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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:** 738 **Date:** JUL 30 1992

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

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

1. Purpose. Provides guidance and delineates responsibilities for the investigation and conduct of emergency and Federal Reclamation Program (FRP) high priority reclamation projects.

Note: These procedures pertain primarily to the Office of Surface Mining Reclamation and Enforcement (OSM) projects addressed under the Federal Reclamation Program. With the exception of the criteria for emergency determinations and the extent of emergency abatement efforts, Appendix 1, and guidance on protecting historic properties, Appendix 10, these procedures do not apply in States which have been given authority by OSM to conduct their own emergency programs.

2. Summary of Changes.

a. The title and purpose have been revised to more clearly identify extent of applicability to State run emergency programs.

b. The guidelines for delineation of an Abandoned Mine Land (AML) emergency and for the proper response to a declared emergency have been revised. (Appendix 1)

c. Guidance pertaining to briefing papers has been revised and incorporated in this directive (Appendix 6) from Directive AML-6, thereby superseding AML-6.

d. The Deputy Director, Operations and Technical Services (DD/OTS) must give prior concurrence to all proposed emergency declarations over $250,000. If an amendment to a briefing paper will cause the total cost of the emergency project to exceed $250,000, it also must receive prior concurrence from the DD/OTS. In no event, though, will an emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people be delayed awaiting DD/OTS concurrence. In such cases, the Assistant Director, Eastern Support Center (AD/ESC) or the Assistant Director, Western Support Center (AD/WSC) is authorized to declare an emergency and take that emergency action required to prevent substantial physical harm to the health, safety, or general welfare of people.

e. Additional guidance is given about communications with a State/Tribe when OSM decides that an emergency complaint is not an emergency and when emergency reclamation will not achieve complete and permanent reclamation.

f. Requirements on compliance with the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) when conducting emergency and Federal high priority projects have been added to the steps to be followed when addressing emergency and high priority projects.

g. By November 15 of each year the AD/ESC and AD/WSC will send a list of high priority projects they plan to fund that Fiscal Year to the DD/OTS. Notice of all changes to this list, either additions or deletions of projects or changes in priority and/or cost levels, must be sent to the DD/OTS and included in the Abandoned Mine Land Inventory System (AMLIS) or accepted for inclusion in AMLIS prior to the action occurring.

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.

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.

(1) An internal document authorizing the expenditure of funds for AML activities such as: complaint investigation, geotechnical exploration or hazard abatement. The briefing paper includes: a written summary of the facts developed through investigation of the hazard(s); if appropriate, a statement that the situation qualified as an emergency project under OSM regulations and documentation of adherence to the criteria for an emergency; other project specifics and the options and alternatives considered for abating or reducing the hazard(s); cost estimates; and approval of the appropriate levels of OSM management to conduct the project. Typically, in an emergency, a request for procurement is also included with the briefing paper.

(2) Amendments to briefing papers are made when substantial increases in project scope or cost occur or when project status changes (For example, a previously approved

geotechnical exploration project now is being declared an emergency.)

d. Normal Program Operations. AML operations funded by State's/Tribe's AML Administrative and Construction Grants or as High Priority Federal AML projects.

e. Pre-reclamation Appraisal. A real estate appraisal, performed by an independent registered or 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.

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

4. Policy/Procedures.

a. Emergency Projects

(1) Emergency complaints. Emergency complaints are made by citizens and government officials. Field Office Directors (FODs) are responsible for initially processing all Federal emergency complaints.

(a) Complaints originate, and are processed, in one of the following manners:

1. Received by FOD. The FOD obtains initial information and then initiates a preliminary investigation except when other more expedient procedures have been developed by the FOD in conjunction with the ESC or WSC. For example, WSC usually investigates emergencies in Colorado for the Albuquerque FOD and ESC's Wilkes-Barre Office investigates emergencies in Pennsylvania's anthracite coal fields. Via a telephone call, a FOD may request ESC or WSC staff to conduct a complaint investigation if Field Office staff cannot conduct an immediate investigation.

2. Received by State AML Agency/Indian Tribe. Forwarded to the FOD who then obtains initial information and then initiates a preliminary investigation except as noted in Section 4.a.(1)(a)1.

3. Received by ESC or WSC. ESC or WSC obtains initial information and forwards it to the FOD who then initiates a preliminary investigation. In some cases ESC or WSC notifies the FOD and then conducts the preliminary investigation.

(b) Initial information to be obtained under 4.a.(1)(a) above: name and phone number of person(s) forwarding potential emergency complaint, nature of problem, site location, and the name and phone number of person most familiar with problem. Information tracking the processing of the complaint is to be kept by the OSM organization conducting the preliminary investigation.

(2) Preliminary Investigation.

(a) OSM FOD responsibilities.

1. Field Office personnel will be dispatched to the problem site in a timely manner. If more expedient, assistance may be requested from ESC or WSC.

2. Notify State AML Agency/Indian Tribe in advance of site visit. The State AML Agency/Indian Tribe may choose to accompany OSM personnel.

3. Staff responsible for field investigation should obtain all pertinent information in Appendixes 2, "Complaint Information Gathering Guide" and 3, "AML Complaint Information Gathering Data," or other forms approved by the AD/ESC or AD/WSC.

4. Alert ESC or WSC of any possible conflicts with NEPA (See REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act") or NHPA (See Appendix 10.).

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

6. Determine if local or State/Tribe institutions can and will correct problem (such as State AML Agency/Tribe, or State/Tribe or county highway department).

7. Provide information to responsible ESC office or WSC in writing, over telefax and/or over telephone of results of investigation, as warranted.

8. If the FOD determines that the problem appears to be an AML emergency, the responsible ESC office or WSC must be promptly notified. The FOD will prepare a report on the complaint investigation using Appendix 4, "Report of Complaint Investigation" (or similar) as a guideline.

9. The Field Office staff will alert ESC or WSC whenever a problem site is in proximity to or it may be reasonably expected that reclamation activities could have an impact on any active mine or mining area.

(b) State AML Agency/Indian Tribe. At its discretion, may provide personnel to accompany OSM staff in the problem investigation.

(c) ESC or WSC. If problem appears to be of a serious nature, the responsible ESC office or WSC will maintain close contact with the FOD during preliminary investigation. In some cases ESC or WSC can conduct the preliminary investigation. See section 4.a.(1).

(3) Final Determination.

(a) When the preliminary investigation is performed by the FOD and the information submitted by the FOD suggests a serious problem, the responsible ESC office or WSC will immediately review and evaluate the complaint investigation report.

(b) The ESC or WSC may dispatch a field team to the problem site if necessary to supplement the FOD investigation. The team may consist of an engineer, project specialist, realty specialist, or other ESC or WSC staff as needed. ESC or WSC will coordinate this visit with the FOD as appropriate.

(c) Request State Attorney General opinion of eligibility from the State AML Agency/Indian Tribe or OSM (Department of the Interior) Solicitor. The eligibility criteria are found at 30 CFR Section 874.12, Eligible coal lands and water. Opinion of eligibility may initially be verbal in a documented telephone log but a written follow-up (Appendix 5 or similar) must be transmitted to responsible ESC office or WSC.

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

(e) As soon as it appears that the cost of the emergency reclamation may exceed $250,000, the AD/ESC or AD/WSC will notify the DD/OTS. Emergency reclamation should be limited

to that required to stabilize the emergency aspects of the problem by eliminating the danger to public health, safety, and general welfare. Why the planned amount of emergency reclamation was decided upon must be documented in the briefing paper or briefing paper amendment.

(f) The ESC AML Division Chief or the WSC Federal Reclamation Branch Chief will determine if unobligated funds are available in the emergency account to address the problem.

(g) The procurement staff of the ESC or WSC will be informed of the probable emergency.

(h) The AD/ESC or AD/WSC will make the final determination on whether an emergency exists. The determination will be based on the AML Emergency Program Guidelines in Appendix 1.

(i) If an emergency exists, the final determination will be documented in a briefing paper or briefing paper amendment if a briefing paper has already been approved for geotechnical exploration, etc. (See Appendix 6). If the estimated cost of the emergency reclamation project is over $250,000, the DD/OTS must give prior concurrence by signing the briefing paper or briefing paper amendment. In no event, though, will an emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people be delayed awaiting DD/OTS concurrence. If there is an immediate threat of substantial physical harm, the AD/ESC or AD/WSC is authorized to declare an emergency and take that emergency action required to prevent substantial physical harm to the health, safety, or general welfare of people. Such action can normally be accomplished in several days. Any additional work will be undertaken only after concurrence by the DD/OTS. At this point, the responsible ESC office or WSC will direct and coordinate all actions that follow.

(j) The AD/ESC or AD/WSC will immediately notify the FOD, the field team, the appropriate procurement staff, and the Headquarters Public Affairs Office of the decision.

(k) The FOD will notify the State AML Agency/Indian Tribe and other interested parties of the decision. If the AD/ESC or AD/WSC determine that a complaint in an AML program State/Tribe not managing its own emergency program does not constitute an AML emergency, the State/Tribe must be provided a detailed written explanation within 10 working days by the appropriate FOD. The AD/ESC or AD/WSC will be responsible for providing the necessary information to the FOD. The detailed written report must 1) explain why the complaint was not declared

an emergency and 2) state if OSM feels that the State/Tribe should consider addressing the problem promptly under the State's/Tribe's normal AML program.

If the State/Tribe determines it to be an eligible high priority AML problem, OSM will assist the State/Tribe in submitting a timely grant submittal. Special consideration should be given to those problems which do not currently meet the criteria for emergency declaration but which may deteriorate into emergencies if not reclaimed promptly. As appropriate on a case-by-case basis, this assistance could include help with the documentation to enter the problem in AMLIS and preparation of the Environmental Assessment. Any requests for assistance by a State/Tribe would be sent to the FOD for action. As necessary, the FOD would request assistance from the ESC or WSC.

In applicable situations, OSM will work with program States/Tribes to establish cooperative agreements on the use of State/Tribal AML funds to conduct the balance of the work required for full reclamation in conjunction with the emergency project.

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

(m) When the AD/ESC or AD/WSC determines that a complaint in a non-program State/Tribe does not constitute an AML emergency, the problem should be considered for funding as a high priority Federal project. When the AD/ESC or AD/WSC thinks the complaint pertains to priority 1 and/or 2 problems, a Problem Area Description form (OSM-76) should be prepared and sent to Headquarters Division of Abandoned Mine Land Reclamation (HQ DAMLR).

(4) Implementation of Corrective Action.

(a) The AD/ESC or AD/WSC may authorize the FOD or the responsible ESC office or WSC field team to proceed with immediate abatement action.

(b) The responsible ESC office, WSC, or the field team will, as appropriate:

1. Prepare a set of detailed written specifications, or request a consulting engineer contractor to prepare specifications that should at a minimum include:

a. Detailed itemized work necessary to correct the problem.

b. Any drawings necessary to make work required more clear.

c. An itemized bid sheet showing each unit of work required with a space for bid price on each unit.

d. The estimated cost by unit of work required.

(c) The responsible ESC office or WSC field team will:

1. Advise the AD/ESC or AD/WSC of the potential for lien.

2. Obtain all necessary consents, or exercise non-consensual procedure for entry.

3. Obtain any additional information necessary to secure an appraisal, if required.

4. Take sufficient color prints (approximately 3" X 5") or slides to show AML problem and impacts, including all 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 10.

5. Assure compliance with NEPA as set out in REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act."

6. Assure compliance with NHPA. See Appendix 10.

(d) The responsible ESC office or WSC will:

1. Assure that any bond associated with the disturbed area has 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.

2. 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 geotechnical investigation or reclamation activities.

3. Prepare briefing paper or amendments if required. The briefing paper or amendments will be developed following the instructions and procedures established in Appendix 6.

4. Process with the Contracting Officer of the ESC or WSC the appropriate procurement action for engineering and reclamation work.

5. Communicate to the affected public (those impacted by the emergency) and State AML Agency/Indian Tribe OSM's plans to address the problem (Scope of Work).

6. Prepare specifications and cost estimate for construction inspection, if appropriate.

7. Provide for construction inspection through the appropriate procurement action by:

a. Contracting to the private sector.

b. Contracting to the State AML Agency/Indian Tribe.

c. Utilizing OSM ESC or WSC and Field Office personnel.

d. Utilizing other Federal agency personnel.

8. Prepare specifications for appraisal, if required. Submit to the appropriate staff of the ESC or WSC for action.

9. Enter all project information and performance data into the AML FRP Management System (FRPMS).

10. 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).

11. Review and reconcile all procurement and assistance actions, designation, identification, and financial data in the FRPMS with corresponding data in ABACIS. Reconciliation shall conform to controls, standards, and procedures, established by the ESC and WSC for monthly, quarterly, and end-of-year comparisons to assure accurate posting

of financial data for the FRPMS, including coordination with the Division of Financial Management to notify it of any apparent inaccuracy in the ABACIS.

12. Notify Headquarters Public Affairs and Congressional Liaison Offices.

(e) The ESC or WSC procurement staff will:

1. Upon receipt of approved briefing paper specifications, and funds availability documentation (MB-65A or procurement request), prepare or monitor the preparation of the solicitation package by the Contracting Officer or his authorized representative in the field.

2. Contact potential contractors for construction and construction monitoring.

3. Coordinate pre-bid conference to be held at the problem site. Attendees will include:

a. Contracting Officer, as appropriate.

b. Project Manager and ESC or WSC staff, as appropriate.

c. Potential contractors.

d. Construction inspector(s).

e. Design engineering firm's representative(s).

4. Award the contract and notify the FOD and the ESC or WSC immediately of this action.

(5) Inspection.

(a) The Project Manager shall be responsible for ensuring that during the construction phase the person assigned to inspect the project keeps a log of reclamation activities. Appendix 7, "Construction Inspector's Daily Diary" should be used for purposes of recording the daily log.

(b) Color prints (approximately 3" X 5") or slides should be obtained where appropriate.

(6) Completion of Project Work.

(a) Upon completion of the construction work, the Project Manager and the person assigned to inspect the project will perform a final inspection. Color prints (approximately 3" X 5") or slides of the completed project shall be taken by the Project Manager.

(b) A report will be prepared detailing the work completed by the contractor and submitted to the Contracting Officer with a recommendation for payment or other action.

(c) The Project Manager will prepare a final report on the project which will include:

1. A narrative description of the project activity from the time it was reported until its completion, including:

a. Report of initial conditions.

b. Immediate action taken.

c. Eligibility information.

d. Description of reclamation activities.

e. Date work started.

f. Date work completed.

g. Summary of costs.

h. Documentation of compliance with NEPA and NHPA, if appropriate.

2. Comparison of pre- and post-reclamation appraisals, if appropriate.

3. A determination by the AD/ESC or AD/WSC whether a lien should be filed or waived. If the AD/ESC or AD/WSC determines that a lien should be filed, notice will be given and the lien filed in accordance with 30 CFR 882.13. Negative findings and waivers shall also be made a part of the permanent project file.

4. Description of benefits derived by reclamation, including socio-economic and environmental benefits. Quantification of accomplishment information will be made where

possible (acres reclaimed, miles of stream improved, number of people protected or affected, etc.).

5. At least four to six color prints (approximately 3" X 5") or slides to adequately show the AML site prior to, during, and after completion of the reclamation project.

6. An Appendix including:

a. Project Briefing Paper.

b. Letter of eligibility from State Agency/Indian Tribe or OSM (Department of the Interior) solicitor.

c. Newspaper clippings, OSM news release(s), if any, and any other publicity items.

(d) The ESC or WSC will enter all project accomplishment information and final cost data into the FRPMS.

(e) The AD/ESC or AD/WSC will submit a Completion Form OSM-76 to HQ DAMLR in accordance with Directive AML-1 when the emergency occurred in an existing Problem Area (PA). The AD/ESC or AD/WSC will check with the FOD to determine if the emergency occurred in a existing PA.

(7) Authorities and Responsibilities.

(a) Only the AD/ESC and AD/WSC or his/her designee has the delegated authority to declare an emergency. The DD/OTS must give prior concurrence to all proposed emergency declarations over $250,000. If an amendment to a briefing paper will cause the total cost of the emergency project to exceed $250,000, it also must receive prior concurrence from the DD/OTS.

(b) Only the OSM Contracting Officer has the authority to obligate OSM funds for AML construction activities.

(c) Only the OSM Contracting Officer has the authority to modify specifications in a contract. Technical modifications will be recommended for approval by the Project Manager to the Contracting Officer. 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.

(d) The Project Manager has contract-related responsibilities as stated in Appendix 8, "Designation as Contractor Officer's Technical Representative - COTR".

(e) All personnel will complete telephone contact reports, such as in Appendix 9, "Confirmation/Report of Telephone Conversation" for any contacts dealing with specific ongoing or potential projects. Reports will be retained in project files.

b. High Priority Projects.

(1) Project Selection

(a) The AD/ESC and AD/WSC are responsible for the investigation and reclamation of high priority coal problem areas identified for abatement under the FRP.

(b) The current OSM policy is that the only high priority projects funded under the FRP will be in non-program States/Tribes.

(c) The projects selected for funding each Fiscal Year are based on the recommendation of the AD/ESC or AD/WSC. Projects are to be selected on the basis of identified and prioritized reclamation needs and within the allocated funds for the particular Fiscal Year. These projects must be selected from those on AMLIS or accepted for inclusion in AMLIS.

(d) By November 15 of each year the AD/ESC and AD/WSC will send a list of high priority projects they plan to fund that Fiscal Year to the DD/OTS. Notice of all changes to this list, either additions or deletions of projects, changes in priority and/or cost levels or deobligations projects used to fund these, must be sent to the DD/OTS and included in AMLIS or accepted for inclusion in AMLIS prior to the action occurring.

(2) Investigation.

(a) The responsible ESC office or WSC will dispatch a team to the problem site. The team may consist of an engineer, project specialist, realty specialist, or other ESC or WSC staff as needed.

(b) The ESC or WSC staff responsible for the field investigation should obtain all pertinent information in Appendixes 2, 3 and 4 (or similar).

(c) The ESC and WSC shall assure compliance with NEPA as set out in REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act."

(d) The ESC and WSC shall assure compliance with NHPA. See Appendix 10.

(e) The ESC or WSC shall request a State Attorney General opinion of eligibility from the State AML Agency/Indian Tribe or OSM (Department of the Interior) Solicitor. The eligibility criteria are found at 30 CFR Section 874.12, Eligible coal lands and water. This opinion of eligibility may initially be verbal in a documented telephone log but a written follow-up (Appendix 5 or similar) must then be obtained.

(f) The ESC or WSC shall assure that any bond associated with the disturbed area has 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.

(g) The ESC or WSC will determine if unobligated funds are available in the ESC or WSC high priority project account.

(h) The procurement staff of the ESC or WSC will be informed of the high priority project.

(i) The AD/ESC or AD/WSC will make the final determination to fund the high priority project.

(j) The determination to fund a high priority project will be documented in a briefing paper (Appendix 6).

(k) The ESC or WSC will notify the appropriate State/Tribe agency(s) and other interested parties of the decision.

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

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

(3) Implementation of Corrective Action.

(a) The AD/ESC or AD/WSC will authorize the ESC or WSC staff to proceed with the abatement action.

(b) Same as 4.a.(4)(b).

(c) Same as 4.a.(4)(c).

(d) The ESC or WSC will:

1. When a high priority project is funded, a Problem Area Description update form, OSM-76, must be sent to HQ DAMLR in accordance with Directive AML-1.

2. Same as 4.a.(4)(d)1.

3. Communicate to the affected State/Tribe OSM's plans to address the problem (Scope of Work).

4. Same as 4.a.(4)(d)3.

5. Same as 4.a.(4)(d)4.

6. Same as 4.a.(4)(d)5.

7. Same as 4.a.(4)(d)6.

8. Same as 4.a.(4)(d)7.

9. Same as 4.a.(4)(d)8.

10. Same as 4.a.(4)(d)9.

11. Same as 4.a.(4)(d)10.

12. Same as 4.a.(4)(d)11.

13. Same as 4.a.(4)(d)12.

(e) Same as 4.a.(4)(e).

(4) Inspecting. Same as 4.a.(5).

(5) Completion of Project Work. Same as 4.a.(6). In addition, the ESC or WSC must send an OSM-76 completion form to HQ DAMLR in accordance with AML-1.

(6) Authorities and Responsibilities.

(a) Only the Assistant Director for the ESC or WSC or his designee has the delegated authority to select high priority projects for funding. All projects must be in AMLIS or accepted for inclusion in AMLIS.

(b) Same as 4.a.(7)(b).

(c) Same as 4.a.(7)(c).

(d) Same as 4.a.(7)(d).

(e) Same as 4.a.(7)(d).

5. Reporting Requirements.

a. Emergencies.

(1) FOD's Investigative Report, paragraph 4.a.(2)(a)8.

(2) Notification of DD/OTS if reclamation cost may exceed $250,000, paragraph 4.a.(3)(e).

(3) Briefing paper, briefing paper amendments, paragraph 4.a.(3)(h) and 4.a.(4)(d)3.

(4) Project Manager Report to Contracting Officer, paragraph 4.a.(6)(b).

(5) Final Report, paragraph 4.a.(6)(c).

(6) Completion report, OSM-76 (PAD), paragraph 4.a.(6)(e).

b. High Priority Projects.

(1) List of high priority projects to be funded during the Fiscal Year, paragraph 4.b.(1)(d).

(2) Briefing paper, briefing paper amendments, paragraph 4.b.(2)(k) and 4.b.(3)(d)4.

(3) Project Manager Report to Contracting Officer, paragraph 4.b.(5).

(4) Final Report, paragraph 4.b.(5).

(5) Completion form, OSM-76 (PAD), paragraph 4.b.(5).

6. Effect On Other Documents. This directive supersedes Directive AML-4, dated March 11, 1987, and Directive AML-6, dated April 3, 1987, and the memorandum of August 19, 1985 from the Director titled, "Abandoned Mine Lands (AML) Emergency program Guidelines." It incorporates the memorandum of November 8, 1991, from DD/OTS to the AD/ESC and AD/WSC and the Assistant Deputy Director, Operations and Technical Services titled "Policy Guidance on Abandoned Mine Land Emergency Program Declaration and Appropriate Response."

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

8. Effective Date. Date of issuance.

9. Contact. Chief, Division of Abandoned Mine Land Reclamation, (202) 208-5365.

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

11. List of Appendices.

a. 1- AML Emergency Program Guidelines

b. 2- Complaint Information Gathering Guide

c. 3- AML Complaint Investigation Data

d. 4- Report of Complaint Investigation

e. 5- State Attorney General or OSM (Department of the Interior) Solicitor's Letter of Eligibility

f. 6- Briefing Papers

g. 7- Contract Daily Diary

h. 8- Designation as Contracting Officer's Technical Representative - COTR

i. 9- Confirmation/Report of Telephone Conversation

j. 10- National Historic Preservation Guidelines for AML Emergency Projects and Federal High Priority Projects.

Appendix 1

AML EMERGENCY PROGRAM GUIDELINES

The following guidance applies to both Federal and State/Tribe managed emergency programs.

1. Major Changes from August 1985 Guidance

a. The requirement that for an area or sag subsidence problem to be declared an emergency it must be anticipated that the emergency reclamation (excluding final revegetation which may have to be delayed until proper weather conditions occur) can be implemented within 6 months has been expanded to include all problem types. The word "implemented" has been replaced with "completed."

b. Additional guidance pertaining to the proper response to a declared emergency is included.

2. 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 problem have to be addressed immediately to protect the health, safety, or general welfare of people?

For a problem to be declared an emergency, it must be anticipated that the emergency reclamation to be undertaken (excluding final revegetation which may have to be delayed until proper weather conditions occur) can be completed within 6 months of receipt of the emergency complaint by the Field Office responsible for the State/Tribe in which the problem occurred. Otherwise, problems can be abated as effectively under normal State/Tribe program procedures or as a Federal high priority project as under the emergency program.

The six month time period referred to in the above paragraph does not waive the need to meet more stringent time frames when complying with other requirements. For example, if an AML

emergency project can be initiated within 30 days of being declared an emergency by OSM, only then may: 1) an expedited NEPA process be used as set out in REG-1 (Handbook on Procedures for Implementing the National Environmental Policy Act), and 2) expedited procedures for complying with the National Historical Preservation Act be used (See Appendix 10).

Additional guidance is given for burning refuse piles, underground mine fires, landslides, hazardous mine openings, area or sag subsidence, "pot hole" subsidence, and shallow overburden subsidence in section 4.

3. Proper response to declared emergencies

The final guidelines on reclamation programs (45 FR 14810-14819, March 6, 1980) provides that:

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

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. The maximum proper amount of emergency reclamation is that which can and needs to be accomplished (excluding final revegetation which may have to be delayed until proper weather conditions occur) within 6 months of receipt of the emergency complaint by the Field Office responsible for the State/Tribe in which the problem occurred. 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 $10,000. If all or some of the remaining reclamation is required to keep the problem from deteriorating into another emergency, it should be accomplished promptly so as to prevent additional emergencies.

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.

4. Specific guidance for selected types of AML emergencies

a. Burning Refuse Piles- A great number of abandoned coal waste areas are scattered through the coal regions of the United States. A significant number of these are burning, some for many years. The problems associated with these burning waste areas include noxious fumes, smoke, and open fires. While these conditions may be hazardous, they do not normally constitute an unavoidable immediate danger to the public, except where inhabited structures exist on or immediately adjacent to these areas.

An investigation of all refuse fire complaints should be conducted to determine if any inhabited structure(s) are directly threatened by fire or noxious (hazardous) gases. The presence of noxious gases must be confirmed. This may be accomplished through the collection and laboratory analysis of ambient air samples as described under the heading "Underground Mine Fires" in Attachment C of directive AML-1, "Abandoned Mine Land Inventory System," or using a hand held monitor. The use of ambient air sampling takes into account odor versus adverse hazardous gas thresholds. If any inhabited structure(s) are directly threatened by fire or noxious (hazardous) gases, these problems should be addressed as emergencies. Burning refuse piles which only create a smoke or odor nuisance in the general vicinity of inhabited structures will be referred to the State/Tribe for consideration under their AML grant program, or in nonprogram States/Tribes, considered for reclamation as a Federal high priority problem.

b. Underground Mine Fires- Underground mine fires occur in many locations throughout the coal regions of the United States. Most reported underground mine fires are not sudden occurrences but have been burning for months or years. As a result the States/Tribes are, generally, aware of these underground fires sufficiently in advance to conduct abatement or control procedures through normal program operations, before the fire develops into a higher risk for substantial physical harm to the public. Sudden dangers may develop where these fires break to the surface through subsidence cracks or along outcrops, or where noxious (hazardous) gases generated by the fire enter into an inhabited structure.

The longer this type of fire burns the higher its potential to spread and the greater the cost to extinguish it. Consideration

will be given to addressing, as emergencies, fires which are discovered at an early stage where extinguishment may be performed expeditiously at a modest cost.

Fires which undergo a sudden change leading to a direct and sudden threat to life from noxious gases or breakout of the fire to the surface will continue to be considered for possible emergency action. The presence of noxious gases must be confirmed. This may be accomplished through the collection and laboratory analysis of ambient air samples as described under the heading "Underground Mine Fires" in Attachment C of directive AML-1, "Abandoned Mine Land Inventory System," or using a hand held monitor.

c. Landslides- Emergency landslides are those areas of land affected by past mining where a landmass has become unstable and is moving or has already moved and is threatening the health and safety of the public. Landslides are primarily caused by excess material on a sloped landmass complicated by the lubricating effects of water due to inadequate drainage. Landslide may begin moving suddenly and continue moving at an unpredictable rate until the resistance and loading forces reach equilibrium.

Landslides related to coal mining are most likely to occur as a result of abandoned spoil piles on steep slopes, sloughing of highwalls, mine drainage saturation of natural slopes or similar situations where past mining practices have caused an unstable condition. Landslides usually occur in the spring or other periods when hydrologic systems are near or exceed their capacity. A landslide emergency situation is created when a road, stream, or inhabited structure are in the immediate potential path of the newly identified unstable landmass or the slide material has recently damaged or restricted the use of the geographic feature or manmade structure. Where these situations do occur, emergency AML work will be performed to address the emergency portion of the landslide. This may involve the permanent stabilization of the entire slide area only when the threat from the newly identified slide activity is imminent and it clearly is not cost effective to delay full reclamation for a few months. Where some reclamation effort less than permanent stabilization can alleviate the emergency, this action will be taken and any remaining or additional work will be referred to the State for consideration under its AML grant program. A known slide with the potential to threaten people or property should be addressed as a Priority 1 problem prior to it developing into an emergency situation.

d. Hazardous Mine Openings- Historically, mine openings were often capped, sealed or left open at the conclusion of

mining with no provisions for continuous maintenance. Subsequent real estate development, other surface activities or vegetation growth may cover or hide these openings. The sudden uncovering of a shaft or other mine opening in a populated area due to the failure of the seal/cap or by vegetation clearing operations will generally be considered an emergency. With the exception of a mine blow-out, a sealed portal seldom fails catastrophically. Any opening created by the sudden failure of either a horizontal or vertical seal may present an immediate danger and should be closed or re-sealed if it exposes persons to noxious gases and/or to the risk of falling into a hazardous mine opening. An existing uncovered mine opening, since it is not a sudden occurrence and its location is usually known by the local populace, will generally not be considered an emergency.

The presence of noxious gases must be confirmed. This may be accomplished through the collection and laboratory analysis of ambient air samples as described under the heading "Underground Mine Fires" in Attachment C of directive AML-1, "Abandoned Mine Land Inventory System," or using a hand held monitor. The use of ambient air sampling takes into account odor versus adverse hazardous gas thresholds.

e. Subsidence- For purpose of these guidelines, three types of subsidence events are considered:

(1) Area or Sag Subsidence- Area (or sag) subsidence consists of surface damage expressed in the form of shallow depressions or general ground settlement and occurs randomly over large or small areas overlying abandoned coal mine workings. When such subsidence happens it involves some degree of immediate movement, followed by an additional series of smaller ground settlements that occur over an extended period of time until ground stabilization is reached.

Subsidence events of this type are unpredictable and may occur suddenly; consequently, awareness of the potential danger is not usually known and investigation of the problem does not occur until after the initial subsidence event has taken place. In the predominant number of cases, the most significant collapse, both at mine level and on the surface, already has occurred. In addition, the greatest potential of physical harm is at the time of the initial subsidence movement, after which the probability of further harm to life and property is significantly reduced. This type of subsidence generally occurs over deep mines.

Current abatement methods, which are employed to minimize further subsidence damage, consist of backfilling voids to prevent continued collapse of adjacent areas and/or grouting of the

underburden to consolidate the broken material and stabilize the affected area. Because of the complex geotechnical issues associated with area mine subsidence events, the satisfactory abatement of these problems is often a difficult and time consuming process. Despite the urgency usually associated with this type of subsidence event, it normally requires six months or more to perform the necessary exploratory drilling, finalize the engineering and geotechnical analysis, develop contract specifications, award a contract and implement the abatement measures. Due to the extended time required to develop effective abatement procedures and since most of the damage usually occurs at the time of the initial subsidence event, area subsidence projects can be abated as effectively under normal State/Tribe program operation procedures, or in nonprogram States/Tribes, as Federal high priority projects as under the emergency program. Therefore, this type of subsidence problem should normally be addressed under the State/Tribe Grant Program or as a Federal high priority project in nonprogram States/Tribes. However, a cooperative effort may be considered in serious situations if sought by the State/Tribe. In such situations, the initial exploratory work might be done under emergency provisions in order to supply project specification to the State/Tribe on a schedule that matches grant processing for the project implementation.

Sometimes when sag subsidence occurs there is no immediate threat to human life and property, but structures are later damaged by resulting stress strain accumulations. When this is the case, the emergency is the sudden threat to human life and property caused by accumulated stress strain on the building resulting from an earlier area or sag subsidence event. In this case the six-month period begins not with the sag subsidence event but with the resulting sudden need for emergency abatement.

(2) "Pot hole" Subsidence- "Pot hole" subsidence events usually occur suddenly and create vertical openings many feet deep and in some cases, the openings reach the mine workings. These suddenly occurring subsidence openings create immediate and serious threats to life and property and, in most cases, should be addressed under the emergency program.

(3) Shallow Overburden Subsidence- Shallow overburden subsidence events may also occur suddenly. In many cases, there is an awareness that the potential exists for a subsidence event of this type to occur, since there usually have been previous events in the immediate area. In some instances, investigatory information has already been obtained or subsurface exploratory drilling in the area has previously been performed. These subsidence problems are generally associated with shallow mines

and the structural integrity of the geologic strata composing the overburden material is frequently inadequate to withstand the stresses associated with mine subsidence. As a result, collapse at the mine level usually causes very substantial vertical movement at the surface. This movement differs from that associated with a sag subsidence in that, (1) the area affected is relatively small, i.e., the subsidence event usually affects only one or two properties, and (2) these events frequently result in severe damage to structures accompanied by immediate and serious threat to life and property. When these events can be addressed quickly in order to protect the affected inhabited structure(s) from further damage and prevent the spread to adjacent properties, consideration will be given to performing the reclamation as an emergency abatement project. However, if the structure has already been destroyed and/or abandoned, then the problem should not be addressed as an emergency.

Appendix 2

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 the 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 a continuing reclamation responsibility?

8. Are there any bonds associated with the disturbed area? (Optional)

9. What is the source of the problem and where is it located?

10. How does the problem cause and affect relate to past coal mining practices?

11. Is access to the property safe?

12. If needed, have the residents secured alternative housing within the commuting area?

13. Have photographs of all aspects of damaged property been taken (including inside of houses).

14. Is there a potential for any emergency abatement to impact the environment (NEPA) and/or historic properties (NHPA)?

15. Does the current problem indicate a seasonal or other periodic (non-random) fluctuation that may change at a later date?

16. What can the landowner and mineral owner do?

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

19. What is the local community willing to do and when?

20. What are the utility companies willing to do and when?

21. What are other State and Federal agencies willing to do and when?

22. Is there insurance company responsibility?

23. 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: _____

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, expending; first noticed, etc.): _____

_____
_____
_____
_____
_____

OTHER INFORMATION

Describe what other information is available and its location (i.e., maps, inspections, exports, 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 Evironmental 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 ESC or WSC.

REMARKS

INVESTIGATOR: _____ SIGNATURE: _____
ADDRESS: _____
CITY: _____ STATE: _____
ZIP CODE: _____ TELEPHONE: _____

Appendix 4

United States Department of the Interior

TAKE PRIDE IN AMERICA

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Eastern Support Center
Ten Parkway Center
Pittsburgh, PA 15220

OCT 21 1991

Memorandum

To: Chief, Branch of Operations
Division of Abandoned Mine Lands C. Dorney

Through: Chief, Section of AML Projects J. Ellen 10/21/91
Branch of Operations

From: Dan Pollock 10/21/91
Physical Scientist

Subject: Anderson Subsidence Complaint Investigation
Boonville, Warrick County, Indiana
In-92-001

On October 7, 1991, I investigated the subject complaint. I went back to the site on October 8, 1991, and spoke with Mr. and Mrs. Anderson. The Indianapolis Field Office officially referred the complaint to the Eastern Support Center on October 4, 1991.

The following site conditions exist:

a. A home owned by David and Elizabeth Anderson is being adversely affected by ground movement.

b. The home has developed cracks in the southwest corner of an attached garage; around the front door; front windows, east end of block foundation, and the south end of the home. A depression has also developed under an attached porch.

c. A surface ground crack is located about five feet from the back of the house but it could not be determined if this is a result of ground movement or soil shrinkage due to the dry weather.

d. The most significant damage is located in the southwest corner. A large crack 3/4 inch in width, has developed in the foundation wall and according to the Anderson's is getting larger. Other smaller cracks can be seen throughout the outside of the structure. The majority of the cracks have developed on the south end of the home.

e. A depression about two feet deep has developed under an attached porch. It is located adjacent to the foundation. The Anderson's said the depression has been getting larger.

f. Mrs. Anderson said the cracks started to develop on August 23, 1991. On that day Mrs. Anderson said she heard a loud noise and the house shook. She thought it was an earthquake. They contacted their insurance agent after this and only recently became aware that it might be mine subsidence causing the problem. The Anderson's said that since the initial ground movement more cracks have developed through the house.

g. The Indiana Number 5 coal seam is located about 35 feet below the surface. It is suspected that the area under the Anderson home was mined out by the Gough Coal Company, which ceased operations in the 1920's.

h. Two subsidence holes were previously filled on the same street as the Anderson home. A sinkhole depression is also present in a field about 1,000 feet from the present problem.

i. The homeowner has subsidence insurance. An inspection was conducted recently by the company. They are awaiting completion of a possible stabilization by OSM prior to settling a claim with the Anderson's.

j. The home was constructed in the late 1970's. No main structural problem occurred to the home until recently.

Recommendations and Conclusions

a. Due to the sudden occurrence of the movement and the past history of mine subsidence that has occurred in the Booneville area, it appears the current ground movement is related to mine subsidence.

b. The landowner has mine subsidence insurance which they will use to make repairs to their home. They, however, do not have the financial resources or technical knowledge to abate the problem. Further, no entity is or will act to correct the problem in a timely manner.

c. It is recommended that an emergency abandoned mine land (AML) project be conducted to abate the problem as it needs to be abated in a time frame faster than would be obtained through the state's AML grant program.

cc: OSM:ESC:AML:RS
4230/AML 6

XD 10/31/91

ANDERSON SUBSIDENCE

IN-92-001

Location: Warrick County, Boonville Quadrangle
Sec. 36, T 5 S, R 6 W

Landowner: David and Elizabeth Anderson
907 Nicholas Drive
Boonville, IN 47601
(812) 897-4389

Mining History: Information obtained from the Preliminary Coal Map (PCM) No. 7 from the IGS. Data Base, indicates that this area was undermined by the Gough Mining Company (Gough Mine). This mining company conducted operations from 1874 to 1899. The PCM #7 indicates that approximately 131,000 tons of coal were removed from 1895 to 1899. The Coal V seam was mined. It varied in depth (30 to 50 feet) and in thickness (4.5 to 7.0 feet).

Currently there are no active mining operations, underground or surface, within a one mile radius of the Anderson residence.

Summary: According to information that was obtained in the Jasonville Office, no post 1977 mining activities have taken place near the Anderson residence. Therefore, any mining activities that may have contributed to the Anderson Subsidence, were conducted prior to the enactment of the Surface Mining Control and Reclamation Act, PL 95-87.

Edward B Kirby 10-25-91

Edward B. Kirby
Project Manager
Restoration Section
Indiana Division of Reclamation

Date

Mine Number: 004496

Quad. Map Numbers:

Numbers Not On Quad.:

Mine Names(s): GOUGH
Company Name(s): GOUGH MINING CO.
KELLY AND NESTOR CO.?

County(s): WARRICK

Quadrangle(s): BOONVILLE, DEGONIA SPRINGS

Mine Location: T 5S R 8W S 25
T 5S R 8W S 36 NWNWNW
T 5S R 8W S 36 NWNWNW

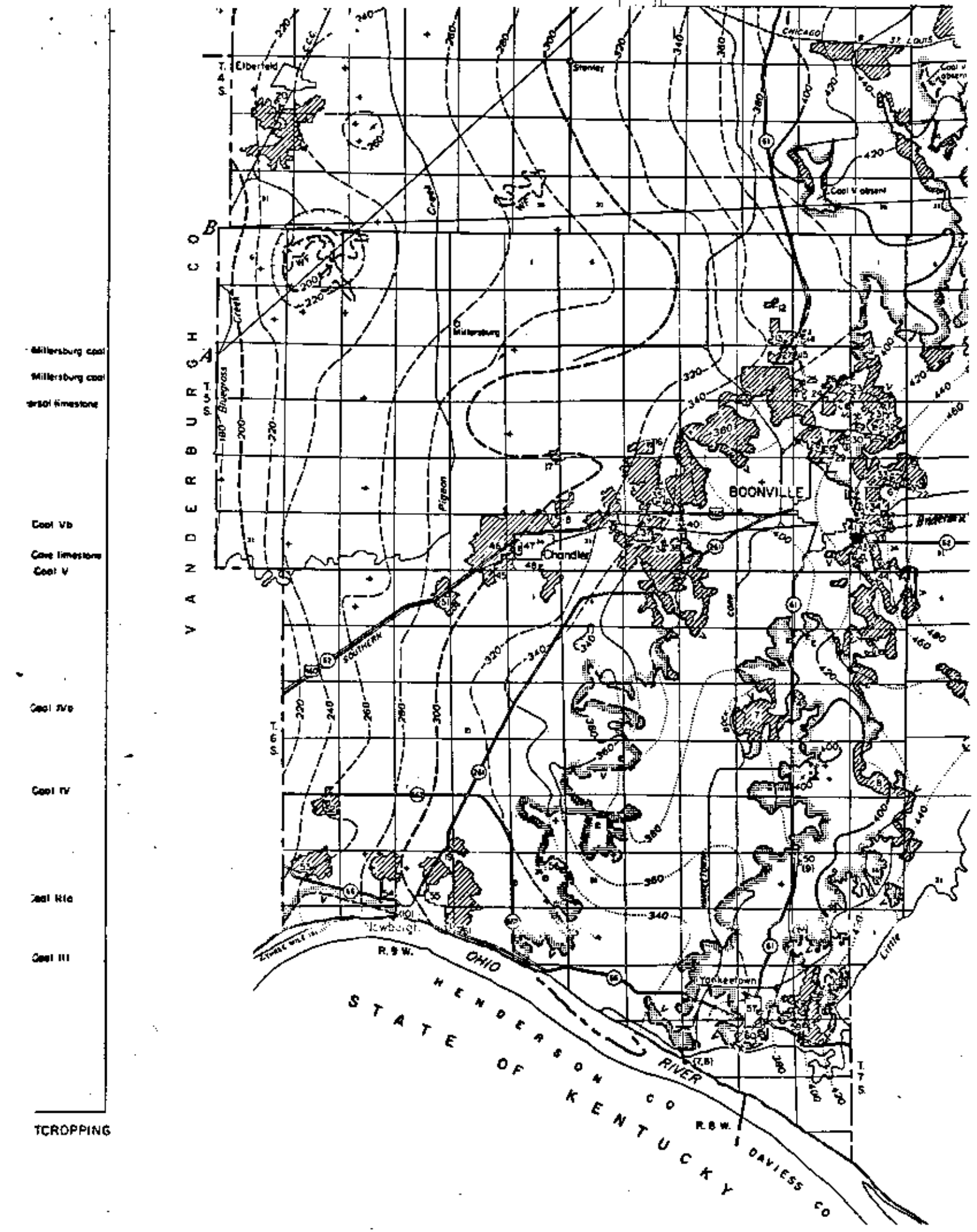
Mine Type	Mining Method	Equipment
UNDERGROUND	SHAFT	

Strat. Code: 2527 Seam: CO-5 Source: ASH8981383
Thickness: 6.4 Depth: 42.0 Elevation: 0.0
Lithology: Roof: SH-BK-FIS Floor: Parting:

Strat. Code: 2527 Seam: CO-5 Source: SMI-1918
Thickness: 4.5 Depth: 30.0 Elevation: 0.0
Lithology: Roof: Floor: Parting:

Strat. Code: 0 Seam: Source: ASH8981386
Thickness: 7.0 Depth: 50.0 Elevation: 0.0
Lithology: Roof: Floor: Parting:

Year Mine Started: 1874 Year Mine Ended: 1899



Millersburg coal
Millersburg coal
Coal Vb
Cave limestone
Coal V
Coal IVa
Coal IV
Coal IIIa
Coal III
TCROPPING
VANDERBURGH CO
Elberfield
Stanley
Millersburg
Chandler
BOONVILLE
Newburgh
Yankeetown
Coal V absent
CHICAGO
ST. LOUIS
SOUTHERN
Pigeon
Bluegrass
Creek
OHIO
RIVER
HENDERSON CO
STATE OF KENTUCKY
DAVIESS CO
R. 9 W.
R. 8 W.
T. 4 S.
T. 5 S.
T. 6 S.
T. 7 S.

Attorney General
Lee Fisher

February 24, 1992

Appendix 5

Mr. Terry M. Dalton, Chief
Realty Support Section
Office of Surface Mining Reclamation and Enforcement
Eastern Support Center
10 Parkway Center
Pittsburgh, PA 15220

Dear Mr. Dalton:

This letter concerns the eligibility of the Dodson Subsidence Emergency Project (OH-92-009) in Section 21, Pike Township, Perry County, Ohio for federal reclamation assistance under Section 404 of the Surface Mining Control and Reclamation Act, Public Law 95-87. The facts as given to me, are:

1. *The project site is a subsidence into an underground mine on the property of Terry and Diane Dodson, 2306 Airport Road, New Lexington, Ohio 43764.*

2. *Ohio Geological Survey records indicate that the Sunnyhill #2 Mine (Py-332) operated by the Peabody Coal Company in the Number 6 Coal underlies the area. The mine was abandoned in 1969.*

3. *The subsidence is located in the yard of the Dodson property. It is most likely the result of the collapse of the roof of the mine.*

Ohio Attorney General Opinion 78-056 discloses that reclamation duties and obligations were not imposed upon underground mine operators until the enactment of General Code Section 898-108 (currently Section 4153.40 of the Revised Code), effective August 26, 1949. Specifically, Section 4153.40 (B), R.C. required the operator to effectively close or fence all openings to mines abandoned after June 3, 1941, and to fill and close off with earth, masonry, or other non-combustible material all vertical shafts and other openings abandoned after August 26, 1949 in a way which may reasonably be expected to prevent unauthorized persons from entering.

Since the subsidence affecting the Dodson property is not subject to the aforementioned Sections of the Ohio Revised Code, it is clear that the operators who mined the proposed project area have no continuing reclamation responsibility under Ohio law with respect to the surface effects caused by their underground mining.

Concerning the State of Ohio's continuing reclamation responsibility as a result of bond forfeiture with respect to the project land area, R.C. 1513.12, effective August 2, 1978, and corresponding sections, instituted the first statutory scheme whereby the State of Ohio was required to expend monies obtained from bond forfeitures arising from the failure to reclaim on the part of the underground coal operators. R.C. 1513.12 required that operators of*

underground coal mines in operation as of 45 days after the effective date of the section or September 16, 1978, submit performance bonds which are forfeitable to the State of Ohio upon default by the operator under R.C. 1513.16(F). In conjunction with R.C. 1513.12 and 1513.16(F), R.C. 1513.18 required that the State of Ohio utilize the forfeited bond money to reclaim the land as required by law.

Thus, with respect to the Dodson Subsidence Project area, which is related to underground coal operation abandoned before September 16, 1978, the State of Ohio has no continuing reclamation responsibility to reclaim as a result of bond forfeiture.

Therefore, it is my opinion, based upon the facts as given and upon the absence of any continuing reclamation responsibility for reclamation by the operator under Ohio law, or by the State of Ohio as a result of bond forfeiture, the Dodson Subsidence Project area is eligible for reclamation assistance under Section 404 of Public Law 95-87 and the applicable regulations thereunder.

Sincerely,

Mark G. Bonaventura
Assistant Attorney General
Division of Reclamation
Fountain Square
Building H-1
Columbus, Ohio
Telephone Number: (614) 265-7071

MGB/RJM/add

cc: R. Jeffrey MacDonald
Gary Novak

* *The Ohio Mining Law, effective August 2, 1978, has subsequently been amended by Substitute House Bill 1051, 1981 Ohio Laws. Portions took effect on September 1, 1981.*

BRIEFING PAPERS

1. Purpose.

Guidance on the use of briefing papers is contained in this appendix to 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. Major Change from former Directive, AML-6

a. The Deputy Director, Operations and Technical Services (DD/OTS) must give prior concurrence to all proposed emergency declarations over $250,000. If an amendment to a briefing paper will cause the total cost of the emergency project to exceed $250,000, it also must receive prior concurrence from the DD/OTS. In no event, though, will an emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people be delayed awaiting DD/OTS concurrence. If there is an immediate threat of substantial physical harm, the Assistant Directors ESC/WDC (ADs ESC/WSC) are authorized to declare an emergency and take that emergency action required to prevent substantial physical harm to the health, safety, or general welfare of people.

4. Definitions.

a. Briefing Paper. An OSM internal document:

(1) An internal document authorizing OSM to expend funds for AML activities such as; complaint investigation, geotechnical exploration or hazard abatement. The briefing paper includes: a written summary of the facts developed through investigation of the hazard(s); if appropriate, a statement that the situation qualified as an emergency project under OSM regulations and documentation of adherence to the criteria for an emergency; other project specifics and the options and alternatives considered for abating or reducing the hazard(s); cost estimates; and

approval of the appropriate levels of OSM management to conduct the project. Typically, a request for procurement is also included with the briefing paper.

(2) 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.)

5. 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. 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.

b. Responsibilities. The responsibility for the preparation of briefing papers, and any amendments, lies with the ADs ESC/WSC.

c. Procedures.

(1) Preparation. The format for briefing papers and amendments to briefing papers should include, at a minimum, the following:

(a) 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.

(b) Location - Should be specifically stated and detailed as to street, township, county, State, etc.

(c) Problem Area Number This number is the key link between FRPMS and AMLIS.

1. Emergency- If the emergency problem is located in an existing Problem Area, include the Problem Area number. This information can usually be readily obtained from the Field Office.

2. High Priority Project- The number of the Problem Area in which the project is located.

(d) Finding of Fact for Emergency/High

Priority Designation - A statement of why the problem qualifies as an AML emergency or high priority project. The finding of fact must specifically identify the nature of the problem(s); reason(s) for reclaiming the problem(s); number of persons threatened; appropriate answers to when, where, how and why questions relative to the development of the problem(s); and the causal relationship to the coal mining practices.

(e) Project Proposal - Briefly outlines the project objective. In the case of proposed reclamation projects, the briefing paper includes the proposed reclamation technique(s) that will be used to reduce or abate the problem. Abatement alternatives are evaluated for cost and technical feasibility and compared to the selected reclamation technique.

In the case of emergency projects the project proposal must:

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

- If the proposed level of work will achieve complete and permanent reclamation of the problem, explain why it would not be cost effective to refer the proposed work beyond that necessary to eliminate the danger to public health, safety, and welfare to a program State/Tribe or for funding as a high priority project in nonprogram States/Tribes.

- Document coordination with the program State/Tribe if a portion of the problem is to be reclaimed using emergency program funds and the remainder referred to the State/Tribe.

(f) Eligibility - Identifies 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.

(g) NEPA Compliance

1. 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).

2. High Priority Projects- ESC/WSC must prepare either an environmental assessment (EA) and a finding of no significant impact (FONSI) or an environmental impact statement (EIS) to be included with the briefing paper. The National Environmental Policy Act (NEPA) compliance documents are an integral part of the project review and decision making process. OSM Directive REG-1, NEPA Handbook procedures establishes guidance in preparing NEPA compliance documents for AML projects.

(h) National Historic Preservation Act Compliance - Document compliance with NHPA as set out in Appendix 10 of AML-4.

(i) Estimated Cost - Project estimated total cost. The briefing paper may include cost breakdown of such items as investigation, exploratory drilling, engineering (design and inspection), realty, construction, or any amendments.

(2) 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:

(a) Total project cost is less than $2,500 (including amendments for project cost increases). The AD ESC/WSC may designate appropriate staff within the Support Center to recommend, concur and approve the briefing paper; however, delegation of his/her authority for briefing paper approval shall not be made below the Branch Chief level.

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

(c) Total project cost is between $100,000 and $250,0000 (including amendments for project cost increases). The AD ESC/WSC may designate appropriate staff within the Support Center to recommend and concur with the briefing paper. The Assistant Director must retain authority to approve the briefing paper.

(d) Total project cost is greater than

$250,000 but less than $1,000,000 (including amendments for project cost increases). The AD ESC/WSC may designate appropriate staff within the Support Center to recommend the briefing paper. The DD/OTS must give prior concurrence. The Assistant Director must retain authority to approve the briefing paper. In no event, though, will an emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people be delayed awaiting DD/OTS concurrence. If there is an immediate threat of substantial physical harm to the health, safety, or general welfare of people the AD ESC/WSC is authorized to declare an emergency and take that emergency action required to prevent substantial physical harm to the health, safety, or general welfare of people. Such action can normally be accomplished in several days. Any additional work will be undertaken only after concurrence by the DD/OTS.

(e) Total project cost is $1,000,000 or greater (including amendments for project cost increases). The AD ESC/WSC will recommend the briefing paper; the Deputy Director for Operations and Technical Services and Director will concur; final approval of the briefing paper will be made by the Assistant Secretary for Land and Minerals Management.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

CONSTRUCTION INSPECTOR'S DAILY DIARY

DATE: ___/___/___ Day of Week: S M T W T F S

Project Name: _____ Contract NO: _____

Project Location: _____

Contractor: _____ Representative: _____

WEATHER DATA:

General: _____

Temperature: Minimum: _____ Maximum: _____

Ground Surface Conditions: _____

Weather Effect on Progress:

____ None ____ Slight ____ Moderate ____ Large ____ Halt Job From ____ To ____

MONITOR:

Name: _____ Firm: _____

Begin Work: _____ End Work: _____

Total Hours and Minutes Worked for the Day: _____

VISITORS AND GOVERNMENT OFFICIALS:

Name: _____ From: _____

Time Arrived: _____ Time Departed: _____

Name: _____ From: _____

Time Arrived: _____ Time Departed: _____

CONTRACTOR:

Begin Work: _____ End Work: _____

Total Hours and Minutes Worked for the Day: _____

WORK ON SCHEDULE: ☐ Yes ☐ No (See Narrative)

WORK ACCEPTABLE: ☐ Yes ☐ No (See Narrative)

Distrib. Orig. to CO
1 to COTR

OSM-115 (1/87)

LIST OF WORKERS ON SITE:

CLASSIFICATION	HOURS WORKED

LIST OF EQUIPMENT ON SITE:

TYPE	HOURS WORKED	HOURS DOWN

MATERIALS FURNISHED TO SITE

DESCRIPTION	QUANTITY	CERTIFICATION

NARRATIVES

(To include materials installed, quantities, equipment capabilities, and problems encountered)

Signature

Attach additional sheets as necessary

CONTRACT NO: _____
DAILY DIARY
PAGE: _____ of _____

NARRATIVES

PAGE ___

Attach additional sheets as necessary

Appendix 8

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Eastern Support Center
Ten Parkway Center
Pittsburgh, PA 15220

DESIGNATION OF CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

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 other 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 nonfeasibility 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.

_____
Contracting Officer

cc: Contractor (2)
Contract File

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

_____
Signature

_____
Date

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

_____
Signature

_____
Date

CONVERSATION RECORD

TIME	DATE

TYPE ☐ VISIT ☐ CONFERENCE ☐ TELEPHONE ☐ INCOMING ☐ OUTGOING

Location of Visit/Conference:

NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU	ORGANIZATION (Office, dept., bureau, etc.)	TELEPHONE NO.

ROUTING	
NAME/SYMBOL	INT

SUBJECT

SUMMARY

ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION	SIGNATURE	DATE

ACTION TAKEN

SIGNATURE	TITLE	DATE

OSM-I FORM 208

CONVERSATION RECORD