X4-30-1). These factors are suggested guidelines, not rigid limits. The logic behind the use of this 6-month criteria is that 6 months is usually ample time for the grantee's non-emergency AML program to assume responsibility for the remaining non-emergency reclamation. The purpose of this guidance is to allow complete reclamation of an emergency project, using emergency funds, when it is more cost effective than letting two separate contracts. The $50,000 minimum is based on the assumption that it would not be cost effective to award two separate contracts for emergency and non-emergency reclamation when the cost of complete reclamation is expected to be less than $50,000. If emergency abatement costs exceeds $50,000, as many do, emergency funds will certainly be made available for complete emergency abatement. However, if a significant amount of work remains to be done after the emergency is abated, emergency funds should not be used.

The RD/FOD, in consultation with the grantee, will determine how much of a project should be funded from the emergency funds and how much from non-emergency funds in accordance with 4-30-50C, Emergency Project Review.

4-30-30 RESPONSIBILITIES

A. OSM Regional Directors/Field Office Directors are responsible for:

1. Receiving, reviewing and awarding grant applications.

2. Declaring emergencies. In doing so the RD/FOD should assure the problem meets the definition of emergency under 30 CFR 870.5 and further defined in Exhibit X4-30-1. The RD/FOD approves the scope of work necessary to abate the emergency.

3. Working with the grantee to ensure appropriate use of emergency funds.

4. Working with the grantee to determine if emergency funds are appropriate, in accordance with section 4-30-40C, for reclamation of AML problems which are not currently emergencies, but which if not reclaimed promptly may deteriorate into emergencies.

4-30-30A. (Continued)

5. Assuring compliance with National Environmental Policy Act (NEPA) as set out in chapter 5-11-20C; REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act" ("NEPA Handbook").

6. Assuring compliance with the National Historic Preservation Act (NHPA) as set out in Exhibit X4-30-2.

7. Assuring that the State/Tribe has certified that it is in compliance with the Endangered Species Act, the Clean Water Act, and any other applicable Federal, State/Tribal, and local laws imposed for the protection of the environment.

8. Monitoring performance of reclamation activities and expenditure of grant funds.

B. Grantees are responsible for:

1. Preparing grant applications and amendments (see FAM Chapters 5-10A, 5-30A).

2. Responding to, and tracking emergency complaints, individual reclamation project progress, and monitoring all its emergency program costs.

3. Ensuring that emergency abatement activities are conducted in accordance with the OSM approved State/Tribe reclamation plan and Exhibit X4-30-1.

4. Ensuring that project funds are properly allocated/expended when projects are undertaken that contain both emergency and non-emergency conditions (see 4-30-50C).

5. Documenting the need for emergency funds, in accordance with section 4-30-40C, for reclamation of AML problems which are not currently emergencies, but which if not reclaimed promptly may deteriorate into emergencies.

6. Assisting OSM in complying with the National Environmental Policy Act in accordance with Chapter 5-11-20C and the OSM "NEPA Handbook," and the National Historic Preservation Act in accordance with Exhibit X4-30-2.

7. Compliance with the Endangered Species Act, the Clean Water Act, and any other applicable Federal, State/Tribal, and local laws imposed for the protection of the environment.

8. Securing and administering contracts for services necessary to abate emergency conditions, including rights of entry, appraisals, and other realty requirements.

9. Submitting performance and financial reports as required in Chapter 5-60A.

4-30-40 FUNDING CONSIDERATIONS

A. Grant application(s) shall be submitted following the procedures contained in Chapter 5-10A. Emergency program costs are included in the grantee's annual AML grant.

4-30-40 (Continued)

B. Funding for the emergency program will be awarded for a period not-to-exceed one-year, unless the RD/FOD approves an amendment extending the performance period (see Chapter 5-30A.).

C. It is appropriate to use emergency program funds for exploratory and design work for high priority projects which have the potential to deteriorate into an emergency situation or which need prompt attention but require considerable evaluation efforts and which will require more than six months to complete the project. The State will then fund the required reclamation as part of its normal AML program.

D. Grantees shall submit complete and accurate performance and financial reports in the time frames established in 5-60A.

E. Deobligated emergency program monies will be returned to OSM. Deobligated grant monies will not be included in grantee carryover AML funds.

F. Funds deobligated from state emergency grants and simplified grant emergency project subaccount will be returned to the OSM emergency fund and may be used by OSM to supplement emergency grant needs in any state.

4-30-50 PROCEDURES

A. Request for Emergency Declaration

Under grantee administered emergency programs, the grantee is responsible for initial investigations of AML citizen complaints. If the complaint is considered by the grantee to be an emergency, then the grantee contacts the RD/FOD to determine if an OSM inspection is needed. Joint inspections are encouraged if possible and expedient.

1. Initial Investigation

a. Grantee AML personnel will be dispatched to the problem site within 48 hours after receipt of the complaint. If the grantee determines that the problem appears to be of a serious nature, the RD/FOD should be promptly notified. The grantee may request assistance from the RD/FOD.

b. Grantee staff responsible for field investigation should obtain all pertinent information. Suggested guides for gathering such information are given in "Complaint Information Gathering Guide," Exhibit X4-30-3, and "AML Complaint Investigation Data," Exhibit X4-30-4.

c. Note any procedures required by NEPA, NHPA, Endangered Species Act, Clean Water Act, or any other Federal, State/Tribal, or local requirements imposed for protection of the environment.

d. If appropriate, notify emergency assistance organizations and local authorities of conditions at the site to ensure that immediate protective steps are taken, such as fencing, street closing, etc.

e. Determine if local or other State/Tribal institutions can and will correct problem (such as county highway department).

4-30-50A. (Continued)

f. As soon as it appears to the grantee that some of the work required to achieve complete reclamation of a problem should be funded with non-emergency funds, the grantee should discuss the situation with the RD/FOD. If it is decided that non-emergency funds should be used, the grantee should take the actions required to assure that the non-emergency funds will be available to complete the non-emergency portion of the reclamation or to include the remaining work in the State's inventory.

g. Obtain information necessary to secure an appraisal, if required.

2. The following materials must be submitted to the RD/FOD for each proposed emergency before an emergency can be declared, except in certain situations described in 4-30-50C.2.a. In consultation with the RD/FOD, the grantee may provide only that information required for the RD/FOD to declare an emergency and supply the remaining information after an emergency has been declared. The amount of discussion about abatement alternatives usually is a function of the size of the project. The more complex the project, the greater the analysis and discussion required.

a. Grantee investigation report. Use an OSM-51 (Exhibit X5-10A-1), or any State form, to provide the information specified below. This may include either a narrative or bullet-type description of the following issues:

(1) Project objective: Describe the project objective in relation to the definition of an emergency, i.e., abate 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 non-emergency program operation procedures and the criteria contained in Exhibit X4-30-1. Abatement alternatives, if any, should be evaluated to demonstrate that the most effective and cost efficient method is being used.

(2) Approach: Briefly describe the project schedule, scope of work and expected accomplishments.

(3) Bonds: Identify any bonds associated with the disturbed area which have been released, or forfeited and expended. If a bond has been forfeited but not expended, it must be applied to any work to be done. A commitment from the holder of the bond to that effect, in writing, is required. This commitment may initially be verbal in a documented telephone log with a written follow-up. If the amount of the unexpended bond funds are inadequate to complete emergency reclamation, the emergency fund would be used. For additional guidance on AML project eligibility relating to bonds see FAM Chapter 4-01-10, Eligibility.

(4) Non-emergency work: Estimate the amount, and cost, of any non-emergency work associated with the emergency project when reclamation is expected to take more than 6 months and/or the total cost of reclamation is over $50,000 (see Section 4-30-20B. of this Chapter). Emergency funds in excess of $50,000 may be used to complete the non-emergency portion of a project if it is demonstrated that this is the most cost effective scenario. If emergency funds are not to be used, the grantee should indicate whether funds from the grantee's non-emergency AML program will be available to complete the reclamation or whether the non-emergency portion will be included in the State's inventory.

4-30-50A. (Continued)

(5) Maps: Include maps showing location of the problem. Do not delay submitting an investigation report if a map is not readily available.

b. Recommendation for emergency action signed by the responsible grantee agency official.

B. Emergency Project Review and Emergency Declaration or Denial

1. Field Office Review. Upon receipt of the information described in 4-30-50A., the RD/FOD may investigate the proposed project site to verify the information contained in grantee reports. The RD/FOD will review the information provided under section 4-30-50A. to ensure that the following requirements are met.

a. The project meets the criteria for an emergency contained in Exhibit X4-30-1.

b. The scope of work is reasonable to abate the emergency condition. When considering the reasonableness of proposed actions, the FO should follow Exhibit X4-30-1.

c. The responsible grantee representative has signed or otherwise agreed to the emergency recommendation and scope of work.

d. Whenever a project is in proximity to, or it may be reasonably expected that reclamation activities could have an impact on, any active mining or mined area, the FO staff will contact the appropriate Federal and/or State/Tribal Mine Safety and Health Administration/Agency to determine if site conditions or probable reclamation activities could affect the health and safety of mine workers. The RD/FOD has the discretion to apply the "proximity" and "reasonably expected" criteria based on the specific site conditions.

e. The project will comply with NEPA, NHPA, and the State/Tribe affirms compliance with the Endangered Species Act, Clean Water Act, and any other Federal, State/Tribal, and local requirements imposed for the protection of the environment.

f. A statement that any bond(s) associated with the disturbed area has been released, or forfeited and expended. If a bond(s) has been forfeited but not expended, it must be applied to any work to be done. A commitment from the holder of the bond(s) to that effect, in writing, is required. This commitment may initially be verbal in a documented telephone log with a written follow-up.

g. Documentation of planned coordination with the grantee's non-emergency AML program if a portion of the problem is to be abated using emergency program funds and the remainder referred to or funded by the grantee's non-emergency AML program. Under grant simplification a project can be partially funded as an emergency and the remainder of the reclamation funded by the grantee's non-emergency AML program funds. If it is determined that a problem should be reclaimed using both emergency and non-emergency project funds, one contract can be awarded that is funded in part with emergency and in part with non-emergency funds.

4-30-50B. (Continued)

2. Emergency Declaration

a. An emergency is declared by the RD/FOD through the signing of a Finding of Fact. This should be done within 48 hours of receipt of the information described in 4-30-50A.

A RD/FOD may approve a limited emergency response based on verbal information prior to obtaining all the information normally required to issue a Finding of Fact when, in the RD/FOD's opinion, delaying issuing a Finding of Fact until all the required information is available could result in substantial physical harm to the health, safety, or general welfare of people. Before doing so, the RD/FOD must assure that the environmental compliance requirements applicable when emergency circumstances at the site require immediate abatement action, as set out at section 5-11-20.C.2. of the FAM, are met. The RD/FOD can approve additional scope upon receipt and review of more complete information.

b. The Finding of Fact includes the following information:

(1) Project name and number. Include PAD number if the problem is in an existing Problem Area.

(2) Project location - Should be specifically stated and detailed as to street, township, county. Longitude and latitude should be included as OSM is now using Geographical Information Systems to display relevant data.

(3) Condition which requires emergency abatement.

(4) Declaration that the project meets the definition of an emergency. Must meet the criteria given in Exhibit X4-30-1.

(5) Scope of work.

- Explain why the proposed level of work is necessary to stabilize the emergency aspects of the problem by eliminating the danger to public health, safety, and general welfare.

- If the proposed level of work will achieve complete and permanent reclamation of the problem, and the estimated cost is greater than $50,000, explain why it would not be cost effective to conduct or fund the proposed work beyond that necessary to eliminate the danger to public health, safety, and welfare under the grantee's non-emergency AML program.

- Document planned coordination with the grantee's non-emergency AML program if a portion of the problem is to be reclaimed using emergency program funds and the remainder reclaimed or funded under the grantee's non-emergency AML program.

4-30-50B. (Continued)

(6) Document compliance with NEPA as set out in chapter 5-11-20C and OSM "NEPA Handbook." If there is an immediate threat of substantial physical harm, and the emergency action must be completed before the required NEPA document can be completed, the grantee may submit environmental and other information to assist the RD/FOD in making the determination required under FAM chapter 5-11-20C.2.c.

(7) Documentation of compliance with NHPA as set out in Exhibit X4-30-2.

c. If the project appears to be an emergency, the OSM inspector/program specialist prepares and signs the Finding of Fact and forwards it to the RD/FOD for approval and signature.

3. Emergency Denial. If the RD/FOD determines that a complaint does not constitute an AML emergency, the grantee must be provided a written determination within two (2) working days. If the grantee determines it to be an eligible high priority AML problem, OSM may assist the grantee in submitting timely NEPA documentation. Special consideration should be given to those problems which do not currently meet the criteria for emergency declaration but which may deteriorate into emergencies if not reclaimed promptly. As appropriate on a case-by-case basis, this assistance could include help with the documentation to enter the problem in the Abandoned Mine Land Inventory System (AMLIS) and preparation of the Environmental document. Any requests for assistance by a grantee should be sent to the RD/FOD for action.

C. Emergency Project Progress Reporting

1. Recipients shall submit performance and final reports in accordance with FAM Chapter 5-60A. The performance report (OSM 51) for emergency projects shall include the following pertinent information:

- Name of project
- Date work started on project
- Discussion of abatement measures and their success or failure
- Original contract(s) cost
- Final project cost
- Date work was completed on the project. Does not include final revegetation when doing so has to be delayed until proper weather conditions occur.)

2. A completed OSM-76, "Abandoned Mine Land Problem Area Description," must be submitted at project completion to show accomplishments.

D. Scope Changes

1. In keeping with the spirit of grant simplification, in general OSM approval is not necessary for changes in emergency grant funded project scope unless the scope changes will result in additional emergency grant funds being spent for non-emergency reclamation. However, the RD/FOD may require OSM approval of such changes if the RD/FOD determines that the grantee is using scope changes to fund non-emergency reclamation with emergency funds.

4-30-50D. (Continued)

2. In addition, in cases where the RD/FOD prepares the NEPA related documents and conducts the required consultations for the grantee, prior to making changes in the scope of work, the grantee shall notify the RD/FOD and the RD/FOD shall review the existing NEPA document and findings. As necessary, changes to existing documents and additional findings shall be made to ensure that the proposed activities are in conformance with applicable requirements. In the cases where the grantee prepares the NEPA related documents and conducts the required consultations, the grantee also may prepare revised documents as necessary to address additional environmental impacts from the proposed scope change.

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AML EMERGENCY PROGRAM GUIDELINES

The following guidance applies to Federally managed emergency programs.

1. Emergency Criteria

As defined in 30 CFR 870.5, an emergency is 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. For an AML problem to be declared an emergency the answers to the following three questions must be yes.

a. Was there a sudden event?

b. Is there a high probability of substantial physical harm to the health, safety, or general welfare of people?

c. Does the emergency condition need to be abated in a time frame that is not possible under normal State/Tribal program procedures in order to protect the health, safety, or general welfare of people?

If an AML emergency project needs to be initiated within 30 days of being declared an emergency by OSM, only then may the following be used: 1) an expedited NEPA process as set out in REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act", and 2) an expedited process for complying with the National Historical Preservation Act be used (See Appendix 6). Chapter 5 of the NEPA Handbook also addresses the Clean Water Act, Endangered Species Act, and other applicable environmental statutes.

2. Proper Response to Declared Emergencies

The proper amount of emergency reclamation is that necessary to stabilize the immediate emergency aspects of the problem by eliminating the immediate danger to public health, safety, and general welfare. Any remaining reclamation should then be accomplished as part of a regular, non-emergency AML project. The only exception to this concept is when it is clearly not cost effective to split a reclamation project into emergency and non-emergency projects. Usually it is not cost effective to split a problem with an estimated total cost of complete reclamation of less than $50,000.

Emergency reclamation must be sufficient to stabilize conditions until the remaining non-emergency reclamation can be undertaken. The objective of emergency reclamation is not to fully reclaim the area but to eliminate the danger to public health, safety, and welfare. When non-emergency reclamation is referred to the State/Tribe after abatement of the emergency, prompt consideration should be requested from the State/Tribe if the remaining reclamation needs to be done expeditiously, either to prevent deterioration into an emergency situation, or to protect the emergency abatement already completed. Similarly, in a non-program State, the responsible OSM office should initiate a prompt review of the site conditions and expedited reclamation.

It is appropriate to use emergency program funds for exploratory and design work for high priority projects which have the potential to deteriorate into an emergency situation or which need prompt attention but require considerable evaluation and design efforts and which will require more than six months to complete the project. The work should be done in cooperation with the State/Tribe who will then fund the required reclamation as part of its normal AML program.

3. Specific Guidance for Selected Types of AML Problems

a. Surface Burning (SB). This type of problem poses an emergency threat to public health and safety through ignition and burning of occupied dwellings, creation of surface fires (e.g.,,grass or forest fires) which could endanger persons or occupied dwellings, or by producing poisonous combustion gases,(e.g. carbon monoxide, carbon dioxide, hydrogen sulfide, etc). The presence of poisonous gases must be confirmed. This may be accomplished through the collection and laboratory analysis of ambient air samples or the use of a hand held monitor. Most refuse pile fires are characterized by noxious fumes, smoke, and open fires. While these conditions may be annoying, they do not normally constitute an emergency and will be referred to the States/Tribes for consideration under their AML grant program, or in non-program States/Tribes, will be considered for reclamation as a Federal high priority project.

However, emergencies may develop where such fires suddenly expand and threaten any inhabited structure(s) or poisonous gases suddenly begin to threaten people. These fires will be considered for possible emergency action, or expedited reclamation by the State.

When refuse fires first start, quick extinguishment of the fire minimizes the cost of reclamation. Therefore, notwithstanding the criteria for emergency definition discussed above, consideration will be given to addressing, as emergencies, fires which are discovered at an early stage and extinguishment may be performed at a modest cost.

b. Gases/Underground Burning (GUB). As with surface burnings, the emergency danger of underground mine fires is the ignition and burning of occupied dwellings, creation of surface fires (e.g., grass or forest fires), or by producing poisonous combustion gases (e.g., carbon monoxide, carbon dioxide, hydrogen sulfide, etc), which could endanger persons or occupied dwellings. The presence of poisonous gases must be confirmed. This may be accomplished through the collection and laboratory analysis of ambient air samples or the use of a hand held monitor.

Normally, inventoried underground mine fires are not sudden occurrences and do not present an immediate danger to public health, safety, and general welfare. The States/Tribes are, generally, aware of these underground fires and will conduct abatement or control procedures through normal program operations. However, emergencies may develop where these fires suddenly break to the surface or where poisonous gases generated by the fire suddenly begin to threaten people or inhabited structures. These fires will continue to be considered for possible emergency action, or expedited reclamation by the State.

When underground mine fires first start, quick extinguishment of the fire minimizes the cost of reclamation. Therefore, notwithstanding the criteria for emergency definition discussed above, consideration will be given to addressing, as emergencies, fires which are discovered at an early stage and extinguishment may be performed at a modest cost.

c. Dangerous Slides (DS). The primary threat of dangerous slides is the immediate danger to the occupants of dwellings which are or could be hit by the slide. In some cases, a slide may be considered an emergency when it blocks a stream, threatening upstream or downstream flooding, especially through release of temporarily-impounded water. Blockage of roadways and driveways may be considered an emergency if access for emergency vehicles is prevented and no highway maintenance agency can act to clear the roadway.

Where these situations occur, emergency AML work will be performed to address only the emergency portion of the landslide. Permanent stabilization of the entire slide area may be considered when a threat from the newly identified slide activity is imminent, the emergency cannot be stabilized without permanent reclamation, or it is clearly demonstrated that it is not cost effective to delay full reclamation. Where emergency reclamation abates the emergency but achieves less than permanent stabilization, the remaining or additional work will be referred to the State/Tribe for consideration under its AML grant program.

d. Portals (P) and Vertical Openings (VO). Emergencies from mine openings are created by the risk of falling into the opening or the risk of entering the opening and being subjected to either falling material (e.g., roof rock or mine timbers) or an inhospitable mine atmosphere, usually carbon dioxide, methane, and/or low oxygen conditions. The possibility of mine explosions from methane buildup is also present.

Historically, mine openings were often capped or sealed at the conclusion of mining with no provisions for continuous maintenance. Subsequent surface activities or vegetation growth may have covered or hidden these openings. The sudden uncovering of a previously unknown shaft or other mine opening in a populated area due to the failure of the seal/cap or by exposure following vegetation clearing operations will generally be considered an emergency. Open shafts, although previously detected, which are now considered to be in or near populated areas and represent an immediate danger to the public may be treated as emergency work.

Any opening created by the sudden failure of either a horizontal or vertical seal may present an immediate danger if it exposes persons to poisonous gases and/or to the risk of falling into the mine opening. Even known mine openings can experience changing conditions, resulting in the discharge of hazardous gases. In both cases, the presence of poisonous gases, usually carbon dioxide and/or lack of sufficient oxygen, should be confirmed when this can be done safely and conditions permit meaningful sampling. This may be accomplished through the collection and laboratory analysis of ambient air samples or the use of a hand held monitor.

e. Subsidence(s). Emergencies resulting from subsidence involve the danger of falling into the opening and/or the risk of damage to occupied dwellings, threatening the safety of occupants. Subsidence damage that significantly affects the structural integrity of occupied dwellings, or adversely affects gas or electric lines, is usually an emergency. Subsidence beneath a roadway may be treated as an emergency, only when a roadway maintenance agency cannot act to correct the problem.

f. Other Problem Types While the five problem types above represent those most commonly associated with emergencies, this Directive does not preclude other problem types from being declared an emergency.

(1) The following problem types may be considered for emergency funding by the RD/CC when they suddenly present an immediate danger to public health, safety, and general welfare.

(a) Dangerous Highwalls (DH)

(b) Dangerous Piles/Embankments (DPE)

(c) Dangerous Impoundment (DI)

(d) Hazardous Equipment/Facilities (HEF)

(e) Polluted Water (PW)

(2) The problem must meet the emergency criteria as set forth in Section 1 of these guidelines and follow other guidance provided in this Directive.

ABANDONED MINE LAND EMERGENCIES - COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT

This Exhibit reaffirms that the procedures set out in the Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR Part 800 to protect historic and archeological resources will be followed when conducting Abandoned Mine Land (AML) emergency abatement. These procedures implement the Section 106 process of the National Historic Preservation Act (NHPA) which requires a review to determine the effect on historic properties[1] of Federal or federally assisted undertakings such as emergency abatement projects.

This Exhibit sets out the steps to follow when emergency construction can be initiated within 30 days of the Office of Surface Mining Reclamation and Enforcement (OSM) declaring the emergency. If construction cannot be initiated within 30 days of OSM declaring the emergency, the regular (NHPA) procedures must be followed, **except in no event will an emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people be delayed in order to meet NHPA requirements.**

Under grantee managed emergency programs, the grantee is responsible for all activities except preparing the "Finding of Fact/Funding Authorization" and deciding if immediate action must be taken to prevent immediate substantial physical harm to the health, safety, or general welfare of people if the SHPO's concerns cannot be resolved or if it is not possible to contact the SHPO (see b. below).

The first step under the review process is determining whether any historic properties listed or eligible for listing on the National Register of Historic Places, including archeological resources, might be affected by the emergency abatement project. While few emergency projects potentially affect historic properties, this must be determined for each emergency abatement project.

a. <u>If no historic properties are found that may be affected by the emergency abatement project</u> - The grantee provides the RD/FOD with a statement that no historic properties are found that may be affected by the emergency abatement project. This is documented in "Finding of Fact/Funding Authorization." A copy of this documentation is to be provided to the State Historical Preservation Officer (SHPO). No further steps in the Section 106 process are required.

b. <u>If a historic property is found that may be affected by the emergency abatement project</u> - The grantee AML organization (grantee) will contact the SHPO.

In consultation with the SHPO, the grantee will apply the Criteria of Effect, pursuant to 36 CFR Part 800.9(a) (See Attachment A), to the historic property that may be affected. If no effect is found, the grantee notifies the SHPO and the RD/FOD. The findings will be documented in the "Finding of Fact/Funding Authorization." If the SHPO has no objections, this will be noted in the "Finding of Fact/Funding Authorization." The grantee will photograph the property (See Attachment B). No further steps in the Section 106 process are required.

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[1] "Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register [of Historic Places]. This term includes for the purpose of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria. (36 CFR Ch. VII, § 800.2 (e)).

If the SHPO does have concerns that the emergency abatement may adversely affect a historic property, the grantee will make a reasonable attempt to resolve the concerns before initiating the emergency abatement. When the SHPO's concerns can be resolved, the "Finding of Fact/Funding Authorization" will state (1) how the abatement will impact a historical property, including a description of the property, (2) the concerns expressed by the SHPO, and (3) how the SHPO's concerns were resolved, including the agreed upon information to be sent to the SHPO. After the abatement has been accomplished, any agreed upon information will be sent to the SHPO. A copy of the information provided the SHPO will be included with the emergency project's final report.

If the SHPO's concerns cannot be resolved and OSM judges that immediate action must be taken, OSM will first document in the "Finding of Fact/Funding Authorization:"

Why emergency abatement must be initiated immediately to prevent immediate substantial physical harm to the health, safety, or general welfare of people.

A description of the SHPO's concerns.

A description of the emergency abatement to be conducted without resolving the SHPO's concerns, its impact on the historic property(s), and the measures and procedures to be used to avoid or minimize harm to historic properties.

The grantee will photograph the property (See Attachment B), and then take only that emergency action required to prevent immediate substantial physical harm to the health, safety, or general welfare of people.

Later the grantee will provide the SHPO with photographs (See Attachment B) and maps along with a description of the actual impact on the property. A copy of the information provided the SHPO will be included with the emergency project's final report. If additional work is required to complete the abatement, the regular NHPA procedures must be followed.

If it is not possible to contact the SHPO (for example, on a weekend) and OSM determines that immediate action must be taken, photograph (See Attachment B) the property, and then take only that emergency action required to prevent immediate substantial physical harm to the health, safety, or general welfare of people. Note in the "Finding of Fact/Funding Authorization" that an unsuccessful effort was made to contact the SHPO. At the first opportunity, notify the SHPO. Later the grantee will provide the SHPO with photographs (See Attachment B) and maps along with a description of the actual impact on the property. A copy of the information provided the SHPO will be included with the emergency project's final report. If additional work is required to complete the emergency abatement, it will be done in accordance with the regular NHPA procedures.

ATTACHMENT A
36 CFR Ch. VII, § 800.9 Criteria of effect and adverse effect.

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting or use may be relevant depending on a property's significant characteristics and should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;
(2) Isolation of the property from or alteration of the character of the property's setting when character contributes to the property's qualification for the National Register;
(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;
(4) Neglect of a property resulting in its deterioration or destruction; and
(5) Transfer, lease, or sale of the property.

© Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of the regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;
(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's [Secretary of the Interior] "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or
(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

ATTACHMENT B
Guideline for Photographs of Historic Properties

It is recommended that the SHPO be contacted beforehand to determine what is required of photographs of historic properties. In lieu of specific guidance from the SHPO, the following guidelines should be followed.

Photograph Type: Use color or black and white film. Polaroid type photographs are not acceptable.

Buildings or structures:

Environment or context: Photograph should show the environment or context in which the property is located.

Elevations: Photographic record must include elevations or side views which show the entire length and/or width of the building or structure. Elevations are used to identify the style of the building or structure and the type of construction.

Elements: Elements are large portions of the building or structure such as walls and roofs, that contain repeated features such as doors, windows and large decorative details. Parts composing the elements of the building or structure such as porches, entryways and large significant decorative aspects should be photographed. Machinery should be photographed.

Details of the Features: Close-up photographs of unusual windows, doors, and repeated designs and motifs. Also include views of typical work methods and materials.

Historic and archeological sites: Photographs should document the condition of the site and present features. If relevant to the evaluation of significance, photographs may also show artifacts that have been recovered from the site. Photographs must show the physical environment and land configuration of the site.

Identification: Identification of photographs should be detailed but concise and contain the following:

- The name of property/site
- The location: (State, county, city and address (if relevant), and emergency project name and number.)
- The date of photograph
- The direction the camera is pointing
- The photograph number
- The role and negative number
- Location where the negative is stored
- A description of what the photograph is showing

COMPLAINT INFORMATION GATHERING GUIDE

1. Was there a sudden event? When did it occur, if known?
2. Is there a high probability of substantial physical harm to the health, safety, or general welfare of people?
3. Does the problem have to be addressed immediately to protect health, safety, or general welfare of people?
4. How many people are endangered and to what extent?
5. How soon does the problem need to be addressed? (What is the urgency?)
6. What is the history of mining in the area?
7. If the mining operator is known, does he have continuing reclamation responsibility?
8. Are there any bonds associated with the disturbed area? (Optional)
9. What is the source of the problem and where is it located?
10. How does the problem cause and affect relate to past coal mining practices?
11. Is access to the property safe?
12. If needed, have the residents secured alternative housing within the commuting area?
13. Have photographs of all aspects of damaged property been taken (including inside of houses).
14. Is there a potential for any emergency abatement to impact the environment (NEPA) and/or historic properties (NHPA)?
15. Does the current problem indicate a seasonal or other periodic (non-random) fluctuation that may change at a later date?
16. What can the landowner and mineral owner do?
17. What is the grantee's regular AML program willing to do and when?
18. What is the local community willing to do and when?
19. What are the utility companies willing to do and when?
20. What are other State/Tribal and Federal agencies willing to do and when?
21. Is there insurance company responsible?
22. Was the owner involved in or benefited from mining?

AML COMPLAINT INVESTIGATION DATA

Type of Complaint: _____
Reported by: _____
Address: _____
Telephone: _____
Date Grantee Received Complaint: _____ Time: _____
Date OSM Field Office Received Complaint: _____
Time: _____
Grantee Person Receiving Complaint: _____
Address of Complaint: _____
City: _____ County: _____
State: _____

SITE INVESTIGATION

Date: _____ Time: _____
Grantee Investigators: _____
Grantee Representative(s) Present: _____

Others Present: _____

Name of Other Agencies Contacted (Local, State/Tribal or Federal): _____

LOCATION OF SITE

Direction to Location (Describe Route): _____

USGS Quadrangle Name: _____
Coordinates: _____

AREA MINED

Mined by: _____
Address: _____
City: _____
State: _____ Zip Code _____
Telephone Number: _____
Permitted Operation: No_____ Yes_____ Permit Number(s) _____

CHARACTERISTICS OF GRANTEE-ADMINISTERED EMERGENCY RECLAMATION ACTIVITIES

Was the property owner involved in the mining? Yes_____ No _____
If yes, explain _____

Duration of Mining : From_____ Until _____
Type of Mining: _____
Field Elevation:_____ Coal Elevation _____
Seam Name: _____

BOND (Optional)

Amount Received: _____ Date _____
Amount Returned: _____ Date _____
Amount Forfeited: _____ Date _____
Amount Available: _____ Date _____

PRESENT OWNERS

Surface Owner's Name: _____
Address: _____
City:_____State: _____
Zip Code:_____Telephone: _____
Mineral Owner's Name: _____
Address: _____
City _____State: _____
Zip Code:_____Telephone: _____

AFFECTED PARTIES

Name: _____
Address: _____
City:_____State: _____
Zip Code:_____Telephone: _____
Land Owner:_____Adjacent Owner: _____
Name: _____
Address: _____
City:_____State: _____
Zip Code:_____Telephone: _____
Land Owner:_____Adjacent Owner: _____

SITE INFORMATION

Date problem began or was first noticed: _____
Is there any active mining or related activities in or around the area? No__ Yes __
Name of Operators(s): _____

Nature of Problem:

_____ Water Discharge
_____ Sedimentation
_____ Flooding
_____ Air Pollution
_____ Slide
_____ Void, Shafts, Slope, Entries, etc.
_____ Mine Fire
_____ Subsidence
_____ Other, Specify _____

Source of Problem:

_____ Underground Mine
_____ Surface Mine
_____ Processing Area
_____ Refuse Pile
_____ Treatment Facility
_____ Other, Specify _____

Potentially Affecting:

_____ Persons — Estimated Number _____
_____ Streams — Name _____
_____ Public Road — Name _____
_____ Housing — Number _____
_____ Building — Number _____
_____ Schools — Name _____
_____ Utility — Power Line _____ Treatment Plant _____
Sewer Line _____ Gas Line _____
Water Line _____
_____ Historic or archeological site(s) Number _____
_____ Other, Specify _____
Estimate Acres (Hectares) Affected _____

NATURE OF PROBLEM

Describe the problem (details: i.e., size, shape; is problem spreading, expanding; first noticed, etc.): _____

OTHER INFORMATION

Describe what other information is available and its location (i.e., maps, inspections, reports, etc.): _____

ELIGIBILITY (Optional)

Grantee Legal Officer Notification

Name: _____
Address: _____
City: _____ State: _____
Zip Code: _____ Telephone _____

Method Used
Oral_____ Date_____ Written_____ Date_____

Declaration of Eligibility from grantee

Name: _____
Address: _____
City: _____ State: _____
Zip Code: _____ Telephone _____

Method Used
Oral_____ Date_____ Written_____ Date_____

Eligible: Yes_____ No_____ Explain _____