



Office of Surface Mining Reclamation and Enforcement

**Annual Evaluation Summary Report
of the
Regulatory and AML Programs**

Administered by the

**Ohio Department of Natural Resources
Division of Mineral Resources Management**

for

2004 Evaluation Period

(July 1, 2003 to June 30, 2004)

**FINAL REPORT
September 2004**

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I. Introduction

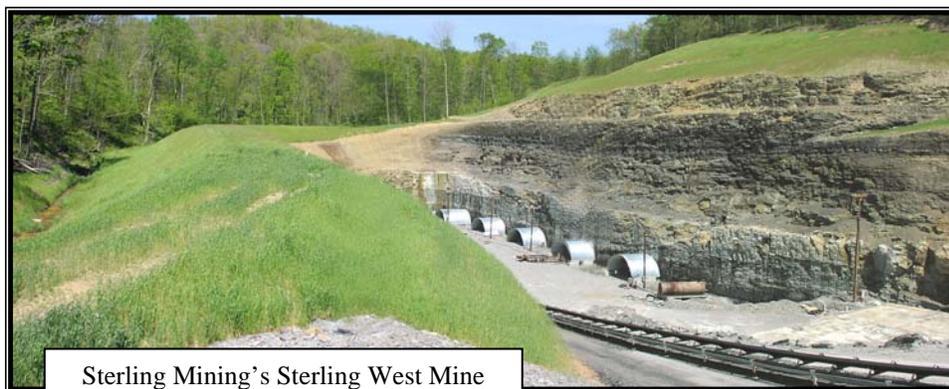
The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that OSM has approved as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Ohio Program and the effectiveness of the Ohio Program in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of July 1, 2003, through June 30, 2004. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Columbus OSM Office.

The following acronyms are used in this report:

ABS	Alternative Bonding System
ACOE	U.S. Army Corps of Engineers
ACSP	Appalachian Clean Streams Program
AMD	Acid mine drainage
ATP	Authorization to Proceed
AML	Abandoned mine land
AVS	Applicant Violator System
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
EY	Evaluation Year
FWS	U.S. Fish and Wildlife Service
NEPA	National Environmental Policy Act
ODNR	Ohio Department of Natural Resources
ODOT	Ohio Department of Transportation
Ohio	Ohio Division of Mineral Resources Management or State of Ohio
OSM	Office of Surface Mining Reclamation and Enforcement
PA	Programmatic Agreement
SMCRA	Surface Mining Control and Reclamation Act
SWCD	Soil and Water Conservation Districts
USFS	U.S. Forest Service
VER	Valid Existing Rights

II. Overview of the Ohio Coal Mining Industry

Thirty-seven mining companies produced 22.3 million tons of coal in 2003, an increase of six percent over 2002 production. The total coal sold in 2003 was 21.9 million tons with a value of \$469.5 million. The average price per ton of coal was \$21.12 down slightly from \$21.18 in 2002.



Sterling Mining's Sterling West Mine
Carroll County

The number of coal-producing companies (37) in Ohio in 2003 remained the same as in 2002. The number of producing mines decreased from 104 to 103.

During 2003, surface mining operations at 94 mines produced 9.1 million tons (41 percent of total production). Coal production from surface mines in 2003 decreased by one million tons, about 10 percent from 2002. Underground mining at seven mines produced 13.1 million tons (59 percent of total production). Coal production from underground mines in 2003 increased by 2.3 million tons, about 21 percent from 2002. Longwall mining of eight million tons accounted for 61 percent of the total underground production (36 percent of total production).

Ohio's coal industry employed 2261 people in 2003, a decrease of five percent over 2002. Production employees, numbering 1520, accounted for 67 percent of the 2003 coal work force.

Ohio retained its 14th place rank among the 26 coal-producing States in the nation and produced 2.1 percent of the nation's coal in 2003, up from 1.9 percent in 2002. Ohio was ranked third nationally in coal consumption, behind Texas and Indiana.



Consol Energy's Silver Spade
Harrison County

(Data source: Ohio Geological Survey, Reports on Ohio Mineral Industries)

III. Overview of the Public Participation Opportunities in the Oversight Process and the State Program

As reported in previous oversight reports, the Ohio Division of Mineral Resources Management (Ohio) has continued several efforts to keep the public informed of activities related to mining and reclamation, in addition to the routine public participation opportunities specified in the Ohio program. Ohio has continued to improve and update its web site. Ohio has continued to meet with a group of industry representatives on a quarterly basis to discuss field and program concerns and issues. This outreach effort began as the Permitting Workgroup. It has continued as a very effective way of communicating on many issues related to the regulation of coal mining.

Ohio has continued to promote its abandoned mined land (AML) educational outreach initiative. The goal of this initiative is to educate individuals, groups, and government agencies concerning the potential building problems associated with AML. AML development can lead to expensive repairs when settling occurs, landslides develop, or other types of problems occur. The AML program does not fund reclamation, water replacement, or stabilization projects if the landowner fails to address the AML problems prior to development.

In 2002, Ohio created the AML Development Guide to assist in evaluating past mining sites for house, road, or other types of development. A total of 700 copies of the guides were mailed to legislators, township trustees, county commissioners, and county engineers in 37 counties.

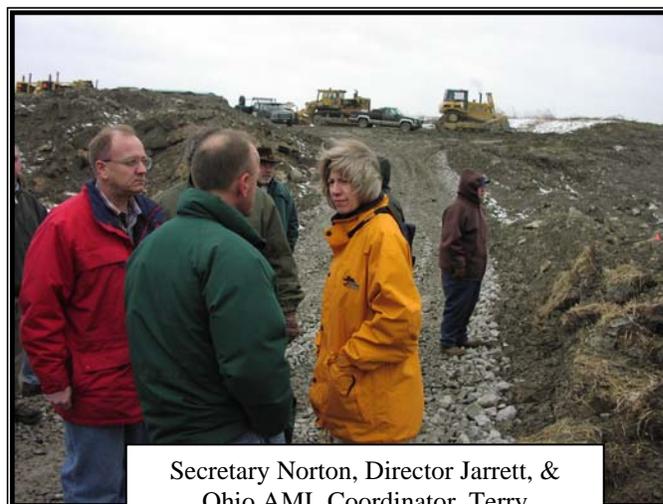
In 2003, Ohio developed a partnership with the Division of Soil and Water and the Soil and Water Conservation Districts (SWCD) to assist in the educational effort with landowners and local officials. A total of 1845 copies of the AML Development Guides were mailed to the SWCDs for distribution in each county. With other requests, Ohio has distributed over 3500 copies of the guides. Ohio has held regional and state meetings with the SWCDs to better familiarize the staff with AML issues associated with the potential building problems. The SWCDs will also be a resource to landowners and local officials on this topic.

In 2004, Ohio plans to conduct more outreach meetings with new groups such as related government agencies, bankers, realtors, and homebuilders. The SWCDs will target groups at the county level for workshops and continue to be a resource on this topic. Ohio developed an educational video for local officials and will distribute it to legislators, township trustees, county commissioners, and county engineers. A new web site has been developed to more accurately locate abandoned underground mines.

OSM Outreach

In addition to outreach efforts by Ohio, OSM also conducts outreach to the public. OSM, likewise, did not implement any new public outreach initiatives during 2004. OSM continues to provide a periodic newsletter to interested parties who have asked to be on our mailing list.

In February 2004, Secretary of Interior Gail Norton and OSM Director Jeff Jarrett, visited two AML sites in Ohio. They held a press conference to describe the administration's proposal for reauthorizing the AML Fund. Representatives from Ohio's AML program and OSM's Columbus office provided support for the visit. The press conference was attended by several local media outlets and a reporter from a national environmental news organization, representatives of a local watershed association, and the AML project contractor.



Secretary Norton, Director Jarrett, & Ohio AML Coordinator, Terry VanOfferen Discuss the US 250 Project

One of the project sites visited was the U.S. 250 Highwall Project in Harrison County where over 2000 lineal feet of dangerous highwall was being backfilled.



US 250 Highwall During Grading, Harrison County



US 250 Highwall After Grading

OSM participated in a watershed tour at Huff run in October 2003 and in the Ohio Mine Land Partnership meetings and tours in the fall and spring of 2003.

OSM's Columbus office presented posters at the USEPA Region III Mid-Atlantic Water Pollution Biology Workshop in Cacapon, West Virginia in 2004, and at Ohio's Applied Science Conference in December 2003.

IV. Major Accomplishments/Issues/Innovations in the Ohio Program

A. Program Accomplishments and Initiatives

On-the-Ground Accomplishments

Ohio continues to effectively administer SMCRA regulatory and abandoned mine land (AML) programs to protect coal-field citizens and to restore land to pre-mining conditions. Overall industry compliance on active mine sites continues at a high level. The on-the-ground, end-result of the mining and reclamation process is predominantly restoration of mined lands to a pasture/grazing post-mining land use, with permanent water impoundments interspersed to support the land use.

OSM's evaluation of off-site impacts, mostly based on enforcement actions taken by Ohio, identified 70 impacts outside permitted areas. Ohio classified three events as causing major off-site impacts. Two of these three occurrences were significant sedimentation outside the permit area that affected land, water, structures, and people. The third was a major impact to a private water supply. Fourteen off-site impacts were considered moderate and 53 minor. As in past years, hydrologic resources were impacted the most, with water quality, sediment control, and encroachment violations causing most of the impacts.

Observations regarding industry compliance and off-site impacts are supported by OSM's findings from 87 site visits on regulated mine sites (22 of these were to gather water quality data on sites with potential to produce acid-mine drainage after reclamation) and other oversight evaluations conducted during this review period. In addition, OSM conducted 67 site visits on AML projects and AML emergency or potential emergency projects to monitor Ohio's AML activities. Section VII of this report contains additional information on the number of inspections and site visits conducted.

During the 2004 Evaluation Period (EY), the Ohio mining industry, in conjunction with the Ohio Division of Mineral Resources Management, achieved final reclamation (Phase III bond release) on 5121.0 acres, an increase of 20 percent from the previous year; established soil replacement and vegetation for Phase II bond release on 2519.0 acres, an increase of 14 percent; and backfilled and graded mining areas for Phase I bond release on 2778.4 acres, a decrease of 35 percent.

Ohio completed initial reclamation on three bond forfeiture sites covering 110.2 acres. In addition, Ohio completed several maintenance projects on forfeiture sites where initial reclamation was completed in the past. Ohio issued two bond forfeiture orders on 132.8 acres.

Regulatory Program Accomplishments

Integrated Permit Process

Ohio, the U.S. Army Corps of Engineers (COE), and Ohio EPA have developed an integrated permit process that will streamline the separate permitting processes under each agency's responsibility whenever proposed coal mining operations may impact streams or wetlands. The

integrated process combines permitting requirements of each agency into one application process. The process is preceded by offering applicants opportunities for pre-application, on-site meetings with the permit application field reviewers of all three agencies. These on-site meetings provide all reviewers and the applicant the opportunity to discuss the proposed mining area and to confer on stream and wetland designations and limitations. Based on the outcome of this meeting, permit applicants and agency reviewers are better informed of the interests of all of the agencies and can provide permit applications that better address all of these interests. This approach minimizes conflicts during the permit review process, thereby reducing review time, an issue critical to the mining industry.

The process asks that permit applicants include all information necessary to meet each agency's regulatory standards in their application for a SMCRA coal mining permit. The beginning of the public comment period for the SMCRA permit application initiates the review period for COE and OEPA. These agencies provide their comments and requests for additional information to Ohio who, in turn, includes them in revision letters to the applicants. Revised applications are returned to Ohio who notifies the other agencies of the revisions and provides another opportunity for their review. No agency relinquishes any of their responsibility through this process. The goal is to have each agency issue their respective permits at the same time or in close proximity with issuance of the SMCRA mining permit.

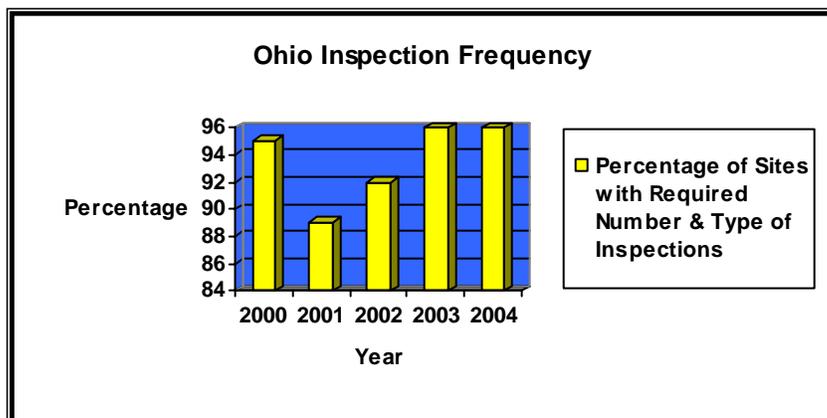
The process is new and is expected to continue to improve with more experience. Initial feedback indicates very positive results. The first permits issued under the process were all issued within one week of the SMCRA permit. COE is considering developing a similar process in other states.

AMD on Reclaimed Mine Sites

Ohio developed and issued policy guidelines for field staff regarding AMD evaluations, prevention, abatement, and AMD inventory sites. These guidelines provide specific instruction to field staff on how to evaluate and document AMD issues during inspections. Ohio also issued orders requiring two mine operators to increase monitoring and to develop and implement abatement plans to address AMD discharges on at least two reclaimed mine sites. This is the initial step toward holding permittees accountable for developing and implementing specific plans to correct AMD problems on mine sites.

Inspection Management

Ohio has continued to effectively manage its inspection workload. Ohio provides OSM with quarterly summaries of the inspection history on each permit, with a summary accounting of the percentage of sites that received the required number and frequency of inspections. The chart provides the overall average of sites receiving the required number of inspections for a five-year period.



Ohio reports that the required number of inspections was conducted on an average of 96 percent of the mine sites during the evaluation period.

Hydrology Database Development

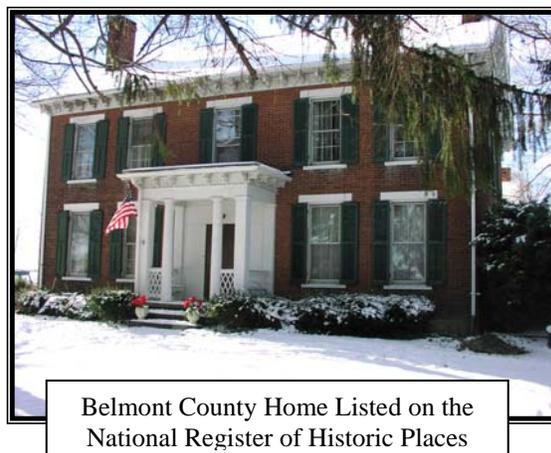
Ohio received a \$60,000 grant from the Groundwater Protection Council through the U.S. Department of Energy as start-up money for the development of a database system for surface and groundwater data. This database will include water quality information from both mining and oil and gas well operations and will provide for tracking of reportable information like quarterly water monitoring results, will enable electronic transfer of water quality data via LIMS, and will allow users to evaluate water quality trends through graphics interface. OSM will provide support personnel to assist in development.

AML Program Accomplishments

Historic Resource Preservation Agreement

Ohio, OSM, the Ohio Historic Preservation Office, and the National Advisory Council on Historic Preservation have drafted a programmatic agreement (PA). The agreement will allow Ohio to waive consultation requirements on AML projects that have been reviewed by qualified professionals and found to have no adverse impact to historic properties.

The PA should be finalized and signed by all parties sometime in the next review period.



Emergency Program

Ohio identified and abated 27 AML emergency conditions during the evaluation period. The emergency projects addressed 16 subsidence-related problems and 11 landslides.

AML Project Accomplishments

Ohio reported the following AML project completions in the Abandoned Mined Land Inventory System (AMLIS). AMLIS is the official OSM record of AML conditions in each state. Ohio's project completions addressed the following AML conditions during the EY04 evaluation period:

- 80.5 acres Clogged Stream Lands (CSL)
- 4.8 miles Clogged Streams (CS)
- 8375.5 lineal feet Dangerous Highwall (DH)
- 2.4 acres of Dangerous Landslide (DS)
- 7 acres Gob (GO)
- 21 Portals (P)
- 16.2 acres Subsidence (S)
- 1.1 acres Surface Burning (SB)
- 33 Vertical Openings (VO)
- 52 Polluted Water Supplies, Agricultural and Industrial (PWAI)
- 125 Polluted Water Supplies, Human Consumption (PWHC)
- 1 Hazardous Water Body (HWD)

Appalachian Clean Streams Program (ACSP)

Ohio continues to actively participate in this initiative. Ohio continues to support and encourage local watershed groups who want to partner with various government agencies, industry, and others who have an interest in abating AMD. The Ohio Division of Soil and Water has developed a watershed coordinator program where coordinator positions are funded at decreasing rates over a six-year period with the difference made up by local matching funds. The majority of Ohio's mining-impacted watersheds have these coordinators. Those watersheds with coordinators are identified with an * in the following list.

OSM approved three new watershed cooperatives agreements totaling \$388,000 during the review period. Ohio is continuing to work with the watershed groups to make full use of this program. Ohio has also increased its use of the ACSP funds within its AML grants, with approximately 50 percent of the \$7.5 million dollars in AML construction bids for AMD projects.

* Monday Creek: The Monday Creek Restoration Project continues to be an active and well-organized watershed group involved in AMD abatement. Some of the current activities of the group are the following:

AMD & ART Project – The design was completed during the review period. However, the Murray City town council decided not to grant the right-of-entry to the land necessary for the project due to liability concerns. The project is now cancelled.

U.S. Army Corps of Engineers (ACOE) Feasibility Study - This study is combined with the Ohio Environmental Protection Agency's (OEPA) Total Maximum Daily Load

(TMDL) study. West Virginia University has developed a hydrology model for the entire watershed that is based on the work done by the ACOE and the OEPA. This has been completed, and the study has undergone final revisions. Numerous projects identified by the study have a projected cost of about ten million dollars. ACOE held a series of public meetings at the end of the review period. Although the meetings were lightly attended, those present supported the project.

The U.S. Forest Service (USFS) has continued to be a strong partner in the watershed. Construction has started on the Snake Hollow and will start this summer on the Big Four Hollow projects. Hocking College has also completed work on the 1.5 acres Jobs Gob Pile project in cooperation with the USFS.

Grimmet Project – This project involving 3.5 acres of gob pile reclamation and installing limestone drains and trenches was contracted in August 2003 and completed by April 2004. The pH has already improved downstream of the project site.

Jobs Doser – A consultant designed this project located on USFS land. The construction contract was issued in January 2004. Substantial construction had occurred by the end of the review period. This project is partially funded by an OSM Watershed Cooperative Agreement.

* Sunday Creek: The watershed group has successfully completed its AMD Abatement and Treatment plan, making the watershed eligible for set-aside funding. The group's watershed cooperative agreement for the Congo Subsidence Closure project was also approved. The project was contracted and the work was nearing completion at the end of the review period. The group is currently concentrating its efforts on closing subsidence features that capture stream flow to reduce the amount of AMD generated from the abandoned mines. The group is also working on a demonstration project at the Corning discharge.

* Raccoon Creek: The Raccoon Creek Improvement Committee (RCIC) has completed its management plan and has received OEPA approval of the document. The watershed group has worked with various partners in applying for and receiving three watershed cooperative agreements as follows:

Carbondale II Project - The Carbondale II watershed cooperative agreement project was bid in January 2003, and construction was completed in January 2004. A water-driven doser has been installed, along with a channel that facilitates mixing and cleanout. The project has neutralized about two miles of stream.

Hope Mine Project – Preliminary design for the Hope Mine watershed cooperative agreement project has been completed. The final design work has begun. However, the completion of the design has been delayed. An abandoned strip mine contributing sediment and AMD directly into Raccoon Creek will be reclaimed using natural channel design concepts.

Mulga Run Project - The Mulga Run watershed cooperative agreement project was bid in June 2003 and was contracted in July 2003. This project includes installation of

limestone and steel slag leach beds, and limestone channels in combination with some priority 2 work to reduce residential and road flooding. Nearly all the work was completed as of the end of this review period.

* Huff Run: The Huff Run Watershed Restoration Partnership has also made effective use of OSM's watershed cooperative agreement program as follows:

Linden Bioremediation Project -The Linden Bioremediation watershed cooperative agreement project has been completed and is continuing to show significant water quality improvement at this time.

Huff Run Acid Pit #1 Project - The Huff Run Acid Pit #1 watershed cooperative agreement project was completed in May 2004.

Harsha Project – OSM received an additional application for a watershed cooperative agreement for the Harsha project, but has not approved it, as minor revisions are still needed. This will be a large project involving surface mine reclamation and pond construction. Design changes have delayed the final revisions and approval of this project.

Lindentree Project – This project was contracted with construction beginning at the end of the review period.

* Moxahala Creek: The watershed group has developed a management plan by holding a series of public meetings and sending out surveys to residents of the watershed. They also worked with Ohio to apply for a watershed cooperative agreement through the non-profit Clay Valley Foundation to construct the Misco west project. This involves sealing off seepage into a large gob pile that is generating significant amounts of AMD. The watershed cooperative agreement was approved and the work was contracted in June 2004, with construction expected to start in July.

Wills Creek: Ohio has continued to work with the ACOE on projects around Wills Creek Reservoir. This watershed does not have any citizen-based group actively involved at the present time.

Kimble Creek: The USFS has completed the installation of a pilot pyrolucite cell that was inoculated near the end of the evaluation period. Monitoring shows the system is working very well. A full-sized system will be installed next.

Yellow Creek: The watershed group has continued monitoring efforts and holding regular meetings. The group has been reviewing all the AMD sites in the watershed to try to pick an appropriate project for their first effort.

* Leading Creek: The Leading Creek Improvement Committee Advisory Council has continued to meet regularly. Several landowners in the watershed were approved to install vegetation filter strips in the buffers of tributary streams to reduce sedimentation from farming activities. Another project was approved that will relocate a dairy barn that was impacting a tributary

stream. AMD is mostly encountered in the Thomas Fork tributary that enters Leading Creek near its mouth. The impact of the AMD is less significant due to the backwaters of the Ohio River. Other tributaries containing lesser amounts of AMD are being evaluated for potential project sites. However, sedimentation, much of it from past mining, is the chief cause of impairment in Leading Creek. Most of the mines have been reclaimed, but the sediment is not scouring out of the lower sections of the tributaries or Leading Creek itself. Stream modifications and sediment removal are being considered. In May 2004, the group hosted a sediment removal demonstration by a company specializing in stream restoration. The Natural Resource Conservation Service is designing the Titus Road project. This project will reclaim an abandoned strip mine that is one of the few remaining mine sites contributing significant amounts of sediment to the watershed. Final design has been delayed due to active timbering on the site.

* Mahoning River Tributaries: The Alliance for Watershed Action and Riparian Easements (AWARE) is an existing group that recently become involved with AMD in two tributaries to the Mahoning River, Mill Creek, and Yellow Creek. AWARE is active in Mahoning County and is affiliated with the Mahoning County Metro Parks. Ohio has completed the drilling and installation of monitoring wells on the largest AMD source in the watershed. The group has begun long-term monitoring of these wells. The group is also working with Ohio to develop an application for a watershed cooperative agreement project.

* Duck Creek: The Duck Creek watershed is a stream impacted by abandoned surface mines. The primary impact is increased runoff and sedimentation. Ohio has done many projects over the years to reduce sedimentation with the goal of preventing flooding. More recently, with the creation of a watershed group with a full-time coordinator, the focus has broadened to include biological recovery. The group is working closely with Ohio and the OEPA, which has completed a TMDL study of the entire watershed. Construction on the Middleburg Project to reclaim 25 acres of barren, eroding spoil is pending permit issuance from the COE.

B. Program Issues

AMD Inventory

OSM and Ohio continued to evaluate the inventory of long-term AMD producing sites. The inventory includes active and bond-forfeited sites with actual and potential long-term treatment liabilities.

This year, OSM continued to review and refine the AMD inventory by verifying conditions on the sites through site visits. OSM conducted 26 site visits to continue collecting water quality and quantity data on the previously identified AMD problems. Some of the inventory sites were reviewed twice, once during the low-flow period and once during the high-flow period, to better characterize the water chemistry and flow variations on the sites.

During EY03, Ohio and OSM developed procedures for adding and removing sites from the AMD inventory. These procedures identify monitoring frequencies and results for removing sites, in addition to granting bond releases on permits on the inventory. Both agencies have agreed that, for a site to be removed or have bond released, the site must have four consecutive quarters of acceptable water quality discharges. During this evaluation year, several bond release

requests were evaluated on segments of permits on the AMD inventory. In most cases, Ohio notified OSM of the release requests per our agreement. OSM was able to review the requests to determine if AMD production was associated with the release segment.

During the previous evaluation year, Ohio established additional monitoring requirements for one of the permits on the inventory. The permittee took corrective actions to try to eliminate the source of the AMD. Ohio is monitoring the site to determine the success of these actions. This evaluation year, Ohio completed another in-depth review of a long-term AMD-producing permit. As a result, Ohio issued an order to the permittee to modify their monitoring plan, install new monitoring wells, and required the permittee to submit a plan detailing the measures they will take to mitigate the AMD conditions.

Ohio established a team in EY03 to develop procedures for their field staff to follow when handling and monitoring identified AMD conditions. This team completed the procedures and they are currently being implemented.

During EY05, OSM plans to more closely evaluate data from each of the sites in the inventory. Inspection frequencies will be determined by an analysis of the data collected to date on each permit. OSM and Ohio will continue to work together to refine the site inventory and to develop strategies for abating and/or treating sources of AMD on these sites.

Bond Forfeiture Program

In November 2002, OSM completed an oversight study and issued a final report on Ohio's bond forfeiture program. The report reaffirmed problems with Ohio's alternative bonding system (ABS) and Ohio's inability to correct a condition placed on the initial approval of Ohio's regulatory program.

Following the November 2002 report, OSM sent letters to Ohio encouraging them to make necessary changes to the bonding program. Ohio responded on August 14, 2003, acknowledging the bonding problem, but reporting no progress toward resolution. OSM's latest correspondence with Ohio was from the Regional Director of OSM's Appalachian Regional Office. On December 3, 2003, he notified Ohio that he was recommending that the OSM Director initiate action to withdraw approval of Ohio's bonding program under 30 CFR Part 733. The Director's office is considering this recommendation.

Currently, Ohio is evaluating draft legislation recently developed by the Ohio coal industry. The draft legislation proposes changes to Ohio's bonding program, among other things. Ohio has not fully evaluated the draft changes and has not submitted them to OSM for formal review. Ohio asked OSM to assist with their initial informal review of the draft legislation. Very preliminary indications are that the current draft legislation would not provide adequate funding to ensure timely reclamation of forfeiture sites. However, OSM is hopeful that the draft legislation is the beginning of a negotiated process that will resolve the longstanding issues with Ohio's bonding program. OSM will continue to assist Ohio as proposals are developed and submitted.

Ohio Supreme Court Decision on Regulatory Takings

The Ohio Supreme Court issued a decision on December 18, 2002, in *State ex rel. R.T.G., v. State*, 97 Ohio St.3d, 2002-Ohio-6716. R.T.G. sought compensation for regulatory takings from the State of Ohio due to the Ohio Department of Natural Resources' (ODNR) determining that 833 acres were unsuitable for coal mining. ODNR's 1994 determination was in response to a 1988 petition from the Village of Pleasant City. It was based on adverse impacts mining may have on the village's sole-source water supply. ODNR's decision followed several appeals, including one to the Ohio Supreme Court, which upheld the unsuitability determination. Following that ruling, R.T.G. filed a complaint to compel the state to appropriate approximately 500 acres of coal in and around the unsuitability area.

The Court ruled that Ohio's unsuitability designation resulted in a categorical taking of all of R.T.G.'s coal rights and issued a writ of mandamus compelling the State to appropriate the coal located within the unsuitability area. An appropriations proceeding will determine the value of R.T.G.'s coal in the designated area. Estimates are in the millions of dollars.

Since last year's report, Ohio has been gathering data and developing appraisals on the properties in preparation for the appropriations proceedings or negotiations for settlement.

Temporary Relief Decisions

OSM's 2003 review of the activities of the Ohio Reclamation Commission identified concerns with the Commission's granting of temporary relief, as reported in last year's annual report. Last year, the Commission agreed to consider OSM's recommendations regarding temporary relief decisions. Because OSM oversight has identified issues with the Commission's approach to temporary relief in the past, OSM conducted a follow-up review of all temporary relief decisions the Commission issued in EY 04.

During EY 04, the Chairman of the Commission issued seven decisions on temporary relief, granting relief in four cases and denying relief in three. OSM formally questioned two of the decisions through the Ten-Day Notice process. Although the issues addressed through the TDN were considered moot once the violation was abated, OSM's concerns about the temporary relief decisions remain. The Commission's response to the TDN raised the level of concern based on the rationale the Commission used to defend their decisions.

OSM met with the Commission to discuss the Commission's approach to temporary relief and how their interpretation may conflict with State and Federal standards. The meeting resulted in an open exchange of ideas, concepts, and different approaches that the Commission agreed to consider. OSM will continue to monitor the Commission's temporary relief decisions and work with the Commission to adjust their process to better reflect the overall intent of Ohio's and the Federal regulatory program. OSM plans to issue a follow-up report on temporary relief in EY05.

Coal Waste Disposal

OSM issued a final report last year on the disposal of coal-processing wastes, finding that

disposal of coal-processing waste occurs on approximately 7 percent of the permits in Ohio. The application requirements to obtain approval for coal-processing waste disposal rely primarily on isolating the refuse material to prevent contact with water. The purpose of this study was to 1) assess the effectiveness of permitting requirements to provide a design that the inspector can evaluate during implementation; 2) to evaluate the operator's implementation of the approved plans; and 3) to review environmental impacts of the disposal of coal-processing waste at surface coal mining operations.

The study considered all coal-waste disposal areas as having a risk of impacting the hydrologic regime. However, the likelihood of unanticipated discharges would be reduced if the disposal plans had greater detail and included verifiable critical construction phases along with certification of construction by the permittee.

A difference exists between application requirements for disposal plans for coal-waste disposal structures and plans for coal-waste disposal in the backfill area of the mine using mixing or cells. The differences require less design information and no certification or inspection requirements by the operator for disposal in the backfill. The lack of these design and construction requirements results in less effective assessments by the inspectors as to whether or not the disposal plan is being implemented.

To address the report and recommendations, Ohio assigned a team of technical, permitting, and inspection personnel, and an OSM representative. The team developed guidelines for documenting, monitoring, and communicating AMD issues to the permittee during inspections. Ohio planned for this team to also develop guidelines for ensuring that coal waste disposal follows approved disposal plans in response to OSM's recommendations, but the guidelines were not developed in EY04.

V. Success in Achieving the Purposes of SMCRA as Measured by the Number of Observed Off-Site Impacts and the Number of Acres Meeting the Performance Standards at the Time of Bond Release



Sediment Deposition from Flooding of Private Property from a Mine in Jefferson County

To further the concept of reporting end results, OSM is collecting the findings from performance standard evaluations for a national perspective in terms of the number and extent of observed off-site impacts and the number of mined and reclaimed acres that meet the bond release requirements for the various phases of reclamation. Individual topic reports that provide additional details on how OSM conducted the following evaluations and measurements are available in the Columbus OSM Office.

A. Off-Site Impacts

OSM considers evaluating and reporting the number and extent of off-site impacts as one measure of the success of the Ohio regulatory program in controlling the adverse impacts associated with mining activities.

As the basis for this measure, OSM primarily used the information that Ohio reported on the number and extent of off-site impacts based on state enforcement actions taken during the period. Ohio inspectors complete an off-site impact worksheet for each violation they issue. The inspectors assess whether an off-site impact occurred, the degree of impact, and the resources affected by the impact. OSM also considered citizen complaints that Ohio processed where an off-site impact was confirmed. In addition, OSM considered the number and extent of off-site impacts identified during OSM inspections.

Although the number of off-site impacts and the number of sites with off-site impacts is higher this year than in past years, there were some contributing factors related to data collection. EY03 was a shortened evaluation period (nine months) which would account for a lower number last year. Part of the increase is most likely attributable to Ohio's inspectors being more aware of, counting, and reporting off-site impacts than in past years. In addition, this year Ohio decided that, absent extenuating circumstances, all violations of effluent limits and exceeding permit or other authorized area boundaries were considered to have caused off-site impacts. This determination was not clear in prior years. The number of off-site impacts identified on OSM inspections is relatively consistent with past years.

Using the combination of sources of information described above, Ohio and OSM identified a total of 70 off-site impacts. There were 356 total inspectable units at the end of EY04. OSM did not inspect any of the 37 bond forfeiture/abandoned sites, and Ohio does not take enforcement action once bond forfeiture orders are issued. Therefore, no off-site impacts were identified on bond forfeiture/abandoned sites. The 37 bond forfeiture sites were not included in the 319 sites inspected by Ohio and OSM for purposes of the evaluation of off-site impacts. Ohio reported 1339 complete inspections and 2182 partial inspections on approximately 319 active and inactive mine sites during the EY 2004 evaluation period. Ohio's and OSM's combined inspections and consideration of citizen complaints identified off-site impacts on 49 mine sites. Therefore, 270 of the 319 mine sites, or 85 percent of the mine sites in Ohio had no identified off-site impacts.

Table 4 in the appendix summarizes the number of resources affected and the extent of the off-site impacts identified. The 70 off-site impacts were reported as: three causing a major impact, 14 causing a moderate impact, and 53 causing minor impacts. These 70 off-site impacts affected 91 resources of people, land, water, and/or structures. Two of the three events that caused major impacts to people, land, water, and structures were due to sediment leaving the permit area. The third major impact was due to damage to a private water supply. Ohio took appropriate and reasonable measures to address the violations and the impacts that resulted. The moderate and minor impacts were related to a variety of issues, with most of the impacts related to water quality and drainage control violations and mining operations exceeding permit boundaries.

Reducing the number of off-site impacts remains a goal of Ohio and OSM.

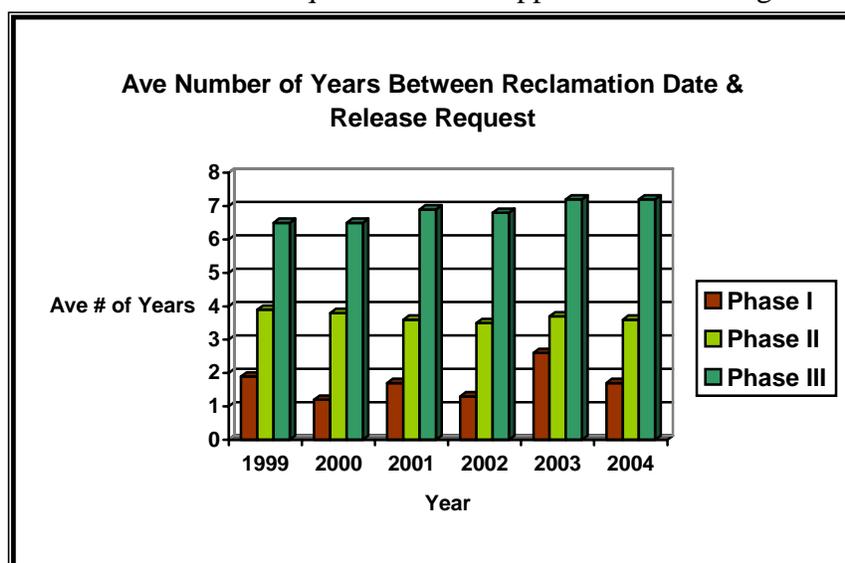
B. Bond Release and Reclamation Success

OSM conducted inspections on 13 segments on 10 permits or five percent of the reclamation segments that the Ohio District Offices approved for bond release between July 1, 2003, and June 30, 2004. OSM found that Ohio's approval of bond releases on these segments was proper in all cases. Table 5 in the Appendix tabulates information on bond releases processed by Ohio during the review period.

OSM measured contemporaneous reclamation using information provided by Ohio for all Phase I, II, and III bond releases the District Offices approved between July 1, 2003, and June 30, 2004. The information provided the date the permittee first identified a segment for reclamation and the date the permittee submitted a bond release request that Ohio approved for that segment.

This portion of the evaluation is based on Ohio's approval of bond release on 230 segments totaling 9934.7 acres. The chart provides the average time frames for each phase of bond release over the last six years. Findings from this evaluation concluded:

- Time frames for completing Phase I reclamation ranged from -0.5 years to 9.8 years¹ and averaged 1.7 years on 63 Phase I releases approved by Ohio. Bond release was requested within one year on 49 percent of the segments approved for phase I release.
- Time frames for completing Phase II reclamation ranged from 0 years to 18.8 years and averaged 3.6 years on 63 phase II releases approved by Ohio. Bond release was requested within two years on 44 percent and within four years on 71 percent of the segments approved for phase II bond release.
- Time frames for completing Phase III reclamation ranged from 0 years to 18.8 years and averaged 7.2 years on the 104 phase III releases approved by Ohio. Bond release was requested within seven years on 51 percent of the segments approved for phase III bond release.



¹The number of years is the time between the date when an incremental area or segment was identified for reclamation on the permittee's annual/final maps and the date the permittee submitted a request for bond release. For example, the Year 1 segment of a permit was identified on an annual or final report as ending in July 1998. The permittee submitted a request for Phase I bond release on Year 1 in December 1998. For purposes of this report, the time (rounded to five months) is reported as 0.4 years. Less than one year or a negative number indicates that the bond release request was dated prior to the date the segment was identified for reclamation in an annual report or the permit was finalized before the anniversary date of permit issuance.

Ohio has continued to monitor sites where mining has been completed for more than two years and the entire site has not achieved a phase II bond release. As of August 2004, there were 41 sites that met these criteria. There were 36 sites that met these criteria last year. Ohio also monitors sites where mining has been completed for more than six years, but the site has not achieved a phase III bond release. There were 31 permits that met these criteria as of August 2003, a slight decrease from 32 permits last year.

Land use statistics gathered during 47 OSM inspections continued previous trends with 80 percent of the permitted acres having an undeveloped pre-mining land use and 89 percent of the land having a pasture/grazing post-mining land use.

Remining proposed on 31 permits reviewed during OSM site visits was planned to address the following AML problem areas:

- Remove an estimated 26 miles of abandoned highwalls
- Reclaim approximately 1600 acres of unreclaimed mine spoil
- Eliminate an estimated 41 mine openings or entries

As of the date of the OSM site visit, remining on these 31 permits had:

- Eliminated nearly 18 miles of highwalls
- Reclaimed an estimated 877 acres of unreclaimed mine spoil
- Eliminated nine mine entries or openings.

The data shows the important role that remining plays in eliminating AML conditions. Unfortunately, data is not available to allow meaningful reporting on the cumulative benefits of remining over the years.

VI. OSM ASSISTANCE

During the evaluation period, OSM provided assistance to Ohio on different initiatives. The purpose of this assistance was to help Ohio more efficiently implement their program. Both OSM and Ohio found that working together cooperatively to resolve problems has been positive and successful. Listed below are brief descriptions of the specific areas where OSM assisted Ohio this year.

Cooperative Inspector Training Initiative

Ohio requested that OSM's inspection staff assist Ohio's inspection staff, particularly staff new to the coal regulatory inspection program, in learning and implementing the practices of proper inspection and documentation of observations during the inspection process. During EY04, OSM provided one session for Ohio inspectors in the North Regional Office. The session was about measurement of critical pond design and construction features.

Large Impoundment Review

Ohio and OSM have completed a final report regarding large impoundments that overlie underground mines in Ohio. The report was in response to impoundment breakthroughs into underground mines in other states. The report concluded that two of four impoundments located within 500 feet of active or known abandoned underground mines present some risk for potential breakthrough. One of the impoundments has been dewatered as part of a coal refuse recovery operation. Dewatering and reclamation of the second impoundment is planned. Ohio has reviewed and approved the final dewatering and reclamation plans. The company has notified Ohio that contracting for the dewatering of the slurry impoundment is underway.

Endangered Species

Ohio, OSM, and the U.S. Fish and Wildlife Service (FWS) signed a memorandum of understanding (MOU) that outlines how the agencies will improve coordination and consideration of endangered species during processing of mining permit applications. In addition to signing the MOU to address endangered species in general, the agencies developed species-specific conservation measures for protection and enhancement of habitat of the endangered Indiana bat. The agencies coordinated development of a policy procedures directive (PPD) with the mining industry and considered their comments. Ohio issued the PPD on February 9, 2004, with an effective date of May 15, 2004. All permit applications received after that date must consider potential impacts on Indiana bats according to the procedures outlined in the PPD.

Technical Training

Ohio's coal regulatory and AML staff participated in more than 73 training sessions between October 1, 2003, and September 30, 2003, presented by OSM's National Technical Training Program. Courses included topics such as: evidence preparation and testimony, principles of inspection, engineering principles, AML design workshops, underground mining and subsidence, wetland, testing and analysis of aquifer characteristics, NEPA, specialized computer software, and many others.

Policy Review

Ohio began a project of reviewing and updating all of their policy memoranda and asked OSM to assist with this review. The project and OSM's assistance will continue into EY05.

Reforestation Initiative

OSM's Appalachian Region started its Reforestation Initiative in EY 04. The initiative is a cooperative effort between states and OSM, along with partners in industry, environmental organizations, academia, and the public, to plant more trees on reclaimed coal mined lands in Appalachia. OSM and Ohio began planning how the initiative will be implemented in Ohio by meeting with coal industry representatives, other state agencies, and forestry experts. Ohio has notified sister agencies including the Division of Wildlife, Division of Forestry, Division of Soil



Reforestation on Federal Land Mined by Avis Coal Co. Planted by US Forest Service

and Water Conservation, and the US Forest Service of the initiative and is seeking their participation.

The initiative stresses the establishment and implementation of a forestry reclamation approach that involves planting trees using practices such as creating a suitable rooting medium for optimum tree growth, reducing compaction, planting different types of trees, using native and non-competitive ground covers, and using proper tree-planting techniques.

Draft Legislation on Changes to Ohio's Bonding Program

OSM assisted Ohio with its initial informal review of draft legislation proposing to change Ohio's current alternative bonding program and funding of regulatory program operations. Ohio drafted a response to the industry proposal along with other options to consider that is pending review by the Director of the Ohio Department of Natural Resources.

Integrated Permit Process

OSM helped Ohio provide a two-day training session for representatives of the U.S. Army Corps of Engineers (COE), the Ohio EPA, and the U.S. Fish and Wildlife Service. The training was provided at the request of the COE in response to concerns raised by the Ohio coal industry about COE's unfamiliarity with mining practices and impacts to streams in Ohio. During the session, Ohio and OSM summarized responsibilities for permitting, inspection and enforcement, engineering, hydrology, and oversight under the Ohio program and SMCRA. The session included visits to active and reclaimed mine sites where stream impacts and restoration activities were observed and discussed with mining company representatives. This effort was further support for the partnership that Ohio, OEPA, and COE have developed to implement their integrated permit process.

Abandoned Underground Mine Exploration for ODOT

OSM's Appalachian Region Federal Reclamation Program Division assisted the Ohio Department of Transportation (ODOT) by investigating the extent of abandoned underground mines with its borehole video camera and interpretation of the video. The mines are located within the proposed construction zone of a 9.5 mile bypass around Nelsonville by U.S. Route 33. The technical assistance was a continuation of past cooperative efforts between OSM and ODOT's Abandoned Underground Mine and Risk Assessment process.

Water Supply Complaint Investigation

OSM's Appalachian Region Program Support Division assisted Ohio with its investigation of a water supply complaint in Guernsey County that was potentially mine related. Ohio requested assistance from OSM hydrologists in performing and reviewing portions of their own investigation and for further technical expertise. The effort helped Ohio reach a final conclusion on the cause of the problems experienced by the complainant.

AMD Policy Development

OSM helped Ohio develop its guidelines on AMD evaluation, prevention, and inventory. These guidelines provide specific instruction to field staff on how to evaluate and document AMD issues during inspections.

VII. General Oversight Topic Reviews

OSM Oversight Inspections

During the evaluation period, OSM completed 49 site visits for general compliance monitoring of coal mining operations to assess compliance with performance standards; 10 site visits to evaluate bond releases approved by Ohio; 22 site visits specifically to obtain seasonal water quality and quantity data at sites with potential for AMD; and eight other mine site visits to follow up on issues. Over 24 percent of OSM's site visits were to collect water quality data in support of OSM/Ohio's AMD inventory initiative. In addition, OSM conducted 57 site visits to monitor AML reclamation project construction and ten site visits to evaluate potential AML emergencies or to monitor AML emergency project construction.

OSM conducts general compliance monitoring oversight inspections to learn how well Ohio is implementing its program by reviewing the on-the-ground impacts of mining operations. Other inspections are directed at very specific program areas such as bond releases or special oversight studies. OSM inspections identified issues related to drainage controls, contemporaneous reclamation, AMD, and hydrologic impacts. Hydrology issues, like AMD and drainage control problems, and excursions outside the permit area by mining operations continue to be the cause of most off-site impacts.

OSM received one formal citizen complaint during the evaluation period. The complaint was about contamination of a temporary water supply provided by a mining company after the original water supply was impacted by longwall mining. Ohio responded to the complaint appropriately.

The results of OSM inspections related to OSM special studies concerning bond release, water supply complaints, longwall mining, reclamation success, and off-site impacts are further discussed under separate topics elsewhere in this report.

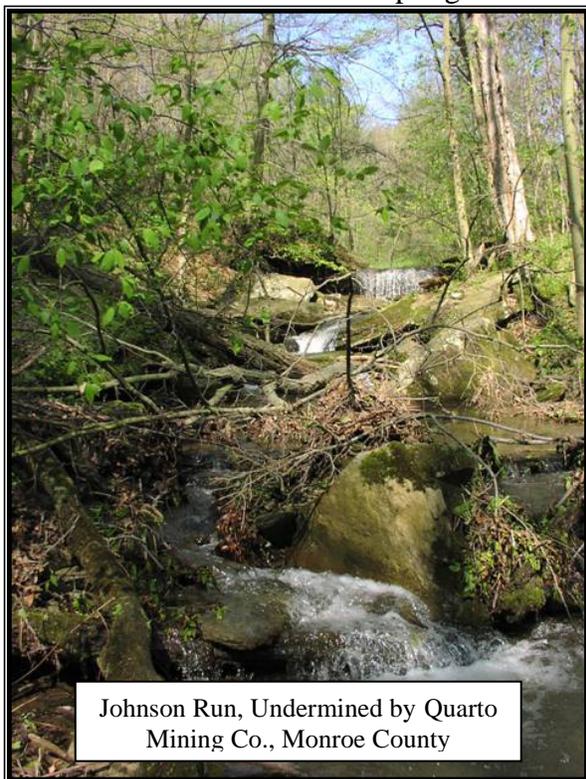
Study of Stream Impacts from Longwall Mining

OSM began a study of stream impacts from longwall mining in 2002. The study uses qualitative

benthic sampling as a possible means of detecting water loss in perennial and intermittent streams overlying longwall panels. Sampling begins upstream of the longwall panels and progresses downstream until the last sampling is done downstream of the last longwall panel. The results of these samplings are compared to see if there are any notable differences in the relative numbers or types of organisms present in areas over longwall panels versus areas upstream or downstream of those panels. A significant decrease in the numbers of organisms or an absence of multi-year organisms over the panels could indicate a potential water loss.

OSM sampled five streams over completed longwall panels in Eastern Ohio during April and May of 2002. These samples were analyzed for taxa identification and relative abundance during EY 2003. A report was done for this particular mine in the spring of 2003. The results showed that there was little difference in taxa diversity, multi-year taxa, or relative abundance for sample sites over panels versus those not over panels. All of the 28 sites sampled had taxa indicative of high quality headwater streams as defined by OEPA. The panels sampled were all from three to as much as 25 years old. It appears that there was no long-term impact from the mining, even though some subsidence features such as cracked and hooved rock were still visible in places.

OSM conducted additional sampling at an active longwall mine in the same vicinity during the spring of 2003, in new areas over proposed longwall panels, and over recently completed panels. This will better assess the short-term impacts of the subsidence. Changes in the stream morphology were noted at the active mine where long pools formed over the subsided panels. Others have also observed this impact over longwall mines in southwestern Pennsylvania.



Johnson Run, Undermined by Quarto Mining Co., Monroe County

OSM also tested the premise of the study by sampling above, across, and below an undermined stream section in the 2002 sampling area that was known to go dry during 2002's extremely dry summer. The analysis of these samples shows, that although the dry section had fewer taxa than the sites up and down stream, the number of taxa and individuals was typical of many of the streams sampled in 2002. Also, there were multi-year species present that would indicate there was some interstitial flow in the section that appeared dry.

OSM collected follow-up samples at the active site in the spring of 2004. The sample sites included those sampled in 2003 plus several samples taken over recently proposed panels. The 2004 samples have not been analyzed yet. However, some significant observations were made. A small tributary that had been undermined and was dry in 2003 was flowing in 2004. A small tributary that was flowing prior to mining in 2003 was dry after mining in 2004. Another

tributary had a visibly diminished flow and benthic community immediately downstream of an undermined area. OSM plans to complete the analysis of the samples taken this year in EY05 to make before and after comparisons. OSM will also continue monitoring the tributaries where problems were observed. This will give us a better picture of how those streams recover.

AML Construction Program

OSM reviewed Ohio's non-emergency AML construction processes for productivity and timeliness as compared to the previous year. OSM did this by maintaining a project database and conducting routine AML oversight inspections. Ohio's overall AML productivity significantly increased on nearly all levels over the recent years. Design productivity, construction contracting, and contract completions all increased significantly, as reflected by the increased number of authorizations to proceed, contracts issued, and project completions.

- National Environmental Policy Act (NEPA) Compliance

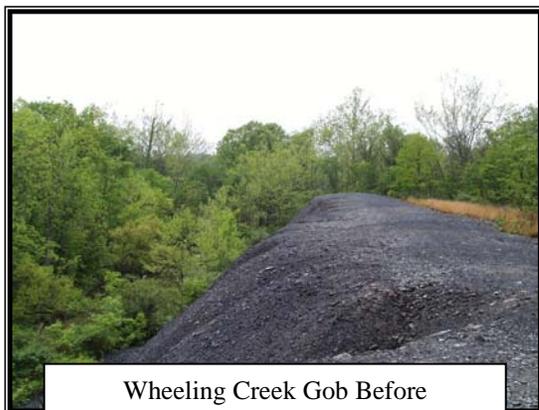
OSM issued 55 "Authorizations to Proceed" (ATP) during EY 2004 (12 months) compared to 46 for EY 2003 (nine months). This level of activity is comparable to last year's. Oversight inspections showed that NEPA submittals accurately described the project sites and any mitigation required. Ohio submitted NEPA information in a timely manner. The information included adequate descriptions of potential bat habitat, an improvement from past years.

- Design Productivity

Ohio completed 49 project designs during the review period compared to 28 for the previous year. Ohio's in-house design staff completed 30 of the 59 designs, with consultants designing the remaining 19 projects. Ohio's effort to do more in-house designs and rely less on consultants continues to be successful, even though there were 19 consultant designs completed this year compared to seven last year, and nine the year before. The increase is due to the increased activity in AMD projects that tend to involve more complicated and time-consuming designs. Of the 19 consultant designs, 14 involved AMD projects.

Conversely, there were 30 in-house designs completed this year compared to 21 for last year. OSM will continue to monitor Ohio's progress in this area, and assist Ohio in their efforts to improve their design productivity, if possible. Any savings resulting from "in-house" designs will allow more money to be directed to construction projects.

- Construction Contracting



Wheeling Creek Gob Before Reclamation, Belmont County

Ohio authorized 30 contracts totaling \$6.5 million dollars in construction contracts during the review period, compared to 14 contracts totaling \$2.8 million last year. Even though this year's review period is a full 12 months versus last year's nine-month period, this represents a significant increase in



Wheeling Creek Gob After Reclamation, Belmont County

construction contracting. This is especially true considering that an additional \$1.1 million was leveraged for construction in the AMD program. There were also several unit-price contracts issued during this period, which were not included in the 30 calculated.

The average time between the bid openings and the authorization of construction contracts went from 57.4 days in 2003, to an all-time low of 47.8 days this year, (previous low was 48.0 days in 2000). This shows that Ohio has continued to issue contracts in a timely manner. Ohio has also expanded its use of unit-price contracts to include water well replacements, portal closures, and maintenance work in addition to backfilling subsidence. This has eliminated the need to design and administer each project separately in order to bid construction. Under unit-price contracts, multiple projects are constructed under one contract. This has helped improve the productivity and efficiency of Ohio's AML program.

- AML Project Construction Completions

Ohio completed 52 projects totaling \$3.5 million (\$0.4 million leveraged) during the review period, compared to 11 last year. Last year's unusually wet spring and early summer hindered construction work, thereby reducing the number of completions. This year, weather still caused delays in the spring. However, the completion of 29 unit-price projects that are less weather dependent made up for the weather delays on other projects. In addition to the 52 completions reported, 14 water supplies were successfully replaced under a unit-price contract for drilling water wells. As last year, there were no significant delays due to design changes or cost overruns.

Abandoned Mined Land Inventory System (AMLIS)

In 2003, the Department of Interior Inspector General released an audit report on AMLIS. The report found that a significant amount of data entered into AMLIS was inaccurate. In response

to the audit, OSM agreed to conduct oversight in 2004 to ensure that states had a system in place to ensure the accuracy of data entered into AMLIS and to periodically check the system in subsequent years. OSM reviewed Ohio's AML procedures manual and found that Ohio has procedures in place that identify how and when AMLIS updates will be made. Ohio has only one person authorized to enter this data, which should ensure that the data entries are consistent and accurate. As such, Ohio has a system in place to ensure the accuracy of data being entered into AMLIS. OSM will review a sample of completed projects in 2005 to verify that Ohio's system is working.

Effectiveness of Bat Gates on AML Projects

OSM conducted a field review on a sample of AML projects where bat gates were placed in mine openings to prevent human entry, but allow access for bats. The review documented several gated openings that were being used by bats. It also showed that more recently designed and constructed gates were most likely to be properly located and constructed. We will continue to assist Ohio in surveying potential sites for gates, and for post-construction bat use.



Follow up on Ohio's Distribution of Personnel Costs

OSM initially reviewed Ohio's distribution of personnel costs in EY 2002. We finalized our report concerning that review in September of 2002. We have continued to monitor the actions Ohio has taken concerning our recommendations and to evaluate the effectiveness of their actions.

During this EY, Ohio began testing a computerized program to track time by project and program area. In July, their entire Fiscal Section began using this system, using an entire year's data. They plan to bring other support groups on line in August. OSM will review this system and the distribution of costs after Ohio has used it for a few months.

Hydrologic Monitoring Study

OSM is currently conducting a study of the ground water monitoring plans approved by Ohio for their surface mining permits. The study's purpose is to evaluate how accurately the approved plans characterize the effect of surface mining on the ground water system. A hydrologist from OSM's Appalachian Region Coordinating Center is providing technical assistance with the study. To date, seven newer permits and four older permits (issued five years ago or more) have been reviewed. We expect to complete the reviews, field-related activities, and the report during EY 05.

Ohio's Processing of Water Supply Complaints

OSM's purpose for this study was to determine the timeliness of Ohio's response to water supply complaints. The study considered the effectiveness of Ohio's changes to the complaint process in providing timely resolution to complainants' concerns.

OSM identified 56 water supply complaints related to coal mining that Ohio logged between January 1, 2002, and December 31, 2003. We reviewed 47 of the 56 complaint files maintained by the two field hydrologists. We met with the field hydrologists responsible for conducting and reporting on the complaint investigations. We reviewed the selected complaint files to determine the status of the complaint, the investigation time, and the total time from receipt of the complaint until final resolution. We also reviewed the files for documentation that citizens were provided their rights to informal review and to maintain confidentiality. The reviewers made no attempt to evaluate the conclusions reached by Ohio's investigation.

OSM's review concluded that Ohio has significantly improved on the timeliness and conclusiveness of water supply complaint investigations and final reports. Program managers acknowledge needed improvements in monitoring of investigations and review of final reports. They have developed and proposed plans to make these improvements. File documentation of informing citizens of their rights to confidentiality and informal review has improved.

Longwall Mining

In April 2001, OSM released a final report titled: "Longwall Mining – Impacts, Implementation, Interaction of the Ohio Division of Mineral Resources Management, the Mining Industry, and Landowners." This report addressed longwall mining and the processes Ohio and the mining industry use to implement the Ohio program requirements and to interact with affected property owners. The report provided five findings and recommendations regarding: permanent water supply replacement; cost of public water; documenting extent of impacts; repair and compensation for damage to structures; and communication, information, and understanding between Ohio, industry, and landowners.

OSM conducted a follow-up review during this review period to document changes Ohio has made since OSM's 2001 study and to determine how effective those changes are.

Based on our interaction with Ohio during this review, they have significantly increased their awareness of the properties and features impacted by longwall mining. They have improved their ongoing communication with the mining companies and landowners so that they are better aware of the status of impacts and repairs/compensation on most properties. Although Ohio has not yet developed a data collection system to better track impacts and repairs/compensation, individual inspectors appear to be documenting the status of each property in their own way. Ohio indicated they hope to continue working toward a more comprehensive approach to documenting impacts and status on individual properties in addition to the current individual approach. We encourage Ohio to develop a more comprehensive system using information readily available in permits and water supply monitoring data provided by the mining companies as a baseline.

Ohio is more proactive on longwall mining issues by meeting with some landowners prior to undermining to explain the program and obligations of the company and the landowner.

Ohio has taken a more active role by working with one mining company to resolve several long-standing permanent water supply replacement issues on several properties and by working on updating the status of repairs/compensation on properties affected. Although there appears to be some progress toward final resolution, it has been at least five years, and longer than ten years on some properties, since the supplies were impacted. Ohio should increase its efforts with the company to reach final resolution.

There are also a few water supplies that have not been permanently replaced within 18 months at the two other mines. Ohio should closely evaluate all situations where permanent water supply replacements have not occurred within 18 months as required by the permits. Ohio should determine why the permittee has been unable to resolve the matter in the required time and formally document what action the permittee plans to take to resolve the situation. Adequate Ohio/permittee attention to these water supplies should prevent the long-term situations that currently exist at one mine from developing at the other mines.

Ohio is currently working on clarifying its water supply replacement policy. As the revision process proceeds, we encourage them to consider providing additional guidance and definition of water supplies with a legitimate use. The current draft revised policy addresses operating and maintenance costs, limitations on public water as a permanent agricultural water supply replacement, limitations on waivers on installation of water delivery systems, and demonstrations to show that water resources are or are not available for future development. All of these matters should be addressed in the final version of the policy.

Ohio is currently evaluating the alternative water supply replacement provisions of a permit during the renewal process. We encourage Ohio to consider requesting revisions to the current permit language so it more clearly reflects the requirements of ORC 1513.162 and Ohio court decisions regarding water replacement. At a minimum, the replacement plans should reflect any final changes to the current Ohio water replacement policy, once the changes occur. Whatever changes are made to this permit should also be required of the other active longwall permit.

Permit Renewals and Expired Permits

Over the past few years, OSM and Ohio identified some permits that had expired without renewal. In the 2004 Performance Agreement between Ohio and OSM, we agreed to a review of Ohio's permit renewal process to determine if renewal applications have been filed and processed in a timely manner.

Operators can continue mining while Ohio processes their renewal applications, if they submit the application at least 120 days before the expiration of the permit involved. If the operator submits the renewal application less than 120 days from the expiration date, the operator must cease mining on the expiration date until the renewal is issued. If the operator submits a renewal application after the expiration date, they must stop mining and submit a new permit application rather than a renewal application.

If Ohio requires revisions to a permit renewal application, they send a notice to the operator to submit the revisions within 30 days. If the operator does not submit the revisions within 30 days, Ohio can take enforcement action to stop mining until a renewal is issued.

OSM reviewed 127 permits that were potentially subject to renewal. For the purpose of OSM's review, OSM defined "timely manner" as the date of approval/issuance of the renewal being equal to or less than the expiration date for the permit. From the review, we found that Ohio issued 47 percent of the permit renewals in a timely manner, 31.5 percent of the permits after the expiration date, and 15 percent of the permits had completed mining and were not renewed.

Ohio is tracking permit expiration dates and working to ensure that they process permit renewals in a timely manner. However, for those renewal applications with issues, Ohio does not have a system in place to ensure that they stay on top of resolving the issues. As a result, some of the permits have been expired for a year or longer, without a decision on the renewal application. OSM recommended that Ohio should develop a process for tracking and resolving the pending issues on renewal applications. The process should clearly establish a line of communication to ensure that all of the needed information related to a renewal application is available to the appropriate Ohio staff, that it is considered in a timely manner, and that a decision is issued.

Ohio's Use of Applicant Violator System (AVS) and Ownership and Control Provisions

The purpose of the review was to evaluate how effective Ohio's consultations are with OSM's AVS office prior to issuing a permit. The purpose of this communication is to ensure that they only issue permits to those eligible in accordance with their laws and regulations and the MOU between Ohio and OSM.

In 2003, OSM's Lexington Applicant/Violator System Office conducted an analysis of Ohio's use and operation of the AVS for the period of September 1, 2002 – August 31, 2003. The purpose of their analysis was to determine if Ohio was entering the necessary information in the AVS in a timely, complete, and accurate manner. As a part of this review, OSM also followed up on areas that the AVS office recommended for review.

In summary, OSM's review found the following:

- Ohio is effectively consulting with OSM's AVS office prior to issuing permits to ensure that they only issue permits to those eligible in accordance with their laws and regulations and the MOU between Ohio and OSM.
- Ohio could improve their documentation of their AVS checks to verify ownership and control information and to ensure that there are no outstanding violations by requiring that each file contain the same documentation (either printed copies of Ohio's system checks in AVS or OSM's quality checks).
- Ohio has revised their process for performing the AVS checks on AML contractors to make it more streamlined.
- To ensure that unabated violations and bond forfeitures are entered into the AVS, Ohio needs to revise their process to provide a way of tracking these to ensure that they are sent to the person responsible for entering them in the ABS.

OSM Part 732 Notices and Program Amendments

Program Condition

Ohio has one program condition remaining at 30 CFR 935.11 from OSM's 1982 approval of the Ohio permanent regulatory program. Ohio must demonstrate that its ABS will ensure timely reclamation at the sites of all operations for which bond has been forfeited. OSM also issued a Part 732 letter to Ohio on this issue on October 1, 1991. The letter notified Ohio that it must revise the Ohio program to ensure that the ABS will have sufficient funds to complete the reclamation plans for any areas in default at any time. An actuarial analysis of Ohio's ABS as of December 31, 1992, found that Ohio's ABS is solvent if certain assumptions are fulfilled. In February 1994, Ohio reported that its ABS continues to have a \$1.5 million deficit. On June 30, 1995, Ohio and OSM updated an Improvement and Monitoring Plan for the Ohio ABS. OSM's review of this program area in EY 2002 again identified that Ohio's inability to complete timely reclamation of bond forfeiture sites remains a significant issue. There has been little improvement in timeliness of reclamation in the last 20 years.

OSM has sent four letters to Ohio since the conclusion of OSM's review of the bond forfeiture program in November 2002. The latest letter, dated December 3, 2003, notified Ohio that the Regional Director was recommending that the OSM Director begin 30 CFR Part 733 proceedings. If the recommendation is accepted, OSM would begin the process to withdraw approval of the Ohio program, in whole or in part. The OSM Director is considering the Regional Director's recommendation. Since, the recommendation was made, the Ohio coal industry has provided Ohio with draft legislation intended to make changes to Ohio's ABS and funding of program administration. Ohio is currently reviewing the draft and developing options in hopes of beginning a dialogue with the mining industry on this issue.

Program Amendment 69

During OSM's review of Ohio's administrative review process, we discovered that Ohio had not adopted changes to conflict of interest rules in OAC 1501:13-1-03. OSM approved Ohio's proposed changes contained in Program Amendment 69 on July 17, 1995. The changes were in response to an OSM review of conflict of interest provisions that suggested that Ohio clarify their rules. Due to an oversight, the rules were not promulgated. OSM and Ohio will be discussing whether the rules still need to be adopted or if Ohio should withdraw the amendment. No progress occurred toward final resolution during the review period.

Program Amendment 75 Attorney Fees

In 1998, OSM approved proposed revisions to the Ohio Revised Code concerning award of attorney fees. This issue has been a long-standing legal issue with the Ohio Program. OSM expected that Ohio would have a sponsor introduce this revision, along with other statutory changes, to the Ohio Legislature during 2000, 2001, 2002, 2003, and again in

2004. There has been no change in the status of this issue. However, Ohio continues to pursue inclusion of the approved amendment in a legislative package.

Program Amendment 79 Blaster Certification

OSM approved Ohio's proposed amendment to its blaster certification rules on October 3, 2003. The rules became effective on April 15, 2004.

Program Amendment 80 Remining

Ohio submitted a formal program amendment on remining on November 7, 2003. The amendment is intended to address changes to Federal rules adopted by EPA regarding water quality standards in remining situations. OSM approved this amendment in August 2004.

Valid Existing Rights

OSM notified Ohio on August 22, 2000, of recent changes to Federal regulations pertaining to VER. Ohio is deferring its final response pending the outcome of legal challenges to OSM's VER rule. Challenges to OSM's VER rule have not yet been decided.

Appendix A

Tabular Summary of Core Data to Characterize the Program

TABLE 1

COAL PRODUCTION (Millions of short tons)			
Period	Surface mines	Underground mines	Total
Coal production ^A for entire State:			
Annual Period			
2001	12,779,952.000	12,848,549.000	25,628,501.000
2002	10,121,933.000	10,725,363.000	20,847,296.000
2003	8,830,597.400	13,002,429.150	21,833,026.550
Total	31,732,482.400	36,576,341.150	68,308,823.550

^A Coal production as reported in this table is the gross tonnage which includes coal that is sold, used or transferred as reported to OSM by each mining company on form OSM-1 line 8(a). Gross tonnage does not provide for a moisture reduction. OSM verifies tonnage reported through routine auditing of mining companies. This production may vary from that reported by States or other sources due to varying methods of determining and reporting coal production.

TABLE 2

INSPECTABLE UNITS

As of June 30, 2004

Coal mines and related facilities	Number and status of permits								Insp. Units ^D	Permitted acreage ^A (hundreds of acres)		
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals					
	IP	PP	IP	PP	IP	PP	IP	PP				
	IP	PP	IP	PP	IP	PP	IP	PP				
STATE AND PRIVATE LANDS REGULATORY AUTHORITY: STATE												
Surface mines	191		77		32		0	300	300	92		92
Underground mines	17		2		0		0	19	19	5.6		5.6
Other facilities	30		2		5		0	37	37	4.4		4.4
Subtotals	0	238	0	81	0	37	0	356	356	0	102	102
FEDERAL LANDS REGULATORY AUTHORITY: STATE												
Surface mines	1		1				0	2		0.1		0.1
Underground mines							0	0				0
Other facilities					1		0	1		0.04		0.04
Subtotals	0	1	0	1	0	1	0	3	0	0	0.14	0.14
ALL LANDS^B												
Surface mines	191		77		32		0	300	300	92		92
Underground mines	17		2		0		0	19	19	5.6		5.6
Other facilities	30		2		5		0	37	37	4.4		4.4
Totals	0	238	0	81	0	37	0	356	356	0	102	102
Average number of permits per inspectable unit (excluding exploration sites)									<u>1</u>			
Average number of acres per inspectable unit (excluding exploration sites)									<u>286.5</u>			
Number of exploration permits on State and private lands:							<u>0</u>		On Federal lands ^C :		<u>1</u>	
Number of exploration notices on State and private lands:							<u>69</u>		On Federal lands ^C :		<u>1</u>	
<p>IP: Initial regulatory program sites</p> <p>PP: Permanent regulatory program sites</p> <p>^A When a unit is located on more than one type of land, include only the acreage located on the indicated type of land.</p> <p>^B Numbers of units may not equal the sum of the three preceding categories because a single inspectable unit may include lands in more than one of the preceding categories.</p> <p>^C Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management.</p> <p>^D Inspectable Units includes multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.</p>												

TABLE 3

STATE PERMITTING ACTIVITY												
As of June 30, 2004												
Type of Application	Surface mines			Underground mines			Other facilities			Totals		
	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres^A	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres
New Permits	30	57	5,035	3	3	7,198	0	0	0	33	60	12,233
Renewals	33	41		1	0		0	0		34	41	0
Transfers, sales and assignments of permit rights	13	14		0	0		0	0		13	14	
Small operator assistance										0	0	
Exploration permits	1	1		0	0		0	0		1	1	
Exploration notices ^B		69									69	
Revisions (exclusive of incidental boundary revisions)		240									240	
Incidental boundary revisions		41	190								41	190
Totals	77	463	5,225	4	3	7,198	0	0	0	81	466	12,423

OPTIONAL - Number of midterm permit reviews completed that are not reported as revisions. _____

^A Includes only the number of acres of proposed surface disturbance.

^B State approval not required. Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining.

TABLE 4

OFF-SITE IMPACTS														
RESOURCES AFFECTED			People			Land			Water			Structures		
DEGREE OF IMPACT			minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE	Blasting	1										1		
	Land Stability	5				3	1		2					
	Hydrology	45	1		2	15	6	2	22	9	2	1		1
	Encroachment	13	1			11			3	1				
	Other	6				2	2		1			1		1
	Total	70	2	0	2	31	9	2	28	10	2	3	1	1
Total number of inspectable units:						<u>319</u>								
Inspectable units free of off-site impacts:						<u>270</u>								
OFF-SITE IMPACTS ON BOND FORFEITURE SITES														
RESOURCES AFFECTED			People			Land			Water			Structures		
DEGREE OF IMPACT			minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE	Blasting													
	Land Stability													
	Hydrology													
	Encroachment													
	Other													
	Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Total number of inspectable units:						<u>37</u>								
Inspectable units free of off-site impacts:						<u> </u>								

Refer to the report narrative for complete explanation and evaluation of the information provided by this table.

TABLE 5

ANNUAL STATE MINING AND RECLAMATION RESULTS		
Bond release phase	Applicable performance standard	Acreage released during this evaluation period
Phase I	- Approximate original contour restored - Topsoil or approved alternative replaced	2,278.40
Phase II	- Surface stability - Establishment of vegetation	2,519.00
Phase III	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	5,121.00
	Bonded Acreage Status^A	Acres
Total number of acres bonded at end of last review period (June 30, 2003) ^B		NA
Total number of acres bonded during this evaluation year		NA
Number of acres bonded during this evaluation year that are considered remining, if available		NA
Number of acres where bond was forfeited during this evaluation year		132.8

^A Bonded acreage is considered to approximate and represent the number of acres disturbed by surface coal mining and reclamation operations.

^B Bonded acres in this category are those that have not received a Phase III or other final bond release (State maintains jurisdiction).

TABLE 7

STATE BOND FORFEITURE ACTIVITY (Permanent Program Permits)		
Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Acres
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2003 (end of previous evaluation year) ^A	13	290.5
Sites with bonds forfeited and collected during Evaluation Year 2004 (current year)	8	704.0
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2004 (current year)	0	0.00
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2004 (current year)	3	110.2
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2004 (end of current year) ^A	18	884.3
Sites with bonds forfeited but uncollected as of June 30, 2004 (end of current year)	10	714.8
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of June 30, 2003 (end of previous evaluation year) ^B	12	1265.1
Sites where surety/other party agreed to do reclamation during Evaluation Year 2004 (current year)	1	55.1
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2004 (current year)	0	0.00
Sites with reclamation completed by surety/other party during Evaluation Year 2004 (current year) ^C	0	0.00
Sites being reclaimed by surety/other party as of June 30, 2004 (current evaluation year) ^B	9	811.2
<p>^A Includes data only for those forfeiture sites not fully reclaimed as of this date</p> <p>^B Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date</p> <p>^C This number also is reported in Table 5 as Phase III bond release has been granted on these sites</p>		

TABLE 8

OHIO STAFFING (Full-time equivalents at the end of evaluation year)	
Function	EY 2004
Regulatory Program	
Permit review	4.50
Inspection	11.00
Other (administrative, fiscal, personnel, etc.)	5.50
Regulatory Program Total	21.00
AML Program Total	41.30
TOTAL	62.30

TABLE 9

<p align="center">FUNDS GRANTED TO OHIO BY OSM (Millions of dollars) EY 2004</p>		
<p>Type of Grant</p>	<p>Federal Funds Awarded</p>	<p>Federal Funding as a Percentage of Total Program Costs</p>
Administration and Enforcement	\$2.00*	50
Small Operator Assistance	\$0.06	100
Totals	\$2.06	

* FY03 Grant of \$1.66 million was for a 10 month period, amortized for a 12 month period results in \$2 million.

Appendix B
Ohio's Comments on the Draft Report

Division of Mineral Resources Management

Michael L. Sponsler, Chief
1855 Fountain Square Court - Bldg. H-3
Columbus, OH 43224-1383
Phone: (614) 265-6633 Fax: (614) 265-7999

August 24, 2004

Mr. George Rieger
DOI Office of Surface Mining
4605 Morse Road, Room 102
Columbus, Ohio 43230

RE: Comments on Draft 2004 Annual Evaluation Summary Report for Ohio

Dear Mr. Rieger:

Ohio has only a few comments on the Draft Annual Evaluation Report. They are as follows:

In Section III, "Overview of the Public Participation Opportunities...." We suggest that you consider adding a summary of the following Outreach Initiative:

2003 –2004 Abandoned Mined Lands Educational Outreach Initiative

The goal of the educational outreach initiative is to educate individuals, groups, and government agencies concerning the potential building problems associated with abandoned mined lands (AML). AML development can lead to expensive repairs when settling occurs, landslides develop or other types of problems occur. The AML program does not fund reclamation, water replacement or stabilization projects if the landowner fails to address the AML problems prior to development.

In 2002, the Division created the AML Development Guide to assist in evaluating past mining sites for house, road or other types of development. A total of 700 copies of the guides were mailed to legislators, township trustees, county commissioners and county engineers in 37 counties.

In 2003, MRM developed a partnership with the Division of Soil and Water and the Soil and Water Conservation Districts (SWCD) to assist in the educational effort with landowners and local officials. A total of 1845 copies of the AML Development Guides were mailed to the SWCDs for distribution in each county. With other requests MRM has distributed over 3500 copies of the guides. MRM has held regional and state meetings with the SWCDs to better familiarize the staff with AML issues associated with the potential building problems. The SWCDs will also be a resource to landowners and local officials on this topic.

In 2004, MRM plans to conduct more outreach meetings with new groups such as related government agencies, bankers, realtors, and homebuilders. The SWCDs will target groups at the county level for workshops and continue to be a resource on this topic. An educational video has been developed for local officials and will be distribution to legislators, township

trustees, county commissioners and county engineers. A new web site has been developed to more accurately locate abandoned underground mines.

In Section V, Item A, “Off-Site Impacts”, we ask that you add in the third paragraph the number for the total inspections of the 326 mine sites that had no identified off-site impacts. Number of permits is a good measure in one regard, but the total number of inspections is an additional measure of compliance.

Section V, Item A, “Off-Site Impacts”, the tone of the report in the next to the last paragraph suggests that there are many more off-site impacts than in past years. Given that the Division only began recording off-site impacts relative to Notices of Violation and Cessation Orders in 2002 and the shortened evaluation year in 2003, we feel that it is not a fair comparison. Please consider revising the portrayal of these numbers.

Section VI, “Large Impoundment Review” we suggest the last two sentences be revised to read as follows: ‘The final dewatering and reclamation plans have been reviewed and approved by Ohio and the company has notified DMRM that contracting for the dewatering of the slurry impoundment is underway.’

Section VII, “General Oversight Topic Review” under the report of Design Productivity we find that the number of project designs listed do not total “59” as reported but “49” (30 in-house, 19 consultant design), please check these figures and revise as appropriate.

Section VII, “General Oversight Topic Review” under the report of “Ohio’s Use of Applicant Violator System” the next to the last bullet point, Ohio suggests that you revise the language to reflect that “Ohio has revised their process” rather than “could revise”.

Accomplishments:

The Division has received a \$60,000 grant from the Groundwater Protection Council (GWPC) through the Department of Energy as start up money for the development of a database system for surface and groundwater data. This database will include water quality information from both mining and oil and gas well operations and will provide for tracking of reportable information like quarterly water monitoring results, enabling electronic transfer of water quality data via LIMS and will allow users to evaluate water quality trends through graphics interface. OSM will be providing support personnel to assist in development.

Thank you for the opportunity to comment on your Annual Evaluation Summary Report. If you have an questions regarding our comments, please feel free to contact Tom Hines.

Sincerely,

signed
Tom Tugend
Deputy Chief

pc: Mike Sponsler, Scott Kell, Tom Hines

OSM adopted Ohio’s comments as reflected in this final report.