



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

Subject Number:  
GMT-11

Transmittal Number:  
461

Date:  
8/4/88

Subject: SOAP ANNUAL LIABILITY REVIEWS

Approval: *[Signature]* Title: Deputy DIRECTOR

1. **Purpose.** This directive provides policy and procedures for conducting annual liability reviews and for seeking reimbursement from applicants who have received assistance under the Federal Small Operator Assistance Program (SOAP).
2. **Definitions.**
  - a. **Actual Production.** The total amount of coal produced from all mining operations owned by the applicant during each year of the permit for which assistance was provided.
  - b. **Applicant.** An individual, corporation, or partnership who has submitted an application for assistance through the SOAP or who has been issued a Surface Mining Control and Reclamation Act (SMCRA) permit after receiving SOAP assistance for the permit.
  - c. **Assistance.** Any product or service provided to an applicant by a qualified laboratory under contract to the Office of Surface Mining Reclamation and Enforcement (OSMRE).
  - d. **Attributed Production.** The total amount of coal produced during each year 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 relatives; and 4) operations owned by persons who control the applicant's operation, as prorated and discussed in detail at 30 CFR 795.6.
  - e. **Consecutive 12-Month Period.** A period of time that can cover any consecutive 12 months without regard to calendar year, fiscal year, or any other annual basis. Once the consecutive 12-month begins for an applicant, generally through reporting associated with AML fee compliance system, its time limits are defined and remain fixed over the period of liability. Subsequently, total production for the annual liability reviews is tabulated on the basis of this consecutive 12-month period.
  - f. **Good Faith.** A determination made by a FOD that a SOAP applicant at all times has acted honestly and reasonably and in a manner consistent with the intent of the SOAP program.
  - g. **Liability Criteria.** The basis upon which annual reviews of continued applicant eligibility for the SOAP are conducted as prescribed in section 3.c.(1)(c) of this directive.
  - h. **Liability Period.** The term of the surface mining permit for which assistance was provided or the five years following permit issuance, whichever is shorter.

i. Qualified Laboratory. Any public or private firm, i.e. contractor, determined by OSMRE to be qualified to provide authorized technical services under the SOAP.

j. Reimbursement. The repayment of SOAP funds expended by OSMRE on behalf of a SOAP applicant who has failed to satisfy the SOAP liability criteria.

k. SOAP Funds. Monies appropriated by Congress to the OSMRE for the purpose of providing authorized technical services through the SOAP.

l. Total Production. The sum of actual and attributed production from the applicant at all operations permitted under SMCRA for any consecutive 12-month period of the applicant's liability period.

3. Policy/Procedures.

a. Policy.

(1) An applicant who has received SOAP assistance must continue to satisfy all eligibility criteria during the liability period or must reimburse OSMRE for SOAP funds expended on his/her behalf as set forth in 3.c.(1)(c)3.

(2) OSMRE may waive liability under a good-faith waiver provision.

(3) Liability reviews shall be conducted annually for each applicant.

(4) Production data (based on sales) from the AML Fee Collection System will be used for the liability reviews.

b. Responsibilities.

(1) Assistant Director, Program Policy, develops national program policies and procedures related to annual liability reviews for SOAP.

(2) Field Office Directors (FOD), conduct annual liability reviews, make decisions on liability, and render final agency decisions on liability, and maintain records.

(3) The Chief, Division of Financial Management, is responsible for collection of all reimbursements.

(4) Manager, AML Fee Compliance System, will monitor and compile actual and attributed production information for each applicant, on the basis of a 12-month consecutive period.

c. Procedures.

(1) Annual Liability Review.

(a) Record Keeping. All pertinent SOAP documents shall be maintained for each applicant by the appropriate FOD. These shall include SOAP applications, contract documents showing award amounts and payments needed to support any reimbursement claim, findings of annual liability reviews, support for any waiver of liability under the good faith provision, and all correspondence related to these documents.

(b) Liability Reviews. The liability of each SOAP applicant will be reviewed and a decision on whether reimbursement is warranted shall be rendered in all cases where SOAP funds have been expended on behalf of an applicant.

1 Cases in which SOAP contracts have been completed. The FOD will establish an annual liability review cycle for each applicant based on production reports for the applicant that are available through the AML Fee Compliance System.

2 Cases in which SOAP contracts have been cancelled. In some cases, SOAP contracts may be suspended and/or subsequently cancelled at the request of either the applicant or OSMRE. In either case, the FOD will conduct a liability review to determine whether liability exists.

(c) Liability Findings. A written finding on liability is prepared annually by the appropriate FOD. This finding shall reflect consideration of the specific liability criteria listed below.

1 Submission of Permit Application. Liability for reimbursement on the part of the applicant will exist if a permit application is not submitted within one year of receipt of the approved laboratory report, if the applicant does not respond in a timely manner to deficiencies identified during the permit review process, or if the permit application is denied.

2 Commencement of Mining. The three-year timeframes specified in SMCRA and the permanent program regulations regarding commencement of mining following issuance of a permit will apply to all SOAP applicants. An applicant will be liable for reimbursement if he does not commence mining within this three-year period.

3 Total Production. The applicant is responsible for complying with the 100,000 ton total annual production limit while mining under a permit for which SOAP assistance was received. Total production is determined from all properties and interests held during mining at the site for which the applicant received SOAP assistance, regardless of when they were acquired. Total production for each applicant will be monitored by the Manager, AML Fee Compliance System.

If an applicant exceeds the 100,000 ton annual production limit and has several active permits for which he received SOAP assistance, it would be unreasonable to seek reimbursement for monies expended on all SOAP studies. OSMRE policy ties excess production to the last assistance site and would seek reimbursement for contract costs at that site only. Production at a site for which reimbursement is sought would no longer count toward subsequent calculations of total annual production with regard to reimbursement. However, the applicant nonetheless would be ineligible for future SOAP assistance as long as total annual production from all sites exceeded 100,000 tons.

4 Sale of Coal Company or Lease. The permanent program rules are specific on liability related to the sale or transfer of permits for which SOAP assistance is provided. (See section 795.12(a)(3).) This also applies where an applicant receiving SOAP assistance sells his lease or company. The applicant and successor in interest are jointly and severally liable for reimbursement in cases where total annual production from all sites exceeds 100,000 tons.

5 Submission of False Information. If it is demonstrated that an applicant knowingly has submitted false information in the SOAP application, such as a failure to disclose all attributed production, he is liable for reimbursement of all SOAP funds expended. In addition, the FOD shall refer the matter to the Office of Inspector General for appropriate action.

6 Good-Faith Waiver. A decision by the FOD to waive liability under the good faith provision of section 795.12(b) will be based on a case-by-case evaluation of the circumstances of the applicant. The purpose of the good-faith waiver is to provide the FOD with the option of waiving liability if the circumstances which would otherwise require reimbursement were outside the applicant's control.

OSMRE applies a "reasonableness" standard in evaluating good faith. An applicant must react in a reasonable manner by notifying the FOD of changing conditions which would affect his or her continued eligibility, expectation to seek a permit or mine coal, or ability to meet other requirements related to the completion of the SOAP project. Prompt notification on the part of the applicant may allow OSMRE to cancel a project and minimize unnecessary expenditures. OSMRE would not be inclined to support a finding of good faith if the review

indicates that the applicant failed to notify the regulatory authority of any changes that had an impact on the original SOAP project, including its purpose and the eligibility requirements for it.

OSMRE requires reimbursement in those cases where the operator has exceeded 100,000 tons of actual and attributed production under a permanent program permit. Since the applicant is in control of production of the mining operation, liability in these cases is straightforward. An applicant controls production and thus would be able to adjust production and remain below the 100,000 ton annual limit or to knowingly exceed the limit and incur the responsibility for reimbursement. (Section 507(c) of the SMCRA covering Small Operator Assistance does not provide for averaging production over two or more years.)

(2) Final Agency Decision on Liability.

For those annual liability reviews which indicate potential liability, the FOD shall notify the applicant of the potential liability using certified mail. The letter should also state the following:

(a) the reason for the liability;

(b) the amount of money involved;

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

(d) the applicant has the opportunity to respond in writing or request a meeting with the FOD within this 30 day period, if the applicant believes there have been extenuating circumstances or 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's liability is waived based on the good faith provision, or

2 the applicant is not liable based on information which showed the FOD finding to be based on inaccurate data, or

3 the applicant is liable.

(e) Any final agency decision must be conveyed to the applicant in writing. The FOD shall notify the applicant for those cases where liability has been waived or determined to not exist. For cases where the final agency decision finds the applicant liable, the FOD shall write a letter to the Chief, Division of Financial Management. A copy of that letter will be sent to the Manager, Small Operator Assistance Program. The letter shall contain:

- 1 a statement of the final agency decision;
- 2 a request to bill the applicant for the debt; and
- 3 attachments that represent all pertinent SOAP documents and correspondence related to the case. This letter initiates the reimbursement process.

(3) Reimbursement Process.

Within 20 days of receipt of the FOD letter, the Chief, Division of Financial Management, shall notify the applicant of the final agency decision and will seek reimbursement following established debt collection procedures consistent with the Department of Interior Manual, Part 344, Debt Collection (50 FR, March 1, 1985). These procedures among other things provide for administrative remedies through the Interior Board of Land Appeals, and notice of interest, penalties and administrative costs.

The Chief, Division of Financial Management shall ensure that recovered Federal SOAP funds are reflected as recoveries against the contract through which the authorized services were provided to the applicant.

(4) 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.

4. Reporting Requirements. The Manager, AML Fee Compliance System, will provide total production data for each applicant to the appropriate FOD. The total production data will be based on a consecutive 12-month period.

The Chief, Division of Financial Management will provide monthly status reports to the Manager, Small Operator Assistance Program for each applicant referred to him/her for action by a FOD.

5. References. Sections 506(c) and 507(c) of SMCRA and 30 CFR section 773.19(e) and Part 795.

6. Effect on Other Documents. This directive supersedes the July 30, 1985, memorandum signed by the Director, subject: "Use of Good-Faith Waiver in the Small Operator Assistance Program," and the November 7, 1983, memorandum signed by the Assistant Director, Program Operations and Inspection, subject: "Clarification on Reimbursement and Contract Mining Related to the Small Operator Assistance Program."

7. Effective Date. Upon issuance.

8. Contact. Chief, Division of Technical Services, 343-1480 and Manager, Small Operator Assistance Program, 343-1507.