

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.1.06
PROCEDURES MANUAL		ISSUE DATE	04/10/15
SUBJECT	Exemptions on Government Finance Construction Projects	Section	Technical/AML/ Reclamation Services
		Last Revised	8/25/2010

OBJECTIVE AND INTENT:

To ensure that a government financed project, which may involve the removal of coal, meets the exemption criteria of Part 4 VAC 25-130-707 of the regulations and complies with the DMME/DMLR/DM “Guidelines for Coal Removal Associated with Government Financed Construction”.

PROCEDURES:

General - Determining Regulatory Requirements

Upon receipt of a written request for site exemption from DMME mine licensing and permitting regulations, the Reclamation Program Manager (RPM) will review the request and all applicable data; assign a team to assist in this effort; visit the site if necessary; and, make the determination as to whether an exemption is warranted.

DMLR Initiates Exemption Determination Process -

A Field Inspector may locate an active construction project, which plans to remove or is removing coal. If the extraction of coal is incidental to a government financed construction project, it is exempt from the coal surface mining regulatory program as long as the operations comply with the terms and conditions of the project.

When finding a project that is not under a DMLR permit, or has not obtained an exemption determination, the Inspector will initiate an inspection of the site (see Procedure #2.1.03) to determine whether the project is exempt from the Act. This will be done in coordination with DM to determine whether a mine license application for the site has been submitted or will be required.

Whenever the project removes more than 250 tons of coal, certain documents must be maintained at the project site. The documents should include the information required by 4 VAC 25-130-707.12 of the regulations.

In reviewing the project information, the Inspector will focus on the documents which:

- describe the construction project;
- set forth the exact location of the construction, right of way, or boundaries of the area which will be directly affected by the construction;
- list the government agency which is financing the project (noting the kind and amount of public financing, and the percentage of the entire construction costs represented by government financing);

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- identify the government agency contact person; and,
- an estimate of the anticipated amount of coal which may be removed during the project; whether such coal would be commercially sold; and whether the coal removal is necessary for the project completion.

The Inspector will contact the person representing the government financing authority for verification of the information and to ensure any coal extraction does not go beyond the scope of the project. The Inspector shall monitor the project at least monthly or as needed to verify that the operation continues to meet the exemption criteria. These reviews shall be documented in an inspection report (**DMLR-ENF-044S**) and forwarded to the Area Supervisor who will then review and forward to the Reclamation Program Manager - Permitting.

If the Inspector's investigation reveals that the construction company's coal extraction is no longer exempt, enforcement action shall be initiated in accordance with Procedure #2.1.03.

Request for Exemption Determination Submitted to DMLR -

Upon receipt of a Government Financed Exemption (GFE) determination request, the DMLR's Reclamation Program Manager-Permitting will -

1. Determine whether the request is complete.
2. Notify the area Inspector and Supervisor of the proposed project. The Inspector will submit data, any pictures documenting the proposed Project site, and/or investigation report(s) to the Reclamation Program Manager-Permitting and the Reclamation Services Manager. The investigation report(s) will include the Inspector's finding or recommendation as to whether the site does or does not meet the exemption criteria.
3. Determine whether additional information is necessary from the party requesting the GFE.
4. Notify the Division Director, Reclamation Services Manager, Reclamation Program Manager-Chief Engineer, OSM, and other interested parties (including appropriate government agencies) of the request.
5. Provide written notice of the DMLR's intent to consider the GFE request to all parties with an identified interest in the exemption determination (this may include state and local agencies, appropriate planning districts, the mineral owner(s), the surface owner(s), the state OSM field office, the site contractor, utilities, or others). This notice will allow a person with a valid legal interest to submit written comments or concerns to the DMLR Director or Reclamation Program Manager - Permitting within a reasonable time period (usually within 15 workdays, unless unique circumstances require an extended period).

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6. Evaluate comments submitted from DM and any interested parties.
7. Review Project documentation or reports provided by the funding agency.
8. Evaluate any additional information that may be requested from any involved party or determine whether additional field investigation by the Inspector may be necessary.
9. Work with the Project applicant and/or DMLR staff to prepare an “engineering necessity determination”.
10. Designate a team to review the GFE request, which will review the request, all applicable data, visit the site if necessary, and provide comments on the Project. The team may collect any available data not already provided that would assist the exemption eligibility determination, such as:
 - a. Documentation of the site conditions.
 - b. Amount of government financing and type.
 - c. Projected cost of the GFE Project.
 - d. Whether government authorization has been given to proceed with the Project.
 - e. An accurate estimate of coal to be removed during the Project term; where the coal will be sold; whether coal removal meets the engineering necessity for the Project; and whether the coal is located within the Project’s boundaries.
11. Based upon the available information, the team will provide the Reclamation Program Manager – Permitting with its determination as to whether an exemption is warranted.
12. Create a folder that contains all electronic correspondence located at \\wap01512\DMLR\permit_supplements that contains the necessary information from the team and prepare a written decision concerning the GFE request.

Exemption Determination -

After determining whether the GFE is warranted, the Reclamation Program Manager - Permitting will summarize the agency’s decision for the Division Director’s signature approval. In the event that the proposed Project is determined to not be exempt from the Act, the applicant will be required to obtain a coal surface mining permit under the Act (and any other necessary federal and State permits/licenses) for the site prior to any activity to facilitate or cause coal removal.

The GFE determination letter will be sent by certified mail and e-mail to the applicant with a copy sent concurrently to each interested party.

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GUIDANCE FOR EXISTING DMLR PERMITS

When land disturbances for construction activities and/or coal extraction incidental to any GFE Project is proposed on an existing DMLR permit, the procedures and guidelines described in the table and narratives below will apply.

The DMLR must make its determination that the Project is exempt and release the permit or applicable permitted areas prior to disturbance of those Project areas. An existing DMLR permit may be utilized under the Project at different stages of the permit. For example, the permit may be at the status where it has been approved with boundaries established but mining has not yet started; active mining may be underway on the permit; or the permit may be in the process of reclamation or has reclamation completed. These various operational statuses will require a different series of DMLR administrative processes for release of the permit or applicable permitted areas prior to Project disturbances.

OPERATIONAL STATUS PRIOR TO PROJECT DISTURBANCE		Modification to mine plan will be necessary.	Modification to reclamation/drainage control plans will be necessary.	Post Mining Land Use Change will be necessary.	Revision application to release area/bond submitted to DMLR.
1	Permit area approved but mining not started.				X
2	Permit area being actively mined.	X	X	X	X
3	Permit area being actively reclaimed.		X	X	X
4	Permit area reclaimed and waiting for bond release.			X	X
5	Underground mining areas (PMU) to be encountered.	X			

Operational Status 1 – Permit area approved but mining not started

Acreage may be deleted by a revision without public participation. The permittee should allow 30 days for the application review and approval process. Bond adjustment may be necessary to the permit due to acreage deletion. Operations and drainage control plans will need to be reviewed but may not need to be revised due to the acreage deletion.

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Operational Status 2 – Permit area being actively mined

Acreeage will not be deleted until modifications to the operations, reclamation, and post mining land use are approved and implemented. The modifications will be made via revision applications that will require public participation. The permittee should allow 180 days for the application review and approval process.

Operations may receive an extension on contemporaneous reclamation time frames to allow for time to modify permit and for Project construction to approach.

If the active mining operations within the Project corridor were taken over by the Project and information supplied to document GFE, acreage could be deleted by the same processes as in situation 1, but the existing DMLR permit would still need a revision to re-organize operations, drainage, and reclamation plans.

Operational Status 3 – Permit area being actively reclaimed

Acreeage cannot be deleted until reclamation and post mining land use changes are approved and implemented. The modifications will be made via revision application that will require public participation. The permittee should allow 180 days for the application review and approval process.

Operations may receive an extension on contemporaneous reclamation timeframes to allow for time to modify permit and time for Project construction to approach.

Operational Status 4 – Permit area reclaimed and awaiting bond release

Acreeage cannot be deleted until post mining land use changes are approved. Bond release applications and land use revisions would be the types that require public participation. After post mining land use changes are approved, and in order to expedite the release of the site, the permittee should submit the bond release application up to 90 days prior to the Project construction encountering the permitted area.

Operational Status 5 – Underground mining areas to be encountered

Deletion of underground mining areas and modification to underground mining plans will be necessary via revision application. The application should not require public participation. The permittee should allow 30 days for the application review and approval process.

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Exemption Approval/Inspection

If the Project is deemed exempt, the Inspector will conduct monthly inspections or as needed of the site to verify that the Project is being conducted in accordance with §§4VAC25-130-707.11, 4VAC25-130-707.12, and the exemption justification submitted to and approved by the DMLR. The Inspector will -

- Document the site conditions (mining equipment present and areas of coal removal) and summarize the Project’s progress (i.e., cost, amount and type of government funding, total tonnage of coal removed, and revenues received from the sale of the coal).
- Respond to citizen complaints concerning the Project. The Inspector may relay the complaint or refer the complainant to the funding agency.
- Report to the Area Supervisor any instance where the site activities or conditions appear to be inconsistent with the GFE determination.

Should the Inspector determine that coal removal at the site has exceeded the limits anticipated in the exemption determination, and the coal removal is not an engineering necessity for the project (assistance may be obtained from the Reclamation Program Manager -Chief Engineer, or technical personnel), immediate action to halt the coal removal operation will be taken. (See Procedures # 2.1.03, 3.3.01, and 3.3.08).

Final Inspection -

The Inspector will conduct a final inspection of the project once coal removal is completed. The inspection report (**DMLR-ENF-044S**) shall document the total project cost, amount of public financing, the total revenues received from the coal removed, and include pictures. The inspector will code the inspection report as the “Final Inspection” and “Not Inspectable” FI/NI.

Record keeping - The Area Supervisor will forward a copy of each inspection report concerning the exempted site to the Reclamation Program Manager –Permitting .

The Reclamation Program Manager –Permitting will maintain a file of each exemption request received by the DMLR. The record shall include, but not be limited to:

1. The exemption request and the current status of the exemption.
2. A specific location description of the site.
3. Identification of the government financing agency and respective contact persons.

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4. A list of all interested parties notified.
5. Documentation or copies of comments, concerns, and data that the DMLR reviewed (both internal and material from interested parties).
6. The “engineering necessity determination” and supporting rationale.
7. The DMLR exemption determination letter.
8. A copy of each inspection and the final inspection report completed and submitted by the Inspector.
9. All other documents or materials generated or collected relative to the project.

The Reclamation Program Manager –Permitting shall ensure each file is maintained and updated - up to and including the submittal of the Inspector’s final inspection report.

After receipt of the final inspection report, the Reclamation Program Manager –Permitting will review the file and indicate in writing as to whether the agency met its obligations in the matter. The completed file will be placed in the folder located at \\wap01512\DMLR\permit_supplements