



January 2012
PE 11-20-509

PERFORMANCE REVIEW

DEPARTMENT OF ENVIRONMENTAL PROTECTION ABANDONED MINE LANDS AND RECLAMATION

AUDIT OVERVIEW

A Federal Review of the West Virginia Abandoned Mine Lands and Reclamation Expresses Concern With Relatively Low Staffing Levels and the Long-term Performance of the Agency

The West Virginia Office of Abandoned Mine Lands and Reclamation Website Needs More Improvements, Particularly in Transparency

The AMLR Needs to Collect More Site Data and Utilize This Information to Standardize Its Reclamation Strategy



JOINT COMMITTEE ON GOVERNMENT OPERATIONS

Senate

Herb Snyder, Chair
Douglas E. Facemire
Orphy Klempa
Brooks McCabe
Clark S. Barnes

House of Delegates

Jim Morgan, Chair
Dale Stephens, Vice-Chair
Ron Fragale
Eric Nelson
Ruth Rowan
Scott G. Varner, Nonvoting

Agency/ Citizen Members

John A. Canfield
W. Joseph McCoy
Kenneth Queen
James Willison
Vacancy

JOINT COMMITTEE ON GOVERNMENT ORGANIZATION

Senate

Herb Snyder, Chair
Mike Green, Vice-Chair
Richard Browning
H. Truman Chafin
Dan Foster
Orphy Klempa
Brooks McCabe
Ronald F. Miller
Joseph M. Minard
Corey L. Palumbo
Bob Williams
Jack Yost
Donna J. Boley
Dave Sypolt

House of Delegates

Jim Morgan, Chair
Dale Stephens, Vice-Chair
William Romine, Minority Chair
Tom Azinger, Minority Vice-Chair
Brent Boggs
Greg Butcher
Samuel J. Cann, Sr.
Ryan Ferns
Roy Givens
Daniel J. Hall
William G. Hartman
Barbara Hatfield
Ronnie D. Jones
Helen Martin

Rupert Phillips, Jr.
Margaret A. Staggers
Randy Swartzmiller
Joe Talbott
Anna Border
Eric Householder
Gary G. Howell
Larry D. Kump
Eric Nelson
Rick Snuffer
Erikka Storch



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred
Legislative Auditor

John Sylvia
Director

Brian Armentrout
Research Manager

Derek Hippler
Research Analyst

Christopher F. Carney
Referencer

CONTENTS

| | |
|---|----|
| Executive Summary..... | 5 |
| Issue 1: A Federal Review of the West Virginia Abandoned Mine Lands and Reclamation Expressed Concern With Relatively Low Staffing Levels and the Long-term Performance of the Agency | 7 |
| Issue 2: The West Virginia Office of Abandoned Mine Lands and Reclamation Website Needs More Improvements, Particularly in Transparency..... | 17 |
| Issue 3: The AMLR Needs to Collect More Site Data and Utilize This Information to Standardize Its Reclamation Strategy | 21 |
| List of Tables | |
| Table 1: Mile of Clogged Stream Reclaimed..... | 10 |
| Table 2: Projects Initiated and GPRA-Acres Reclaimed | 11 |
| Table 3: Emergency Projects Abated Within Six Months | 12 |
| Table 4: AMLR Budget, Projects and Staffing | 14 |
| Table 5: West Virginia AMLR Website Evaluation Score | 17 |
| Table 6: West Virginia AMLR Website Evaluation Score | 18 |
| Table 7: Cost of Final Site Reports..... | 23 |
| List of Appendices | |
| Appendix A: Transmittal Letter to Agency | 27 |
| Appendix B: Objective, Scope and Methodology | 29 |
| Appendix C: Website Criteria Checklist and Points System..... | 31 |
| Appendix D: OSM Report on AMLR Staffing Level | 35 |
| Appendix E: Agency Response | 45 |
| Appendix F: Agency Comments and Our Evaluation..... | 47 |

EXECUTIVE SUMMARY

The Legislative Auditor conducted an evaluation of the Office of Abandoned Mine Lands and Reclamation (AMLR) as part of the Agency Review of the West Virginia Department of Environmental Protection authorized pursuant to West Virginia Code §4-10-8. The report contains the following issues:

Report Highlights

Issue 1: A Federal Review of the West Virginia Abandoned Mine Lands and Reclamation Expresses Concern With Relatively Low Staffing Levels and the Long-term Performance of the Agency.

- The AMLR should consider communicating with the Division of Personnel to address issues with their starting salaries. The AMLR should consider establishing a performance measure and goal to determine whether the staffing levels are adequate to handle the increased workload.
- The AMLR should establish performance measures and goals to more effectively track agency performance, such as the percentage of emergency projects abated within six months, the percentage of work completed on the projects initiated for the past five years, and the AMLR's response time to complaints.

Issue 2: The West Virginia Office of Abandoned Mine Lands and Reclamation Website Needs More Improvements, Particularly in Transparency.

- The website scored 10 out of 18 points for user-friendliness and 12 out of 32 points for transparency, using the Website Criteria Checklist and Points System created by PERD, resulting in a total score of 22 out of 50 total points, or 44 percent.
- The AMLR can improve its website by including more features to enhance user-friendliness and transparency.

Issue 3: The AMLR Needs to Collect More Site Data and Utilize This Information to Standardize Its Reclamation Strategy.

- The AMLR should produce final site reports, ones that discuss the challenges the site presented and the techniques used to address those challenges. Such a practice is particularly important on such sites where the AMLR used innovative or modified reclamation techniques. This is even more important now that a large number of AMLR employees are retiring or will soon be eligible for retirement.

- If the AMLR believes it will continue beyond 2022, then it should measure the long-term success of volunteer trees on reclaimed sites. This will allow the AMLR to measure the success of volunteer trees, and thereby demonstrate successful reclamation.

Recommendations

1. *The AMLR should consider reporting performance measures as recommended in the report and other measures that the AMLR determines are appropriate.*
2. *The AMLR should consider communicating with the Division of Personnel to address their starting salaries.*
3. *The AMLR should consider establishing a performance measure and goal to determine whether the staffing levels are adequate to handle the increased workload.*
4. *The AMLR should list its important performance measures on its website and in its annual report.*
5. *The AMLR's website should consider including email, budget information, a complaint form, performance measures, and other considerations.*
6. *The AMLR should produce final site reports, especially for those projects that utilize modified or innovative reclamation techniques.*
7. *If the AMLR believes it will continue beyond 2022, it should develop a measure to determine the long-term success of volunteer tree growth.*

ISSUE 1

A Federal Review of the West Virginia Abandoned Mine Lands and Reclamation Expresses Concern With Relatively Low Staffing Levels and the Long-term Performance of the Agency.

Issue Summary

A 2011 federal review of the West Virginia Office of Abandoned Mine Lands and Reclamation (AMLR) expresses concern that the long-term success of the program is adversely affected because current staffing levels have not increased in proportion to recent increases in grant funding and workload. This is further exacerbated by the anticipation of employee turnover due to employees becoming eligible for retirement. The AMLR attributes this issue to low starting salaries, high retirement, and the inability to award merit-based raises. The Legislative Auditor also finds that the AMLR has not developed performance measures that gauge the agency's performance. When the AMLR was required to report performance measures for the Executive Budget Operating Detail in 2007, it listed output measures without any goals or benchmarks. Without goals or benchmarks, output measures do not convey whether performance is good or needs improvement. This will continue in the long term and the quality of the work may suffer if staffing is not addressed. **As a result, the Legislative Auditor recommends the AMLR develop various performance measures, including one that will measure the agency's progress in achieving the appropriate level of staffing.**

The Legislative Auditor recommends the AMLR develop various performance measures, including one that will measure the agency's progress in achieving the appropriate level of staffing.

Performance Goals and Measures of the Executive Budget

As part of the appropriation request process, it is required that state agencies submit division-level performance measures for the *Operating Details* of the State's Executive Budget. Other information reported includes the agency's mission statement, goals and objectives. Although legislative appropriations are not based on the performance measures submitted by state agencies, performance measures are required in order to promote accountability before the Legislature and the public, and to encourage agencies to become result-oriented in their operations.

The Legislative Auditor has observed that many state agencies have not provided adequate goals or performance measures in the State's Executive Budget. In some cases, the performance measures are not strongly tied to the agency's overall mission, while in other cases the

list of performance measures is incomplete. In addition, state agencies oftentimes do not provide goals or benchmarks for their performance measures. Without a benchmark, a performance measure does not indicate whether performance is good or needs improvement.

The AMLR states its mission statement on its website as follows:

**Office of Abandoned Mine Lands and Reclamation
(AMLR)**

Mission Statement

To protect public health, safety, and property from past coal mining and enhance the environment through reclamation and restoration of land and water resources.

The AMLR's mission statement is supported by Chapter 22, Article 2 of the West Virginia Code and the Federal Surface Mining Control and Reclamation Act of 1977.

The Legislative Auditor examined the agency's mission statement to determine if the agency's focus is statutorily supported. The performance of an agency is tied to what the agency considers its mission. Therefore, the mission should be clearly understood by the agency and it should not be more or less than what is statutorily required. The Legislative Auditor determines that the agency's mission statement is consistent with its enabling statute, as indicated below.

| The AMLR's mission statement is: | |
|---|---|
| fully supported by statute. | X |
| not supported by statute. | |
| is less than statutorily required. | |
| is more than statutorily mandated. | |
| is determined administratively as allowed by statute. | |

Mission Statement Sources:

The AMLR's mission statement is supported by Chapter 22, Article 2 of the *West Virginia Code* and the Federal Surface Mining Control and Reclamation Act of 1977.

- WV Code §22-2-2: *Therefore, it is the intent of the Legislature*

by this article to vest jurisdiction and authority in the Director of the Division of Environmental Protection to maintain program approval by, and receipt of funds from, the United States Department of the Interior to accomplish the desired restoration and reclamation of our land and water resources.

- P.L. 95-87: *(a) Expenditure of moneys from the fund on lands and water eligible pursuant to section 404 for the purposes of this title, except as provided for under section 411, shall reflect the following priorities in the order states:*
 - (1)(A) the protection; of public health, safety, and property from extreme danger of adverse effects of coal mining practices;*
 - (B) the restoration of land and water resources and the environment that –*
 - (i) have been degraded by the adverse effects of coal mining practices; and*
 - (ii) are adjacent to a site that has been or will be remediated under subparagraph (A);*
 - (2)(A) the protection of public health and safety from adverse effects of coal mining practices;*
 - (B) the restoration of land and water resources and the environment that –*
 - (i) have been degraded by the adverse effects of coal mining practices; and*
 - (ii) are adjacent to a site that has been or will be remediated under subparagraph (A); and*
 - (3) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.*

The Legislative Auditor has determined that the AMLR's stated

mission statement does not add to or reduce from its statutory mandate.

The AMLR Should Develop Performance Measures and Goals to Accurately Assess Agency Effectiveness and Promote Accountability as Well as Transparency.

Performance measures establish clear, achievable goals for the agency, and contain data that demonstrates the agency’s relative success in meeting those goals. Prior to 2008, the AMLR listed three performance measures in the Operating Detail of the State of West Virginia Executive Budget: 1) the number of complaints received and resolved, 2) the number of emergency projects completed, and 3) the number of regular projects completed. The AMLR no longer reports its performance information for the Operating Details of the Executive Budget because the Budget Office no longer publishes performance measures at the office or program level.

The Legislative Auditor has determined that the AMLR’s stated mission statement does not add to or reduce from its statutory mandate.

Performance Measures

| <u>Fiscal Year</u> | <u>Actual 2003</u> | <u>Actual 2004</u> | <u>Estimated 2005</u> | <u>Actual 2005</u> | <u>Estimated 2006</u> | <u>Estimated 2007</u> |
|----------------------------------|------------------------|------------------------|---------------------------|------------------------|---------------------------|---------------------------|
| Complaints received and resolved | 279 | 352 | 247 | 355 | 288 | 300 |
| Emergency projects completed | 54 | 40 | 49 | 37 | 47 | 35 |
| Regular projects completed | 29 | 23 | 38 | 29 | 30 | 20 |

These are output measures that demonstrate the AMLR’s workload. Although these are useful for showing the amount of work completed, without establishing goals for these output measures they do not convey the AMLR’s performance. The AMLR also tracks additional output measures, such as miles of clogged streams restored (see Table 1), and the number of projects initiated alongside the GPRA-acres reclaimed (See Table 2).

Although these are useful for showing the amount of work completed, without establishing goals for these output measures they do not convey the AMLR’s performance.

| Table 1 Miles of Clogged Stream Reclaimed | | | |
|--|----------------|----------------|----------------|
| Performance Measure | FY 2008 | FY 2009 | FY 2010 |
| Miles of Clogged Stream Reclaimed | 4.7 | 1.1 | 2.5 |

| Table 2 Projects Initiated and GPRA-Acres Reclaimed | | | |
|--|----------------|----------------|----------------|
| Performance Measure | FY 2008 | FY 2009 | FY 2010 |
| Emergency Projects Initiated | 42 | 39 | 32 |
| Authorization to Proceeds Issued | 12 | 62 | 53 |
| Non-Emergency GPRA-acres reclaimed | 1,581.8 | 1,224.1 | 7,900.7 |
| Emergency GRPA-acres reclaimed | 16.2 | 32.9 | 21.3 |

These also do not represent performance measures. The Legislative Auditor recognizes that some output measures cannot be assigned goals because the workload is outside of the AMLR’s control. Therefore, the AMLR should consider adopting other performance measures in which the AMLR can set goals. The AMLR can also convert some of these output measures into performance measures by assigning timeliness goals or goals for completion time frames. **The Legislative Auditor recommends the AMLR consider the following:**

1. The percentage of emergency projects that were abated within six months.

This performance measure is a national standard established by the OSM, one with a clear goal: abate 100% of emergency projects within six months. When a complaint has been investigated and an emergency project has been identified, the AMLR must work quickly to abate any and all dangers to the public health, safety, general welfare and property. The efficiency of this response is gauged by tracking the time frame within which these projects are completed. The AMLR already compiles the data necessary to report the percentage of emergencies that it completed within six months of the initial discovery. As seen in Table 3, the AMLR has achieved this goal for the last two years, and came close in 2008. **The Legislative Auditor commends the AMLR for meeting this established federal standard.**

The AMLR should consider adopting other performance measures in which the AMLR can set goals.

The Legislative Auditor recommends the AMLR consider the percentage of emergency projects that were abated within six months as a performance measure.

Table 3
Emergency Projects Abated Within Six Months

| Performance Measure | FY 2008 | FY 2009 | FY 2010 |
|---|---------|---------|---------|
| Percentage of Emergency Projects Abated Within Six Months | 97% | 100% | 100% |

2. The annual percentage of initiated projects completed.

The AMLR should consider reporting the number of new projects initiated for each of the past five years (since grants are set for three-year time periods) and the annual percentage of initiated projects completed. For example, for 2010 the AMLR would report the total number of projects for each year since 2006 and then report the total percentage of projects completed for each year. The AMLR has the information necessary to report this performance measure. The AMLR's Chief suggested that the percentage of work completed be weighted based on the project's cost. The Legislative Auditor's Office concurs that this would be an accurate assessment of the AMLR's performance. This outcome measure should be tracked and reported to provide general information on the progress the agency is making in executing its mission. To establish a performance benchmark, the AMLR could establish a goal of 100% completion rate for initiated projects that are four years old. For example, in 2010 AMLR should demonstrate what percentage of projects initiated in 2006, 2007, 2008, and 2009 were completed.

The AMLR should consider reporting the number of new projects initiated for each of the past five years (since grants are set for three-year time periods) and the annual percentage of initiated projects completed.

3. The AMLR should establish a time frame for inspectors to investigate complaints.

The AMLR should establish a standard time frame in which inspectors investigate complaints and track how frequently inspectors meet this goal. The time frame could differ depending on whether the complaint related to an emergency or non-emergency issue. The AML offices in Pennsylvania, Kentucky, Ohio and Virginia have established a time frame in which complaints must be investigated. West Virginia has several options for this measure. It could follow Ohio's example and require inspectors to respond to emergency complaints within 48 hours and to non-emergency complaints within 10 days. Or it could follow the state of Virginia's example and attempt to contact the complainant the day of the complaint and perform a site inspection within five days or less if it is an emergency. In West Virginia, this measure would assess the agency's ability to accomplish what WV Code §22-2-4(b)(1)(A) establishes as the AMLR's highest priority:

The AMLR should establish a standard time frame in which inspectors investigate complaints and track how frequently inspectors meet this goal.

The protection of public health, safety, general welfare and property from extreme danger of adverse effects of past surface-mining practices.

Such a performance measure will also provide the public with greater transparency in regards to this aspect of their work.

The Federal Government Has Concerns That the Current Staffing Levels Could Impact Current and Future Performance.

Performance goals and measures can be developed for different levels of an agency's operations such as its finances, employee turnover rate, staffing levels, outputs and other inputs. Although the agency needs to develop performance measures for various outputs, there is a need for AMLR to also develop performance goals and measures for its staffing level. The reason for this is indicated by concerns of the OSM. Although the OSM has praised the AMLR for its efforts in developing a new system that goes beyond the basic site-selection requirements, the OSM has indicated that AMLR's staffing levels have not increased in proportion with recent increases in funding and workload. Table 4 shows that grant funding significantly increased in 2008. Consequently, the AMLR has increased the number of projects and the cost of projects has also increased. However, the OSM noted that *"Both the number of projects and the total project costs have increased significantly since 2007, without a significant increase in personnel to conduct and manage the increased number of projects and funding."* The OSM states its concern in the following statement:

Although staff dedication and proper management does play a large role in the ability of a program to function successfully, the concern is that the increased demand on the staff will eventually have a detrimental effect on the long term success of the program. The current staffing level has not kept up with the increase in the workload, which appears to be problematic in the long term. This finding, along with the potential increase in staff turnover due to personnel reaching retirement eligibility, creates an additional concern for long term success and accountability for the AML Program.

Although the OSM has praised the AMLR for its efforts in developing a new system that goes beyond the basic site-selection requirements, the OSM has indicated that AMLR's staffing levels have not increased in proportion with recent increases in funding and workload.

The current staffing level has not kept up with the increase in the workload, which appears to be problematic in the long term.

Table 4
AMLR Budget, Projects and Staffing

| Grant Year | Grant Amount | Project Construction Costs For Grant Year | Projects Included in the Grant Year | Budgeted FTE | Filled Positions |
|-------------------|---------------------|--|--|---------------------|-------------------------|
| 2000 | \$22,716,218 | \$14,258,367 | 35 | 69 | 61 |
| 2001 | \$22,798,611 | \$13,860,310 | 27 | 68 | 60 |
| 2002 | \$27,794,678 | \$18,594,062 | 31 | 67 | 59 |
| 2003 | \$31,867,078 | \$14,197,799 | 23 | 68 | 57 |
| 2004 | \$29,169,204 | \$12,557,489 | 18 | 60 | 55 |
| 2005 | \$23,898,141 | \$13,315,147 | 28 | 60 | 56 |
| 2006 | \$21,806,718 | \$13,516,513 | 32 | 60 | 53 |
| 2007 | \$20,918,644 | \$10,636,328 | 26 | 57 | 54 |
| 2008 | \$47,785,548 | \$27,940,940 | 46 | 63 | 53 |
| 2009 | \$42,916,727 | \$27,719,947 | 29 | 64 | 54 |
| 2010 | \$57,867,175 | \$32,542,177 | 53 | 65 | 57 |

Because of the concerns the OSM has over the AMLR staffing, and in order to maintain a high level of competency, the OSM will significantly increase its oversight inspections of the AMLR beginning in 2012. (OSM's full report can be seen in Appendix D.) The AMLR acknowledges it has difficulty recruiting and keeping new employees. The agency attributes this problem to low starting salaries and the inability to award raises based on merit. This problem is and will be further compounded by a high turnover resulting from a significant number of retirements. One possibility that the AMLR should consider is to appeal to the Division of Personnel for higher starting salaries for the affected positions. According to Division of Personnel Rules (§CSR 143-1-5) it can increase the starting salary of new employees if the agency can demonstrate severe or unusual recruiting difficulties for the job class. According to the Division of Personnel, the AMLR has not made such a request. **The Legislative Auditor recommends the AMLR communicate with the Division of Personnel to address its starting salaries. The Legislative Auditor also recommends the AMLR establish a performance goal and measure to for achieving an appropriate staffing level proportional to the increase workload within a certain time period.**

One possibility that the AMLR should consider is to appeal to the Division of Personnel for higher starting salaries for the affected positions.

The Legislative Auditor also recommends the AMLR establish a performance goal and measure to for achieving an appropriate staffing level proportional to the increase workload within a certain time period.

Conclusion

As of 2007, the AMLR's performance measures are no longer included in the Executive Budget Operating Detail. However, for the years in which the AMLR was reporting performance measures, it actually listed output measures without including performance goals. Therefore, what the AMLR reported as performance measures were, in fact, output measures not performance measures. Output measures that do not specify performance goals such as timeliness or completion rates will not indicate whether the agency's performance is good or bad. The AMLR should consider the examples of performance goals and measures in this report, and it should develop other performance measures that are appropriate. Given the concerns cited by the federal government's Office of Surface Mining, a performance measure should be developed for achieving staff levels proportionate to workload by a certain time frame. These performance measures should be reported in the AMLR's annual report and on its website. Furthermore, if staffing is not soon addressed, performance will likely deteriorate in the long run. Therefore, the Legislative Auditor recommends the AMLR seek to fill budgeted positions in proportion to the recent increase in grant funding and workload in order to improve performance and better achieve its mandated outcomes.

The AMLR should consider the examples of performance goals and measures in this report, and it should develop other performance measures that are appropriate.

Recommendations

1. *The AMLR should consider developing performance measures as recommended in the report and other measures that the AMLR determines are appropriate.*
2. *The AMLR should consider communicating with the Division of Personnel to address its starting salaries for affected positions.*
3. *The AMLR should consider establishing a performance goal and measure for achieving staffing levels that are adequate to handle the increased grant funding and workload.*
4. *The AMLR should list its important performance measures on its website and in its annual report.*

The Legislative Auditor recommends the AMLR seek to fill budgeted positions in proportion to the recent increase in grant funding and workload in order to improve performance and better achieve its mandated outcomes.

ISSUE 2

The West Virginia Office of Abandoned Mine Lands and Reclamation Website Needs More Improvements, Particularly in Transparency.

Issue Summary

The Legislative Auditor’s Office reviewed assessments of governmental websites to develop a list of attributes that should be included into state agency websites. The most common elements in previous studies were applied to establish a set of criteria used to measure how the Office of Abandoned Mine Lands and Reclamation (AMLR) supports online citizen engagement (see Appendix C). Table 5 reports that the AMLR integrates 44% of the checklist items within its website. Some elements may not be applicable to certain agencies, but the checklist provides an overview of whether or not the agency is capitalizing on the interactive features of the internet and making an effort to become more user-friendly and transparent. The AMLR can improve its website by including more features to enhance user-friendliness and transparency.

The AMLR can improve its website by including more features to enhance user-friendliness and transparency.

| Table 5 West Virginia AMLR Website Evaluation Score | | | |
|--|-------------------------|---------------------------|---------------------------------|
| Substantial Improvement Needed | More Improvement Needed | Modest Improvement Needed | Little or No Improvement Needed |
| 0-25% | 26-50% | 51-75% | 76-100% |
| | AMLR 44% | | |
| <i>Source: The Legislative Auditor’s review of the AMLR’s website.</i> | | | |

The AMLR Needs to Improve User-Friendliness and Transparency

In order for citizens to actively engage with an agency online, they must first be able to access and comprehend information on governmental websites. Therefore, government websites should be designed with citizens in mind. A user-friendly website is readable and allows citizens to easily navigate from page to page. Governmental websites should also be transparent by being open and accountable to the public. Transparency

also promotes public trust and informs citizens of what their government is doing.

The Legislative Auditor reviewed the AMLR website for both user-friendliness and transparency. Table 6 demonstrates the AMLR’s website requires improvement to both user-friendliness and transparency.

| Category | Possible Points | Agency Points | Percentage |
|-----------------|------------------------|----------------------|-------------------|
| User-Friendly | 18 | 10 | 56 |
| Transparent | 32 | 12 | 38 |
| Total | 50 | 22 | 44 |

Source: Assessment made by the West Virginia Legislative Auditor’s Office

The AMLR Website Is Moderately User-Friendly, But Requires Improvement

The AMLR website is moderately user-friendly, as every page is linked to the homepage as well as the DEP’s main page. This ease of navigation is further enhanced by a search box and a navigation bar on every page. The AMLR website can also be comprehended by most citizens because the site utilizes a simple sans serif font, maintains large font that can be resized, and is written on a 7th grade reading level. The AMLR also provides users with the option to provide feedback regarding the website, thus engaging with the public to potentially improve the site’s effectiveness.

User-Friendly Considerations

The following are a few attributes that would enhance the user-friendliness of the AMLR website.

- 1. Mobile Functionality**- A separate layout for individuals accessing the site from a mobile device. The AMLR should also consider developing a mobile application (app) to actively engage with the public.
- 2. FAQ Section**- A page that lists the agency’s most frequently asked questions and responses.

The AMLR Website Needs to Include Additional Content Elements to Improve Transparency

The AMLR website contains essential information about the agency, such as the agency's physical address, phone number, and the names and contact information for administrative officials. The website also clearly states the agency's online privacy policy and contains public record information such as the Projects Out for Bid, and explaining the federal laws under which it operates.

Transparency Considerations

The DEP's website needs to be more transparent, and could benefit from improvements. The following are a few attributes that could be beneficial to the DEP in increasing its transparency:

1. **Budget Information**- budget data available at the checkbook level, preferably in a searchable database.
2. **Complaint Form**- a page where citizens can file a complaint or report an Abandoned Mine-related issue using an online form.
3. **Performance Measures**- performance measures and outcomes.
4. **Job Postings**- a section on its homepage for open job postings and a link to the application page of the Personnel Division's website.
5. **Email**- A contact email address
6. **Administrator's Biography**- A short biography of the office's administrator.
7. **Website Updates**- A timestamp on each page stating when the website was last updated.

The DEP's website needs to be more transparent, and could benefit from improvements.

Conclusion

The emerging use of technology from paying bills to interactive communication has filtered its way to state government. In order to take advantage of this trend, state agencies are utilizing websites to engage citizens as active participants in the governmental process. Few studies have focused on legislative websites and those that have, use different criteria when reviewing sites. A literature review was conducted and utilized to formulate a website checklist, which the Legislative Auditor

utilized to grade the AMLR's website on its user-friendliness and transparency. The AMLR should include additional content elements to make its website more user-friendly and transparent. The website contains 44% of the core elements included in the Legislative Auditor's criteria.

The current AMLR website enables users to easily navigate through its pages and comprehend the information provided. The site also provides essential agency information, such as address, phone number, administrative staff, responsibilities, public records, and mission statement. The site could, however, benefit from several additions that would boost the site's user-friendliness and greatly improve the site's transparency. **It is the Legislative Auditor's opinion that in order to continue to strive for open government and transparency, the AMLR's website should consider including mobile functionality, a FAQ section, budget information, a complaint form, performance measures, job postings, and other features that it deems useful.**

The website contains 44% of the core elements included in the Legislative Auditor's criteria.

The site could, however, benefit from several additions that would boost the site's user-friendliness and greatly improve the site's transparency.

Recommendation

5. *The AMLR should consider making improvements in its website by including more features to enhance user-friendliness and transparency as recommended.*

ISSUE 3

The AMLR Should Consider Collecting More Site Data and Utilizing This Information to Standardize Its Reclamation Strategy.

Issue Summary

The AMLR should produce final site reports, especially for those projects that utilize modified or innovative reclamation techniques. This will create a body of knowledge from which the AMLR can analyze its success when using new reclamation techniques. Furthermore, if the AMLR anticipates it will continue beyond 2022, it should measure the long-term success of volunteer trees. By collecting this data, the AMLR can better determine whether reclamation efforts have been successful. It will allow inspectors to more accurately evaluate the health of volunteer tree growth on sites.

The AMLR does not produce a final report once the reclamation of a site is complete. There is no document examining the challenges unique to this site and the techniques used to address those challenges.

The AMLR Does Not Produce Final Site Reports

The AMLR does not produce a final report once the reclamation of a site is complete. There is no document examining the challenges unique to this site and the techniques used to address those challenges. For each site, the AMLR conducts a final inspection to determine if the site can be released back to the landowner and the contractor paid in full. The AMLR then conducts semi-annual inspections for five years after the final inspection has been conducted and the contractor has been fully paid. At no point in these final stages does the AMLR produce a summary of events for the site, one that discusses the challenges this site presented or the techniques used to address those challenges. While the AMLR does produce final inspection reports, these only state that the site is functioning and stable. Such inspection reports do not contain detailed information such as the species presenting problems, the progress of natural succession progress, an explanation of the sections without growth, or the techniques being utilized. Such a policy is not in alignment with the OSM's directive on enhancement and performance reviews, which asks several questions of state AML programs:

1. Is there an effective procedure for post-project reviews to evaluate the long-term success of project designs?
2. Is the procedure being implemented?

3. Are adequate post-project reviews being conducted?
4. Are the reviews being adequately analyzed on a program basis, and are results/recommendations of the analysis being used to improve long-term success of project designs.

While the OSM produces detailed reports such as these for the sites it inspects, the OSM does not inspect or monitor all the sites. As stated in the OSM and AMLR's *Abandoned Mine Land Performance Agreement: Evaluation Years 2010 and 2011*, the OSM aims to inspect at least 10% of non-emergency projects and 10% of emergency projects. The AMLR could also use the OSM reports as an example of the reports it should produce for the remaining 90% of sites. By writing summary reports on the remaining 90% of sites in these categories, the AMLR could greatly expand the collective knowledge it acquired in the completion of these sites. The AMLR does not have documentation detailing past challenges and innovations; there is no way to know if an issue at one site has already been successfully addressed at a previous site. **If the AMLR does not have the resources available to complete summary reports on every site, the Legislative Auditor recommends the AMLR write reports on those sites that involve modified or innovative reclamation techniques.**

If the AMLR does not have the resources available to complete summary reports on every site, the Legislative Auditor recommends the AMLR write reports on those sites that involve modified or innovative reclamation techniques.

The AMLR's Kempton Refuse and Acid Mine Drainage site serves as an excellent example of why the AMLR should produce final site reports. The reclamation of this site, initiated in 2007, involved the relocation of a stream, the installation of an AMD water treatment system, backfilling highwalls, and reforestation. On this site, the DEP's newsletter, InDEPth, noted that the AMLR faced "construction difficulties related to geology, hydrology and geography," but these were overcome with a wide variety of "innovative reclamation techniques." The reforestation aspect was particularly innovative because it marked the first time the AMLR utilized the Forestry Reclamation Approach (FRA). The FRA was developed by the Appalachian Regional Reforestation Initiative (ARRI), an organization comprised of reforestation researchers and experts from universities throughout the region alongside federal and state regulators. This reforestation strategy is a legal requirement for the Division of Mining and Reclamation (DMR), but not for the AMLR.

Prior to the start of reclamation, the Kempton project manager went with two OSM employees and ARRI members to meet then AMLR Chief, Charles Miller. At the request of those present, the Chief agreed to reclaim five acres of Kempton using the FRA. Unlike previous

AMLR projects, this site would utilize loose, non-compacted top soil and hand-planted trees. To achieve this loose top soil, the AMLR and the reclamation contractor devised a new solution called “flipping.” This method employs a large hydraulic excavator to lift the top four feet of soil and drop it in place. As a result of these efforts, the Kempton site has been honored with awards from the West Virginia Mining Association (Northern Reclamation Award for Outstanding AML Reclamation), the ARRI (Excellence in Reforestation Award), and the OSM (2011 Abandoned Mine Land Reclamation Award). **Without a final study on Kempton, these innovative techniques would not be documented. Employees facing similar challenges at another site would be forced to rely on the collective memory of those who worked on Kempton.** This statement applies to all of the AMLR’s sites, not just those sites using FRA or those utilizing innovative techniques.

Without a final study on Kempton, these innovative techniques would not be documented. Employees facing similar challenges at another site would be forced to rely on the collective memory of those who worked on Kempton.

This is a pressing issue now that a large number of AMLR employees are retiring or will soon be eligible for retirement. The retiring employees will take with them the knowledge they accumulated over their careers. This issue, unavoidable in any agency, will be greatly exacerbated by the fact that this knowledge will not be passed to the new employees. **The next generation of AMLR employees will not have reference material to access when facing an issue that retired employees had already solved at previous sites.**

The next generation of AMLR employees will not have reference material to access when facing an issue that retired employees had already solved at previous sites.

Producing these site reports could take as little as two hours for the inspector to complete. The Legislative Auditor finds that the AMLR initiates an average of 80 projects a year (combined Emergency and Non-Emergency). The average salary for an AMLR Environmental Resource Specialist (inspector) is \$43,490. If we assume the inspector works 2,000 hours a year, we then find that each inspector is paid an average of \$21.75 an hour. **Therefore, this recommendation will cost the AMLR \$3,479 (see Table 7).**

| Table 7 Cost of Final Site Reports | | | |
|---------------------------------------|-------------------------------------|------------------------------------|---|
| Hours Spent Writing the Report | Average Number of Projects Per Year | Average Hourly Wage For Inspectors | Total Annual Cost of All Final Site Reports |
| 2 | 80 | \$21.75 | \$3,479 |

The AMLR Does Not Measure the Long-term Success of Volunteer Tree Growth

The AMLR does not measure the long-term success of tree growth on their sites. When the AMLR completes the final inspection on a site, the AMLR releases the reclaimed site back to the landowner. The landowner can then develop the land in whatever way they choose: lawn, woodlands, pastureland, commercial development, etc. During this period, the AMLR conducts semi-annual inspections for the five subsequent years following the site's completion. On all projects, AMLR inspectors continue to monitor the growth of vegetative cover. Yet on the properties where the landowner chooses to allow for natural reforestation, the AMLR does not track the success of volunteer trees (trees that establish of their own accord and are not hand-planted). WV Code states the AMLR is designed to accomplish restoration and reclamation of West Virginia's land and water resources. **Without tracking the success of volunteer tree growth, the AMLR cannot determine whether restoration has been successful.**

The AMLR does not measure the long-term success of tree growth on their sites.

The fee collection process, which funds the AMLR program, is set to end in 2022 unless Congress reinstates the program. **However, if the AMLR anticipates that it will continue beyond 2022, then the Legislative Auditor recommends the AMLR develop a measure for comparing pre-reclamation tree growth to post-reclamation tree growth, which will help the AMLR determine if volunteer trees on previously reclaimed sites remain as healthy as those of the area adjacent.** The Division of Mining and Reclamation (DMR) already has a measure for comparing pre-mining tree growth to post-reclamation tree growth. The DMR uses a weighted average site index to predict how tall the dominant tree species on a given soil type will be at a certain age. This unit of measure can then be used to determine if productivity has been restored. The AMLR, unlike the DMR, is not legally required to use this measure. **However, the Legislative Auditor believes that this measure will create a standard for tree growth, allowing inspectors to more accurately evaluate the health of volunteer trees on sites.**

The Legislative Auditor recommends the AMLR examine the data comparing pre-reclamation tree growth to post-reclamation tree growth to determine if full woodland restoration is being achieved.

This is especially important as in the long-term because no agency or independent organization has examined whether volunteer trees on AMLR sites are more or less healthy than the surrounding trees of the adjacent properties. Site visits have demonstrated that decades-old sites are visually blending into the surrounding vegetation. There have not, however, been any studies on the health of these volunteer trees. **The Legislative Auditor recommends the AMLR examine the data comparing pre-reclamation tree growth to post-reclamation tree growth to determine if full woodland restoration is being achieved.**

Conclusion

The AMLR should write final site reports that summarize the work accomplished during each project. If the AMLR does not have the resources available for this task, the agency should instead write summary reports on sites where it used modified or innovative reclamation techniques. Furthermore, if the AMLR anticipates that it will continue beyond 2022, it should track the success of volunteer tree growth. If it is not known whether present reclamation techniques can fully restore woodlands to their previous condition, then it is not known whether present techniques meet the definition of restoration. By implementing these internal controls, the AMLR can better understand its own reclamation techniques, more uniformly apply quality standards, and take advantage of recent innovations. Complying with the recommendations in this issue should not cost AMLR much money.

Recommendations

6. *The AMLR should produce final site reports, especially for those projects that utilize modified or innovative reclamation techniques.*
7. *If the AMLR believes it will continue beyond 2022, it should develop a measure to determine the long-term success of volunteer tree growth.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

December 23, 2011

Mr. Eric J. Coberly, P.E., Chief
Office of Abandoned Mine Lands and Reclamation
601 57th Street SE
Charleston, WV 25304

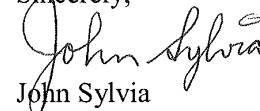
Dear Mr. Coberly:

This is to transmit a draft copy of the performance review of the Office of Abandoned Mine Lands and Reclamation. This report is scheduled to be presented during the January 8-10, 2012 interim meetings of the Joint Committee on Government Operations, and Joint Committee on Government Organizations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on December 29, 2011. Please notify us to schedule an exact time. In addition, we need your written response by noon on January 3, 2011 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, January 5, 2012 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,


John Sylvia

Enclosure

JS/jda

Joint Committee on Government and Finance

Appendix B: Objective, Scope, and Methodology

Objective

The Legislative Auditor conducted an evaluation of the Office of Abandoned Mine Lands and Reclamation (AMLR) as part of the Agency Review of the Department of Environmental Protection required by West Virginia Code §4-10-8. The purpose of this report is to: 1) assess the Office of Abandoned Mine Land's (AMLR) fulfillment of its statutory mandates, 2) identify the best practices in the industry to determine if the AMLR could improve its effectiveness and efficiency, and 3) determine the AMLR's compliance with the recommendations made in a 1996 Legislative Audit.

Scope

The scope of the performance measures issue is performance measures reported in the *Executive Budget Operating Details* for FY 2005-2011, the DEP Annual Report for FY 2008-2009, and the DEP State of the Environment Report for FY 2008. The scope of the website evaluation is user-friendliness and transparency demonstrated on the agency website as of August 2011. The scope of the priority system issue is the requirements of OSM, the requirements of state and federal laws, and the policies enacted since the PERD performance review in 1996. The scope of the AMLR's data collection issue is the AMLR's practices in regards to the collection and utilization of data relevant to the execution of their statutory obligations.

Methodology

This evaluation was conducted by interviewing with agency personnel, examining State Code and federal laws, and reviewing AMLR documents, records, and publications. This evaluation also relied on interviews with staff from OSM; the Division of Mining and Reclamation; the Office of Special Reclamation; and the AML programs in Virginia, Pennsylvania, Ohio, Kentucky, Illinois, and Wyoming. Additionally, this evaluation involved field visits to active mine sites, Special Reclamation sites, and AMLR sites in various stages of reclamation and post-reclamation. In evaluating AMLR's website, the Legislative Auditor conducted a literature review of government website studies and performed a review of top ranked government websites and groups that rate government websites in order to establish a master list of elements that would increase citizen engagement. The Brookings Institute's 2008 State and Federal E-Government in the United States and the Rutgers University's 2008 E-Governance study helped identify the top ranked states in regards to e-government. The Legislative Auditor identified three states (Indiana, Maine and Massachusetts) that were ranked in the top ten in both studies and reviewed all three states' main portals for trends and common similarities in transparency and open government. The Legislative Auditor also reviewed a 2010 report from the West Virginia Center on Budget and Policy that was useful in identifying a group of core elements from the master list that should

be incorporated into every state and local website to increase its transparency and e-governance. It is understood that not every item listed in the master list is to be found in a department or agency website because some of the technology would not be practical or useful. Therefore, the Legislative Auditor is recommending that an agency or department determine if it is progressing in step with the e-government movement that is emphasizing transparency and user-friendliness. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C: Website Criteria Checklist and Points System

| Website Criteria Checklist and Points System Office of Abandoned Mine Lands and Reclamation | | | |
|--|---|-----------------------------------|---------------------------------|
| User-Friendly | Description | Total Points Possible | Total Agency Points |
| Criteria | The ease of navigation from page to page along with the usefulness of the website. | 18 | 10 |
| | | Individual Points Possible | Individual Agency Points |
| Search Tool | The website should contain a search box (1), preferably on every page (1). | 2 points | 2 points |
| Help Link | There should be a link that allows users to access a FAQ section (1) and agency contact information (1) on a single page. The link's text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. "How do I...", "Questions?" or "Need assistance?") | 2 points | 1 point |
| Foreign language accessibility | A link to translate all webpages into languages other than English. | 1 point | 0 points |
| Content Readability | The website should be written on a 6 th -7 th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability. | No points, see narrative | 7 th grade |
| Site Functionality | The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1). | 3 points | 3 points |
| Site Map | A list of pages contained in a website that can be accessed by web crawlers and users. The Site Map acts as an index of the entire website and a link to the department's entire site should be located on the bottom of every page. | 1 point | 1 point |
| Mobile Functionality | The agency's website is available in a mobile version (1) and/or the agency has created mobile applications (apps) (1). | 2 points | 0 points |
| Navigation | Every page should be linked to the agency's homepage (1) and should have a navigation bar at the top of every page (1). | 2 points | 2 points |

| Website Criteria Checklist and Points System Office of Abandoned Mine Lands and Reclamation | | | |
|--|--|-----------------------------------|---------------------------------|
| FAQ Section | A page that lists the agency's most frequent asked questions and responses. | 1 point | 0 points |
| Feedback Options | A page where users can voluntarily submit feedback about the website or particular section of the website. | 1 point | 1 point |
| Online survey/poll | A short survey that pops up and requests users to evaluate the website. | 1 point | 0 points |
| Social Media Links | The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter. | 1 point | 0 points |
| RSS Feeds | RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format. All agency websites should have a RSS link on their websites. | 1 point | 0 points |
| Transparency | Description | Total Points Possible | Total Agency Points |
| Criteria | A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government. | 32 | 12 |
| | | Individual Points Possible | Individual Agency Points |
| Email | General website contact. | 1 point | 0 points |
| Physical Address | General address of stage agency. | 1 point | 1 point |
| Phone Number | Correct phone number of state agency. | 1 point | 1 point |
| Location of Agency Headquarters | The agency's contact page should include an embedded map that shows the agency's location. | 1 point | 1 point |
| Administrative officials | Names (1) and contact information (1) of administrative officials. | 2 points | 2 points |
| Administrator(s) biography | A biography explaining the administrator(s) professional qualifications and experience. | 1 point | 0 points |

| Website Criteria Checklist and Points System Office of Abandoned Mine Lands and Reclamation | | | |
|--|---|----------|----------|
| Privacy policy | A clear explanation of the agency/state's online privacy policy. | 1 point | 1 point |
| Public Records | The website should contain all applicable public records relating to the agency's function. If the website contains more than one of the following criteria the agency will receive two points: <ul style="list-style-type: none"> • Statutes • Rules and/or regulations • Contracts • Permits/licenses • Audits • Violations/disciplinary actions • Meeting Minutes • Grants | 2 points | 2 points |
| Complaint form | A specific page that contains a form to file a complaint (1), preferably an online form (1). | 2 points | 0 points |
| Budget | Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1). | 3 points | 0 points |
| Mission statement | The agency's mission statement should be located on the homepage. | 1 point | 1 point |
| Calendar of events | Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1). | 2 points | 1 point |
| e-Publications | Agency publications should be online (1) and downloadable (1). | 2 points | 0 points |
| Agency Organizational Chart | A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/organizational chart (1). | 2 points | 1 point |
| Graphic capabilities | Allows users to access relevant graphics such as maps, diagrams, etc. | 1 point | 0 points |
| Audio/video features | Allows users to access and download relevant audio and video content. | 1 point | 0 points |
| FOIA information | Information on how to submit a FOIA request (1), ideally with an online submission form (1). | 2 points | 0 points |

| Website Criteria Checklist and Points System Office of Abandoned Mine Lands and Reclamation | | | |
|--|--|----------|----------|
| Performance measures/outcomes | A page linked to the homepage explaining the agencies performance measures and outcomes. | 1 point | 0 points |
| Agency history | The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time. | 1 point | 1 point |
| Website updates | The website should have a website update status on screen (1) and ideally for every page (1). | 2 points | 0 points |
| Job Postings/links to Personnel Division website | The agency should have a section on homepage for open job postings (1) and a link to the application page Personnel Division (1). | 2 points | 0 points |

Appendix D: OSM Report on AMLR Staffing Level



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
1027 Virginia Street, East
Charleston, West Virginia 25301

JUN 21 2011

Eric J. Coberly, Chief
Office of Abandoned Mine Lands
and Reclamation
Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

Dear Mr. Coberly:

Enclosed is the final report of the joint Office of Surface Mining Reclamation and Enforcement (OSM)/West Virginia Department of Environmental Protection (WVDEP) report covering our "Enhancement and Performance Review" concerning Historic Staffing and Funding for the WVDEP Abandoned Mine Land (AML) Program. In accordance with the Oversight Work Plan, a review was conducted to determine how staffing levels and program accomplishments have changed with the increase in AML funding as a result of the 2006 reauthorization. The review found that staffing levels have remained constant, but funding and project activities have greatly increased, causing concern that the increased demand on the staff will eventually have a detrimental effect on the WVDEP AML program. OSM will increase oversight activities to monitor the effects that the staffing level has on the WVDEP AML program.

If you have any questions, please contact me at (304) 347-7158.

Sincerely,

For:

Roger W. Calhoun, Director
Charleston Field Office

Enclosures

Enhancement and Performance Review Report Historic Staffing and Funding of West Virginia's Abandoned Mine Land Program

Executive Summary: This study was conducted to determine how staffing levels of the West Virginia Department of Environmental Protection (WVDEP) Office of Abandoned Mine Lands and program accomplishments have changed with the increased funding as a result of the 2006 reauthorization of the Abandoned Mine Land (AML) program. The review team evaluated the level of AML staffing for the past ten years and compared the staffing levels with funding allocations and work accomplishments during the same time period. The study found that staffing levels have remained consistent, although both funding and project activity have greatly increased.

Principle Reviewed: AM-22, Appendix I, Principles of Excellence and Performance, establishes the principle to be reviewed. Principle 4 states that programs should have systems in place to ensure accountability and responsibility for spending AML funds and a process to ensure that such systems are working.

Review Dates: Staff size, project accomplishments, and program funding were evaluated for the previous ten grant years (from 2000 to 2010). Information from previous calendar years during the same time frame was also reviewed.

Personnel: The WVDEP reviewer was Eric Coberly. The Office of Surface Mining Reclamation and Enforcement (OSM) reviewers were Nancy Roberts and Richard Buckley.

Background: Title IV of the Surface Mining Control and Reclamation Act (SMCRA), P.L. 95-87 established the AML program. It also established the AML Fund, supported by reclamation fees paid by current coal mining operations. SMCRA authorizes OSM to use money from the AML Fund to provide financial assistance to states and tribes to carry out their approved reclamation plans. Federal regulations detailing the requirements of the AML program can be found at 30 CFR, Parts 870 through 887.

Section 405 of SMCRA provides that an approved state program shall have exclusive responsibility and authority to implement the provisions of the approved program. On February 23, 1981, OSM approved the West Virginia Abandoned Mine Lands Reclamation Plan (the state plan), and granted West Virginia the exclusive responsibility and authority to implement the provisions of the approved program. OSM distributes the funding for the administration and reclamation of AML problems on an annual basis by issuing grants to the State programs.

In 2006, amendments to SMCRA substantively changed the AML program (see *Federal Register* Vol. 73, No. 221, November 14, 2008). One of the primary changes in the 2006 amendment (reauthorization) involved changes to the distribution of the AML fund and treasury funds to states and tribes. As a result of the 2006 amendment, the West Virginia AML program began to receive significantly more funding than in previous years. The purpose of this study was to compare the previous funding levels, project accomplishments, and staffing levels prior to the 2006 changes and after the reauthorization.

Review Methodology: A Work Plan was developed for this study (attached) which stated that each annual grant would be reviewed to determine the amount of funding provided during the grant year. The work plan also stated that the total number of staff employed during the year will be obtained from grants and/or personnel records, and that the annual project accomplishments would be determined based on authorizations to proceed and final inspections. The actual methodology varied slightly as discussed below.

FUNDING: Funding information was obtained as outlined in the work plan. Grant amounts were obtained by review of the grant files. The 2007 grant and all previous grants have been closed out and the costs included in the tables and charts are final costs for those grant years. The 2008 – 2010 Grants have not been closed out, and the costs utilized in this report are the existing grant amounts, including amendments. Final grant costs are expected to be slightly different than costs shown, but are not expected to significantly change, and the minor changes will not alter any of the findings or conclusions to this report. The grant information is provided below.

| Grant Year | Grant Amount |
|-------------------|---------------------|
| 2000 | \$22,716,218 |
| 2001 | \$22,798,611 |
| 2002 | \$27,794,678 |
| 2003 | \$31,867,078 |
| 2004 | \$29,169,204 |
| 2005 | \$23,898,141 |
| 2006 | \$21,806,718 |
| 2007 | \$20,918,644 |
| 2008 | \$47,785,548 |
| 2009 | \$42,916,727 |
| 2010 | \$57,867,175 |

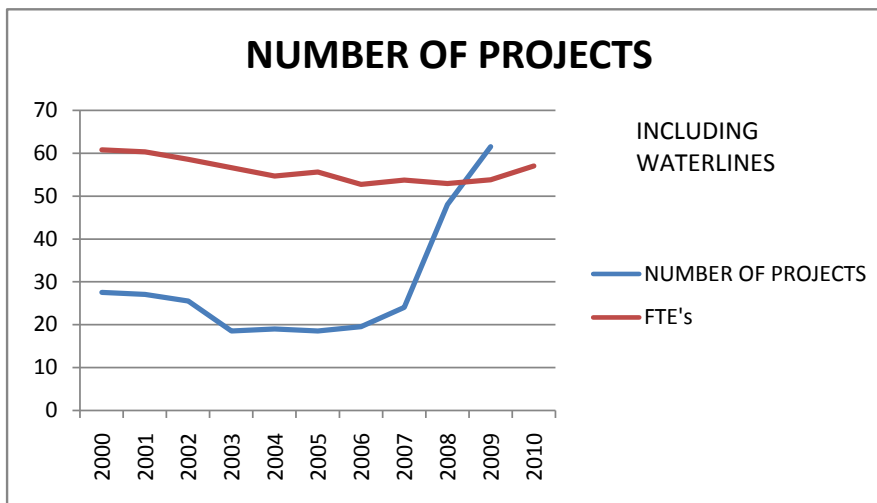
STAFFING: Staffing information was also obtained as outlined in the work plan. The West Virginia AML Program Staffing numbers were obtained from the human resources (personnel) office at the WVDEP and are based on the West Virginia fiscal year (July 1 to June 30). Staffing numbers are as follows:

| Grant Year | Budgeted FTE/Filled Positions |
|-------------------|--------------------------------------|
| 2000 | 69/61 |
| 2001 | 68/60 |
| 2002 | 67/59 |
| 2003 | 68/57 |
| 2004 | 60/55 |
| 2005 | 60/56 |
| 2006 | 60/53 |
| 2007 | 57/54 |
| 2008 | 63/53 |
| 2009 | 64/54 |
| 2010 | 65/57 |

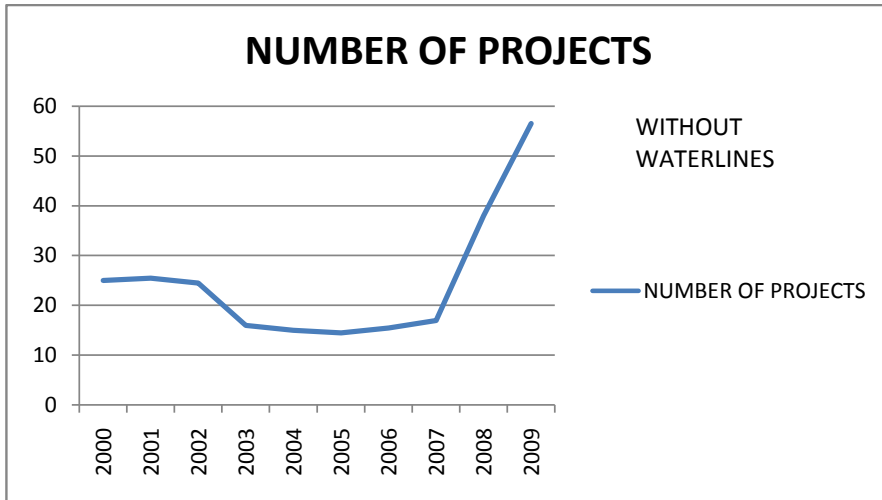
ACCOMPLISHMENTS: During the review, the methodology for obtaining project accomplishments was modified from that presented in the work plan. The WVDEP maintains a project database that includes project costs, critical milestones and dates, and the associated grant year to which the project was assigned. This data base was the primary source of the information provided in the report. Because a grant is awarded for a time frame of three years, the review team decided that it was more practical and beneficial to utilize the calendar year rather than the grant year to evaluate costs and accomplishments. The information on the grant year funding is provided as outlined in the work plan, but specific accomplishments and costs were evaluated based on the calendar year. It was also deemed beneficial to utilize the bid opening date to analyze the accomplishments. Utilizing bid opening date reflects that the project has completed the planning and design phases and is ready to have a contract awarded for construction. This date, along with the date of final inspection, is a more accurate reflection of the State's accomplishments than the date of OSM's project approval (Authorization to Proceed).

All of the information discussed in the work plan is provided in the chart below, but the following graphs are based on the number of projects entering the construction phase (Bid Opening Date).

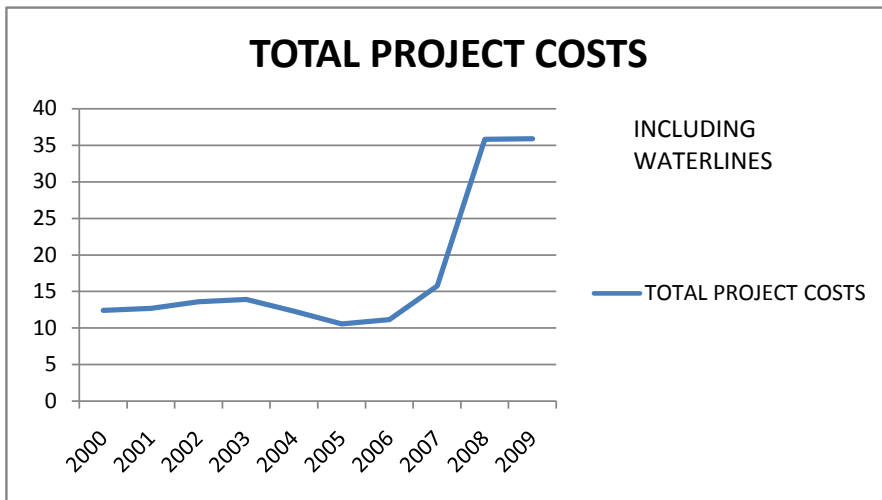
| Year | Projects included in the Grant Year | Project Construction Costs GRANT YEAR | # ATPS issued in Calendar Year | Projects Initiated (Construction Bid Opening) in the Calendar Year (CY) | Total Construction Costs for Projects Awarded (Bid Opened) in CY | # Project Completions in Calendar Year |
|------|-------------------------------------|---------------------------------------|--------------------------------|---|--|--|
| 2000 | 35 | \$14,258,367 | 31 | 34 | \$14,032,944 | 47 |
| 2001 | 27 | \$13,860,310 | 17 | 21 | \$10,780,083 | 44 |
| 2002 | 31 | \$18,594,062 | 35 | 33 | \$14,630,743 | 34 |
| 2003 | 23 | \$14,197,799 | 7 | 18 | \$12,554,362 | 24 |
| 2004 | 18 | \$12,557,489 | 15 | 19 | \$15,320,447 | 26 |
| 2005 | 28 | \$13,315,147 | 26 | 19 | \$9,326,330 | 27 |
| 2006 | 32 | \$13,516,513 | 15 | 18 | \$11,821,195 | 18 |
| 2007 | 26 | \$10,636,328 | 19 | 21 | \$10,483,644 | 16 |
| 2008 | 46 | \$27,940,940 | 29 | 27 | \$21,043,274 | 23 |
| 2009 | 29 | \$27,719,947 | 68 | 70 | \$50,612,393 | 38 |
| 2010 | 53 | \$32,542,177 | 49 | 54 | \$21,169,968 | 64 |



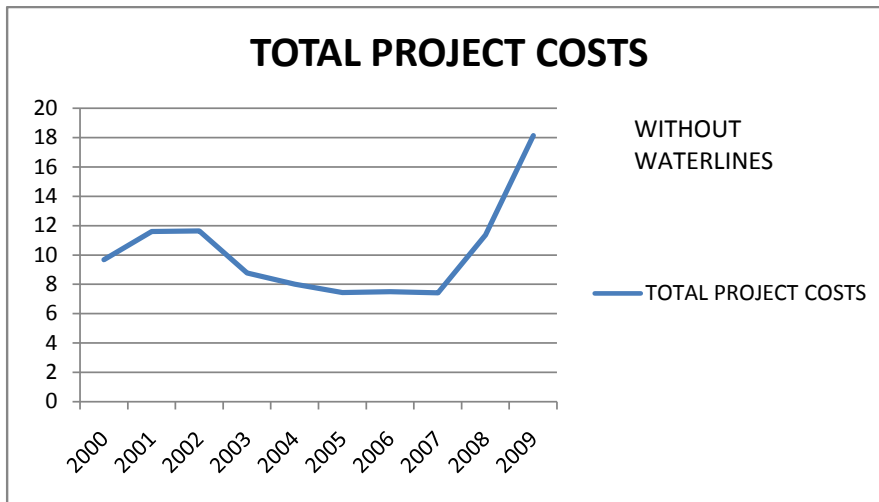
The above graph shows the total number of projects, including waterline projects, where construction was initiated in the calendar year. As seen on the chart, a significant increase in project construction occurred in 2007 and continues to increase. The chart also shows the decline in AML staffing levels, with a slight increase in personnel in recent years.



The above graph shows the total number of projects, excluding waterline projects, where construction was initiated in the calendar year. As seen on the chart, even without the inclusion of waterline projects, a significant increase in project construction still occurred in 2007 and continues to increase.

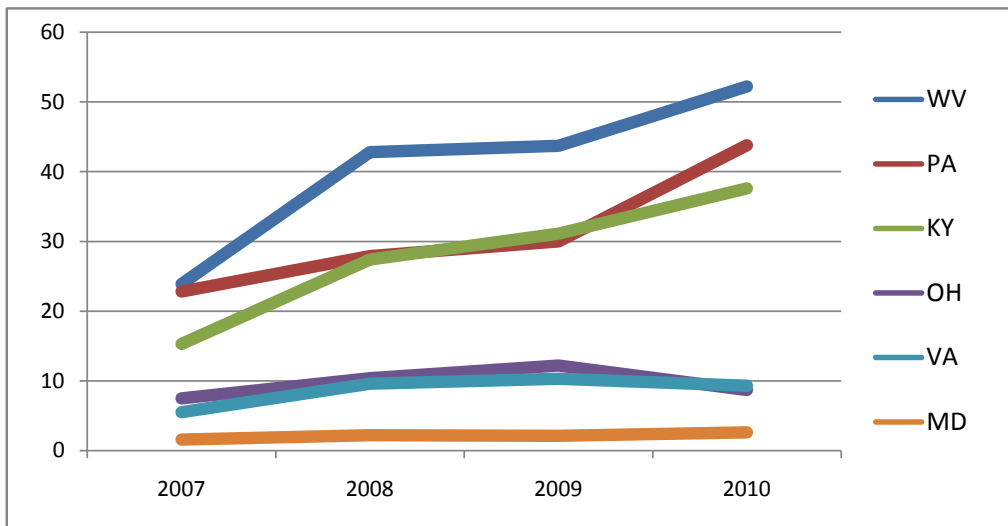


The above graph shows the total construction costs, including waterline projects for each calendar year. As seen on the chart, a significant increase in project construction occurred in 2007, and began to level off in recent years. With the increased funding (in 2006) for waterline construction, the state immediately began addressing their backlog of waterline projects.

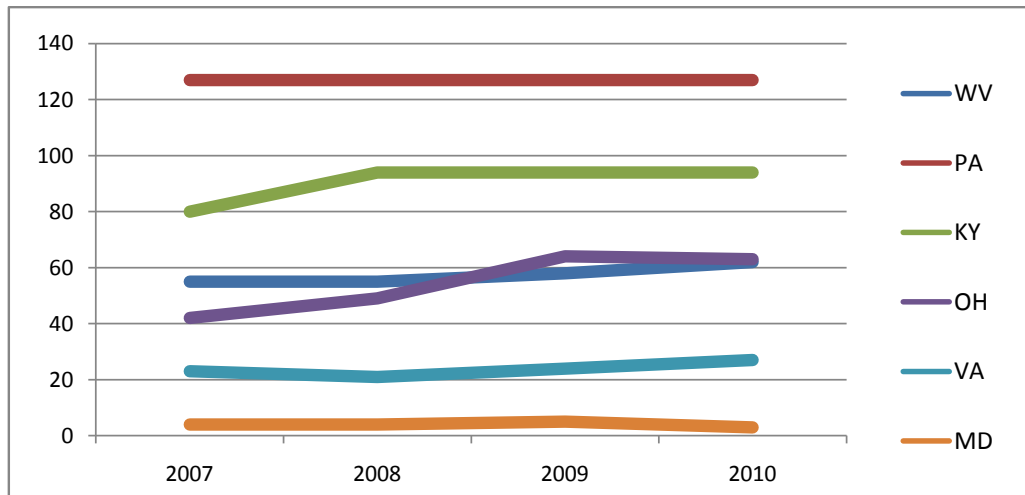


The above graph shows the total construction costs, excluding waterline projects, for each calendar year. As seen on the chart, a significant increase in project construction occurred in 2007, and the costs continue to increase.

ADDITIONAL INFORMATION: In addition to the specific review of the West Virginia AML program, a brief analysis of adjacent states was conducted to compare the 2010 staffing levels and grant funding of West Virginia with those in the adjacent states. The information was obtained from the REG-8 Summary Reports on the OSM Web Page. As seen on the attached graph, West Virginia yearly funding levels are the highest in the region, but the West Virginia staffing levels are significantly lower than most of the other states.



AML Annual Funding (Millions) By State in Appalachian Region



AML Annual Staffing By State in Appalachian Region

Findings and Conclusions: As shown on the tables and graphs, AML staff levels have not increased proportionately with the increase in funding and workload. Both the number of projects and the total project costs have increased significantly since 2007, without a significant increase in personnel to conduct and manage the increased number of projects and funding.

Although staff dedication and proper management does play a large role in the ability of a program to function successfully, the concern is that the increased demand on the staff will eventually have a detrimental effect on the long term success of the program. The current staffing level has not kept up with the increase in the workload, which appears to be problematic in the long term. This finding, along with the potential increase in staff turnover due to personnel reaching retirement eligibility, creates an additional concern for long term success and accountability for the AML Program.

OSM will begin to monitor the effects that this has on the WVDEP AML program. A significant increase in oversight inspections will be conducted in Evaluation Year 2012 to ensure that there are no issues occurring as a result of what appears to be low staffing levels and to ensure that the AML program maintains the high level of competency expected. If problems are observed, an action plan will be required.

DEPT OF INTERIOR
2011 MAR 10 AM 11:32
OSM - CHARLESTON

**West Virginia
Oversight Work Plan (Enhancement and Performance Review)
Evaluation Year 2011**

Topic (Principle): Principle 4: Programs should have systems in place to ensure accountability and responsibility for spending Abandoned Mine Land (AML) funds and a process to ensure that such systems are working.

Element: Evaluate historic staffing and funding relationships.

Reviewers: OSM – Nancy Roberts, Rick Buckley
WVDEP - Eric Coberly

Purpose of the Review: This is an initial review to evaluate the number of State AML employees over the past ten years and compare the staffing levels with funding allocations and work accomplishments, primarily to determine how staffing levels and accomplishments have changed with the increased funding as a result of the 2006 Reauthorization.

Authority for Review: AML-22, Appendix I, Principles of Excellence and Performance Measures.

Population Size: Staff size, project accomplishments, and program funding will be evaluated for the previous ten Grant years (from 2000 to 2010).

Sample Size: Data will be collected and reported for all ten years within the population size.

Review Methodology: Each grant will be reviewed to determine the amount of funding provided during the grant year. Recent years, which have not been closed out, will be evaluated on the current expenditures in the grant. Total staff employed during that year will be obtained from grant and/or personnel records, and will be based on the maximum number of staff in place during the year. Annual project accomplishments will be determined by: (1) the number of Authorizations to Proceed granted by OSM, and (2) the actual project completions (and project costs) as determined by the number of projects where the construction phase has been completed and verified by a final inspection. The personnel employed will be compared with the funding and project accomplishments provided for each year.

Data Needed from the WVDEP: WVDEP will need to provide an accurate staffing number, reflecting the maximum personnel in the AML program for each grant year from 2000 through 2010. Funding data will be obtained by reviewing the final or current grant awards. Accomplishments will be provided by obtaining the number of ATPs from the OSM files, and the number of completed projects and project costs by review of grant documents, WebAML reports, and AML records.

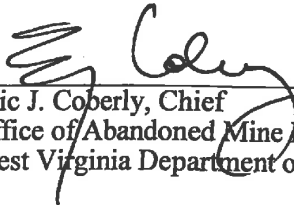
Detailed Time Frames and Milestones of the Review: The information shall be obtained by the team within seven days of the signed work plan. Evaluation of the information is

anticipated to take two days. A draft findings report will be prepared within four weeks after the evaluation is completed and submitted to OSM and WVDEP management for review. After management review is completed, the report will be finalized and submitted formally to WVDEP by the project completion date.


| | | |
|-------------------------|-----------------------|----------|
| Estimated Hours: | Work Plan Development | 10 hours |
| | Review | 16 hours |
| | Report Preparation | 16 hours |

Project Completion Date: May 15, 2011.

CONCURRENCES:


Eric J. Coberly, Chief
Office of Abandoned Mine Lands and Reclamation
West Virginia Department of Environmental Protection

3 | 9 | 11
Date


Roger W. Calhoun, Director
Charleston Field Office
Office of Surface Mining

3 | 4 | 11
Date

Appendix E: Agency Response



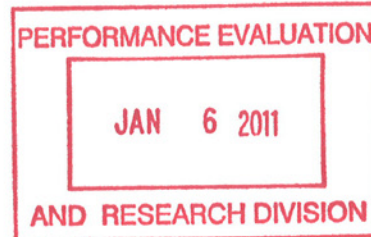
west virginia department of environmental protection

Office of Abandoned Mine Lands
and Reclamation
601 57th Street, S.E.
Charleston, WV 25304
Phone: 304-926-0485
Fax: 304-926-0458

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

January 6, 2012

John Sylvia, Director
Legislative Post Audit Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610



Dear Mr. Sylvia:

Please consider this the Department of Environmental Protection's response to the report issued by the Legislative Auditor of the Agency Review of the Office of Abandoned Mine Lands and Reclamation (AMLR).

ISSUE 1

A Federal Review of the West Virginia Abandoned Mine Lands and Reclamation Expresses Concern With Relatively Low Staffing Levels and the Long-term Performance of the Agency.

DEP Response: The federal review actually showed that AMLR was able to efficiently manage staff to complete significantly more projects per year for bid. AMLR has over the past few years planned, designed, and constructed projects at a higher sustained rate than at any point in the 30 year history of the program. AMLR has received, during this period, larger grants than at any other point in the program history and has responded by developing and constructing the projects in a timely manner. The document conclusion was forward looking and expressed concern about maintaining that production without a drop in quality due to the challenges mentioned.

AMLR currently works within the Division of Personnel policies and procedures to advertise vacancies, recruit, and fill positions. The number of positions available to the agency is adequate at this time to ensure the program successfully continues.

AMLR will also consider reporting performance measures and goals as recommended in the report to track their performance.

Promoting a healthy environment.

Page Two
January 6, 2012

ISSUE 2

The West Virginia Office of Abandoned Mine Lands and Reclamation Website Needs More Improvements, Particularly in Transparency.

DEP Response: Portions of the information requested is on the WVDEP main website. AMLR will incorporate additional items or provide links to the main site to improve the website's transparency.

ISSUE 3

The AMLR Needs to Collect More Site Data and Utilize This Information to Standardize the Reclamation Strategy.

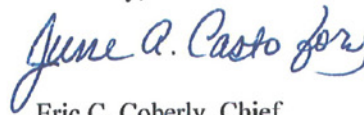
DEP Response: Our goal is to provide a site where hazards are abated, the slopes are stable, and the vegetative cover is substantial to the point that soil erosion is prevented. We concentrate on grasses because it has been proven to be the best reclamation technique for long term stability. Volunteer trees are looked at as a bonus but we have no control and do not make any attempt to control the many factors that affect tree size/health. Successful site restoration does not require tree growth. The Auditor recommends that we compare pre-reclamation tree growth to post reclamation tree growth. We have in many cases little or no trees on the pre-reclamation site. In addition, these lands have been significantly disturbed to the point where we already know that they will never achieve the same type forest as the adjacent areas that were not disturbed. The federal Office of Surface Mining that provides oversight of our program has never presented this as a concern or deficiency in our reclamation techniques nor have they ever warranted further study on the topic. AMLR fully anticipates that the collections of fees will end in 2022 and thus end the future grant distributions. This was the basis for the 2006 Amendment to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in that the grants were increased to distribute adequate funds to the states in order to reclaim the inventory of sites that existed. Congress was clear in saying that this was the last time for extending this program and included in the legislation a phase out plan for the tax that supports AMLR.

AMLR will provide summaries on sites where innovative and /or modified reclamation techniques are used to ensure that future employees are aware of the techniques that have been tried and proven successful or unsuccessful.

Page Three
January 6, 2012

Thank you for the recommendations for improvement and for the opportunity to respond to this report. Should you need additional information or have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Eric C. Coberly". The signature is written in a cursive style with a large initial "E".

Eric C. Coberly, Chief
DEP Abandoned Mine Lands
and Reclamation

cc: Randy Huffman
Cabinet Secretary

Appendix F: Agency Comments and Our Evaluation

We provided a draft copy of this report to the Department of Environmental Protection (DEP) – Office of Abandoned Mine Lands and Reclamation (AMLR) for comment. The DEP provided written comments which are reprinted in Appendix B. In commenting on the DEP’s written response to this report, the Legislative Auditor would like to address comments made by the agency relating to Issue 3 of the report.

- Issue 3: The AMLR Needs to Collect More Site Data and Utilize This Information to Standardize the Reclamation Strategy.
 - The DEP does not believe the recommendation to measure voluntary tree growth at its reclamation sites is needed. The Legislative Auditor’s recommendation to measure voluntary tree growth could be beneficial in providing the DEP with data on the impact that its reclamation methods have on such tree growth. This data could be used to help in determining best practices for long-term site reclamation and restoration of sites where desired. However, the Legislative Auditor only recommends that voluntary tree growth be measured if the AMLR is continued beyond 2022. Federal funding for the AMLR program is set to end in 2022 as a result of the 2006 Amendment to the Surface Mining Control and Reclamation Act of 1977. If the AMLR program is ended in 2022, it would be a moot issue to measure voluntary tree growth since such measurement would require more than 10 years of data.

In addition, the report will be available at <http://www.legis.state.wv.us/Joint/PERD/perd.cfm>. If you or your staff members have any questions about this report, please contact me at (304) 347-4890 or jsylvia@mail.wvnet.edu.

John Sylvia

Director



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939