

<b>DIVISION OF MINED LAND RECLAMATION</b>		<b>PROCEDURE NO.</b>	4.1.06
<b>PROCEDURES MANUAL</b>		<b>ISSUE DATE</b>	October 21, 2010
<b>SUBJECT</b>	AML Procedure Guidelines	<b>Section</b>	Technical/AML/Reclamation Services
		<b>Last Revised</b>	10/16/2009

**OBJECTIVE AND INTENT:**

To ensure DMLR personnel advance the reclamation of abandoned mine land features in accordance with statutes, state and federal regulations, and the state reclamation plan.

**PROCEDURES:**

**Inspector Receives an AML Complaint:**

- The inspector will initiate investigation by obtaining information from the complainant regarding the mining history to include company name, dates of mining, coal seams mined, type of mining (deep, surface, associated facility, etc); If adjacent property is involved then the inspector will identify the landowner(s), document contact information (in the complaint investigation form) and assess cooperation for future right of entry negotiations.
- The inspector in coordination with the DMLR Area Supervisors and/or AML Specialists will evaluate mine relatedness. If necessary, the inspector will request technical assistance.
- The inspector will create a topographic map identifying the complaint area. Identify the complaint area with an ortho layer, topo map or a sketch.
- The inspector will obtain any applicable data available from the associated coal company or other resources on the area of interest.
- The inspector will identify the landowner of the problem area, document contact information (on the complaint investigation form) and assess cooperation for future right of entry negotiations.
- The inspector will document the findings on AML complaint form (DMLR-AML-147S). At this time the inspector should select the appropriate disposition. Currently there are 5 AML dispositions - (1) AML Consideration, (2) AML Non-Eligible, (3) AML Emergency, (4) AML Technical Assistance Requested and (5) AML Investigation Incomplete. When disposition (1), (2) or (3) is selected the inspector will close out the complaint. When disposition (4) or (5) is selected a follow-up complaint investigation must be conducted.

**Inspector Submits the AML Complaint Investigation and AML Inventory Form to the Area Supervisor:**

- When disposition (1) AML Consideration, or (3) AML Emergency is selected, the complaint investigation report will be submitted to the Area Supervisor. The Area Supervisor, after review, will forward the complaint investigation report to the AML Project Coordinator. For complaints with the disposition of AML Consideration, the Area Inspector will complete the Potential Projects screen so that the site will be automatically listed for project selection consideration. For complaints with the disposition of Emergency, the Area Inspector will complete the Emergency Supplement information.

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- When disposition (2) AML Non-eligible is selected, the complaint investigation report will be submitted to the Area Supervisor and AML Project Coordinator for evaluation to be added to the Post-Act or alternate funding list, if site meets requirements.
- When disposition (4) Technical Assistance Requested or (5) Investigation Incomplete is selected the complaint investigation report will be submitted to the Area Supervisor. The inspector will complete a follow-up complaint investigation report upon receiving additional information.

**Eligibility Team Performs Research for the Final Eligibility Determination:**

- The Project Coordinator will evaluate potential projects to be sent to the Eligibility Team for determination of recommendation of eligibility with final determination made by the DMLR Director.
- The BSG Eligibility Team consists of selected office volunteers, the AML Projects Coordinator and the AML CAD/GIS Specialist. (not all of the members would be working on all of the projects)

**AML Project Selection Timeline**

**AML Project Selection Procedures:**

- The Project Selection Team (PST), with assistance from the AML Reclamation Program Managers will consist of the AML Project Manager, AML Services Manager, AML Project Coordinator and Reclamation Services Manager
- The Project Selection Team (PST) will review the eligibility list and the Abandoned Mine Land Inventory System (AMLIS) to select a group of potential AML projects for AML funding by August 1st of each year. There will be consideration of eligibility and right of entry.
- After the list of potential AML projects is created, appropriate representatives of DMLR (AML engineer, the appropriate Area Supervisor, AML Reclamation Program Managers, and Contracting Coordinator (CC) as recommended by the AML Project Manager) will perform a site review. The AML engineer, with assistance from the AML Reclamation Program Managers, will prepare a Scope of Work and Cost Estimate/Budget. The appropriate Area Inspector will accompany the team at this time.
- The assigned project engineer or AML engineer will provide, upon request, a pre-project design concept drawing. The concept drawing will be used by the Realty Specialist (and/or Area Inspector if assistance is requested by the Realty Specialist) to discuss and explain the project with landowners.

**Realty Procedures:** (see Procedure 4.1.02 for additional guidance)

- The Realty Specialist, with assistance as requested from the Area Inspector, will begin preliminary contacts with property owners. Available property ownership information from public records will

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be obtained from various county clerks' offices and property tax mapping and indices from the county Commissioners of Revenue will be obtained.

- If possible, written consents of right of entry will be secured in the early stage of the design phase. At a minimum, verbal commitment from landowners will be negotiated and documented on the landowner contact form. (Note: this can be performed, as the project site is being formulated, by the AML Reclamation Program Managers, Area Inspectors or the AML Engineer.)
- If landowner cooperation and approval become difficult after reasonable negotiation, then a decision will be made by the AML Project Manager and the AML Project Coordinator as to the project's viability.

The Realty Specialist will:

- Coordinate with the AML Reclamation Program Managers and/or AML Engineer.
- Determine landowners and property interests affected by the proposed activity.
- Determine if any lien issues are warranted as to past participation in mining. *(If the property is subject to a lien as defined by the "PARTICIPATION" factor in PL 109-423 as amended in Section 408a, then the following will be performed :)*
  - i. Realty Analysis will be developed to justify primary community or offsite benefits **or**
  - ii. An Estates To Be Appraised form is prepared requesting appraisal services and forwarded to the Contract Coordinator/officer.
  - iii. An appraisal showing will be scheduled and conducted in the field with the appraiser.
  - iv. Upon receiving an appraisal from the contractor, a Review of Appraisal Report form will be completed and returned to the Contract Coordinator for recommended payment for the services.
  - v. If the appraisal indicates that a significant increase in market value will occur as a result of the proposed reclamation then a follow-up appraisal following the completion of the reclamation work will be performed by the Appraiser to determine if a significant increase in market value did occur and an updated figure of the value amount.
  - vi. If a significant increase in market value has occurred, a Notice of Lien form will be prepared for recordation at the appropriate county or city jurisdiction of the said property.
  - vii. If there is no significant increase, a Lien Waiver will be executed by the Division Director as a result of the appraisal showing no significant increase in market value and/or documentation of community benefit.

If the property is not subject to a lien as defined by the PARTICIPATION factor the landowner(s) will be approached to sign either an Exploratory and/or a Construction Consent for Right of Entry for the Division to accomplish the proposed reclamation or exploratory work.

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- Maintain / manage Landowner Contact forms and document contacts with the property owners and documentation of any “PARTICIPATION” in the mining for lien determination/issues as described in *PL109-432 as amended in Section 408a*.
- Prepare the appropriate Consent for Right of Entry for each property owner known to be affected by the proposed project.
- Obtain written consent from all affected \*owners of interest. Requests for Right of Entry are sent by certified mail, email and/or in person during field negotiations. (Owners who are reluctant in giving written consent or there are numerous owners in an undivided heir ship/estate may desire to be “posted” (friendly) though the public notice procedure.)
- Prepare the Public Notice of Intent to Enter (posting notice) for execution by the DMLR Director. (The Notices will be given to AML Services Specialist for processing and publication)
- Post the Public Notice on the project or property in a highly visible area(s) and provide photographic documentation of the posting for the realty file.
- Mail the Public Notice to non-consensual / unsigned owner(s) by certified mail.
- Upon obtaining Consent for Right of Entry (ROE) from property owners, the ROE is recommended to be executed by the AML Projects Coordinator and/or the Reclamation Area Supervisors in absence of the “PC”.
- An Executed counterpart of the Consent for Right of Entry will be mailed to the property-owner(s).
- Final completion of the project Realty File will be performed after all Right of Entry is secured and preferably prior to the project is advertised for bids. The completion of the realty file will contain the following finalized documents:

AML-123	Executed Right of Entry Forms (construction/exploratory)
AML-301	Public Notice of Intent to Enter (executed, published, posted and/or mailed to the owner, all documented)
AML-307	Property Owner List
AML-302	Landowner Contact and Lien Determination Forms (LOC)
-----	Deeds
-----	County/City Tax Mapping and indices & other property mapping used

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	to determine affected properties/boundaries
-----	General Correspondence and file documentation, i.e. letters
AML-305	Lien Waiver (as necessary)
AML-311	Realty Analysis (as necessary)
AML-309	Estates to be Appraised (as necessary)
AML-310	Review of Appraisal Report (as necessary)
AML-304	Notice of Lien (as necessary-rarely)
AML-306	Title Search Request Form (necessity will be determined by the AML Projects Coordinator in specific or complicated issues)
AML-312	Eligibility/EA information (as necessary)

- Upon completion of the realty file, an electronic version of the documents will be moved to the AMLSNAP1 and filed under Realty – FY Project Year and Project Name.
- The AML Project Manager will update the Realty Specialist with any changes in the scope of work associated with the project, especially changes that affect landowners that have already signed the Consent for Right of Entry.
- The final eligibility should be determined prior to initiation of the final engineering work and prior to grant submittal by October 31.

NOTE:

*Owners of Interest may mean a legal interest of record such as a utility easement, deeds, life estate, remainderman etc. or a legal interest from unrecorded deeds, leases, tenants, easements (appurtenant or prescriptive), right of ways or undivided estates involving several/numerous heirs.*

*Easements involving utilities such as gas lines, electrical lines, and telephone companies vary in the way the companies like to conduct business in regards to signing a Right of Entry. Most prefer a*

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*field visit and giving verbal consent and recommendations. Others may sign the ROE, which contains specific conditions. If there is the need for relocation of lines, they will sign the ROE which may involve negotiating an agreement for compensation from the project funds/contractor.*

**National Environmental Policy Act (NEPA) Procedures and Design:**

- The Project Team consisting of AML Project Manager, AML Project Coordinator, AML Engineer, and AML Reclamation Program Managers will convene.
- AML Reclamation Program Managers will begin the NEPA consultation process following the project selection.
- AML Reclamation Program Managers will conduct all required habitat surveys and forward to the DGIF, DCR (as required), and the U.S. Fish and Wildlife Service.
- AML Reclamation Program Managers will ensure that the comments from the NEPA agencies will be incorporated into the final construction specifications. They will also ensure that all NEPA conditions are highlighted in the specs. The AML Reclamation Program Managers will ensure the Authorization to Proceed (ATP) and NEPA Conditions match exactly. A Fact Sheet Checklist has been developed for use by the AML Reclamation Program Managers to ensure all NEPA Permits are obtained.

Note: Authorization to Proceed (ATP) has to be approved by OSM before projects can begin.

**PERMITS PROCEDURES AND GUIDELINES**

- The need for permits will be identified during the NEPA process. Consulting agencies will denote permit requirements and these will be addressed in the project’s respective NEPA document. Routine permits may be required by the Army Corps of Engineers, Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission. In addition, permit requirements from non-consulting agencies, such as Virginia Department of Transportation, will also be addressed in the NEPA document.
- AML Reclamation Program Managers who have primary duties in NEPA will coordinate the acquisition of permits necessary to accomplish the project.
- Any required permits will be highlighted on a project’s Fact Sheet Checklist with the name of the permit, issuing agency, date, and reporting requirements. Also, exemptions from Virginia stormwater permitting will be referenced on the Checklist. The Fact Sheet Checklist will be distributed to the appropriate field personnel and contract coordinators prior to the project bid showing.

AML Reclamation Program Managers who have primary duties in NEPA will coordinate the project close-out to ensure compliance with all NEPA permit conditions.

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## **GRANT PROCEDURES AND GUIDELINES**

### Project Selection

- Regular Projects – AML Projects Coordinator submits project list and budgets to Grants Administrator (GA) for next year’s project in December. Public Notice will run in January.
- Emergency Projects – Upon submittal of declaration to OSM, AML Projects Coordinator or AML Services Specialist notifies GA of pending project and assigns/verifies the project number.
- Maintenance and Remedial Maintenance Projects - AML Projects Coordinator and Contract Coordinator, in consultation with the GA, will assign projects to the appropriate grant (year) based on available money.

### Project Tracking

- AML Reclamation Program Managers will obtain from AML Services Specialist a grant site number before submitting NEPA to OSM. The project type will be identified by AML Project Coordinator to AML Services Specialist.
- AML Services Specialist will enter the site name, number and budget into:
  - 1) AML Office
  - 2) Manager’s Tracking Sheet
  - 3) Budget/Contract Sheet, and
  - 4) Project Tracking Sheet
- Once the Authorization to Proceed (ATP) is issued, AML Services Specialist will update the tracking sheets
- AML Project Manager assigns; prioritizes, coordinates post – ATP site visits, design, permits, realty, etc. and submits to AML Services Specialist to update tracking sheets.
- AML Project Manager or Projects Coordinator will notify GA any time there is a change in budget or a project is dropped or added.
- AML Services Specialist will maintain the invoice records by grant year, and then by project type.
- Contract Coordinators will maintain the budget/contract sheet with all contracts, expenditures, change orders, etc.
- Area Supervisors, AML Reclamation Program Managers, and Contract Coordinators will maintain the project tracking sheet, recording key dates as obtained from field staff, routinely, no less than quarterly (in Feb., May, Aug., and Nov.). It is especially important to enter the completion date.
- AML Projects Coordinator will update the AMLIS sheets for grant closeouts.

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### AML GRANT FACTS

- AML grant year runs from April 1 to March 31.
- Administration sub-accounts (regular and emergency), as well as Emergency construction sub-accounts, are only open for 1 year.
- Regular construction sub-accounts are open for 3 years.
- Extension requests for any sub-accounts should be submitted in January (60 days before the end of the performance period, March 31).

#### KEY DATES FOR AML GRANTS ADMINISTRATOR

DECEMBER	Get project list and budgets for next year's grant Watch for award documents on OSM website detailing
JANUARY	Prepare public notice and publish in local newspapers. Schedule public hearing and advertise in TOWN HALL. Request extension on sub-accounts that expire 3/31 as needed.
FEBRUARY	Conduct public hearing. Check to be sure OFS has next year's cost codes in Account Structure. Be sure folks who do requisitions are aware of the new codes. Submit application to OSM.
MARCH	Assure grant approval. Give budget for Admin sub-accounts to OFS. Note end of performance period closeout on 3/31 (after this date we can spend money, but not obligate new money on closing sub-accounts).
APRIL-MAY	Annual reports to OSM.
AUGUST – OCTOBER	Close-outs of various sub-accounts

## ENGINEERING AND DESIGN

### Draft Designs:

- NEPA is already approved or in progress (See NEPA Procedures and Guidelines, Page 4).
- Based on staff workload and complexity of the project, the AML Project Manager with input from the PST decides whether engineering design is to be completed in-house by an outside consultant.
- If an outside consultant is chosen (Professional Services Procurement), AML Reclamation Program Managers with assistance from project engineer will provide a scope of services, project map and NEPA documentation to the Contracting Coordinators. The Contracting Coordinator will decide the Competitive Sealed Proposal process per procurement law and prepare all documents.

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The Contracting Coordinator, Project Inspector and AML Project Manager will conduct a site visit with the consultant, participate in the evaluation and negotiation process and the Contracting Coordinator will award contract to the selected consultant.

- At each stage, engineering designs are reviewed by Contracting Coordinator, Project Inspector, Area Supervisor, AML Reclamation Program Managers and AML Engineer.

**Bid Documents:**

- When the design is prepared in-house and ready for bid, all specs, drawings, permit, and landowner special requests are sent to the Contracting Coordinator by the AML Project Manager. When the design is prepared by an outside consultant and the design has been finalized, all specs, drawings, permits, and landowner special requests are sent to the Contracting Coordinator when the project is ready to go to bid  
Contracting Coordinator will coordinate with the consultant to put the project out to bid.
- Contracting Coordinator determines appropriate bidding procedure, prepares documentation to advertise the solicitation, and coordinates with engineer and inspector to schedule the pre-bid conference. Contracting Coordinator determines if an Addendum to the bid is needed and prepares and issues any needed Addendums.
- Procurement prepares solicitation packages for in-house designs or coordinates with the outside consultant to prepare the solicitation documents.
- Procurement conducts pre-bid conference. Project Inspector and Engineer attend the pre-bid conference.
- After receipt and opening of bids, Procurement reviews bids for procurement law compliance and forwards bid tabulations to design engineer for review and their recommendation.
- Upon completion of bid review, Procurement makes award determination and prepares all documentation to award the contract. When contract has been signed by all legal authorities, a Notice to Proceed will be issued to the Contractor giving them the authority to begin work.
- Contract Coordinator will enter all contract information into AML Office.
- At that time, the responsibility for administering the contract goes to the AML engineer, project inspector and area supervisor.

**CONSTRUCTION AND INSPECTION**

**Inspections:**

- Inspector will initiate a pre-construction conference. At this time, the inspector should remind the contractor that notification must be provided to the inspector before critical construction phases are to commence so the inspector can be present.

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- Inspector will have primary responsibility for providing construction inspection. Inspection reports (DMLR-AML-130S) will be submitted to the Area Supervisor and copied to the Reclamation Services Manager via e-mail.
- AML Reclamation Program Managers and AML Engineer will be available to assist upon request if technical problems arise. AML Project Manager shall be consulted if a significant change is suggested or needed. Generally, a significant change is one that may alter the engineering design and performance of the project or result in an increase in the cost of the project.
- Project Inspector will be responsible for any pre-construction or post-construction notifications.

**Construction Change Orders:**

- Once anyone (inspector or engineer) is aware of the likelihood or possibility of a construction change order, the Contracting Coordinator will be notified and consulted with as to the ramifications and procedures with regard to issuing a change order (Inspectors will utilize AML Inspection Report DMLR-AML-130S for this notification and for documentation of Contracting Coordinator consultation. **The inspection report will be sent to the Contracting Coordinator via e-mail thru the Area Supervisor and copied to the Reclamation Services Manager**). Inspectors will initiate construction change orders with consultation from the AML Reclamation Program Managers, if needed.

**Invoicing:**

- Invoices will be processed by the Project Inspector and Area Supervisor and mailed, and/or, hand-delivered to the Contracting Coordinator no later than five (5) working days from the date the Project Inspector receives the invoice. **A hard copy of the AML Inspection Report (DMLR-AML-130S) must accompany the invoice recommending approval of the invoice. Also, a copy of the AML inspection report (DMLR-AML-130S) must be e-mailed to the Reclamation Services Manager.** The AML Project Manager will authorize payment. The Contracting Coordinator and AML Services Specialist will update the budget sheets.

Reference to the OFS Policies and Procedures file on the intranet:

SECTION: 4.0.0. - ACCOUNTS PAYABLE

**Section 4.7.2 – Billing Correspondences**

**Subsection B. Construction Services**

- 1. Were the billed services received and are the charges for them in accordance with the purchase documents?**

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- a) **DMME** requires that a contractor claim form titled “**Application for Payment No. xx**” be submitted to the appropriate **AML** inspector. This form must bear the approvals of the responsible **field inspector**, the inspector’s supervisor, the responsible **Contracting Officer**, and the appropriate section manager, **AML or DMM**. **AML or DMM** shall deliver to the **FT or the ACCT** the original of the completed form before processing a vendor’s claim. This form properly completed and certified of both **DMME** and the vendor, evidences that the services were received and that the charges are in accordance with the authorizing document(s).
- b) The **Fiscal Director** may waive the form required under 1a) If the vendor is allowed to submit a claim on another approved form, the bill must be authorized for payment by designated **DMME staff** identified in 1a) above. Stamp the invoice with **OFS** stamp “**Services Received - Payment Approved**” and forward it to the appropriate manager responsible for the contractor’s work. **OFS staff** shall request that the signed bill be returned to **OFS** in no more than four days after its submission for approval.
- c) Once the properly authorized invoice is completed, proceed to 4.7.3.

**Inventory Update:**

- Inventory updates are done before project is released and is a signatory for Final Inspection. AML Project Coordinator will be responsible for the inventory update.

**Final Inspection and Release:**

- Area Supervisor and Inspector will conduct the final inspection. **The project inspector will complete the AML Inspection Report (DMLR-AML-130S) and complete the Final Inspection Form (DMLR-AML-171).**
- **All Final Inspection Reports (DMLR-AML-130S) must be printed off and a hard copy of the Final Inspection Form (DMLR-AML-171) will be sent to the AML Service Specialist thru the Area Supervisor and then to Contracting Coordinator for Bond Release. Please note that the project inspector should also e-mail a copy of the AML Inspection Report (DMLR-AML-171) to the Reclamation Services Manager.**
- AML Service Specialist will close out projects in AML Office.
- AML Project Manager will sign the Final Inspection Report Form.

**EMERGENCY PROJECTS PROCEDURE AND GUIDELINES**

- A sudden occurrence of extreme danger may lead to an AML emergency declaration request to OSM. Upon documenting eligibility and completing any required NEPA consultation, the AML

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Project Manager and Project Coordinator check budgets for available funding. The entire emergency process is accelerated as it has grant time constraints.

- After routing through the Division Director, the Project Coordinator submits the emergency declaration to OSM for approval and Authorization to Proceed. If required, NEPA consultation is performed by AML Reclamation Program Managers. The Projects Coordinator will inform the AML Office Services Specialist to update tracking sheets and AML Office.
- If emergency action cannot wait on a design, the Contracting Coordinator selects a contractor to perform immediate and necessary construction with minimal design, and the Inspector and AML Engineer provide oversight of construction. If a Contracting Coordinator awards a contract without competitive sealed bidding or competitive negotiation, a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. However, procurement shall be made with such competition as is practicable under the circumstances.
- If time permits, DMLR personnel may provide a design or the agency may contract with an outside consultant to design the emergency project. The Contracting Coordinator will bid project when design is complete.
- Contracting Coordinator shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.
- Emergency actions are to follow standard procedures for eligibility, NEPA, realty, data entry, and inventory to the extent practical.

## **MAINTENANCE AND REMEDIAL ACTIONS**

- The agency recognizes that unanticipated events may result in a need for maintenance and remedial work to ensure the permanence and effectiveness of AML reclamation work.
- Any notification of a need for maintenance or remedial action should be routed to an AML Reclamation Program Manager. This AML Reclamation Program Manager will advise field staff and conduct a site visit.
- The AML Reclamation Program Manager will consult with the AML Project Manager, Contract Coordinator, and the Grants Manager upon the scope of work and construction estimate. The AML Reclamation Program Manager will ensure the work is consistent with the original intent of the project and is also within the NEPA project boundary. The AML Office Services Specialist will update tracking sheets and AML Office.
- The AML Reclamation Program Manager, with the assistance of other DMME staff, will coordinate development of a maintenance or remedial plan. The AML Reclamation Program Manager will submit the plan to OSM to allow determination of NEPA consultation and also request OSM approval for expenditure of maintenance funds. The AML Reclamation Program

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Manager will manage any required NEPA consultations and advise the Realty Specialist of the proposed action. Remedial actions do not require OSM approval.

- Upon receiving OSM approval, the AML Reclamation Program Manager will consult with the Realty Specialist to ensure necessary entries are secured.
- A contracting coordinator will procure a construction contractor following established procedures. The Inspector, AML Reclamation Program Manager, along with Contract Coordinator is asked to attend any bid showing.
- Maintenance and remedial actions are to follow established procedures for eligibility, NEPA, realty, budgeting, data entry, and inventory to the extent practical. Maintenance expenditures do not need to be reported in AMLIS.