

## APPENDIX 6.5      AML PROGRAM-SPECIFIC INSTRUCTIONS FOR CATEGORICAL EXCLUSION DETERMINATION

A checklist is used to determine if an AML project funded through Title IV of SMCRA is eligible for a categorical exclusion under NEPA. A ‘yes’ answer to any question means that the project is not eligible and requires preparation of an environmental assessment.

List the project name along with a brief description of the project using AML Inventory keywords in the title block.

### I.      **General Exceptions**

These exceptions were developed after a review of common AML reclamation projects and the impacts associated with those projects. AML projects that include any of the following problems, situations, or activities will require an EA as detailed in 516 DM Chapter 13.

1. Subsidence projects involving the placement of any material into underground mine voids through drilled holes to address more than one structure.
2. Mine fires and refuse fires.
3. Hazardous or explosive gases. For example, projects involving the venting of methane or carbon dioxide.
4. Dangerous impoundments, both surface and underground, as defined in the inventory guidelines (AML-1).
5. Dangerous slides where the abatement work can result in damage to inhabited property.
6. Undisturbed, non-commercial borrow or disposal sites.
7. Hazardous wastes as defined by the EPA.
8. The use of explosives.
9. Projects over 100 acres in size.

### II.     **Department of the Interior Exceptions**

These exceptions are presented in 43 CFR 46.215. The Department’s procedures were published in the *Federal Register* on April 29, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437[1]). The Department Manual includes the following 15 exceptions that apply to individual actions that are categorically excluded actions but may meet any of the criteria listed here. Environmental documents must be prepared for actions which may:

1. Have significant impacts on public health and safety.
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (E.O. 11990); floodplains (E.O. 11988); national monuments; migratory birds; and other ecologically significant or critical areas.
3. Have highly controversial environmental effects.

4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
6. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.
7. Have significant impacts on properties listed or eligible for listing on the National Register of Historic Places.
8. Have significant impacts on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.
9. Have significant impacts on resources requiring compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.
10. Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.
11. Involve unresolved conflicts concerning alternative uses of available resources (NEPA Sec. 102(2) (E)).
12. Have a disproportionate, significant adverse effect on low income or minority populations (EO 12898).
13. Restrict access to and ceremonial use of Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites (EO 13007).
14. Contribute to the introduction, continued existence or spread of Federally listed noxious weeds (Federal Noxious Weed Control Act).
15. Contribute to the introduction, continued existence or spread of non-native invasive species or actions that may promote the introduction, growth, or expansion of the range of non-native invasive species (EO 13112).

### **III. Resource Impact Exceptions**

The resources values correspond to those listed in this NEPA Handbook (Chapter 7). If any agencies, persons, or groups have unresolved issues with the proposed project, an EA must be prepared.

If project activities result in impacts that must be mitigated through the uses of techniques beyond common construction practices, an EA must be prepared to analyze the potential environmental effects, and alternatives. Mitigation, in and of itself, is not considered specialized.

There are several mitigation techniques related to wetlands and streams that are considered common construction practices. Specialized mitigation is an indicator of the potential for significant adverse effects. The following examples are provided to help the reviewer determine when mitigating measures require preparation of an EA. These examples are for guidance only and are not inclusive.

<b>Common Mitigation Practices Not Normally Requiring an Environmental Assessment:</b>	<b>Specialized Mitigation Practices Normally Requiring an Environmental Assessment:</b>
Watering roads to suppress dust.	Developing detailed dust control plans in response to air quality zone requirements, or public health considerations.
Installation of silt fence and hay bales to control sediment.	A specialized sediment control plan required to protect sensitive off-site resources.
Routine traffic control such as flagmen or safety barricades.	The use of road closures and detours resulting in a substantial alteration of traffic patterns.
Replanting of trees, shrubs, and grass to replace lost vegetation types.	Developing a specialized revegetation plan in response to concerns over adverse impacts on plant communities.
Placement of brush and rock piles to replace wildlife habitat.	Developing a specialized plan in response to concerns over adverse impacts on wildlife communities.
Routine placement of barriers that allow continued use of mines by non-endangered bat or other species.	Specialized mine closure procedures in response to site specific concerns about bat habitat.

#### **IV. Attach Consultation Letters and a Location Map**

Attach all consultation letters including, but not limited to, SHPO, ESA, and CWA consultation letters, and any other consultation letters required by the state reclamation plan. Actual copies of the consultation letters or MOU must be attached to the categorical exclusion determination form. Signatory checklists that document compliance with these, without the consultation letters, will not be accepted.

The location map is traditionally from a 7.5 minute quadrangle map, with the map name, project name, and project location legibly marked. A secondary map may be needed to include all project features, important resource values, landmarks, roadways, and utilize the highest quality aerial photography available.

#### **V. Responsible Official Certification**

The official signing this block is certifying the accuracy and completeness of the statements on the form. The person's name and title should be typed on the second line.

#### **VI. OSMRE Determination**

The OSMRE official making the determination is to review this document, check the appropriate block, and sign as indicated. The person's name and title should be typed on the second line.