

EY 2004 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**

**September 2003
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. Oversight Studies

In addition to continuous oversight, OSM may conduct 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
- 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. In 2002, Ohio implemented a process that has Ohio inspectors collecting data on the number and degree of off-site impacts identified during their inspections. Ohio inspectors will provide the data on a quarterly basis to Ohio managers who will share it with OSM. 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 period. The information needed includes general inspection, enforcement, permitting, and other information that Ohio has provided in the past.

Part VI. Assistance

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.

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:

<u>Signed</u>	<u>9/29/03</u>	<u>Signed</u>	<u>9/23/03</u>
Michael Sponsler	Date	George J. Rieger	Date
Chief		Program Manager	
Ohio Division of Mineral Resources Management		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 remining to achieve environmental gains through the remining 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, remining, land use, and hydrologic impacts.

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

OSM's lead person will be designated later. Ohio's contact person is Tom Tugend. Ohio inspectors will provide data on a quarterly basis to Ohio managers who will then share it with OSM. OSM and Ohio will meet to conduct a quality control review of off-site impact data on a quarterly basis. OSM will consider the data provided by Ohio and information collected during oversight inspections in its annual assessment of off-site impacts. OSM will develop a report on the number and degree of off-site impacts.

- AMD Inventory

Continue development and verification of the inventory of post-SMCRA sites with AMD or reasonably high potential to produce AMD, and complete the evaluation of possible prevention and remediation methodologies. Dave Agnor is OSM's lead person and Wayne Schalk is Ohio's lead person.

In EY 2000, OSM began establishing an inventory of potential 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:

- Completing the collection of water quality and quantity data through site visits on each of 21 identified sites not sampled during periods of high and low-flow. Ohio inspectors will accompany OSM inspectors when possible.

- Completing the collection of water quality and quantity data through site visits on each of the 36 potential sites not sampled during periods of high and low-flow and evaluate their potential for inclusion on the AMD inventory. Ohio inspectors will accompany OSM inspectors when possible.
- OSM and Ohio will finalize the draft procedure to be used to provide notification of any sites discovered through their inspection programs that meet the criteria for the AMD inventory.
- OSM will develop a report with detailed information summarizing the findings from site visits over the past few years on individual sites listed on the AMD inventory. This information may help Ohio determine future actions necessary to address the AMD conditions on these sites.

As a result of these site visits, 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 with OSM relative to these sites. 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 for which bond release is requested 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.

- 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. This study was started in EY 2003 but not yet completed. The study is considering the effectiveness of Ohio's ground water monitoring plans to accurately characterize mining's effect on the ground water system.

- Large impoundment engineering

This evaluation is a regional objective to determine the risk of large impoundments located over underground mines. Ohio is conducting 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 four impoundments that meet the review criteria. Ohio has developed a draft report and is revising it. A summary report of all activities regarding OSM's and Ohio's review of large impoundments will be completed this year. Joe Hoerst is Ohio's lead person and Dan Schrum is OSM's contact.

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

This study will evaluate the impacts from longwall mining beneath perennial and intermittent streams. OSM developed a method of determining significant stream loss based on a biological assessment of the streams. OSM began the study on the Quarto #4 mine during EY 02 and finished data collection and an interim report for that mine in EY 03. Stream sampling was completed at the American Energy Mine in EY 03 with identification of species to be completed later in EY 04. OSM expects to continue the study at the two Southern Ohio Coal Company longwall mines in EY 04. This review will consider the dates of mining, the types of overburden strata, and the depth of cover. Max Luehrs is OSM's lead person. Ohio has chosen not to participate in the data collection portion of this study.

- Haul roads/access roads

Although planned for EY 02 and 03, this study did not get started. The purpose is to determine how effectively Ohio is carrying out regulatory provisions regarding roads used to facilitate mining. OSM's lead person will be determined later. Ohio's contact is Rick Simmers.

New Studies Planned During EY 04 -

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.

Implementation of Toxic Material Handling Plans

This study was planned to begin in EY 03 but was not started. Operators describe in the permit how toxic materials will be handled during mining. The intent of the special handling is to minimize post-mining impacts to the environment. This study will examine how the permittee implements the toxic material-handling plan and how the state inspector monitors implementation of the plan. Dave Agnor will lead this review for OSM. Ohio will identify contacts for this review at a later date.

Ownership and Control and AVS

This review will serve as OSM's customer service topic for EY 04. OSM will evaluate how Ohio's permitting section reviews ownership and control information provided in permit applications and how effectively they consult with OSM's AVS office prior to issuing a permit. The review will also consider how Ohio monitors if persons conducting mining operations are those approved in the permit. OSM and Ohio will identify lead persons in the future.

Responsiveness to Water Supply Complaints

OSM will review Ohio's inventory of water supply complaints to report on timeliness of response, adequacy of investigation and support for conclusions, and final resolution. Timeliness of final resolution has been a problem in the past. This will serve as a follow-up to past studies on this issue. Contact persons will be named later.

Permit Renewals and Expired Permits

OSM and Ohio identified some permits over the past few years that had expired without renewal. OSM will review OSM and Ohio databases to identify permits that have expired or are about to expire to determine if renewal applications have been filed and processed timely. This review will look at the renewal process in general. Contact persons will be named later.

Hydrologic Review at Bond Release

Ohio implemented new procedures that inspectors must follow before approving bond releases. As part of OSM's planned bond release inspections, OSM will determine if the process is being followed and if it is effectively minimizing bond releases where impacts to the hydrologic balance are in question. Contact persons will be named later.

Effectiveness of Bat Gates on AML Projects

OSM will conduct surveys at mine openings where Ohio has installed bat gates to determine how extensively bats are using the openings. Max Luehrs will conduct the study for OSM. Ohio's contact persons will be named later.

Follow Up on Longwall Mining Study

OSM will follow up on findings and recommendations from the 2001 study on longwall mining. The review will determine how effective changes resulting from that study have been at addressing the issues identified. Dan Schrum will conduct the study for OSM. Ohio's contact will be named later.

Follow up on Temporary Relief Decisions

OSM will review all temporary relief decisions from the Reclamation Commission since the EY 03 review to determine if the Commission is providing documentation of how the standards for granting relief were met or not met. Dan Schrum and Pat Murdock will conduct the follow up for OSM.

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 regulatory inspection activities for EY 03 will include:

- Approximately 60 inspections for general program implementation monitoring. Components of approximately 15 inspections will be specifically focused on aspects of roads and approximately 10 will be focused on toxic material handling plans. These specific performance standards will be included along with a general review of each site. Information on ownership and control will be collected on some of these 60 inspections. Site selection may be stratified to ensure that some sites include the special focus areas identified. In addition to other performance standards, these OSM inspections will continue to specifically address the following aspects where applicable: stream buffer zone variances, excess spoil and blending provisions; implementation of Ohio's landslide policy; wetlands and mitigation plans; and implementation of Ohio's policy on temporary inactive status. These performance standards were selected because they primarily relate to past oversight findings. Looking specifically at these areas during inspections, in lieu of a specific oversight study, will provide an overall assessment of how well DMRM has implemented the policies. Although OSM collected data on these program areas in ET 03, no evaluation of the data was conducted. Additional data collection should enhance this evaluation.

During these inspections, OSM will also 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 off-site impacts to demonstrate end results of mining and reclamation, as well as to provide a general assessment of compliance at mine sites.

- Approximately 40 bond release inspections 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 and review of Ohio's documentation supporting approval of the bond release. OSM will also collect similar information, as identified above, on these inspections.
- An estimated 15 follow-up inspections to address issues identified on prior inspections.
- Approximately 60 site visits to monitor discharges on sites listed on the AMD actual and potential inventories. These site visits are for collecting data to determine changes in water quality and quantity over a long period of time.

AML program inspections

- Approximately 20 AML site inspections to verify compliance with programmatic goals, contractual requirements, and NEPA considerations.

Attachment D. Pending Regulatory Issues Identified during Past Evaluation Years (Status as of September 2003)

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 address these issues during EY 04.

A. Toxic Material Handling Plans - 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. Ohio agreed to develop 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 assigned a team that has developed draft guidelines for addressing AMD issues during inspections. This team will also be assigned to address findings and recommendations from OSM's study on coal waste disposal and to also address inspection of toxic material handling.)**

B. Bond Forfeiture Program – OSM made the following recommendations resulting from its 2002 review of the Ohio Bond Forfeiture and Bonding Process: 1. Ohio needs to consult with a state agency or other sources with actuarial expertise to develop a sound, long-term funding mechanism for Ohio's ABS that supports timely and complete reclamation of all forfeited sites. The goal should be that the ABS and/or site-specific bond provide adequate funding so that Ohio can reclaim all forfeited sites within two years or less of the BFO. 2. In addition to funding changes, the ABS program should include a formal process or charter that describes how the ABS will be administered and by whom. The process should provide Ohio the authority to adjust bond rates to reflect changes to mining and reclamation conditions on individual mine sites based on an assessment of reclamation liability. It should provide authority to periodically adjust taxes/fees that support the ABS based on audit and analysis of the fund. The process should include mandatory periodic audits and formal reporting of the condition of the ABS based on sound actuarial and accounting principles that demonstrate assets and liabilities and the need for adjustments. 3. Ohio must revise the current ABS or develop other funding mechanisms that will address long-term treatment of AMD that may be identified on mine sites. Although Federal rulemaking is anticipated on this issue, Ohio should consider potential funding mechanisms as they contemplate changes to its ABS. 4. Ohio has changed its interpretation of ORC 1513.18(B) regarding the priority of completing reclamation of forfeited coal mine sites from that on which OSM based its approval of that program provision. Therefore, Ohio must submit a program amendment to OSM. The amendment must explain this change and demonstrate how Ohio's ABS will provide sufficient resources to ensure timely reclamation of forfeited coal mine sites with full consideration of the additional liability placed on the ABS for reclamation of non-coal forfeiture sites. 5. Ohio and OSM should revisit the terms of the Improvement and Monitoring Plan in light of other actions that may result from this review.

(Status: Ohio has not submitted any proposed changes to its bonding program to OSM. Meetings and additional discussion on Ohio's approach to the issues identified in this report will occur in EY 2004.)

C. Citizen Complaint Process – OSM's November 2001, report on Ohio's citizen complaint process recommended that: 1. Ohio should improve its procedures for logging and tracking citizen complaints to ensure that all offices consistently log and track complaints to their conclusion. 2. Ohio revise the filing system in the field offices to ensure that all documentation related to a complaint is maintained in one central location. 3. Ohio should address the complaints we identified that have not been investigated and ensure that complainants receive a final written response or interim response informing them of the status of their complaint. 4. Ohio should assign responsibility for monitoring inspection and response times. 5. Ohio should ensure that all complainants are informed of rights of confidentiality, to accompany inspectors on an inspection, and to request informal review; and establish a separate file for confidential complaints. **(Status: Initial testing of a "beta" complaint-tracking database occurred and additional review is needed before applicability to all program areas. Training is continuing on database before it is implemented state-wide.)**

D. Drainage Controls – OSM identified that Ohio is not documenting verification that drainage controls are constructed as designed and that a number of drainage controls deviate from the approved and/or as-built designs. Ohio needs to change its verification and enforcement process to ensure that drainage controls are constructed as designed. **(Status: Ohio sent a letter to the mining industry that clarified their position regarding construction of ponds in accordance with approved designs. The issue was also discussed with each field team. OSM has asked their inspectors to evaluate, document, and address significant deviations between approved designs, as-built certifications, and actual construction during their oversight inspections.)**

E. Temporary Relief – The Reclamation Commission should document its basis for all temporary relief decisions. OSM will conduct a follow-up review of all temporary relief decisions over the next six months. **(Status: The Reclamation Commission agreed to consider OSM's recommendations.)**

F. Coal Exploration Activities - Ohio agreed to improve tracking and documentation of inspections and to ensure that at least every fifth NOI issued in each district is inspected as required. **(Status: Ohio sent a letter to the mining industry that clarified their position regarding exploration operations. The issue was also discussed with each field team.)**

G. Coal Waste Disposal – Ohio has assigned a team to develop inspector guidelines for addressing AMD and, following that, to develop guidelines for ensuring that coal waste disposal plans are followed. **(Status: The team will continue meeting and develop the guidelines.)**

**Attachment E. Ohio Program Conditions and Requirements
(Status as September 2003)**

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. OSM conducted a study on Ohio's bonding system in 2002 and reaffirmed that deficiencies remain regarding timeliness of reclamation of forfeited sites and the ability of Ohio's ABS to ensure timely reclamation. OSM and Ohio will continue to work to resolve this issue.

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 69

OSM approved Ohio's Program Amendment 69 on July 17, 1995. The amendment clarified conflict of interest regulations in OAC 1501:13-1-03. Ohio has not adopted the approved changes. OSM and Ohio will decide if the changes are still necessary or if Ohio should withdraw the amendment.

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. OSM conducted a study on Ohio's bonding system in 2002 and reaffirmed that deficiencies remain regarding timeliness of reclamation of forfeited sites and the ability of Ohio's ABS to ensure timely reclamation. 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. OSM will help Ohio edit its draft Remining Handbook.
- ADP/database development – to develop process and database changes that will allow OSM read-only access to Ohio's databases.
- Permitting Work Group – OSM will continue to participate by attending quarterly meetings of the group.
- OSM will provide periodic on-site inspection and enforcement consultation and training to Ohio's newer inspectors upon request from Ohio. This on-site activity will not be considered as an OSM inspection and will be specifically designed as a training exercise. Ohio asked that OSM specifically address review and use of maps and cross-sections, permit review in preparation for inspections, and review of critical plans for coal waste disposal.
- Ohio will review their policy and procedure directives and has asked that OSM assist them with that review.
- OSM will continue to participate with Ohio and the U.S. Fish and Wildlife Service on endangered species matters.