Memorandum

To: Director

Through: Deputy Director, Operations and Technical Services

From: Ad Hoc Bonding Committee/Alternative Systems

Subject: Secretarial MBO on Alternative Bonding Systems

OSM in conjunction with the Office of the Solicitor conducted a review of alternative bonding systems (ABS's). An analysis of the review has been prepared and is attached hereto. The ad hoc committee responsible for the analysis, has concerns about the ability of existing ABS's to meet the requirements of Section 509 of SMCRA and 30 CFR 800.11 (e). The committee believes that OSM needs to maintain a consistent and continuous vigil over ABS's and their solvency. The committee also believes that there is a need to strengthen the enforcement of existing requirements for ABS's in order to assure their solvency for current and future reclamation. Therefore, considerations for evaluating the sufficiency of any ABS to meet successfully the existing requirements contained in SMCRA and the regulations have been prepared as part of the analysis. To this end, the attached document includes a review of the needed considerations for OSM to understand solvency, analyze ABS's, and recognize various ways of meeting the solvency requirement.

To determine what revisions to existing and proposed ABS's may be needed for them to meet the requirements of SMCRA and the OSM regulations, the committee recommends the following:

- That the evaluation considerations be incorporated into OSM Directive REG-8 which pertains to state program oversight. This would provide agency-wide consistency in the way ABS solvency is analyzed and evaluated.

- That all existing and proposed ABS's be fully reviewed, using the attached considerations, to determine their sufficiency in meeting the requirements contained in 30 CFR 800.11(e). We suggest that the Director in consultation with the Field Office Directors establish firm and expedient dates for the completion of these reviews and any necessary follow-up actions.

- That the considerations be used to analyze, understand and evaluate all future state program amendments that pertain to ABS's.
That rulemaking be initiated with respect to clarifying responsibilities in the following two areas of concern:

- In the event an ABS terminates, the ABS must remain liable for the generation of income, or an alternate system established, to satisfy existing forfeitures and future liability of the sites covered by the ABS.

- In the event of a Section 733 action, the ABS fund and all supporting legal documents, such as indemnity agreements, must be transferable to the United States.

That the committee brief the Field Office Directors and States, in a workshop setting, to assure a thorough and consistent understanding of the considerations presented here.

In keeping with the general requirement that sufficient funds for reclamation be available, that OSM review the adequacy of conventional bonding systems and the need for additional guidance or evaluation criteria.

The review and attached analysis included the solicitation of ABS information from the six states currently conducting alternative bonding systems and consultation with an internationally recognized actuarial firm (see Attachment 2). Information and recommendations from these sources have been incorporated into the considerations.

Upon your approval of these recommendations, the ad hoc committee will proceed appropriately as specified above.