



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

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AML-22

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Subject: Evaluation of State and Tribal Abandoned Mine Land Programs

Approval:

*Robert P. Moran*

Title: Director

1. Purpose. This directive establishes policies, procedures and responsibilities for conducting enhancement and performance reviews of State and Tribal Abandoned Mine Land (AML) Programs (oversight).

2. Summary. This directive:

- sets forth principles of excellence which can be used as guidelines for conducting Enhancement and Performance Reviews (EPR);
- suggests measurement techniques for each principle;
- sets forth core program data to be reported to the Office of Surface Mining Reclamation and Enforcement (OSM) by the States/Indian tribes;
- establishes <sup>Performance</sup> ~~Programmatic~~ Agreements (PA) as the basis for a shared commitment approach by States, Indian tribes and OSM in carrying out specified responsibilities; and
- establishes the <sup>Fiscal</sup> ~~calendar~~ year as the evaluation period for reviews.

3. Definitions.

a. Enhancement and Performance Reviews. The process of evaluating and assisting States and Indian tribes in the administration, implementation and maintenance of their approved reclamation programs to ensure that the provisions of SMCRA and the implementing regulations are met.

b. State and Tribal Reclamation Programs. A State/Indian tribe-administered program, approved under section 405 of the Surface Mining Control and Reclamation Act (SMCRA), to conduct AML activities in accordance with Title IV of SMCRA.

4. Policy/Procedures.

a. Responsibilities.

(1) Director/Deputy Director. Establish nationwide reclamation policies and national priority review topics.

(2) Assistant Director, Program Support.

(a) Develop, clarify and revise national EPR policies and procedures.

(b) Coordinate with other Assistant Directors (AD) and Regional Directors (RD) on EPR issues and activities affecting their areas of expertise and responsibilities.

(3) Regional Directors.

(a) Ensure that EPR activities are planned, conducted, monitored and reported in accordance with national policies, procedures and guidance.

(b) Consistent with national policy, procedures and standards, provide supplemental guidance to Field Offices to address issues arising from implementation of the national guidance.

(c) Ensure that PA's entered into by OSM and States/Indian tribes are consistent with national policies, procedures, regional needs, and resource availability.

(d) Provide Field Offices with the technical assistance necessary to support EPR activities.

(e) Resolve issues which the Field Office Directors and State/Indian tribal Program Managers have been unable to agree.

(f) Coordinate with other RD's and ADs on EPR issues and activities affecting their areas of expertise and responsibilities.

(g) In States/Indian tribes in which the Regional Office conducts oversight, follow (4) below.

(4) Field Office Directors .

(a) Negotiate and execute PA's.

(b) Conduct EPR activities and prepare related documents and reports in accordance with the appendices to this directive and other national and regional policies and procedures.

(c) Develop day-to-day operational procedures consistent with EPR policies.

(d) Interact on a routine basis with citizen and environmental organizations to determine their areas of concern.

(e) Develop and execute PA's through discussions with respective program States/Indian tribes.

(f) Where necessary, develop and incorporate into a PA annual plans for providing technical or programmatic assistance to a State/Indian tribe.

(g) When appropriate, prepare and present a briefing for the Director/Deputy Director, and RD, if applicable on the annual evaluation report and conditions within the State/Indian tribe.

b. Policy.

(1) The overall measure of excellence in the AML program is the degree to which States and Indian tribes are successful in achieving planned reclamation goals. By emphasizing outcomes of reclamation, OSM can identify when the desired end result is not being achieved and establish a basis for reaching agreement with (and providing assistance to) a State/Indian tribe to improve its program. By focusing on end results, OSM can better determine the root causes of problems and concentrate its resources on prevention.

(2) The scope of EPR's for each State/Indian tribal program will be tailored to the unique differences in the programs resources. OSM will plan its EPR and assistance after examining the needs and requirements of each program within a region.

c. Procedures.

(1) EPR activities must be planned, conducted and reported in accordance with this directive, its appendices and all other relevant directives and supplemental guidance.

(2) Evaluations will be conducted annually on a ~~year~~<sup>5 year</sup> year basis.

5. Reporting Requirements: Field Office Directors and, for those States/Indian tribes in which the Regional Office conducts oversight, Regional Directors must prepare an annual evaluation report for each State/Indian tribe within their area of responsibility.

6. Effect on Other Documents. Supersedes Directive REG-8, "Oversight of State Regulatory Programs and State and Tribal Abandoned Mine Land Reclamation Programs," Transmittal Number 815, dated June 1, 1994 with respect to AML EPR activities .

7. References. OSM Directive GMT-10, "Federal Assistance Manual"; OSM Directive AML-1, "Abandoned Mine Land Inventory System", Section 4; OSM Directive AML-4, "Procedures for Emergency and Federal High Priority Reclamation Program Projects", Appendices 1 through 10; Title IV of SMCRA; 30 CFR Parts 870 through 888; March 6, 1980 Federal Register ("Guidelines for Reclamation Programs and Projects" 45 FR 14810-14819).

8. Effective Date: When signed.

9. Contact: Division of Reclamation Support (202-208-5365).

10. Keywords: State and Tribal Programs, Enhancement and Performance Review, Annual Report.

11. List of Appendices.

- Appendix 1 Emphasizing Outcomes Program Uniqueness
- Appendix 2 Principles of Excellence and Performance Measures
- Appendix 3 The ~~Programmatic Agreement~~ *Performance*
- Appendix 4 State/Indian Tribe Enhancement and Performance Review
- Appendix 5 Enhancement and Performance Review Report
- Appendix 6 The Annual Report

### **Emphasizing Outcomes Program Uniqueness**

The mission of the AML program is to permanently reclaim abandoned mine sites by abating hazards, reducing/mitigating adverse effects of past mining and restoring adversely affected lands and water to beneficial uses. Whenever possible, this reclamation should be conducted primarily through approved State and Tribal programs with well trained staff using the latest technology in an atmosphere of shared commitment between these programs and the Office of Surface Mining. Enhancement and performance evaluations should consistently provide information, assistance, and feedback to States and Indian tribes, OSM, and the public so that the purposes and goals of Title IV can be met efficiently and effectively.

The overall measure of excellence in the AML program is the degree to which States and Tribes are successful in achieving planned reclamation goals. One of the primary goals of Enhancement and Performance Reviews (EPR) is to improve upon this success. EPR's will document each State's/Indian tribe's ability to achieve desired outcomes. Emphasizing outcomes also will allow OSM to identify when the end result is not being achieved and establish a basis for reaching agreement with (and providing assistance to) a State/Indian tribe to improve its program. By focusing on end results, OSM can better determine the root causes of problems and concentrate its resources on prevention.

The scope of EPR for each State/Indian tribal program will be tailored to the unique differences in the programs resources. OSM will plan its EPR and assistance after examining the needs and requirements of each program within a Region. With these differences in mind, the scope and level of EPR by OSM must be flexible to achieve the purposes of SMCRA. The Regional Offices and Field Offices, in cooperation with each AML Reclamation Program, will determine performance measures appropriate for evaluating State/Indian tribal achievement under the "Principles of Excellence."

## Principles of Excellence and Performance Measures

Following are six principles of excellence which support the concept of excellence in reclamation, along with suggested performance measures which could be used to determine the degree to which programs were meeting the principles. These are suggestions only, and are provided as examples of the type of questions the Field Office or Regional Office as applicable could use in a review. They are neither all inclusive nor mandatory for each review. They are representative of the questions that should be asked when addressing a particular principle. In addition to answering the question either "yes" or "no", the evaluator should prepare a narrative to support and explain the answer and to describe the degree to which the program meets the principle.

Evaluation should be an on-going process which will bring about overall improvement in the AML program. They are not to be done as ~~yearly~~ <sup>fiscal year</sup> reviews which expound upon problems in a program, but as a continual process that assists in strengthening future performance if needed.

1. Programs should be responsive to public concerns. The State or Tribal AML program should effectively address public inquiries concerning the program and provide requested information. The public must be able to provide input into the project selection process. There also needs to be a demonstrated effort to inform and educate the public of the benefits of the AML program.

### Possible Performance measures

- Does the program follow the plan's process for including citizen input into reclamation project selection?
- Does the program properly implement interagency/intergovernmental coordination? It should be coordinating with all required and affected agencies (such as the U.S. Fish and Wildlife Service and the State Historic Preservation Office, as well as affected State and local entities) at the appropriate time in project design.
- Does the program provide requested information to the public in a timely manner?

2. Program States and Indian tribes must have approved reclamation plans which meet the requirements of Federal laws and regulations and conduct reclamation in accordance with their plan. Included in this plan must be an identification, prioritization, and planning process. The plan should be updated timely to reflect changes in the law or regulations.

### Possible Performance measures

- Does the current plan meet the requirements of SMCRA, the regulations and other applicable laws? If not, a schedule must be established and the plan changed.
- Does the program autonomously recognize the need for change in the plan and take the necessary actions to change it on its own initiative?
- Does the program comply with OSM Directive AML-1 (AML Inventory)? This measure focuses on whether the State/Indian tribe provides OSM with updates of the Problem Area Description (PAD) in a timely and complete and cumulative manner. OSM should check the State's/Indian tribe's on-going process for documenting priority determinations, for placing problem areas into the inventory and for submitting updates to show funding and accomplishments. There should be an ongoing review of both the State's/Indian tribe's implementation of the OSM Directive AML-1 guidelines and criteria, as well as the status of the inventory on a program-wide basis.
- Does the program comply with its plan for project ranking and selection? This addresses whether the selection of projects by the State/Indian tribe was in accordance with the plan, or if in variance, can be reasonably explained and justified.
- Does the program follow the project planning requirements of the plan? This item looks at the project design process and the process for obtaining the necessary rights-of-entry. This category also includes the identification of liens on any property subject to the project construction.
- Are the contracting procedures being followed? The contracts should accurately and unambiguously reflect the project goals and mitigation identified in the environmental documents and consultations/coordinations with other agencies.
- Does the State or Indian tribe perform the AVS check on the successful bidder at the time of contract award?

3. On-the-ground reclamation is to be achieved in a timely, cost-effective manner. AML programs should have efficient and cost-effective reclamation technology and administration that provides long-term success. Reclamation should be conducted in a manner that results in a net benefit to society. When possible, reclamation should not only eliminate a hazard but create a beneficial use for the reclaimed area.

#### **Possible Performance measures**

- Is construction completed on schedule (within the performance period)?
- Are the final costs of the project, as compared to the program's original estimates, appropriately documented and supported?
- Are projects completed in an environmentally sound manner and in compliance with all state and federal statutory and regulatory requirements to minimize both short- and long-term effects? Discuss measures to control sedimentation, water pollution, enhance wildlife or other natural resources values and in other areas. Did the State obtain all necessary permits in a timely manner, to include those pertaining to historic preservation, wetlands preservation and restoration and stormwater discharge?"
- Does the State use construction techniques which lower cost and/or improve stability?
- Is the degree to which the State/Indian tribe monitors projects during construction appropriate?
- Do completed projects meet the goal of the design?
- Do projects frequently require unscheduled maintenance (thereby indicating a possible need to rethink designs)?
- Is there an effective procedure for post-project reviews to evaluate the long-term success of project designs? Is the procedure being implemented? Are adequate post-project reviews being conducted? Are the reviews being adequately analyzed on a program basis, and are results/recommendations of the analysis being used to improve long-term success of project designs?

4. Programs should have systems in place to ensure accountability and responsibility for spending AML funds and a process to assure that such systems are working. Programs should develop and maintain internal controls to ensure that proper procedures for grants and other activities are properly followed. These systems should include, but not be limited to, accounting records, contracting and procurement records, payroll records, inventory records and project records.

#### **Possible Performance measures**

- Are AML monies distributed to their State/Indian tribe obligated quickly (i.e., is the unobligated balance growing, shrinking, or stable)?



- Are drawdowns and disbursements of monies and accounting of receipt/disposition of program income accomplished in accordance with requirements for Federal funds?
- Are financial, progress and close-out reports submitted timely?
- Are procedures for procurement, management and disposal of property and/or services followed?
- Do the internal control systems work? Are there indications that the program has detected and corrected problems on its own initiative?
- Are audits conducted by States/Indian tribes in accordance with the Federal Single Audit Act of 1984, and are they up to date with audit resolution?

5. Information on AML Program operations and accomplishments should be gathered and maintained in an effective manner. Programs should have records which reflect all aspects of the program, and a well-designed, organized system to maintain these records. There should be trained staff familiar with these systems in order to provide information quickly and accurately. This information should be readily available to OSM.

Possible Performance measure

- Does the program maintain a data management system to provide an organized method of determining and updating informational needs of management, with the ability to process data in an efficient manner?

6. Emergency complaints should be addressed timely and effectively and in compliance with the emergency guidelines outlined in OSM Directive GMT-10 and the approved State Emergency Program Procedures. Only that action necessary to abate the emergency should be taken under the emergency program.

Possible Performance measures

- Are complaints investigated promptly?
- Do emergency recommendations meet the emergency criteria?
- Are the emergencies promptly abated?
- Are emergency funds being used for only the emergency abatement?
- Is the remaining problem, if any, listed on the inventory?

### **The Programmatic Agreement**

Each State/Indian tribe program, together with their respective OSM Field Office or Regional Office as applicable, should identify specific performance objectives and related measurements in annual programmatic agreements. These agreements will be negotiated by both parties and will concentrate on programmatic functions which may need improvement. The established principles and measurements shall be used when developing each specific State/Indian tribe/OSM programmatic agreement. When applicable statistics should be developed both to support and explain the responses to the questions and to measure progress.

Programs need not be reviewed each year in each of the six areas covered under the principles of excellence. Instead, each State/Indian tribe should develop with the appropriate Field Office or Regional Office a programmatic agreement which addresses the areas to be reviewed and establishes applicable performance measures. Since much of the enhancement and performance is trend analysis and the interaction between the programs and OSM is continual, the programmatic agreements can be for periods longer than one year. However, they should be reviewed every year to determine the progress being made.

These agreements would first address the overriding goal of the AML program, i.e., reclamation. They would recognize that if the State/Indian tribe was permanently reclaiming AML sites by abating hazards, reducing/mitigating adverse effects of past mining and restoring adversely affected lands and water to beneficial use, it would be conducting an overall successful program.

Using the principles of excellence and any national objectives established by the Director for the AML program, the agreements would also address areas on which enhancement and performance reviews would concentrate for the upcoming year. Within the individual agreement, specific measures would be established as necessary. Finally, within the agreement, applicable principles for OSM would be established. For example, if the focus was on grants management as described in Principle 4, the agreement could stipulate that OSM process grant documents and issue Authorizations to Proceed within specified time frames. A suggested format to be used for each principle being examined follows.

**State/Indian Tribe  
Enhancement and Performance Review  
Calendar Year Ended 199\_**

**Principle Being Evaluated:** Identify the principle of excellence being evaluated.

**Reason for Selection:** Identify if this review is an initial, follow-up or cyclical one.

**Requirements:** Explain the expectations of the Field Office or Regional Office as applicable and the program in the area under evaluation.

**Background:** Explain to the degree applicable the background leading up to the evaluation, including why this principle was selected for evaluation, when it was last evaluated, and what the findings were from previous evaluations.

**Population/Sample:** Identify the population that will be subject to evaluation, the sample that will be reviewed, and how the sample will be selected.

**Summary of Planned Review:** Describe how the evaluation will be conducted. This should include what files will be reviewed, if site visitations will be conducted, the measurements that would be used to determine success or excellence, and statistics that will be gathered.

**Reporting:** Explain how the results of the review will be reported.

**Schedule:** Identify the major steps in the evaluation and report writing and the benchmarks for completion of these steps.

## Enhancement and Performance Review Report

**Principle Reviewed:** Identify the principle reviewed.

**Review Dates:** Provide the dates of the review, any field visits, and other contacts with the program.

**Personnel:** Provide the names of all OSM and program staff involved in the review, and their telephone numbers.

**Background:** State the reasons for the review, including whether it was a follow up review, a cyclical review or a first time review.

**Review Methodology:** Describe the population subject to the review, the actual sample reviewed and how the sample was chosen. Discuss also the statistics generated by the review, the specific data gathered and specific measures used to evaluate the principle.

**Findings and Conclusions:** Report the findings with specific examples to support these findings. Use statistics and discuss the specific measures to explain the degree to which the principle is being accomplished. Identify positive conclusions by describing the accomplishments of the program. Document and describe any issues and their causes, and describe any necessary plan to resolve these issues. Discuss the relative importance of these issues when considering the overall program.

**Corrective Actions:** Discuss any corrective actions necessary and provide a schedule for implementing these actions.

## The Annual Report

**Part I. General:** Describe the overall assessment of the program. Discuss if the mission statement is being met, and describe how. Discuss the overall quality of the reclamation, the cost effectiveness of the program, and any major program areas (such as subsidence insurance) that were not subjected to a formal review. Discuss any progress or participation under special initiatives, i.e., the Appalachian Clean Streams Initiative. Mention any plan amendments that were approved during the year.

This section of the report is to set forth the general impression of how the program works. Areas such as communication, training, staffing, and cooperation with OSM would be appropriately discussed here. Also use this section to discuss any special considerations or program abnormalities, such as heavy rains and flooding, shortened construction seasons, strikes, industry fluctuations, etc. that may have affected the program's success during the period. Provide an overall assessment of the progress made toward resolving issues both uncovered during this evaluation year and any outstanding from prior years.

**Part II. Noteworthy Accomplishments:** Discuss the program's successes and those areas that exceed normal expectations. Describe innovation in reclamation, training, communications, cost savings, accounting and grants management as applicable. Discuss awards received or recommended, or other recognition received, including OSM attendance at ground breaking/project dedication ceremonies. If conferences and seminars were hosted, discuss them.

**Part III. Results of Enhancement and Performance Reviews:** Discuss any reviews conducted during the year, highlighting positive findings as well as issues to be resolved. Discuss the follow up action needed for unresolved issues, and the agreed upon actions to be taken if the program is unable to resolve the issues. Use the Enhancement and Performance Review Reports to document this part, using applicable parts of the individual reports as attachments if necessary.

**Part IV. Accomplishments and Inventory Reports:** Using Abandoned Mine Land Inventory System generated reports for data, describe the program's accomplishments, the status of work left to be done, and any other information unique to the program being evaluated.<sup>1</sup> Select data that is appropriate and meaningful for the program and compare it between the beginning and end of the review period to identify patterns and trends. Examples which may be meaningful include:

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<sup>1</sup>For example, AMLIS may not contain all of the priority 3 or pre-1992 non-coal data for the State/Indian tribe. You may consider using such supplemental data if you believe it to be reliable.

- the extent (if any) to which the unreclaimed, funded, and reclaimed portions of the program's inventory is changing;
- the number of sites being reclaimed;
- the kinds of on-the-ground problems that are being reclaimed (measures include costs, sites, and problem type units); and
- other information concerning project selection (e.g., geographical).

**Part V. Reporting Requirements:**

- The completed report shall be forwarded to the State or Indian tribe within 45 days of the close of the calendar year.
- The State or Tribe shall be provided a 30 day comment period.
- Within 10 days of receipt of the State or Indian tribe's comments, the Field Office Director (FOD) or Regional Director (RD) as appropriate, shall make any necessary revisions to the report. The comments and a summary of the disposition of these comments will be attached to the report.
- If the FOD or RD as appropriate, substantially revises the report, the State or Indian tribe shall be allowed 15 days to comment. These comments will also be attached to the report.
- The FOD or RD as appropriate, shall then forward the report to the Deputy Director and Director for comment. If necessary a briefing will be scheduled.
- If the review and/or briefing result in substantive changes, the State or Indian tribe will be allowed another 15 days to provide comments. These comments will be attached to the report.
- After all changes resulting from the briefing/review are incorporated, the FOD or RD as appropriate, shall have sufficient copies of the report printed, bound and distributed to all Field Offices, Regional Offices and other OSM units as necessary.
- The FOD or RD as appropriate, shall transmit an electronic copy of the report to OSM's bulletin board.
- As requested, the FOD or RD as appropriate, shall provide copies of the report to States, interested citizens and other interested parties.