

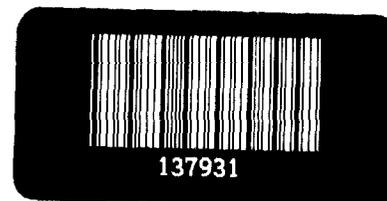
GAO

Report to the Chairman, Subcommittee on  
Government Efficiency, Federalism and  
the District of Columbia, Committee on  
Governmental Affairs, U.S. Senate

January 1989

# SURFACE MINING

## Interior's Response to Abandoned Mine Emergencies



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General Accounting Office  
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Resources, Community, and  
Economic Development Division

B-226046

January 31, 1989

The Honorable Jim Sasser  
Chairman, Subcommittee on Government  
Efficiency, Federalism, and the  
District of Columbia  
Committee on Governmental Affairs  
United States Senate

Dear Mr. Chairman:

During hearings held on October 23, 1987, you requested the Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) to provide a report describing its handling of requests for emergency reclamation of abandoned mine land (AML) sites. OSMRE provided its report entitled AML Complaint/Emergency Projects Report to the Subcommittee on July 7, 1988. As agreed with your office, we have reviewed (1) the completeness and accuracy of the information provided in OSMRE's report to the Subcommittee, (2) the number of days OSMRE takes to process emergency complaints, and (3) whether emergency projects approved by OSMRE met all established criteria for approval. To determine the accuracy of the report, we examined OSMRE case files in three states—Ohio, Kentucky, and Tennessee.

## Results in Brief

We found OSMRE's report to be incomplete and inaccurate. It did not contain all emergency complaints received by OSMRE during 1983 through 1987 and double counted others. Further, information provided on about 77 percent of the complaints we sampled from Ohio, Kentucky, and Tennessee was either inaccurate or unverifiable.

Although OSMRE has not established criteria to judge the timeliness of its response to complaints, OSMRE inspectors visit mine sites within 48 hours after receipt of a complaint about 64 percent of the time. However, it took much longer for OSMRE to complete its investigation and decide whether an emergency existed and, if so, to award a construction contract. Where data were available, the average time from receipt of a complaint to either awarding a construction contract or denying that an emergency existed was about 97 days, with a range from 1 day to more than 28 months.

We were unable to determine whether approved emergency projects met all established criteria because none of the project files contained documentation to substantiate that all selection criteria were met. For example, none of the project files for the 57 complaints included in our three-state sample, which were determined by OSMRE to be emergencies, contained information to demonstrate that immediate corrective action was needed.

## Background

To promote the reclamation of mined areas left abandoned before enactment of the Surface Mining Control and Reclamation Act of 1977 (SMCRA)(30 U.S.C. 1201, et seq.), the Congress established an Abandoned Mine Reclamation Fund, commonly called the AML Fund, to be administered by the Secretary of the Interior. Moneys from the fund are annually appropriated by the Congress to administer the federal and state reclamation programs and reclaim eligible abandoned mine sites.

Although the Secretary has granted 23 states and two Indian tribes authority for reclaiming sites within their borders, OSMRE, under its Federal Reclamation Program, generally retains responsibility for reclaiming problem sites that pose an imminent hazard to public safety and well being and requires a rapid response (commonly referred to as OSMRE's emergency program).<sup>1</sup>

Under Section 410(a) of SMCRA, the Secretary of the Interior, through OSMRE, is authorized to spend AML moneys for emergency projects on eligible lands if it is determined that

"(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and  
(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices."

As defined in OSMRE's regulations (30 CFR 870.5), an emergency

"... means a sudden danger or impairment that presents 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."

Through fiscal year 1988, OSMRE spent about \$104.6 million to respond to 1,193 complaints it had determined met these criteria.

<sup>1</sup>Arkansas, Illinois, West Virginia, Virginia, and Montana have been granted primary responsibility for emergencies under their state AML programs.

## OSMRE Emergency Program Policy and Procedures and Reporting Approach

Emergency AML complaints are usually received from persons directly affected by a perceived emergency. Under OSMRE's emergency program procedures, after receiving a complaint, inspector(s) from one of OSMRE's 13 field offices should visit the site in "a timely manner" as part of an initial investigation. If the problem is not eligible for funding under SMCRA or is determined by OSMRE not to be an emergency, the complainant should be notified and the case should be closed.

If, however, the problem appears to be of a serious nature, OSMRE's Eastern or Western Field Operations Offices, located in Pittsburgh, Pennsylvania, and Denver, Colorado, respectively, should be promptly notified, followed by a written complaint investigation report. Concurrently, the field office should request an opinion from either the state's Attorney General or the Interior Solicitor's office on the project's eligibility for funding under SMCRA (that is, the problem must be coal-related; the mine must have been abandoned before August 3, 1977; and any bond on the area must have been released or forfeited and expended).

After receiving information from an OSMRE field office that a possible emergency exists, the responsible Eastern or Western Field Operations Office should immediately review and evaluate the complaint investigation report. In addition, a team of specialists may be sent to the site to obtain additional information. The Assistant Director of the Eastern or Western Field Operations Office must then make the final determination on whether or not an emergency exists. If an emergency does exist, this determination is documented in a briefing paper for inclusion in the official case file.

Once a determination is made that an emergency exists, the appropriate field operations office may authorize immediate abatement action. This, in part, involves preparing detailed written specifications and cost estimates for all phases of the reclamation work and awarding contract(s) to abate the emergency.

OSMRE has no management information system for monitoring its emergency program performance. Consequently, to obtain the information the Subcommittee requested, OSMRE developed the requested information from two different sources: (1) databases developed by each of the 13 field offices containing information found in their emergency complaint files and (2) OSMRE's existing Federal Reclamation Program Projects Tracking System that tracks those complaints forwarded by the field offices on which expenditures have been made. Each source contained part of the requested information. The field office databases contained

information on the complaint date, initial inspection date, and the status of the complaint, whereas the Federal Reclamation Program Projects Tracking System contained information on the date the briefing paper was prepared and the date the construction contracts were awarded. The Eastern Field Operations Office developed a program to compile the information from the two separate sources.

## OSMRE's June 1988 AML Report Is Incomplete and Inaccurate

OSMRE's June 1988 AML Report did not include all complaints received by OSMRE field offices for the three states we reviewed, and most of the reported complaints contained information that was either inaccurate or unverifiable. While the report listed a total of 481 complaints for the three states we reviewed, from our review of the OSMRE files, we found an additional 87 complaints that were not included in the report. Conversely, OSMRE should not have included five complaints because they either duplicated ones already included in the report or were not emergency AML complaints.

In addition to not including all emergency complaints, the OSMRE case files that we reviewed showed that complete and accurate information was provided for only 38 complaints, or 23 percent, of the 163 complaints we randomly selected from Ohio and Kentucky and the 2 listed complaints from Tennessee.

**Table 1: Accuracy of Sampled Reported Complaint Data**

State	Number of complaints			Total
	Accurate	Inaccurate <sup>a</sup>	Unverifiable	
Kentucky	22	52	16	90
Ohio	16	45	12	73
Tennessee	0	2	0	2
<b>Total</b>	<b>38</b>	<b>99</b>	<b>28</b>	<b>165</b>

<sup>a</sup>A complaint was considered inaccurate if it contained both inaccurate and unverifiable data elements.

As shown in table 1, we found that information on one or more key processing dates (initial complaint, investigation, briefing paper, or construction award date) or on the type of action taken was inaccurately reported for 99 complaints. Over 45 percent of the 99 complaints contained more than one error. Another 28 complaints could not be verified because the official case files did not contain supporting documentation for one or more data elements (the key processing dates or the action taken).

Most of the inaccuracies we identified in OSMRE's report were caused by OSMRE field office personnel incorrectly transferring information from the case files to the field office databases, errors in the Federal Reclamation Program Projects Tracking System, or errors made when combining the information from the two sources to produce the report.

OSMRE's report indicated that only two emergency complaints were received in Tennessee during the period 1983 through 1987 as compared with over 175 complaints in each of the other two states we reviewed. During our review of OSMRE files and interviews with knowledgeable state and federal officials, we did not identify any additional complaints in Tennessee. According to state and federal officials, there are probably several reasons for this, including:

- Tennessee produces a small amount of coal, ranking in the lower 50 percent of the 26 coal-producing states.
- Most of the mined land is owned by only two or three private companies, making their operations easier to monitor and less likely to have been abandoned without reclamation.
- Much of the mined land is being or has been remined, so pre-SMCRA mining sites have either been reclaimed or are ineligible for emergency designation because they have been affected by post-SMCRA mining.
- The geographical terrain of the state is not as prone to mine-related slides and subsidence as in some other states.
- People in the state may not be as aware of OSMRE's emergency program as in other states and therefore are less likely to file complaints.

## OSMRE Complaint Processing Time Can Vary

Our review of the 165 randomly selected complaints shows that the time to process a complaint can vary. Overall, we found that, where data were available, the average time from receipt of a complaint to either awarding a construction contract or denying that an emergency exists was about 97 days, with a range from 1 day to more than 28 months. Our finding is consistent with an OSMRE internal study, dated July 1988, that commented on a May 1988 internal study as follows:

"... a number of AML emergency projects were not being conducted within a time frame which would have precluded them from being referred to the State for abatement action. Certain projects were taking an inordinate amount of time to implement; thus, the emergency classification had been questioned."

Of the 165 complaints, 100 had documentation available to calculate the time from OSMRE's receipt of the complaint to either determining that an

emergency does not exist or awarding a contract to abate the emergency. The processing time for the 100 complaints, excluding the time needed to actually abate the emergency, is shown in table 2.

**Table 2: Processing Time—100 Sampled Complaints**

State	Number of days to process complaints				Total
	0-59	60-179	180-359	360 or more complaints	
Kentucky	36	11	6	2	55
Ohio	22	14	5	3	44
Tennessee	0	0	0	1	1
<b>Total</b>	<b>58</b>	<b>25</b>	<b>11</b>	<b>6</b>	<b>100</b>

For those complaints for which sufficient documentation existed in the case files, we determined the intermediate time frames for the following processing steps:

- receipt of the complaint to initial investigation,
- initial investigation to denial or approval as an eligible emergency project, and
- approval as an emergency project to award of a contract to abate the emergency.<sup>2</sup>

Table 3 shows the average OSMRE processing time and number of complaints included by step and state.

**Table 3: Complaint Processing Steps—Average Number of Days to Complete and Number of Complaints**

Processing step	Kentucky		Ohio		Tennessee		Total	
	Avg. Days	Complaints	Avg. Days	Complaints	Avg. Days	Complaints	Avg. Days <sup>a</sup>	Complaints
Receipt to inspection	3.4	74	5.4	45	0.5	2	4.1	121
Inspection to decision	70.6	66	103.7	49	677.0	1	89.8	116
Decision to contract award	117.5	26	64.7	15	164.0	1	100.0	42

<sup>a</sup>The average for each processing step cannot be combined to determine an average overall processing time because the data for each processing step are taken from different sets of complaints.

OSMRE has not developed criteria to judge the timeliness of its response to complaints. The agency, however, has reported to the Congress that initial investigations are usually made within 48 hours of complaint

<sup>2</sup>Those complaints that were denied emergency status would not be included in the third step.

receipt. Although table 3 shows that initial inspections were made an average of 4.1 days after the receipt of the complaint, we found that 77 of the 121, or 64 percent, of the complaints were investigated within 48 hours, as OSMRE has reported. For the remaining two processing steps, we found that for

- 18 of the 116 complaints reviewed, OSMRE took over 180 days (twice the average) to decide whether or not an emergency existed after completing the inspection, and for 5 of the 18 complaints, OSMRE took over 1 year to reach a decision and
- 6 of the 42 complaints reviewed that were declared an emergency,<sup>3</sup> OSMRE took over 200 days (twice the average) to award a contract and 3 of the 6 took over 300 days.

**Documentation Inadequate to Verify Emergency Designation**

OSMRE emergency program project files did not contain sufficient documentation to determine whether approved emergency projects met all established criteria. To be considered for reclamation under OSMRE's emergency program, the mine must have been abandoned prior to enactment of SMCRA with no continuing reclamation responsibility under state or federal law and the condition at the mine must warrant emergency reclamation. The criteria used to determine whether an abandoned mine site warrants emergency reclamation are (1) the problem is a result of a sudden occurrence, (2) it poses substantial physical harm to the public, and (3) immediate corrective action is required and no other person or agency can respond expeditiously. To be classified as an emergency, all three criteria must be met. As shown in table 4, the project files for the 57 complaints included in our three-state sample that were determined by OSMRE to be emergencies did not contain adequate documentation to determine whether they met these three criteria.

**Table 4: Criteria for Which No Supporting Documentation Was Available in Agency Case Files**

State	Complaints	Emergency criteria		
		Sudden occurrence	Substantial harm	Immediate action
Kentucky	35	5	1	35
Ohio	21	4	2	21
Tennessee	1	0	0	1
<b>Total</b>	<b>57</b>	<b>9</b>	<b>3</b>	<b>57</b>

<sup>3</sup> Another 15 complaints determined by OSMRE to be emergencies did not have sufficient documentation in the case files to determine the number of days between approval as emergency projects and awarding of the contracts.

According to OSMRE officials, even though the need for immediate action was not documented in the case files, they assume that OSMRE inspectors, in making their emergency determinations, know whether the condition needs immediate attention and whether another person or agency is available to expeditiously abate the emergency.

Our observations on the condition of agency case files are consistent with OSMRE's May 1988 internal study that stated:

"... a sample review of 89 active project files revealed that the files neither were updated in a timely manner nor were all files complete. . . . Project files at Pittsburgh were found to be incomplete in 20% of the sample cases reviewed and three files could not be located. The problem, in part, is that some personnel assigned projects retain the official file copy material in their personal working files. Reportedly, part of the situation is due to inadequate staff time to do filing."

## Conclusions

OSMRE's June 1988 AML Complaint/Emergency Projects Report to the Subcommittee is incomplete and contains many inaccuracies. As such, the information provided to the Subcommittee cannot be used to accurately assess the agency's past performance in responding to emergency abandoned mine land complaints. Currently, sufficient information is not available to effectively monitor the emergency program activities.

Given the small size of the program, the effort to develop an expensive, complex monitoring system is probably not justified. However, we believe that good program management demands that the agency maintain certain rudimentary information to provide an informed basis for assessing program performance and making any necessary management adjustments. Accordingly, we believe OSMRE should prescribe the documentation to be included in complaint case files. Adequate documentation should be available to track the complaint through the review process and to verify that the criteria for emergency status approval have been met. Further, because many emergency projects appeared to have excessively long processing times, we also believe that OSMRE should establish a process whereby the status of emergency projects would be periodically reviewed to ensure that the emergency condition is being abated in a timely manner.

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## Recommendations to the Secretary of the Interior

We recommend that the Secretary of the Interior have the Director, OSMRE:

- develop written instructions and guidance as to how case files should be structured, including criteria as to what minimum documentation is required;
- periodically review complaint case files to ensure that all required information is included; and
- establish a process to periodically review the status of emergency projects to ensure that timely corrective action is being taken commensurate with the urgency associated with the emergency.

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We conducted our review from June 1988 through November 1988 in accordance with generally accepted government auditing standards. We reviewed SMCRA and OSMRE's emergency program policies, procedures, and practices. We interviewed (1) OSMRE officials in the Eastern Field Operations Office in Pittsburgh, Pennsylvania; Columbus, Ohio; Lexington, Kentucky; and Knoxville, Tennessee, and (2) state conservation and Tennessee Valley Authority officials in Knoxville and members of the Save Our Cumberland Mountains citizens action group in Oakridge, Tennessee. To determine the accuracy and completeness of OSMRE's June 1988 AML Report, we selected a random sample of listed complaints from Ohio and Kentucky and the two complaints listed for Tennessee. A more complete discussion of our scope and methodology is contained in appendix I.

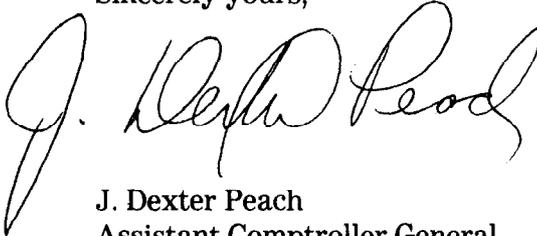
We discussed the information obtained during the review with OSMRE officials and have incorporated their comments where appropriate. However, in accordance with your request, we did not obtain official agency comments on a draft of this report.

As agreed with your office, 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 make copies available to others upon request.

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This work was performed under the direction of James Duffus III, Associate Director. Other major contributors are listed in appendix II.

Sincerely yours,



J. Dexter Peach  
Assistant Comptroller General



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## Abbreviations

AML	Abandoned Mine Land
GAO	General Accounting Office
OSMRE	Office of Surface Mining Reclamation and Enforcement
SMCRA	Surface Mining Control and Reclamation Act of 1977



# Scope and Methodology

On October 28, 1987, the Chairman, Senate Subcommittee on Government Efficiency, Federalism, and the District of Columbia, Committee on Governmental Affairs, requested that we provide information on the Office of Surface Mining Reclamation and Enforcement's (OSMRE) handling of requests for emergency reclamation of AML sites. In subsequent discussions with the Subcommittee office, we agreed to review (1) the completeness and accuracy of the information contained in OSMRE's June 1988 AML Report, (2) the number of days OSMRE takes to process emergency complaints, and (3) whether emergency projects approved by OSMRE met all established criteria for approval. To determine the accuracy of the AML Report, we selected a random sample from the 479 complaints coming from Ohio and Kentucky and selected the 2 complaints listed for Tennessee. As agreed, our review was limited to these three states because our initial work indicated that similar data problems existed for all states.

**Table I.1: Sample of Complaints Listed in the AML Report**

State	Number of complaints	Number of complaints GAO reviewed
Kentucky	302	90
Ohio	177	73
Tennessee	2	2
<b>Total</b>	<b>481</b>	<b>165</b>

Because various actions, such as inspections and OSMRE decisions, were in many instances not documented in OSMRE's files, the information collected is not projectable. Nevertheless, the information should be useful in identifying patterns of weaknesses in the AML Report. We compared the following five data elements in the AML Report to the source documents in the complaint files at OSMRE's Eastern Field Operations Office and field offices in Columbus, Ohio; Lexington, Kentucky; and Knoxville, Tennessee.

- Complaint Date. The earliest date OSMRE was notified of a potential emergency.
- Field Office Investigation Date. The first date that a representative from OSMRE inspected the site to assess the problem.
- Type of Action. A code OSMRE assigned to a complaint to indicate its disposition.
- Federal Briefing Paper Date. The date the first briefing paper was approved requesting funds.

- **Construction Date.** The date a contract was awarded to abate the emergency.

To calculate the timeliness of the complaint process, we reviewed the case files of our random sample of 165 complaints listed in OSMRE's June 1988 AML Report. The three time frames analyzed were: (1) from the complaint date to the initial inspection date, (2) from the initial inspection date to the date OSMRE made a decision on the complaint, and (3) from the date of the OSMRE decision to the date a contract was awarded to abate the emergency. The third time frame was not calculated for those complaints which OSMRE decided did not meet requirements for emergencies.

To determine the completeness of the report, we (1) verified a listing of complaints generated from OSMRE's complaint data bases for Ohio, Kentucky, and Tennessee to the complaints listed in the AML Report and (2) selected and compared separate random interval samples of 169 case files out of approximately 1,100 case files maintained at the Eastern Field Operations Office for Ohio, Kentucky, and Tennessee and at each of the field offices in these states to those in the AML Report.

To evaluate OSMRE's basis for declaring or denying emergency status to complaints, we reviewed the 165 sampled complaint files to determine whether approved emergencies met all three established criteria (result of a sudden occurrence, probable substantial harm, and immediate action required) and that those complaints denied emergency status did not meet at least one of the criteria. Our review was limited to determining whether adequate documentation was available to show that each of the criteria was considered by OSMRE in making its decision.

To determine why Tennessee had so few complaints, we held discussions with officials of OSMRE, the state of Tennessee, the Save Our Cumberland Mountains citizens action group, and the Tennessee Valley Authority.

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