

***EY 2002 Performance Agreement***

**Between**

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

**And**

**The Office of Surface Mining Reclamation and Enforcement  
Columbus Oversight and Inspection Office**

**October 2001**

**Final**

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## **Part I. Purpose of This Agreement**

The purpose of this performance agreement between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Ohio Division of Mineral Resources Management, Ohio Department of Natural Resources (Ohio), is to:

- 1) Foster a shared commitment to implement the Surface Mining Control and Reclamation Act (SMCRA) through the Ohio regulatory and Abandoned Mined Land (AML) reclamation programs by identifying shared goals and working as partners to accomplish those goals.
- 2) Discuss and address issues in a manner that produces clear descriptions of those issues and mutually agreeable solutions.
- 3) Identify solutions to problems that allow for incremental problem-solving to meet both short-term and long-term goals.
- 4) Focus joint problem-solving on the main goal of making improvements, rather than on solidifying differences of opinion.
- 5) Develop an atmosphere of shared resources and ideas to enhance our problem-solving ability in the context of a State/Federal partnership.
- 6) Ensure that both parties understand each other's goals and responsibilities for the coming Evaluation Year.

OSM will make this performance agreement a part of the Evaluation File of our oversight efforts maintained for public review.

## **Part II. Shared Program Goals**

Ohio and OSM have established shared goals. These shared goals, the actions that OSM and Ohio will take to meet these goals, and the status of these actions are listed in Attachment A. OSM, with Ohio's assistance, will update Attachment A as necessary to reflect changes in the status of the joint actions. (Note: Both Ohio and OSM have established other goals to fulfill their own individual program needs.)

### **Part III. Evaluation Plan**

#### **A. Introduction**

OSM's Directive REG-8 establishes the framework within which OSM conducts oversight of State programs. This agreement reflects the flexibility and latitude provided by this Directive.

The Columbus Oversight and Inspection Office of the Appalachian Regional Coordinating Center (ARCC) will conduct OSM's oversight of the Ohio Program.

Through this agreement, OSM and Ohio have identified the basic concept of oversight and assistance to the Ohio Program. The identified oversight and assistance in the attachments to the agreement reflect Ohio's and OSM's view of the highest priority areas for review and areas that need assistance.

This agreement is supplemented by Attachments A through F. These attachments describe the specific oversight focus areas, OSM inspections, pending issues and status from past oversight, program conditions, and assistance efforts. The basic terms of this agreement will apply to future years to eliminate the need to develop a new agreement each year. The attachments will be updated annually to reflect changes in status and new oversight and assistance areas.

OSM and Ohio may modify this agreement as issues are resolved, as new issues arise, or as work priorities change.

#### **B. Continuous Oversight**

OSM will conduct oversight of the Ohio programs as an ongoing process throughout the year. This process will involve analysis of Ohio inspection findings, program data, grant reports, Ohio internal control reports, and other information routinely provided by or available to Ohio. OSM's oversight will stress prevention, detection, and prompt correction of any problems noted. The oversight inspection criteria for OSM's planned oversight inspections are included as Attachment C.

#### **C. Special Oversight Studies**

In addition to continuous oversight, OSM may conduct special in-depth studies of selected areas of Ohio's program each year. These oversight studies will emphasize overall "on-the-ground" success of reclamation and how effectively the Ohio program is meeting the goals of SMCRA. Oversight studies will also recognize any innovative ways Ohio approaches managerial efficiency, problem resolution, or environmental protection, and will recognize any areas of outstanding implementation of Ohio's approved program.

The selected oversight topic areas are shown in Attachment B. OSM will update Attachment B as necessary to reflect the current status of oversight studies and any changes that occur. Before beginning

oversight identified in Attachment B, OSM will develop, in consultation with a designated Ohio contact person, written outlines that will describe the anticipated scope, methodology, time period, population size, sampling scheme, and sample size of the proposed review. These reviews need not rely exclusively on random sampling. The review outlines will also describe any assistance that Ohio or other branches of OSM will provide during the course of the study. OSM will provide a minimum of ten working days for Ohio to review and comment on each draft review outline.

## **D. Public Participation**

### **a. Public Outreach**

Section 102(I) of SMCRA stresses the importance of involving all parties in the development and enforcement of State and Federal programs. OSM and Ohio currently have their own public outreach programs that include:

#### **Ohio:**

- Public rulemaking notice mailing list
- Periodic mailings to the mining industry and consultants on topics of interest
- Council of Unreclaimed Strip Mined Land biennial reports
- Various publications such as the Wildlife Manual
- Educational materials such as "**Let's See Trees**" video, poster, and display
- Staff participation in "**Partnering in Environmental Education**"
- Annual regional AML project and funding meetings held throughout the State
- Department and Division websites
- Meetings with groups and individuals who express an interest in mining activities
- Quarterly permitting workgroup meetings with industry representatives
- AML Educational Outreach Program that addresses the hazards of constructing residential housing on abandoned mined lands
- Electronic mine permit application
- Citizen's Guide to Mining and Reclamation

#### **OSM:**

- Evaluation and Administrative Record public files
- Monthly newsletter
- Federal Register notice mailing list
- Public comment periods announced in the Federal Register
- Annual oversight/evaluation reports
- OSM Home Page on Internet
- Meetings with groups and individuals who express an interest in mining activities

Ohio and OSM agree to continue to evaluate and improve their outreach programs.

OSM Directive REG-8 requires that OSM develop an outreach program that solicits public comments regarding OSM's oversight process, recommendations for review topics within the Ohio program, and suggestions for improvements to future annual evaluation reports.

As a part of outreach, OSM and Ohio agree to periodically meet with industry and environmental special interest groups to discuss areas of interest and to seek input from such groups. OSM/Ohio will seek input from those individuals and groups who have specifically expressed interest in the mining and AML programs.

Ohio may use input from such meetings as an indication of the public's perception of its performance and to obtain input on perceived problem areas.

#### **E. Measurement of On-the-Ground Reclamation Success**

OSM's approach to oversight, developed in conjunction with States and directed by OSM Directive REG-8, specifies two measurements for evaluating and reporting the success of a State Program in achieving the environmental performance standards (on-the-ground success) of SMCRA. These two measurements are the number of mined acres meeting the performance standards for each phase of bond release, and the number and extent of off-site impacts caused by mining and reclamation. To evaluate and report on these measurements, Ohio and OSM cooperatively developed the needed data and the evaluation methods in 1996. Ohio will work with OSM staff to create and refine a mechanism that will have Ohio inspectors collecting data about off-site impacts during inspections. Ohio inspectors will provide the data on a quarterly basis to Ohio managers who will share it with OSM. A procedure will also be developed that will provide criteria for assigning the degree of each impact. OSM will consider the data provided by Ohio in its annual assessment of off-site impacts.

### **Part IV. Resolving Issues**

#### **A. Issue Resolution Methods**

Ohio and OSM will resolve issues in a cooperative manner as those issues arise. OSM and Ohio may use any of the following mechanisms to resolve issues:

- ! Discussions at meetings between OSM and Ohio staff.
- ! Joint data collection and evaluation to determine the actual extent and/or causes of perceived problems.
- ! Creation of joint problem-solving teams comprised of staff from both offices.

- ! Joint solicitation of third-party assistance to clarify or arbitrate perceived problems.
- ! Discussion at specially scheduled meetings between Ohio and OSM officials.
- ! Joint OSM-Ohio preparation of written plans with steps agreed upon by both parties to resolve problems.

## **B. Issues Pending Resolution**

The issues presently pending resolution and their status are listed in Attachment D. With Ohio's assistance, OSM will update these attachments as necessary to reflect the current status of the issues.

## **Part V. Joint Database of State Program Information**

Ohio and OSM will continue to work on the establishment of a joint database system with a goal of eliminating most, if not all, of the duplication of handling hard copy information. Ohio will provide OSM with read-only access to the captured data to facilitate information sharing and reduce the need for duplicate data entry and research.

Ohio will create database elements and reporting components with input from OSM to ensure that mandatory reporting elements for both agencies are readily available where practical. Database development will provide information that will enable Ohio and OSM to report on the size, impact, and results of mining and reclamation in Ohio, plus the day-to-day program activities.

Until the joint database is developed so that OSM can access and retrieve information, Ohio will continue to assist and provide OSM with information to answer customer requests and fulfill annual reporting requirements about the Ohio Program. Ohio will provide the information or make it available to OSM upon request and on an annual basis at the end of each evaluation year. The information needed includes general inspection, enforcement, permitting, and other information that Ohio has provided in the past.

## **Part VI. Assistance**

In light of the consolidation of the Division of Oil and Gas and the Division of Mines and Reclamation into ADMRM, there will be an increased need for training for the new staff who will ultimately have Acoal inspection duties. Specifics relating to training and assistance needs are identified in Attachment F. Ohio and OSM will provide training and assistance to each other as needs and capabilities develop. Specific assistance topics are identified in Attachment F.

**Part VII. Signatures**

Representing the Ohio Department of Natural Resources, Division of Mineral Resources Management, and the Office of Surface Mining Reclamation and Enforcement, the following parties agree to the purpose, goals, and anticipated actions proposed in this performance agreement:

Signed MSponsler                      10/22/01  
Michael Sponsler                      Date  
Chief  
Ohio Division of Mineral Resources Management

signed George J. Rieger                      10/3/01  
George J. Rieger                      Date  
Program Manager  
Oversight & Inspection Office  
Office of Surface Mining

## **Attachment A. Shared Goals of Ohio and OSM**

- 1) Ensure long-term solvency of the Ohio Alternative Bonding System.
- 2) Further the joint efforts now underway to protect the hydrologic balance both on and off-site by addressing the findings from past OSM evaluation reports; by designing and implementing inspection, evaluation, and permitting procedures for preventing acid mine drainage; and by fully participating in OSM's Appalachian Clean Streams Initiative.
- 3) Evaluate and use methods that measure on-the-ground results and impacts as one method to assess the effectiveness of Ohio's programs in fulfilling the purposes of SMCRA.
- 4) Continue to develop and improve Ohio's automated data processing and reporting capabilities.
- 5) Conduct joint reviews and problem-solving to ensure that Ohio meets its program requirements in an effective and efficient manner.
- 6) Provide prompt and effective response to concerns raised by the public, and provide an effective outreach program to coal field citizens, industry, and interest groups.
- 7) Remove barriers and provide incentives to re-mining to achieve environmental gains through the re-mining of abandoned mined lands.
- 8) Continue to develop and update an inventory of post-SMCRA sites that currently have a reasonable probability of producing acid-mine drainage after reclamation. Explore solutions and mechanisms for acid-mine drainage (AMD) remediation, including the evaluation of permitting criteria and the on-the-ground performance of prevention methodologies.
- 9) Meet fiscal reporting requirements in a timely manner.

## Attachment B. Oversight Activities

### Annual and/or On-going Studies from Prior Years -

- Achievement of performance standards at the time of bond release (reclamation success)

OSM's lead person is Dan Schrum. OSM inspectors will continue to contact Ohio inspectors to schedule inspections on sites for evaluating bond releases. OSM will develop a report on reclamation success. The report will include data collected by OSM on approved bond releases, contemporaneous reclamation, remaining, land use, and hydrologic impacts.

- Evaluation of the number and degree of off-site impacts

OSM's lead person is Mark Balaj. Ohio's contact person is Dave Clark. OSM will collect data to address this national measurement on all inspections, as well as from State inspection and enforcement and citizen complaint data. Ohio will work with OSM staff to create and refine a mechanism that will have Ohio inspectors collecting data about off-site impacts during inspections. Ohio inspectors will provide data on a quarterly basis to Ohio managers who will then share it with OSM. Ohio and OSM will also develop criteria for assigning the degree of each impact. OSM will consider the data provided by Ohio in its annual assessment of off-site impacts. OSM will develop a report on the number and degree of off-site impacts.

- Review the following aspects of Ohio's AML program: AML construction monitoring; AML project design and construction accomplishments; and implementation of storm-water runoff criteria. OSM's lead persons are Max Luehrs and Steffan Koratich who will conduct the study of these areas under the outline developed during EY 98. Ohio's contact is Terry VanOfferen.
- Development and verification of an inventory of post-SMCRA sites with AMD or reasonably high potential to produce AMD, including evaluation of possible prevention and remediation methodologies. Dave Agnor is OSM's lead person on this topic and Wayne Schalk is Ohio's lead person.

In EY 2000, OSM began establishing an inventory of expected long-term AMD discharging permits. The criteria for inclusion in the inventory was that a site was either a bond forfeiture site with a continual AMD discharge or the site was an "active" mine where an AMD discharge would/could prevent the site from obtaining bond release. OSM established a preliminary inventory of 75 mine sites. Through inspections, OSM reduced the number of confirmed sites that OSM suspects will be long-term AMD producers to 21 sites and 36 sites that OSM considers as potential long-term producing sites.

For this evaluation year, OSM will continue to develop and refine the AMD inventory by:

- \$ Conducting two inspections on each of 21 identified sites to collect further site and water data. Inspections will be scheduled to collect one high and one low-flow water sample to better define the water quality problems on these sites. Ohio inspectors will accompany OSM inspectors when possible.
- \$ Conducting one inspection each on the 36 potential sites to further evaluate the sites= potential for inclusion on the AMD Inventory. Ohio inspectors will accompany OSM inspectors when possible.
- \$ Identifying additional sites for consideration through routine oversight inspections.
- \$ Ohio will provide any sites to OSM discovered through their inspection program that meet the criteria for the AMD inventory. OSM will provide Ohio with the criteria OSM used to identify sites for the AMD inventory.

As a result of these inspections, sites can be added and removed from either of the two categories, based upon site conditions. OSM would like Ohio's concurrence on each addition or deletion. OSM will provide Ohio with copies of the inspection reports, water quality analyses, and any other pertinent information for any additions or deletions that are proposed to the inventory. OSM will work with Ohio to review the information and the site to determine if the permittee and Ohio could take any additional action to correct the source of the AMD.

Ohio will continue to review existing inventory sites and exchange information relative to appropriateness of actions to either eliminate or reduce post-mining discharges or ensure long-term treatment. To further this commitment, Ohio will notify OSM prior to approving any bond release on any portion of any site identified on the two AMD inventory lists. Ohio and OSM will consider hydrologic and other information following a jointly developed protocol to ensure that the segment being requested for bond release does not contribute to the identified AMD source or that the AMD source has been permanently corrected before Ohio releases bond. OSM and Ohio will explore solutions and mechanisms for AMD remediation, including the evaluation of permitting criteria and the on-the-ground performance of prevention methodologies.

Using the inventory data and OSM policy, OSM will evaluate Ohio's Program to determine how Ohio's bonding system may meet any identified long-term treatment needs.

- Monitoring mine site compliance at mining operations through OSM inspections.
- OSM will continue to conduct a number of program monitoring inspections as described in Attachment C. OSM inspectors will continue to contact Ohio inspectors and managers, as

appropriate, to provide opportunity, wherever possible, for joint inspections. OSM and Ohio recognize the importance of and will emphasize joint inspections when possible.

- Hydrologic monitoring -

Dave Agnor is OSM's lead person. Ohio's contact is Mike Dillman. The study will evaluate the effectiveness of Ohio's ground water monitoring plans to accurately characterize mining's effect on the ground water system.

- AML projects - emergency program -

Mike Hiscar is OSM's lead person. Ohio's contact is John Husted. The scope of this study is changed from that described in the 2001 agreement so that it will only include a review of the timeliness of abating AML hazards at this time.

### **New Studies Planned During EY 02 -**

OSM will communicate with the appropriate Ohio contact when developing the evaluation methodology. In most cases, OSM will provide a draft study outline to Ohio for comment prior to the start of the evaluation, unless there is no change from the methodology used in the past.

### **Large impoundment engineering**

This evaluation is a regional objective to determine the risk of large impoundments located over underground mines. Ohio will conduct this evaluation with OSM's assistance. This on-the-ground engineering review will follow OSM guidelines for evaluating MSHA-sized impoundments within 500 feet of either active or abandoned underground mines to assess risk of discharge or breach into an underground mine. There are currently five impoundments that meet the review criteria. Joe Hoerst is Ohio's lead person and Dan Schrum and Steffan Koratich are OSM's leads.

### **AML landowner participation and coordination**

This study will meet OSM's annual requirement to evaluate an aspect of public participation in Ohio's Program. It will evaluate the effectiveness of Ohio's citizen participation and coordination efforts. The study will focus on the coordination that occurs after the project is selected for funding (including forfeitures), and until it is completed. The review will take into account any procedures DMRM has in place regarding landowner coordination. Max Luehrs and Pat Murdock are OSM's contact persons. Ohio's contact will be named later.

### **Forfeiture reclamation**

The purpose is to determine how effectively Ohio's bond forfeiture program is achieving restoration of mined land. We will conduct a field review of sites reclaimed under Ohio's bond forfeiture program to determine if all reclamation and bond release standards are met and to assess the timeliness of reclamation. Site visits will occur on sites reclaimed since our 1993 study. OSM will determine the number of sites once Ohio provides an update to its bond forfeiture database. We estimate visits to 25 – 30 sites. The study will also include a review of Ohio's bond forfeiture data to determine the current liability and assets of Ohio's alternative bonding system. Dan Schrum and Steffan Koratich are OSM's lead persons. Ohio's lead will be named later.

### **Underground mine impacts to stream - long-term office project**

This study will evaluate the impacts from longwall mining beneath perennial and intermittent streams. We will develop a method of determining significant stream loss to conduct this study. The entire office will be involved in the study, both to ensure adequate resources for the study, and to develop new skills within our staff. The study will begin with the finalized Quarto #4 mine and proceed, at a minimum, to the two Southern Ohio Coal Company longwall mines. This will allow us to review longwall impacts in the two major seams that have been longwalled in Ohio. This will also determine if any further studies are warranted. This review will take into account the dates of mining, the types of overburden strata, and the depth of cover. Max Luehrs is OSM's lead person. Ohio's lead will be identified later.

### **Drainage control and impoundments**

The purpose is to determine how effectively Ohio is carrying out regulatory provisions regarding drainage and sediment control. We will compare specific aspects of drainage control system designs approved in permits and as-built designs to Ohio's design and construction standards. The study will include an on-the-ground review of those same features to compare the constructed features to the approved and/or as-built design and certification. On-the-ground review will also consider functionality, maintenance, annual inspection and certification, and permanent structure requirements of the program. We will conduct inspections on a sample of sites that have various aspects of drainage control features including: permanent and temporary impoundments (small and large); permanent and temporary diversions; channel restoration; and small area drainage exemptions. We estimate 10-15 site visits. OSM's lead person is Steffan Koratich. Ohio's contact will be named later.

### **Haul roads/access roads**

The purpose is to determine how effectively Ohio is carrying out regulatory provisions regarding roads used to facilitate mining. We will evaluate all aspects of roads on a sample of permits. We will specifically evaluate road design, classification, construction, certification, drainage control, surfacing, dust control, and maintenance. We will compare approved designs to design requirements; construction to approved or as-built designs and certification; evaluate the success of construction in preventing off-site impacts to property and streams; how effectively the road and drainage control features are maintained; and success of reclamation or permanent roads. We will also evaluate Ohio's implementation of requirements for

permitting public roads. We will conduct inspections on the stratified sample to include long and short haulroads; permanent roads; and public roads. We estimate 10–15 site visits. OSM’s lead person is Mark Balaj. Ohio’s contact will be named later.

### **Land use classification pre-mining and changes**

The purpose is to report on the results of Ohio’s land use policies and how they meet the intent of SMCRA’s land use provisions. We will compare pre-mining land use classifications approved in a sample of permit applications to pre-mining site conditions to determine if the classification meets the criteria of Ohio’s program. The study will evaluate Ohio’s support for approving land use changes on a number of permits. The study will report statistics on land use trends, identify Ohio’s land use policies, and identify any potential deficiencies or lack of support for Ohio’s decisions on land use. We will inspect permit application areas or permits that have not been affected, permits that are in the five-year maintenance period, and those with an approved land use change. The sample will cover a range of land uses. We estimate 20 – 25 site visits. OSM’s lead person is Dan Schrum and Ohio’s contacts will be named later.

### **Success of Completed AML AMD Projects**

A citizen interested in AMD abatement suggested this topic. Determine how effective the projects have been in reducing or eliminating AMD affects. What AMD treatment technologies worked and what technologies didn’t work or were ineffective for what reasons? What technologies worked and are the most cost effective? What lessons have been learned and how were subsequent projects modified to take advantage of such knowledge? This review will provide a summary of Ohio’s AMD remediation efforts to date. The summary will identify the project, dates of construction, design and construction costs, the type of treatment technology used, the design agent, construction contractor, and the source of monitoring data and post-construction evaluations. A synopsis of the projects’ performance will be included. The summary will be updated as necessary with new projects, and any modifications to past projects. This review is meant to assist in evaluating AMD technologies, not DMRM’s performance. OSM’s lead persons are Dave Agnor and Max Luehrs. Ohio’s contact will be named later.

### **Grant-related issues (personnel cost distribution)**

We will review DMRM’s procedure for distributing personnel costs to their five different program areas to ensure that they are accurately charging these costs to their Title IV and Title V programs. Pat Murdock and Phil Fantazier are OSM’s lead persons. Ohio will name their contact later.

## **Attachment C. Oversight Inspections**

The general oversight inspection concept is to direct inspection resources to problem identification, resolution, and assistance. OSM will evaluate compliance with applicable performance standards during on-site inspections and ensure that any problems are properly addressed as required by the Ohio Program and SMCRA. However, OSM and Ohio recognize that identified problems may have several potential resolutions that achieve successful protection and restoration of the environment. The oversight inspection theme is to work with all parties to identify and solve problems that have prevented or may prevent the achievement of environmental performance standards.

In oversight evaluations and inspection reports, OSM will analyze on-the-ground impacts to determine the extent of impact and to identify and address the underlying cause of these impacts.

OSM will notify appropriate Ohio managers of individual inspection findings that may be symptomatic of programmatic problems, or of isolated incidents of which they should be aware. OSM will continue to notify Ohio inspectors to provide the opportunity for joint inspections.

### **Inspection Type and Criteria:**

OSM's annual inspection activities for EY 02 will include:

- Approximately 75 inspections for general program implementation monitoring. Components of approximately 15 inspections will be specifically focused on aspects of roads; 25 will be focused on land use; and 15 will be focused on drainage control systems. These specific performance standards will be included along with a general review of each site. Site selection will be based primarily on sites that include the necessary components of these three study areas. During these inspections, OSM will collect information on compliance at the mine site, off-site impacts, re-mining, and land use. OSM will use information collected during these inspections to support topical oversight reports on reclamation success and to demonstrate end results of mining and reclamation, as well as to provide a general assessment of compliance at mine sites.
- Approximately 50 bond release inspections are planned to evaluate on-the-ground success through achievement of performance standards at the time of bond release, including any identifiable impacts to the hydrologic system. OSM will also collect similar information, as identified above, on these inspections
- An estimated 15 follow-up inspections are planned to address issues identified on prior inspections.
- An estimated 25 site visits associated with the study on bond forfeiture reclamation are planned.

- Approximately 20 AML site inspections are planned to verify compliance with programmatic goals, contractual requirements, and NEPA considerations.
- Approximately 70 inspections are planned to monitor discharges and reclamation success on sites listed on the AMD actual and potential inventories.

**Attachment D. Pending Regulatory Issues Identified during Past Evaluation Years  
(Status as of September 2001)**

The following is a list of unresolved issues identified by OSM special studies conducted during previous evaluation years and identified in previous Annual Evaluation Reports. If OSM and Ohio have already taken or agreed to follow-up actions and due dates, those actions and dates are listed in parentheses. OSM and Ohio will use the mechanisms discussed in Part IV. A to resolve these issues during the Evaluation Year.

- A. Continuous obligation to ensure bond fund solvency. **(Status: Ohio developed information that will report the progress in improving Ohio's completion of bond forfeiture reclamation and monitoring of this program are a, but has not formally submitted it to OSM due to national issues related to adequacy of bonding programs for treatment of AMD. OSM recently requested current information on the status of reclamation on bond forfeiture sites and will conduct an oversight study this year as described in Attachment B.)**
- B. Hydrology Oversight Review for Geologic and Hydrologic Data; Surface and Ground Water Monitoring; Handling of Toxic Wastes; and Sediment Pond Design, Construction, and Maintenance (EY 93). Ohio is approving plans that contain only a general description of the segregation and isolation of toxic materials, not specific details.
- a. Completion date for developing guidelines for reviewing and approving disposal plans for toxic-producing materials and ensuring that applicant has identified sufficient quantity and equipment for placing the isolating material. **(Status: Ohio has drafted an acid-forming materials handling PPD that is currently under review. DMRM will finalize the draft policy by November 30, 2001.)**
3. Ohio does not adequately review design criteria for sedimentation ponds. Ohio approves designs based on inadequate design parameters for storm runoff, ground cover and condition, and the physical characteristics of the watershed draining into the ponds. These deficiencies resulted in construction of undersized ponds with a high likelihood of effluent violations at the design storm event.
- a. Methodology and time schedule for implementing a revised process for reviewing sediment pond designs to address the individual findings. **(Status: OSM will incorporate aspects of this issue into its study on drainage control systems planned for this year.)**
- C. In 1996, OSM identified that Ohio does not have a process for considering hydrologic impacts at the time of bond release. Ohio agreed to develop guidelines that will provide a process for such an evaluation for inspection staff. **(Status: Ohio has developed a procedure for identifying**

**potential impacts at the time of bond release and expects to implement a procedure by November 1, 2001.**

- D. OSM's study on longwall mining identified five findings and recommendations. Ohio's 2002 Strategic Plan includes a priority strategy to "improve inspection processes and provide staff training in longwall mining operations and inspections." Ohio and OSM will continue discussing the findings and recommendations as Ohio moves forward with implementing its Strategic Plan. **(Status: Ohio committed to conduct a training session with inspection and technical staff by December 1, 2001, for the purpose of educating and reiterating Ohio's policies and procedures regarding longwall mining, including those outlined in Ohio PPD Underground 90-2. The training will address issues regarding waiver of repairs and/or water supply replacement; responsibility for replacement costs; documenting and tracking subsidence damage, follow-up, and mitigation; timely repairs; and meeting permit conditions, among others. Ohio has started the process to more completely document subsidence damage. Ohio also committed to review and update public information about issues related to longwall mining by May 2002, and make this information available to those experiencing problems or upon request.)**
- E. OSM will provide a report on its study of coal refuse disposal before October 1, 2001. Ohio will evaluate the report and develop a response.
- F. OSM will provide a report on Ohio's citizen complaint process before October 1, 2001. Ohio will evaluate the report and develop a response.

**Attachment E. Ohio Program Conditions and Requirements  
(Status as of May 31, 2002)**

**A. 30 CFR Part 733 Actions**

OSM has issued no Part 733 actions to Ohio.

**B. 30 CFR Part 732 Actions and Outstanding Program Amendments**

One Part 732 issue in Ohio concerns the Ohio Alternative Bonding System (ABS). On October 1, 1991, OSM notified Ohio that it must revise the Ohio program so 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 Alternative Bonding System (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.

In 1995 and 1996, Ohio obtained \$1.7 million in general revenue funds to address this deficit and has eliminated the backlog of forfeitures, which created the deficit initially. On June 30, 1995, Ohio and OSM updated an Improvement and Monitoring Plan for the Ohio ABS. The plan was designed to resolve the deficiencies noted in the October 1, 1991, part 732 letter. Ohio has implemented changes directed to solvency of the ABS and has worked on a request for removal of the program condition. OSM and Ohio will continue to work to resolve this issue, which now, due to national attention to AMD and bonding, includes aspects of AMD treatment that also may affect Ohio's program.

OSM issued a Part 732 notice to Ohio on August 22, 2000, notifying them of recent changes to Federal regulations pertaining to valid existing rights. Ohio responded to the notice indicating that no changes were necessary. The Federal VER rules are under appeal. OSM determined that changes are necessary, but has said that Ohio may defer action until the Federal appeals are resolved.

Program Amendment 75

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. Although OSM considers adoption of this program element moderately important to ensure the effectiveness of Ohio's program, it is a component of a previously required amendment and must be adopted. OSM expected that Ohio would have a sponsor to introduce this revision to the Ohio Legislature during 2000. The proposed revisions have not yet been introduced. Ohio is currently considering attaching this revision to some other statutory changes being considered by the Department of Natural Resources. Ohio will continue to pursue adoption of the approved language as the Department's legislative agenda will allow within the year.

## Program Amendment 76

In 1997, OSM notified Ohio of Federal rule changes that have occurred over the past several years. The provisions affecting Ohio include: permitting and performance standards on siltation structures and impoundments; variances from approximate original contour; prime farmland; and affirmation by the applicant that reclamation requirements are met when applying for bond release. Ohio submitted a program amendment to address these provisions in late 1997. OSM approved the amendment in late 1998. Ohio promulgated some of the rules approved under the amendment in 1999, but has not yet adopted the rules concerning siltation structures, impoundments, and bond release affirmation. Ohio officially filed the remaining rules on August 23, 2001. A public hearing is scheduled for September 27, 2001, with the effective date of the rules expected shortly thereafter.

### **C. Program Conditions**

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 Alternative Bonding System (ABS) will ensure timely reclamation at the sites of all operations for which bond has been forfeited. As discussed above, OSM issued a Part 732 letter to Ohio on this issue on October 1, 1991. Ohio has developed information to submit OSM to address this condition. OSM and Ohio will continue to work to resolve this issue, including aspects of acid mine drainage treatment that may impact Ohio's program.

## **Attachment F. OSM Assistance Activities**

Ohio and OSM will participate on the following problem-solving teams:

Remining Task Force - to remove barriers that prevent remining and seek incentives to encourage more remining.

ADP/database development – Assist Ohio with AML database development by working with Ohio’s AML staff. Develop process and database changes that will allow OSM read-only access to Ohio’s databases. Steffan Koratich is OSM’s lead person and Ohio’s lead person is Greg Miller.

Permitting Work Group - continue to follow through on the 1998 recommendations of the group.

MERIT Training - OSM will assist with the development of the Mineral and Energy Resources Inspector Training Program (MERIT) in those specific areas of the coal regulatory program where they can provide expertise and training talents. In addition to training staff in new inspection roles and responsibilities, OSM and Ohio anticipate this training will specifically address several areas of inspection and enforcement. Some of these include: monitoring and enforcement of permit plans and conditions; field aspects of midterm permit and permit renewal reviews; development of facts and collection of evidence adequate to support enforcement actions; and implementation of Ohio’s policies and procedures regarding stream buffer zones, landslides, temporary inactive status, alternative resoiling material, public roads, longwall mining, and others.