

**WEST VIRGINIA
ABANDONED MINE LAND PERFORMANCE
AGREEMENT
EVALUATION YEARS 2012 AND 2013**

**West Virginia Department of Environmental Protection
Office of Abandoned Mine Lands and Reclamation**

and

**Office of Surface Mining Reclamation and Enforcement
Charleston Field Office**

**Final
June 03, 2011**

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I. Purpose

Background: On February 23, 1981, the Secretary of the Department of the Interior approved the West Virginia Abandoned Mine Land Reclamation Plan under the provisions of the Surface Mining Control and Reclamation Act (SMCRA). With that approval, the State assumed primary authority for the reclamation of non-emergency abandoned mine land (AML) reclamation projects within the State. On August 26, 1988, the Secretary approved the West Virginia Abandoned Mine Land Reclamation Emergency Program. The West Virginia Department of Environmental Protection (WVDEP), Office of Abandoned Mine Lands and Reclamation, currently administers these programs.

The Charleston Field Office (CHFO) and WVDEP developed this Performance Agreement (Agreement) using guidance in Office of Surface Mining (OSM) Directive AML-22, *Evaluation of State and Tribal Abandoned Mine Land Programs*. The Agreement contains the basic framework for oversight activities beginning on July 1, 2011, and ending on June 30, 2013, for the two evaluation periods. Both parties may amend the agreement at anytime. OSM will include a copy of the agreement in the Public Evaluation File at the CHFO.

Objectives: The purpose of this oversight agreement between CHFO and WVDEP is to:

- Enforce the requirements of SMCRA related to the Title IV abandoned mine land reclamation;
- Foster mutual respect in carrying out the requirements of SMCRA;
- Assure performance topics reflect OSM/State priorities;
- Consider the impacts on State resources needed to participate in and support CHFOs oversight effort;
- Measure program effectiveness using on-the-ground, performance-based results as the principal focus of program evaluation and documentation;
- Support the WVDEP in carrying out its approved Title IV program;
- Focus on technical assistance and a programmatic review instead of a detailed project specific evaluation;
- Encourage WVDEP to utilize CHFO and OSM staff for technical assistance when appropriate to assist in determining project eligibility, including the evaluation of mine drainage sources (active, abandoned, or co-mingled);
- Provide timely follow-through on requests for assistance and plan amendment;

- Provide for CHFO and WVDEP peer review of oversight reports;
- Ensure compliance with the National Environmental Policy Act (NEPA) while avoiding unnecessary construction delays;
- Ensure that the limited resources available to both agencies are used in the most efficient and effective ways;
- Encourage the use of AML enhancement projects as an economical approach to solving abandoned coal mine problems; and,
- Foster the use of current technology to abate acid mine drainage (AMD) on projects where AMD abatement is feasible.

II. Annual Evaluations

Background:

Upon approval of the State AML Reclamation Plan, OSM assumed an oversight role in West Virginia. As part of this oversight, CHFO conducts an annual enhancement and performance review, provides assistance to the State, and prepares annual evaluation reports to keep the public and Congress informed of the State's success in implementing SMCRA and the approved Reclamation Plan.

AML Oversight in West Virginia will focus on:

- Measuring the on-the-ground success of approved programs;
- Identifying the need for financial, technical, and other program assistance;
- Encouraging partnerships with other Federal, State, and local agencies, and community-based groups to best utilize AML funds for waterline construction
- Encouraging partnerships with other Federal, State, and local agencies, and community-based watershed groups to encourage the abatement of AMD; and,
- Encouraging the use of AML enhancement projects as a tool to reclaim abandoned coal mines.

Oversight Review/Technical Assistance

Oversight will be accomplished through evaluations planned, implemented, and documented jointly by staff from WVDEP and CHFO. State participation in the evaluations will ensure that any misinterpretations will be kept to a minimum. Evaluations will be conducted throughout the evaluation year. Accordingly, draft evaluation reports will be prepared for topics to be summarized in the Annual Evaluation Report, and they shall be provided to WVDEP for final comment no later than June 1 of the applicable evaluation year period. This will allow the State

an opportunity to review the reports and provide comments to CHFO before the preparation of the Annual Evaluation Report.

Each agency will assign at least one staff member to jointly lead the evaluation of selected review topics. The team leaders will determine the need for other resources as part of the evaluation process. They will further establish the time frames and schedules to complete the reports.

Both parties have prioritized the following work plan topics for the EY 2012/2013 oversight evaluations. Priority 1 work plan topics are topics that will start and should be completed during the first evaluation year, and many will be repeated for the second year. Topics not initiated during this first evaluation year may be deferred to the subsequent evaluation period. Both agencies will approve the detailed work plans before the evaluations begin. After both agencies develop and approve the work plans, they will be maintained in a public review file at CHFO in accordance with OSM Directive INF-1.

The following program topics are ranked Priority 1.

AML Regular and Emergency Project Inspections – OSM, in cooperation with WVDEP, will evaluate potential sites to determine if the site meets the proposed priority. Approved projects will be evaluated to ensure that all required permits are obtained, adequate environmental controls are in place during construction, and also to compare the completed project with the approved scope of work. Inspectors will use the criteria in Appendix A for inspecting AML sites.

Fish and Wildlife Coordination – OSM will provide WVDEP technical assistance with regard to bat issues, including fall and winter construction issues. WVDEP will provide OSM with suggested modifications for improvements to the existing Programmatic Agreement with US Fish and Wildlife Service to ensure the protection of threatened or endangered species while allowing activities to occur without specific consultation that will not adversely affect federally listed species or their designated critical habitat.

Mine Seal/Bat Gate Construction Techniques – WVDEP and OSM will conduct file and field reviews on a sample of construction projects involving bat gates, culverted bat gates, wet seals and dry seals to determine if existing policies are sufficient to adequately determine the type of seal needed, as well as the proper design and construction of the seals and gates.

Maintenance on Existing AML Projects – WVDEP and OSM will evaluate the current policies and procedures for conducting routine maintenance on previously completed projects on AML-eligible lands (including federal emergencies and RAMP projects).

Regional 404 Permit Meeting/Training - OSM will coordinate meetings and training with the US Army Corps of Engineers, WVDEP, and watershed groups to renew the Regional

Permit and work to make it more useful to the US Army Corps of Engineers and more user friendly for the WVDEP and watershed groups.

Historic Protection – OSM and WVDEP will work with the State Historic Preservation Office to develop a process to ensure the commitments on projects involving a Memorandum of Agreement under the Historic Preservation Act are followed through and the Agreements are closed out.

Abandoned Mine Land Inventory System (AMLIS) - OSM will assist WVDEP in its continued effort to update and validate previously unidentified additions to AMLIS. Changes and additions to AMLIS will be conducted in accordance with the approved rule changes as a result of the reauthorization.

Water Supply Projects – OSM and WVDEP will evaluate AML waterline expenditures. The evaluation team will determine the emphasis of the review, which could include review any aspect of the waterline process, including eligibility requirements, project design, sub-grant procedures, public involvement or other issues involved with AML funded waterlines.

AML Enhancement/3.14 Exemption- OSM and WVDEP will evaluate proposed and existing AML Enhancement and 3.14 Exemption projects to ensure that all required permits are obtained, adequate environmental controls are in place during construction, and also to compare the completed project with the approved scope of work.

AML Staffing – OSM and WVDEP will follow up on the initial staffing evaluation concerning the need for additional personnel due to AML's increased work load related to the additional AML funding as a result of the 2006 reauthorization changes.

Phase II Eligibility Study - WVDEP and OSM will conduct a follow-up to the March 2010 study on project eligibility. Phase 2 will evaluate the documentation and process that the WVDEP utilizes to determine project eligibility on AML sites.

The following program topics are ranked Priority 2.

Public Notice –OSM and WVDEP will conduct an oversight review of existing public notice procedures and evaluate if additional procedures should be implemented.

Acid Mine Drainage – OSM will work with WVDEP to update the inventory of AML sites in the State with AMD and include the data in an AMD GIS Project Inventory.

State AML Plan Update – OSM will provide technical assistance and advice to the WVDEP in updating the State AML Plan in response to changes in the federal regulations resulting from the AML reauthorization and changes in the West Virginia procurement regulations. In addition, OSM will process any amendment to the State AML Plan in

accordance with Federal requirements.

Project Repair/Restoration - WVDEP and OSM will conduct a field and file review of projects requiring significant rework or extensive maintenance to determine if a trend or root cause can be established.

Procurement Practices- OSM and WVDEP will review a sample of design or construction contracts where change orders have significantly changed the cost of the work or the scope of the project.

Public Outreach

CHFO and WVDEP are committed to continuously interacting with citizen, environmental, and industrial organizations. As part of the project approval process, WVDEP places public notices in local newspapers describing the project and offering input either through face-to-face meetings or through correspondence. CHFO further maintains a mailing list of organizations and individuals who have previously participated in the AML Program. During the evaluation year, CHFO requests input from these groups/individuals and encourages them to provide suggestions for program review. Draft performance agreements and Annual Reports are posted on OSM's website. Groups and individuals are further encouraged to provide suggestions for further program improvement. In addition, CHFO staff is available to meet with individual citizens or organizations at any time during the evaluation year. WVDEP routinely participates in these meetings. The public review file in the CHFO will contain a record of any of these meetings. Each individual and organization will also receive a copy of the final report. CHFO encourages citizen groups to request and schedule meetings related to specific issues. We will pursue other opportunities for public outreach throughout the evaluation year, as appropriate.

III. Information Exchange

CHFO and the WVDEP agree that the exchange of information is critical to the oversight process. CHFO needs State information to:

- Complete day-to-day oversight activities;
- Respond to periodic inquiries from the public and Congress about the status of the program; and,
- Provide data to satisfy OSM oversight reporting requirements.

The CHFO staff has access to the National AMLIS through OSM's Wide Area Network. This provides all CHFO office locations in West Virginia direct access to basic information about AML sites from the time West Virginia identifies them and places them on the inventory. Review teams and CHFO may need other information from data systems maintained by the WVDEP. Work Plans for each oversight evaluation will identify the data to be collected and the

methods by which it will be provided. Both agencies will approve each work plan before any evaluations begin.

IV. Exchange of Documents

Several other documents identified in Appendix B (Exchange of Documents) are essential for oversight. CHFO and WVDEP will exchange these documents as specified or when they are completed.

V. OSM Approval Processes

Both the grant approval and specific project authorization processes are fully described in the Federal Assistance Manual. Complete grant applications are processed within 60 calendar days of receipt, and amendments are approved or disapproved within 30 days of a complete request.

WVDEP may submit a project for an emergency declaration from OSM when there is a sudden danger or impairment that presents a high probability of substantial physical harm and the danger cannot be abated quickly enough under the normal AML program procedures. CHFO will expedite the review process, and authorization for most approved emergencies will be provided within two working days of receiving WVDEP information. Compliance with environmental requirements is needed, unless there is an immediate threat of substantial physical harm, and some emergency action must be completed before the NEPA documents can be prepared. Verbal coordination and approval is required prior to the expenditure of any funding on an emergency declaration.

Written authorizations to proceed (ATP) on non-emergency projects must be obtained prior to construction. The ATP letter notifies the WVDEP that CHFO has determined that the environmental review is complete and the WVDEP is approved to begin construction. CHFO will process the ATP request within 14 working days after receipt of a complete ATP package. When additional information is needed to complete the request for an ATP, CHFO will verbally contact WVDEP and other consulting agencies to discuss the needed information and will process the request when the additional information is provided. WVDEP may request an expedited review of projects when conditions are not of an emergency nature but still require a quick turn-around. CHFO will work cooperatively to expeditiously process those requests.

VI. Annual Evaluation Report Tables

Annual AML evaluation reports are enhanced by including summary data tables and graphics of annual and cumulative AML accomplishments, which reflect changes in the core data that characterize the AML program. OSM conducts data analysis using the data extracted from E-AMLIS. The WVDEP agrees to keep the data in AMLIS current. CHFO will prepare most tables showing accomplishments in the annual evaluation report using information from this system. However, additional information, not maintained in AMLIS is also needed. WVDEP agrees to work cooperatively with OSM to obtain the required information.

VII. Innovative State Actions

OSM Directive AML-22 provides that oversight will recognize innovative approaches in areas such as:

- Extraordinary or innovative achievements in reclamation;
- Managerial efficiency;
- Problem resolution;

To identify these accomplishments, each work plan will incorporate provisions to highlight any activities that would qualify as innovative approaches. Additionally, WVDEP will identify and report to CHFO any activities they believe deserves recognition in the Annual Evaluation Report. Either CHFO or WVDEP may identify these activities.

VIII. Project Inspections

CHFO will select sites for an on-site evaluation using the guidelines contained in Appendix A, *Site Inspection Policy*. While we will select most inspections using these guidelines, CHFO reserves the right to conduct additional inspections based on the professional judgment of CHFO or WVDEP staff. WVDEP will receive a written copy of the results of each inspection.

IX. Signatures

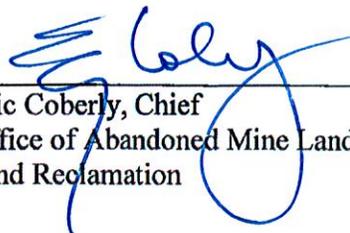
Signed in agreement by the parties this 3rd day of June, 2011.

**For the Office of Surface Mining
Reclamation and Enforcement**



Roger W. Calhoun, Director
Charleston Field Office

**For the West Virginia Department
of Environmental Protection**



Eric Coberly, Chief
Office of Abandoned Mine Lands
and Reclamation

Appendix A

SITE INSPECTION POLICY

For EY's 2012 and 2013, OSM will conduct AML site inspections according to the following criteria:

1. A. WVDEP and CHFO will jointly inspect, as practicable, at least 10 percent of submitted emergency and non-emergency AML projects, including water supply projects, and will include sites visits as follows: (All emergency complaints not addressed within six months of the emergency declaration will also be evaluated to determine if the project could have been addressed under normal grant procedures.)

Prior to OSM issuing an authorization to proceed: These inspections will evaluate the description and priority of the problem; adequacy of the reclamation proposal; potential for public controversy; and eligibility of the project.

Pre-bid construction: These inspections will evaluate the scope of work and contract specifications; bidding procedure; compliance with Authorization to Proceed; and adequacy of the NEPA compliance document.

During construction: These inspections will evaluate the construction activities, environmental controls, and adherence to permits.

During or following the final inspection: These inspections will evaluate if the contract documents were followed, any changes to the scope of work, any maintenance work required, and overall success of the reclamation project.

2. CHFO will respond to all on-site requests for technical assistance from the WVDEP.
3. WVDEP and CHFO will jointly conduct pre-award, prebid, during construction, and final inspection site visits on all projects subject to a Memorandum of Agreement under the Historic Preservation Act. WVDEP will ensure that OSM is given sufficient notification for all pre-bids, pre-constructions, and final inspections for all MOA projects.

Additional project inspections may occur based on oversight evaluation work plans developed jointly by CHFO and WVDEP or when determined necessary based on the professional judgment of the program staff.

Appendix B

EXCHANGE OF DOCUMENTS

WVDEP Notifications to CHFO

WVDEP will provide the following documents to CHFO:

- Proposed and final changes to State statutes or State regulations;
- Written or verbal requests for technical assistance;
- The AML Site Information Data Sheet (submitted on a quarterly basis), until such time that access to the information management system (WEBAML) is available to OSM;
- Internal memoranda that assign reclamation projects to specific grants or transfer projects between grants;
- Revisions to the State AML Plan; and
- For each reclamation project:
 - A complete Environmental Assessment (EA) or Categorical Exclusion;
 - Eligibility documents for all projects;
 - For emergency projects requiring immediate action before the project can be submitted and approved by OSM, the EA should explain the need for the immediate action including the investigation, project start, and project completion dates;
 - An electronic Problem Area Data Sheet (PAD) when a new project is being added to the inventory. On emergency projects, the PAD is submitted after the project is completed; and,
 - A copy of the investigation report (AML-10) and an OSM 51 for each emergency reclamation project.

Appendix B (cont.)

CHFO Notifications to WVDEP

CHFO will provide the following documents to WVDEP:

- Annual Evaluation Report - The draft West Virginia annual AMLR report will be prepared and forwarded to the State for review and comment within 30 days of the close of each evaluation year. The State will have 15 days to provide comments to OSM;
- Federal court decisions relating to challenges to Federal law or regulations;
- Detailed Oversight Evaluation Reports;
- Copies of Federal Register notices relating to changes in Federal rules;
- Authorizations to Proceed for each approved project with an emergency declaration for each emergency project;
- Findings of No Significant Impacts;
- Federal statutory or regulatory amendments;
- OSM policy documents;
- Consultation results with U.S. Fish and Wildlife Service
- Technical assistance reports; and,
- AML Reclamation Plan amendment decisions.

Appendix C

DETAILED OVERSIGHT WORK PLANS

Individual detailed oversight work plans will be prepared using the following format. Each work plan will be maintained in a public review file at CHFO upon execution.

WEST VIRGINIA ABANDONED MINE LANDS PROGRAM
Detailed Oversight Work Plan
Evaluation Year

TOPIC:

EVALUATION TEAM: WVDEP:

OSM:

PURPOSE OF THE REVIEW:

STATUTORY/REGULATORY AUTHORITY:

POPULATION SIZE:

SAMPLE SIZE:

REVIEW METHODOLOGY (DESCRIBE REVIEW APPROACH, PROCEDURES, PLANS, ETC.):

ON-THE-GROUND IMPACTS/RESULTS:

PUBLIC OUTREACH:

OTHER ASSISTANCE NEEDED:

EVALUATION FORM(S) TO BE PREPARED TO CONDUCT REVIEW:

DATA NEEDED FROM WVDEP (DATA FILES AND SPECIFIC FIELD NAMES, FILE ACCESS, PERMIT ACCESS, GIS DATA, ETC.):

ESTIMATED HOURS:

WVDEP

OSM

WORKPLAN DEVELOPMENT

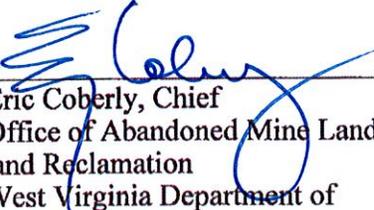
REVIEW

REPORT PREPARATION

DETAILED TIMEFRAMES AND MILESTONES OF THE REVIEW:

PROJECTED COMPLETION DATE:

CONCURRENCES:


Eric Coberly, Chief
Office of Abandoned Mine Lands
and Reclamation
West Virginia Department of
Environmental Protection

6/6/11
DATE

Roger W. Calhoun, Director
Charleston Field Office
Office of Surface Mining
Reclamation and Enforcement

DATE