

	U.S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Code: INE-44
		Transmittal Number: 957
		Date: 11-21-08
Subject: Contemporaneous Evaluation of Reclamation Activities		
Approval: Brent Wahlquist		Title: Director

1. **Purpose.** Many operators do not apply for bond release until several years after reclamation work has been completed. The purpose of this Directive is to ensure, where the Office of Surface Mining Reclamation and Enforcement (OSM) is the regulatory authority, that evaluation of critical aspects of reclamation are not deferred until a bond release application is filed. OSM will conduct timely and well-documented inspections that contemporaneously evaluate critical mining and reclamation activities as they occur in the mining and reclamation process.
2. **Summary of Changes.** This is a new Directive.
3. **Definitions.**
 - a. **Bond Release Inspection.** A bond release inspection is a required inspection and evaluation of reclamation work by the regulatory authority within 30 days of receipt of a bond release application, or as soon thereafter as weather conditions permit. (30 CFR 800.40(b)(1))
 - b. **Complete Inspection.** A complete inspection is an on-site review of a permittee's compliance with all permit conditions and requirements imposed under the applicable program within the entire area disturbed or affected by surface coal mining and reclamation operations. (30 CFR 842.11(c)(1)(ii))
 - c. **Inspectors.** Inspectors are duly authorized representatives of the Secretary of the Interior under Directive INE-18 conducting inspections where OSM is the regulatory authority under subsection 517(b)(3) of SMCRA and 30 CFR Parts 842 and 843.
 - d. **Partial Inspection.** A partial inspection is an on-site or aerial review of a permittee's compliance with some of the permit requirements and conditions imposed under an applicable program. (30 CFR 842.11(c)(1)(i))
4. **Policy.** For reclamation to be effective and the land to be restored to equivalent productivity, there is a critical sequence of events that must be followed in the reclamation process. These include such things as removing and storage of topsoil and/or other suitable soil materials prior to mining, appropriately isolating and burying any toxic materials during mining, regrading the mine spoil to approximate original contour in a manner that blends in with the

drainage pattern, replacing the topsoil and/or suitable soil materials, and then reestablishing vegetation.

If any of these are not done properly in sequence, remedial actions (such as additional regrading or reworking the backfill) may be required after topsoil replacement and vegetation have been established. A second removal and replacement of topsoil is a substantial environmental disruption in the short-term that also may impact the potential for long-term reclamation success.

It is OSM policy that, where OSM is the regulatory authority, its inspectors will contemporaneously evaluate and document, in the course of regular inspections required by 517(b)(3) of SMCRA, each critical step in the reclamation process as it occurs. All aspects of reclamation must be evaluated as they occur. The results of that evaluation will be documented in the inspection reports, including any concerns or remedial actions that may be required. Reclamation activities that have previously been evaluated will not be re-evaluated unless significant, unexpected changes in site conditions call into question the overall viability of the reclamation, as in cases of land instability or excessive backfill settlement.

While the ultimate determination of reclamation success and release of the operator's liability for further reclamation efforts occurs only through the open and public process of bond release, OSM is not relieved of its responsibility, where it is the Regulatory Authority, to contemporaneously evaluate, document, and require remedial actions, where appropriate, for each aspect of the mining and reclamation process that can be observed by the inspector as it occurs. Contemporaneous evaluation of reclamation activities is intended to ensure that any issues or problems with key aspects of reclamation will be identified and resolved during a reclamation phase and not be deferred until a bond release application is processed.

5. **Responsibilities.**

a. The Federal Regulatory Authority will ensure that all inspections of surface coal mining operations contemporaneously evaluate and document each aspect of the mining and reclamation process as it occurs in accordance with this directive.

b. Inspectors under a Federal Regulatory Program will ensure that each inspection of a surface coal mining operation includes an evaluation and documentation of each aspect of the mining and reclamation process as it occurs in accordance with this directive.

6. **Procedures.** Complete inspections under 30 CFR 842.11(c) should include an evaluation and documentation of all aspects of the mining and reclamation process that are occurring or have occurred since the previous inspection, regardless of whether the previous evaluation occurred during a complete or partial inspection.

Partial inspections under 30 CFR 842.11(c) should target, where practicable, reclamation activities that are actively occurring, including evaluating and documenting all reclamation activity that has occurred since the previous evaluation, regardless of whether the previous evaluation occurred during a complete or partial inspection.

During an inspection under 30 CFR 800.40(b) associated with processing an application for bond release where OSM is the regulatory authority, the prior inspection history of the site plays a prominent role. For example, when evaluating a Phase I bond release application where topsoil has been replaced, the results of prior inspections must be taken into account before considering whether approximate original contour (AOC) has been achieved. In cases where previous inspections addressed, or should have addressed, AOC before replacement of topsoil, only compelling new information would justify consideration of AOC after topsoil has been replaced.

7. **Reporting Requirements.** None
8. **Effect on Other Documents.** None
9. **References.**
 - a. The Surface Mining Control and Reclamation Act, subsection 517(b) (3)
 - b. Code of Federal Regulations, 30 CFR 800.40, "Requirement to Release Performance Bonds"
 - c. Code of Federal Regulations, 30 CFR Part 842, "Federal Inspections and Monitoring," and Part 843, "Federal Enforcement"
 - d. OSM Directive INE-18, "Authorized Representatives," Transmittal Number 635, September 14, 1990
 - e. Letter of October 19, 1999, from OSM Director Kathy Karpan to Ms. Carolyn Johnson, Citizens Coal Council, and Ms. Jeannie Benally, Dine' Mining Action Center
10. **Effective Date.** Upon Issuance
11. **Distribution.** By electronic format
12. **Appendices.** None

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