



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

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REG-8

Transmittal Number:

384

Date: 10/9/87

Subject: Oversight of State Programs - Annual Evaluations

Approval: 

Acting
Title: Director

1. Purpose. This directive outlines the policies and responsibilities for conducting the evaluation of State programs.

2. Definitions.

a. Oversight. The process of evaluating the administration of each approved State program and State reclamation plan.

b. Approved State Program. The regulatory program approved under section 503 of SMCRA and any requirements of a cooperative agreement entered into pursuant to section 523 of SMCRA.

c. State Reclamation Plan. The plan approved under section 405 of SMCRA.

3. Policy/Procedures.

a. Policy. The objective of OSMRE's oversight of State program activities is to evaluate the administration of approved State programs and reclamation plans under SMCRA on a continuing basis and to cooperatively address and resolve significant deficiencies in such administration in a timely manner.

b. Responsibilities.

(1) The Deputy Director, Operations and Technical Services, has overall responsibility for the development and implementation of the policies and procedures associated with oversight activities including the issuance of the "Procedures for the Evaluation of State Regulatory and Abandoned Mine Land Reclamation Programs under the Surface Mining Control and Reclamation Act" on an annual basis.

(2) The Assistant Directors, Field Operations, are responsible for assuring adherence to oversight policies and guidance. This responsibility involves assuring that Field Office personnel are adequately trained in oversight guidance and procedures and providing technical assistance to Field Offices as necessary to support oversight activities. In addition, the Assistant Directors, Field Operations, are responsible for quality control of the annual State reports prepared by Field Offices.

(3) The Field Office Directors are responsible for conducting evaluations on a continuing basis in accordance with oversight policies and guidance. This responsibility includes

interacting with State personnel on a frequent and routine basis (at least quarterly) to review results and discuss issues identified during the evaluation and with outside interest groups such as State and local coal associations and environmental groups on an annual basis to determine their areas of interests during the oversight period. Also, the Field Office Directors are responsible for preparing annual summary reports for each State which shall report on State activities under an approved State program and reclamation plan, on OSMRE's oversight activities within the State and on the issues raised and their resolutions as appropriate.

(4) The Assistant Director, Program Policy, is responsible for developing the "Procedures for the Evaluation of State Regulatory and Abandoned Mine Land Reclamation Programs under the Surface Mining Control and Reclamation Act" on an annual basis and for providing training or advice on the use of those procedures as requested by the Assistant Directors, Field Operations.

c. Procedures. Field Office Directors shall plan and carry out their activities within the guidelines contained in the "Procedures for the Evaluation of State Regulatory and Abandoned Mine Land Reclamation Programs under the Surface Mining Control and Reclamation Act" distributed on an annual basis. The annual oversight procedures issued by the Deputy Director, Operations and Technical Services may be modified by the Deputy Director to provide clarifying guidance for use during the particular oversight period.

4. Reporting Requirements. The development and submission to the Director of State evaluation reports will occur annually.

5. References. None

6. Effect on Other Documents. Supersedes Directive REG-8, Transmittal Number 309, dated December 19, 1986 and Directive INE-14, Transmittal Number 144 dated November 26, 1982.

7. Effective Date. Upon Issuance.

8. Contact. Division of Regulatory Programs, (202) 343-5361.




United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

OCT 9

In Reply
Refer To:
4151
DRP 7

Memorandum

To: Assistant Directors, Field Operations
Field Office Directors

From: 
James W. Workman
Deputy Director, Operations and Technical Services

Subject: Fiscal Year 1988 Procedures for the Evaluation of State
Regulatory and Abandoned Mine Land Reclamation Programs

Attached for your use are the Fiscal Year 1988 procedures for the evaluation of State programs. These documents represent a continuation of our efforts to address concerns expressed by you, the States, the Congress and other interested parties. While the annual evaluation report format and outline is included, please note the increased emphasis on conducting evaluation activities as an ongoing process, not an annual event.

Copies of these documents have been provided separately to all State regulatory authorities and agencies administering abandoned mine land reclamation programs. I urge you to discuss them with your respective States as soon as possible.

Attachments

PROCEDURES FOR THE EVALUATION OF STATE REGULATORY AND
ABANDONED MINE LAND RECLAMATION PROGRAMS UNDER THE
SURFACE MINING CONTROL AND RECLAMATION ACT
FOR THE PERIOD
JULY 1, 1987 THROUGH JUNE 30, 1988

1988 STATE PROGRAM EVALUATION HIGHLIGHTS

Overview

Changes have been made to the 1988 oversight guidance to emphasize oversight of State performance on an ongoing basis, to strengthen the State's primacy role and to diminish the perception that there is dual regulation in primacy States. Accordingly, the guidance has been revised to assist Field Offices in redirecting their oversight efforts from the preparation of annual reports to conducting evaluations on a more routine basis.

To the fullest extent possible, OSMRE's evaluation activities are being tied to OSMRE's inspection findings. The supplement to the minesite evaluation and inspection report (MEIR) form, as revised for 1988, supports this approach as it requires the inspector to document the State's reasons for failing to cite violations only after conferring with the State. This should promote routine dialogue with the State concerning its enforcement activities.

In all program areas, the goal is to encourage Field Offices to conduct evaluations and investigations as necessary to address problems as they arise or become apparent rather than to postpone evaluation activities or interactions with the State until the end of the evaluation year. Further, to the maximum extent possible, Field Offices are encouraged to provide summary data and findings to States on a continuous basis. This should promote discussion of issues while they are still in the formative stages.

Inspection and Enforcement

In the past, OSMRE's oversight program did not directly relate observed violations to State performance. Rather, it attempted to make inferences of State performance as a whole based on comparisons of data from OSMRE inspections of a random sample of sites with State inspection data from all sites. However, partially in response to the recommendations contained in GAO report entitled "Interior Department and States Could Improve Inspection Program" (GAO/RCED 87-40), OSMRE has modified its oversight inspection approach to measure directly whether State inspectors are citing all violations of performance standards and to gather information on the severity and causes of violations.

For the 1987 evaluation year, OSMRE inspectors were required to document whether any violations observed on the OSMRE inspection were present at the time of the last State complete inspection. The 1988 oversight guidance further refines this direct approach to evaluating State performance in that, as revised for 1988, the supplement to the MEIR form requires the inspector to document the State's reasons for failing to cite violations only after conferring with the State. In addition, the revised form will capture information provided by OSMRE inspectors concerning the severity and causes of observed violations.

Field Offices are encouraged to continue efforts to shorten intervals between State complete inspections and OSMRE oversight inspections. The 1988 format requires recording and reporting of these intervals for management control purposes.

Also, to minimize the appearance of any duplication of State and Federal inspection activities, OSMRE Directive INE-20, "Statistical Sampling and Inspections," is being revised to provide that the number of routine oversight inspections conducted will be limited to either the number generated by the formula previously used or 50% of the total number of inspectable units within the State, whichever is smaller.

Permitting and Bonding

Under the prior oversight guidance, OSMRE evaluated State permitting and bonding activities through an annual review of a sample of permitting documents processed by the State. After reviewing the sample for completeness and procedural concerns, OSMRE evaluated the technical adequacy of certain permits with respect to selected topics such as hydrology, revegetation and blasting. With respect to OSMRE's completeness and procedural reviews, the findings for a given State did not differ greatly from year to year after the initial implementation and refinement of State procedures. In addition, many of the problems identified in OSMRE's technical adequacy reviews appear to be permit-specific.

In light of these results, the requirement for an annual review of sample permit documents is being discontinued. OSMRE's permitting and bonding oversight activities shall instead be tied to OSMRE's inspection findings or other information that becomes available to the Field Office during the evaluation year. The revised MEIR supplement form for 1988 supports this approach in that it requires the inspector to analyze and record the causes of violations. A potential need to evaluate State permitting activities may arise in cases where the cause of a violation is identified as a permit defect. In these circumstances, the Field Office is encouraged to initiate a study of those aspects of the State's permitting activities related to the permit defect to determine whether the problem is unique or whether it represents a more general programmatic problem, which, if left uncorrected, could be expected to occur again.

Under the 1988 guidance, studies of State permitting and bonding activities will be triggered by either this mechanism or any other information that becomes available to OSMRE during the evaluation year. This may include outside interest group input as discussed below. This approach will concentrate efforts on known or suspected problems.

When, under these revised procedures, bond adequacy is selected as a review topic, the evaluation shall compare OSMRE estimates of bond requirements on specific sites currently in full production to actual bond amounts set by the State. OSMRE estimates shall be developed in accordance with the procedures set forth in OSMRE's "Handbook for Calculation of Reclamation Bond Amounts".

Data Collection

To ensure the success of the revised oversight procedures and to maintain consistency of presentation among Field Offices, data collection shall be limited to that required to complete the tables or address other routine reporting requirements contained within this guidance document.

Exceptions to this requirement may be granted only in accordance with OSMRE Directive SFP-2, "Planning and Management of Special Studies," which establishes guidelines and procedural requirements for the conduct of special studies.

Sampling

In many cases, the number of inspection reports, assessment documents and other items is too great for the Field Office to review all documents. In such cases the Field Office shall select a sample for review. If report findings are based on review of a sample rather than the entire population, the tables shall be footnoted to specify the size of the sample and the report narrative shall clarify that the findings apply only to the sample reviewed. No numerical inferences should be made regarding the population as a whole on the basis of findings for the sample population.

Outside Interest Group Input to Evaluation Process

At the start of each evaluation year, each Field Office Director (FOD) shall contact outside interest groups such as State or local coal associations and environmental groups to determine their areas of interest. The FOD shall then devise, within the limits and controls established by this guidance, State-specific oversight plans to address the concerns identified by these groups, where appropriate.

Evaluation File

The Field Office shall prepare and maintain a program evaluation file for each State which shall be available for public review as part of the evaluation process. The evaluation file shall include the following materials in chronological order:

- National oversight guidance and format documents.
- Methods used to conduct the evaluation and prepare the annual report.
- Factual information developed or utilized in the program review.
- Special study reports.
- All correspondence with the State and meeting notes concerning program evaluation procedures, reports or issues.
- Evaluation reports released by OSMRE.
- All public comments, complaints or observations on the evaluation.

Generally, this information should be placed in the file as soon as it is available. Evaluation reports and special study reports should not be included in the file prior to release by OSMRE. At that time, draft reports circulated outside OSMRE should also be included in the file. Staff notes, working papers and other documents that are preliminary in nature should not be included.

The evaluation file does not replace the administrative record. While some of the documents in the evaluation file pertaining to programmatic deficiencies might also be appropriate for the administrative record, most evaluation file materials would not normally be included. For clarification as to which documents should be entered in the administrative record, see OSMRE Directive INF-2, "Administrative Record System."

Action Plans

Action plans are critical to the success of an oversight approach which places emphasis on problem identification and resolution on an ongoing basis. To be effective, action plans must be dynamic in nature. Field Offices should meet with the State at least quarterly to ensure that these plans reflect the current status of issues. To emphasize the importance of action plans, a separate directive will be issued to clarify policy concerning their development and implementation.

Format

To reflect the changes in OSMRE's oversight approach for the 1988 evaluation period, the report format guidance has been revised to serve as procedural guidance for evaluating State performance. Procedures for the evaluation of State permitting activities have been incorporated into this general procedures document. Guidance for preparing the annual reports is included as a section within the evaluation procedures document.

National Objective Topics

As discussed below, three national objective topics have been selected for the 1988 evaluation year:

Alternative Enforcement

In prior evaluation years, OSMRE has examined State systems for implementing alternative enforcement mechanisms. For the 1988 evaluation year, OSMRE's review will focus on State use of alternative enforcement actions to achieve abatement of failure-to-abate cessation orders which remain unabated longer than 30 days or when other applicable criteria have been met.

Applicant Violator System (AVS) Usage

The AVS will be in place by October 1, 1987. During the 1988 evaluation period, OSMRE will evaluate whether States are participating and using the AVS in accordance with the memorandum of understanding governing AVS implementation. Directive INE-32 provides additional guidance on oversight of State usage of the AVS.

Permit Applicant Ownership and Control Information

OSMRE will examine whether States are requiring and receiving complete and accurate ownership and control information from permit applicants prior to permit issuance. The accuracy of such data is critical to the reliability and usefulness of the AVS.

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I. EVALUATION PROCEDURES: REGULATORY PROGRAM

As discussed below, the evaluation procedures include three elements: onsite oversight inspections, collection and reporting of program monitoring data, and special studies.

Onsite Oversight Inspections: The purpose of conducting onsite oversight inspections is to identify whether operations are being conducted in accordance with the approved State program and, if not, whether such violations result from deficiencies in the State's administration of that program. This is the cornerstone of the evaluation process, since the success of the State in achieving onsite compliance with the objectives of SMCRA is the ultimate purpose of the program. The inspections may also determine which, if any, of the State program elements require special study to determine if deficiencies exist that will require resolution.

Collection and Reporting of Program Monitoring Data: As in the past, Field Offices are required to collect and report program monitoring data from State regulatory authorities concerning their activities and obligations under the program. These data are to be collected and reported in formats provided in the "Tables" section of this guidance document. Field Offices are reminded that data collection from State regulatory authorities beyond that specified in the tables must be approved as a special study.

Special Studies: All special studies other than national evaluation topics and permitting reviews must be approved by the Assistant Director, Field Operations, under Directive SFP-2.

A. Inspection and Enforcement

1. Industry Compliance

- Identify the most frequently violated performance standards, using the categories contained in the MEIR form.
- For the performance standard categories with the largest number of violations, identify the specific violations most frequently observed. This should include the MEIR "other" categories if they contain recurring types of violations in significant numbers.
- Identify any known causes for the most frequently violated standards.

- Determine the overall seriousness of violations existing during OSMRE inspections. Classify violations as to whether their effects remain within or extend beyond the permit area, or whether the violation is purely administrative in nature (recordkeeping).
- Evaluate whether patterns of specific violations are apparent within the minor, moderate, or considerable impact categories, and if so, the causes, if known.

2. State Inspections

- Analyze, on a minimum quarterly basis, State performance with respect to inspection frequency. Identify the reasons, including those provided by the State, for any negative trends in the frequency of complete or partial State inspections.
- Where the required inspection frequency was not met, identify any significant trends or patterns with respect to operation type, activity status, etc.

3. State Enforcement

a. Citation of Violations

- During OSMRE inspections, identify appropriate enforcement actions taken by the State and note the time elapsed since the last complete State inspection.
- Identify all uncited violations by MEIR performance standard categories. Within those categories, identify the specific types of violations.
- Identify the causes of uncited violations and inquire as to why the State did not take appropriate enforcement action.
- Identify the seriousness of uncited violations in terms of the probability of occurrence of the event the standard was designed to prevent and the actual or potential impact of such an event.
- Periodically (at least quarterly) analyze whether any patterns of specific violations are apparent and review the correlation between the State's reasons for not citing violations and the types of violations, seriousness and State program requirements. Discuss all trends with the State on at least a quarterly basis.

b. Timeliness and Appropriateness of State Enforcement Actions

- Identify any delays between the date the State observes a violation and the date it serves any necessary enforcement action.
- Evaluate the timeliness of reinspections to determine abatement by comparing the reinspection date with the abatement date set in the enforcement action.
- Based on OSMRE field reviews, evaluate the appropriateness of the measures and times given for abatement of violations. Also evaluate the appropriateness of abatement date extensions, including those beyond 90 days.
- Based on OSMRE field reviews, evaluate the frequency and appropriateness of enforcement action modifications and vacations.

c. State Responses to Citizen Complaints

Periodically review State citizen complaint activity, including compliance with procedural requirements of the State program and the appropriateness of State responses to citizens.

d. State Responses to OSMRE Ten-Day Notices

Evaluate the appropriateness of State responses to ten-day notices issued by the Field Office.

e. Coal Exploration

- Periodically analyze State inspection records to determine how frequently the State inspects exploration sites, including those for which only a notice is required.

Conduct oversight inspections of exploration sites if necessary to address the following questions:

- Are exploration operations being conducted and reclaimed in compliance with the applicable performance standards?
- Does it appear that quantities of coal in excess of that allowed in the notice of intent or exploration approval are being removed?

f. Exemptions under Section 528 of SMCRA

- Is the State or OSMRE aware of coal being extracted under one of the exemptions?

- If so, what does the State do to assure that the exemptions are properly applied?

g. Illegal or Unpermitted Operations

What actions does the State take against illegal or unpermitted operations?

h. Repeal of Two-Acre Exemption

Conduct reviews as appropriate to address the following questions regarding State compliance with P.L. 100-34, which repealed the exemption previously provided for the extraction of coal where the operation affected two acres or less.

- Where previously allowed by the State program, did the State discontinue issuing special "two-acre or less" permits after June 6, 1987?
- Did the State ensure that all two-acre operations not holding permanent program permits ceased operation as of November 8, 1987?

i. Suspension or Revocation of Permit or Other Enforcement Action for Pattern of Violations

- Does the State conduct systematic reviews to identify when a pattern of violations exists?
- Are determinations as to whether a pattern of violations exists made in a reasoned, consistent fashion?
- When the State determines that a pattern of violations exists, what action does it take, i.e., does the State issue the permittee a show cause order?

j. Alternative Enforcement (National Objective Topic)

- Under the State program, is the State required to take alternative enforcement action in cases where a failure-to-abate cessation order has been issued and remains outstanding beyond 30 days or when some other criteria have been met? If so, has the State taken such actions? What type (court injunction, permit suspension/revocation, individual civil penalty, criminal penalty)?
- Does the State employ any additional procedures to require abatement or ensure that there will not be a recurrence of a failure to abate?

- If there are other circumstances under which the State program requires the use of alternative enforcement, is the State following these requirements?
- Review the timeframes of alternative enforcement actions taken.

k. Applicant Violator System (AVS) Usage (National Objective Topic)

(See Directive INE-32 for additional guidance.)

- Is the State implementing the terms of the memorandum of understanding regarding participation and use of the AVS?
- Does the State enter all permit applications into the AVS in a timely fashion (at least quarterly)?
- Does the State query the AVS for each permit application processed prior to approval?
- How does the State respond when application information conflicts with AVS data?
- Does the State change ownership or control data on the entities contained in the AVS? If so, how does the State document the basis for the change?
- Does the State issue permits to applicants which the AVS matched against a violator? If so, on what basis?
- Does the State issue permits to applicants with outstanding State violations or civil penalties? To what extent is the State contacting other State regulatory authorities to obtain similar data for applicants and affiliates operating within those States?

l. Suspension/Revocation of Improvidently Issued Permits

(See Directive INE-34 for additional guidance.)

Improvidently issued permit: A permanent program permit which should not have been issued because (a) at the time of permit issuance, the permittee had not complied with all Federal failure-to-abate cessation orders or he/she owed overdue Federal civil penalties assessed for a failure-to-abate cessation order, or (b) the permittee owns or controls or is owned or controlled by a person responsible for such unabated Federal violations or unpaid Federal penalties.

- Does the State act upon OSMRE notice of an improvidently issued permit? If so, what actions does the State take?

- Is the State authorized to act when notified by OSMRE that a permit appears to have been improvidently issued?
- Under what circumstances will the State suspend or revoke an improvidently issued permit?
- If the State does not act when notified by OSMRE that a permit appears to have been improvidently issued, does the State fully document its reasons for not suspending/revoking the permit?
- Does the State investigate each notice by OSMRE of an improvidently issued permit to determine if a permittee failed to disclose all required compliance information prior to permit approval? Does the State fully document the results of each investigation?

4. Applicable Tables

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B. Permitting and Bonding

1. Selection of Review Topics

Review of any national objective topic is mandatory. Other topics may be selected for review if they relate to one or more of the following criteria:

- Issues identified in previous permitting evaluations;
- Permit-related issues identified during oversight inspections;
- Concerns of interest groups or other interested parties; or
- Concerns of the Field Office Director.

Planning for such analyses shall include a determination of (1) the question to be answered, (2) what data are needed to answer the question, and (3) how this data will be collected and analyzed.

The Field Office Director should coordinate with the appropriate Assistant Director, Field Operations, to obtain necessary staff support when designing and conducting permitting evaluations of technical topics. Also, evaluation plans should be discussed with the State.

2. Selection of Actions to be Reviewed

If more than one topic is selected for investigation, it is not necessary to review the same sample of permits for each topic if each topic is treated as a separate study.

Without ADFO approval, the number of permitting actions selected for review for any given topic should not exceed 50 percent of the number of relevant actions taken either during the 12 months prior to the evaluation or since the last OSMRE review of this topic, whichever is smaller.

3. Evaluation Findings

Upon completion of the evaluation of each topic selected, including any relevant national objective topics, the Field Office shall prepare a separate report which summarizes the evaluation findings, notes any qualifications that need to be placed on the validity or accuracy of the findings, recommends actions to resolve any problems, and identifies any additional studies needed. Each report shall also:

- Identify the subject area evaluated and the State program standards relevant to that area.
- Identify permits and associated documents reviewed and, when applicable, any discussions or meetings with State personnel that form the basis for reviewer findings.
- Describe and document the accomplishments of the State in implementing its program in the subject area.
- Describe and document any significant problems or deficiencies identified.
- Specify the number of permits reviewed and the number containing deficiencies.
- Explain the effects of any identified deficiencies on other aspects of the permitting process.
- Describe the potential or actual effects of any deficiencies on the environment or the public and explain how deficiencies may impact the success of reclamation.
- Analyze the probable cause of any deficiencies and discuss any State explanations.
- Make a judgment as to whether the deficiencies identified result from the State's failure to implement program provisions or from deficiencies in the approved program.
- State whether deficiencies of a similar nature were identified during the previous reporting period.
- Identify program-wide (as opposed to permit-specific) actions needed or taken to correct deficiencies.

- Summarize the findings of site visits in relation to the subject area.

4. Permit Applicant Ownership and Control Information
(National Objective Topic)

Conduct reviews as necessary to address the following questions:

- How does the State ensure that, prior to permit issuance, the permit application is complete and accurate with respect to the applicant's identification of ownership and control information (State counterpart to 30 CFR 778.13)?
- What, if anything, does the State do to verify the accuracy of ownership and control information provided by permit applicants?
- How does the State respond in cases where application information conflicts with AVS data or other available information?

5. Additional Procedures for Bonding Evaluations

If the operation of the State's bonding program or some portion thereof is selected as an evaluation topic, the following additional questions should be used as guidance in conducting such a study:

a. Amount of Bond

- Is the State following approved program procedures for determining bond amounts?
- Are bond amounts set by the State adequate to cover the cost of reclamation at all times during the liability period? To answer this question, independent estimates of costs for reclaiming sites in full production may be prepared based on field inspections, using the applicable methodology in OSMRE's "Handbook for Calculation of Reclamation Bond Amounts." Where the amount of the bond being reviewed is less than the estimated cost of reclaiming the site at the time of the OSMRE evaluation by 15 percent or more, the State's calculations and assumptions in computing the component costs of reclamation should be carefully analyzed.
- Does the State analyze bond adequacy at the time of permit renewal and when reviewing applications for incidental boundary revisions and significant permit revisions? How does the State identify the need for bond adjustment?

b. Liability

- Is the State requiring bond coverage for the period of liability specified in the approved program?
- Do bonding documents specify the scope of work to be guaranteed and the liability assumed under the bond?

c. Form of Bond

- Are bond instruments properly executed (e.g., do they contain a noncancellability clause, allow reclamation work to be performed by the surety, contain a legal description, and specify the number of acres bonded)?
- Does the State accept only those forms of bond (e.g., certificate of deposit, surety, self-bond) approved under the State program?

d. Alternative Bonding Program

In answering these questions, use the State's annual report on its bond pool where available.

- What are the basic requirements of the alternative bonding program? What are its income sources and maintenance levels?
- Does the bonding fund appear adequate to keep pace with the forfeiture rate on permanent program sites?

6. Applicable Tables

| | |
|----------|------------------------------|
| Table 1 | Permitting Actions |
| Table 2 | Alternative Bonding Activity |
| Table 34 | Federal Lands Data |

C. Bond Release

1. Initial Program Bonds

Is the State adhering to the appropriate release standards and procedures for initial program bonds?

E. Civil Penalties

1. Procedures for Civil Penalty Assessment and Assessment Conferences

- Does the State review each violation for penalty assessment purposes in the manner and within the timeframes prescribed by the State program?
- Are assessment conferences being held within prescribed timeframes?
- Is the State assessing mandatory penalties for failure-to-abate cessation orders in accordance with the approved program requirements?
- Is the State adhering to the approved program criteria for determining penalty amounts, i.e., is the State considering the history of previous violations for the permit, the seriousness of the violation, the negligence of the permittee and any good faith shown by the permittee in attempting to achieve compliance? Are these criteria being interpreted in a manner consistent with the definitions set forth at 30 CFR 845.13 or any counterpart definitions included in the approved State program?
- Is the State consistent in assessing violations which are of a similar degree of severity?
- Are any modifications made to penalty amounts as a result of assessment conferences consistent with inspection reports and the requirements of the approved program?
- Does the State document its reasons and calculations for penalty assessments, adjustments and waivers?

2. Collection of Penalties

- Is the State successful in collecting civil penalties? Monitor the time lapse between issuance of the final penalty assessment and collection.
- What measures (e.g., legal action, use of a collection agency) are being taken to collect overdue assessments?
- Is the State denying permits to applicants with outstanding civil penalties or taking any other actions to maintain the enforcement value of penalties and encourage operator compliance?

3. Applicable Tables

Table 29

State Civil Penalty Assessments

F. Administrative and Judicial Review1. Review Board Decisions

- Does the administrative review board document and render decisions by making findings of fact and conclusions of law? Examine the reasons for any differences between board decisions and hearing officer recommendations.
- Are administrative decisions consistent with program requirements?
- Does the administrative or judicial board or court make the appropriate findings before granting temporary relief?

2. Review Board Procedures

- Does the administrative review board require payment of proposed penalties into escrow prior to allowing appeal?
- Does the administrative review board allow intervention by appropriate parties?
- Does the administrative review board allow review when the applicant has failed to follow procedures, i.e., filed for appeal after the time for appeal has lapsed?
- Are appeals of administrative or judicial decisions based upon the record or does the appellate board or court allow a de novo hearing?

3. Recovery of Costs

If the appellant or petitioner in a review proceeding requests recovery of costs, what procedures does the State follow in reviewing the request? Monitor the outcome of any such proceedings.

4. Applicable Tables

Table 31

Administrative and Judicial Appeals

G. Other Program Areas1. Conflict of Interest

Annual onsite evaluations of State conflict of interest procedures shall be conducted to determine whether the policies and procedures established and used to implement

section 517(g) of SMCRA are sufficient. Field Office personnel shall not perform a review of individual conflict of interest forms, but rather shall evaluate the State's collection and filing of statements, the counseling and guidance it provides, and the resolution of any conflicts identified by the State. The evaluation shall address the following questions:

- Does the State process adequately verify that non-exempt employees do not have conflicts of interest? In answering this question, consider the results of any onsite evaluations of State employees' financial disclosure statements conducted by OSMRE's Division of Personnel.
- Identify the number of non-exempt State employees who filed required statements, the results of the review of these statements by the State and the status of OSMRE's review of the statement filed by the head of the State regulatory authority.

2. Small Operator Assistance Program

- Does the State maintain an ongoing program to inform small operators about the availability of assistance?
- Does the State provide assistance to small operators in a timely manner?
- Does the State monitor applicant eligibility and liability?

3. Designation of Lands Unsuitable for Surface Mining

- Does the State follow its approved program procedures when processing unsuitability petitions?
- Does the State adequately document its decision findings on unsuitability petitions?

4. State Program Amendments and Issues

- Evaluate the State's progress in addressing any outstanding conditions of approval or required amendments.
- Is the State diligently pursuing regulatory reform in accordance with the appropriate Part 732 letters?
- Evaluate progress in resolving any other programmatic issues that arise.

5. Grants and Program Administration

- Evaluate the resolution of any issues or concerns raised by internal or external audits or reviews of State grant programs.
- Evaluate the resolution of any issues relating to staffing or program management and administration.

II. EVALUATION PROCEDURES: ABANDONED MINE LAND RECLAMATION (AMLR) PROGRAM

A. Program Funding

Monitor the State's obligation and drawdown rates.

B. Reclamation Achievements

Review reclamation accomplishments. Evaluate the success and potential applicability of any research activities or special or innovative projects or techniques.

C. Grants Administration

- Does the State provide financial, performance and closeout reports which comply with the timeframes and information content requirements specified by OMB Circular A-102, as explained in the Federal Assistance Manual?
- Does the State comply with OMB Circular A-102 requirements, as explained in the Federal Assistance Manual, with respect to audits and physical equipment inventories?

D. Construction Program

1. Project Ranking and Selection

- Does the State follow the ranking procedures specified in its approved AMLR plan?
- Evaluate the State's progress in addressing all known priority one and two AMLR problems. Will it be able to abate all such problems within the life of the program?

2. Project Coordination

- Evaluate coordination with other Federal, State and local agencies, including fish and wildlife agencies, the Army Corps of Engineers, the State Historic Preservation Officer, and the Rural Abandoned Mine Program of the Soil Conservation Service. Is coordination both adequate and in accordance with the approved plan and any memoranda of understanding?
- Does the State obtain all necessary concurrences, permits, and mitigation plans from other government agencies prior to construction?

3. Construction Costs and Timeliness

- Have delays in project starts or completions impeded the State's ability to complete projects within the approved grant performance period?

- Do cost overruns (if they exist) threaten the State's ability to complete all approved projects within any grant?

4. Project Monitoring

- Does the State adequately monitor active construction sites to ensure that project goals are met in a timely and cost-effective manner?
- Does the State monitor completed projects to determine long-term success and maintenance needs?
- Does the State use the results of its project monitoring activities to modify designs and construction techniques for future and, as appropriate, uncompleted projects to improve the probability and cost-effectiveness of attaining project goals?
- Does the State adequately provide for maintenance of completed projects in a cost-effective manner consistent with project goals and objectives?
- Do OSMRE's oversight inspections indicate problems (e.g., unauthorized departures from contract plans and specifications, adverse impacts on the public health, safety or the environment, absence of essential maintenance) with the State's AMLR construction monitoring program?

5. Project Effectiveness

Do completed projects satisfactorily abate all threats to the public health, safety, and the environment, consistent with the project scope?

E. Realty Aspects

1. Rights of Entry

- Does the State obtain the appropriate rights of entry in a timely manner for each parcel in each project?
- Has the State found it necessary to use nonconsensual entry? If so, has the State followed its prescribed finding and notice procedures?

2. Liens and Lien Waivers

- Has the State filed any liens? If so, identify the number and total dollar value.

- Does the State follow the procedures of its approved plan in recording liens, including, at a minimum, the notarized independent appraisal and landowner prepayment option requirements?
- Has the State collected on any liens or received any payments from landowners in lieu of liens? If so, have the funds been returned to the Abandoned Mine Reclamation Fund?
- Does the State adequately document all statutory exemptions from lien placement (i.e., the landowner acquired the property prior to May 2, 1977, and did not consent to, participate in, or exercise control over the mining)?
- Does the State properly document all lien waivers?
- Has the State established and maintained a lien tracking system?

3. Land Acquisition, Management and Disposal

- Has the State submitted any grant applications to acquire land adversely affected by past coal mining practices?

If any such applications have been approved, the following questions must be addressed:

- Has the State followed the acquisition procedures prescribed by its AMLR plan, including appraisal of any mineral or water rights?
- If the acquired land is being used for nonreclamation purposes, are fees being collected, accounted for and deposited in the proper Abandoned Mine Reclamation Fund account? If fees are not being collected, has the State properly waived their collection?
- If the State disposed of any acquired land, did it do so in accordance with the notice and hearing and the competitive bidding or reverter of title provisions of 30 CFR 879.15 and section 407(g) of SMCRA?

F. Other Program Areas

1. Procurement

Are the State's procurement activities, including disbursement of Federal funds, timely and in compliance with its approved AMLR plan and State and Federal law, regulations and procurement standards?

2. Public Participation

Does the State comply with the public participation provisions of its approved AMLR plan on all AMLR plan amendments, grant applications, grant amendments, and project selections?

3. Noncoal Reclamation

If the State seeks or gains approval for any noncoal reclamation projects, the following questions must be addressed:

- On what basis did the State request funding for noncoal reclamation projects, i.e., did the State establish that all coal-related reclamation has been funded or accomplished, or did the Governor request the projects as necessary for protection of the public health or safety?
- Has the State acquired any land for noncoal reclamation purposes? If so, has the proper OSMRE approval been obtained in advance?
- Identify any accomplishments or problems unique to noncoal reclamation.

4. State Emergency Reclamation Program

If the State has received approval for the conduct of an emergency reclamation program, the following questions must be addressed:

- Are emergency projects being coordinated with other State, Federal and local agencies, Indian tribes and OSMRE?
- Does the project file contain documentation establishing the eligibility of each site in each project?
- Is the State evaluating potential emergencies and designing and constructing emergency reclamation projects in accordance with its approved plan and appropriate Federal guidelines and policy?

5. Subsidence Insurance Program

If the State has received a grant to establish a subsidence insurance program, monitor the State's progress in implementing such a program.

6. Post-1992 Set-aside Fund

Public Law 100-34 authorizes each State to set aside 10% of the State share of the AML reclamation fees collected within the State in a separate fund to address reclamation needs after 1992. If the State has elected to exercise this option, report the amounts set aside.

G. Applicable Tables

| | |
|----------|-------------------------------------------------------|
| Table 39 | AMLR Project Status Summary |
| Table 40 | AML Reclamation Achievements Since Program Approval |
| Table 41 | AML Reclamation Achievements During Evaluation Period |
| Table 42 | Summary of AMLR Grant Funds Awarded to State |
| Table 43 | Summary of Non-Grant AMLR Funding |

III. TABLES

Data collection requirements for OSMRE oversight of both State regulatory and AMLR programs are set forth in the tables included in this section. The data collection period is July 1, 1987 through June 30, 1988. Field Offices are encouraged to review data summaries at various points throughout this period to evaluate State performance and provide feedback to the State.

TABLE 1

| Permitting Actions | | | | | | | |
|-----------------------------------------------|-----------------------------------|-------------------------------------------|-----------------------------------|---------------------------------------|------------------------------------|-------------------------------------|-------|
| Application type | Number of Permit Applications | | | | | | |
| | Received during evaluation period | Pending at beginning of evaluation period | Approved during evaluation period | Dis-approved during evaluation period | Withdrawn during evaluation period | Pending at end of evaluation period | Other |
| Repermits | | | | | | | |
| Renewals | | | | | | | |
| New permits | | | | | | | |
| Coal exploration greater than 250 tons | | | | | | | |
| Coal exploration less than 250 tons (notices) | | | | | | | |
| Significant revisions | | | | | | | |
| Other | | | | | | | |

TABLE 2

| Alternative Bonding Activity | |
|------------------------------------------------------------------------------------------------|----|
| Starting balance (July 1, 1987) | \$ |
| Pool income (including any interest) | \$ |
| Expenditures | \$ |
| Ending balance (June 30, 1988) | \$ |
| Number of unreclaimed sites with bond forfeited during evaluation period | |
| Number of unreclaimed sites with bond forfeited during prior evaluation periods | |
| Number of permanent program sites (acres) reclaimed | |
| Number of initial program sites (acres) reclaimed | |
| Average time lapse between collection of forfeited funds and award of contract for reclamation | |

Instructions: Itemize all income sources (tonnage tax, permit fees, acreage fees, etc.) either as subcategories of "Pool income" or in a footnote.

Itemize expenditures if they involve activities other than direct reclamation, e.g., administrative costs.

TABLE 3

| OSMRE Regulatory Oversight Inspections | | | | | | | | | | |
|-----------------------------------------------------------------------------------------------|-------------|-------------|-------------|-----------|--------------------|-----------|-----------|-----------|-----------|-----------|
| | Permit type | | | | | | | | | |
| | Surface | | Underground | | Preparation plants | | Other | | Total | |
| | <u>IP*</u> | <u>PP**</u> | <u>IP</u> | <u>PP</u> | <u>IP</u> | <u>PP</u> | <u>IP</u> | <u>PP</u> | <u>IP</u> | <u>PP</u> |
| Number of inspectable units as of July 1, 1987 | | | | | | | | | | |
| Number of oversight inspections | | | | | | | | | | |
| Number of other inspections (e.g. ten-day notice follow-up, citizen complaint, special study) | | | | | | | | | | |
| Total number of inspections | | | | | | | | | | |
| * Initial Program ** Permanent Program | | | | | | | | | | |

TABLE 4

| Lapse Between Prior State Complete Inspections and OSMRE Oversight Inspections | |
|-----------------------------------------------------------------------------------|-----------------|
| Days | Number of sites |
| 0-5 | |
| 6-10 | |
| 11-20 | |
| 21-45 | |
| 46-[Insert number] | |

TABLE 5

| Inspectable Units (As of June 30, 1988) | | | | | | | |
|--------------------------------------------|-------------------|-------|----------|--------------------|--------------------|-------|-------|
| Units on State lands | Permanent Program | | | | Initial Program | Acres | |
| | Active | | Inactive | Bond Forfeiture | | | Total |
| | Producing | Other | | | | | |
| Surface | | | | | | | |
| Underground | | | | | | | |
| Other | | | | | | | |
| facilities | | | | | | | |
| Exploration | | | | | | | |
| permits | | | | | | | |
| Exploration | | | | | | | |
| notices | | | | | | | |
| Subtotal | | | | | | | |
| Units on Federal lands | | | | | | | |
| Surface | | | | | | | |
| Underground | | | | | | | |
| Other | | | | | | | |
| facilities | | | | | | | |
| Exploration | | | | | | | |
| permits | | | | | | | |
| Exploration | | | | | | | |
| notices | | | | | | | |
| Subtotal | | | | | | | |
| Units on Indian lands | | | | | | | |
| Surface | | | | | | | |
| Underground | | | | | | | |
| Other | | | | | | | |
| facilities | | | | | | | |
| Exploration | | | | | | | |
| permits | | | | | | | |
| Exploration | | | | | | | |
| notices | | | | | | | |
| Subtotal | | | | | | | |
| Total | | | | | | | |

Definitions for Table 5

Inspectable unit:

A surface coal mining and reclamation or coal exploration operation for which an inspection obligation exists under the State counterpart to 30 CFR 840.11(a), (b) or (c) or under 842.11(c) where OSMRE is the regulatory authority. Although most inspectable units consist of a single permit or unpermitted site, regulatory authorities may consolidate several contiguous permits belonging to the same permittee into a single inspectable unit.

Initial program permits or operations:

The number of initial program operations (operations active after May 3, 1978; operations with permits issued after February 3, 1978 but prior to the date of permanent program approval; or operations with permit applications pending approval on the date of permanent program approval and later issued) whose bonds have not been released or where reclamation responsibility remains. This includes portions of initial operations not overlapped by permanent program permits. Illegal operations are also included.

Permanent program permits:

The number of operations under permanent program permits issued by the State.

Active producing:

Produced coal in previous quarter based on fee compliance information.

Active other:

Not producing coal but not inactive as defined below.

Inactive:

Permanent program operations in temporary cessation under the State counterpart to 30 CFR 816.131 or where reclamation Phase II has been completed and bond liability reduced.

Bond forfeiture:

The regulatory authority has forfeited the bond and has collected or is in the process of collecting the forfeited funds.

Other facilities:

The number of operations for facilities not within the permit boundaries of a surface or underground mine.

TABLE 6

| Industry Compliance Findings | |
|-------------------------------------------|------------------------------------------------------------------------------------|
| Number of violations per inspectable unit | Number of inspectable units on which OSMRE observed indicated number of violations |
| None | |
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 or more | |

TABLE 7

| Performance Standards Most Frequently in Noncompliance During OSMRE Inspections | | | |
|------------------------------------------------------------------------------------|--------|---------------------|--------|
| General category | | Specific violations | |
| | Number | | Number |
| 1. | () | a. | () |
| | | b. | () |
| | | c. | () |
| | | d. | () |
| 2. | () | a. | () |
| | | b. | () |
| | | c. | () |
| | | d. | () |
| 3. | () | a. | () |
| | | b. | () |
| | | c. | () |
| | | d. | () |

TABLE 8

| Distribution of Violations According to Seriousness (For Violations Observed During OSMRE Inspections) | | | |
|--------------------------------------------------------------------------------------------------------------|------------------|--------------|--------------|
| Number of violations with impacts remaining within permit area | | | |
| Probability of occurrence | Degree of impact | | |
| | Minor | Moderate | Considerable |
| None or unlikely Likely Occurred | | | |
| Number of violations with impacts extending outside permit area | | | |
| Probability of occurrence | Degree of impact | | |
| | Minor | Moderate | Considerable |
| None or unlikely Likely Occurred | | | |
| Number of administrative (recordkeeping) violations | | | |
| Degree of impact | | | |
| Minor | Moderate | Considerable | |
| | | | |

TABLE 9

| Primary Causes of Industry Noncompliance (For Violations Observed During OSMRE Inspections) | |
|------------------------------------------------------------------------------------------------|----------------------|
| Reason | Number of violations |
| Permit defect | |
| Unusual weather | |
| Unofficial waiver | |
| Operator negligence | |

TABLE 10

| Number and Frequency of State Inspections | | | | | |
|-------------------------------------------|-----------------------------|----------------------------------------------------------------------|--------------------------------|-------------------------------------------------|-----------------------------------------------------|
| Review period | Number of inspectable units | Number of partial inspections | Number of complete inspections | Number of units on which required frequency met | Number of units on which required frequency not met |
| 1986 | | | | | |
| 1987 | | | | | |
| 1988 | | | | | |
| Inspection Frequency Shortfall | | | | | |
| Number of active inspectable units* | | Number of required complete inspections lacking per inspectable unit | | Number of inactive inspectable units** | |
| | | None | | | |
| | | 1 | | | |
| | | 2 | | | |
| | | 3 | | | |
| | | 4 | | | |
| Number of active inspectable units* | | Number of required partial inspections lacking per inspectable unit | | Number of inactive inspectable units | |
| | | None | | NA*** | |
| | | 1 | | NA | |
| | | 2 | | NA | |
| | | 3 | | NA | |
| | | 4 | | NA | |
| | | 5 | | NA | |
| | | 6 | | NA | |
| | | 7 | | NA | |
| | | 8 | | NA | |

TABLE 11

| State Inspections of Coal Exploration Sites | | | | |
|---------------------------------------------|---------------------------------------------------|-----------------------|------------------------------------------------|-----------------------|
| Review period | Coal exploration operations greater than 250 tons | | Coal exploration operations less than 250 tons | |
| | Number of sites | Number of inspections | Number of sites | Number of inspections |
| 1986 | | | | |
| 1987 | | | | |
| 1988 | | | | |

TABLE 12

| State Enforcement Actions | | | |
|---------------------------|----------------------|-----------------------------------|--------------------------------|
| Review period | Number of violations | | |
| | Notices of violation | Failure-to-abate cessation orders | Imminent harm cessation orders |
| 1986 | | | |
| 1987 | | | |
| 1988 | | | |

TABLE 13

| Summary of Violations* Cited by State by Performance Category | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-----------------------------------|
| Performance standard category | Number of violations cited | Percent of total violations cited |
| Standards that limit mining effects to the permit area | ////// | ////// |
| A. Distance prohibitions B. Mining within permit boundaries C. Signs and markers D. Sediment control measures E. Design and certification requirements - sediment control F. Effluent limits G. Surface water monitoring H. Ground water monitoring I. Blasting procedures J. Haul/access road design and maintenance K. Refuse impoundments L. Other: _____ | | |
| Standards that assure reclamation quality and timeliness | ////// | ////// |
| M. Topsoil handling N. Backfilling and grading O. Following reclamation schedule P. Revegetation requirements Q. Disposal of excess spoil R. Handling of acid or toxic materials S. Highwall elimination T. Downslope spoil disposal U. Postmining land use V. Temporary cessation of operations W. Other: _____ | | |
| *Does not include failure-to-abate violations or violations cited as a result of OSMRE ten-day notices. | | |

TABLE 14

| State Citation of Violations by Performance Standard Category (For Sites Inspected by OSMRE) | | |
|-------------------------------------------------------------------------------------------------|-----------------------------------------------|----------------|
| Performance standard category | Violations requiring State enforcement action | |
| | Number cited | Number uncited |
| | | |
| | Total | Total |