



## *EY 2012 Performance Agreement*

**Between**

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

**And**

**The Office of Surface Mining Reclamation and Enforcement  
Columbus Office of the Pittsburgh Field Division**

**FINAL**

**June 2011**

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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) 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, while maintaining each agency's independence in meeting their own program requirements, 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 issues that allow for incremental problem-solving to meet both short-term and long-term goals.
- 4) Focus on making improvements, rather than on 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 and will also make it available on OSM's WEB site through links to the Appalachian Region and/or the Pittsburgh Field Division's WEB sites.

## **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 Office of the Pittsburgh Field Division of the Appalachian Region (AR) 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 in need of increased focus.

This agreement is supplemented by Attachments A through F. These attachments describe the specific oversight focus areas, OSM inspections, pending implementation concerns and recommendations for improvement, and action plans developed to resolve program problems identified by oversight, program conditions, and assistance efforts. 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 Ohio's programs as an ongoing process throughout the year. This process will involve analysis of Ohio's 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 will conduct in-depth studies of selected areas of Ohio's program each year. These oversight studies will emphasize overall 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, in consultation with a designated Ohio

contact person, will develop 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
- Web site link to Appalachian Regional Reforestation Initiative, Citizen's Guide to Mining and Reclamation, Report on Ohio Mineral Industries, and links to OSM, MSHA, OEPA, USACE, and AVS
- Annual regional AML project and funding meetings held throughout the State
- Department and Division websites
- Meetings with groups and individuals interested in mining activities
- Quarterly coal work group meetings with industry representatives
- Ohio AML Educational Outreach Initiative that addresses the hazards of residential and commercial development on abandoned mined lands
- Public meetings and informal conferences related to permitting activities

#### **OSM:**

- Evaluation and Administrative Record public files
- Bi-monthly newsletter
- Public comment periods announced in the Federal Register
- Annual oversight/evaluation reports
- OSM, ARC, and PFD websites
- Meetings with groups and individuals who express an interest in mining activities
- Outreach to public and industry promoting the Appalachian Regional Reforestation Initiative
- Outreach and assistance to watershed groups
- Outreach seeking input on the oversight process from the public

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.

On or about March 1, 2011, OSM and Ohio posted notices on their respective websites and OSM notified its list of interested parties of OSM's request for input and suggestions from the public regarding oversight studies and other input regarding OSM's oversight process in Ohio. The period for providing input expired on March 30, 2011. A draft of this agreement was also posted on the OSM and Ohio websites on or about May 1, 2011, asking for public comments on the draft agreement. This comment period ended on May 15. Both public notices included an opportunity to meet with OSM about oversight. The content of this agreement considered input provided through this outreach effort.

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 and Ohio will seek input from those individuals and groups who have specifically expressed interest in the mining and AML programs. The outreach schedule is expected to remain the same for preparation of the EY 2013 agreement (next year).

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

OSM's approach to oversight defined by OSM Directive REG-8 specifies two measurements for evaluating and reporting the success of a State Program in achieving the environmental performance standards of SMCRA. These two measurements are the number of mined acres meeting the performance standards for each phase of performance security release, and the number and extent of off-site impacts caused by mining and reclamation. For both of these measures, OSM will use data provided by Ohio and validated, to the extent possible, through OSM oversight. To evaluate and report on these measurements, Ohio and OSM cooperatively developed the needed data and the evaluation methods in 1996. Ohio provides OSM with performance security release information that OSM uses to report on the number of acres receiving each phase of performance security release.

In 2002, Ohio implemented a process to collect data on the number and degree of off-site impacts identified during their inspections. Ohio inspectors provide information on violations resulting in off-site impacts on the civil penalty worksheets. This data is entered into a database and Ohio provides OSM with a report listing violations and those resulting in off-site impacts. OSM uses this and other information in its annual assessment of off-site impacts.

#### **F. Program Data**

OSM Directive REG-8 provides specific data that OSM must report to quantify Ohio's program and OSM's oversight activities on an annual basis. Ohio collects much of this data as part of

their program operations and provides it to OSM when OSM is drafting its annual oversight report or when requested at other times during the year. Ohio may not be routinely collecting all of the data that is now required by REG-8. OSM and Ohio will work together through a small workgroup to develop protocols for collecting and providing the additional data to the extent reasonably possible. OSM and Ohio will also develop a method that reasonably ensures that the reported data is correct, the data entry is done by qualified individuals, and data systems are secured and maintained.

OSM and Ohio will re-examine ways of providing OSM with read-only access to Ohio's regulatory databases. This would enable OSM to review data electronically. It would minimize duplication of effort and eliminate a significant amount of paperwork currently being exchanged.

## **Part IV. Resolving Issues and Program Problems**

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

Ohio and OSM will cooperate to resolve issues as they arise. OSM and Ohio may use any of the following mechanisms to resolve issues:

- Discussions at meetings between OSM and Ohio staff as needed, or at a minimum, on a quarterly basis.
- 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 routinely scheduled meetings between Ohio and OSM officials at the operations level to resolve site-specific inspection and enforcement matters.
- Joint OSM-Ohio preparation of written action plans with steps and schedules agreed upon by both parties to resolve program problems, as defined below, that are not expected to be resolved within 180 days following identification of a problem as required by OSM Directives REG-8 and REG-23.

### **B. Program Problems, Implementation Concerns, and Recommendations for Improvement Pending Resolution**

OSM Directive REG-23 defines a "regulatory program problem" as: "An issue identified during OSM's oversight of a state ... regulatory program that could result in a failure by the state ... to effectively implement, administer, enforce, or maintain all or a portion of its approved regulatory program or to adopt and implement program amendments that are required under 30 CFR Part 732 and 30 CFR Subchapter T." "Program problems" that cannot be resolved within 180 days must be documented through a formal action plan. However, such "program problems" are distinct from implementation concerns identified by OSM oversight where OSM recommends



certain actions be taken that could improve State program implementation with an objective of continuous process improvement. Such implementation concerns may not necessarily equate to a "program problem." However, they should be considered and tracked until the recommendation is implemented or both parties agree that the recommended action is not necessary and would not be elevated to the level of a "program problem" if the recommendation is not implemented. Such tracking would not equate to a formal action plan. The implementation concerns and recommendations presently pending resolution and their status are listed in Attachment D. The program problems are described in Attachment E and include action plans. With Ohio's assistance, OSM will update these attachments as necessary to reflect the current status of the issues.

### Part V. 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 VI. 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:

	
John F. Husted	for Ben Owens
Chief	Acting Division Chief
Ohio Division of Mineral Resources Management	Pittsburgh Field Division
	Office of Surface Mining Reclamation and Enforcement
Date 6-17-11	Date 6/13/2011

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

- 1) Ensure long-term solvency of the Ohio Alternative Bonding System by continuing to revise Ohio's alternative bonding system. This will be done by Ohio's continuing to make statutory and rule changes necessary to meet Federal requirements, with the desired outcome of eventually resolving the one remaining condition on Ohio's program.
- 2) 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. Continue to focus attention on minimizing the occurrence of off-site impacts and ensuring timely and proper reclamation resulting in timely and proper release of performance security.
- 3) Conduct joint reviews and problem-solving to ensure that Ohio meets its program requirements in an effective and efficient manner. Continuing to conduct joint inspections when possible and to hold regular meetings to discuss issues and assist each other in resolving problems in a cooperative approach.
- 4) 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. Increased outreach regarding the oversight process will occur via email, website announcements, web-posting of oversight documents, and bi-monthly newsletters. Continue to respond to inquiries and complaints from the public in an open and timely manner.
- 5) Remove barriers and provide incentives to remining to achieve environmental gains through the remining of abandoned mined lands through continued participation with Ohio's Remining Task Force that is exploring ways to promote remining and reduce impediments to remining.
- 6) Continue to maintain 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. Develop adequate alternative financial securities where necessary to ensure proper treatment of and/or eliminate long-term acid-mine drainage from these mine sites as provided by the Ohio Program. This will be accomplished by continuing to meet and discuss sites with AMD, monitoring water quality/quantity to help develop the best solutions, developing approaches

to eliminating the source, or, as a last resort, developing a long-term treatment plan that is fiscally secured by an adequate financial assurance agreement.

- 7) Meet fiscal management and reporting requirements in a timely manner by continuing to promote open communications between respective fiscal and grants staff to improve understanding of State and Federal requirements and limitations.
- 8) Promote the Appalachian Regional Reforestation Initiative (ARRI) to plant more trees on reclaimed coal mined lands in Appalachia. Establish and implement a Forestry Reclamation Approach (FRA) program that involves planting trees using practices such as loose grading, creating a suitable rooting medium for optimum tree growth; planting two types of trees; using native and non-competitive ground covers; and using proper tree-planting techniques. We will continue current efforts and develop new ways of promoting this initiative by providing any new research information available and encouraging mine operators and landowners to consider using this reclamation approach whenever the opportunity exists.
- 9) Resolve longstanding, site-specific enforcement cases through discussion at monthly meetings at the operational level.
- 10) Work to develop OSM read-only access to Ohio's regulatory database to lessen the burden of hard-copy data exchanges and to minimize OSM disruptions to Ohio's operations by working to improve coordination between each agency's data management resources.
- 11) Develop strategies for considering/resolving oversight findings regarding implementation concerns and recommendations intended to promote continuous program improvement that are distinctly apart from program problems that require formal action plans.

## **Attachment B** **Oversight Activities**

### **Annual and/or Ongoing Studies from Prior Years**

**Achievement of performance standards at the time of performance security release (reclamation success):** OSM will use performance security release data that Ohio provides throughout the year as the primary source of information for its evaluation of reclamation success. OSM will also use information collected during OSM inspections on a sample of performance security releases that Ohio has approved to evaluate if Ohio is releasing performance security only when all reclamation standards are met. Prior to the end of the evaluation year, OSM will issue a report on its findings on reclamation success. The report will summarize data provided by Ohio and collected by OSM inspectors regarding approved performance security releases, contemporaneous reclamation, remining, and land use. The number of acres achieving each phase of performance security releases for the entire review period, as reported by Ohio, will serve as the measure of reclamation success for GPRA purposes. OSM's lead person is Dan Schrum. Ohio's contact person is Dave Clark.

**Evaluation of the number and degree of off-site impacts:** OSM will use Ohio's data on the number of violations resulting in off-site impacts as the primary source of data to report on this program measure. Another source of data is the number of Ohio's Chief's Orders that may also identify an off-site impact; i.e., orders for diminution/ contamination of water supplies. Ohio inspectors complete a worksheet for each violation they issue as part of the civil penalty assessment process. Ohio enters this into a database from which they develop a report on the off-site impacts identified. On a quarterly basis, Ohio will send OSM this report with a listing of all violations issued and a listing of any Chief's Orders indicating an off-site impact. OSM and Ohio will meet to conduct a quality control review of off-site impact data. Findings from OSM oversight inspections will serve as another source of data for this program measure. OSM and Ohio inspectors will discuss whether violations identified during OSM inspections resulted in off-site impacts. Any issues that are not addressed/resolved at the inspector level will be identified to the respective managers and discussed at a monthly DMRM/OSM work group meeting.

REG-8 states that an off-site impact is defined as anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on resources where that impact is intended to be minimized or prevented by SMCRA or the applicable State program. The impact must be related to a mining and reclamation activity and must be outside the area authorized by the permit for conducting mining and reclamation activities. Off-site impacts may be identified within the permit boundary if the impact is outside the area authorized by the permit for mining and reclamation activities.

OSM and Ohio have had discussions in the past concerning the following specific types of violations:

- Flyrock that is cast beyond the permit limits with no readily discernible damage
- Disturbance of a protected area or buffer zone within the permit boundary where disturbance is not authorized
- Discharge of water from the permit area that violates NPDES water quality standards into a stream or water body that has water quality that is worse than the discharge from the mine
- Underground mining beyond the area authorized by the permit even though no surface disturbance occurs

In each example, although “damage” to land or water may not be readily discernible, mining activity either occurred outside the permit or within an area not authorized for disturbance, or caused an impact, regardless of the degree of impact, that affected the area outside the permit or area unauthorized for disturbance. Therefore, each example meets OSM’s definition of an off-site impact and will be counted as such.

OSM will develop a report on the number and degree of off-site impacts at the end of the evaluation period. OSM will report the number of sites free of off-site impacts for GPRA purposes. OSM’s lead person is Pat Murdock. Ohio’s contact person is Greg Mills.

**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. OSM’s lead person is Dave Agnor and Ohio’s is Cheryl Socotch.

For this evaluation year, OSM and Ohio technical and inspection personnel will continue to conduct site visits at inventory sites to reevaluate and assess the extent of AMD and compliance with performance standards.

**Inspections:** OSM will continue to conduct a number of program monitoring inspections as described in Attachment C. In the past, OSM inspectors contacted Ohio inspectors and/or managers to provide opportunities for joint inspections. This process will continue with one exception. OSM Directive REG-8 now directs OSM Field Offices that 10 percent of the oversight inspections must be conducted independently without notifying the State of the site to be inspected until the day of the inspection, with no more than 24 hours notice. The 10 percent applies to oversight complete inspections for purposes of this agreement. OSM inspectors will comply with this requirement by notifying Ohio inspectors of the date of planned inspections, as has been done in the past. However, the actual site will not be divulged until the day of the inspection. If the Ohio inspector does not participate, OSM inspectors will contact the Ohio inspector and/or supervisor after the inspection is completed to notify them of the results of any

independent inspections prior to completion of the inspection report. Although this is a new requirement, OSM and Ohio recognize the importance of joint inspections. With the exception of not identifying the site selected for independent inspections, OSM will continue to provide as much notice as possible of upcoming inspections to facilitate joint inspections.

**Tracking and Follow-Up of Issues Identified on OSM Inspections:** OSM will continue to track all unresolved issues and enforcement actions identified on OSM inspections by conducting follow-up on-site inspections and reviews of State enforcement documentation at State offices. OSM inspectors and their supervisor will track each issue, interim steps, and corrective action, and will monitor all extensions through final abatement. This tracking will include monitoring the ARP and IBR review process where these actions result from enforcement actions. OSM inspectors and program staff will conduct periodic follow-up inquiries and inspections to determine progress and verify proper resolution of issues. OSM may summarize the results of issue resolution near the end of the evaluation period or periodically as warranted.

**Accuracy of AMLIS Updates:** OSM will review Ohio's use and compliance with the new e-AMLIS system by reviewing new problem area approvals, new problem additions, and proper updating of completed projects. Dave Agnor is the OSM reviewer. Ohio's contact is Kathy Rossman.

**Routine AML Oversight:** OSM will continue its annual reporting of Ohio's non-emergency AML design and construction productivity and timeliness compared to previous years. OSM does this by using Ohio's AML data, maintaining a project database, and conducting routine AML oversight inspections. Ohio's contact is the AML Manager of Public Health and Safety and OSM's is David Agnor. OSM will summarize this information for the annual report.

### **Contracting Process Review**

The purpose of this review is to determine if Ohio's procurement and management of services acquired with Federal SMCRA Funds are consistent with State and Federal requirements and are being properly implemented. This includes adequate management controls to prevent fraud, waste, abuse, and mismanagement of Federal funds. The review will also determine if this aspect of AML and Regulatory programs are being administered in an effective and efficient manner. This study was planned for EY 2011 but not completed. Sheila Hartless will conduct this review for OSM. Ohio's contact is Cheryl Allen.

**Review of Internal Controls on Federally Funded Property and Equipment:** This study was not completed last year. It will include our review of State regulations and procedures regarding the purchase, safeguarding, monitoring, management, and disposition of property and equipment. This study will also review the property and equipment purchased related to program staffs' needs. This study was planned for EY 2011 but not completed. OSM's reviewers Sheila Hartless and Pat Murdock will perform the full review during Evaluation Year 2012. Ohio's contact is May Sholes.

## **Studies Planned for EY 2012**

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.

**Temporary Cessation** – DMRM, with OSM’s assistance, conducted a review of temporary cessation in 1997 that resulted in DMRM’s issuance of guidelines for review and processing of temporary cessation of operations, dated December 7, 1999, to the inspectors. This review will evaluate how well DMRM is implementing these guidelines, the on-the-ground conditions of sites currently in temporary cessation, and the length of time the sites have been in temporary cessation. Data collection will be completed by OSM inspectors during oversight complete inspections. Data analysis and the report will be completed by an OSM program person. Ohio’s contact person is Wayne Schalk.

**Permitting and inspection of coal waste disposal sites** – OSM will request an inventory of approved coal waste disposal sites from DMRM. OSM will review a sample of permits that have approved designs for coal waste disposal facilities; the on-the-ground condition of the facilities compared to the approved designs; and the company records regarding periodic inspection, testing of construction, documentation of critical construction phases, and certifications. This study will be conducted by OSM engineers, program staff, and inspectors. Ohio’s contact person is Greg Mills.

**Permitting and inspection of coal slurry pipelines** – OSM will request an inventory of sites with coal slurry pipelines from DMRM. OSM will review the permits to evaluate the approved design, construction, maintenance, and spill prevention and response precautions provided in the permits. OSM will also evaluate site conditions for compliance and state inspection reports for documentation of the facilities. This study will be conducted by OSM engineers, program staff, and inspectors. Ohio’s contact person is Mike Kosek.

**Public Notice of Performance Security Release Applications:** OSM will follow up on a study conducted in EY 2009 on this topic to see if DMRM’s changes have been effective regarding the timing of decisions on performance security release applications compared to public notices of the applications. This review will serve as the customer service topic for EY 12. An OSM program person will conduct this review. Ohio’s contact person is Wayne Schalk.

## **Attachment C**

### **Oversight Inspections**

The general oversight inspection concept is to direct inspection resources to problem identification, resolution, and assistance. To best achieve this, the nucleus of OSM inspection oversight is the “Oversight Comprehensive Inspection” (OC). As part of each OC inspection, OSM will evaluate compliance with all applicable performance standards during permit review and on-site inspections to ensure that any problems identified are properly addressed as required by the Ohio Program and SMCRA. 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 and permit requirements 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 provide Ohio inspectors with the opportunity to conduct joint inspections.

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

##### **OSM’s regulatory inspection activities for EY 2012 will include:**

- Approximately 75 oversight complete (OC) inspections will be conducted as the primary inspection and data-gathering process for oversight of Ohio’s mining and reclamation operations. Site selection will be primarily based on sites where OSM has not conducted a complete inspection for two years or more, with some exceptions; some sites, primarily active producing sites, that OSM has inspected more recently; new permits; and sites with significant adjacent area permits issued since the last OSM inspection.

During these permit reviews and on-site inspections, OSM will collect information and data to support oversight objectives and special topical evaluation studies. The findings of these inspections and prior OSM inspections will generate the need for follow-up inspection evaluations. Follow-ups may include site visits, document reviews, and/or phone inquiries. Some topical review activities will require individual scheduling when the evaluation criteria would not be generally available during OC inspections.

- Approximately 35 performance security release evaluation data forms will be completed during OC inspections when possible, and on targeted performance security release inspections. The data forms will focus on the evaluation of on-the-ground success through achievement of performance standards at the time of performance security release, including any identifiable impacts to the hydrologic system and review of Ohio’s documentation

supporting approval of the performance security release. Ohio began a new process for notifying OSM of upcoming performance security releases in late EY 2010 and will continue it. Ohio inspectors will give OSM inspectors prior notice by phone or email of the date of all performance security release inspections. OSM inspectors will determine which release inspections they will attend. This approach will minimize situations where Ohio has approved releases to which OSM may have an objection based on site conditions at the time of the OSM inspection. Effective coordination and scheduling of OC inspections and data review findings will facilitate efficient data collection opportunities and evaluations. The evaluation period will be from May 1, 2011, through April 30, 2012, for performance security release data collection.

- Follow-up inspections as necessary to verify that all enforcement actions that OSM deferred to State action resulted in timely and appropriate correction of violations.
- Approximately 20 additional inspections may be conducted for the coal waste disposal and the slurry pipeline studies.
- Conducting reviews of selected sites on the AMD inventory to collect water quality and quantity data. These site visits will be completed by Dave Agnor, Cheryl Socotch, and others to concentrate on sites with outstanding Chief's Orders for AMD issues, sites on which the permittee has requested release of performance security, and new sites that have been added to the inventory in the past year (about four sites).

#### **AML program inspections**

Approximately 30 AML site inspections will be conducted to verify compliance with programmatic goals, contractual requirements, and NEPA considerations.

**Attachment D**  
**Pending Implementation Concerns, Recommendations for  
Improvement from Past Evaluation Years**  
(Status as of April 2011)

**Implementation Concerns and Recommendations for Improvement**

The following is a discussion of implementation concerns and recommendations for improvement identified by OSM oversight 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 2012.

**Toxic Material Handling Plans:** Hydrology Oversight Review for Geologic and Hydrologic Data; Surface and Ground Water Monitoring; Handling of Toxic Wastes; Coal Waste Disposal; and Sediment Pond Design, Construction, and Maintenance (EY 1993). 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 the applicant has identified sufficient quantity and equipment for placing the isolating material. Ohio drafted guidelines and a new attachment to their coal mining permit application that will provide a more detailed acid and toxic-forming material handling plan. The draft was provided to the mining industry for comment in September 2006. In EY 2008, representatives from industry, Ohio, and OSM were considering this draft document along with other hydrology matters as a part of developing policy and rules to implement enacted HB 443. Ohio issued "Overburden Analysis Guidelines" with an effective date of October 16, 2009, addressing provisions in HB 443 discussing characterization and analysis of the acid- or toxic-mine-drainage potential of a proposed coal mining permit area. Based on the provisions of ORC 1513 and OAC 1501:13, spreadsheets for calculation of acid base accounting (ABA) were developed and are submitted as an addendum to the Geology Information section of the coal mining application. Because ABA is only one component of an assessment of post-mining water quality issues, the guidelines discusses other factors in the form of additional data or documentation that may be submitted by the applicant or required by the chief to supplement the ABA, as well as mining and reclamation practices that may be incorporated or enhanced as a result of the ABA results.

Ohio's hydro-geologists will resume discussion on the requirements of a toxic materials handling plan as it relates to disposal plans and ensuring sufficient available area and equipment for placing material required to be isolated.

**Longwall Mining:** In a letter to Ohio on July 12, 2005, OSM summarized several remaining issues from past OSM oversight regarding longwall mining. Ohio responded to OSM's letter on

December 21, 2005. OSM replied on February 2, 2006, indicating that most issues have not been addressed. OSM committed to address specific problems as they are identified through TDNs. OSM issued one TDN in EY 2006 to address steam impacts. The problem addressed through this TDN has not yet been corrected. However, the company recently submitted a mitigation plan. The current status of the mitigation is not known but will be evaluated as part of OSM inspections in EY 2011. Ohio filled the Inspector 3 position for longwall mines in May 2010. New inspectors were in place in August 2010. That has allowed an inspector to be assigned to work nearly full-time at both of Ohio's full coal recovery permits. Ohio is utilizing components of a tracking system that was supplied by OSM and is now tracking the timing of mining and impacts to features by landowner, structure, and water supply. Ohio is developing a logging system to document stream impacts and is considering hiring a part-time biologist to help with the historical inventory of stream impacts. Ohio continues to explore options relative to hiring a biologist, and has recently secured additional funding from OSM for summer interns. Ohio intends to seek an intern to help assemble an inventory of historical stream impacts at the longwall mines in Belmont County.

**Alternative Enforcement:** In response to OSM's EY 2006 oversight report, Ohio agreed with the findings and indicated they would be hiring an enforcement coordinator to help implement the recommendations. Ohio has not hired an enforcement coordinator as suggested in EY 2006. Ohio has identified the need for an inspection and enforcement coordinator and is working on details of this position relative to their realignment plans. Ohio has included this position in its 18-month grant estimate for FY 2013. Ohio has revised one aspect of the individual civil penalty process that was identified as needing improvement in the 2006 oversight report. OSM will continue to monitor Ohio's progress toward addressing the other recommendations.

**Public Notice of Performance Security Releases:** OSM is planning a follow-up review in EY 2012 on the timeliness of decisions on performance security release applications compared to public notices and other recommendations for improving the process identified in a 2009 oversight study on this topic.

**Ohio's Civil Penalty Process:** In EY2008, OSM conducted a review of Ohio's civil penalty process to determine if Ohio was conforming to the civil penalty assessment (CPA) requirements of its approved program and if it was adequately documenting its decisions and actions. The review found that Ohio needed to correct implementation errors regarding Individual Civil Penalties; that Ohio may not be achieving the objective of the civil penalty process, which is to deter violations; and that Ohio should consider revising their CPA guidelines to improve consistency when assessing individual components of CPAs. Both of Ohio's field supervisors who work directly with CPAs have reviewed the results of the OSM study from EY 2008 and believe they have the mechanisms in-place to properly address ICPA's. Both report that they have not needed to use the process. In EY 2011, Ohio revised the notification to owners and controllers of their eligibility for an ICPA. Ohio has included a review of the CPA process

as part of its strategic planning initiative for 2011. During EY 2012, OSM will consider any changes that occur as a result of Ohio's review toward meeting the recommendations for improvement that OSM provided in 2008.

**Extensions to abatement times beyond 90 days:** OSM's follow-up review of this topic in EY 2011 found significant improvement on processing of extensions and ARPs related to enforcement actions. Although a few site-specific problems remain to be resolved on enforcement actions that OSM and Ohio continue to discuss on a monthly basis, Ohio has improved the overall process.

**Permanent Impoundment Procedures:** As a result of findings from prior OSM inspections regarding acceptable water levels in permanent impoundments, Ohio agreed to draft procedures/guidelines for permanent impoundments. Ohio has provided draft procedure directives for comment to OSM and the mining industry on two occasions over the past two years. Ohio is reviewing final draft procedure directives at this time. OSM will continue to monitor Ohio's progress at adopting final procedures to resolve implementation concerns regarding permanent impoundments.

**Approximate Original Contour (AOC):** OSM completed an oversight review of Ohio's implementation of AOC provisions of their program in EY 2011. The study provided recommendations for improving Ohio's implementation of this program area including:

- DMRM should develop written guidelines explaining the minimum requirements for cross-sections and slope measurements and/or providing other technological methods for evaluating AOC in permit applications
- DMRM should provide written guidelines for inspectors for evaluating compliance with AOC during mining and reclamation
- To determine if identified differences in elevation are consistent with expected land surface configurations inherent in AOC requirements, OSM will work with DMRM and provide direction and clarity in defining AOC land form expectations and support in making any necessary program changes
- OSM should provide better direction in the utilization of current measurement and modeling techniques in defining AOC land form expectations at the time of permit review and post-mining AOC evaluations

Ohio agreed to review and consider the recommendations. OSM will work with Ohio regarding possible ways to implement the recommendations and provide technical support as necessary.

**Large Impoundments:** OSM completed a review of large impoundments in EY 2011. The review made the following recommendations that should improve Ohio's implementation of their program regarding large impoundments:

- develop and assign responsibility to maintain a DMRM inventory of large impoundments

- develop written procedures and/or a memorandum of understanding (MOU) among DMRM, the Ohio Division of Soil and Water Resources (DSWR), and U.S. Department of Labor, Mine Safety and Health Administration (MSHA) that provides for coordination of review of proposed impoundments, modifications, revisions, designation of permanency, and notification of abandonment and final performance security release
- develop standard criteria for review of large impoundments by DMRM engineers
- provide initial and reoccurring refresher training to DMRM inspectors on inspection procedures and provide specific documentation criteria for inspection of impoundments
- continue pursuit of timely final reclamation of three slurry impoundments, two of which were identified as having a risk of breakthrough into abandoned underground mines, and pursue timely opening of a clogged spillway pipe on another impoundment
- reevaluate DMRM's approval of a permit revision for one impoundment as a permanent structure based on the as-built design's not meeting required criteria for design storm events
- develop ways to require permittees to submit and routinely update emergency action plans (EAP) for all large impoundments and share the plans with all three agencies

Ohio agreed to seek formal dialogue with the other two agencies that regulate impoundments and work to improve documentation, communication, and the inspection process as they relate to large impoundments. OSM will monitor DMRM's progress to meet their commitments in EY 2012.

## Attachment E

### **Program Problems and Action Plans**

(Status as of April 2011)

The following Program Problems were identified by OSM oversight conducted during previous evaluation years or are required program amendments and 30 CFR Parts 732/733 actions identified in previous Annual Evaluation Reports. These Program Problems are described in the Action Plans below as required by OSM Directives REG-8 and REG-23.

#### **30 CFR Part 733 Actions**

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 performance security has been forfeited.

- 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.
- On December 3, 2003, the Appalachian Region's Regional Director recommended that the OSM Director initiate action under 30 CFR Part 733.
- The Director sent Ohio a "733" letter on May 4, 2005.
- The Ohio Legislature passed HB 443, and it was signed into law on January 4, 2007, effective on April 4, 2007.
- Ohio submitted Program Amendment #82 in March 2007.
- OSM reviewed the amendment and provided an issue letter to Ohio on July 30, 2007, asking that Ohio address the issues within 60 days.
- Ohio responded to the issue letter in January 2008.
- OSM responded to Ohio's response in January 2009.
- Ohio has adopted three legislative changes and several rules since HB 443.
- OSM has informally reviewed all changes since HB 443.
- Ohio submitted a formal revision to PA #82 on April 1, 2011.
- Ohio completed an actuarial review of the Reclamation Forfeiture Fund in EY 2009.
- A contract for a conducting a second actuarial study has been issued and the study will be completed by June 30, 2011.

Ohio has continued working with the Ohio Coal Association to adopt legislation to address the remaining legislative issues that OSM raised under HB 443. Although legislation to address some specific issues OSM identified with HB443 has not yet been adopted, OCA and Ohio have reported they have reached agreement to allow legislation to be introduced.

Legislation is planned for this year that should provide a permanent supplemental revenue source to fund the regulatory program and address the remaining few statutory issues that OSM identified. Ohio has additional procedure directives to develop that will support additional rulemaking. OSM will continue working with Ohio to gain approval of the amendment and to develop the remaining rules and policies necessary during EY 2012.

<b>Action Plan ID: OH-2011-001</b>		<b>State - Ohio</b>		<b>Responsible OSM Office &amp; Manager: ARC, Pittsburgh Field Division, George Rieger, 717-782-4849</b>	
<b>Problem Description</b>		1982 condition on the Secretary's approval of Ohio's regulatory program that the alternative bonding program does not ensure timely reclamation of bond forfeiture sites and resultant OSM notice of May 2005, under 30 CFR Part 733			
<b>Resolution Required</b>		To resolve the program condition, Ohio must "...demonstrate how the alternative bonding system will assure timely reclamation at the site of all operations for which bond has been forfeited." Ohio must revise its program to provide adequate administration and funding of its alternative bonding system so that it meets the requirements of 30 CFR 800.11(c).			
#	<b>Actions Required</b>	<b>Projected Date</b>	<b>Progress</b>	<b>Date</b>	
1	Ohio will formally submit a revised PA#82 to include all statutory and rule changes made since PA #82 was submitted in March 2007.	April 1, 2011	Revised PA #82 submitted	April 1, 2011	
2	OSM will publish the proposed rule on Revised PA #82 in the Federal Register.	May 30, 2011			
3	Legislation currently being considered by Ohio and OCA to address the remaining OSM statutory issues will be introduced to the legislature.	May 1, 2011			
4	Once adopted, Ohio will submit the changes to OSM as another revision to PA #82 or depending on timing of OSM's Federal Register notice; they may be combined with the other changes to PA #82.	Within 30 days of adoption			
5	Ohio will submit a current actuarial report on the Reclamation Forfeiture Account.	July 1, 2011			
6	OSM will decide if or how, the actuarial report will be considered along with other changes to PA#82.	August 15, 2011			
7	OSM will review the changes proposed and notify Ohio of any new issues.	October 15, 2011			
8	OSM will make a decision on revised PA #82 and provide a recommendation regarding resolution of the program condition to the Secretary of Interior.	February 1, 2012			
9	Final resolution expected.	April 1, 2012			

## **30 CFR Part 732 Actions and Outstanding Program Amendments**

### **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. Since adoption of this program element is a component of a previously required amendment, it must be adopted. Ohio told OSM in EY 2006 that they could not work out acceptable language with the mining industry. Therefore, Ohio does not plan any further work to adopt the language that OSM approved in 1998. OSM has taken no further action on this matter since its October 11, 2006, letter to the ODNR Director. Ohio did not respond to that letter and has not taken any further action to adopt the approved amendment. There was no change on this issue during EY 2010. OSM will continue to work with Ohio to resolve this issue. Ohio's legal counsel recently contacted OSM regarding this issue and is drafting a response intending to show that Ohio's provisions are no less effective than the Federal provisions.

<b>Action Plan ID: OH-2011-002</b>	<b>State - Ohio Responsible OSM Office &amp; Manager: ARC, Pittsburgh Field Division, George Rieger, 717-782-4849</b>		
<b>Problem Description</b>	OSM established on January 13, 1997, in 30 CFR 935.16, that Ohio must submit a program amendment to revise statutory provisions regarding attorney fees. Ohio submitted program amendment (PA) #75 on June 24, 1997. OSM approved it on February 24, 1998 and removed the required amendment from 935.16. However, Ohio has not adopted the approved amendment.		
<b>Resolution Required</b>	"1) Amend the Ohio program to make it clear that such awards may be made in connection with any administrative review proceedings concerning an enforcement action, permit issuance decision or employee discrimination complaint, not just those concerning enforcement actions. 2) Amend ORC 1513.13(E)(1)(b) and (c) to make it clear that such costs may also be assessed against persons who participate in bad faith appeals, not just those persons who initiate bad faith appeals."		
#	<b>Actions Required</b>	<b>Projected Date</b>	<b>Progress</b>
1	Ohio will submit support for how the Ohio Program is no less effective than Federal standards for OSM's consideration or introduce legislation that adopts the language in PA #75 that OSM approved.	July 31, 2011	
2	OSM should reinstate the required amendment in 30CFR 935.16 if Ohio does not meet #1 or reconsider the requirement that Ohio must change its program.	September 30, 2011	

### **Ownership and Control Rules**

OSM and Ohio have met to discuss new Federal rules regarding ownership and control and the AVS process. In September 2009, Ohio stated that they will maintain most of their current ownership and control rules and continue operating under the provisions of the current MOU with OSM. However, Ohio acknowledged that they needed to make some changes and planned to do so during EY 2010. Due to other priorities, Ohio has not yet proposed rules to address the changes that OSM identified were needed to remain as effective as the Federal ownership and control rules. These rules are currently being drafted, and will go through Ohio's internal and external review process, including OSM, OCA, and OEC. Ohio anticipates a 2011 date for filing and submittal of the program amendment.

<b>Action Plan ID: OH-2011-003</b>	<b>State - Ohio</b>	<b>Responsible OSM Office &amp; Manager: ARC, Pittsburgh Field Division, George Rieger, 717-782-4849</b>
<b>Problem Description</b>	On September 25, 2009, Ohio responded to OSM that they would not be adopting the Federal rules on ownership and control with regard to permit blocking, would rely on terms of the MOU with OSM regarding AVS, and would submit a program amendment in response to certain other changes to Federal rules on ownership and control in six to nine months. In February 2011, Ohio reported that the rules are drafted and will be distributed to OSM and other interested parties for their informal review and comment in April 2011. Following that informal review, Ohio will submit a formal amendment to OSM.	
<b>Resolution Required</b>	Ohio needs to submit the program amendment.	
<b>#</b>	<b>Actions Required</b>	<b>Projected Date</b>
1	Ohio will submit a request for informal review of the proposed rule changes.	July 30, 2011
2	Ohio will revise proposed rules in response to informal review outcome and submit a formal program amendment to OSM.	October 30, 2011
	<b>Progress</b>	<b>Date</b>

## Attachment F

### **OSM Assistance Activities**

- OSM will continue to attend the quarterly meetings of the Coal Permitting Work Group.
- OSM will continue to participate with Ohio and the U.S. Fish and Wildlife Service on endangered species matters as needed.
- OSM will work with Ohio to promote the Appalachian Regional Reforestation Initiative (ARRI) by continuing to meet with industry, and working with other agencies to promote the initiative and provide training.
- OSM will continue participating on Ohio's HB 443 work groups and with the Reclamation Forfeiture Fund Advisory Board as needed.
- Upon request, OSM will help Ohio with their efforts to update their enforcement procedures guidance document and any other procedures or guidelines as needed.
- OSM is providing funding for the development of, or replacement of, Ohio's Central Tracking System (CTS). The Coal Permit Tracking System is being replaced with a comprehensive system for electronic permitting, business process management (workflow), and document imaging. An RFQ has been issued for the project which will close in April 2011. The vendor selection will take place in May 2011, with the hardware, software, and design expected to be purchased and completed by June 30, 2011. The system will be completed and in production by the end of the calendar year. In the first half of CY 2012 Ohio will train the coal companies on the use of the electronic permitting system, with a goal of minimizing and eliminating the acceptance of paper applications.

In calendar year 2012 we will be working on the second phase of the integrated system, focusing on the migration of the current Coal Inspection and Enforcement program to the new environment. The new system will include the ability of the coal inspectors to take the supporting documentation with them to the field. The second phase will either be developed exclusively in-house with ODNR staff, or with a combination of ODNR staff and contract partners. Ohio will ask for OSM's input and recommendations, as the project unfolds.

- Assist and participate in developing a training session of DMRM and OSM inspectors regarding procedures for inspecting and documenting impoundments.
- Assist and participate in developing a training session of DMRM and OSM inspectors regarding procedures for inspecting and documenting coal waste disposal facilities.