

**Office of Surface Mining  
Reclamation and Enforcement**

**Pittsburgh Field Division**



**Evaluation Report**

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**LIENS**

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**Maryland Abandoned Mine Lands Program**

**Evaluation Year 2004**

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## **OBJECTIVE**

The purpose of this study was to determine whether requirements for establishing liens, determining increase in market value, and crediting of funds are being followed in accordance with Maryland's approved State Reclamation Plan.

## **SUMMARY**

With one exception, Maryland has implemented processes that assure lien requirements are being addressed under the approved Maryland State Reclamation Plan. The exception is Clean Streams (CS) Projects, for which lien requirements are not being addressed. Also, changes are suggested to improve support for decisions on lien exemptions, and to clarify the procedure used in determining when land "may be" subject to a lien. These issues are discussed in more detail under the "Findings" section.

Maryland has not placed liens on any project undertaken since program inception. Most projects have been exempted either due to land ownership prior to 1977, or primarily benefiting the health, safety, or environmental values of the general community.

## **BACKGROUND**

Evaluations of Lien processes were conducted by OSM in 1991 and again in 1994 as a follow-up to the 1991 recommendations. The 1994 report indicated that all applicable recommendations of the 1991 report had been resolved.

The approved Maryland program requires that an appraisal be conducted prior to the start of a reclamation project on private lands that may be subject to a lien. Properties are not subject to appraisals (i.e., lien exempted) if a person who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation work owns the property. Properties are also not subject to appraisals when reclamation work performed on private land primarily benefits health, safety, or environmental values of the general public or area in which the land is located. A lien is established on the appraised increased value of the property, with certain exceptions. Exhibit 1 flow-charts the lien process.

## **SCOPE/METHODOLOGY**

Abandoned Mine Land (AML) projects undertaken within the last three evaluation years were reviewed for compliance with program requirements for conducting appraisals and establishing liens.

After reviewing the legal and regulatory requirements involving establishment of liens in Maryland<sup>1</sup>, an interview was conducted with Maryland program personnel responsible for the lien program to ascertain policy and procedures used for establishing liens. An interview form (Exhibit 2) was used as a guide. Following the interview, files were reviewed to confirm implementation of program requirements and policy. Review results were documented using a Lien Evaluation Form (Exhibit 3).

## FINDINGS

The Maryland AML program is structurally divided into two sections. The AML Section is responsible for management of all Title IV abandoned mine land projects except Clean Streams Projects and Watershed Cooperative Agreement Projects, which is managed by the Planning, Research, and Development Section. Interviews revealed that lien processes (appraisal/lien establishment) are not being documented for Clean Stream Projects.

The lien review in Maryland consists of four primary steps:

1. Determining whether liens are exempt from appraisals
2. Determining whether appraisals may be waived
3. Conducting appraisals
4. Establishing a lien

Maryland uses a Realty Documentation form (Exhibit 4) to document these steps.

**Lien Exemptions** - If title to private property was acquired prior to May 2, 1977 and the owner did not consent to, participate in, or control the mining operation on the land, the land is exempted from lien requirements. The land is also exempted if it can be determined, based on available information without conducting an appraisal, that the reclamation would primarily benefit the health, safety, or environmental values of the greater community or area.

Of the six non-Clean Stream AML projects begun during the last three evaluation years, three<sup>2</sup> were exempted based on the “primary benefit” criteria; though one of these, Oak Hill, did not include documentation of this exemption. One of the projects<sup>3</sup> was exempted based on the “ownership” criteria. One of the projects<sup>4</sup> was exempted in part on the “primary benefit” criteria and part on the “ownership” criteria. The remaining project, Warnick, was unique in that it did not involve any physical land reclamation on the property which received a benefit. This project involved extension of a public water supply line to six residents who had well water impacted by past mining practices. The waterline was placed in the road right of way, and the residents tapped into it at their expense.

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<sup>1</sup> Annotated Code of Maryland 15-1107 to 1109, AML Plan Chapter 7, SMCRA sec. 408, 30CFR 872.11 (a)(3), 872.12(b)(3), 875.18, 882.10, 882.12-.14.

<sup>2</sup> Spruce Hollow, Shallmar, and Oak Hill

<sup>3</sup> Bear Hill (owned by Gunfeld Coal Co. since 1965)

<sup>4</sup> Kitzmiller

Maryland reasoned that since no right of entry, easement, or landowner consents were required for the property that benefited by the project, and no reclamation activities were conducted on these lands, no liens could be established. OSM realty staff was consulted and supported this reasoning. The form (Exhibit 4) used by Maryland in documenting the exemptions does not include a narrative to support the exemption criteria used. This information can generally be found by searching the project file, or from general staff knowledge of the project, but is not readily available.

**Appraisal Waivers** – If the land does not meet the exemption criteria above, Maryland’s Department of General Services (DGS), Office of Real Estate, Evaluation and Appraisal Division, conducts a preliminary estimate of increase in value of the land to determine if the land “may be” subject to a lien (See Exhibit 4, item #IIA). If this estimate reveals that the increase in value is less than the cost of filing a lien (\$2,450 used as a basis<sup>5</sup>), or the reclamation project was necessitated by an unforeseen occurrence and the total market value increase is insignificant, the appraisal and lien are waived. This process meets the criteria established under OSM regulations. OSM regulations under FR28585 (June 30, 1982) state, “Where the official responsible for the reclamation program can determine from available evidence that...it is clear that there will be no significant increase in market value, then the property is not subject to a lien and no appraisal is necessary. When there is any doubt that these determinations can be made without the basis of appraisals, then it must be considered that the property may be subject to a lien and appraisals must be obtained.” However, Maryland law under section 15-1107(b) does not include a procedure for determining if land “may be” subject to a lien (i.e., available evidence appraisal waiver), nor does the approved reclamation plan address this aspect. Maryland’s Realty Documentation form (Exhibit 4) is used to make this determination. If the land does not qualify for either a lien exemption or appraisal waiver, then it is determined that the land “may be” subject to a lien.

None of the six projects begun during the evaluation period used the appraisal waiver criteria.

**Appraisals** – If neither the exemption or waiver criteria apply, the land **may** be subject to a lien. At this point, a formal independent appraisal of the land is conducted through the DGS, by either DGS personnel or outsourcing, depending on workload and other factors. The formal appraisal differs from the preliminary estimate both in scope and detail. Formal appraisals also require two separate independent appraisers for acquisition, or one for disposition.<sup>6</sup> A lien waiver can be made at this point using the same standards under the waiver section above, or if as in the case of exemptions, the formal appraisal results in a determination that the reclamation would primarily benefit the health, safety, or environmental values of the greater community or area, or the project is necessitated by unforeseen circumstances and the appraisal shows no significant increase in land value. None of the six projects begun during the evaluation period were found to have the need for independent appraisals.

**Liens** – Chapter 7 of the Maryland Reclamation Plan reflects requirements of section 15-1107(b) of the annotated code of Maryland regarding the establishment of liens. The independent appraisal

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<sup>5</sup> February 4, 1987 letter from the Maryland Attorney General’s office gave a conservative estimate of \$3,387.00.

<sup>6</sup> Per 2/26/04 conversation with Mr. David Kelleher, DGS

statement serves as a lien for the increased value of the property. Landowners may petition the circuit court to review the increase value determined by the lien. Proceeds from lien satisfaction are credited to Maryland's Federal-State Reclamation Fund.

According to Maryland personnel, no AML projects have had to have liens established since inception of the program.

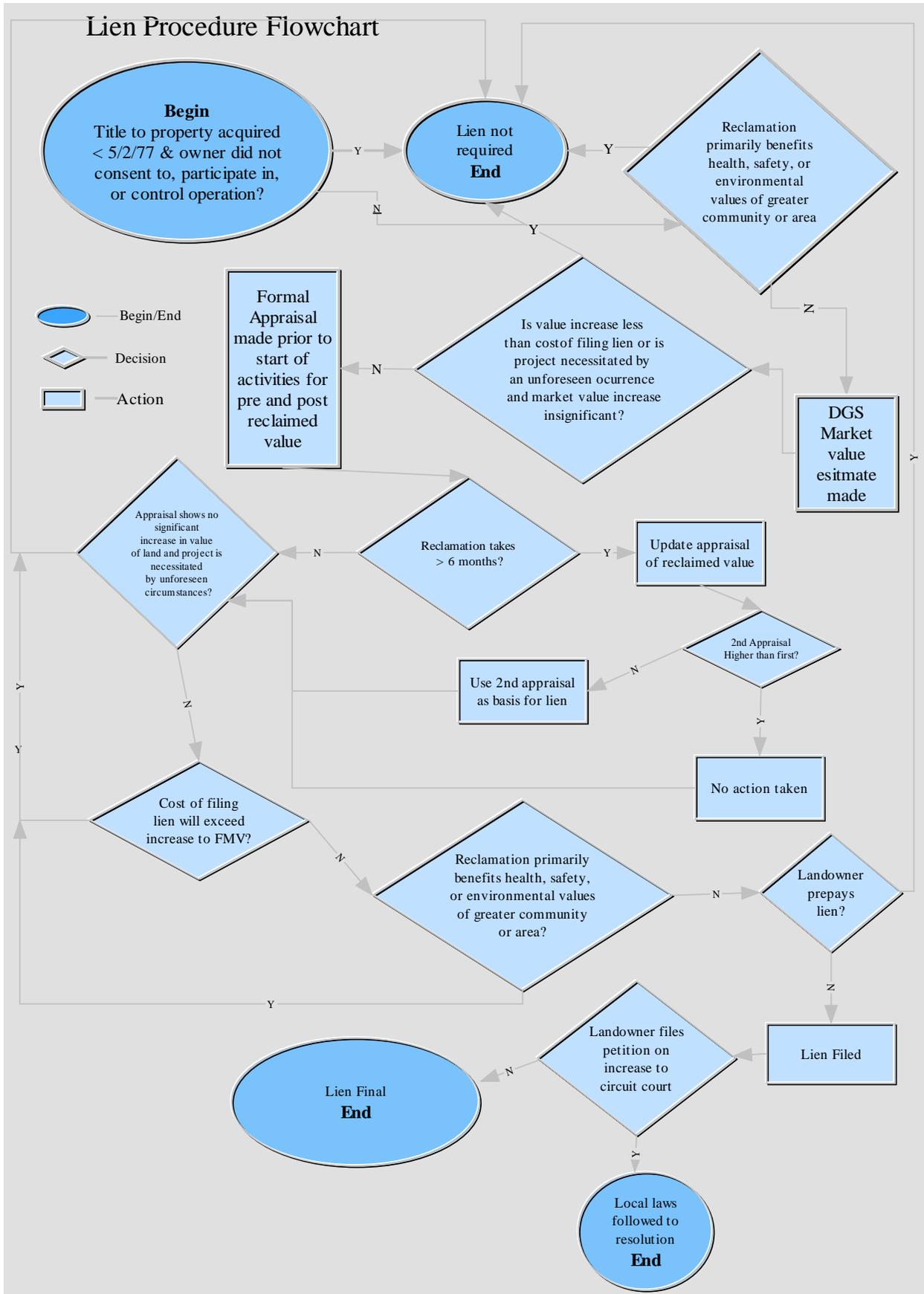
Maryland estimates that approximately 50% of non-Clean Stream AML projects have been exempted under the "ownership" criteria and the majority of the remaining projects are exempted under the "primary benefit" criteria.

## **RECOMMENDATIONS**

1. Recommend Maryland implement lien procedures for **Clean Stream Projects** in accordance with the approved Reclamation Plan chapter 7 and Maryland Annotated Code section 15-1107(b).
2. Recommend Maryland consider amending the approved Maryland State Reclamation Plan to address the procedures included in the Bureau of Mines Abandoned Mine Lands Program Realty Documentation form for determining when land "may be" subject to liens.
3. Recommend Maryland add a narrative justification to support the Bureau of Mines Abandoned Mine Lands Program Realty Documentation form exemption choice (Item I).

## **EXHIBITS**

# Exhibit 1 – Lien Process Flow Chart





7. How many liens have been filed in last three EY's?

8. How many liens have been waived in last three EY's?

### Exhibit 3 – Liens Evaluation Form

<b><i>LIENS EVALUATION FORM</i></b>		
1	Survey Name	LIENS EVALUATION FORM (Maryland)
2	Survey Identification Code	MD04-LIEN
3	Survey Version	MD04-LIEN-04
4	Version Date	10/07/03
5	Date Survey Completed	
6	Project Review Date:	
1 0	Project Name:	
1 1	State:	Maryland
1 2	Project Start Date:	
1 3	County:	
1 5	Township:	

This document is Read-Only. After completing data entry for this survey, save the file in the  
**H:\Data\OIOData\Maryland PTS\Unprocessed** folder.

Give the file a name using format: *permit number+LIEN+inspection date*.

Example: H:\Data\OIOData\Maryland PTS\Unprocessed\SM-84-100LIEN2003

This indicates that on permit SM-84-100 a lien survey (**LN**) was conducted on January 1, 2003 (**01012003**)

Note: There are no dashes, slashes, or other delimiters in the date portion of the filename and the permit is always padded with zeros to make it a four-digit number

Module Title	Jump to Module
Cover Page	<a href="#">Module</a>
Appraisals	<a href="#">A</a>
Liens	<a href="#">B</a>

<b>A</b>				<b>Appraisal (file review) [AC 7-907/Plan Ch. 7]</b>	<b>LIEN-Mod-A (Rev. 10/07/2003)</b>
	1			Document that an appraisal conducted for this project? (If "NO", go to A1a, otherwise A2)	YES
		a		Document that property acquired prior to 5/2/77 and owner did not consent, participate, or control?	NA
		b		Document reclamation primarily benefit health, safety or environment of community?	NA
	2			If construction took more than 6 months, document a second appraisal made? (If NA, go to 3, otherwise A2a)	NA
		a		Was second appraisal higher or lower than first? (If lower, go to A2b, otherwise 3)	NA
		b		Was second appraisal used as basis for lien?	NA
	3			Was appraisal conducted prior to construction?	NA
	4			Was appraisal conducted by an independent appraiser?	NA
	5			Comments (Please indicate question number applicable to each comment)	

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<b>B</b>				<b>Liens (file review) [AC 7-907/Plan Ch. 7]</b>	<b>LIEN-Mod-B (Rev. 10/07/2003)</b>
	1			Document of lien filed? (If no, go to B1a, otherwise 2)	NA
		a		Document appraisal shows no significant increase in value and project necessitated by unforeseen circumstances?	NA
		b		Document cost of filing lien exceed increase to FMV?	NA
		c		Document reclamation primarily benefit health, safety or environment of community or area?	NA
		d		Document landowner prepay lien? (end module)	NA
	2			Document landowner file a petition on lien increase to circuit court? (If yes, go to B2a, otherwise end module)	NA
		a		Status of petition	UPHELD
	3			Comments (Please indicate question number applicable to each comment)	

# Exhibit 4 – Realty Documentation Form

BUREAU OF MINES  
ABANDONED MINE LANDS PROGRAM  
REALTY DOCUMENTATION

Project Name: \_\_\_\_\_

AML Grant: \_\_\_\_\_

LANDOWNER INFORMATION

Landowner: \_\_\_\_\_

Individual: \_\_\_ Corporation: \_\_\_ State or Public: \_\_\_

Street: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: ( \_\_\_\_\_ ) \_\_\_\_\_

Agent or Contact: \_\_\_\_\_

DEED INFORMATION

Parcel Location: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

County: \_\_\_\_\_ Tax Map No.: \_\_\_\_\_ Parcel: \_\_\_\_\_

Deed Libre/Folio: \_\_\_\_\_ Acreage: \_\_\_\_\_

Date Purchased: \_\_\_\_\_ Current Land Use: \_\_\_\_\_

Parcel Description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**LIEN QUALIFICATION**

**I. Lien Exemption Documentation**

- A. Is the property to be reclaimed owned by a person who acquired title prior to May 2, 1977 and who did not consent to, participate in, or exercise control over the mining operation which necessitates the reclamation work?

YES \_\_\_\_\_ NO \_\_\_\_\_

NOTE: If YES, skip to Section III A.

- B. Does the reclamation to be performed primarily benefit the health, safety, or environmental values of the general community in which the land is located?

Yes \_\_\_\_\_ NO \_\_\_\_\_

NOTE: If YES, skip to Section III A.

**II. Lien Waiver Documentation**

- A. DGS Market Value Increase Estimate:

Date: \_\_\_\_\_ Estimator: \_\_\_\_\_, DGS.

Estimated Per Acre Increase: \$ \_\_\_\_\_ (Attach copy)

1. Market Value Increase Computation:

Total Landowners Acreage to be Reclaimed:

Estimated Per Acre Increase: X \$ \_\_\_\_\_

Total Value of Increase: = \$ \_\_\_\_\_

2. Is Total Value of Increase less than \$ 2,450.00 ?

YES \_\_\_\_\_ NO \_\_\_\_\_

Note: If YES, skip to Section III B.

- B. Is the reclamation project necessitated by an unforeseen occurrence, and is the total market value increase an insignificant amount?

YES \_\_\_\_\_ NO \_\_\_\_\_

Note: If YES, skip to Section III B,  
If NO, skip to Section III C.

III. LIEN DETERMINATION

CHECK ONE BOX AS APPLICABLE:

- A.  Based upon the information and documentation provided in Section I above, it is hereby determined that the land to be reclaimed qualifies for EXEMPTION from a lien, as provided for in Chapter 7, of the State of Maryland, Abandoned Mine Land Reclamation Plan, and that NO lien will be filed.
- B.  Based upon the information and documentation provided in Section II above, it is hereby determined that the land to be reclaimed qualifies for WAIVER of a lien, as provided for in Chapter 7 of the State of Maryland, Abandoned Mine Land Reclamation Plan, and that NO lien will be filed.
- C.  Based upon the information and documentation provided in Section I and II above, it is hereby determined that the land to be reclaimed MAY QUALIFY for placement of a lien, as provided for in Chapter 7 of the State of Maryland, Abandoned Mine Land Reclamation Plan, and that a Formal Independent Appraisal of the Increased Land Value will be completed to determine the amount of any lien.

Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

## Exhibit 5 – Liens/Right of Entry Flow Chart

