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U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

Subject Number: AML-4

Transmittal Number: 871

Date: JUN 17 1997

Subject: Procedures for Federal Reclamation Program Emergency and High Priority Projects

Approval: Katherine L. Henry Title: Acting Director

1. Purpose. Provides guidance and delineates responsibilities for the investigation and conduct of Federal Reclamation Program (FRP) emergency and high priority reclamation projects in non-program States and in program States which do not manage their own emergency program. This directive does not apply in States which have been given authority by OSM to conduct their own emergency programs.

2. Summary of Changes.

a. Incorporates changes previously transmitted in AML 4-1 through AML 4-4.

b. Incorporates the contents of AML-2, "Notarized Appraisal in Filing Lien Under Federal Reclamation Program," AML-7 "Use of the AML Fund to Pay Expenses or Claims Associated with AML Federal Reclamation," AML-13 "Disposition of Receipts from the Sale of Coal Recovered Incidental to any AML Federal Reclamation Program," and AML-16 "Implementation of Lien Requirements on Federal Reclamation Projects," by adding Appendix 8.

c. Incorporates OSM policy which prohibits the use of emergency funding for sites mined and abandoned after August 3, 1977 (interim program sites).

d. Deletes the requirement that the Deputy Director (DD) approve emergencies estimated to cost over $250,000 and the Assistant Secretary approves those over $1,000,000.

e. Eliminates "procedures" from Section 4, Policy/Procedures. The Regions will develop in-house procedures consistent with their personnel and organizational structure.

f. Eliminates Appendix 4, "Report of Complaint Investigation," Appendix 5, "State Attorney General or OSM (Department of the Interior) Solicitor's Letter of Eligibility," Appendix 7, "Contract Daily Diary," and Appendix 9, "Confirmation/Report of Telephone Conversation."

3. 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. Emergency reclamation should be limited to that required to abate the emergency aspects of the problem by eliminating the danger to public health, safety, and general welfare. Additional work, after abatement of the emergency, is normally referred to the State/Tribal AML Program except as provided in Appendix 1, Part 2.

b. High Priority. A situation in which there is a need to protect public health, safety, and general welfare from the hazards created by the adverse effects of past coal mining practices (Priority 1 or 2 problem, Section 403 of the Surface Mining Control and Reclamation Act).

c. Briefing Paper. An internal document which authorizes the expenditure of funds for AML activities conducted by the FRP such as: geotechnical investigations, design contracts, or hazard abatement. The briefing paper includes a written summary of the facts developed through investigation of the hazard(s) and a declaration that an emergency exists which constitutes a danger to public health, safety, or general welfare and no other entity will act expeditiously to correct the problem. The briefing paper also includes: the options and alternatives considered for abating or reducing the hazard(s); cost estimates for abating the emergency; a declaration of compliance with NEPA and NHPA; and approval of project funding. Amendments to briefing papers are made when substantial increases in project scope or cost occur or when project status changes from a previously approved geotechnical exploration project to an emergency project.

d. Pre-reclamation Appraisal. A real estate appraisal, performed by an independent certified appraiser, of the market value of the unreclaimed land as affected by past mining. In the event of an unforeseen occurrence, the appraisal of the property will be performed as it existed immediately prior to the unforeseen occurrence.

e. Post-reclamation Appraisal. A real estate appraisal by an independent certified appraiser of the market value of the property as reclaimed.

4. Policy for Emergency Projects.

a. Emergency complaints. The Regional Directors of the Coordinating Centers (RD/CC), or their delegated representative, are responsible for processing all Federal emergency complaints. Each Region will establish and

implement specific in-house procedures which reflect the most efficient use of their personnel and organizational structure.

b. Preliminary Investigation.

(1) OSM personnel will normally be dispatched to the problem site within 48 hours.

(2) The State AML Agency/Indian Tribe should be notified in advance of the site visit and may choose to accompany OSM personnel.

(3) Any form approved by the RD to obtain all pertinent information may be used. Appendixes 2, "Complaint Information Gathering Guide" and 3, "AML Complaint Investigation Data," are provided as guidelines.

(4) The RD must be notified of any possible conflicts with the National Environmental Policy Act (NEPA) (See REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act") or the National Historical Preservation Act (NHPA) (See Appendix 6).

(5) As appropriate, landowners, emergency assistance organizations, and local authorities should be notified of conditions at the site.

(6) Determine if the problem site is near any active mining and whether reclamation activities could have an impact on such active mining area(s). In such cases, the RD will notify the appropriate Federal and/or State Mine Safety and Health Administration/Agency to determine if site conditions or probable reclamation activities could affect the health and safety of mine workers.

(7) Determine if the site was mined and abandoned prior to August 3, 1977. Sites mined and abandoned after August 3, 1977 are not eligible for emergency funding and should be referred to the State/Tribe or considered as civil penalty projects.

(8) At the conclusion of the preliminary investigation, a report will be prepared for the RD in accordance with procedures established and approved by the RD. Appendix 3, "AML Complaint Investigation Data" is included as a guide.

c. Final Determination.

(1) The RD/CC, or their delegated representative, will immediately review and evaluate the complaint investigation report and determine whether an emergency exists based on the AML Emergency Program Guidelines (see Appendix 1).

(2) A Project Manager will be designated for the project.

(3) The State Attorney General opinion of eligibility will be obtained from the State AML Agency/Indian Tribe or OSM (Department of the Interior) Solicitor.

(4) Determine if unobligated funds are available.

(5) The RD/CC, or their delegated representative, will prepare a Site Investigation Report and, if an emergency, document the final determination in a briefing paper or briefing paper amendment (See Appendix 4).

(6) Notify the State AML Agency/Indian Tribe and other interested parties of the decision within 10 working days. When the RD determines that the complaint does not constitute an AML emergency:

(a) In an AML program State/Tribe, the complaint is referred to the State/Tribe for consideration as an eligible high priority project.

(b) In a non-program State/Tribe, the problem will be considered for funding as a high priority FRP project and a Problem Area Description form (OSM-76) must be prepared.

d. Implementation of Corrective Action.

(1) The responsible Coordinating Center team will prepare written specifications for the work necessary to correct the problem, including the estimated cost. Specifications may be prepared in-house or by contractor at the discretion of the RD.

(2) The specifications must contain a description of the storm water pollution prevention plan, if applicable. AML projects must meet both State and local storm water discharge permit requirements. The Environmental Protection Agency (EPA) publication, "Storm Water Management For Construction Activities; Developing Pollution Plans and Best Management Practices, Summary Guidance (EPA 833-R-92-001, October 1992)" gives a

good description of what is required when the U.S. EPA is responsible for issuing a storm water discharge permit.

(3) Sufficient color prints or slides should be taken to show the AML problem and impacts, including damage to structures, both inside and out. Video Camcorders tape may be used instead of color prints except for photographs required of Historic Properties. (See Appendix 6).

(4) Specifications must ensure compliance with NEPA as set out in REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act" and with the National Historical Preservation Act (NHPA). (See Appendix 6)

(5) Ensure that the appropriate Federal and/or State Mine Safety and Health Administration/Agency has responded that reclamation activities will not affect active mining operations. Where the probable reclamation activities could affect the health and safety of mine workers, coordination and agreement on measures to abate the potential impact must be completed prior to undertaking any reclamation activities.

(6) Obtain written permission from all affected landowners.

(7) Prepare a bid solicitation package. All AML contractors <u>must</u> be eligible under 30 CFR 773.15(b)(1) to receive a permit or conditional permit to conduct surface coal mining operations. Confirm this eligibility by requesting a Applicant/Violator System (AVS) and OSM recommendation from OSM's AVS.

(8) Enter all project information and performance data into the AML FRP Management System (FRPMS). Data shall be progressively entered and updated on a schedule to coincide with posting of corresponding data to other systems, including the OSM accounting system (ABACIS).

(9) Notify Headquarters Office of Communication.

e. <u>Construction Inspection</u>. Reclamation activities during the construction phase of the project should be documented in a daily log. Color prints or slides should be obtained where appropriate.

f. <u>Completion of Project Work</u>.

(1) Upon completion of the construction work, the Project Manager and, if necessary, the person assigned to inspect the project will perform a final inspection. Color prints, approximately 3 X 5 (76 X 127

millimeters), or slides of the completed project shall be taken. The contractor should be present at the final inspection, if feasible.

(2) The Project Manager will review the contractor's invoices and make a recommendation for payment or other action. All claims must be addressed and a release of claims must be secured prior to close out of the contract.

(3) A final report on the project will be prepared which includes:

(a) A narrative description of the project activity from the time it was reported until its completion.

(b) A comparison of pre- and post-reclamation appraisals, if appropriate, and a determination by the RD/CC, or their delegated representative whether a lien should be filed or exempted/waived. If the RD/CC determines that a lien should be filed, notice will be given and the lien filed in accordance with 30 CFR 882.13. Exemptions (negative findings) and waivers shall be made a part of the permanent project file.

(c) A description of benefits derived by reclamation, including social-economic and environmental benefits. Quantification of accomplishment information will be made where possible e.g., acres (hectares) reclaimed, miles (kilometers) of stream improved, number of people protected or affected, etc.

(4) Form OSM-76 (PAD) will be completed and AMLIS updated when the emergency occurred in an existing Problem Area (PA). All project accomplishment information and final cost data will be entered into the FRPMS.

g. Authorities and Responsibilities.

(1) Only the RD/CC or his/her designee has the delegated authority to declare an emergency in non-program States.

(2) Only the OSM Contracting Officer has the authority to obligate OSM funds for AML construction activities or to modify specifications in a contract. No modifications will be undertaken by the contractor until funds are available and authority to proceed is given to the contractor by the Contracting Officer.

(3) The Project Manager has contract-related responsibilities as stated in Appendix 5, "Designation as Contractor Officer's Technical Representative - COTR".

5. Policy for High Priority Projects. The RD/CC, or their delegated representative, is responsible for the investigation and reclamation of high priority coal problem areas identified for abatement under the FRP. Each Region will establish and implement specific in-house procedures which reflect the most efficient use of their personnel and organizational structure.

a. Project Selection.

(1) All high priority projects funded under the FRP must be in non-program States/Tribes and are to be selected on the basis of identified reclamation needs for the Region. These projects must be selected from those on AMLIS, or accepted for inclusion in AMLIS, and must be within the allocated funds for that particular Fiscal Year.

(2) By November 15 of each year the RD/CC, or their delegated representative, will send a list of high priority projects planned for funding that Fiscal Year to the Deputy Director.

b. Investigation.

(1) Pertinent information on high priority projects may be obtained on any form/format approved by the RD. Appendixes 2, "Complaint Information Gathering Guide" and 3, "AML Complaint Investigation Data," are provided as guides.

(2) An opinion of eligibility must be obtained from the OSM (Department of the Interior) Solicitor. This opinion of eligibility may initially be verbal in a documented telephone log but a written follow-up must then be obtained. Pertinent data on the mining history of the project area may be requested from the State/Tribe, as appropriate.

(3) Any bond associated with the disturbed area should 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.

(4) Whenever a problem site is in proximity to, or where reclamation activities could have an impact on, any active mining or mine area, the appropriate Federal and/or State Mine Safety and Health

Administration/Agency will be notified to determine if site conditions or probable reclamation activities could affect the health and safety of mine workers. Where the probable reclamation activities could affect the health and safety of mine workers, coordination and agreement on measures to abate the potential impact must be completed prior to undertaking any geotechnical investigation or reclamation activities.

(5) The RD/CC, or their delegated representative, will make the final determination to fund the high priority project and will determine if unobligated funds are available. The determination to fund a high priority project will be documented in a briefing paper (See Appendix 4).

(6) The appropriate State/Tribe agency(s) and other interested parties will be notified of the decision.

c. Implementation of Corrective Action.

(1) The responsible Coordinating Center team will prepare written specifications for the work necessary to correct the problem, including the estimated cost. Specifications may be prepared in-house or by contractor at the discretion of the RD.

(2) The specifications must contain a description of the storm water pollution prevention plan, if applicable. AML projects must meet both State and local storm water discharge permit requirements. The Environmental Protection Agency (EPA) publication, "Storm Water Management For Construction Activities; Developing Pollution Plans and Best Management Practices, Summary Guidance (EPA 833-R-92-001, October 1992)" gives a good description of what is required when the U.S. EPA is responsible for issuing a storm water discharge permit.

(3) Sufficient color prints or slides should be taken to show the AML problem and impacts, including damage to structures, both inside and out. Video Camcorders tape may be used instead of color prints except for photographs required of Historic Properties. See Appendix 6.

(4) Specifications must ensure compliance with NEPA as set out in REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act" and with the National Historical Preservation Act (NHPA). (See Appendix 6)

(5) Ensure that the appropriate Federal and/or State Mine Safety and Health Administration/Agency has responded that reclamation activities will not affect active mining operations. (See 5.b.)

(6) Obtain written permission from all affected landowners.

(7) Prepare a bid solicitation package. All AML contractors must be eligible under 30 CFR 773.15(b)(1) to receive a permit or conditional permit to conduct surface coal mining operations. Confirm this eligibility by requesting a Applicant/Violator System (AVS) and OSM recommendation from OSM's AVS.

(8) When a high priority project is funded, a Problem Area Description update form, OSM-76, must be completed and AMLIS must be updated. Enter all project information and performance data into the AML FRP Management System (FRPMS). Data shall be progressively entered and updated on a schedule to coincide with posting of corresponding data to other systems, including the OSM accounting system (ABACIS).

(9) Notify Headquarters Office of Communication.

d. Construction Inspection. Reclamation activities during the construction phase of the project should be documented in a daily log. Color prints or slides should be obtained where appropriate.

e. Completion of Project Work.

(1) Upon completion of the construction work, the Project Manager and the person assigned to inspect the project will perform a final inspection. Color prints or slides of the completed project should be taken.

(2) The Project Manager will review the contractor's invoices and make a recommendation for payment or other action. All claims must be addressed and a release of claims must be secured prior to close out of the contract.

(3) A final report on the project will be prepared which includes:

(a) A narrative description of the project activity from the time it was reported until its completion.

(b) A comparison of pre- and post-reclamation appraisals, if appropriate and a determination by the RD/CC, or their delegated representative whether a lien should be filed or exempted/waived. If the RD/CC determines that a lien should be filed, notice will be given and the lien filed in accordance with 30 CFR 882.13. Exemptions (negative findings) and waivers shall also be made a part of the permanent project file.

(c) A description of benefits derived by reclamation, including social-economic and environmental benefits. Quantification of accomplishment information will be made where possible e.g., acres (hectares) reclaimed, miles (kilometers) of stream improved, number of people protected or affected, etc.

(4) Form OSM-76 (PAD) will be completed and AMLIS updated. All project accomplishment information and final cost data will be entered into the FRPMS.

f. Authorities and Responsibilities.

(1) Only the Regional Director for the Coordinating Center or his/her designee has the delegated authority to select high priority projects for funding. All projects must be in AMLIS or accepted for inclusion in AMLIS.

(2) Only the OSM Contracting Officer has the authority to obligate OSM funds for AML construction activities or to modify specifications in a contract. No modifications will be undertaken by the contractor until funds are available and authority to proceed is given to the contractor by the Contracting Officer.

(3) The Project Manager has responsibilities as stated in Appendix 5, "Designation as Contractor Officer's Technical Representative - COTR".

6. Reporting Requirements.

a. Emergencies.

(1) Investigative Report, paragraph 4.b.(87)

(2) Briefing paper, briefing paper amendments, paragraph 4.d.(7).

(3) Final Report, paragraph 4.f.(3).

b. High Priority Projects.

(1) List of high priority projects to be funded, paragraph 5.a.(2).

(2) Briefing paper, briefing paper amendments, paragraph 5.c.(7).

(3) Final Report, paragraph 5.e.(3).

7. Effect On Other Documents. This directive supersedes Directive AML-4, dated March 11, 1987, AML-4-1, AML-4-2, AML-4-3, AML-4-4, AML-2, dated February 12,1991, AML-7, dated May 8, 1987, AML-13, dated February 16, 1988, and AML-16, dated July 31, 1989. It partially incorporates the memorandum of November 8, 1991, from the Deputy Director, titled "Policy Guidance on Abandoned Mine Land Emergency Program Declaration and Appropriate Response."

8. References. Abandoned Mine Land Reclamation Program Regulations, 30 CFR, Parts 874, 877, 879, and 882; 36 CFR Part 800, Advisory Council Regulations; 46 FR 14813, et seq. (March 6, 1980); REG-1, OSM "Handbook on Procedures for Implementing the National Environmental Policy Act."

9. Effective Date. Date of issuance.

10. Contact. Chief, Division of Reclamation Support, (202) 208-5365.

11. Keywords. Emergency, briefing paper, high priority project.

12. List of Appendices.

a. 1- AML Emergency Program Guidelines

b. 2- Complaint Information Gathering Guide

c. 3- AML Complaint Investigation Data

d. 4- Briefing Papers

e. 5- Designation as Contracting Officer's Technical Representative - COTR

f. 6- Abandoned Mine Land Emergencies - Compliance with National Historic Preservation Act

g. 7- National Pollution discharge Elimination System Storm Water Discharge Permits

h. 8- Specific Circumstances Arising under the Federal Reclamation Program

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?

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.

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), historic properties (NHPA), public utilities, private water supplies, or waste disposal systems?

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, mineral owner, and/or municipal agencies do?

17. What is the State's abandoned mine land agency 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 and Federal agencies willing to do and when?

21. Is an 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 OSM Received Complaint: _____ Time: _____
Date OSM Field Office Received Complaint: _____
Time: _____
OSM Person Receiving Complaint: _____
Address of Complaint: _____
City: _____ County: _____
State: _____

SITE INVESTIGATION

Date: _____ Time: _____
OSM Investigators: _____
State Representative(s) Present: _____
_____
Others Present: _____
_____
_____
Name of other agencies contacted (local, State or Federal): _____
_____
_____

LOCATION OF SITE

Directions to Location (Describe Route): _____
_____
_____
_____
_____
_____

USGS Quadrangle Name: _____

Coordinates: _____

Appendix 3
AML-4

AREA MINED

Mined by: _____
Address: _____
City: _____
State: _____ Zip Code_____
Telephone Number: _____
Permitted Operation: No _____ Yes _____ Permit Number(s) _____
_____
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 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, etc.): _____

_____

_____

_____

ELIGIBILITY (Optional)

State Legal Officer Notification

Name: _____

Address: _____

City: _____ State: _____

Zip Code: _____ Telephone: _____

Method Used

Oral_____ Date_____ Written_____ Date_____

Declaration of Eligibility from State

Name: _____

Address: _____

City: _____ State: _____

Zip Code: _____ Telephone: _____

Method Used

Oral _____ Date _____ Written _____ Date _____

Eligible: Yes _____ No _____ Explain _____

_____

_____

_____

_____

POTENTIAL NEPA PROBLEMS

Note any potential National Environmental Policy Act related problems. See REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act (NEPA)." Actual responsibility for complying with NEPA rests with RD/CC.

REMARKS

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

BRIEFING PAPERS

1. Purpose. Guidance on the use of briefing papers is contained in this appendix to OSM Directive AML-4. This guidance applies to OSM Federal Reclamation Program Projects only, and does not apply to projects authorized under State/Tribe AML grant programs approved by OSM.

2. Summary. This appendix describes the content and levels of approval authority for briefing papers and amendments for the Federal Reclamation Program.

3. Definitions.

a. Briefing Paper. An OSM internal document which authorizes OSM to expend funds for AML activities such as: geotechnical exploration, design contracts, or hazard abatement. Contracts involving expenditure of AML Federal Program funds cannot be undertaken without an approved briefing paper. The briefing paper is in addition to a procurement request and other contractual documents.

(1) The briefing paper includes:

(a) A written summary of the facts developed through investigation of the hazard(s).

(b) A Finding of Fact which concludes that an emergency exists which constitutes a danger to public health, safety, and general welfare, and no other person or agency can act expeditiously to restore, abate, or prevent the adverse effects of past mining practices. If the problem is not an emergency, the Finding of Fact will denote a priority.

(c) Project specifications and options/alternatives considered for abating or reducing the hazard(s).

(d) Cost estimates for abating the emergency and documentation of funding approval for the project.

(e) Documentation of NEPA compliance.

(f) Documentation of NHPA compliance.

b. Briefing Paper Amendment. Amendments to briefing papers are made when substantial increases in project scope or cost occur or when project status changes (For example, it is declared an emergency, following the geotechnical investigation.)

4. Policy/Procedures.

a. Concept. A briefing paper shall be prepared and approved for all OSM Federal reclamation activities which receive funding from the AML fund.

b. Responsibilities. The responsibility for the preparation of briefing papers, and any amendments, lies with the RD/CC.

c. Procedures. The format for briefing papers and amendments should include, at a minimum, the following:

(1) Heading. Designates briefing paper and/or amendment number (1, 2, 3. etc.) and lists the project name; the municipality, county and State where the problem is situated; and the assigned project number.

(2) Location. Should be specifically stated and detailed as to street, township, county, State, etc. If feasible, include the latitude and longitude.

(3) Problem Area Number. If the problem is in an existing problem area, include the problem area number for emergencies and high priority problems. This number is the key link between FRPMS and AMLIS and can usually be readily obtained from the Field Office.

(4) Description of the Problem. Describe the hazards found during the investigation and demonstrate why the problem qualifies as an AML emergency or a high priority project. If an emergency, the problem must meet the criteria as outlined in Appendix 1.

(5) Project Proposal. Briefly outlines the project objective. In the case of proposed reclamation projects, the briefing paper includes the proposed reclamation techniques that will be used to reduce or abate the problem.

For emergency projects, the project proposal must explain why the proposed level of work is necessary to stabilize the emergency aspects of the problem and estimate the amount of non-emergency reclamation, if any, which remains after abatement of the emergency.

Non-emergency reclamation remaining after abatement of the emergency, in a program State/Tribe, is normally referred to the State/Tribe AML agency for completion as a high priority project. However, if non-emergency reclamation is proposed to achieve complete and permanent reclamation of the problem, the project proposal will explain why this is the most cost effective alternative.

(6) Eligibility. Identify the approximate date of the last mining activity that is the cause of the problem(s) and whether there is any continuing responsibility for any person or entity to reclaim under State or other Federal Law.

(7) NEPA Compliance for Emergency Projects. Document compliance with NEPA as set out in OSM Directive REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act" (NEPA Handbook).

(8) NHPA Compliance. Document compliance with the National Historic Preservation Act as set out in Appendix 6 of AML-4.

(9) Estimated Cost. Include an estimate of the total cost for the project. The estimate should include a cost breakdown of such items as investigation, exploratory drilling, and engineering (design and inspection).

(d) Recommendation, Concurrence and Final Approval of Briefing Papers and Briefing Paper Amendment. The level of signatory authority for a briefing paper or briefing paper amendment is determined by the estimated cost of the project as follows:

(1) Total project cost is less than $2,500 (including amendments for project cost increases). The RD/CC may designate appropriate staff to recommend, concur and approve the briefing paper.

(2) Total project cost is $2,500 or greater and less than $100,000 (including amendments for project cost increases). The RD/CC may designate appropriate staff to recommend, concur and approve the briefing paper; however, delegation of his/her authority for briefing paper approval shall not be below the Field Office Director/Division Chief level.

(3) Total project cost is over $100,000 (including amendments for project cost increases). The RD/CC may designate appropriate staff to recommend and concur with the briefing paper but must retain authority to approve the briefing paper.

DESIGNATION OF COTR

The following example is included as a guide for designating a Contracting Officer's Technical Representative (COTR).

Memorandum

To: _____

From: Contracting Officer

Subject: Contract No.: _____

Project Title: _____

Your are hereby appointed as the Contracting Officer's Technical Representative (COTR) for the subject contract. It is necessary that you thoroughly familiarize yourself with the terms, conditions, and specifications of the contract in order that you may administer it effectively. Your responsibilities and duties are as follows:

1. If determined appropriate by you, arrange and conduct a pre-work conference with the contractor. Items of discussion may include but not be limited necessarily to required wage rates, technical specifications, and the intended work schedule.

2. In no event will any understanding, agreement, modification, change order or the matter deviating from the terms of the contract be effective or binding upon the Government unless formalized by proper contractual documents executed by the Contracting Officer.

3. Recommend in writing to the Contracting Officer any desired changes in the scope of work, giving a full explanation of the proposed action. If the contractor proposes a change, you are to obtain a written statement from him to that effect and forward that statement and your recommendations (including estimated cost changes) to the Contracting Officer.

4. Assure that changes in the scope of work or delivery schedule are covered by written contract modification issued by the contracting Officer or with his prior approval.

5. Monitor contract performance and report all problems related to the contract. Any violation, deviation, inadequate performance, or schedule problems shall immediately be reported to the Contracting Officer.

6. Review project inspector reports and advise the Contracting Officer of any significant deviations from scheduled progress or planned work activities.

7. Inspect and accept completed work, either personally or through the project inspector. Provide information concerning contractor performance in sufficient detail to the Contracting Officer so that he/she can determine if performance is satisfactory.

8. Reject any unsatisfactory work and/or materials and report such action immediately to the Contracting Officer.

9. Review engineering studies, designs, or value engineering proposals submitted by the contractor to determine their feasibility or non-feasibility and to submit your technical evaluation to the Contracting Officer with appropriate recommendations.

10. In the course of your duties, you are expected at all times to conduct your activities in compliance with the standards of conduct established by this agency.

Pursuant to DIAR 1401.670-3, you are not authorized under any circumstances to:

1. Award, agree to, or execute any contract, contract modification, or notice of intent.

2. Obligate, in any way, the payment of money by the Government.

3. Make a final decision on any contract matter which is subject to the clause at FAR 52.233-1, Disputes.

4. Terminate, for any cause except safety, the contractor's right to proceed.

_____
Contracting Officer

cc: Contractor (2)
Contract File

Addressee's Acknowledgment of Receipt
(Return one signed copy)

_____
Signature

_____
Date

Contractor's Acknowledgment of Receipt
(Return one signed copy)

_____
Signature

_____
Date

COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT

This appendix 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 appendix 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, <u>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</u>.

Under the Federal emergency program, OSM is responsible for all the activities set out below. Under State managed emergency programs, the State is responsible for all activities except documenting findings in the "Finding of Fact and Funding Paper" and deciding if immediate action must be taken to prevent immediate substantial physical harm to the health, safety, or general welfare of people.

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.

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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))

a. **If no historic properties are found that may be affected by the emergency abatement project** - This is documented in the briefing paper (Federal Reclamation Program) or "Finding of Fact and Funding Paper" (State/Tribe managed emergency program). A copy of this documentation is to be provided to the State Historical Preservation Officer (SHPO)/Tribal leaders (in the remainder of this document, SHPO also includes Tribal leaders if the problem is on Tribal lands). No further steps in the Section 106 process are required.

b. **If a historic property is found that may be affected by the emergency abatement project** - For the Federal Reclamation Program (FRP), the OSM official declaring the emergency (OSM) will contact the SHPO. For a State managed emergency program, the State AML organization (State) will contact the SHPO.

In consultation with the SHPO, OSM/State will apply the Criteria of Effect, pursuant to 36 CFR Part 800.9(a), to the historic property that may be affected. If no effect is found, OSM/State notifies the SHPO and documents the findings in the briefing paper (in the remainder of this document "briefing paper" refers to both the "FRP Briefing Paper" or "Finding of Fact and Funding Paper", whichever is appropriate). If the SHPO has no objections, this will be noted in the briefing paper. OSM/State will photograph the property. No further steps in the Section 106 process are required.

If the SHPO does have concerns that the emergency abatement may adversely affect a historic property, OSM/State will make a reasonable attempt to resolve the concerns before initiating the emergency abatement. When the SHPO's concerns can be resolved the briefing paper 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 to 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 briefing paper:

- 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.

OSM/State will photograph 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.

Later OSM/State will provide the SHPO with photographs 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 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 briefing paper that an unsuccessful effort was made to contact the SHPO. At the first opportunity, notify the SHPO. Later OSM/State will provide the SHPO with photographs 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.

c. **Criteria of effect and adverse effect (36 CFR Ch. VII, § 800.9).**

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.

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, but may be considered as being not adverse for the purpose of the regulations, include, but are not limited to:

(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.

d. **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.)

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- 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

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM STORM WATER DISCHARGE PERMITS

Background

The 1987 amendment to the Clean Water Act (CWA) required the United States Environmental Protection Agency (EPA) to regulate storm water discharges in the National Pollution Discharge Elimination System (NPDES). Final regulations for permit applications for storm water discharges were published on November 16, 1990. The NPDES regulates storm water discharges from municipal and industrial activities, including mining, inactive mines, and construction sites. Also, EPA published NPDES general permits for storm water discharges from construction sites in the States and on Indian lands where it is responsible for issuing general permits in the September 9, 1992, Federal Register, 57 FR 41176.

States and Indian tribes may apply to EPA for approval to issue permits and administer their own Pollution Discharge Elimination System. Most States have done so and are responsible for regulating storm water discharges with EPA providing guidance and oversight. However, in those States or Indian tribes that do not have the authority to issue permits, EPA remains the authorizing agency.

Storm Water Discharge Permits

When States are responsible for water discharge permits, the agency responsible for abandoned mine land reclamation must obtain all applicable permits from the appropriate State agency.

Water discharge permits must be obtained from EPA in those cases where the State or Indian tribe has not been approved to issue permits. When obtaining a permit from EPA a Notice of Intent (NOI) must be submitted two days prior to the commencement of construction and a storm water pollution plan must be developed and implemented. See 57 FR 41176 for detailed instructions.

Construction projects that will result in the disturbance of five or more acres require storm water discharge permits.

OSM is responsible for obtaining water discharge permits for FRP projects when required.

Emergencies

Applicable procedures for obtaining a storm water discharge permit will be followed when conducting emergency projects except that in no event will an emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people be delayed by procedures for obtaining a storm water discharge permit. Such emergency action can normally be accomplished in several days. When a storm water discharge permit is required, additional work will only be undertaken after a storm water discharge permit has been obtained.

SPECIFIC CIRCUMSTANCES
THE FEDERAL RECLAMATION PROGRAM

I. Lien Filing Requirements

Section 408 of the Surface Mining Control and Reclamation Act (SMCRA) requires that, within six months of project completion, a lien be placed for the increase in property value where reclamation on private property results in a significant increase in the value of the land.

Significant increase is defined as $5,000 or a 25 percent increase in fair market value over the before reclamation fair market value, whichever is more. However, at the discretion of the RD/CC, a lien may be filed on any property when the increase in value is greater than $5,000. Appraisals must be used to make this determination.

SMCRA requires that appraisals be notarized. Although the notarized appraisal provides a basis for filing a lien, appraisals are not appropriate documents for filing in the land records. It is sufficient that the lien, which is an appropriate document for filing in the land records, state the before and after appraised valuations and the increase in value that forms the basis for the lien.

In ordering appraisals, the Office of Surface Mining Reclamation and Enforcement (OSM) should inform the appraiser, in writing, that appraisals will be a matter of public record in conjunction with a lien. OSM should request that the appraiser furnish a notarized summary of the appraisal report in addition to the notarized appraisals. Notarized appraisals should remain in the official file. Copies can be furnished to landowners after deletion of any information designated by the appraiser as privileged or confidential.

Liens may be waived following a determination 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 determination should include a finding that there is public access to the land for public use such as recreation and that 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.

A lien may also be waived if OSM finds in writing and documents that an area-wide project does not intend to benefit any private property, the project affects numerous private properties, the cost of individual appraisals and the administrative expense of individual lien determinations is substantial, and 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.

Finally, a lien may also 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. 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 OSM.

A memorandum of no significant increase in value shall be prepared, if appropriate, by an OSM appraiser. Copies of all documentation and supporting data shall be maintained in the project files.

II. Use of the Abandoned Mine Land Fund to pay Express or Claims Associated with Abandoned Mine Land Reclamation.

a. Repairs to Structures. There is no specific authorization in Title IV to justify expenditures for repairs to structures damaged by subsidence or other adverse effects of past mining. In fact, Congress went so far as to prohibit the use of Title IV funds to pay the actual construction costs of housing. (Section 407(h) SMCRA.) The intent is that Title IV funds should not be diverted to private needs, as opposed to what are considered to be public needs. Therefore, the repair of structures should not be authorized unless the repairs are a direct and necessary part of a cost-effective abatement plan for the project as a whole, such as foundation reinforcement, and only to the extent that it is necessary to support the foundation during construction activities to prevent damage to the structure or harm to the construction workers.

b. Moving or Relocating Structures. Subsidence or other hazards may make it necessary to move a structure in order to prevent further damage or conduct effective reclamation at the site. In such situations OSM employees will take all

necessary steps to prevent the structures from sustaining further damage, including shoring up the structure and restoration of the site so as to achieve the previous load bearing capacity. Some minimal corrective action in the foundation may be appropriate if the damage is not attributable to other problems. The OSM employee will also advise occupants that the structure may be unsafe but will not order occupants to vacate. Instead the employee will inform local authorities of the conditions. OSM will make reasonable efforts to reclaim the site without moving the structure. Structures will be moved only as a last resort and only if the option is cost-effective.

c. Temporary Lodging Expenses. OSM will limit its AML reclamation activities to abating, preventing or controlling the primary cause of the hazard. The costs to treat secondary or tertiary effects of past coal mining go beyond the scope and intent of Title IV. Temporary lodging expenses may be appropriate, on a case-by-case basis, only where the reclamation effort directly necessitates the removal of the residents and for a limited time, until other arrangements can be made. Payment of temporary lodging expenses must be approved in writing by the appropriate RD.

d. Claims for Damages Resulting from AML Reclamation. Where damages occur to adjacent property as a result of AML reclamation or where claims are made for loss of business, damages to personal property, or where there are other claims relating to the negligence of parties involved in the AML reclamation, the claims may not be settled by OSM program personnel. Instead, a factual, chronological record of the investigation of the claim should be made and immediately transmitted to the Division of Surface Mining, Office of the Solicitor, for definitive action or advice. The rationale for this procedure is that claims may be covered under the Tort Claims Act, contractor liability insurance, subsidence insurance or other means and could therefore result in litigation.

III. Disposition of Receipts from the Sale of Coal Recovered Incidental to Abandoned Mine Land Federal Reclamation Program Projects

On occasion OSM, in conducting AML Federal Reclamation Program (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.

When 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. OSM 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 may be exercised for right-of-entry).

Upon the extraction and sale of the coal, the proceeds will be placed in a 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 Regional Coordinating Centers, as appropriate, will coordinate, through the Financial Unit of the Administrative Service Center, with the Chief, Division of Financial Management, OSM, 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.

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.

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