



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

Subject Number:
GMT-6

Transmittal Number:
545

Date: JUN 7 1980

Subject: Eligibility of Operators and Authorized Services in the SOAP

Approval: [Signature] Title: Director

1. **Purpose.** This directive provides policy and procedures for determining eligibility of operators for assistance and for providing hydrologic and geologic/overburden technical services authorized under a Federal Small Operator Assistance Program (SOAP).

2. **Summary.** This directive supercedes the following Office of Surface Mining Reclamation and Enforcement (OSMRE) Directives: "Operator Eligibility for SOAP Assistance" (Chapter 43, Section 10, Transmittal Number 93) dated May 18, 1981, and "Laboratory Qualification for SOAP" (Chapter 43, section 20, Transmittal Number 94) dated May 18, 1981. Significant provisions of this directive include:

a. The use of data from the AML fee compliance system to verify production submitted by the applicant (para 4c(2)(d)3).

b. The use of data from the applicant violator system to verify ownership patterns (para 4c(2)(d)3), and to review the performance history of the applicant (para 4c(2)(d)5).

c. The applicant can appeal the final agency decision on eligibility to the Interior Board of Land Appeals (para 4c(4)).

d. Procedures for selecting and contracting with qualified laboratories (para 4c(6)).

e. A description of technical services authorized for the SOAP (para 3d).

3. **Definitions.**

a. **Actual Production.** The probable total amount of coal expected to be produced from all mining operations owned by the applicant during any consecutive 12-month period of the permit for which assistance is being sought.

b. **Applicant.** An individual, corporation, or partnership who has submitted an application for assistance through the SOAP and who intends to seek a SMCR permit.

c. **Attributed Production.** The probable total amount of coal expected to be produced during any consecutive 12-month period of the permit by: 1) individuals or business entities

having a financial interest in the applicant; 2) operations in which the applicant has a financial interest; 3) members of the applicant's family or the applicant's relatives; and 4) operations owned by persons who control the applicant's operation, as prorated and discussed in detail at 30 CFR 795.6.

d. **Authorized Services.** Services for the collection and interpretation of hydrologic and geologic/overburden analyses as are deemed necessary to comply with appropriate requirements contained in 30 CFR 780.21 and .22 (for surface mines) and 30 CFR 784.14 and .22 (for underground mines). Costs for drilling observation wells necessary for the collection of ground water information are covered under the program; however, costs for overburden drilling to define the extent of the coal or for sampling overburden materials are not covered. In addition, engineering analysis or designs are not authorized services. Collection of data from local or regional sites in expectation of applications is not authorized under the program.

An eligible applicant may receive complete services (all applicable hydrologic and geologic data normally associated with a new permit application) or partial services needed to correct permit deficiencies identified during the initial or mid-term permit review process.

e. **Control.** An individual or business entity producing coal and having the authority to make policy decisions or otherwise direct the management of the applicant or applicant's operation. Indirect control of an applicant can be exercised by the terms and conditions specified in a contract mining agreement with another coal company.

f. **Program.** Small Operator Assistance Program (SOAP) as authorized by Section 507(c) of SMCRA.

g. **Small operator.** Any operator whose probable total production is between 250 tons and 100,000 tons of coal during any consecutive 12-month period.

h. **Probable Total Production.** The sum of actual and attributed production from all operations for any consecutive 12-month period of the permit, or during each of the first five years of the permit for which SOAP assistance is to be provided, whichever period is shorter.

4. **Policy/Procedures.**

a. **Policy.** To receive SOAP assistance, an operator must offer proof of meeting the requirements outlined in 30 CFR 795.7 by submitting a complete application for assistance that can be evaluated and verified following the procedures in this directive.

b. Responsibilities.

(1) The Assistant Director, Program Policy, is responsible for developing national program policies and procedures as they are related to eligibility for the SOAP.

(2) The Field Office Directors (FOD) provide applications for assistance and other necessary information to potential applicants, render a final agency decision on each application for assistance, maintain records, and submit reports in accordance with the requirements of this directive.

(3) The Assistant Director, Eastern or Western Operations, shall provide contract and technical support, as requested, to the appropriate FOD.

(4) The Manager, AML Fee Compliance System, shall provide production information for applicants to appropriate FODs.

(5) The Chief, Division of Debt Management, shall provide information on ownership patterns and performance history of applicants to the appropriate FOD.

c. Procedures.

(1) General. The FODs shall send all necessary information and the approved application form (copy attached) to operators seeking assistance. To become eligible for assistance, operators must submit the completed application form with the required descriptive material and signed affidavits to the appropriate Field Office for review and evaluation.

(2) Application Review.

(a) Recordkeeping. All applications shall be date stamped and recorded at the time of receipt and a record kept on the status of each application.

(b) Complete Applications and Notification. Within 5 working days after receipt of an application, the FOD shall complete a review of the application for completeness in accordance with the requirements at 30 CFR 795.7. If the application is complete, the FOD shall send written notification to the applicant within 3 working days after the completeness review indicating that the application is complete and is under review for determination of eligibility.

(c) Incomplete Applications and Notification. Within 3 working days after the completeness review, the FOD shall send a notice to the applicant by certified mail specifying

deficiencies in the application. Field Office staff may help the applicant correct minor deficiencies.

(d) Assessment of Eligibility. The FOD shall evaluate the following for each applicant:

1 Expected Total Production Rates. The applicant is required to provide a schedule of the probable total coal production for each year of the proposed permit.

a Sources of Production. Actual and attributed production from the following sources will be counted:

i) All coal produced by operations owned by the applicant.

ii) The pro rata share, based upon percentage of ownership, of coal produced by operations in which the applicant owns more than a 5 percent interest, or in which other operations own more than 5 percent of the applicant.

iii) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management.

iv) All coal produced by operations owned by members of the applicants' family and relatives, unless it is established there is no direct or indirect business relationship between or among them.

b Coal Mined for Other Owners Under Contract. Generally, if there is no ownership, partial ownership, or apparent management control over the applicant by a contract buyer, broker, or other coal company having a business relationship with the applicant, then production from these sources is not attributed to the applicant. Otherwise, attributed production under the conditions stated above is added to the actual production of the applicant. Agreements or contracts between the operator and a buyer, broker or other coal companies having a business relationship with the applicant should be closely reviewed on a case-by-case basis to ensure compliance with 30 CFR 795.6. Some common business relationships that should be evaluated with respect to direct or indirect control and any resulting attributed production to the applicant include:

i) Applicants brokering coal for other producers;

ii) Applicants having agreements to mine coal for a broker, processor, or large company which owns or leases the coal and also has its own production;

iii) Applicants under contract to mine another owner's coal, and who purchase or lease equipment from or receive engineering assistance from that owner; and

iv) Applicants who apply for and are responsible for the permit provisions but allow the buyer to post bond.

2 Past Total Production Rates. An applicant's eligibility for assistance under the SOAP program is not solely based on past production rates. However, these rates serve as historical indicators of an applicant's production capability. Coal production for the year preceding the application is required in the application by 30 CFR 795.7. This production and ownership relationships that may result in attributed production shall be verified as explained below. The FOD shall also resolve any discrepancies between estimated production and past production. For example, assistance should be denied unless the applicant can demonstrate in writing that total production will be 100,000 tons per year or less, when total production during the preceding year was substantially greater than 100,000 tons.

3 Verification of Past Total Production Rates and Ownership Patterns.

a The FOD shall verify past production through production data provided by the Manager, AML Fee Compliance System.

b The FOD shall verify ownership patterns (and any attributed production) through information in the applicant violator system which will be provided by the Chief, Division of Debt Management.

4 Right to Mine and Right to Enter Documents. Right to mine documents normally are coal lease agreements and right to enter documents normally are related to surface rights. These documents should be current official documents and bear the name of the applicant.

5 Performance History. A review for unpaid civil penalties, unabated violations and delinquent reclamation fees must be conducted as a part of the SOAP assistance eligibility evaluation. The FOD shall evaluate performance history and eligibility for a permit through information in the applicant violator system which will be provided by the Chief, Division of Debt Management. The performance history of both the applicant and operator, if they are different entities, must be evaluated before approving SOAP assistance.

6 Eligible Operations. Sites where coal or coal refuse is to be mined and requires a permit in accordance with 30 CFR Part 780 or 784. Operations incidental to coal mining such as tipples and processing plants, are not eligible.

7 Lands Unsuitable for Mining. Assistance will be denied if the proposed permit area is designated as unsuitable for mining, or if a petition to designate the land unsuitable for mining is pending.

(3) Eligibility Decision. An applicant shall be found eligible if (a) he/she demonstrates through the application the intent to apply for a permit pursuant to the Act; (b) he/she establishes through the application that the probable total actual and attributed production for each year of the permit will not exceed 100,000 tons; c) the applicant does not organize or reorganize his or her company solely for the purpose of obtaining SOAP assistance; and d) the FOD finds the applicant is not restricted in any manner from receiving a permit for mining in the area proposed. The FOD shall render a decision on eligibility within 10 working days of the date of the notification letter of completeness and notify the applicant via certified mail within 3 days after the decision on eligibility. The written notification of eligibility must contain statements that: (a) the applicant and any successor is liable for any contract costs should the Office of Surface Mining Reclamation and Enforcement have to cancel the project before it is completed; and (b) that production data contained in the AML Fee Compliance System will serve as the basis for calculating total production once the applicant commences mining.

(4) Final Agency Decision on Eligibility. For those eligibility reviews which indicate potential ineligibility, the FOD shall notify the applicant of the potential ineligibility using certified mail. The letter should also state the following:

(a) the reason for the ineligibility;

(b) that a final agency decision will be rendered in 30 days from the date of the letter; and

(c) the applicant has the opportunity to respond in writing or request a meeting with the FOD within this 30 day period, if the applicant wishes to provide any other information that may have a direct bearing on the final agency decision.

Following the 30 day period, the FOD will render a final agency decision considering any relevant information provided by the applicant. The final agency decision will declare either-

1 the applicant is eligible based on information which showed the initial FOD finding to be based on inaccurate data, or

2 the applicant is ineligible. Any final agency decision must be conveyed to the applicant in writing by certified mail. For cases where the final decision finds the applicant ineligible, the letter shall contain:

a a statement of the final agency decision and the reason(s) for the decision;

b a statement that the decision is subject to administrative appeal to the Interior Board of Land Appeals and the following statement that describes the appeals procedure:

"This decision may be appealed in accordance with the regulations found at 43 CFR 4.1280 through 1286 (copy attached). To initiate an appeal, you must file a written notice of appeal with this office at the above address within 20 days of the date you receive this decision. At the same time, you must also file a copy of the notice with the Interior Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. The IBLA will render a final agency decision on the matter in accordance with the applicable regulations. Failure to strictly comply with these requirements may result in summary dismissal of the appeal."

(5) Submission of False Information. Information in the application for assistance is assumed to be submitted in good faith. If the FOD learns that any of the information submitted in the application is false, the applicant shall be notified via certified mail of the allegation. The applicant shall be given the opportunity to either explain or refute the allegation of false information. If the applicant fails to resolve the allegation, then the assistance shall be denied and the FOD shall refer the matter to the Office of the Inspector General for appropriate action.

(6) Contracting for Authorized Services. The FOD shall seek assistance, as appropriate, from the Assistant Director, Eastern or Western Field Operations with regard to

developing and issuing a Request for Proposal (RFP) solicitation, selecting a qualified laboratory under that solicitation, developing a site specific scope of work, designating a Technical Project Officer (TPO) to monitor the contract, and designating a contracting officer to administer the contract and pay invoices. Coordination shall be maintained with local Federal permitting personnel so that the site specific scope of work can be tailored exclusively to Federal permitting requirements and in the appropriate format for the requirements.

Laboratory qualification shall be accomplished as part of the RFP process. The RFP shall contain criteria for determining a laboratory's qualification based upon criteria found at 30 CFR 795.10 and unit cost criteria for selection of contractor based on lowest cost among those laboratories deemed technically qualified.

(7) Oversight of State Programs. This directive is not intended to serve as a basis for the oversight of State SOAPs. When evaluating a State's implementation of its approved regulatory program, OSMRE personnel shall adhere to all requirements and policies contained in that program.

5. Reporting Requirements. The FODs shall maintain a list of all small operators that have applied for, or are receiving assistance, showing as a minimum:

- a. Name of applicant and company and ownership relationships, if applicable.
- b. Address and phone number of applicant.
- c. Date when application was received.
- d. Date when application was approved or rejected.
- e. Probable total annual production.
- f. Geographic location of proposed permit area (state, county, longitude, and latitude).
- g. Summary of assistance provided and contract costs for assistance.
- h. Qualified laboratory(s) that provided assistance.
- i. Date(s) that approved laboratory report(s) sent to applicant.

This information shall be provided to the Chief, Division of Technical Services by October 1 of each year.

The FOD shall provide a copy of the contract and final laboratory report(s) to the applicant using certified mail. Furthermore, the FOD shall provide the name and MSHA number for each applicant receiving final reports to the Manager, AML Fee Compliance System.

The Chief, Division of Debt Management, shall provide reports on performance history as available through the applicant violator system, in response to FOD requests.

The Manager, AML Fee Compliance System shall provide reports on coal sales as available through the Fee Compliance System, in response to FOD requests.

6. Effect On Other Documents.

a. Supersedes the following memoranda:

July 23, 1985, memorandum signed by Director on "Small Operator Assistance Program Eligibility Applicant and Operator Violation History"

May 24, 1983, memorandum signed by Assistant Director, Program Operations and Inspection, on "Small Operator Assistance Program -Update of List of Qualified Laboratories"

March 12, 1985, memorandum signed by Acting Assistant Director, Program Operations and Inspection, on "Role of the Small Operator Assistance Program in Correcting Permit Deficiencies"

November 7, 1983, memorandum signed by Assistant Director, Program Operations and Inspection, on "Clarification on Reimbursement and Contract Mining Related to the Small Operator Assistance Program"

March 29, 1983, memorandum signed by Assistant Director, Program Operations and Inspection, on "Coal Activities Eligible for Assistance in the Small Operator Assistance Program"

December 30, 1982, memorandum signed by Assistance Director, Program Operations and Inspection, on "Eligibility of SOAP funding -Payment of Reclamation Fees"

b. Supercedes Directives: "Operator Eligibility for SOAP Assistance" (Chapter 43, Section 10, Transmittal Number 93) dated May 18, 1981, and "Laboratory Qualification for SOAP" (Chapter 43, Section 20, Transmittal Number 94) dated May 18, 1981.

7. **References.** Section 507(c) of the Act, and 30 CFR Part 795.
8. **Effective Date.** Upon issuance.
9. **Contact.** Chief, Division of Technical Services, 343-1480.
10. **Key Words.** SOAP, Eligibility Determination, Authorized Services.
11. **Appendices.**
Small Operator Assistance Application.

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

SMALL OPERATOR ASSISTANCE APPLICATION

OMB No. 1029-0061
Expires: 4/90

Date of Application: _____

A. BACKGROUND

1. Permit Applicant's:

Name

Company Name

Street Address

City

State

Zip

Authorized Company Official and Title

(Area Code) and Phone No.

2. Operator's name and address, if different than applicant: _____

3. Applicant is an individual _____ (or) a partnership _____
(or) a corporation _____. Date of formation _____

4. Has applicant ever been denied Small Operator Assistance? Yes ___ No ___
If yes, attach a full explanation of the circumstances and reasons for denial.

PAPERWORK REDUCTION ACT STATEMENT

"The Paperwork Reduction Act of 1980 (44 U.S.C. 35) requires us to inform you that: This information is being collected in order for a determination of qualification to be made. This information will be used to determine applicant's qualification. The obligation to respond is voluntary."

Public reporting burden for this form is estimated to average 10 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, Washington, D.C. 20240; and Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

5. Has applicant ever had a Small Operator Assistance Project with either OSMRE or a State Regulatory Authority. Yes ___ No ___. If yes, complete below:

<u>Project Name</u>	<u>Contractor</u>	<u>OSMRE or State</u>	<u>Date SOAP Reports Received</u>
---------------------	-------------------	-------------------------------	-------------------------------------------

B. PERMIT INFORMATION FOR PROPOSED ASSISTANCE SITE

1. Is site currently permitted? Yes ___ No ___
2. If permitted, give: Permit Number _____ Issue date _____
3. What are the anticipated starting and termination dates of the mining operation? From _____ To _____

4. Name and location of proposed permit site:

- a. Name: _____
- b. County: _____
- c. Latitude: _____
- e. Longitude: _____
- f. Name of nearest stream: _____

5. Method of Mining (check appropriate box):

- | | | | |
|-------------------|-----|---------------------|-----|
| Area Stripping | () | Mountaintop Removal | () |
| Deep Mine | () | Auger Operation | () |
| Contour Stripping | () | Other | () |

If other describe: _____

6. Number of acres in permit area (nearest tenth): _____

7. (a) Probable depth of coal resource:
 Average depth to coal _____ Feet
 Maximum depth to coal _____ Feet

(b) Probable thickness of coal resources:
 Feet _____ Inches _____

(c) Are there multiple seams? Yes _____ No _____
If yes, attach depth and thickness information for each additional seam.

(d) Estimate of reserves in the permit area and method of calculation.

8. State the projected production for each year of the permit area for which assistance is being sought.

SOAP Site

Year (1) _____
Year (2) _____
Year (3) _____
Year (4) _____
Year (5) _____

C. MAPS

Provide U.S. Geological Survey topographical map of 1:24,000 scale or larger, or a topographic map of equivalent detail which clearly shows:

- (a) The boundaries of the proposed permit area and the natural drainage above and below the affected area.
- (b) Property boundaries and the name of record for property owners within the permit area and adjacent land.
- (c) The location of existing structures and developed water sources within the permit area and on adjacent lands.
- (d) The location of existing and proposed test borings or core sampling.
- (e) The location and extent of known workings of any underground mines within the permit area and adjacent area.

D. DOCUMENTATION

Provide copies of documents which show that:

- 1. The applicant has a legal right to enter and mine coal within the permit area; and
- 2. A legal right of entry has been obtained for the Office of Surface Mining Reclamation and Enforcement and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected, to collect environmental data, or to install monitoring equipment.

E. ATTRIBUTED PRODUCTION
(during past 12 months)

- I. (a) Are other mines owned or operated by the applicant? Yes ___ No ___
- (b) Does the applicant control any other mine ("control" means, but is not limited to, direction of the management)? Yes ___ No ___
- (c) Does the applicant own more than a five percent (5%) interest in any other coal mining operation? Yes ___ No ___
- (d) Does any person or corporation own more than a five percent (5%) interest in the applicant, or directly or indirectly control the applicant by reason of stock ownership, direction of the management, or in any other manner whatsoever? Yes ___ No ___
- (e) Does the applicant have any direct or indirect business relationship between or among his/her family members and relatives owning coal producing operations? Yes ___ No ___

2. If any of the above five questions (1(a), (b), (c), (d), or (e)) are answered "Yes", provide the information listed below for each coal mining operation operated during the past twelve (12) months. If question "(c)", "(d)" or "(e)" was answered "Yes", the total and pro rata share of coal production must be furnished. List each mining operation separately and attach extra sheets as needed.

- (a) Name of Company _____
- (b) Mine Location (County) _____ State _____
- (c) Surface Mine or Underground Mine Permit No. _____
- (d) MESA (MSHA) I.D. No. for the mine site _____
- (e) State Coal Severance Tax Vendor No. _____
- (f) Tons of coal produced (attach legible copy of coal severance tax return for each month during most recent 12 months) _____ Pro rata share _____

3. State the total projected production for each year of the proposed permit for which assistance is being sought.

Other Operation(s)

- Year (1) _____
 Year (2) _____
 Year (3) _____
 Year (4) _____
 Year (5) _____

F. UNDERTAKING OF APPLICANT

The undersigned, as a duly authorized representative of the applicant, hereby agrees that the applicant intends to apply for a permit pursuant to the regulations and shall, if the applicant receives small operator assistance:

1. Fully cooperate with all laboratories, their employees and agents, that will produce the determination and statement;
2. When requested, submit coal production information for the area affected by this application and for any other mining operation in which the applicant has an interest or an operation which has an interest in the applicant; said information is to be furnished within thirty (30) days of the end of the first twelve (12) months of mining activity and thereafter for each twelve (12) month period of mining under the permit for which assistance is provided; and,
3. Notify the Office of Surface Mining Reclamation and Enforcement in writing within 10 days of any change (a) in ownership or mining plans that may affect assistance eligibility or permit eligibility pursuant to the information in this application, or (b) that may require a change in the scope of work being performed by the contractor.
4. Refund within 30 days to the Office of Surface Mining the full amount for laboratory services paid pursuant to this applicant (with computed interest penalty) in accordance with 795.12(a), upon presentation of appropriate receipts, if any of the following conditions occur:
 - (a) Information submitted as required by paragraph (2) above or from the abandoned mine lands fee compliance system shows actual and attributed coal production to be in excess of 100,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit, whichever is shorter;
 - (b) knowingly submits false information;
 - (c) Fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory report;
 - (d) Fails to commence mining after obtaining a permit;
 - (e) Sells, transfers or assigns the permit to another person or company and the transferee's total actual and attributed production exceeds the 100,000 ton annual production limit during any consecutive 12-month period of the remaining term of the permit. In this case, the applicant and its successor shall be jointly and severally obligated for reimbursement.

Undertaking of the Applicant (continuation sheet)

- 5. The operator, represented by the authorized company official (signature below), agrees to assume responsibility for the care, maintenance, and eventual disposal of any ground-water observation wells drilled on their behalf. Upon completion of the Small Operator Assistance Program study, the use of and responsibility for these wells shall transfer to the operator. Furthermore, it shall be the responsibility of the operator to meet all appropriate State and Federal regulations regarding the continued use and/or eventual abandonment of these wells.

G. AFFIDAVIT

I, _____, as the applicant, or as a duly authorized representative, being first duly sworn, state that to the best of my knowledge all information furnished in this applicant is true and complete.

by _____

SIGNATURE

TITLE

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 19__.

My commission expires _____

(Notary Public)