

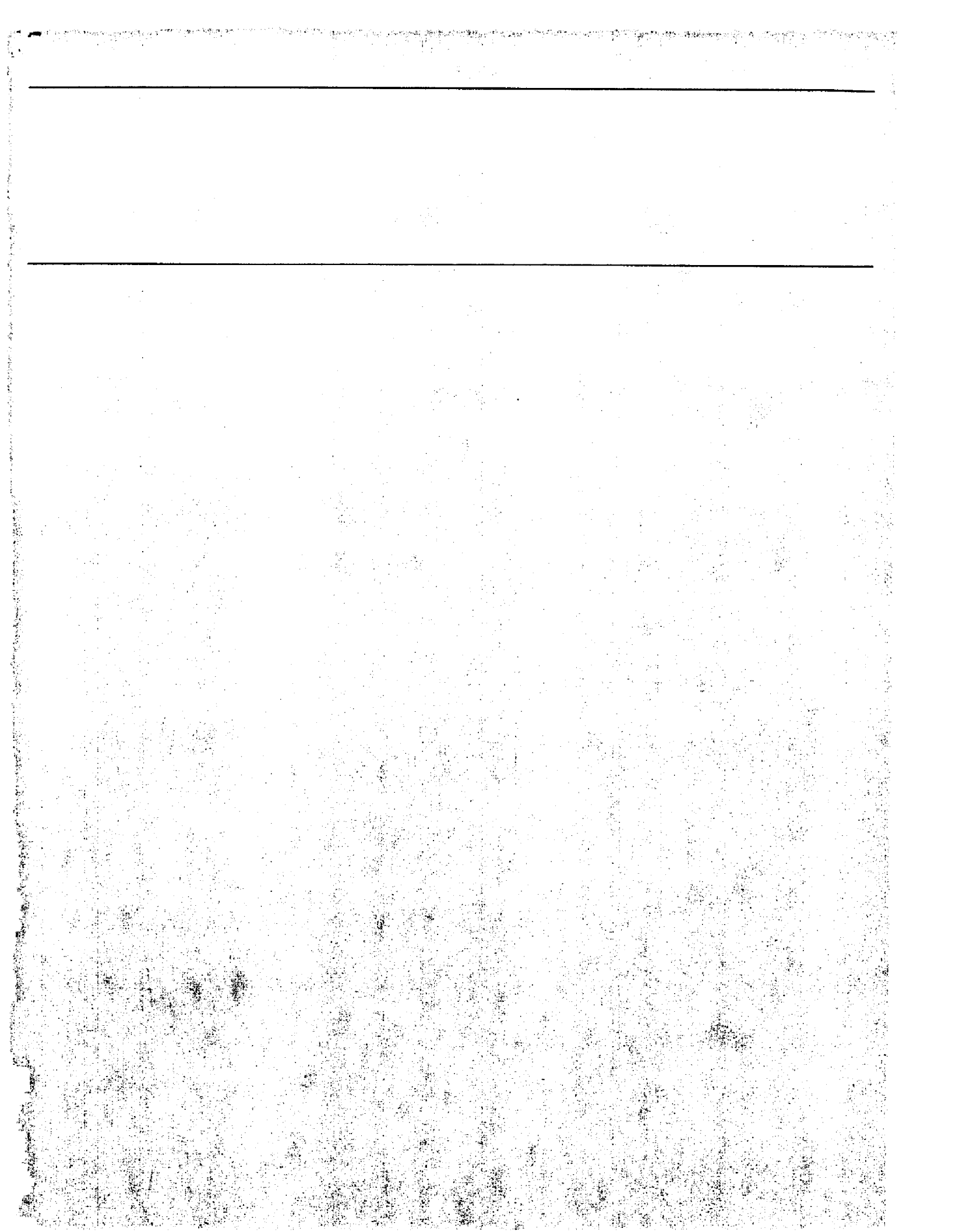
Report to Congressional Requesters

June 1991

**ABANDONED MINE
RECLAMATION**

**Interior May Have
Approved State Shifts
to Noncoal Projects
Prematurely**





Resources, Community, and
Economic Development Division

B-226046

June 7, 1991

The Honorable Nick J. Rahall, II
Chairman, Subcommittee on Mining and
Natural Resources
Committee on Interior and Insular Affairs
House of Representatives

The Honorable Malcolm Wallop
United States Senate

The Honorable Conrad Burns
United States Senate

In separate requests, you asked us to examine the process that the Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) uses in allowing states¹ to spend federal surface coal mine reclamation funds to address noncoal reclamation problems. Before OSMRE approves use of these funds, states must first certify that all eligible coal reclamation problems have been addressed. As of March 31, 1991, three states (Wyoming, Montana, and Louisiana) have had their requests for certification approved by OSMRE. Specifically, you asked us to determine whether OSMRE ensures that the certification requirement has been met before approving state certifications.

To promote the reclamation of areas damaged by coal mining practices before enactment of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the Congress established a fund, commonly called the Abandoned Mine Land or AML Fund, derived from fees levied on current coal production. From this fund OSMRE provides grants to states to perform specific reclamation projects set forth in annual state construction plans. Under SMCRA, 50 percent of the fees collected in a state or on Indian lands is to be allocated to the state or Indian tribe. This percentage is referred to as the "state share." The remaining 50 percent of the fees may be spent at the discretion of the Secretary of the Interior, either directly or through additional grant funds to the states.

Results in Brief

OSMRE's certification review process does not ensure that all sites adversely affected by past coal mining practices have been addressed before OSMRE approves a state's request to use federal funds for noncoal

¹In this report, the term "state" refers to both states and Indian tribes.

reclamation. The process provides reasonable assurance that the highest priority abandoned coal mine sites—those adversely affecting the public's health and safety—have been addressed before OSMRE approves a state's request for certification. Under current procedures, however, other coal sites that experienced environmental degradation to land, water, and other resources could remain unreclaimed after the state's certification has been approved.

On a related matter, OSMRE has not effectively communicated its policy to the states that once the state certification has been approved, the state loses further access to the Secretary of the Interior's discretionary AML Fund revenues, leading to confusion on the part of the states.

Background

Reclamation fees, paid quarterly by all coal mine operators, make up virtually all of the deposits into the AML Fund, and monies from the fund are annually appropriated by the Congress to administer the federal and state reclamation programs. Reclamation projects are funded in accordance with the priorities set out in SM CRA: the first two priorities relate to public health, safety, and general welfare; the third to restoration of land and water resources and the environment; the fourth to research and development; and the fifth and sixth to public facilities and land. (App. I provides more detailed information on the priorities set forth in SM CRA.)

In addition to the states' entitlements to 50 percent of the revenues generated from their states, Interior uses the Secretary's discretionary funds to provide additional grants to the states. Currently, the portion of the Secretary's discretionary funds provided to each state is determined by a formula based on the state's historical coal production. To receive secretarial discretionary funds, states must demonstrate that they have reclamation needs as reflected in a national inventory of abandoned coal mine land problem areas. The inventory is generally limited to reclamation problems involving the public's health, safety, and general welfare (priorities 1 and 2).²

Although the SM CRA reclamation program is focused on addressing coal sites, abandoned noncoal sites may also be reclaimed under one of the following conditions: (1) the governor of a state certifies that the impacts of a noncoal mine constitute an extreme danger to the public's

²The inventory also includes some abandoned mine lands that present environmental restoration problems (priority 3), but these areas are not used to allocate funds.

health and safety or (2) the governor certifies that all reclamation associated with abandoned coal sites has been addressed. After approval by OSMRE of the latter certification, a state does not receive any of the Secretary's discretionary funds except to address emergency situations. Certification, however, frees the state to use its annual state share funds to reclaim abandoned noncoal sites.

As of March 31, 1991, three states—Wyoming, Montana, and Louisiana—had certified that all eligible coal-related reclamation had been addressed. Each of these certifications has been approved by OSMRE. Wyoming had spent \$119.2 million on noncoal reclamation projects through November 1990, Montana had spent \$8.4 million, and Louisiana had not spent any money on noncoal projects.

The Omnibus Budget Reconciliation Act of 1990 contained several amendments to SMCRA, including grandfathering in the three state certifications already approved by OSMRE. Under the amendments, the act specifically requires that all six priorities be addressed before future requests for certification are approved. The amendments are effective October 1, 1991.

Coal-Related Reclamation Problems May Remain After Certifications Have Been Approved

While OSMRE provides reasonable assurance that all eligible priority 1 and 2 projects have been addressed before approving a state's request for certification, the effects of past coal mining practices on land and water resources and the environment and on publicly owned facilities and land (priority 3 through 6 projects) may remain after a state's certification request is approved. These coal-related reclamation projects must compete with noncoal reclamation sites for funds that are limited to state share monies.

SMCRA, as amended, specifically requires that all eligible coal reclamation projects be addressed before OSMRE approves a state's certification request.³ According to OSMRE officials, however, SMCRA has always required that all six priorities of coal projects be addressed. Nonetheless, OSMRE approved both Wyoming's and Montana's requests for certification even though all coal projects had not been addressed.⁴ Wyoming certified that it addressed all coal projects but interpreted "all" to mean

³An exception is when the governor of a state certifies that the impacts of a noncoal mine constitute an extreme danger to the public's health, safety, or general welfare.

⁴Louisiana's request for certification was also approved but, according to OSMRE officials, Louisiana did not have any coal sites needing reclamation.

those projects on its inventory—priorities 1 and 2 along with some priority 3 projects. Montana also certified that it addressed all projects but in reality it was certifying only priority 1 through 3 coal projects. These state certifications were approved because OSMRE field offices, in accordance with existing certification review procedures, based their approval on the states' completion of priority 1 and 2 projects only.

Once OSMRE received the certifications from the governors that all reclamation associated with abandoned coal mine or coal development sites had been addressed, OSMRE field office staff verified that the states' inventory of priority 1 and 2 coal reclamation projects had been addressed. OSMRE then published a notice in the Federal Register requesting public input on any abandoned coal sites still requiring reclamation. When the public and OSMRE staff did not identify any additional sites requiring reclamation, OSMRE approved the states' requests for certification and published the approval in a final Federal Register notice. The field offices did not attempt to verify that the states had identified and addressed priority 3 through 6 coal projects. In this regard, OSMRE has not issued specific policy or guidance on how priority 3 through 6 coal projects should be dealt with when states request certification.

OSMRE field office and state officials gave various reasons for basing state certification approval on the completion of priority 1 and 2 coal projects without verifying that all priority 3 through 6 projects had been identified and addressed. These officials stated that total compliance with the act is not always practical. For example, they noted that the national inventory generally includes only priority 1 and 2 coal projects, making it difficult for OSMRE field office staff to identify other coal-related reclamation projects, much less affirm with any degree of certainty that these problems have been addressed. OSMRE field office and state officials also noted that the universe of these problems is constantly changing because such things as research and demonstration projects on surface mining reclamation and water quality control program methods and techniques are added or deleted. Further, some projects to restore degraded land and water resources cannot be addressed because of access problems on private lands or are not considered to be cost beneficial because they present little or no environmental threat. Meanwhile, OSMRE field office and state officials believe that some noncoal sites, while not warranting a governor's certification that they constitute an extreme danger to the public's health, safety, or general welfare, are of more concern than remaining coal reclamation projects.

Confusion Exists on Financial Consequences of State Certifications

Beginning with approval of the first request for certification by Wyoming in 1984, except in emergency situations, OSMRE has not allowed a state to share in the Secretary's discretionary funds once the certification has been approved. This policy, however, has not been formalized and field office and state officials have not always been aware of it. For example, a Wyoming official told us that the state was surprised to learn that it had forfeited its eligibility for the Secretary's discretionary funds when OSMRE approved the state's request for certification. The first notice in the Federal Register requesting public input on any unreclaimed abandoned coal sites in the state made no mention that secretarial discretionary funds would no longer be available. It was not until OSMRE published approval of the state's request for certification in a final Federal Register notice that Wyoming officials became aware of the forfeiture provision. Texas withdrew its certification request after learning that federal share funds would no longer be available when its certification was approved. OSMRE estimates that nine additional states and three Indian tribes will request certification by 1995. All these states and tribes may not be aware of the financial consequences of their decision.

Conclusions

Currently, both the Secretary's discretionary funds and the state's share of reclamation fees are first marshalled primarily to address abandoned coal sites adversely affecting the public's health, safety, or general welfare. Once both OSMRE and a state are reasonably assured that all these sites have been addressed, it has been OSMRE's practice to approve the state requests for certification. This approval, in effect, releases the Secretary's discretionary funds, that could have been allocated by formula to the state, to be used in other states with continuing coal-related health and safety problems.

In approving a certification request, OSMRE does not independently verify whether a state has addressed all priority 3 through 6 coal projects. Instead, OSMRE relies primarily on the governor's certification statement that all coal projects have been addressed. While OSMRE field office and state officials provided various reasons for not addressing all sites adversely affected by past coal mining practices before a state's request for certification is approved, this practice is not consistent with SMCRA.

OSMRE's lack of either policy or operating guidance to address the certification requirements of SMCRA has contributed to the confusion over certification. Before the nine states and three Indian tribes now considering

certification make a final decision, the confusion needs to be resolved with written policy and operating guidance.

Recommendations to the Secretary of the Interior

We recommend that the Secretary of the Interior direct the Director, OSMRE, to adopt policies consistent with SMCRA and require reasonable assurance that all eligible coal projects, including priority 3 through 6 projects, have been addressed before approving state requests for certification. To assist its field offices and the states in accomplishing this, OSMRE should develop written policy and guidance on how (1) all coal reclamation projects are to be identified and addressed and (2) OSMRE will verify a state's certification request.


We also recommend that the Secretary direct the Director, OSMRE, to formally notify states of OSMRE's policy regarding the implications of certification—which is a state can no longer share in the Secretary's discretionary funds once its request for certification has been approved.

We conducted our review from October 1990 through March 1991 in accordance with generally accepted government auditing standards. We interviewed officials and obtained and reviewed documentation at OSMRE's headquarters in Washington, D.C., and OSMRE field offices in Casper, Wyoming, and Tulsa, Oklahoma. We also met with, and obtained records from, state officials in Colorado, Louisiana, Montana, Texas, and Wyoming.

As requested, we did not obtain official agency comments on a draft of this report. We did, however, discuss the findings contained in this report with OSMRE officials and incorporated their comments where appropriate.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of the Interior and the Director, OSMRE, and other interested parties. We will also make copies available to others upon request.

This report was prepared under the direction of James Duffus III, Director, Natural Resources Management Issues, who can be reached at (202) 275-7756. Other major contributors are listed in appendix II.



J. Dexter Peach
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Six Priorities of Coal Projects

Abandoned mine reclamation projects undertaken by the states must reflect the priorities established under SMCRA in the following order.

Project Priority

Priority 1	The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.
Priority 2	The protection of public health, safety, and general welfare from adverse effects of coal mining practices.
Priority 3	The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.
Priority 4	Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques.
Priority 5	The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices.
Priority 6	The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in the act for recreation and historic purposes, conservation, and reclamation purposes, and open space benefits.

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