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NEWS RELEASE

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FOR RELEASE July 16, 2009

Auditor of State David A. Vaudt today released a report on the review of the Abandoned Mined Land Reclamation (AMLR) program administered by the Department of Agriculture and Land Stewardship (the Department) for the period July 1, 2003 through June 30, 2008. The AMLR program is funded by the U.S. Office of Surface Mining Reclamation and Enforcement (OSM). Funding is used to reclaim abandoned mined land to protect the health, safety and general welfare of the public and restore land, water and environmental resources affected by coal and non-coal surface mining practices that occurred prior to August 3, 1977 to safe levels. The review was completed to determine if the program was in compliance with Federal regulations, the *Code of Iowa* and administrative rules governing the program.

Vaudt reported the review identified the Department completed monitoring of some reclamation sites; however, the Department did not comply with its policy to monitor all completed projects quarterly during the 5 year maintenance period to determine the continued success of the reclamation projects. The Department completed limited monitoring of some of the sites. Vaudt also reported the Department did not have written procedures to ensure complaints and concerns from land owners were consistently addressed.

The report is available for review in the Office of Auditor of State and on the Auditor of State's web site at <http://auditor.iowa.gov/specials/specials.htm>.

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**DEPARTMENT OF AGRICULTURE & LAND STEWARDSHIP
ABANDONED MINED LAND RECLAMATION PROGRAM**

**FOR THE PERIOD
JULY 1, 2003 THROUGH JUNE 30, 2008**

Table of Contents

	<u>Page</u>
Auditor's Transmittal Letter	3-4
Background Information	5-7
Findings and Recommendations:	
Finding A - AMLR sites not re-evaluated/re-prioritized	7
Finding B – Pre-contracting documents not consistently maintained	7
Finding C – On-site project maintenance inspections not completed	8
Finding D – Lack of written complaint resolution policy	8
	<u>Schedule</u>
Summary of grant awards	1 10-11
Staff	12



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Auditor's Transmittal Letter

To the Secretary of Agriculture and
Members of the State Soil Conservation Committee:

In accordance with Chapter 11 of the *Code of Iowa*, we have conducted a review of the Abandoned Mined Land Reclamation (AMLR) program administered by the Soil Conservation Division (Division) of the Department of Agriculture and Land Stewardship (Department). We reviewed certain AMLR program activities for the period July 1, 2003 through June 30, 2008, including compliance with Federal regulations, the *Code of Iowa* and administrative rules governing the administration of the program. In conducting our review of the AMLR program, we performed the following procedures:

- (1) Interviewed Division personnel and reviewed related information to obtain an understanding of the administration of the AMLR program.
- (2) Reviewed and determined compliance with Federal and State requirements regarding the administration of the AMLR program, including contracting, reporting, abandoned mined land site inventory and the eligibility determination process.
- (3) Reviewed program monitoring procedures used by the Division to determine if procedures were adequate and in compliance with Federal requirements.
- (4) Examined selected projects monitored by the Division to determine compliance with the Division's policies and procedure.
- (5) Determined if the Division established complaint resolution procedures and followed the procedures when complaints were filed.
- (6) Examined selected project expenditures for engineering consultant contracts, construction contracts, change orders and amendments to determine compliance with Department of Administrative Services policies and procedures and Federal regulations.

Based on these procedures, we have developed certain recommendations and other relevant information we believe should be considered by the Governor, the Secretary of Agriculture, the State Soil Conservation Committee and the General Assembly.

We extend our appreciation to the personnel of the Department of Agriculture and Land Stewardship and the Soil Conservation Division for their courtesy, cooperation and assistance provided to us during this review.

DAVID A. VAUDT, CPA
Auditor of State

WARREN G. JENKINS, CPA
Chief Deputy Auditor of State

January 16, 2009

Department of Agriculture and Land Stewardship
A Review of the Abandoned Mined Land Reclamation Program

Background Information

As of June 30, 2008, Iowa had 279 abandoned surface mining sites. These sites were surface mined for coal and various other minerals prior to 1977. After mining was completed, the site was abandoned and left to deteriorate over time. No attempt was made at the time to restore the mined land or ensure it was safe and not a hazard to the health, safety and welfare of the general public. The majority of the sites are located in the southeastern part of Iowa. Most of the sites are former surface mines where material lying above the coal was removed to extract the coal, without any provision for reclamation following the completion of mining operations.

Mined sites abandoned prior to 1977 are eligible to be reclaimed under Title IV of the Federal Surface Mining Control and Reclamation Act (Reclamation Act) established by Public Law 95-87. The General Assembly enacted Chapter 207 of the *Code of Iowa* authorizing the Iowa Department of Agriculture and Land Stewardship (Department) to administer the provisions of the Reclamation Act. Section 207.21 of the *Code* specifically authorizes the Soil Conservation Division (Division) of the Department to participate in the Abandoned Mined Land Reclamation (AMLR) program. The Mines and Minerals Bureau (Bureau) within the Division administers the AMLR program for the Department.

The objectives of the AMLR program are to protect the health, safety and general welfare of the public and restore land, water and environmental resources affected by coal and non-coal surface mining practices which occurred prior to August 3, 1977 to safe levels. Under this program, the abandoned mined land is restored to allow the land to be used for wildlife conservation, recreation or agricultural use. Reclamation projects typically include items such as the elimination of dangerous high-walls, acid mine drainage, clearing clogged streams and improving hazardous water bodies. Ridges of acid-forming shale are also graded and vegetated.

Funding for the AMLR program is provided through Federal grants awarded by the U.S. Office of Surface Mining Reclamation and Enforcement (OSM). The State is not required to provide matching funds. According to staff we spoke with, local and private funds are contributed in many cases to the reclamation projects. In these cases, the Bureau will use the local and private funds and reduce the amount of Federal funds used on the project. This allows the unused Federal funds to be applied to another project where other sources of funds are not available or to complete additional projects.

Each year, the Bureau applies to OSM for a grant to reclaim Priority 1 abandoned mined land sites. Priority 1 sites must be reclaimed first as they represent possible extreme danger to the health and safety of the general public and to the welfare of natural resources. The Bureau is required to evaluate and prioritize abandoned mined land sites for inclusion in OSM's Abandoned Mined Land Inventory System (AMLIS).

Project ranking and selection procedures contained in the Code of Federal Regulations requires use of a priority ranking system. The Department's State Reclamation Plan, which is approved by OSM, includes a priority ranking system with Priority 1, 2, and 3 sites determined as follows:

- *“Priority 1 includes sites requiring protection of public health, safety, general welfare and property from extreme danger resulting from adverse effects of past coal mining practices.*
- *Priority 2 includes sites requiring public health, safety and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger.*
- *Priority 3 includes sites requiring restoration of eligible land and water and the environment previously degraded by adverse effects of past mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity.”*

The Bureau occasionally updates the abandoned mined land site inventory to reflect the completion of reclamation projects and to add more site-specific information observed while monitoring reclamation projects. According to Bureau staff we spoke with, the site inventory has not been comprehensively re-evaluated and re-prioritized since 1999. The lack of periodic evaluation and updates to the reclamation site inventory could result in problems, such as damage to property or injuries to persons, if significant changes go unnoticed. Findings regarding abandoned mined land sites not being re-evaluated and re-prioritized for several years are summarized in **Finding A**.

Prior to seeking funding, the Bureau selects projects, designs reclamation procedures and completes the environmental review. Both the design and environmental review take approximately 1 year each to complete. The design and engineering for reclamation projects are completed by architectural and engineering companies under service contracts entered into by the Department. Project priorities include items such as eliminating health and safety hazards, restoring impacted land and water resources and eliminating off-site environmental impacts. Once the design is complete, the Bureau reviews the project’s impact on the surrounding environment. Once these phases are completed, the Bureau waits until funding becomes available to proceed with the actual reclamation.

As stated previously, the Bureau applies to OSM for funding. Under the Reclamation Act, the Department receives approximately \$1.7 million annually. The Reclamation Act was re-authorized in 2006 and, as a result, funding was increased nationwide. According to the latest information provided to the Bureau, the Department will receive approximately \$3 million annually beginning in fiscal year 2012 for reclamation projects.

Each year, the Bureau files an application with OSM indicating how the funds will be expended. Once the Bureau is notified of the final award amount, the Bureau identifies those projects which allow the Bureau to maximize the Federal funds awarded in conjunction with any local and private funding available. The projects undertaken may be Type 1 or 2. **Table 1** summarizes the number of projects by priority type and status.

Table 1

Priority Level	Unfunded	Funded (In process)	Completed	Total
Priority 1	25	1	53	79
Priority 2	79	5	43	127
Priority 3	58	3	12	73
Total	162	9	108	279

Some projects may have Priority 1, 2 and 3 features. OSM requires these projects to be reported under each category in the inventory system if the project contains elements of multiple priorities. The inventory system also includes a field showing the cost estimate for each project. The Bureau allocates the total cost based on the priorities when a project is reported under more than one priority in the inventory system.

According to staff we spoke with, some projects will require extensive work which makes it infeasible to begin the project. For example, a Priority 1 site with 200 acres to be reclaimed may cost in excess of \$4 million. Since funding has been limited, the Bureau has determined it is more appropriate to work on other projects which can be completed instead of holding the funds for several years to work on only 1 project. These cost prohibitive projects will be completed when funding allows. As stated previously, the State’s allocation will increase to \$3 million in fiscal year 2012. This will allow the Bureau to begin some of the previously cost prohibitive projects.

Table 2 summarizes the grants received by the Bureau during fiscal years 2004 through 2009 and the number of related projects.

Fiscal Year	Number of Projects	Amount
2004	3	\$ 1,687,982
2005	4	1,732,359
2006	4	1,684,982
2007	5	1,711,637
2008	2	1,704,251
2009	6	1,755,932
Total	24	\$ 10,277,143

Schedule 1 details the funding received each year and the approved cost categories. After funding is received from OSM, the Bureau may proceed with reclamation projects included in the grant agreement. The Bureau has 3 years from the award date to complete the reclamation projects under each agreement.

The grant application is based on estimates developed during the design and environmental review process and the number of projects the Bureau would like to begin during the year.

As part of the project, the Bureau is required to complete and maintain a pre-contracting questionnaire (PCQ) prior to entering into a service contract to evaluate items, such as whether an employer-employee relationship exists, contained in the State Accounting Enterprise (SAE) of the Department of Administrative Services' (DAS) Procedure 240.102 for services contracting. We determined the PCQ was missing from 11 project files. Findings regarding pre-contracting documents not consistently maintained are summarized in **Finding B**.

In addition to the previously mentioned responsibilities regarding abandoned mined land inventory and reclamation project planning and development, the Bureau oversees, coordinates and monitors the actual reclamation project.

The Bureau monitors each project from initiation through completion to ensure projects are constructed as intended. The Department also established a policy to visit each reclamation project site quarterly. These monitoring visits were to continue for the entire 5 year maintenance period. Our review identified the Department was not complying with its policy and some reclamation projects sites were not visited at all by the Bureau during fiscal years 2004-2005. Findings regarding on-site project maintenance inspections not consistently being completed are summarized in **Finding C**.

On occasion, the Bureau receives complaints from land owners regarding the reclamation project. According to Bureau staff we spoke with, the Bureau will follow up with the complainant when a complaint is received. If the complaint is received during the reclamation project and Bureau staff substantiates the claim, the contractor(s) involved will be asked to make any necessary changes to resolve the issue. Complaints filed after the project has been completed are followed up by Bureau staff who review the issue and determine the best course of action based on discussions with contractors, environmental experts and the complainant. If a complaint is not resolved to the satisfaction of the individual who filed the complaint, the individual may contact OSM to further pursue resolution of the complaint. As a last resort, an individual may pursue legal action if OSM is not able to resolve the complaint.

Based on our review, we determined the Bureau does have a process for addressing complaints. However, the process should be formally documented. Findings regarding the lack of a written complaint resolution policy are summarized in **Finding D**.

Findings and Recommendations

We completed the procedures detailed in the Auditor's Transmittal Letter for the period July 1, 2003 through June 30, 2008. As a result, we identified certain findings and recommendations which should be considered by the Department.

Finding A – Abandoned mined land sites not re-evaluated and re-prioritized

While the Department established the abandoned mined land site inventory as required, sites have not been comprehensively re-evaluated and re-prioritized for several years. The Bureau only re-evaluates sites in cases when a request is received, such as a change in ownership, or it is made aware of improvements being made adjacent to the site. The Bureau does re-evaluate a site prior to beginning the planning and design phase for a reclamation project. As a result, the abandoned mined land site inventory may not reflect significant changes in site conditions which would warrant a revision of the site's priority ranking until the Bureau begins planning a reclamation project.

According to Bureau staff we spoke with, the Bureau does not have enough staff to periodically re-evaluate and re-prioritize sites. Site inventory is the responsibility of the Bureau's Environmental Specialist position, which has been vacant for several years. Bureau staff also believe priority features, such as highwalls and impoundments, do not change greatly.

Recommendation – The Department should periodically visit all unfunded abandoned mined land sites to re-evaluate and adjust the priority status, as appropriate, to ensure sites are appropriately prioritized so the most dangerous sites are consistently reclaimed with available funds. To facilitate the process and for efficiency purposes, sites located in reasonably close proximity to AMLR program projects in process each year should be visited and evaluated using the Bureau's site priority checklist.

The site re-evaluation process should include tracking sites not visited in conjunction with site reclamation project visits and subsequent coordinated visits to those sites to ensure all sites are periodically re-evaluated. This should help ensure the most dangerous and hazardous sites are reclaimed with available funds prior to those of lower priority.

Finding B – Pre-contracting documents not consistently maintained

The Department did not maintain PCQ's in reclamation project files or in the Accounting Department for 11 of 25 contracts tested. Of the 11 contracts, 3 were for engineering and design consultant services and 8 were construction contracts. As a result, the Department did not comply with DAS-SAE Procedure 240.102 requiring a PCQ be completed prior to entering into a contract. The purpose of the PCQ is for the identification of employer/employee relationships and to document sole source contracts.

Recommendation – The Department should consistently complete and maintain copies of PCQ's in each project file to indicate if an employer/employee relationship exists or if the vendor is the only vendor available who can perform the work (sole source).

Finding C – On-site project maintenance inspections not consistently completed

The Bureau has a policy requiring quarterly on-site monitoring visits of reclamation projects during the 5-year maintenance period following completion of projects.

Based on procedures performed, we determined the Bureau did not comply with its policy requiring quarterly monitoring visits. We identified on-site monitoring of some reclamation project sites was not performed by Bureau staff during fiscal years 2004 and 2005. Bureau staff we spoke with stated the lack of completion of on-site monitoring visits was primarily due to a lack of resources during those fiscal years. Significant problems at abandoned mined land sites could occur and go unnoticed for an indefinite amount of time if on-site monitoring visits are not consistently completed.

Recommendation – The Department should ensure on-site monitoring visits during the maintenance period are consistently completed in accordance with the Bureau’s internal policy.

Finding D – Lack of a written complaint resolution policy

Based on our review of 2 on-going complaints, we determined procedures used by the Bureau were consistently applied to complaints received during the construction and maintenance phases of the projects. However, the Bureau has not developed a written complaint resolution policy to ensure the procedures used are performed for all complaints received regarding reclamation projects.

A lack of written policies and procedures regarding complaints from intake through resolution could result in inconsistent treatment and documentation when complaints are encountered.

Recommendation – The Department should develop and consistently apply written policies and procedures regarding complaints for AMLR projects which cover, but are not limited to, intake, investigations, observations, significant communications and resolution of each complaint. Also, the written policies should require documentation regarding complaint activity and resolution or status to be maintained in each relevant project file.

Schedule

Department of Agriculture and Land Stewardship
A Review of the Abandoned Mined Land Reclamation Program

Summary of Grant Awards
For fiscal years 2004 through 2009

Fiscal Year	Grant period	Number of projects funded	Administrative	Projects
2004	01/15/03 - 01/14/06	3	\$ 218,283	1,290,768
2005	01/15/04 - 01/14/07	4	177,000	1,323,000
2006	07/01/05 - 06/30/08	4	215,284	1,290,767
2007	07/01/06 - 07/01/09	5	219,029	1,310,973
2008	07/01/07 - 07/01/10	2	219,028	1,303,223
2009	07/01/08 - 07/01/11	6	273,485	1,422,447
Total		24	\$ 1,322,109	7,941,178


Emergency administration	Emergency projects	Streams	Total
10,000	50,000	118,931	1,687,982
10,000	50,000	172,359	1,732,359
10,000	50,000	118,931	1,684,982
10,000	50,000	121,635	1,711,637
10,000	50,000	122,000	1,704,251
10,000	50,000	-	1,755,932
60,000	300,000	653,856	10,277,143

Department of Agriculture and Land Stewardship
A Review of the Abandoned Mined Land Reclamation Program

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