

**WEST VIRGINIA
ABANDONED MINE LAND PERFORMANCE
AGREEMENT
EVALUATION YEARS FY-2004 AND FY-2005**

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

and

Office of Surface Mining

Charleston Field Office

December 2003

Table of Contents

<i>I. Purpose</i>	<i>1</i>
<i>Background</i>	<i>1</i>
<i>Objectives</i>	<i>1</i>
<i>II. Annual Evaluations</i>	<i>2</i>
<i>Background</i>	<i>2</i>
<i>Oversight Review/Technical Assistance</i>	<i>2</i>
<i>Public Outreach</i>	<i>4</i>
<i>III. Information Exchange</i>	<i>4</i>
<i>IV. Exchange of Documents</i>	<i>5</i>
<i>V. Annual Report Tables</i>	<i>5</i>
<i>VI. Innovative State Actions</i>	<i>5</i>
<i>VII. Project Inspections</i>	<i>5</i>
<i>VIII. Signatures</i>	<i>6</i>
<i>Appendix A – Site Inspection Policy</i>	<i>7</i>
<i>Appendix B– Exchange of Documents</i>	<i>9</i>
<i>Appendix C – Detailed Oversight Evaluation Work Plans</i>	<i>11</i>

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 Division 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 using guidance in OSM Directive AML-22, *Evaluation of State and Tribal Abandoned Mine Land Programs*. The Agreement contains the basic framework for oversight activities beginning on October 1, 2004, and ending on June 30, 2005, 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 CHFO's 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.
- Provide timely follow-through on requests for assistance and plan amendments.
- 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 ways.
- Encourage the use of re-mining as an economical approach to solving abandoned coal mine problems.
- 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 local, State, and Federal agencies and community-based groups to encourage the abatement of acid mine drainage.
- Encouraging the use of re-mining as a tool to reclaim abandoned coal mine problems.

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 misinterpretations are kept to a minimum. Evaluations will be conducted throughout the evaluation year with all draft detailed evaluation reports for topics to be included in the Annual Evaluation Report being provided to WVDEP for final comment no later than June 1, 2004, for the FY-2004 evaluation period, and June 1, 2005, for the FY-2005 evaluation 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 Work Plan topics for the following FY 2004/2005 oversight evaluations. Priority 1 work plan topics are topics that will start and should be completed during the evaluation year. Priority 2 topics will start after all Priority 1 topics are finished. Topics not initiated this evaluation year may be deferred to the subsequent evaluation period. As both agencies develop and approved the work plans, they will be appended to this Agreement in Appendix C. Both agencies will approve each detailed work plan before the evaluations will begin. The following program topics are Priority 1.

Project Inspections – CHFO will evaluate construction projects to determine if adequate environmental controls are in place during construction and also compare the completed project with the approved scope of work. Inspectors will use the criteria in Appendix A, Table A-1, for those projects estimated to cost \$100,000 or more.

Emergency Project Inspections – CHFO will evaluate emergency projects to determine if the emergency criteria established in GMT-10-7 are satisfied. Inspectors will compare the completed project with the approved scope of work and also determine if adequate environmental controls are in place during construction. Inspectors will use the criteria in Appendix A, Table A-1, for those projects estimated to cost \$100,000 or more.

Appalachian Clean Streams Initiative – The CHFO will continue to work with the WVDEP to plan new projects, and use OSM Appalachian Clean Stream Initiative funds to leverage additional money for new and existing Clean Stream projects.

NEPA Fish and Wildlife Coordination – The CHFO will work with WVDEP to implement an effective and efficient endangered species coordination process.

Public Service District Project Monitoring – The CHFO will evaluate WVDEP's oversight and contract monitoring controls once funds are provided to public service districts for waterline extension type projects.

Coal Refuse Projects – These no cost contracts will be checked to determine compliance with the state plan, state regulations, and federal requirements.

No Cost Projects – All no cost contracts, including coal refuse contracts, will be checked to determine compliance with the state plan, state regulations (including an AML enhancement rule currently in the pipeline), and federal requirements.

State Plan and Regulation Updates – The CHFO will provide technical assistance and advice to the WVDEP for updates to the State plan and regulations, as needed.

Abandoned Mine Land Inventory System (AMLIS) – The CHFO will evaluate WVDEP's AMLIS to ensure that the data entered into the system is accurate.

The following program topics are Priority 2. The agencies will start these reviews after they complete the Priority 1 evaluations.

Clean Streams Reporting Verification – OSM and WVDEP will conduct a study to verify the accuracy of financial and programmatic reports prepared under the Appalachian Clean Streams Program.

Public Outreach

CHFO and WVDEP are committed to continuously interacting with citizen, environmental, and industry 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 surface mining program. During the evaluation year, CHFO requests input from these groups/individuals, and encourages them to provide suggestions to improve future annual evaluation reports. In addition, CHFO staff will be 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:

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

The CHFO staff has access to the National Abandoned Mine Land Inventory System (AMLIS) through OSM's Wide Area Network. This provides all CHFO office locations in West Virginia direct access to 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 method to provide it. Both agencies will approve each work plan before the evaluation begins.

IV. Exchange of Documents

Access to AMLIS has eliminated the need for routinely submitting inventory forms. 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. Annual Evaluation Report Tables

The WVDEP agrees to keep the data in the AMLIS system current. CHFO will prepare a table of accomplishments in the annual evaluation report using information from this system.

VI. Innovative State Actions

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

1. Reclamation
2. Training
3. Communications
4. Cost savings
5. Accounting
6. Grants management

To identify these accomplishments, each Work Plan will incorporate provisions to highlight any activities that would qualify as innovative approaches. Additionally, the WVDEP will identify and report to the CHFO any activities they believe deserve recognition. Annual evaluation reports may identify activities identified by either the CHFO or WVDEP.

VII. 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.

VIII. Signatures

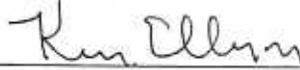
Signed in agreement by the parties this 3rd day of February, 2004.

For the Office of Surface Mining



Roger W. Calhoun, Director
Charleston Field Office

For the West Virginia Department
of Environmental Protection



Ken Ellison, Director
Division of Land Restoration

Appendix A

SITE INSPECTION POLICY

For EY's 2004, 2005, and 2006, OSM will conduct AML site inspections according to the following criteria:

1. A. WVDEP and CHFO will jointly (as practicable) inspect 10 percent of submitted *non-emergency AML* projects before OSM issues an authorization to proceed. During the site visit, inspectors will evaluate the following:
 - a. Description of the problem.
 - b. Adequacy of the reclamation proposal.
 - c. Adequacy of the NEPA compliance document.
 - d. Potential for public controversy.
 - e. Eligibility of the project.
- B. WVDEP and CHFO will jointly inspect, as practicable, all AML Emergency projects with an anticipated construction cost exceeding \$100,000 at pre-bid conference and at (or after) the final inspection. For those emergency projects reviewed at pre-bid which result in a bid award of greater than \$50,000 or a contract duration of greater than 20 days, an inspection/evaluation directed toward contract specification compliance will be conducted by CHFO (jointly with WVDEP, as practicable).
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 with a Memorandum of Agreement (MOA) under the Historic Preservation Act.

Table A-1 summarizes the projected number of Emergency and Non-Emergency inspections to be conducted based on the above criteria. 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 program staff.

Table A-1

Number of Annual Emergency and Non-emergency Inspections

	Site Inspection Criteria	Emergency Inspections	Non-emergency Inspections*
Pre-award	10 percent of all projects	0	4
Pre-bid	All projects with an Advisory Council MOA	0	1
	AML emergencies/Non-emergency Projects	5	2
Active Construction	All projects with an Advisory Council MOA	0	1
	AML emergencies/Non-emergency Projects	5	2
Final Inspections	AML emergencies/Non-emergency Projects	5	2
Totals		15	12

*Includes Watershed Cooperative Agreement and ACSI projects.

Appendix B

EXCHANGE OF DOCUMENTS

WVDEP Notifications to CHFO

Proposed and final changes in State statute or State regulation.

WVDEP will provide the following notifications to CHFO for reclamation projects:

1. A complete Environmental Assessment (EA) or Categorical Exclusion.
2. 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.
3. A Problem Area Data Sheet (PAD) with each request. If the site is already in AMLIS, the PAD can be eliminated. On emergency projects, the PAD is submitted after the project is completed.
4. A copy of the investigation report (AML-10) and an OSM 51 for each emergency reclamation project.

Written or verbal requests for technical assistance.

The AML Site Information Data Sheet (submitted on a quarterly basis).

Internal memoranda that assign reclamation projects to specific grants or transfer projects between grants.

Eligibility documents for Emergency projects.

CHFO Notifications to WVDEP

Annual Evaluation Report - The draft West Virginia annual AMLR report will be prepared and forwarded to the State for review and comment by October 31 for each evaluation year. The State will have 15 days to provide comments to OSM.

Federal court decisions related to challenges to Federal law or regulations.

Detailed Oversight Evaluation Reports.

Authorizations to Proceed for each approved project with an emergency declaration for each emergency project.

Findings of No Significant Impacts (FONSI).

Federal statutory or regulatory revisions.

OSM policy documents.

All directives, policy memoranda, handbooks, etc.

Technical assistance reports.

WV Reclamation Plan amendment decisions.

Obligation reports on March 31 and September 30 of each year.

Appendix C

DETAILED OVERSIGHT EVALUATION WORK PLANS