

PENNSYLVANIA
ABANDONED MINE RECLAMATION PLAN
AMENDMENT NO.3
UNDER THE PROVISIONS OF
THE FEDERAL SURFACE MINING CONTROL
AND RECLAMATION ACT OF 1977

August 2016

PREPARED BY THE BUREAU OF ABANDONED MINE
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INDEX

	<u>Page</u>
INTRODUCTION	3
PART G: The Pennsylvania Emergency Response Reclamation Program (Emergency Program)	3
I. Governor’s designation of the Department of Environmental Protection	3
II. Legal opinion authorizing the Emergency Program	3
III. Policies and procedures in conducting the Emergency Program	4
IV. Administrative and managerial structure for the Emergency Program	7
V. Emergency problem quantification	10
VI. Emergency Program in Pennsylvania	11
 EXHIBITS:	
1. Governor’s designation of the Department of Environmental Protection	
2. Legal opinion of authority for the Emergency Program	
3. Distribution of Pennsylvania Coals	

INTRODUCTION

The Pennsylvania Department of Environmental Protection (DEP) has administered the Title IV AML Reclamation Program in Pennsylvania since July 30, 1982. This Reclamation Plan Amendment No. 3 modifies Pennsylvania's Abandoned Mine Reclamation Plan (Plan) to allow DEP to administer a State Emergency Program under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), P.L. 95-87, as amended, 30 U.S.C. §§ 1231-1244. Amendment No. 3 will add a PART G to the original Plan which originally contained PARTS A, B, and C. Amendment No. 1 added PARTS D and E, and Amendment No. 2 added PART F.

Pursuant to the guidelines published in the federal register on September 29, 1982, DEP offers the following description of Pennsylvania's proposed procedures for implementing an emergency response reclamation program based on the provisions in Section 410 of SMCRA.

PART G: The Pennsylvania Emergency Response Reclamation Program

I. Governor's designation of the Department of Environmental Protection

Exhibit 1 of the Plan, attached, contains an official designation by the Governor of Pennsylvania in 1978 that the Department of Environmental Resources (DER) was the State agency authorized to implement and administer the Abandoned Mine Reclamation Program. On July 1, 1995 the Department of Environmental Resources was split into the Department of Conservation and Natural Resources (DCNR) and the Department of Environmental Protection (DEP), the latter of which administers the Abandoned Mine Program

The designation authorizes DEP to receive, administer, and disburse federal grants, pursuant to Title IV of SMCRA, and includes both the Emergency and Non- Emergency Programs.

II. Legal opinion authorizing the Emergency Program

Exhibit 2 of the Plan, attached, contains the 1978 legal opinion of the Pennsylvania Attorney General that DEP is authorized by Pennsylvania law to administer the State Reclamation Plan, and a 2016 memorandum from the DEP's Office of Chief Counsel specifying DEP's statutory authority to establish and administer an Emergency Program as part of its State Reclamation Plan. The Pennsylvania Attorney General offered the opinion that "authority is granted in the following laws: "The Land and Water Conservation and Reclamation Act", Act of January 19, 1968, P.L. 996 (1967), No. 443, as amended, 32 P.S. § 1501 et seq.; The Act of May 7, 1935, P.L. 141, 52 P.S. § 809 et seq.; "The Coal Mine Sealing Act of 1947", Act of June 30, 1947, P.L. 1177, as amended, 52 P.S. § 28.1 et seq. [repealed]; The Act of April 3, 1968, P.L. 92, No. 42, 52 P.S. §

30.201 et seq.; The Act of July 19, 1965, P.L. 216, No. 117, as amended, 52 P.S. § 30.101 et seq.; “The Clean Streams Law”, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 et seq.; and “The Administrative Code of 1929”, Act of April 9, 1929, P.L. 177, as amended, Section 1915- A, 71 P.S. § 510-15.”

The Office of Chief Counsel’s memorandum notes that “Section 16 of the Land and Water Conservation and Reclamation Act (32 P.S. § 5116 (Allotment of moneys)) and the Mine Fire and Subsidence Remedial Project Indemnification Law (52 P.S. 30.201 – 30.206) provide DEP the authority to conduct activities consistent with an Emergency Reclamation Program.”

III. Policies and procedures in conducting the Emergency Program

1. Emergency response reclamation activities involve entering upon any land where an eligible abandoned coal mine related emergency exists, and on any other land to have access to the land where the emergency exists, to restore, reclaim, abate, control, or prevent the adverse effects of legacy coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. These emergency powers are in Section 410 of SMCRA. Pennsylvania’s Act 443 (Land and Water Conservation and Reclamation Act) provides identical powers under the State’s Program. DEP will use proper procedures outlined in U.S. Office of Surface Mining Reclamation and Enforcement (OSMRE)’s Federal Assistance Manual (FAM) Chapter 4-120 entitled “State Emergency AML Reclamation Program”.

For the Emergency Program, an emergency means a sudden danger or impairment or previously unknown condition, related to legacy coal mining, which represents a high probability of substantial physical harm to the health, safety or general welfare of people before the danger can be abated under normal program operation procedures. As in the non-emergency program, DEP must determine that:

- a. Abandoned coal mine conditions caused the sudden danger, impairment or condition.
 - b. The abandoned mine problem is hazardous to people or the environment.
 - c. Reclamation is technologically and economically feasible.
 - d. No one else has reclamation responsibility under state or federal laws.
2. DEP will handle the coordination of emergency reclamation work between the State and OSMRE as outlined in the Pittsburgh Field Division (PFD) of the Appalachian Region of the OSMRE Emergency Response protocol. Coordination with other agencies for

environmental clearance will be on a project specific basis as outlined in the “OSMRE Handbook on Procedures for Implementing the National Environmental Policy Act”.

DEP will conduct emergency response projects in compliance with the Federal Clean Water Act, and all applicable Federal, Pennsylvania, and local laws and regulations. Certain approvals, and permit waivers and exemptions, may apply to a given project due to the need to act rapidly to protect the public’s health or safety. DEP will obtain State Historic Preservation Office (SHPO), DCNR, and U.S. Fish and Wildlife Service (USFWS) clearances in writing as soon as possible. However, a project requiring immediate response may necessitate having written approvals obtained after the project is completed. In cases where sufficient time is not available to obtain the usual clearance, DEP personnel will use their expertise to determine if the project is likely to adversely affect SHPO, DCNR, and USFWS concerns.

Where needed, assistance is available from the Pennsylvania State Police, Pennsylvania Department of Transportation, and the Pennsylvania Emergency Management Agency. DEP will coordinate the Emergency Program from the field offices in DEP’s Bureau of Abandoned Mine Reclamation (Bureau). One field office is located in the bituminous coal field in Ebensburg and the other is located in the anthracite coal field in Wilkes-Barre. DEP will coordinate emergency reclamation work with OSMRE and use the approved procedures contained in OSMRE FAM Chapter 4-120 for that work.

3. DEP will conduct all investigations and eligibility findings required by Title IV of SMCRA. DEP will transmit this information to officials of OSMRE who have the delegated authority to make the Findings of Fact and Emergency Declarations required under Section 410 of SMCRA.

The Bureau will submit the AML problems and proposed reclamation projects that meet all the following conditions under the “Finding of Fact (FoF) and Authorization to Proceed (ATP), Small AML Emergencies in Pennsylvania” paper approved by the PFD OSMRE on June 24, 2015. Problems and proposed projects not meeting these criteria shall be submitted for individual FoF/ATP:

- Sudden Occurrence;
- High Probability of Substantial Physical Harm;
- No other response capability exists;
- Project completion time is estimated less than 30 days;
- Estimated project cost under \$15,000;
- AML Eligibility Determination has been prepared;
- Meets Categorical Exclusion criteria (USFWS 516 DM6,

- Appendix 8);
- Meets SHPO clearance criteria; and
- PNDI clearance has been obtained;

Following OSMRE approval of the project, the making of the FoF and granting the ATP, the State will undertake specific construction efforts to abate the emergency condition.

4. When emergency conditions warrant an immediate response, the Bureau will initiate appropriate actions upon receipt of an approval, a “Limited Emergency Response”, or a verbal approval from OSMRE.
5. DEP may enter on any land where an emergency exists or on lands adjacent thereto for access, to prevent the adverse impacts of coal mining in order to protect the public health, safety or general welfare.

It is the policy of the State to respect the rights of private ownership, and the State will make all reasonable efforts to notify the landowner in advance of entry. The consent for right of entry shall be in the form of a signed agreement with the owner of record or his authorized agent. When owners are unknown or not readily available or will not grant permission for right of entry, access will be obtained in accordance with 30 CFR 877.14. If the emergency project requires the acquisition, management, and disposition of lands and water, it will be done in accordance with 30 CFR PART 882.

6. DEP has provided adequate notice and opportunity for public comment sufficient to satisfy state reclamation plan amendment approval requirements under 30 CFR 884.15(a) and 884.14(a), including a public hearing if requested. DEP has ensured public participation and involvement in the preparation of this Reclamation Plan Amendment No. 3 and its associated State Emergency Program by undertaking the following process:

First, DEP sought intradepartmental notice and review by sending the draft amendment to their legal staff, the comptroller’s office and contracting offices. DEP then published notice of the proposed Reclamation Plan Amendment No. 3 in the Pennsylvania Bulletin with instructions how to obtain a copy and how to provide public comment. Comments were solicited from the public through the eComment tool on DEP’s website. This tool provides users with full access to submit comments, view comments submitted by others, and review regulations, policies, technical guidance documents, general permits, and other proposals open for public comment.

Next, DEP provided the following stakeholders with additional notice of publication of the Reclamation Plan Amendment No. 3 to elicit their participation in the eComment process:

- County Conservation Districts, in each of the 45 coal counties
- Eastern Pennsylvania Coalition for Abandoned Mine Reclamation
- Foundation for Pennsylvania Watersheds
- Mining and Reclamation Advisory Board
- Western Pennsylvania Coalition for Abandoned Mine Reclamation

Pennsylvania is committed to public participation and involvement in this program and believes that public response plays an integral and necessary role in its administration.

7. All emergency project development, design, realty, construction and administration will generally be done by the Bureau, as is done in its Non-Emergency Title IV Program. Some project design and inspection may be done by consultants under contract with the Department. The eligibility opinions will be based on the same criteria as the Non-Emergency Title IV projects. The Department legal staff will determine if the project meets the eligibility requirements set out in Section 404 of SMCRA. Some projects may need to have project eligibility verbally approved by DEP and OSMRE before the project is started, with the written approval following as soon as possible.

IV. Administrative and managerial structure for the Emergency Program

1. In October of 2010, OSMRE ceased implementing the Federal Emergency Program to address suddenly occurring, high-priority, AML problems in Pennsylvania. In response to the cessation of the Federal Emergency Program by OSMRE, Pennsylvania chose not to seek delegation of the Emergency Program from OSMRE, but rather chose to set up an Accelerated Response Program (ARP) to address the AML problems traditionally dealt with by OSMRE. The ARP operates as follows:
 - a. The ARP took advantage of some accelerated contracting procedures provided within Pennsylvania's Procurement Code. Unlike traditional OSMRE Emergency Projects, accelerated response projects required submission of a formal written request from Pennsylvania to OSMRE for an ATP. This included all required consultations with both federal and state resource agencies and complete compliance with the National Environmental Policy Act (NEPA). Once an ATP was issued by OSMRE, Pennsylvania addressed these AML problems with both in-house staff and through outside contractors. Pennsylvania's AML Program maintains two field offices, and while the organizational structure and function of the two field

offices are not identical, the ARP in both field offices incorporated the major business practices as regular projects, using the same four main work functions as regular response projects: 1) Inquiry Investigations; 2) Planning and Project Development; 3) Project Design, and 4) Project Construction, with supporting functions including administration, real estate services, surveying, permitting, grants management, in-house construction crews, and construction inspection. For ARPs, DEP utilized multiple staff working in parallel to advance the reclamation quickly.

- b. DEP investigated inquiries and the investigator(s) made a recommendation to the Program Manager regarding whether the inquiry warranted a regular or accelerated response. A key element to the ARP was the Bureau's recognition that the scope of the event dictated the complexity of the environmental clearances, the amount of engineering and design, and the time necessary to mobilize an appropriate reclamation crew or contractor. Both field offices maintain in-house construction crews with significant equipment available to respond and address many small AML hazards, such as pothole subsidence and mine drainage breakouts. These projects usually qualify for a Categorical Exclusion from National Environmental Policy Act requirements and environmental clearances are easily resolved based on the residential setting. The ATP request was prepared quickly with excellent cooperation by OSMRE, which issued the ATPs with prompt turnaround times. Larger projects, such as when subsidence impacts multiple structures, are more complex and thus require greater time to design the project and obtain Commonwealth emergency contracting authority. Such projects also involve more complexity in mobilizing the contractor (hired through solicitation of quotes or proposals with very short timeframes between bid issue and bid opening), and require more time to obtain an ATP. Construction, Investigation, and Design Managers would consult each other and determine, based on the investigators' recommendation and report, resources available, and project complexity, whether the project warranted the regular or accelerated response.
- c. The Inquiry Investigation and Planning and Development personnel of the field office involved with the project supplied the information necessary for ATP approval to the Bureau's Central Office Planning and Development staff, who then forwarded the information to OSMRE. The field office Project Design staff (and in some cases, central office Project Design staff) designed the larger projects. The field office Project

Construction staff handled construction management, supervision, and inspection for the ARP projects.

2. The proposed organization of DEP's Emergency Program will be similar to that used for the ARP, and the Bureau does not anticipate requiring the addition of any new positions or personnel. DEP may, over time, adjust managerial and administrative structure of the Program but does not anticipate establishing any positions because of the implementation of the Emergency Program. DEP will provide supplementary technical, legal, contracting, and administrative services to the Emergency Program from respective sections of DEP, as it did under ARP.
3. DEP will adequately staff the Emergency Program with sufficient numbers of employees with the necessary technical skills as needed and available. Personnel from the contracting, legal and administrative areas will work on various aspects of the Emergency Program as the need dictates. If necessary, DEP may use consultants for certain aspects of the emergency projects. Other existing Bureau staff is also available to assist if the need arises.
4. The Bureau will administer the Emergency Program because it is the entity responsible for implementing the existing Title IV program. Most of the administrative procedures already exist under the existing Plan, and were which the Bureau utilizes in administering and implementing the ARP.

Some of these administrative procedures include:

- a. Bureau staff will investigate and report emergency complaints in the same general manner and with the similar staff as other Title IV inquiry investigations.

Bureau staff will investigate complaints as quickly as possible and as the situation warrants.

- b. Bureau staff and the Office of Chief Counsel will continue to process eligibility determinations and opinions for emergency projects. When necessary, staff will obtain verbal eligibility opinions to facilitate a quick response.

The Inquiry Investigation and Planning and Development personnel of the field office involved in the inquiry will supply the information necessary for FoF and ATP approval to the Bureau's Central Office Planning and Development and Special Projects staff, who will then forward the same to OSMRE.

- c. The procedures regarding emergency reclamation on private land under 30 CFR PART 882 and emergency projects rights of entry under 30 CFR PART 877.14 are discussed above in PART G, III, 4 & 5.

The Bureau's realty staff will obtain rights-of-entry. When necessary, investigators will obtain right-of-entry to facilitate quick response.

- d. Project supervision and project inspection procedures will generally remain unchanged from other similar Title IV project procedures already in place. The Bureau will submit outstanding NEPA documents as quickly as possible, and will include final reports in the annual report as per FAM 4-120-90.
5. DEP's purchasing, procurement and contracting systems in responding to emergency situations will conform to the requirements of OMB Circular A-102 and Commonwealth laws and regulations.

In addition to the elements listed in PART B, II.e. of the Plan, the Bureau will use the following elements to respond quickly to emergency situations: (1) The Bureau will streamline emergency project purchasing and procurement systems so that materials may be purchased without formal site specific competitive bidding (for example, stockpiling and using material on hand or, having preapproved material on account); (2) the Bureau may simplify the selection of a contractor through the use of DEP's in-house construction staff and equipment, or by obtaining a few quotes from a list of qualified contractors.

6. DEP will use the same accounting system for the Emergency Program that it currently uses for the other Title IV projects. This accounting system conforms to OMB Circular A-102. Bureau staff will assign new subaccounts and cost function numbers for the Emergency Program, as required.

V. Emergency problem quantification

1. DEP may undertake emergency projects in any of the eligible coalfields found in Pennsylvania. A map showing the distribution of Pennsylvania coal fields is attached as Exhibit 3. AML problem areas are located within these coalfields.
2. Emergency projects in Pennsylvania can occur in AML problem areas and involve any eligible legacy coal mining related problem. Common problems that occur and the techniques for addressing those problems are covered in PART C, II in the Plan.

3. The Bureau has continued to develop experience and efficiencies in responding to these types of projects with its ARP. In the federal fiscal years October 1, 2010 to September 30, 2013 (FY 2011, FY 2012 and FY2013), the Bureau responded to 1,983 requests for assistance with potential AML problems, 719, 599, and 665 respectively, in each year. The Bureau investigated these requests or inquiries and, when urgent conditions warranted, the Bureau elevated them to ARP project status. In 2011, the Bureau elevated 13.6% of the inquiry requests to ARP project status upon investigation (98 projects). In 2012 the rate was 8.3% (50 projects), and in 2013 10.7% (71 projects).
4. Mine subsidence problems are the most common AML problem type DEP experiences during the ARP, representing 85% of all the ARP projects DEP addresses. The following chart indicates the number, total cost and types of ARP projects:

Federal Fiscal Year	BAMR ARP Sites	Total Construction Cost	Subsidence	Mine Drainage	Mine Gas	Fires	Land Slide	Mine Opening
2011	98	\$1,608,001	81	2	1	2	6	6
2012	50	\$1,190,698	45	1	1	1	0	2
2013	71	\$2,067,431	61	2	0	2	3	3
Totals	219	\$4,866,130	187	5	2	5	9	11
Percent			85%	2%	1%	2%	4%	5%

VI. Emergency Program in Pennsylvania

The objectives of the Pennsylvania abandoned mine land program are to fulfill the general reclamation requirements set out in Section 403 of SMCRA, FAM Chapter 4, OSMRE Directive AML-4 and the NEPA Handbook. The program's highest priorities lie in the protection of public health, safety and general welfare from extreme dangers posed by the adverse effects of past coal mining. The Emergency Response Program provides an additional means of accomplishing these priorities. The State will have the capability and the administrative structure to properly implement the Emergency Response Program as described in this amendment and is willing and able to work closely with OSMRE to ensure its success.