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	U· S· DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	**Subject Number:** AML-7 **Transmittal Number:** 330 **Date:** 05/08/87

Subject: Use of the AML Fund to Pay Expenses or Claims Associated with AML Federal Reclamation.

Approval: Jed D. Christensen **Title:** Director

1. Purpose. This directive addresses the appropriate disposition of requests for AML funding to pay incidental expenses or claims associated with AML reclamation projects or for expenses or claims that are consequentially related to the adverse effects of past coal mining.

2. Definitions. None.

3. Policy/Procedures.

(a) Policy. Over a period of time, various issues and questions concerning the appropriate use of AML funds have been raised. OSMRE policy regarding these miscellaneous, tangential issues has been evolving but has not been brought together in a central location. This directive will itemize these miscellaneous issues and provide procedures and policy guidance for their resolution.

(b) Procedures.

(1) 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. (Section 412 SMCRA)

(2) Asbestos Removal from Structures

A State requested an AML grant to remove asbestos insulation from hot water pipes in houses that were originally built by a mining company for its employees. Houses built for company employees were not directly connected to coal extraction or processing. Therefore, the proposed removal of asbestos insulation from the houses is not eligible for AML funding under section 404 of SMCRA.

(3) Moving or Relocating Structures

Subsidence or other hazards, on occasion, may make it necessary to move a structure in order to prevent further damage or conduct effective reclamation at the site. In such situations, OSMRE employees will:

(i) 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 objective is to leave the site in as safe a condition as possible, given the circumstances.

(ii) Advise occupants that the structure may be unsafe or borderline but do not order occupants to vacate. Instead, inform local authorities of the conditions.

(iii) Make all reasonable efforts to reclaim the site without moving the structure. If there is no other way to reclaim the site, the structure may be moved, but only after written justification is approved by the Assistant Director for Eastern/Western Field Operations. Structures will be moved only as a last resort and only if the option is cost-effective.

(4) Temporary Lodging Expenses

OSMRE 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 Assistant Director for Eastern/Western Field Operations.

(5) 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 OSMRE 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.

c. Responsibilities. None.

4. Reporting Requirements. None.

5. References.

a. Title IV of SMCRA.

b. For 3b(1) - Memorandum dated June 14, 1983 to Chief, Federal Reclamation Division from Assistant Solicitor, Division of Surface Mining.

c. For 3b(2) - Letter dated June 16, 1986, to State of New Mexico from Acting Director, OSMRE.

d. For 3b(3) - Memorandum dated June 20, 1979, from Acting Assistant Director, AML, to Director, OSMRE.

e. For 3b(4) - Memorandum dated July 11, 1980, from Staff Attorney, OSMRE, to Assistant Director, AML.

f. For 3b(5) - Memorandum dated June 1, 1983, from Assistant Solicitor, Division of Surface Mining, to Chief, Federal Reclamation Program.

6. Effect on Other Documents. Incorporates all previous letters and memoranda listed in references above.

7. Effective Date. Upon Issuance.

8. Contact. Division of Abandoned Mine Lands, (202) 343-7910.