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Rescinded and is located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

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

	U·S·DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-8 Transmittal Number: 466 Date: July 15, 1988

Subject: Oversight of State Regulatory and State and Tribal Abandoned Mine Land Reclamation Programs

Approval: [signature] **Title:** Deputy Director

1. PURPOSE. This directive establishes policies, procedures, criteria and responsibilities for conducting oversight of State regulatory and State and Tribal abandoned mine land reclamation programs.

2. DEFINITIONS.

a. Oversight. The process of evaluating and assisting States and Tribes in the administration, implementation and maintenance of approved regulatory and abandoned mine land reclamation programs.

b. State program. A State-administered program, approved by the Secretary under Section 503 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State. Where a cooperative agreement governing mining on Federal lands has been approved under Section 523 of SMCRA, that agreement is considered part of the State program. For purposes of this directive, this term also includes State and Tribal abandoned mine land reclamation (AMLR) plans approved under Section 405 of SMCRA.

3. POLICY/PROCEDURES.

a. Responsibilities.

(1) Assistant Director, Program Policy (AD/PP).

(a) Develops, clarifies and revises national oversight policies, standards and procedures.

(b) Analyzes the results of implementing oversight policies, standards and procedures to ensure that the objectives of SMCRA are achieved.

(c) Coordinates with the Assistant Directors for Finance and Accounting and Information Systems Management concerning oversight issues and activities affecting their areas of expertise and responsibility.

(2) Assistant Director, Field Operations (AD/FO).

(a) Ensures that oversight activities are planned, conducted monitored and reported in accordance with national policies, procedures and guidance.

(b) Develops supplemental oversight policies, procedures and guidance, consistent with national policy, procedures and standards, to address issues of a local or regional nature arising from implementation of the national guidance.

(c) Provides Field Offices with the technical and other assistance necessary to support oversight activities.

(3) Field Office Director (FOD).

(a) Plans and conducts oversight activities and prepares related documents and reports in accordance with national and regional policies and procedures.

(b) Develops procedures consistent with both national and regional oversight policies to carry out day-to-day operations.

(c) Requests technical and other assistance when necessary to properly conduct oversight activities.

(d) Interacts with outside and special interest groups, such as State and local coal associations and citizen and environmental organizations, to determine their areas of concern.

b. Procedures. Oversight activities shall be planned, conducted, and reported in accordance with the document entitled "Procedures and Criteria for the Evaluation of State/Tribal Regulatory and Abandoned Mine Land Reclamation Programs under the Surface Mining Control and Reclamation Act" (Appendix) and all other relevant directives and supplemental guidance.

4. REPORTING REQUIREMENTS.

a. Annual oversight workplans (FOD to AD/FO and AD/PP).

b. Annual evaluation reports (FOD to AD/FO and AD/PP).

5. REFERENCES.

a. Directive INF-1, "Policy and Procedural Guidelines for OSMRE Records Management Systems."

b. Directive REG-23, "Development and Implementation of Action Plans."

6. EFFECT ON OTHER DOCUMENTS.

a. Supersedes Directive REG-8, "Oversight of State Programs - Annual Evaluations," Transmittal Number 384, dated October 9, 1987.

b. Supersedes Directive SFP-2, "Planning and Management of Special Studies," Transmittal Number 317, dated February 11, 1987.

c. Supersedes memorandum from the Assistant Director for Program Operations and Inspections to the Field Office Directors, dated February 4, 1983, concerning guidelines for evaluating approved State regulatory programs with regard to fish ad wildlife matters.

7. EFFECTIVE DATE. Upon issuance.

8. CONTACT.

Chief, Division of Regulatory Programs; (202) 343-5351.

Appendix.

Appendix to Directive REG-8

PROCEDURES AND CRITERIA FOR THE EVALUATION OF STATE/TRIBAL REGULATORY AND ABANDONED MINE LAND RECLAMATION PROGRAMS UNDER THE SURFACE MINING CONTROL AND RECLAMATION ACT

TABLE OF CONTENTS

I. Background and Purpose..... 1

II. Procedures..... 2

III. Program Elements and Performance Criteria..... 8

A. Regulatory Program..... 9

1. Permitting..... 9
2. Bonding..... 12
3. Inspection..... 15
4. Enforcement..... 17
5. Civil Penalties..... 19
6. Administrative and Judicial Review..... 21
7. Lands Unsuitable..... 23
8. Blaster Certification..... 25
9. Small Operator Assistance..... 26
10. Program Amendments..... 27
11. Program Management and Administration.... 29

B. AMLR Program..... 32

1. Project Ranking and Selection..... 32
2. Project Planning and Design..... 34
3. Construction Management and Post-construction Activities..... 36
4. Program Management and Administration.... 38
5. Elements Applicable Only to Certain Programs..... 40

a. Emergency Reclamation Program..... 40
b. Land Acquisition, Management and Disposal..... 41
c. Subsidence Insurance Program..... 41

IV. Annual Reports..... 42

A. Reporting Requirements..... 42
B. Format and Instructions..... 42

V. Examples..... 57

A. Standard Reporting Forms..... 58
B. Concern Letter..... 61
C. Workplan..... 64

I. Background and Purpose

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) authorizes the Office of Surface Mining Reclamation and Enforcement (OSMRE) and States to administer regulatory programs to ensure that surface coal mining and reclamation operations meet the requirements of SMCRA. It also authorizes OSMRE and the States to develop abandoned mine land reclamation (AMLR) programs to reclaim lands damaged by surface mining prior to SMCRA. In addition, Congress amended SMCRA in 1987 to allow the Navajo, Hopi and Crow Tribes to submit and gain approval of AMLR programs.

OSMRE has overall responsibility in all States to promote the achievement of program goals and objectives, to ensure adherence to Federal and State statutory and regulatory requirements implementing SMCRA and to maintain reasonable nationwide consistency. This guidance provides criteria for evaluating the regulatory and AMLR programs approved under SMCRA. The criteria also provide a basis for OSMRE to report annually on the status of program implementation and administration. This document has three principal functions:

- Defining the major elements of sound regulatory and AMLR programs.
- Defining the respective roles and responsibilities of OSMRE and the States in carrying out regulatory and AMLR programs.
- Establishing the format for OSMRE's annual report on the status of program administration by the States.

II. Procedures

A. General Approach

Oversight is an ongoing process involving continuous evaluation of State performance; it is not an annual end-of-year exercise. Such a process involves frequent communication with the State, analysis of inspection findings, reports and audits, and periodic meetings. Emphasis should be placed on prevention, detection and prompt correction of problems. Positive attitudes must be maintained; constructive working relationships with State personnel greatly facilitate problem resolution. This approach does not imply that problems should be overlooked, rather it entails identifying and reporting issues in a diplomatic manner and cooperating with and assisting the State in efforts to resolve them.

B. Definitions

1. Level I Evaluation. A process whereby OSMRE monitors the State's overall administration of its approved program and reclamation plan, primarily, but not exclusively, through the conduct of random sample and other required inspections and review of documents routinely supplied to the Field Office by the State.

2. Level II Evaluation. An in-depth review of a specific program area resulting from concerns raised by the public or potential problems identified during the Level I evaluation process.

3. Level III Evaluation. An extensive in-depth review requiring technical expertise or other resources not available within the Field Office itself.

4. Conclusion. A positive or negative determination regarding the State's performance. Conclusions shall be based on discernible trends rather than isolated deficiencies.

5. Concern. An indication that, while no systematic or programmatic problems have been confirmed, the State may not be consistently meeting program requirements or is engaging in a practice that threatens its ability to do so. While concerns do not provide a basis for OSMRE to require corrective action, OSMRE should call the concern to the State's attention and, where appropriate, recommend remedial actions.

6. Issue. A procedural or programmatic problem that is causing or will cause the State to consistently fail to meet program requirements. Identification of an issue may result from Level I, II or III evaluation activities. Unless the State takes immediate corrective action, development of an action plan is mandated.

C. Oversight Workplan

As a part of the planning phase of oversight, each Field Office Director (FOD) shall annually develop a workplan presenting a general strategy for conducting oversight during the next four years and detailing the oversight activities to be conducted in the coming year. In determining the frequency at which each program element will be reviewed, the FOD must consider, and the plan must reflect, the State's past performance and the likelihood of significant changes in performance or activity levels.

The multi-year strategy shall include a listing of all program elements and subelements, the year that each element/subelement is to be examined, the review frequency, and the basis for the frequency. Some program elements will be examined every year while others may be examined only every two, three or four years. For example, if a State has historically had very little activity in the small operator assistance program, past oversight reviews have found State performance to be satisfactory, and there is no indication that significant changes in performance or activity levels are likely to occur, then this program element may need to be examined in detail only every four years. The multi-year strategy does not lock the Field Office into a strict schedule; rather it provides a general long-term plan for the examination of all program elements. It also documents the basis for the frequency of review of each program element or subelement.

The workplan must also describe in detail how each program element/subelement scheduled to be examined in the pending year will be reviewed. The basis and methodology for each Level II or III review shall be clearly stated. Because oversight is a continuous process, the need for Level II or III reviews may not be known at the start of the evaluation period. As concerns necessitating such reviews develop during the year, the workplan shall be modified accordingly.

This description shall include the following items:

- Identification of the program element/subelements to be examined and the frequency with which they will be reviewed throughout the year.

- A brief description of the evaluation technique, including the period for which State actions will be reviewed and the sample size.

- Any technical or other assistance requested from the Assistant Director for Field Operations (AD/FO).

The proposed workplan must be submitted to the AD/FO for review 60 days prior to the start of each evaluation year. The FOD shall concurrently provide a copy of the plan to the Assistant Director for Program Policy (AD/PP) for review. Any AD/PP comments shall be sent to the AD/FO within 15 days of receipt. Within 30 days of receipt of the plan, the AD/FO shall review the plan and either approve it or return it for revision.

Since oversight is an ongoing process, the workplan will most likely require revision during the evaluation year. Any such revisions shall be processed in the manner prescribed for the original plan.

D. Oversight Activities

As discussed below, three basic oversight activities exist: Remote review, on-site desk review and on-site field review.

Remote Review. This activity involves monitoring of State performance using documents routinely supplied to OSMRE by the State. Data gained through remote review shall be analyzed on a reasonably continuous basis to identify any trends concerning program administration and implementation.

On-site Desk Review. This oversight activity occurs any time OSMRE finds it necessary to examine files, documents or other information located at a State office. The reviewer should first examine all information available in the Field Office, including pertinent conversation records and meeting minutes, in preparation for the review.

The scope and methodology of the evaluation shall be discussed with the State prior to the review and communication shall be maintained throughout the review itself. Upon conclusion, a close-out meeting shall be held with the State.

On-site Field Review. This oversight activity occurs any time OSMRE finds it necessary to conduct field evaluations of program implementation. A desk review of all pertinent documents should precede any field evaluation. Data collected on random sample and other routine inspections shall be analyzed frequently to identify any trends in program implementation.

E. Conduct of Oversight Activities

Feedback is a necessary component of a successful oversight program. Conclusions resulting from oversight activities shall be discussed informally with the State (in person or by telephone) to avoid any possible misinterpretation of the State program or misrepresentation of State actions and to solicit any additional information the State may wish to provide.

If a conclusion is positive, the State shall be commended. If, after discussions with the State, a conclusion remains negative, the FOD shall send the State a formal concern or issue letter, as appropriate, documenting the conclusion (with supporting facts) and providing suggestions for resolution. Where personnel outside the Field Office have participated in a review they shall be afforded an opportunity to comment on the letter before it is sent. All letters shall be reviewed and signed by the FOD.

Letters shall clearly distinguish between issues and concerns. Where the review uncovers an issue which cannot be resolved immediately, the FOD shall proceed with offers of assistance and development of an action plan in accordance with the provisions of Directive REG-23. The FOD shall promptly notify the AD/FO of all issues identified.

Nothing in this guidance shall be construed as superseding OSMRE's responsibilities to issue ten-day notices and take appropriate enforcement action where necessary.

1. Concern/Issue Letters

Letters shall include the following elements:

- Date of the oversight activity and the period evaluated.
- Listing of OSMRE staff involved in the review, excluding those with only peripheral involvement through routine inspection and grant administration activities.
- Listing of State personnel contacted during the review, excluding those contacts pertaining only to routine inspection and grant administration activities.
- Scope of the oversight activity and the State activities examined.
- All identified conclusions, with any negative conclusions clearly labeled as either issues or concerns.
- Facts supporting the conclusions.
- Specific corrective action, if any, required for each issue or recommended for each concern.
- If appropriate, an offer of technical or administrative assistance.

2. Meetings

Issues and concerns shall be discussed with the State at regularly scheduled quarterly meetings of Field Office and State managerial personnel and staff. An agenda letter shall be formulated and sent to the State and the AD/FO at least one week in advance of the quarterly meeting. The letter shall outline the specific topics and points to be discussed and shall solicit additional topics from the State. Minutes of each meeting shall be kept and sent to the State in draft form for comment before being finalized and filed. Meetings shall be held more frequently if the need arises.

F. Documentation

The Field Office shall maintain a public review file for each evaluation year on an ongoing basis in accordance with Directive INF-1. This file, which shall be organized in part by program element and kept current throughout the evaluation period, shall include the following items:

- National oversight guidance and format documents.
- Annual workplans and any subsequent revisions.
- Factual information obtained or utilized during oversight activities (excluding inspection reports and other site- or case-specific documents).
- Special reports documenting reviews of program elements.
- Concern and issue letters.
- Action plans.
- Agenda letters, meeting minutes and correspondence and conversation records.
- Annual evaluation report (both the version initially provided to the State and the final version).
- Public comments, complaints or observations pertaining to evaluation reports or the evaluation process.

Working papers shall not be included, but special reports, data summaries and detailed analyses adequate to document the findings stated in the annual report and support the conclusions stated in concern and issue letters shall be incorporated.

G. Distribution of Documents

- Concern/issue letters. Copies shall be sent to the AD/FO and each specialist who participated in the evaluation activity.
- Agenda letters and quarterly meeting minutes. Copies shall be sent to the AD/FO.
- Action plans. Copies shall be sent to the AD/FO.
- Tracking reports and quarterly status reports shall be distributed in accordance with Directive REG-23.

III. Program Elements and Performance Criteria

OSMRE has identified the elements of each regulatory and AMLR program subject to oversight and has developed general criteria for use in evaluating each element. This document lists these criteria as well as techniques for the evaluation and oversight of each element. Except where otherwise indicated, the specific standards and criteria used to evaluate performance shall be those set forth in the approved State regulatory program or State or Tribal AMLR plan.

Elements which must be addressed in an effective oversight program are listed below:

Regulatory Program

1. Permitting
2. Bonding
3. Inspection
4. Enforcement
5. Civil Penalties
6. Administrative and Judicial Review
7. Lands Unsuitable Designation
8. Blaster Certification
9. Small Operator Assistance
10. Program Amendments
11. Program Management and Administration

AMLR Program

1. Project Ranking and Selection
2. Project Planning and Design
3. Construction Management and Postconstruction Activities
4. Program Management and Administration
5. Elements Applicable Only to Certain Programs

    a. Emergency Reclamation Program
    b. Land Acquisition, Management and Disposal
    c. Subsidence Insurance Program

REGULATORY ELEMENT

1. Permitting

SMCRA requires that persons desiring to conduct surface coal mining and reclamation operations and certain coal application activities first obtain permits to do so. The permit must contain information adequate to enable the regulatory authority to evaluate the operator's ability to comply with all program requirements. Permit applications are subject to public notice requirements and must contain adequate legal, compliance and right-of-entry information to protect the rights of surface landowners and other persons with a legal interest in the affected lands. Proper permit application review, including adequate technical analyses and documented findings by the regulatory authority, is critical to protection of the public from the adverse effects of such mining operations. Technically complete and accurately prepared permits detail how surface coal mining will be conducted to protect the environment. Planning of the mining activity will help to ensure that reclamation is conducted as contemporaneously as possible after removal of the coal resource.

Evaluation and oversight of permitting activities shall be based on the State's adherence to its approved program with emphasis on the following criteria:

- Issuance of permits that meet all requirements of the regulatory program, as evidenced by approved permits that:

  (1) Are administratively complete.

  (2) Contain baseline hydrologic, geologic and other information concerning the site in sufficient detail to assess the impacts of mining on the environment.

  (3) Contain mining and reclamation plans (and, for underground operations, subsidence control plans) in the detail necessary to demonstrate that reclamation can be accomplished in accordance with program requirements, together with all pertinent plan and design certifications.

(4) Contain a determination of the probable hydrologic consequences of mining accompanied by the regulatory authority's assessment of the probable cumulative hydrologic impacts of all anticipated mining in the area.

(5) Include documentation of an adequate public liability insurance policy prior to issuance.

(6) Are accompanied by the written findings required of the regulatory authority by the program and documentation of the basis for these findings.

(7) Contain all terms and conditions required by the program.

- Processing of applications for permits, revisions, renewals, transfers, sales and assignments of rights in accordance with the timeframes and procedural requirements specified in the program.

- Adherence to public notice requirements and other provisions encouraging public participation, as evidenced by:

  (1) Submission of proof of publication of newspaper notices for all applications prior to approval.

  (2) Availability of applications for public review.

  (3) Solicitation of comments from local governments, the State Historic Preservation Officer and other interested agencies in accordance with program requirements.

  (4) Documented consideration of all public and agency comments (including informal conference records) during the decision making process.

(5) Following a decision on an application, prompt notification of interested parties in accordance with program requirements.

- Maintenance of permit adequacy, as evidenced by timely midterm permit reviews with revisions required as necessary for the permit to remain in compliance with all program requirements.

- Use and maintenance of the applicant/violator system to ensure that permits are not issued to persons responsible for outstanding unabated violations.

- Adequate review of applications for experimental practices and ongoing evaluation of the success of approved practices.

Oversight Techniques

Approved State permits shall be reviewed on an ongoing basis by OSMRE reclamation specialists in preparation for random sample inspections. In addition, the Field Office shall evaluate permits, permitting procedures, and specific permitting topics on a periodic basis to ensure compliance with the State program. Permits shall be selected from those issued by a State during the evaluation year unless a larger sample is necessary to evaluate State activity in the subject area since the last in-depth review of that topic. Review topics may be selected on the basis of inspection findings, concerns of outside interest groups, citizen complaints, or other indicators of actual or potential environmental or public participation problems.

Review of any topic should include the data submitted by the permit applicant; the regulatory authority's analytical techniques, assumptions and conclusions; and the findings upon which a permit was issued, as well as on-site evaluations as necessary. Permit renewals, modifications, midterm reviews, and revisions shall be reviewed if pertinent to the topic selected. Reviewers shall accord discretion to alternative technical approaches selected or approved by the State and shall not mandate the use of any particular analytical or reclamation technique. Each State is free to choose professionally acceptable design criteria and methods that result in adequate reclamation in accordance with the State program.

REGULATORY ELEMENT

2. Bonding

Section 509 of SMCRA establishes requirements for posting of a performance bond for surface coal mining and reclamation operations. Bonds are essential to guarantee reclamation if an operator does not or cannot complete the reclamation plan. SMCRA allows various types of performance bonds but requires the amount of the bond to be adequate for a third party to complete the reclamation plan if forfeiture occurs. Specific liability periods apply consistent with the requirement for achieving revegetation success.

Section 519 of SMCRA provides for the release of performance bonds concurrent with the achievement of specified reclamation phases. Specific application, public notice and documentation requirements must be met before partial or full bond release may be granted.

Bond forfeiture is the final means of ensuring that the environment will be protected from the adverse effects of surface coal mining operations. It should supplement, not substitute for, efforts to compel the operator to complete all reclamation obligations. When necessary, forfeiture should result in cost-effective, timely and complete reclamation.

Evaluation and oversight of permanent program bonding activities shall be based on State program requirements with emphasis on the criteria listed below. Since SMCRA does not require that initial program sites be bonded, evaluation of State performance with respect to any bond posted for such sites shall be based on the applicable State initial program requirements.

- Administration of a bonding program which results in adequate performance guarantees as evidenced by the regulatory authority's:

  (1) Maintenance of a system to track the status of all bonds and maintain the security of instruments held by the regulatory authority.

  (2) Computation of bond amounts designed to ensure that the bond will be adequate for the regulatory authority to complete the reclamation if the operator fails to do so.

(3) Evaluation of the validity, value and restrictions placed on all instruments posted as bond.

(4) Evaluation of bond terms and conditions to ensure that the period of reclamation liability is fully covered by one or more bonds.

(5) Periodic evaluation of the viability of any alternative bonding system and initiation of any necessary corrective measures subsequently deemed appropriate.

- Proper release of bond liability, as evidenced by:

  (1) Provision of public notice of all bond release applications and proper notification of all interested parties of the regulatory authority's intent to release bond.

  (2) Evaluation of the degree and success of reclamation on all parcels for which partial or complete bond release has been requested (as documented in State inspection reports).

  (3) Calculations demonstrating that bond remaining after a proposed partial release will be adequate to complete all remaining reclamation commitments in accordance with program requirements.

  (4) Documentation that all applicable bond release standards have been attained before approval of any bond release application is granted.

- Adjustment of bond amounts as necessary to maintain bond adequacy as the area requiring bond coverage increases or decreases or the cost of future reclamation changes, as evidenced by, at a minimum, evaluation of bond adequacy during the processing of applications for significant permit revisions, transfers and renewals and during midterm permit reviews.

- Timely and proper forfeiture and use of bonds to complete reclamation when efforts to compel the permittee to do so fail, as evidenced by:

  (1) Adherence to program procedural requirements.

  (2) Timely collection of forfeited bonds and good faith efforts to pursue and complete any attendant litigation.

  (3) Prompt initiation and completion of reclamation on forfeited sites in accordance with the approved reclamation plan.

Oversight Techniques

- Review of permit provisions, bond instruments, State guidance and procedures, and files and documents pertaining to all bonding, bond release, and bond forfeiture actions.

- OSMRE inspections of sites subject to bond release (see Directives INE-28 and REG-26).

- Special reviews and inspections of forfeiture sites.

REGULATORY ELEMENT

3. Inspection

Section 517(c) of SMCRA requires that the regulatory authority conduct inspections on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for each surface coal mining and reclamation operation. These inspection frequencies are designed to ensure that surface coal mining operations are conducted so as to protect the environment and ensure that reclamation is conducted contemporaneously with mining. Prompt detection and correction of any violations should minimize their seriousness and duration and hence their environmental impact. This section of SMCRA also requires that OSMRE conduct such inspections as are necessary to evaluate the administration of approved State programs.

Evaluation and oversight of inspection efforts shall be based on State program requirements and the following criteria:

- Inspection of all surface coal mining and reclamation operations at the applicable minimum frequency in accordance with program requirements, and, for coal exploration sites and coal extraction operations claiming exemptions, at a frequency adequate to encourage and maintain compliance with program requirements.

- For each inspection, prompt preparation of accurate, thorough reports, as evidenced by:

  (1) Documentation of the seriousness and conditions surrounding any violations observed and enforcement actions taken or modified, vacated or terminated, and the progress in abating violations contained in previously issued notices or orders.

  (2) For complete inspections, documentation that all records were reviewed and all performance standards and permit requirements evaluated for the entire permit area.

  (3) For partial inspections, documentation of which performance standards and permit requirements were evaluated and for what portion of the permit area or period of operation.

(4) Narratives that exhibit continuity with and cognizance of conditions discussed in previous inspection reports.

- Maintenance of an inspection data base and provision of inspection reports to OSMRE.

- Timeliness of inspections conducted in response to citizen complaints and ten-day notices.

- Timeliness and adequacy of State responses to citizen complaints.

Oversight Techniques

- Analysis of data recorded on OSMRE inspections, including data on violations detected by OSMRE, but not cited by the State.

- Review of State inspection data, reports, files and tracking systems.

- OSMRE studies.

REGULATORY ELEMENT

4. Enforcement

Section 521 of SMCRA contains provisions for the issuance, modification, termination and enforcement of notices of violation, cessation orders, show cause orders and alternative enforcement actions. State regulatory programs must include sanctions no less stringent than those of SMCRA and procedures which are the same as or similar to those of SMCRA and its implementing regulations. Effective implementation of these provisions is necessary to ensure that operations are conducted in a manner protective of the environment and that, whenever necessary, regulatory authorities exercise the full reach of Federal or State constitutional powers to ensure the protection of the public interest through effective control of surface coal mining operations.

Evaluation and oversight of the enforcement of the regulatory program shall be based on State program requirements and the following criteria:

- Issuance, modification and termination of notices of violation, cessation orders, show cause orders and alternative enforcement actions in accordance with program requirements, as evidenced by:

  (1) Minimal delays between observation of a violation and issuance of the proper notice or order.

  (2) Issuance of notices and orders that prescribe adequate, appropriate and timely remedial measures and abatement periods.

  (3) Appropriate documentation of the reasons for all modifications and vacations of enforcement actions, including extensions of abatement periods.

  (4) Timely follow-up inspections on all notices and orders, with timely issuance of terminations or failure-to-abate cessation orders as appropriate.

  (5) Timely, systematic reviews for patterns of violation, with show cause orders issued as appropriate.

(6) Conduct of show cause hearings in accordance with program procedural requirements, with appropriate, reasoned decisions concerning permit suspension or revocation.

(7) Where other measures fail to achieve compliance, timely consideration and initiation of appropriate alternative enforcement actions.

Oversight Techniques

Review of:

- State enforcement actions, including evaluation of the appropriateness of remedial and abatement actions, interim steps and extensions of time granted.
- Modifications, terminations and vacations of enforcement actions.
- Pattern of violations reviews.
- Show cause findings and hearing documents.
- Orders for suspension or revocation of permits.
- Service records and compliance conference records.
- Alternative enforcement files.
- Federal follow-up inspections.

REGULATORY ELEMENT

5. Civil Penalties

Section 518 of SMCRA sets forth requirements concerning the assessment of civil penalties for violations of the Act or other program or permit provisions. Paragraph (i) of this section requires that the penalty provisions of State programs incorporate penalties no less stringent than those set forth in SMCRA and contain the same or similar procedural requirements relating thereto. Penalty amounts and collection efforts shall be adequate to maintain penalty enforcement values and encourage operators to maintain their operations in compliance on a continuous basis.

Evaluation and oversight of civil penalty programs shall be based on State program requirements and the following criteria:

- Timely review of every violation in each enforcement action for assessment of penalties in accordance with program requirements, as evidenced by:

  (1) Preparation of explanatory penalty assessment notices and worksheets for each violation addressing the four required factors (history, seriousness, negligence and good faith) and any additional program penalty determination requirements.

  (2) Assessment of mandatory daily penalties for failure-to-abate cessation orders.

  (3) Adherence to program timeframes for provision of penalty assessment notices to the permittee, the holding of assessment conferences and issuance of assessment conference reports.

  (4) Documentation of the reasons and calculations for any penalty assessments, adjustments and waivers.

- Maintenance of the enforcement value of civil penalties, as evidenced by:

  (1) Withholding approval of new permit applications filed by applicants with unabated violations or overdue civil penalties.

  (2) Effective efforts to pursue collection of overdue penalties.

Oversight Techniques

- Review of State civil penalty files and collection records.
- OSMRE studies.

REGULATORY ELEMENT

6. Administrative and Judicial Review

Sections 525 and 526 of SMCRA contain provisions for administrative judicial review of actions taken by the regulatory authority. Administrative review is available to a permittee issued a notice or order pursuant to Section 521(a)(2) and (a)(3) or to any person having an interest which is or may be adversely affected by such notice or order. Regulatory programs also must provide for judicial review of enforcement actions in accordance with section 526. Administrative and judicial review is necessary to ensure that the rights of all persons are fully protected.

Evaluation and oversight of State administrative and judicial review activities shall be based on State program requirements and the following criteria:

- Provision of administrative and judicial review in accordance with program procedures, as evidenced by:

  (1) Proper notification of permittees and persons with affected interests of their right to apply for review of agency decisions and the procedure to do so.

  (2) Refusal to accept administrative appeals concerning civil penalties prior to payment of any proposed penalties into escrow.

  (3) Timely scheduling of administrative hearings.

  (4) Timely issuance of decisions on administrative appeals.

- Issuance of administrative hearing decisions which are consistent with program requirements and which fully document the basis for the decision.

- Appealing or otherwise remedying the effect of administrative and judicial decisions with adverse programmatic implications.

- Proper implementation of provisions governing recovery of costs.

Oversight Techniques

- Review of State administrative and judicial review files.
- Review of State tracking data.
- OSMRE studies.

REGULATORY ELEMENT

7. Designation of Lands Unsuitable for Surface Mining

Section 522 of SMCRA requires the regulatory authority to establish a planning process to enable the State to make objective decisions based upon competent, scientifically sound information as to which lands within a State may be unsuitable for all or certain types of mining operations. Upon petition, such lands may be designated as unsuitable for mining operations. The purpose of this process is to ensure that mining operations are not conducted where reclamation is not feasible or where they would conflict with other important values.

Evaluation and oversight of the State's lands unsuitable designation process shall be based on State program requirements and the following criteria:

- Processing of petitions to designate areas as unsuitable for mining, or to have an existing designation terminated, in accordance with program timeframes and requirements, as evidenced by:

  (1) Timely issuance of completeness determinations and decisions on petitions.

  (2) Documentation of the basis for completeness determinations or lack of further consideration by the regulatory authority.

  (3) Adherence to public participation provisions concerning the processing of petitions.

  (4) Preparation of a detailed statement on the potential coal resources of the area, the demand for such resources, and the impact of any designation on the environment, the economy and supply of coal.

  (5) Documentation of the basis for the regulatory authority's decisions on complete petitions.

- Establishment and maintenance of a resource data base and inventory system adequate to permit evaluation of whether reclamation is feasible in areas covered by petitions.

Oversight Techniques

Review of:

- Data base and inventory system.
- Petitions concerning lands unsuitable for mining.
- Completeness determinations and petition decision documents.
- Other relevant State file materials.

REGULATORY ELEMENT

8. Blaster Certification

Section 719 of SMCRA requires that each State develop and administer a program for the training, examination and certification of persons who will conduct blasting in surface coal mining operations. These programs are designed to ensure that only persons qualified to conduct blasting operations become certified as blasters. Coupled with the performance standards requiring that only such persons conduct blasting operations at surface coal mines, this program helps to protect society from the adverse effects of the improper use of explosives.

Evaluation and oversight of State blaster certification programs shall be based on State program requirements, with emphasis on the following criteria and characteristics of a successful program:

- Routine offering of training courses and/or materials to persons seeking certification as blasters.
- Certification of only qualified persons as blasters, as evidenced by:
  - (1) Examination of all applicants to test their knowledge and ability concerning the use of explosives.
  - (2) Careful review and verification of all applications for certification to ensure that all experience and other requirements have been met.
- Suspension or revocation of certification when required.

Oversight Techniques

Review of:

- Blaster certification files.
- Training records.
- OSMRE studies and inspection records.

REGULATORY ELEMENT

9. Small Operator Assistance

Section 507(c) of SMCRA requires that the regulatory authority provide assistance to small operators in determining the probable hydrologic consequences of mining and conducting the geologic testing necessary to prepare a permit application.

Evaluation and oversight of a State's small operator assistance program (SOAP) shall be based on the State's adherence to its program requirements, with emphasis on the following criteria:

- Adequate review and verification of applications for assistance to ensure that only applicants who are eligible for SOAP receive assistance.
- Monitoring of contracts to ensure that authorized services are provided and that no unauthorized expenditures occur.
- Monitoring of approved applications to determine when reimbursement is necessary.
- Maintenance of an acceptable laboratory qualification program.

Oversight Techniques

Review of:

- SOAP applications, decision documents and State SOAP files.
- Grant reports and program audits.
- Contract administration files.
- Laboratory qualification records.

REGULATORY ELEMENT

10. Program Amendments

Section 503 of SMCRA authorizes States to assume primary jurisdiction over the regulation of surface coal mining and reclamation operations on non-Federal lands within their borders. To do so, the State must demonstrate its capability to carry out the provisions and meet the purposes of SMCRA. This section and the implementing regulations in Subchapter C of 30 CFR Chapter VII establish specific requirements for State permanent regulatory programs, one of which specifies that the State program shall be consistent with SMCRA and the corresponding Federal regulations. Accordingly, when conditions or events indicate that the State program or its manner of implementation no longer meets the requirements of the Act or the Federal regulations, the State, on its own initiative or at the request of OSMRE, must undertake measures to amend the program so that it is consistent with the Federal regulations and SMCRA.

Evaluation and oversight of State program maintenance activities shall be based on the State's adherence to the following criteria:

- Provision of prompt notification to OSMRE of all significant events and proposed or actual program changes as listed in and required by 30 CFR 732.17(b).

- Timely responses to all notifications from OSMRE that program amendments appear to be necessary (Part 732 letters), as evidenced by submission of the needed amendments or a letter acknowledging the need for a program amendment and containing a schedule or timetable for State action.

- Timely submission of materials to address all outstanding required amendments and conditions of program approval.

- Timely promulgation and implementation of program amendments approved by OSMRE.

Oversight Techniques

- Review of administrative record.
- OSMRE studies and program reviews.
- Review of the State Register or other official State publication of enacted statutes and promulgated regulations.

REGULATORY ELEMENT

11. Program Management and Administration

Section 503(a)(4) of SMCRA requires that State regulatory programs provide for the effective implementation, maintenance and enforcement of a permit system. Section 503(a)(3) requires sufficient administrative and technical personnel and funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of the Act.

Section 705 authorizes the award of grants to the States for program purposes. All grant-funded State actions must conform to the requirements set forth in Circulars A-87, A-102 and A-128 published by the Office of Management and Budget (OMB) and the Department of the Interior's common grants management rule at 43 CFR Part 12. These provisions mandate effective and efficient program administration.

Section 517(g) prohibits certain employees of the regulatory authority and other State personnel with a function or duty under SMCRA from having any direct or indirect financial interest in any underground or surface coal mining operation. Employees must annually submit a statement of financial interests.

Evaluation and oversight of the administration and management of the regulatory program shall be based on the following criteria:

- Administration and management of Federal grants in accordance with Treasury Department, Interior Department, and OMB requirements, as evidenced by:

  (1) Disbursement of drawdowns on letters of credit within required time-frames.

  (2) Adequate accounting for all program income and expenditures.

  (3) Timely submission of complete grant applications and financial, progress and close-out reports.

  (4) For regulatory administration and enforcement grants, provision of State matching share funds in acceptable form.

  (5) Performance of all required audits and implementation of all appropriate recommendations.

- An organizational structure that facilitates effective program implementation, as evidenced by:

  (1) Timely and effective execution of program responsibilities and functions.

  (2) Maintenance of effective internal and external communication channels to maximize coordination both within and among organizational units and between the State, OSMRE and interested outside parties.

  (3) Where State agencies other than the regulatory authority have a role in the program, effective coordination in a manner which minimizes duplication and omissions.

  (4) Routine use of internal quality controls and data analyses to evaluate performance and provide timely notice of the nature and extent of any implementation problems.

- Adherence to personnel and staffing policies adequate to meet program implementation needs and Federal grant recipient requirements, as evidenced by:

  (1) Recruitment, training and hiring practices that ensure that the agency staff is adequate in size and technical and professional capability to properly administer the approved program.

  (2) Maintenance of accurate, current time and attendance payroll records.

  (3) Compliance with all equal employment opportunity requirements.

- Compliance with all Federal conflict of interest provisions including:

  (1) Identification of all non-exempt employees.

  (2) Identification of and justification for all exempt positions.

  (3) Filing of conflict of interest report forms from all non-exempt employees with the proper official.

  (4) Identification and resolution of conflicts in a timely manner, including monitoring of compliance with any divestiture orders.

(5) Forwarding proper certification of the filing and review of employee statements to OSMRE.

- Procurement, management and disposal of property and services in accordance with the requirements of OMB Circulars A-87 and A-102 and the common grants management rule at 43 CFR Part 12.

- Establishment and maintenance of data management systems adequate to meet program needs, including internal and external data transfer capability.

Oversight Techniques

Review of:

- State files and records.

- OSMRE studies.

- Audit reports.

- Grant applications, reports and related documents.

AMLR ELEMENT

1. Project Ranking and Selection

Sections 404 and 409 of SMCRA define the lands and waters eligible for reclamation with monies from the Abandoned Mine Reclamation Fund established under Section 401. However, the quantity and severity of problems resulting from inadequate reclamation of lands affected by mining activities prior to SMCRA far exceed the funds available to reclaim such sites. Therefore, Section 403 of SMCRA establishes reclamation priorities and Section 405 requires that State and Tribal reclamation plans include specific criteria for ranking and selecting projects to be funded. OSMRE has established a national inventory of abandoned mine lands, which States update on a continuous basis, to monitor reclamation needs.

Evaluation of project ranking and selection activities shall be based upon the State/Tribe's adherence to the following criteria:

- Maintenance of a complete, current inventory of sites eligible for and in need of reclamation.
- Adherence to the ranking and selection criteria and procedures prescribed by the State/Tribal plan when choosing projects for grant applications.
- Documentation of project eligibility when requesting grant funding.
- Proper consideration of public comments concerning project selection.
- For grant applications for projects to reclaim abandoned noncoal minesites, documentation either that all coal-related reclamation needs have been or will be met, or that the Governor or Tribal Chairman has requested such reclamation and the reclamation is necessary to protect the public health or safety.

Oversight Techniques

Review of:

- Grant application and review documents.
- Records of public participation and the disposition of public comments.
- State/Tribe project ranking and selection files.
- OSMRE field evaluations and other studies.

AMLR ELEMENT

2. Project Planning and Design

AML reclamation projects shall be planned and designed to obtain a justifiable and reasonable long-term solution to the site's problems. Planning is necessary to ensure proper coordination with other AML reclamation programs (such as RAMP) and Federal, State and local agencies, including procurement of permits from other governmental entities and compliance with such statutes as the National Historic Preservation Act, the Endangered Species Act, the Fish and Wildlife Coordination Act and the Clean Water Act. Rights of entry and appraisals also must be obtained in advance of any need to enter the property for design or construction purposes.

Evaluation and oversight of planning and design activities shall be based upon the State/Tribe's adherence to State/Tribal plan provisions and the following criteria:

- Completion of coordination requirements and obtaining any necessary permits in a timely manner.

- Maintenance of the staffing resources and technical expertise necessary to prepare and review designs.

- Preparation of well-planned project designs and contract specifications which:

  (1) Prescribe a technically sound means of attaining the project's goals in a reasonably cost-effective manner.

  (2) Minimize construction delays and changes resulting from design deficiencies.

- Consideration of previous experience with the cost, suitability and long-term success of various design alternatives in reclaiming sites with similar problems (including those of other States and Tribes).

- Timely acquisition of all rights-of-entry necessary for project design and construction, including proper execution of nonconsensual entry procedures, where necessary.

- Determination of whether any real estate parcels within the project area may be subject to lien, and documentation of any waivers of lien in accordance with the approved plan.

Oversight Techniques

Review of:

- Project design documents and files.
- Construction files (including change orders and inspection reports).
- Procurement documents and records.
- OSMRE field evaluations and other studies.
- Generally accepted standards used in the construction industry.
- Project realty files.
- Project management records.

AMLR ELEMENT

3. Construction Management and Postconstruction Activities

Construction activities represent the end-product of the AML reclamation program and result in achievement of the purpose of SMCRA relating to reclamation of mined areas left without adequate reclamation prior to the enactment of SMCRA. Construction monitoring and postconstruction analysis are critical to ensuring efficient expenditures of funds to accomplish enduring reclamation. In addition, to ensure that no landowner improperly benefits from reclamation activities, Section 408 of SMCRA establishes requirements for the filing of liens under certain circumstances.

Evaluation and oversight of construction and postconstruction activities shall be based upon the State/Tribe's adherence to the State/Tribal plan and the following criteria:

- Solicitation of bids, award of contracts and execution of change orders for construction projects in accordance with State procurement law or, for Tribal programs, the common grants management rule at 43 CFR Part 12.

- Effective management of the construction program, as evidenced by:

  (1) Synchronization of project design, realty and procurement activities and construction scheduling to maximize use of the construction season and staff resources and meet grant and project timetables.

  (2) Inspection of ongoing construction projects at a frequency and in sufficient detail to adequately monitor and maintain adherence to contract terms. This should include the timely filing and evaluation of written reports.

  (3) Detailed evaluations of completed projects to assess compliance with contract requirements prior to making any final payments to the contractor or releasing any escrow funds or performance bonds.

- Where potential liens have not been waived in accordance with provisions of the approved plan, timely preparation of appraisals to determine the increase in real estate value due to the reclamation work, and proper recording, maintenance and satisfaction of any resultant liens.

- Ongoing postconstruction monitoring and analysis of reclaimed project sites adequate to determine maintenance needs and the long-term success and effectiveness of various reclamation techniques and design alternatives in accomplishing project goals under the environmental conditions found within the State/Tribe.

Oversight Techniques

Review of:

- Procurement and financial accounting documents and files.

- Construction inspection, realty and project management files, including photographs.

- Grant performance, financial and closeout reports.

- OSMRE field evaluations and other studies.

AMLR ELEMENT

4. Program Management and Administration

Section 405 of SMCRA authorizes the award of grants to the States and Tribes for AMLR program purposes. All grant-funded State and Tribal actions must conform to the requirements set forth in Circulars A-87, A-102 and A-128 published by the Office of Management and Budget (OMB) and the Department of the Interior's common grants management rule at 43 CFR Part 12. These provisions mandate effective and efficient program administration.

Evaluation and oversight of AMLR program management and administration shall be based on the State/Tribe's adherence to the following criteria:

- Administration and management of Federal grants in accordance with Treasury Department, Interior Department and OMB requirements, as evidenced by:

  (1) Disbursement of drawdowns on letters of credit within required time frames.

  (2) Adequate accounting for all program income and expenditures.

  (3) Timely submission of complete grant applications and financial progress and closeout reports.

  (4) Performance of all required audits and implementation of all appropriate recommendations.

- An organizational structure that facilitates effective program implementation, as evidenced by:

  (1) Timely and effective execution of program responsibilities and functions.

  (2) Maintenance of effective internal and external communication channels to maximize coordination both within the agency and among the State/Tribe, OSMRE and interested outside parties.

  (3) Where other State or Tribal agencies have a role in the program, effective coordination in a manner that minimizes duplication and omissions.

  (4) Routine use of internal quality controls and data analyses to evaluate performance and

provide timely notice of the nature and extent of any implementation problems.

- Adherence to personnel and staffing policies adequate to meet program implementation needs and Federal grant recipient requirements as evidenced by:

  (1) Recruitment, training and hiring practices that ensure that the agency staff is adequate in size and technical and professional capability to properly administer the approved program.

  (2) Maintenance of accurate, current time and attendance payroll records.

  (3) Compliance with all equal employment opportunity requirements.

- Procurement, management and disposal of property and services in accordance with the requirements of OMB Circulars A-87 and A-102 and the common grants management rule at 43 CFR Part 12.

- Establishment and maintenance of data management systems adequate to meet program needs, including internal and external data transfer capability.

Oversight Techniques

Review of:

- State/Tribal files and records.

- OSMRE studies.

- Audit reports.

- Grant applications, reports and related documents.

AMLR ELEMENT

5. Elements Applicable Only to Certain Programs

[Instructions: Include the elements listed below only if they apply to the program being evaluated. Each applicable element should be listed and discussed on a separate summary sheet.]

Under Section 410 of SMCRA, the Secretary is authorized to expend funds for emergency restoration, reclamation, abatement, control or prevention of the adverse effects of coal mining practices on eligible lands, if (1) an emergency exists, constituting a danger to the public health, safety or general welfare and (2) no other person or agency will act expeditiously to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices. OSMRE has encouraged States to assume primary responsibility for this function although emergency declarations remain the responsibility of the OSMRE Field Office Director.

Title IV of SMCRA also contains provisions authorizing (1) acquisition, management and disposal of abandoned mine lands for reclamation purposes, and (2) award of up to $3 million in State-share reclamation funds to States to establish subsidence insurance programs.

No State or Tribe is required to establish an emergency reclamation program, acquire land, or establish a subsidence insurance program; however, if it does so, evaluation and oversight of such activities shall be based upon the State/Tribe's adherence to its approved plan and the following criteria:

Emergency Reclamation Program

- Prompt investigation of citizen reports of emergency conditions.

- Submission of requests for emergency declarations that are complete and accurate and contain the documentation necessary for OSMRE to make the findings required by Section 410 of SMCRA.

- Use of expedited procurement, design and construction procedures and the implementation of interim measures to abate the emergency condition as rapidly as possible in accordance with State/Tribal plan provisions, following the OSMRE Field Office Director's approval of the emergency declaration.

Land Acquisition, Management and Disposal

- Adherence to the land acquisition and disposal and user fee collection and management requirements of the approved plan and Section 407 of SMCRA.

Subsidence Insurance Program

- Administration of any subsidence insurance program in a manner that ensures that the program is operating in a self-sustaining manner and that only claims for subsidence damage resulting from eligible coal-related underground mining activities are paid.

Oversight Techniques

Review of:

- State/Tribal emergency investigation/project files.
- OSMRE field evaluations and other studies.
- OSMRE emergency declaration files.
- State/Tribal accounting records.
- Subsidence insurance program records.

IV. Annual Reports

A. Reporting Requirements

The FOD shall prepare an annual evaluation report for each State or Tribe within his or her area of responsibility.

The completed report shall be forwarded to the AD/FO within 30 days of the close of the evaluation year; the AD/FO shall have 15 days to provide comments to the Field Office. Within 10 days of receipt of the AD/FO's comments, the FOD shall revise the report and forward one copy to the State, which shall have a 15-day comment period. Within 10 days of receipt of the State/Tribe's comments, the FOD shall make any necessary revisions and forward the report to the AD/FO. The State/Tribe's comments and a summary of the FOD's disposition of those comments shall be appended to the report. Upon authorization by the AD/FO, the FOD shall send one original (with appendices) to the AD/PP and one copy to the Deputy Director.

B. Format and Instructions

Reports shall be prepared in accordance with the format and instructions provided on the following pages.

Title Page

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Fiscal Year 19___ Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Program

under the

Surface Mining Control and Reclamation Act of 1977

in the State

of

[Capitalize name of State]

for the Period

July 1, 19__ through June 30, 19 __

[Month/Year]

TABLE OF CONTENTS

I. Introduction

II. Overview of Mining Industry

III. Executive Summary

IV. Actions Affecting Program Implementation

V. Summary Findings

A. Regulatory Program

1. Permitting
2. Bonding
3. Inspection
4. Enforcement
5. Civil Penalties
6. Administrative and Judicial Review
7. Lands Unsuitable
8. Blaster Certification
9. Small Operator Assistance
10. Program Amendments
11. Program Management and Administration

B. AMLR Program

1. Project Ranking and Selection
2. Project Planning and Design
3. Construction Management and Postconstruction Activities
4. Program Management and Administration
5. Elements Applicable Only to Certain Programs

a. Emergency Reclamation Program
b. Land Acquisition, Management and Disposal
c. Subsidence Insurance Program

VI. Tables