TENNESSEE ABANDONED MINE LAND

PERFORMANCE AGREEMENT/WORK PLAN

FISCAL YEAR 2011

DEPARTMENT OF ENVIRONMENT & CONSERVATION

U.S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING

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PERFORMANCE AGREEMENT
FISCAL YEAR 2011

This performance agreement is between the Office of Surface Mining Reclamation and Enforcement's (OSM) Knoxville Field Office (KFO) and the Tennessee Department of Environment and Conservation (TDEC), Land Reclamation Section. The purpose of this agreement is to:

- Continue to build an effective working relationship between the KFO and the TDEC.
- Assure each agency accomplishes the goals of Title IV of the Surface Mining Control and Reclamation Act (SMCRA) and the Tennessee Statute 59-8-324, States Program to Acquire and Reclaim Land Disturbed by Past Mining; and Rules of the Tennessee Department of Environment and Conservation, Chapter 400-1-24, Abandoned Mine Lands Reclamation Program, and
- Assure that oversight of the Tennessee Abandoned Mine Land (AML) Program is accomplished as required by OSM Directives AML 22, Evaluation of State and Tribal Abandoned Mine Land Programs; GMT 10, Federal Assistance Manual; and AML 1, Abandoned Mine Land Inventory.

The provisions, understandings and agreements necessary to assist KFO and TDEC in achieving these common goals are:

1. KFO is required by OSM Directive AML-22 to:

   - Develop and execute a performance agreement and work plan with the state.
   - Plan and conduct oversight activities including enhancement and performance reviews.
   - Prepare reports and documents in accordance with AML-22 and other national and regional policies or procedures.
   - Develop operational procedures consistent with national and regional policies.
   - Coordinate technical and other assistance with the Regional Director.
   - Interact on a routine basis with citizens and environmental organizations to identify their areas of concern, which will be major factors in determining where OSM will focus its resources.
   - Provide assistance to the state, if requested or necessary, and
   - Complete annual evaluation report(s) for FY 2011 on the Tennessee AML Program by December 31, 2011.

2. KFO and TDEC will be governed by the provisions of this agreement for FY 2011 beginning on October 1, 2010 and ending on September 30, 2011.

3. KFO and TDEC will, pursuant to OSM Directive AML-22, prepare and execute a performance agreement and work plan for FY 2012 prior to September 30, 2011.

4. KFO and TDEC have established, with the opportunity for citizen or public input, program areas targeted for special review emphasis during FY 2011 (described in Attachment A). The evaluation of the target areas will be conducted jointly by teams of both OSM and TDEC personnel. We have outlined the review scope and methodology to be used in conducting the reviews. TDEC and OSM will name a contact person or persons for each Performance Agreement/Work Plan item to coordinate and/or participate in the review.

   It is recognized that additional review topics may be added to this document based upon review findings, stakeholder suggestions, unplanned events, or OSM regional or national directives. Changes to this document will be developed by OSM and TDEC. TDEC will be afforded the opportunity to participate in other oversight studies conducted during the evaluation year, if they choose to do so.

5. KFO and TDEC agree they will, as necessary and as time permits, conduct joint site visits of AML projects, once before, during and after construction completion. For scheduling purposes TDEC will provide KFO notice via email when a project enters the active construction phase.

6. KFO and TDEC staff will promptly address and discuss implementation issues and problems identified during the evaluation year. We will develop action plans or solutions which are mutually agreeable to both the KFO and the TDEC when needed. KFO and TDEC management will work to promptly resolve concerns once a KFO/TDEC review team advises them of the need for management assistance.

7. KFO and TDEC will periodically review any areas of the Tennessee AML program identified as problematic or deficient during previous evaluation years to determine whether or not satisfactory resolution of issues has been achieved.

8. KFO will prepare annual evaluation reports and maintain evaluation files pursuant to the applicable federal file provisions.

9. KFO will serve as TDEC's external source for technical and policy information related to implementing Title IV of SMCRA, and respond to all TDEC requests for assistance or information in a timely manner.

10. KFO encourages TDEC to conduct internal reviews of its own program areas in lieu of OSM's special oversight studies or routine oversight. KFO will report the results of any such reviews provided by TDEC in the OSM annual evaluation report. TDEC will provide to KFO the data necessary to fulfill its AML reporting requirements.

11. KFO and TDEC will emphasize on-the-ground/end-results success of the State AML program in achieving the purposes of the Act when evaluating the Tennessee Approved AMLR Program.

12. KFO and TDEC will continue to share a responsibility to assure 100 percent of the environmental documents prepared for AML construction projects and/or sites adequately

describe the work scope and ensure National Environmental Policy Act (NEPA) compliance prior to obligating Federal funds for construction. (See Attachment B)

13. At the time of the drafting of this performance agreement, OSM notified Tennessee that the OSM administration of the AML Emergency Program in Tennessee will terminate on September 30, 2010. KFO will encourage and continue to explore the TDEC assumption of the emergency program through ongoing discussions.

    To date, TDEC has elected not to administer an AML Emergency Program in Tennessee. If TDEC elects to administer an AML Emergency Program in Tennessee, KFO and TDEC agree to implement the program in accordance with the provisions of Chapter 4-30 "State Emergency Reclamation Program" of the Federal Assistance Manual (FAM) authorized under OSM Directive GMT-10.

    If the AML Emergency Program is transferred to Tennessee on October 1, 2010, oversight inspections of AML emergency projects will be conducted under the same procedures outlined in this document for non-emergency AML projects, which are based upon provisions of OSM Directive AML-22 "Evaluation of State and Tribal AML Programs."

14. KFO and TDEC will hold periodic staff and management meetings to discuss any ideas and/or concerns and facilitate communication, as needed.

15. TDEC will consider use of the Forest Reclamation Approach on abandoned mine land projects for post-mining use as forest.

16. TDEC agrees to follow the provisions of OSM directive AML-1 Abandoned Mine Land Inventory System (AMLIS) which governs implementation and maintenance of the AML Inventory.

17. TDEC will ensure prior to it awarding any AML contract that contractors and subcontracts involved are in compliance with Federal regulations at 30 CFR §874.16. TDEC will verify through OSM's Applicant Violator System (AVS) and file document that the company officials have no outstanding environmental violations at the time of award, which would preclude them from obtaining such AML contract award.

FY 2011 Performance Agreement

Representing the Tennessee Department of Environment and Conservation, and the Office of Surface Mining Reclamation and Enforcement, Knoxville Field Office the following parties agree to the purpose, goals and anticipated actions proposed in this Performance Agreement.

Tim Eagle 9/10/10

Tim Eagle
Manager,
Land Reclamation Section
Division of Water Pollution Control
Tennessee Department of
Environment Conservation

Date

9/10/10

Earl D. Bandy, Jr.
Director
Knoxville Field Office
Office of Surface Mining
Reclamation & Enforcement

Date

Attachment A

OSM FY 2011 OVERSIGHT WORK PLAN

TENNESSEE

ENHANCEMENT AND PERFORMANCE REVIEW

AML Program Element #1: Non-Emergency Construction Management

Population size: All non-emergency abandoned mine land (AML) reclamation projects in active construction status or completed between February 1, 2009 and January 31, 2011.

Sample size: All (or a maximum of six) active or completed AML reclamation projects will be selected randomly to reflect, to the extent possible, reclamation activities over all Tennessee coalfield regions.

Review scope and methodology:

TDEC will designate a representative or representatives to participate in the review and report development. TDEC will provide OSM the subject AML non-emergency construction project site population at the start of the review. TDEC will also notify OSM when any site construction gets underway during the review period on AML reclamation sites and the estimated construction completion timeframe. Project site files and respective grant files will be reviewed, TDEC personnel interviewed, and joint OSM/TDEC site visits scheduled and conducted for the sampled project sites to evaluate TDEC performance in managing AML non-emergency construction and on-the-ground AML hazard abatement success. The results of each sampled project site visit will be documented in an OSM site visit report.

Sampled project file and respective grant file documents considered for review will include:

- Correspondence generated during environmental document development and interagency or intergovernmental consultation processes requiring specific permit conditions or mitigation measures for the construction project site.
- Environmental documents developed for the project site (i.e. environmental assessments, categorical exclusions, and findings of no significant impact).
- Engineered project site designs.
- Project site construction contracts, technical specifications, and invoices.
- Any written procedures used by TDEC in AML construction management.
- TDEC inspection reports.
- Construction grant performance reports, and
- Previous OSM site visit reports.

The review will determine whether TDEC AML non-emergency contract monitoring and construction management effectively ensured:

- Project construction was carried out or is being carried out in accordance with contract terms and technical specifications.

- Compliance with any specific permit conditions or mitigation measures required pursuant to the interagency and intergovernmental NEPA consultation process, and
- Construction achieved or is progressing toward achieving the project design goals to effectively reclaim the AML features involved.

Beginning date: 9/1/2010
Completion date: 8/31/2011

Assistance requested from AD/SC: None

OSM FY 2011 OVERSIGHT WORK PLAN

TENNESSEE

ENHANCEMENT AND PERFORMANCE REVIEW

Program Element #2: Drawdowns and Disbursements of OSM Grant and Cooperative Agreement Funding

Population Size: All drawdowns from OSMRE grant occurring within Fiscal Year 2011.

Sample Size: A minimum number of drawdowns occurring within Fiscal Year 2011 are required to determine whether there have been any changes in the method of drawing funds, the accounting for the funds within the State's accounting system, or the time frames established in the previously conducted Level I review.

Review Scope and Methodology:

Review of Tennessee Department of Environment and Conservation (TDEC) drawdowns and disbursements of OSM grant funding will be conducted to determine whether the drawdowns and disbursements of Federal funds are in conformity with the Grants Management Common Rule codified by the U.S. Department of the Interior at 43 CFR Part 12, Subpart C; the OSM Federal Assistance Manual Chapter 5-55; and the following criteria:

- Drawdowns were limited to the minimum amount needed and timed to correspond with the actual, immediate cash requirements of TDEC in order to carry out the approved Tennessee abandoned mine land (AML) program and cooperative agreements.

- Drawdown timing and amounts were as close as administratively feasible to actual disbursement by TDEC for direct program costs and the proportionate share of any allowable indirect costs.

- Drawdowns were properly accounted for and in accordance with Federal grant and cooperative agreement funding requirements.

Beginning Date: 9/1/2010
Completion Date: 8/31/2011

Assistance Requested from the ARCC: An ARCC Grants Specialist will conduct this review.

Attachment B

PROCESSING OF ENVIRONMENTAL DOCUMENTS REQUIRED BY NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)

TDEC and KFO agree to cooperatively and jointly develop an environmental document required by the National Environmental Policy Act of 1969 (NEPA) for each AML project federally funded under all Tennessee Abandoned Mine Land (AML) Consolidated Grants. TDEC agrees following adequate project development it will prepare an accurate description of planned construction activities and impacts to environmental features such as, but not limited to, streams, floodplains, wetlands, and threatened or endangered species and their habitat. TDEC will provide the description to applicable State and Federal jurisdictional or environmental agencies and request they provide NEPA consultation comments for use in the environmental document preparation. KFO, being responsible for ensuring NEPA compliance, will assist in securing or resolving NEPA consultation comments if requested by TDEC.

Upon receipt of the consultation comments TDEC will develop a draft of the appropriate environmental document, Environmental Assessment (EA), or Categorical Exclusion Certification and Determination (CE), which resolves all consultation comments. TDEC will send the NEPA document along with the consultation comment responses and a request for an OSM authorization to proceed (ATP) to the KFO. The environmental document package will include an AML eligibility statement, new or updated Problem Area Description (PAD); and an Abandoned Mine Land Inventory System (AMLIS) printout markup showing the features that will change from "unfunded" to "funded" immediately prior to ATP issuance.

KFO will review each environmental document and will promptly schedule and conduct a joint OSM/TDEC site visit as warranted. KFO will verify prior to ATP issuance that planned work is accurately described, consultation comments are resolved in the draft environmental document, and all necessary permits and proposed borrow/disposal areas have been identified. KFO will work with TDEC to revise the environmental document if a revision is found to be needed and will provide TDEC a copy of the site visit report or email outlining any needed revisions. KFO will issue a Finding of No Significant Impact/ATP or Categorical Exclusion Certification and Determination/ATP within fourteen working days following receipt of a complete NEPA request package from TDEC.

Immediately prior to project ATP issuance KFO will request TDEC provide a copy of the AMLIS data sheet documenting AML feature units and costs have been moved from unfunded to funded.

If following ATP issuance TDEC identifies additional AML features or previously unidentified borrow or disposal areas it wishes to incorporate into the construction contract, TDEC agrees to advise KFO of such, provide an AML eligibility statement for the added AML features, and obtain KFO concurrence that the AML feature(s) or areas are covered by the approved environmental document prior to the changes being implemented. TDEC agrees to submit any required AMLIS revisions for all such AML features when requesting KFO concurrence.