



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

Subject Number:  
AML-4

Transmittal Number:  
888

Date: MAY 6 8 2000

Subject: Procedures for Federal Reclamation Program Emergency and High Priority Projects

Approval: *Kathleen L. Henry*

Title: Director

1. **Purpose.** This Directive provides guidance and outlines responsibilities when OSM investigates and conducts Federal Reclamation Program (FRP) emergency or high priority reclamation projects in non-program States and emergency projects in program States which do not manage their own emergency program. It does not apply in States which have been given authority by the Office of Surface Mining (OSM) to conduct their own emergency programs.

2. **Summary of Changes.**

- a. Incorporates provisions of the Abandoned Mine Reclamation Act of 1990 which authorize work on interim sites.
- b. Incorporates lien provisions of the Code of Federal Regulation. (30 CFR 882.13)
- c. Executive Order 12866, the President's memorandum of June 1, 1998, and The National Partnership for Reinventing Government requires that our customers be able to understand what we write the first time they read it. Therefore, editorial changes were made to comply with the "plain language" concept.

3. **Definitions.**

- a. **Emergency.** An emergency is a sudden danger that has a high probability of causing substantial physical harm to the health, safety, or general welfare of people before it can be abated under normal program operation procedures. Emergency reclamation should be limited to that required to abate the emergency aspects of the problem by eliminating the danger. Additional work, after abatement of the emergency, is normally referred to the State/Tribal Abandoned Mine Land (AML) Program except as provided in Appendix 1, Part 2.
- b. **High Priority.** A High Priority site is one where there is a need to protect public health, safety, and general welfare from hazards created by past coal mining practices. These are Priority 1 or 2 problems as defined in Section 403 of the Surface Mining Control and Reclamation Act (SMCRA).

c. Briefing Paper. A Briefing Paper, as required by this Directive, is an internal document which authorizes spending funds for AML activities conducted by the OSM. It includes a written summary of the facts found during investigation of the hazard(s) and a declaration that an emergency exists which no other entity will act quickly to correct. It also includes: the options and alternatives considered for abating or reducing the hazard(s); cost estimates; a declaration of compliance with the National Environmental Policy Act (NEPA) and the National Historical Preservation Act (NHPA); and approval of project funding. Briefing papers are also used for funding other AML activities such as geotechnical investigations, mining-relatedness determinations, etc. Amendments to briefing papers are made when additional funding is needed to complete abatement or when substantial changes to project scope occur. They may also be amended when project status changes from a previously approved geotechnical exploration project to an emergency project.

d. Regional Director (RD). The Directors of the Regional Coordinating Centers, or their designated representatives. It may include the Field Office Director, the Project Manager, or others on the RD's staff. Refer to OSM Directive OPM-5, Delegation of Authority, for appropriate delegations.

e. Pre-reclamation Appraisal. This is a real estate appraisal, by an independent certified appraiser, of the market value of the unreclaimed land. In the event of an unforeseen occurrence, the appraisal of the property will be performed as it existed immediately prior to the unforeseen occurrence.

f. Post-reclamation Appraisal. This is a real estate appraisal, by an independent certified appraiser, of the market value of the property as reclaimed.

#### **4. Policy for Emergency Projects.**

a. Emergency complaints. The RDs will process all Federal emergency complaints. They will establish specific in-house procedures which reflect the most efficient use of their personnel and organizational structure. Activities may be performed by a variety of staff members from the Coordinating Center and/or the Field Office(s). This "team" is any OSM employee or group assigned to the task.

b. Preliminary Investigation.

(1) The team normally examines the problem site within 48 hours.

(2) The State AML Agency/Indian Tribe should be notified in advance of the site visit and may choose to accompany OSM personnel.

(3) Any form approved by the RD may be used to obtain all pertinent information. Appendixes 2, "Complaint Information Gathering Guide" and 3, "AML Complaint Investigation Data," are provided as guidelines.

(4) The team must notify the RD of any possible conflicts with NEPA (See REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act"), NHPA (See Appendix 6), the Endangered Species Act (ESA), or other applicable Federal or State laws.

(5) As appropriate, the team should notify landowners, emergency assistance organizations, and local authorities of conditions at the site.

(6) The team must determine if the problem site is near any active mining and whether reclamation activities could have an impact on that area. If an impact is expected, the RD notifies the appropriate Federal and/or State Mine Safety and Health Administration to determine if the health or safety of mine workers is at risk.

(7) The team must determine if the problem is a result of coal mining and the land was abandoned prior to August 3, 1977. Sites abandoned after this date are eligible for emergency funding if they are interim sites as defined in SMCRA at 402(g)(4)(B)(i), or if they are insolvent surety sites as defined in SMCRA at 402(g)(4)(B)(ii).

(8) At the conclusion of the preliminary investigation, the team must prepare a report for the RD. Appendix 3, "AML Complaint Investigation Data" is included as a guide.

c. Final Determination.

(1) The RD immediately reviews the complaint investigation report and determines whether an emergency exists based on the AML Emergency Program Guidelines (see Appendix 1). If an emergency is declared, the RD will:

(a) Designate a Project Manager.

(b) Obtain an opinion of eligibility from the State Attorney, the State AML Agency/Indian Tribe or OSM (Department of the Interior) Solicitor, whichever is appropriate.

(c) Determine if funds are available.

(2) The Project Manager will:

(a) Prepare a Site Investigation Report and document the final determination in a briefing paper or briefing paper amendment (See Appendix 4).

(b) Notify the State AML Agency/Indian Tribe and other interested parties of the decision within 10 working days.

(3) If the complaint does not constitute an AML emergency:

(a) In an AML program State/Tribe, the complaint is referred to the State/Tribe for consideration, if the problem is a result of coal mining.

(b) In a non-program State/Tribe, the problem will be considered for funding as a high priority FRP project and a Problem Area Description (Form OSM-76) is prepared.

d. Implementation of Corrective Action Upon Approval of the Briefing Paper.

(1) The responsible team prepares written specifications for the work necessary to correct the problem, including the estimated cost. Specifications may be prepared in-house or by a contractor at the discretion of the RD.

(2) The specifications must contain a description of the storm water pollution prevention plan, if applicable. AML projects must meet both State and local storm water discharge permit requirements. The Environmental Protection Agency (EPA) publication, "Storm Water Management For Construction Activities (EPA 833-R-92-001, October 1992)" gives a good description of what is required when EPA is responsible for issuing a storm water discharge permit.

(3) The project file should contain enough color prints or slides to show the AML problem, including damage to structures, both inside and out. Video Camcorder tape may be used instead of color prints except when photographs of Historic Properties are required. (See Appendix 6).

(4) Specifications and subsequent Federal actions must comply with NEPA, NHPA, ESA and other applicable Federal or State laws.

(5) If a determination was made under Part 4.b.(6) that reclamation activities could have an impact on active mining in the area, the team notifies the appropriate Federal and/or State Mine Safety and Health Administration and obtains a response regarding the risks to active mining operations. If reclamation activities could affect the health or safety of mine workers, an agreement on measures to abate the potential impact must be reached before undertaking any reclamation activities.

(6) The team must obtain written permission from all affected landowners. Non-consensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

(7) The Contracting Officer (CO) and/or the team must prepare a bid solicitation package and ensure that all AML contractors (successful bidders) are eligible under 30 CFR 773.15(b)(1). Bidder eligibility must be confirmed by OSM's Applicant/Violator System for each contract to be awarded.

(8) The team must enter all project information and performance data into the AML Federal Reclamation Program Management System (FRPMS). Data is progressively entered and updated on a schedule to coincide with posting of corresponding data to other systems, including the OSM accounting system Advance Budget/Accounting Control Information System (ABACIS).

e. Construction Inspection. The Project Manager, or the appointed construction inspector, must keep a log of reclamation activities during the construction phase of the project, including the use of color prints or slides where appropriate.

f. Completion of Project Work.

(1) Upon completion of the construction work, the Project Manager performs a final inspection, taking color prints or slides of the completed project. She/he will invite the contractor to join in the final inspection.

(2) The Project Manager reviews the contractor's invoices and makes a recommendation for payment or other action. All claims must be addressed and a release of claims, if required, must be secured by the CO prior to closeout of the contract.

(3) The Project Manager prepares a final report on the project which includes:

(a) A narrative description of the project activity from the time it was reported until its completion.

(b) A determination by the RD of whether a lien should be filed or waived. A pre- and post-reclamation appraisal may be ordered by the RD to assist in this determination. Liens are filed in accordance with 30 CFR 882.13. If a lien is not filed, the waiver is made a part of the permanent project file.

(c) A description of benefits derived by reclamation, including social-economic and environmental benefits. You should use quantities where

possible, e.g., acres (hectares) reclaimed, miles (kilometers) of stream improved, number of people protected or affected, etc.

(4) The Project Manager and/or the team completes a Problem Area Description (PAD) (Form OSM-76) and updates the Abandoned Mine Land Inventory System (AMLIS). Also, they enter all project accomplishment information and final cost data into the FRPMS.

g. Authorities and Responsibilities.

(1) Only the RD or his/her designee has the authority to declare an emergency.

(2) Only the OSM Contracting Officer (CO) and, as applicable, authorized credit card holders, have the authority to obligate OSM funds for AML construction activities. Only the CO is authorized to modify specifications in a contract. No modifications will be undertaken by the contractor until funds are available and authority to proceed is given by the CO.

(3) The Project Manager has contract-related responsibilities as described in Appendix 5, "Designation as Contractor Officer's Technical Representative-COTR."

**5. Policy for High Priority Projects.** The RDs are responsible for the investigation and reclamation of high priority problem areas in non-program States. They will establish and implement specific in-house procedures which reflect the most efficient use of personnel and organizational structure within their Regions. Activities may be performed by a variety of staff members from the Coordinating Center and/or the Field Offices (team). The "team" is any OSM employee or group assigned to the task.

a. Project Selection.

(1) All high priority projects funded under the FRP must be in non-program States/Tribes. They are selected from AMLIS, or from projects accepted for inclusion in AMLIS, and must be within the allocated funds for that particular Fiscal Year.

(2) By November 15 of each year the RD will send a list of high priority projects planned for funding that Fiscal Year to the Director.

b. Investigation.

(1) The team may use any form approved by the RD to gather pertinent information on high priority projects. Appendixes 2, "Complaint Information Gathering Guide" and 3, "AML Complaint Investigation Data," are provided as guides.

(2) The team must have an opinion of eligibility from the OSM (Department of the Interior) Solicitor. This opinion may initially be verbal, if documented in a telephone log, but written confirmation must follow. Pertinent data on the mining history of the project area may be requested from the State/Tribe, as appropriate.

(3) Any bond associated with the disturbed area should have been released, or forfeited and expended. If a bond has been forfeited but not expended, it must be applied to any work to be done. A commitment from the holder of the bond to that effect, in writing, is required. This commitment may initially be verbal, if documented in a telephone log, but written confirmation must follow.

(4) The team must determine if a problem site is near any active mining and whether reclamation activities could have an impact on that area. If an impact is expected, the RD notifies the appropriate State agency and/or the Federal Mine Safety and Health Administration to determine if the health or safety of mine workers is at risk. If the health or safety of mine workers is at risk, an agreement on measures to abate the potential impact must be reached before undertaking any reclamation activities.

(5) The RD decides whether to fund the high priority project and determines if funds are available. This determination is documented in a briefing paper (See Appendix 4).

(6) The RD notifies the appropriate State/Tribal agency(s) and other interested parties of the decision.

c. Implementation of Corrective Action Upon Approval of the Briefing Paper.

(1) The responsible team prepares written specifications for the work necessary to correct the problem, including the estimated cost. Specifications may be prepared in-house or by a contractor at the discretion of the RD.

(2) The specifications must contain a description of the storm water pollution prevention plan, if applicable. AML projects must meet both State and local storm water discharge permit requirements. The Environmental Protection Agency (EPA) publication, "Storm Water Management For Construction Activities; (EPA 833-R-92-001, October 1992)" gives a good description of what is required when EPA is responsible for issuing a storm water discharge permit.

(3) The project file should contain enough color prints or slides to show the AML problem, including damage to structures, both inside and out. Video Camcorder tape may be used instead of color prints except when photographs of Historic Properties are required. (See Appendix 6.)

(4) Specifications and subsequent Federal actions must comply with NEPA, NHPA, ESA and other applicable Federal or State laws.

(5) If a determination was made under Part 5.b.(4) that reclamation activities could have an impact on active mining in the area, the team must ensure that the appropriate State agency and/or the Federal Mine Safety and Health Administration has responded. If reclamation activities could affect the health or safety of mine workers, an agreement on measures to abate the potential impacts must be reached before undertaking any reclamation activities.

(6) The team must obtain written permission from all affected landowners. Non-consensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

(7) The Contracting Officer and/or the team prepares a bid solicitation package and ensure that all AML contractors (successful bidders) are eligible under 30 CFR 773.15(b)(1). Bidder eligibility must be confirmed by OSM's Applicant/Violator System for each contract awarded.

(8) When a high priority project is funded, the team must complete a Problem Area Description, Form OSM-76, and update AMLIS. They also enter all project information and performance data into FRPMS. Data is progressively entered and updated on a schedule to coincide with posting of corresponding data to other systems, including the OSM accounting system ABACIS.

d. Construction Inspection. The Project Manager, or the appointed Construction Inspector, must keep a log of reclamation activities during the construction phase of the project, including color prints or slides where appropriate.

e. Completion of Project Work.

(1) Upon completion of the construction work, the Project Manager performs a final inspection, taking color prints or slides of the completed project.

(2) The Project Manager reviews the contractor's invoices and make a recommendation for payment or other action. All claims must be addressed and a release of claims, if required, must be secured by the Contracting Officer prior to closeout of the contract.



(3) The Project Manager prepares a final report on the project which includes:

(a) A narrative description of the project activity from the time it was reported until its completion.

(b) A determination by the RD of whether a lien should be filed or waived. A pre- and post-reclamation appraisal may be ordered by the RD to assist in this determination. Liens are filed in accordance with 30 CFR 882.13. If a lien is not filed, the waiver is made a part of the permanent project file.

(c) A description of benefits derived by reclamation, including social-economic and environmental benefits. You should use quantities where possible e.g., acres (hectares) reclaimed, miles (kilometers) of stream improved, number of people protected or affected, etc.

(4) The team must complete a PAD and update AMLIS. All project accomplishment information and final cost data is entered into the FRPMS.

f. Authorities and Responsibilities.

(1) Only the RD or his/her designee has the authority to select high priority projects for funding. All projects must be in AMLIS or accepted for inclusion in AMLIS.

(2) Only the OSM Contracting Officer (CO) and, as applicable, authorized credit card holders, have the authority to obligate OSM funds for AML construction activities. Only the CO is authorized to modify specifications in a contract. No modifications will be undertaken by the contractor until funds are available and authority to proceed is given by the CO.

(3) The Project Manager has responsibilities as described in Appendix 5, "Designation as Contractor Officer's Technical Representative - COTR."

**6. Reporting Requirements.**

a. Emergencies.

(1) Investigative Report, paragraph 4.b.(8)

(2) Briefing paper, briefing paper amendments, paragraph 4.c.(5).

(3) Final Report, paragraph 4.f.(3).

b. High Priority Projects.

- (1) List of high priority projects to be funded, paragraph 5.a.(2).
- (2) Briefing paper, briefing paper amendments, paragraph 5.b.(5).
- (3) Final Report, paragraph 5.e.(3).

7. **Effect On Other Documents.** This directive supersedes Directive AML-4, dated June 17, 1997.

8. **References.** Abandoned Mine Land Reclamation Program Regulations, 30 CFR, Parts 874, 877, 879, and 882; 36 CFR Part 800, Advisory Council Regulations; 46 FR 14813, et seq. (March 6, 1980); REG-1, OSM "Handbook on Procedures for Implementing the National Environmental Policy Act."

9. **Effective Date.** Date of issuance.

10. **Contact.** Chief, Division of Reclamation Support, (202) 208-5365.

11. **Keywords.** Emergency, briefing paper, high priority project.

12. **List of Appendices.**

- a. 1- AML Emergency Program Guidelines
- b. 2- Complaint Information Gathering Guide
- c. 3- AML Complaint Investigation Data
- d. 4- Briefing Papers
- e. 5- Designation as Contracting Officer's Technical Representative
- f. 6- Abandoned Mine Land Emergencies - Compliance with National Historic Preservation Act
- g. 7- National Pollution Discharge Elimination System - Storm Water Discharge Permits
- h. 8- Specific Circumstances Arising under the Federal Reclamation Program.

## AML EMERGENCY PROGRAM GUIDELINES

The following guidance applies to Federally managed emergency programs.

### 1. Emergency Criteria

As defined in 30 CFR 870.5, an emergency is a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures. For an AML problem to be declared an emergency the answers to the following three questions must be yes.

- a. Was there a sudden event?
- b. Is there a high probability of substantial physical harm to the health, safety, or general welfare of people?
- c. Does the emergency condition need to be abated in a time frame that is not possible under normal State/Tribal program procedures in order to protect the health, safety, or general welfare of people?

### 2. Proper Response to Declared Emergencies

The proper amount of emergency reclamation is the amount necessary to stabilize the emergency aspects of the problem by eliminating the immediate danger to public health, safety, and general welfare. Any remaining reclamation should then be accomplished as part of a regular, non-emergency AML project. The only exception to this concept is when it is clearly not cost effective to split a reclamation project into emergency and non-emergency projects. Usually it is not cost effective to split a problem when an estimated total cost of \$50,000, or less, will achieve complete reclamation.

Emergency reclamation must be sufficient to stabilize conditions and eliminate the hazards until the remaining non-emergency reclamation can be undertaken. When non-emergency reclamation is referred to the State/Tribe after abatement of the emergency, they should be asked to classify the project as a high priority if the remaining reclamation needs to be done expeditiously. This action will help prevent deterioration of the emergency work already completed. Similarly, in a non-program

State, the responsible OSM office should review the site conditions and begin reclamation as soon as possible.

It is appropriate to use emergency program funds for exploratory and design work for high priority projects which have the potential to deteriorate into an emergency situation. The design work should be done in cooperation with the State/Tribe who will then fund the required reclamation as part of its normal AML program.

### 3. Specific Guidance for Selected Types of AML Problems

a. Surface Burning (SB) Surface Burning is an emergency when it threatens to burn occupied dwellings or when it is producing poisonous or dangerous gases, (e.g., carbon monoxide, hydrogen sulfide, etc) and suddenly begins to threaten people. The presence of poisonous gases must be confirmed through the collection and laboratory analysis of ambient air samples or the use of a hand held monitor. Most refuse pile fires are characterized by noxious fumes, smoke, and open fires. While these conditions may be annoying, they do not normally constitute an emergency and will be referred to the States/Tribes for consideration under their AML grant program, or in non-program States/Tribes, will be considered for reclamation as a Federal high priority project.

When non-emergency fires suddenly expand and threaten any inhabited structure(s) or poisonous gases suddenly begin to threaten people, emergency action will be considered to eliminate the threat.

Refuse fires are easier and cheaper to extinguish if discovered early. Therefore, notwithstanding the criteria for emergency definition discussed above, fires which are discovered at an early stage may be treated as emergencies.

b. Gases/Underground Burning (GUB) Underground mine fires are considered emergencies when they threaten to burn occupied dwellings, either directly or by starting surface fires, or when they produce poisonous or dangerous gases (e.g., carbon monoxide, hydrogen sulfide, etc) and suddenly begin to threaten people. The presence of poisonous gases must be confirmed through the collection and laboratory analysis of ambient air samples or the use of a hand held monitor.

Normally, inventoried underground mine fires are not sudden occurrences and do not present an immediate danger to the public. The States/Tribes will, generally, conduct abatement or control procedures through normal program operations. However, emergencies may be declared when these fires suddenly break to the surface or where poisonous gases generated by the fire suddenly begin to threaten people.

As with Surface Burning, underground mine fires are easier and cheaper to extinguish if discovered early. Therefore, notwithstanding the criteria for emergency definition discussed above, fires which are discovered at an early stage may be treated as emergencies.

c. Dangerous Slides (DS) Dangerous slides are emergencies when there is immediate danger to the occupants of dwellings which are, or could be, endangered by the slide. In some cases, a slide may be considered an emergency when it blocks a stream, threatening upstream or downstream flooding. Blockage of roadways and driveways may be considered an emergency if access for emergency vehicles is prevented and no highway maintenance agency can act to clear the roadway.

Where these situations occur, emergency AML work will address only the emergency portion of the landslide. Permanent reclamation of the entire slide area may be considered when the emergency cannot be stabilized without it or it is clearly demonstrated that it is not cost effective to delay full reclamation. Where emergency work abates the emergency but achieves less than permanent reclamation, the remaining work will be referred to the State/Tribe for consideration under its AML grant program or it will be done under the FRP.

d. Portals (P) and Vertical Openings (VO) Vertical Openings are emergencies when there is a risk of falling into the opening. A portal can be an emergency when there is a substantial danger of entering the opening and being subjected to either falling material (e.g., roof rock or mine timbers) or an inhospitable mine atmosphere, such as methane and/or low oxygen conditions. The possibility of mine explosions from methane buildup would also create an emergency situation.

Historically, mine openings were often capped or sealed at the conclusion of mining with no provisions for continuous maintenance. Subsequent surface activities or vegetation may have covered or hidden these openings. The sudden uncovering of a previously unknown shaft or other mine opening in a populated area will generally be considered an emergency. Open shafts, although previously detected, which are now considered to be in or near populated areas may be treated as emergency work.

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Any opening which exposes persons to poisonous gases should be declared an emergency, even known openings which experience changing conditions, resulting in the discharge of hazardous gases. The presence of poisonous gases should be confirmed when this can be done safely and conditions permit meaningful sampling. This may be accomplished through the collection and laboratory analysis of ambient air samples or the use of a hand held monitor.

e. Subsidence (S) Emergencies resulting from subsidence involve the danger of falling into the opening and/or the risk of damage to occupied dwellings, threatening the safety of occupants. Subsidence damage that significantly affects the structural integrity of occupied dwellings, or adversely affects gas or electric lines, is usually an emergency. Subsidence beneath a roadway may be treated as an emergency only when a roadway maintenance agency cannot act to correct the problem.

f. Other Problem Types While the five problem types above represent those most commonly associated with emergencies, this Directive does not preclude other problem types from being declared an emergency. The problem must meet the emergency criteria as set forth in Section 1 of these guidelines and follow other guidance provided in this Directive.

## COMPLAINT INFORMATION GATHERING GUIDE

1. Was there a sudden event? When did it occur, if known?
2. Is there a high probability of substantial physical harm to the health, safety, or general welfare of people?
3. Does the problem have to be addressed immediately to protect health, safety, or general welfare of people?
4. How many people are endangered and to what extent?
5. How soon does the problem need to be addressed? (What is the urgency?)
6. What is the history of mining in the area?
7. If the mining operator is known, does she/he have continuing reclamation responsibility?
8. Are there any bonds associated with the disturbed area? (Optional)
9. What is the source of the problem and where is it located?
10. How does the problem relate to past coal mining practices?
11. Is access to the property safe?
12. If needed, have the residents secured alternative housing within the commuting area?
13. Have photographs of all aspects of damaged property been taken (including inside of houses).
14. Is there a potential for any emergency abatement to impact the environment (NEPA), historic properties (NHPA), public utilities, private water supplies, or waste disposal systems?

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15. Does the current problem indicate a seasonal or other periodic (non-random) fluctuation that may change at a later date?
16. What can the landowner, mineral owner, and/or municipal agencies do?
17. What is the State's abandoned mine land agency willing to do and when?
18. What is the local community willing to do and when?
19. What are the utility companies willing to do and when?
20. What are other State and Federal agencies willing to do and when?
21. Is an insurance company responsible?
22. Was the owner involved in or benefited from mining?



## AML COMPLAINT INVESTIGATION DATA

Type of Complaint: \_\_\_\_\_ Reported by: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date OSM Received Complaint: \_\_\_\_\_ Time: \_\_\_\_\_

Date OSM Field Office Received Complaint: \_\_\_\_\_ Time: \_\_\_\_\_

OSM Person Receiving Complaint: \_\_\_\_\_

Address of Complaint: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_

### SITE INVESTIGATION

Date: \_\_\_\_\_ Time: \_\_\_\_\_ OSM Investigators: \_\_\_\_\_

State Representative(s) Present: \_\_\_\_\_

Others Present: \_\_\_\_\_

Name of other agencies contacted (local, State or Federal): \_\_\_\_\_

### LOCATION OF SITE

Directions to Location (Describe Route): \_\_\_\_\_

USGS Quadrangle Name: \_\_\_\_\_

Coordinates: \_\_\_\_\_

AREA MINED

Mined by: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Permitted Operation: No \_\_\_ Yes \_\_\_ Permit Number(s) \_\_\_\_\_

Was the property owner involved in the mining? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, explain:

\_\_\_\_\_  
\_\_\_\_\_

Duration of Mining : From \_\_\_\_\_ Until \_\_\_\_\_

Type of Mining: \_\_\_\_\_

Field Elevation: \_\_\_\_\_ Coal Elevation \_\_\_\_\_ Seam Name: \_\_\_\_\_

BOND (Optional)

Amount Received: \_\_\_\_\_ Date \_\_\_\_\_

Amount Returned: \_\_\_\_\_ Date \_\_\_\_\_

Amount Forfeited: \_\_\_\_\_ Date \_\_\_\_\_

Amount Available: \_\_\_\_\_ Date \_\_\_\_\_

PRESENT OWNERS

Surface Owner's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mineral Owner's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

AFFECTED PARTIES

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Land Owner: \_\_\_\_\_ Adjacent Owner: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Land Owner: \_\_\_\_\_ Adjacent Owner: \_\_\_\_\_

SITE INFORMATION

Date problem began or was first noticed: \_\_\_\_\_

Is there any active mining or related activities in or around the area? No \_\_\_ Yes \_\_\_

Name of Operator(s) \_\_\_\_\_

Nature of Problem:

- \_\_\_\_\_ Water Discharge
- \_\_\_\_\_ Sedimentation
- \_\_\_\_\_ Flooding
- \_\_\_\_\_ Air Pollution
- \_\_\_\_\_ Slide
- \_\_\_\_\_ Void, Shafts, Slope, Entries, etc.
- \_\_\_\_\_ Mine Fire
- \_\_\_\_\_ Subsidence
- \_\_\_\_\_ Other, Specify \_\_\_\_\_

Source of Problem:

- \_\_\_\_\_ Underground Mine
- \_\_\_\_\_ Surface Mine
- \_\_\_\_\_ Processing Area
- \_\_\_\_\_ Refuse Pile
- \_\_\_\_\_ Treatment Facility
- \_\_\_\_\_ Other, Specify \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Potentially Affecting:

- \_\_\_\_\_ Persons ..... Estimated Number \_\_\_\_\_
- \_\_\_\_\_ Streams ..... Name \_\_\_\_\_
- \_\_\_\_\_ Public Road .. Name \_\_\_\_\_
- \_\_\_\_\_ Housing ..... Number \_\_\_\_\_
- \_\_\_\_\_ Building ..... Number \_\_\_\_\_
- \_\_\_\_\_ Schools ..... Name \_\_\_\_\_
- \_\_\_\_\_ Utility ..... Power Line \_\_\_\_\_ Treatment Plant \_\_\_\_\_
- \_\_\_\_\_ Sewer Line \_\_\_\_\_ Gas Line \_\_\_\_\_
- \_\_\_\_\_ Water Line \_\_\_\_\_

\_\_\_\_\_ Historic or archeological site(s) Number \_\_\_\_\_

\_\_\_\_\_ Other, Specify \_\_\_\_\_

Estimate Acres Affected \_\_\_\_\_

NATURE OF PROBLEM

Describe the problem (details: i.e., size, shape; is problem spreading, expanding; first noticed, etc.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER INFORMATION

Describe what other information is available and its location (i.e., maps, inspections, etc.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ELIGIBILITY (Optional)

State Legal Officer Notification

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Method Used

Oral \_\_\_\_\_ Date \_\_\_\_\_ Written \_\_\_\_\_ Date \_\_\_\_\_

Declaration of Eligibility from State

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Method Used

Oral \_\_\_\_\_ Date \_\_\_\_\_ Written \_\_\_\_\_ Date \_\_\_\_\_

Eligible: Yes \_\_\_\_\_ No \_\_\_\_\_ Explain \_\_\_\_\_

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POTENTIAL NEPA PROBLEMS

Note any potential National Environmental Policy Act related problems. See REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act (NEPA)." Actual responsibility for complying with NEPA rests with the RD.

REMARKS

INVESTIGATOR: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip

Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

## BRIEFING PAPERS

1. Purpose. This appendix explains the use of briefing papers as defined in OSM Directive AML-4. It applies to OSM Federal Reclamation Program (FRP) projects only, and does not apply to projects authorized under State/Tribe AML grant programs approved by OSM.
2. Summary. This appendix describes the content and levels of approval authority for briefing papers and amendments for the FRP project.
3. Definitions.
  - a. Briefing Paper. An OSM internal document which authorizes spending funds for AML activities such as: geotechnical exploration, design contracts, or hazard abatement. Contracts which require AML funding from the FRP cannot be let without an approved briefing paper. The briefing paper is in addition to a procurement request and other contractual documents. The briefing paper includes:
    - (1) A written summary of the site conditions.
    - (2) A Finding of Fact which concludes that an emergency exists or, if the problem is not an emergency, denotes a priority. For an emergency declaration, the Finding of Fact must conclude that no other person or agency can act expeditiously to restore, abate, or prevent the adverse effects of past mining practices.
    - (3) Project specifications and options considered for abating or reducing the hazard(s).
    - (4) Cost estimates and documentation of funding for the project.
    - (5) Documentation of NEPA compliance.
    - (6) Documentation of NHPA compliance.
    - (7) Documentation of ESA compliance.
  - b. Briefing Paper Amendment. Amendments to briefing papers are made when additional funding is needed to complete abatement or when substantial changes to project scope occur.

4. Policy/Procedures.

a. Concept. A briefing paper is prepared and approved for all OSM Federal reclamation activities which receive funding from the AML fund.

b. Responsibilities. The RD is responsible for the preparation of briefing papers and any amendments.

c. Procedures. The format for briefing papers and amendments should include, at a minimum, the following:

(1) Heading. Designates briefing paper and/or amendment number (1, 2, 3, etc.) and lists the project name; the municipality, county and State where the problem is situated; and the assigned project number.

(2) Location. Should be specifically stated and detailed as to street, township, county, State, etc.

(3) Problem Area Number. If the problem is in an existing problem area, include the problem area number for emergencies and high priority problems. This number is the key link between FRPMS and AMLIS and can usually be readily obtained from the Field Office.

(4) Description of the Problem. Describe the hazards and demonstrate why the problem qualifies as an AML emergency or a high priority project. If an emergency, the problem must meet the criteria as outlined in Appendix 1.

(5) Project Proposal. Briefly outline the project objective and methods proposed to meet that objective. For emergency projects, it must explain why the proposed level of work is necessary to stabilize the emergency and estimate the amount of non-emergency reclamation, if any, that is left.

Remaining non-emergency reclamation, in a program State/Tribe, is normally referred to the State/Tribe AML agency for completion as a high priority project. However, if non-emergency reclamation is proposed to achieve complete reclamation of the problem, the project proposal will explain why this is the most cost effective alternative.

(6) Eligibility. Identify the approximate date of the last mining activity that is the cause of the problem(s) and whether there is any continuing responsibility for any person or entity to reclaim the site under State or other Federal Law.

(7) NEPA Compliance for Emergency Projects. Document compliance with NEPA as set out in OSM Directive REG-1, "Handbook on Procedures for Implementing the National Environmental Policy Act" (NEPA Handbook).

(8) NHPA Compliance. Document compliance with the National Historic Preservation Act as set out in Appendix 6.

(9) ESA Compliance. Document compliance with the Endangered Species Act and other applicable Federal and State laws.

(10) Estimated Cost. Include an estimate of the total cost for the project. The estimate should include a cost breakdown of such items as investigation, exploratory drilling, and engineering (design and inspection).

(d) Recommendation, Concurrence and Final Approval of Briefing Papers and Briefing Paper Amendment. The level of signatory authority for a briefing paper or briefing paper amendment is determined by the estimated cost of the project as follows:

(1) If the total project cost is less than \$2,500 (including amendments for project cost increases), the RD may designate appropriate staff to recommend, concur and approve the briefing paper.

(2) If the total project cost is \$2,500 or more but less than \$100,000 (including amendments for project cost increases), the delegation of authority to approve briefing paper cannot be below the Field Office Director/Division Chief level. Others may recommend or concur as appropriate.

(3) If the total project cost is over \$100,000 (including amendments for project cost increases), the RD may designate appropriate staff to recommend and concur with the briefing paper but must retain authority to approve the briefing paper.



## **DESIGNATION OF CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE**

The following example is included as a guide for designating a Contracting Officer's Technical Representative (COTR).

Memorandum

To:

From: Contracting Officer

Subject: Contract No.

Project: Title

You are hereby appointed as the Contracting Officer's Technical Representative (COTR) for the subject contract. It is necessary that you thoroughly familiarize yourself with the terms, conditions, and specifications of the contract in order that you may administer it effectively. Your responsibilities and duties are as follows:

1. If determined appropriate by you, arrange and conduct a pre-work conference with the contractor. Items of discussion may include but not be limited necessarily to required wage rates, technical specifications, and the intended work schedule.
2. In no event will any understanding, agreement, modification, change order or the matter deviating from the terms of the contract be effective or binding upon the Government unless formalized by proper contractual documents executed by the Contracting Officer (CO).
3. Recommend in writing to the CO any desired changes in the scope of work, giving a full explanation of the proposed action. If the contractor proposes a change, you are to obtain a written statement from him to that effect and forward that statement and your recommendations (including estimated cost changes) to the CO.
4. Assure that changes in the scope of work or delivery schedule are covered by written contract modification issued by the CO or with his prior approval.

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5. Monitor contract performance and report all problems related to the contract. Any violation, deviation, inadequate performance, or schedule problems shall immediately be reported to the CO.
6. Review project inspector reports and advise the CO of any significant deviations from scheduled progress or planned work activities.
7. Inspect and accept completed work, either personally or through the project inspector. Provide information concerning contractor performance in sufficient detail to the CO so that she/he can determine if performance is satisfactory.
8. Reject any unsatisfactory work and/or materials and report such action immediately to the CO.
9. Review engineering studies, designs, or value engineering proposals submitted by the contractor to determine their feasibility or non-feasibility and to submit your technical evaluation to the Contracting Officer with appropriate recommendations.
10. In the course of your duties, you are expected at all times to conduct your activities in compliance with the standards of conduct established by this agency.

Pursuant to DIAR 1401.670-3, you are not authorized under any circumstances to:

1. Award, agree to, or execute any contract, contract modification, or notice of intent.
2. Obligate, in any way, the payment of money by the Government.
3. Make a final decision on any contract matter which is subject to the clause at FAR 52.233-1, Disputes.
4. Terminate, for any cause except safety, the contractor's right to proceed.

---

Contracting Officer

cc: Contractor (2)  
Contract File

Addressee's Acknowledgment of Receipt  
(Return one signed copy)

Contractor's Acknowledgment of Receipt  
(Return one signed copy)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT

The Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR Part 800 establish procedures to protect historic and archeological resources and implement Section 106 of the National Historic Preservation Act (NHPA). NHPA requires a review of Federal emergency projects to determine the effect on historic properties.

Under the Federal reclamation program, the Office of Surface Mining Reclamation and Enforcement (OSM) is responsible for all the activities set out below. Under State managed emergency programs, the State is responsible, except that OSM decides when immediate action must be taken to protect the public and must document findings in the "Finding of Fact and Funding Paper."

This appendix sets out the steps to follow when emergency construction can be initiated within 30 days of OSM declaring the emergency. If construction cannot be initiated within 30 days of OSM declaring the emergency, the regular NHPA procedures must be followed, except in no event will an emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people be delayed in order to meet NHPA requirements.

The first step in the review process is to determine whether any historic properties might be affected by the emergency project. Historic property includes any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NR). For the purpose of this directive the term also includes artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the NR" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet NR listing criteria at 36 CFR 800.2 (e).

While few emergency projects potentially affect historic properties, the following steps should be taken for each emergency project.

1. **If no historic properties are found that may be affected by the emergency abatement project** you will document this in the FRP briefing paper or "Finding of Fact and Funding Paper" for State/Tribe managed emergency projects. You must send a copy of the documentation to the State Historical Preservation Officer (SHPO) or Tribal leaders. No further steps in the Section 106 process are required.

Please note that, within the context of this appendix, the term SHPO includes Tribal leaders if the project is on Tribal lands and briefing paper includes the Finding of Fact and Funding Paper for State/Tribe projects.

2. **If a historic property is found that may be affected by the emergency abatement project**, whoever declares the emergency will contact the SHPO. In consultation with the SHPO, you will use the Criteria of Effect, pursuant to 36 CFR Part 800.9(a), to determine if the historic property will be affected. If all parties are satisfied that the historic property will not be affected this will be noted in the briefing paper. OSM/State will photograph the property. No further steps in the Section 106 process are required.

3. **If there are concerns that the emergency abatement may adversely affect a historic property**, all parties will make a reasonable attempt to resolve the concerns before work begins. If the concerns are resolved the briefing paper will:

- (a) describe the historic property and explain how it will may be affected;
- (b) specify the concerns of the SHPO and explain how they were resolved.

After the abatement has been accomplished, any agreed upon information will be sent to the SHPO and a copy will be included with the emergency project's final report.

4. **If the SHPO has concerns which cannot be resolved and OSM determines that immediate action must be taken**, the briefing paper must include:

- (a) a description of the SHPO's concerns;
- (b) an explanation of why emergency abatement must be initiated immediately to prevent substantial physical harm to the health, safety, or general welfare of people;
- (c) a description of the emergency work to be done, its impact on the historic property(s), and the measures to be used to avoid or minimize harm to historic properties.

OSM/State will photograph the property and then take only that emergency action required to prevent immediate substantial physical harm to the health, safety, or general welfare of people.

When the emergency has been stabilized, OSM/State will provide the SHPO with photographs, maps, and a description of the actual impact on the property. A copy of this information will be included with the emergency project's final report. If additional work is required to complete reclamation, the regular NHPA procedures must be followed.

5. **If it is not possible to contact the SHPO (for example, on a weekend) and OSM determines that immediate action must be taken**, photograph the property, and then take only that emergency action required to prevent immediate substantial physical harm to the health, safety, or general welfare of people. Note in the briefing paper that an unsuccessful effort was made to contact the SHPO and notify him/her at the first opportunity.

### **Guideline for Photographs of Historic Properties**

It is recommended that the SHPO be contacted beforehand to determine what is required of photographs of historic properties. In lieu of specific guidance from the SHPO, the following guidelines should be followed.

Photograph Type: You may use black and white film, although 35 millimeter color film is preferred. Polaroid type photographs are not acceptable.

#### Buildings or structures:

Environment: Photograph should show the environment in which the property is located.

Exterior: Photographs must include views which show the entire length and/or width of the building or structure. These can be used to identify the style of the building and the type of construction

Elements: Photographs should show the elements of the building or structure such as walls and roofs, that contain repeated features such as doors, windows and large decorative details. Additional photographs should be taken of the individual features of the elements, such as porches, entryways and large significant decorative aspects. Machinery should be photographed.

Details of the Features: Close-up photographs of unusual windows, doors, and repeated designs and motifs should be taken. Also, include views of typical work methods and materials.

Historic and archeological sites: Photographs should document the condition of the site and present features. If relevant to the evaluation, photographs may also show artifacts that have been recovered from the site. Photographs must show the physical environment and land configuration of the site.

Identification: Identification of photographs should contain the following:

- The name of property/site
- The location, including the State, county, city and address (if relevant).
- The emergency project name and number.
- The date of photograph
- The direction the camera is pointing
- The photograph number
- The role and negative number
- Location where the negative is stored
- A description of what the photograph is showing

## **NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM STORM WATER DISCHARGE PERMITS**

### **Background**

The 1987 amendment to the Clean Water Act required the United States Environmental Protection Agency (EPA) to regulate storm water discharges in the National Pollution Discharge Elimination System (NPDES). Final regulations for permit applications for storm water discharges were published on November 16, 1990. The NPDES regulates storm water discharges from municipal and industrial activities, including mining, inactive mines, and construction sites. Also, for those States and Indian lands where they are responsible for issuing Storm Water Discharge Permits, EPA published NPDES general permits in the September 9, 1992, Federal Register, 57 FR 41176.

States and Indian tribes may apply to EPA for approval to issue permits and administer their own Pollution Discharge Elimination System. Most States have done so and are responsible for regulating storm water discharges with EPA providing guidance and oversight. However, in those States or Indian tribes that do not have the authority to issue permits, EPA remains the authorizing agency.

### **Storm Water Discharge Permits**

The agency responsible for abandoned mine land reclamation (OSM, State, Tribe) must obtain all applicable permits from the agency which issues those permits.

When obtaining a permit from EPA a Notice of Intent must be submitted two days prior to the commencement of construction and a storm water pollution plan must be developed and implemented. See 57 FR 41176 for detailed instructions.

Construction projects that will result in the disturbance of five or more acres require storm water discharge permits.

### **Emergencies**

Emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people must not be delayed by procedures for obtaining a storm water discharge permit. After the emergency is stabilized, if a storm water discharge permit is required, that permit must be obtained before any additional work is begun.



## **SPECIFIC CIRCUMSTANCES THE FEDERAL RECLAMATION PROGRAM**

### **I. Lien Filing Requirements**

Section 408 of the Surface Mining Control and Reclamation Act (SMCRA) requires that a determination be made whether or not to place a lien for the increase in property value where reclamation on private property results in a significant increase in the value of the land. Any such lien must be placed within six months of project completion.

For the Office of Surface Mining and Reclamation Enforcement (OSM), "significant increase" means \$5,000 or a 25 percent increase in fair market value after reclamation, whichever is more. Notarized appraisals must be used to document a significant increase in property value.

Appraisals, if done, provide a basis for filing a lien but are not filed in the land records. The lien, which contains the before and after appraised value, is filed in the land record.

If ordering appraisals, the Regional Director (RD) should inform the appraiser, in writing, that appraisals will be a matter of public record in conjunction with a lien. She/he also should request a notarized summary of the appraisal report in addition to the appraisals. Copies of the appraisals can be furnished to landowners after deletion of any information designated by the appraiser as privileged or confidential.

A lien cannot be placed against a property if the landowner acquired it before May 2, 1977 and did not consent to, exercise control over, or participate in the mining operations which necessitated the reclamation work.

A lien may be waived if the RD concludes that:

a. The reclamation primarily benefits the health, safety or environmental values of the community or area in which the land is located.

b. The reclamation is necessitated by an unforeseen occurrence and the work performed will not result in a significant increase in the market value.

c. The cost of filing it exceeds the increase in fair market value of the property. The following factors will, at a minimum, be included in determining the cost of filing a lien:

- the cost of all pre and post-reclamation appraisals;
- filing costs; and
- the cost of any other item approved by OSM or required by local, State or Federal law.

If a lien is to be waived, the OSM official responsible for approving the project is also responsible for the reasons. A copy of all documentation and supporting data must be maintained in the project file.

Liens on private property are satisfied at the time of transfer of ownership and any unsatisfied portion will remain as a lien on the property. Liens must be maintained and renewed as may be required by State or local laws. Moneys derived from satisfaction of lien is to be deposited in the appropriate Abandoned Mine Reclamation Fund account.

## **II. Use of the Abandoned Mine Land (AML) Fund to pay Expenses or Claims Associated with Abandoned Mine Land Reclamation.**

a. Repairs to Structures. There is no specific authorization in Title IV to pay for repairs to structures damaged by subsidence or other adverse effects of past mining. In fact, Congress went so far as to prohibit the use of Title IV funds to pay the actual construction costs of housing. (Section 407(h) SMCRA.) The intent is that Title IV funds should not be diverted to private needs, as opposed to what are considered to be public needs. Therefore, the repair of structures should not be authorized unless the repairs are a direct and necessary part of a cost-effective abatement plan. For example, foundation reinforcement may be an authorized repair, but only to the extent that it is necessary to prevent further damage to the structure or harm to the construction workers.

b. Moving or Relocating Structures. Subsidence or other hazards may make it necessary to move a structure in order to prevent further damage or conduct effective reclamation at the site. In such situations OSM employees will take all necessary steps to prevent the structures from sustaining further damage, including minimal corrective action in the foundation if the damage is not attributable to other problems. They will advise occupants that the structure may be unsafe but will not order occupants to vacate. Instead they should inform local authorities of the conditions. OSM will make reasonable efforts to reclaim the site without moving the structure. Structures will be moved only as a last resort and only if the option is cost-effective.

- (b) are not willing to enter into an agreement (in which case police powers may be exercised for right-of-entry).

Upon the extraction and sale of the coal, the proceeds will be placed in a project escrow account established for that specific purpose by the Division of Financial Management. The Chief of the Division or Branch responsible for the AML FRP program at the Regional Coordinating Centers, as appropriate, will coordinate, through the Financial Unit of the Administrative Service Center, with the Chief, Division of Financial Management, OSM, at the Denver Finance Center, the establishment of a project escrow account. The Division of Financial Management will provide to the coal sales agent or broker a copy of the escrow instructions requiring payment of all receipts into the appropriate escrow account.

Payments to the owner(s) of the coal will be based on the pre-reclamation written agreement with the owner(s) or as directed by court decree. OSM's share of any coal sale proceeds will be deposited in the Abandoned Mine Reclamation Fund.

c. Temporary Lodging Expenses. Temporary lodging expenses may be appropriate, on a case-by-case basis, only where the reclamation work necessitates the removal of the residents and for a limited time. Payment of temporary lodging expenses must be approved in writing by the appropriate RD.

d. Claims for Damages Resulting from AML Reclamation. OSM program personnel are not authorized to settle claims where:

- damages occur to adjacent property as a result of AML reclamation;
- claims are made for loss of business;
- claims are made for damages to personal property; or
- where there are other claims relating to the negligence of parties involved in the AML reclamation.

Instead, they will prepare a factual, chronological record of the investigation of the claim and immediately send it to the Office of the Solicitor for action or advice. The rationale for this procedure is that claims may be covered under the Tort Claims Act, contractor liability insurance, subsidence insurance or other means and could therefore result in litigation.

### **III. Disposition of Receipts from the Sale of Coal Recovered Incidental to AML Federal Reclamation Program (FRP) Projects**

On occasion OSM, in conducting FRP projects, has extracted coal incidental to reclamation. An example of this is the extraction of coal incidental to abating or controlling an underground mine fire.

When coal is to be recovered and sold incidental to an FRP project, a written agreement must be signed by OSM and the mineral rights owner(s) before the work can begin. The agreement must specify the terms and conditions for payment to the owner(s) and will become part of the required right-of-entry document. OSM program personnel must consult with the Solicitor's Office on matters related to the negotiation of any agreement on coal sales proceeds with mineral rights owner(s).

Reclamation work may begin without such an agreement only if the project addresses an emergency situation and the owner(s) of the mineral rights:

- (a) cannot be located, or

- (b) are not willing to enter into an agreement (in which case police powers may be exercised for right-of-entry).

Upon the extraction and sale of the coal, the proceeds will be placed in a project escrow account established for that specific purpose by the Division of Financial Management. The Chief of the Division or Branch responsible for the AML FRP program at the Regional Coordinating Centers, as appropriate, will coordinate, through the Financial Unit of the Administrative Service Center, with the Chief, Division of Financial Management, OSM, at the Denver Finance Center, the establishment of a project escrow account. The Division of Financial Management will provide to the coal sales agent or broker a copy of the escrow instructions requiring payment of all receipts into the appropriate escrow account.

Payments to the owner(s) of the coal will be based on the pre-reclamation written agreement with the owner(s) or as directed by court decree. OSM's share of any coal sale proceeds will be deposited in the Abandoned Mine Reclamation Fund.