

**OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT**

Annual Evaluation Summary Report

of the

Regulatory and AML Programs

Administered by the State

of

OHIO

for

2003 Evaluation Period

(October 1, 2002 to June 30, 2003)

FINAL REPORT
September 2003

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I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that OSM has approved as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Ohio Program and the effectiveness of the Ohio Program in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of October 1, 2002, through June 30, 2003. This reporting period covers only nine months, due to a change in the previous evaluation year from October 1 through September 30 to the new evaluation year of July 1 to June 30. This change results from a need for data earlier in the year for Congressional reporting purposes. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Columbus OSM Office.

The following acronyms are used in this report:

ABS	Alternative Bonding System
ACOE	U.S. Army Corps of Engineers
ACSP	Appalachian Clean Streams Program
AMD	Acid mine drainage
AMDAT	Acid mine drainage treatment and abatement plan
ATP	Authorization to Proceed
AML	Abandoned mine land
CFR	Code of Federal Regulations
DOW	Ohio Division of Wildlife
EPA	Environmental Protection Agency
EY	Evaluation Year
FWS	U.S. Fish and Wildlife Service
NEPA	National Environmental Policy Act
NOI	Notice of Intent to Explore
ODNR	Ohio Department of Natural Resources
Ohio	Ohio Division of Mineral Resources Management or State of Ohio
OSM	Office of Surface Mining Reclamation and Enforcement
SMCRA	Surface Mining Control and Reclamation Act
TMDL	Total Maximum Daily Load
USFS	U.S. Forest Service
VER	Valid Existing Rights

II. Overview of the Ohio Coal Mining Industry

Thirty-seven mining companies produced 21.0 million tons of coal in 2002, a decrease of nearly 19 percent over 2001 production. The total coal sold in 2002 was 20.8 million tons with a value of \$440.2 million. The average price per ton of coal was \$21.18, a 13 percent decrease from 2001.

The number of coal-producing companies in Ohio decreased from 41 in 2001 to 37 in 2002. The number of producing mines decreased from 112 to 104. During 2002, surface mining operations at 95 mines produced 10.1 million tons (48 percent of total production). Coal production from surface mines in 2002 decreased by 2.4 million tons, about 19 percent from 2001. Underground mining at nine mines produced 10.8 million tons (52 percent of total production). Coal production from underground mines in 2002 decreased by 2.5 million tons, about 19 percent from 2001. Longwall mining of 6.1 million tons accounted for 56.5 percent of the total underground production (29 percent of total production).

Ohio's coal industry employed 2379 people in 2002, a decrease of 12 percent over 2001. Production employees, numbering 1446, accounted for 61 percent of the 2002 coal work force. Wages earned by all coal industry employees in 2002 totaled more than \$116.2 million, down 18 percent from 2001.

Ohio retained its 14th place rank among the 26 coal-producing States in the nation and produced 1.9 percent of the nation's coal in 2002, down from 2.3 percent in 2001. Ohio ranked third nationally in coal consumption, behind Texas and Indiana.

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

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

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

Ohio has continued with its educational outreach program with a goal of educating individuals, groups, and governmental agencies about potential building problems associated with abandoned mine lands (AML). Development on AML can lead to expensive repairs when settling or landslides occur and other types of building problems. Ohio's AML program does not fund reclamation, water replacement, or stabilization projects if landowners fail to address AML problems prior to development.

Ohio developed a guide for developing AML sites to assist in evaluating past mining sites for homes, roads, or other types of development. Ohio mailed 700 copies of the guides to legislators and local governments in 37 counties.

Ohio developed a partnership in 2002 with the Division of Soil and Water and the Soil and Water Conservation Districts (SWCDs) to assist in the education effort with landowners and local officials. A total of 1845 copies of the guides were mailed to the SWCDs for distribution in each county. Ohio is holding regional and state meetings with the SWCDs to better familiarize the staff with AML issues associated with potential building problems. The SWCDs will also be a resource to landowners and local officials on this topic.

In addition to outreach efforts by Ohio, OSM also conducts outreach to the public. OSM, likewise, did not implement any new public outreach initiatives during 2002. OSM continues to provide a periodic newsletter to interested parties who have asked to be on our mailing list.



OSM helped organize an Earth Day event in coordination with the Duck Creek Watershed Project, the Washington Soil and Water Conservation District, and the Ohio Division of Mineral Resources Management. Representatives from each organization helped build log and pole sediment control structures on an abandoned strip mine site. The site was located on a state-owned wildlife area in the Duck Creek drainage basin.

2003 Earth Day Project
Construction of Log & Pole Sediment
Control Structures on AML Sites
Noble County



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

A. Program Accomplishments and Initiatives

On-the-Ground Accomplishments

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

OSM=s evaluation of off-site impacts, mostly based on enforcement actions taken by Ohio, identified 47 impacts outside permitted areas. Three events were classified by Ohio as causing major off-site impacts. These three occurrences were impacts to water supplies. Eight off-site impacts were considered moderate and 36 minor. As in past years, hydrologic resources were impacted the most, with water quality and sediment control violations causing most of the impacts.

Observations regarding industry compliance and off-site impacts are supported by OSM=s findings from 107 site visits on regulated mine sites (39 of these were to gather water quality data on sites with potential to produce acid-mine drainage after reclamation) and other oversight evaluations conducted during this review period. In addition, OSM conducted 31 site visits on AML projects and AML emergency or potential emergency projects to monitor Ohio=s AML activities. Section VII of this report contains additional information on the number of inspections and site visits conducted.

During the nine-month 2003 Evaluation Period (EY) (October 1, 2001, through June 30, 2003), the Ohio mining industry, in conjunction with the Ohio Division of Mineral Resources Management, achieved final reclamation (Phase III bond release) on 4273.0 acres, established soil replacement and vegetation for Phase II bond release on 2214.0 acres, and backfilled and graded mining areas for Phase I bond release on 4273.0 acres.

Ohio completed reclamation on five bond forfeiture sites covering 86.9 acres. Reclamation is underway on six bond forfeiture sites covering about 155 acres. Surety companies completed final reclamation for Phase III bond release on four bond forfeiture sites covering 900.3 acres. Ohio issued two bond forfeiture orders on 35.2 acres.

Program Accomplishments and Initiatives

Regulatory Program Accomplishments

Inspection Management

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

Ohio reports that the required number of inspections was conducted on an average of 95 percent of the mine sites during the evaluation period.

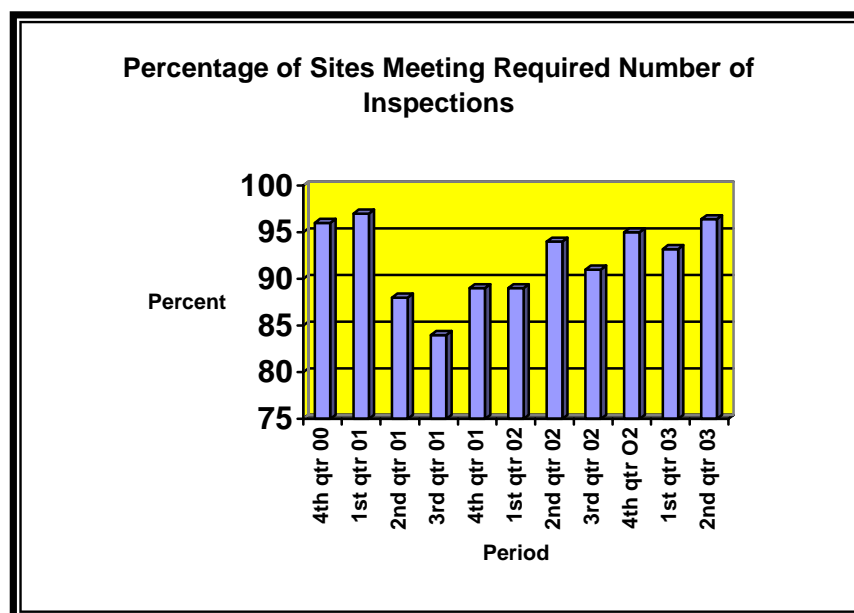
Compliance with Permits

Ohio has increased their emphasis on compliance with approved plans, designs, standards, and permit conditions at mining and reclamation operations. Past OSM inspections and oversight studies have identified non-compliance

with permit standards as a significant cause of violations in Ohio. Ohio managers have raised awareness of staff and industry that compliance with all measures described in approved permit applications is required. The number of violations Ohio has issued related to non-compliance with permit standards has increased.

Improved Hydrologic Impact Evaluation Procedures

Ohio implemented new guidelines that inspectors must follow during inspections and before recommending approval of any bond release. The procedures specifically address hydrologic impacts and they focus on prevention and identification of problems during mining, evaluation of water monitoring reports, evaluation of off-site areas that may be impacted, and consultation with hydrologists. The guidelines include a checklist that inspectors must complete before bond release is approved. The checklist requires the inspector to make a determination or, when facts warrant, to request assistance from a hydrologist about all water quality and quantity issues on the permit and adjacent areas. This documentation will provide support for a final decision on all bond release requests. These guidelines will help address OSM's long-standing concern about Ohio's documentation of hydrologic impacts at the time of bond release.



AML Program Accomplishments

Emergency Program

Ohio identified and abated 29 AML emergency conditions during the evaluation period. The emergency projects addressed 26 subsidence-related problems, two burning gob piles, and one mineshaft.

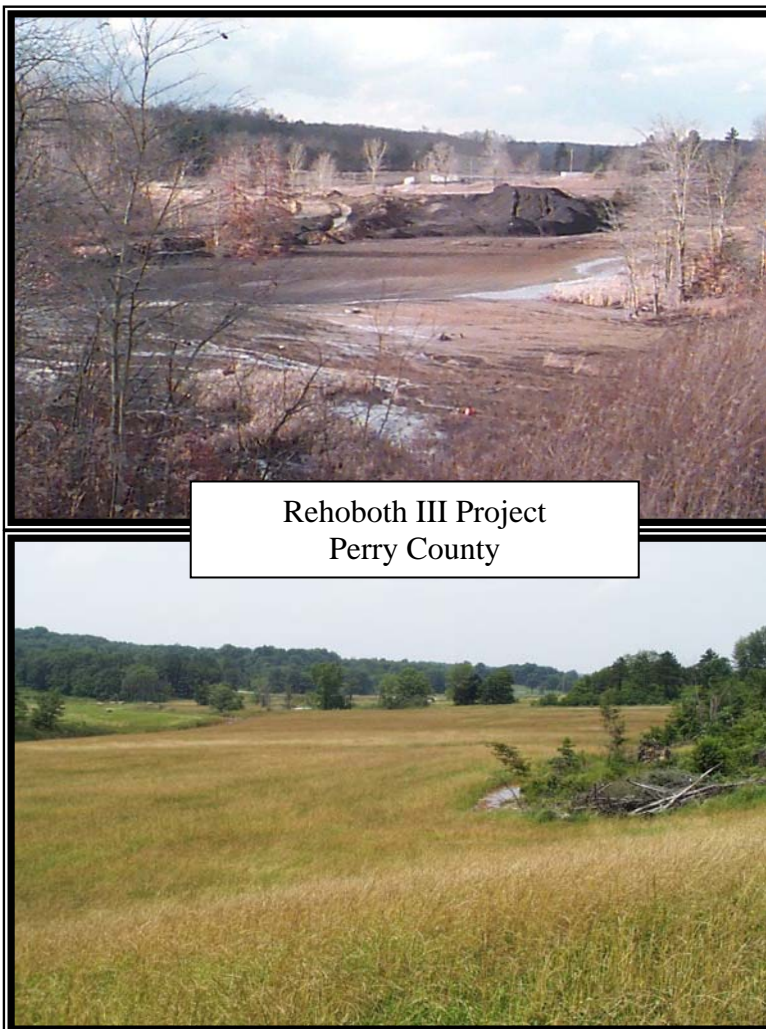
In 2002, OSM conducted a review of Ohio's implementation of its AML emergency program to determine the amount of time Ohio takes to respond to and abate AML emergency conditions. As a result of that review, Ohio agreed to improve monitoring and tracking of their current process.

In 2003, Ohio developed a plan to improve monitoring and tracking of all AML emergency projects. One part of Ohio's plan is that all complainants receive a telephone call within 24 hours from the receipt of the complaint. A second element of Ohio's plan is that construction to correct pothole subsidence complaints would start within 90 days. Construction on subsidence projects that require drilling and grouting would start within 120 days. Landslide repair would begin within 180 days.

AMLIS Accomplishments

Ohio reported the following AML project completions as accomplishments in the Abandoned Mined Land Inventory System (AMLIS):

- 81 acres Clogged Stream Lands (CSL)
- 1622 lineal feet Dangerous Highwall (DH)
- 12.4 acres of Dangerous Landslide (DS)
- 30 acres gob (GO)
- 4 Hazardous Equipment and Facilities (HEF)
- 22 Portals (P)
- 5.7 acres Subsidence (S)
- 4 acres Surface Burning (SB)
- 1 Vertical Openings (VO)
- 100 gallons per minute of acid mine drainage (AMD) treated (WA)



Rehoboth III Project
Perry County

Appalachian Clean Streams Program (ACSP)

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

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

AMD & ART Project – The conceptual design for this passive treatment system in Murray City has been completed. A consultant was hired in February 2003, to complete the final design and was 50 percent completed as of the end of the review period. The group intends to apply to OSM for a watershed cooperative agreement for this project once the design is done.

U.S. Army Corps of Engineers (ACOE) Feasibility Study - This study is combined with the Ohio Environmental Protection Agency's (OEPA) Total Maximum Daily Load (TMDL) study. West Virginia University has developed a hydrology model for the entire watershed that is based on the work done by the ACOE and the OEPA. This has been completed, and the study is undergoing final revisions. Numerous projects identified by the study have a projected cost of about ten million dollars. Work can proceed after final reviews are done and congressional authorization is received.

The U.S. Forest Service (USFS) has continued to be a strong partner in the watershed. Designs for the Snake Hollow and Big Four Hollow projects have been completed, and construction should begin next season. Repair work was also done on the Orbitson Subsidence Closure project, and an additional stream capture was closed off at Essex. Hocking College has also started work on the 1.5 acres Jobs Gob Pile project in cooperation with the USFS.

Grimmet Project – This project involving 3.5 acres of gob pile reclamation and installing limestone drains and trenches was bid in January 2003, with the contract issued in April. The contractor dropped out of the contract, and the next lowest bidder was selected. Work had not started as of the end of the review period.

Jobs Doser – A consultant designed this project located on USFS land. Bidding is scheduled for late summer or early fall.

* Sunday Creek: The watershed group has successfully completed its AMD Abatement and Treatment plan, making the watershed eligible for set-aside funding. The group's watershed cooperative agreement for the Congo Subsidence Closure project was also approved. The project has been bid, with the work to be completed this summer. The group is currently concentrating its efforts on closing subsidence features that capture stream flow to reduce the amount of AMD generated from the abandoned mines.

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

Carbondale II Project - The Carbondale II watershed cooperative agreement project was bid in January 2003, and construction is now occurring. A water-driven doser will be installed, along with a channel that will facilitate mixing and cleanout.

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

Mulga Run Project - The Mulga Run watershed cooperative agreement project was bid in June 2003. It was in the contracting process as of the end of the review period. This project includes installation of limestone and steel slag leach beds, and limestone channels in combination with some priority 2 work to reduce residential and road flooding.

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

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

Huff Run Acid Pit #1 Project - The design of the Huff Run Acid Pit #1 watershed cooperative agreement project is completed and the project advertised for bids.

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

Mineral City Park Project -The Mineral City Park study has been completed.

* Moxahala Creek: The watershed group is developing the management plan by holding a series of public meetings and sending out surveys to residents of the watershed. They are also working with Ohio to apply for a watershed cooperative agreement through the non-profit Clay Valley Foundation to construct the Misgo west project. This would involve sealing off seepage into a large gob pile that is generating significant amounts of AMD.

Wills Creek: Ohio has continued to work with the ACOE on projects around Wills Creek Reservoir. Construction on the Linton Township Road project, started in the summer of 2002, has been completed. The water quality from this site is significantly improved. The ACOE is in the planning stages for another project called MM-280, on the south side of the reservoir. This watershed does not have any citizen-based group actively involved at the present time.

Kimble Creek: The USFS has completed the installation of a pilot pyrolucite cell that was inoculated near the end of the evaluation period. Monitoring will occur through the next season to evaluate this approach.

Piedmont Lake Drainages:

Lick Run: The goal of this project is to restore a 32-acre embayment area on Piedmont Lake. Over the last year, Ohio has monitored the project, which was completed by the ACOE last summer. They have met with Dr. Ziemkiewicz to review the site and the monitoring result to determine dosing rates. The Ohio Division of Wildlife (DOW), the landowner at the site, conducted fish sampling in the embayment this summer.

Robinson Run: This headwater stream is located on the Egypt Valley Wildlife Area about two miles upstream of Piedmont Lake. The upper end of this drainage is polluted by AMD. Ohio University did a monitoring study on its chemical quality. The Olney Friends School, located in nearby Barnesville, may apply to OSM for a watershed cooperative agreement in partnership with DOW and Ohio. The school would perform monitoring using its environmental science class. Ohio would administer the project, and perform any needed operation and maintenance. DOW would restock one or more ponds on the upper end of Robinson Run that are currently polluted by AMD.

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

* Leading Creek: The Leading Creek Improvement Committee Advisory Council has continued to meet regularly. Several landowners in the watershed were approved to install vegetation filter strips in the buffers of tributary streams to reduce sedimentation from farming activities. AMD is mostly encountered in the Thomas Fork tributary that enters Leading Creek near its mouth. The impact of the AMD is less significant due to the backwaters of the Ohio River. Other tributaries containing lesser amounts of AMD are being evaluated for potential project sites. However, sedimentation, much of it from past mining, is the chief cause of impairment in Leading Creek. Most of the mines have been reclaimed, but the sediment is not scouring out of the lower sections of the tributaries or Leading Creek itself. Stream modifications and sediment removal are being considered. The Natural Resource Conservation Service is designing the

Titus Road project. This project will reclaim an abandoned strip mine that is one of the few remaining mine sites contributing significant amounts of sediment to the watershed. A watershed coordinator has been hired in cooperation with the Ohio Department of Natural Resources, Division of Soil and Water.

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

* Duck Creek: The Duck Creek watershed is a stream impacted by abandoned surface mines. The primary impact is increased runoff and sedimentation. Ohio has done many projects over the years to reduce sedimentation with the goal of preventing flooding. More recently, with the creation of a watershed group with a full-time coordinator, the focus has broadened to include biological recovery. The group is working closely with Ohio and the OEPA, which has completed a TMDL study of the entire watershed.

B. Program Issues

AMD Inventory

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

This evaluation year, OSM continued to review and refine the AMD inventory by verifying conditions on the sites through site visits. OSM made 45 site visits to continue collecting water quality and quantity data on the previously identified AMD problems. Most of the actual inventory sites were reviewed once during the low-flow period and once during the high-flow period to better characterize the water chemistry and flow variations on the sites.

During this evaluation year, Ohio and OSM jointly developed procedures for adding and removing sites from the AMD inventory. These procedures identify monitoring frequencies and results for removing sites, in addition to granting bond releases on permits on the inventory. Both agencies have agreed that, for a site to be removed or have bond released, the site must have four consecutive quarters of acceptable water quality discharges. Ohio established additional monitoring requirements for one of the permits on the inventory. It is conducting a special in-depth review of another in anticipation of better defining actions the permittee must take to address the AMD problem. Ohio has also assigned a team to develop special procedures for their field staff to implement regarding the handling and monitoring of AMD.

During the upcoming evaluation year, OSM will continue to evaluate these sites along with any new sites found during normal routine oversight inspections. OSM and Ohio will continue to work together to refine the site inventory and to develop strategies for abating and/or treating sources of AMD on these sites during the coming evaluation year.

Longwall Mining

As a result of OSM's EY 2001 report on longwall mining, Ohio agreed to review and revise their current public information regarding longwall mining and make it more available to landowners upon request. Ohio developed an information pamphlet and has made it available to the public. The main finding of the EY 2001 report concerned the timeliness of permanent replacement of agricultural water supplies. Ohio is planning a refresher training meeting with the inspectors involved with underground mines to reiterate policies regarding damage repair and compensation and water replacement. OSM conducted an inspection of one of the mines included in the 2001 study of longwall mining. Permanent agricultural water replacements have not yet been provided to all of the properties impacted. Mining was completed in 1999. Ohio will soon be again notifying mining companies to remind them of their responsibility to permanently replace water supplies in accordance with program and permit requirements. Ohio will also follow up on any water supplies that have not been addressed in a timely manner.

Bond Forfeiture Program

Last year, OSM made several recommendations in its report on Ohio's bond forfeiture program, including:

- The report was not based on an actuarial analysis and provided no long-term projection of the solvency of Ohio's alternative bonding system (ABS). The report describes the current condition of the ABS and projects how long it will take Ohio to eliminate the current liability under current funding. Based on the limitations of this report, 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 bond forfeiture order.
- 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.

- 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.
- Ohio has changed its interpretation of Ohio Revised Code 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.
- Ohio and OSM should revisit the terms of the Improvement and Monitoring Plan in light of other actions that may result from this review.

Following the November 2002 report, OSM sent two letters to Ohio encouraging them to make necessary changes to the bonding program. OSM sent its latest letter to the Director of the Ohio Department of Natural Resources on May 13, 2003. The letter concluded: "It is imperative that Ohio takes action during the current legislative session. Otherwise, I will be compelled to recommend that the Director of OSM immediately initiate proceedings under 30 CFR Part 732.13(j)(4) to withdraw approval of the Ohio program, in whole or in part." Although OSM and Ohio are informally discussing the matter, Ohio has not yet submitted any changes to its bonding program. OSM will continue to work with Ohio to develop necessary changes to the bonding program to ensure timely reclamation of forfeited sites.

As planned, Ohio directed most of its attention this past year to completing several maintenance-type projects on forfeited sites. Initial project construction was substantially completed on five forfeited coal sites in addition to work on forfeited industrial minerals sites. Due to the funding situation, progress on completing initial reclamation of forfeited coal mine sites was limited. Of the 41 forfeited sites that had not been completely reclaimed as of January 1, 2002, Ohio has substantially completed reclamation on five of these sites and surety companies have completed final reclamation on four additional sites. Four new coal mine forfeiture sites were added to the inventory.

Ohio Supreme Court Decision on Regulatory Takings

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

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

On December 30, 2002, the Ohio Attorney General filed a motion for reconsideration of the Court's decision. The motion for reconsideration was based on, among other reasons, Federal takings cases where nearly opposite decisions were reached with nearly identical fact situations. The Court denied that motion on January 8, 2003. Ohio decided not to appeal the decision to the U.S. Supreme Court.

The decision could have very significant effects on future regulation of mining activities where mining may be prohibited or limited. The financial impact of the decision on Ohio's program could be devastating. Ohio has already paid attorney fees in excess of \$300,000. Although the cost of the coal reserves is unknown at this time, pending the outcome of settlement negotiations or an appropriations proceeding, it could be in the millions of dollars.

Permanent Impoundments

During the last evaluation period, after final bond was released, OSM identified permanent impoundments on one site that did not maintain a stable water level. During this period, OSM, Ohio, and the mining company met on the site to determine the extent to which this problem included other areas permitted by this company and to clarify the standards that must be met. Ohio acknowledged the problem and clarified their interpretation of the requirements to maintain a stable water level. Ohio suggested that the company evaluate other impoundments on their permits and take measures to ensure that the impoundments meet the requirements before requesting final bond releases.

Permit Renewals and Expired Permits

During this evaluation period, OSM and Ohio identified a number of permits that had expired without being renewed. In most cases, the permittee had not recognized that their permit had expired or was about to expire and had not submitted an application to renew the permit before expiration. In some cases, the Ohio inspector had not realized that the permit had expired. Ohio's policy is that an application for permit renewal will not be accepted after a permit has expired. Once expired permits were identified, Ohio took proper enforcement action to stop mining on the site until a valid permit was issued. In one instance, the Ohio Reclamation Commission granted temporary relief from Ohio's enforcement action. The relief allowed the permittee to continue operating his processing facility while a permit application was submitted and processed. Ohio has taken measures to help prevent future occurrences of permits expiring prior to renewal.

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

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

A. Off-Site Impacts

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

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

Using this combination of sources of information, a total of 47 off-site impacts were identified on 28 mine sites, based on information gathered by OSM and Ohio. Ohio inspected approximately 319 active and inactive mine sites during the EY 2003 evaluation period. Based on this review, 291 of the 319 mine sites, or 91 percent of the mine sites in Ohio had no identified off-site impacts. There was no change in the percentage or the number of sites free of off-site impacts from EY 2002. OSM did not inspect the 38 bond forfeiture sites and Ohio does not take enforcement action once bond forfeiture orders are issued. Therefore, no off-site impacts were identified on bond forfeiture sites. The 38 bond forfeiture sites were not included in the 319 sites inspected by Ohio and OSM. However, Ohio continues to inspect these abandoned sites at least once a year.

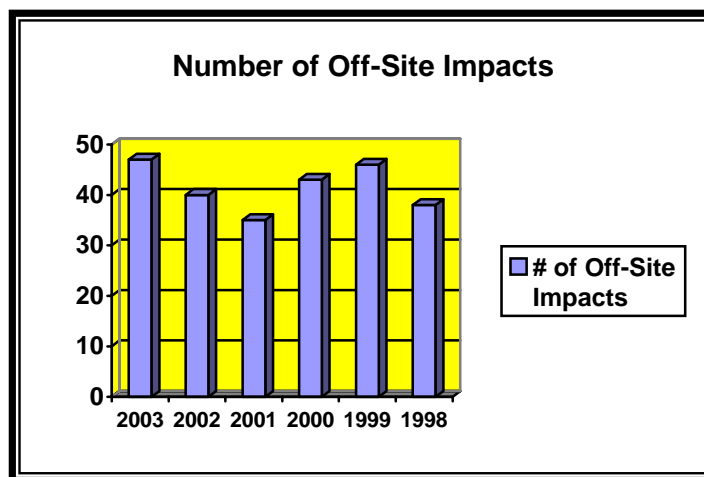
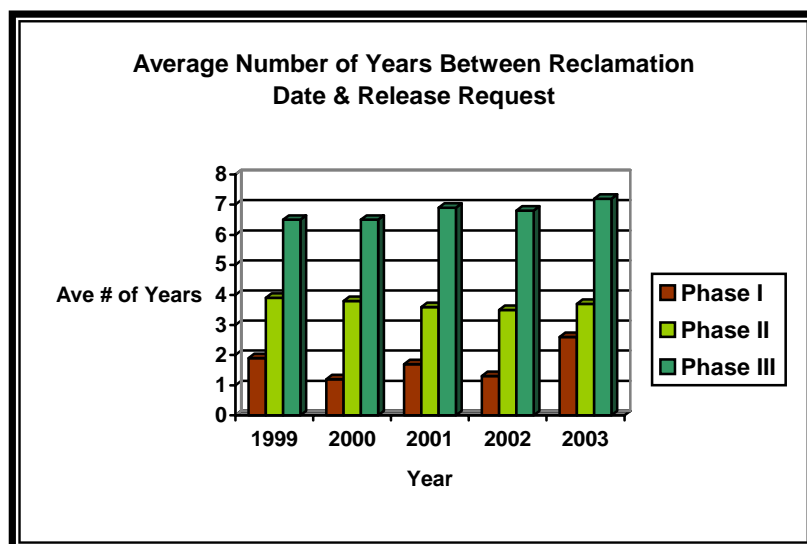


Table 4 summarizes the number of resources affected and the extent of the off-site impacts identified. The 47 off-site impacts were reported as: three causing a major impact, eight causing a moderate impact, and 36 causing minor impacts. These 47 off-site impacts affected 66 resources of people, land, water, and/or structures. Two of the three events that caused major impacts to people and water were due to damage to water supplies that were not replaced in a timely manner. The third event that Ohio designated as causing a major impact to water was related to operating on an expired permit. Ohio took appropriate and reasonable measures to address the violations and the impacts that resulted. The moderate and minor impacts were related to a variety of issues, with most of the impacts related to water quality and drainage control violations.

Considering the nine-month review period, the number of off-site impacts is higher than in the past three years. This increase is most likely attributable to Ohio's inspectors being more aware of, counting, and reporting off-site impacts than in past years. The number of off-site impacts identified on OSM inspections is relatively consistent with past years. The percentage of sites free of off-site impacts has remained stable over the same period. Reducing the number of off-site impacts remains a goal of Ohio and OSM.

B. Bond Release and Reclamation Success

OSM conducted inspections on 42 segments on 33 permits or 16 percent of the reclamation segments that the Ohio District Offices approved for bond release between July 1, 2002, and June 30, 2003. OSM found that Ohio's approval of bond releases on these segments was proper in all cases. Table 5 in the Appendix tabulates information on bond releases processed by Ohio during the review period¹.



OSM measured contemporaneous reclamation using information provided by Ohio for all Phase I, II, and III bond releases the District Offices approved between July 1, 2002, and June 30, 2003. The information provided the date the permittee first identified a segment for reclamation and the date the permittee submitted a bond release request that Ohio approved for that segment.

This portion of the evaluation is based on Ohio's approval of bond release on 254 segments totaling 12,244.7 acres. The chart provides the average time frames for each phase of bond release over the last five years. Findings from this evaluation concluded:

¹ Table 5 provides data on bonds released by Ohio between October 1, 2002, and June 30, 2003. OSM's review of reclamation success covers the period from July 1, 2002, to June 30, 2003, to allow completion of the report by the end of the EY.

- Time frames for completing Phase I reclamation ranged from –0.3 years to 17.2 years² and averaged 2.6 years on 87 Phase I releases approved by Ohio. Bond release was requested within one year on 41 percent of the segments approved for phase I release.
- Time frames for completing Phase II reclamation ranged from –0.3 years to 15.1 years and averaged 3.7 years on 62 phase II releases approved by Ohio. Bond release was requested within two years on 26 percent and within three years on 53 percent of the segments approved for phase II bond release.
- Time frames for completing Phase III reclamation ranged from –0.3 years to 16.2 years and averaged 7.2 years on the 105 phase III releases approved by Ohio. Bond release was requested within seven years on 62 percent of the segments approved for phase III bond release.

Ohio has continued to monitor sites where mining has been completed for more than two years and the entire site has not achieved a phase II bond release. As of August 2003, there were 36 sites that met these criteria. There were 35 sites meeting this criteria last year. Ohio also monitors sites where mining has been completed for more than six years, but the site has not achieved a phase III bond release. There were 32 permits that met these criteria as of August 2003, a decrease from 35 permits last year.

Land use statistics gathered during 55 OSM inspections continued previous trends with 76 percent of the permitted acres having an undeveloped pre-mining land use and 74 percent of the land having a pasture/grazing post-mining land use. Crop productivity records reviewed on 11 segments approved for phase III bond release, which required a demonstration of restored crop productivity, indicated the reported average hay production on the total of the released acreage was 2.95 tons per acre, exceeding the total reported county average by 20 percent.

Remining proposed on 33 permits reviewed during OSM site visits is planned to address the following AML problem areas:

- Remove an estimated 19 miles of abandoned highwalls
- Reclaim approximately 1500 acres of unreclaimed mine spoil
- Eliminate an estimated 21 mine openings or entries

As of the date of the OSM site visit, remining on these 33 permits had:

- Eliminated nearly nine miles of highwalls
- Reclaimed an estimated 730 acres of unreclaimed mine spoil
- Eliminated six mine entries or openings.

²The number of years is the time between the date an incremental area or segment was identified for reclamation on the permittee's annual/final maps and the date the permittee submitted a request for bond release. For example, the Year 1 segment of a permit was identified on an annual or final report as ending in July 1998. The permittee submitted a request for Phase I bond release on Year 1 in December 1998. For purposes of this report, the time (rounded to five months) is reported as 0.4 years. Less than one year or a negative number indicates that the bond release request was dated prior to the date the segment was identified for reclamation in an annual report or the permit was finalized before the anniversary date of permit issuance.

The data shows the important role that re-mining plays in eliminating AML conditions.

VI. OSM ASSISTANCE

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

Cooperative Inspector Training Initiative

Ohio requested that OSM's inspection staff assist Ohio's inspection staff, particularly staff new to the coal regulatory inspection program, in learning and implementing the practices of proper inspection and documentation of observations during the inspection process.

OSM inspectors conducted three separate sessions for inspectors with Ohio's north team. During each session, OSM and Ohio inspectors reviewed permits to share techniques and information from a pre-inspection review of permits. This is important to conducting on-the-ground inspections and gaining better understanding of the mining and reclamation plan. This approach supports Ohio's emphasis on compliance with permit standards. The OSM and Ohio inspectors then conducted on-the-ground inspections of different mine sites to again share techniques and expertise.

Both OSM and Ohio inspectors felt the experience was very beneficial. OSM and Ohio expect to continue with this effort during the next evaluation year. Future sessions may focus on specific areas such as general inspection practices; construction of fills, ponds, roads, and refuse disposal sites; and water quality issues including monitoring, AMD inventory, and treatment.

Large Impoundment Review

As a result of major occurrences of impoundment breakthroughs into underground mines in other states, Ohio and OSM have continued to work together conducting field reviews of four large impoundments that overlie underground mines in Ohio. Following field visits to the four impoundments, Ohio received specific information from the permittees for the impoundments. During this year, Ohio developed a draft report on the impoundments based on the information provided by the mining companies and Ohio's own engineering review. OSM and Ohio are discussing the draft report and determining if any action is necessary to address any potential risk of breakthrough into underground mines. OSM expects to complete a final summary report on OSM's overall evaluation of the Ohio program's implementation of large impoundment criteria in early EY 04.

Endangered Species

Ohio, OSM, and the U.S. Fish and Wildlife Service (FWS) have worked together to develop a memorandum of understanding on how the agencies will improve coordination and consideration of endangered species during processing of mining permit applications. In addition to developing the MOU to address endangered species in general, the agencies have also developed

species-specific conservation measures for protection and enhancement of habitat of the endangered Indiana bat. Ohio will issue the conservation measures in the form of a policy directive that will include minimum permitting and performance standards that provide protection and enhancement measures that must be addressed in permit applications and during mining and reclamation.

Technical Training

According to Ohio's 2002 Annual Report, Ohio's coal regulatory and AML staff participated in more than 60 training sessions in 2002 presented by OSM's National Technical Training Program and the Technical Information Processing System. Courses included topics such as: evidence preparation and testimony, engineering principles, AML design workshops, testing and analysis of aquifer characteristics, AML real estate work, and many others.

VII. General Oversight Topic Reviews

OSM Oversight Inspections

OSM completed 47 site visits for general compliance monitoring of coal mining operations during the evaluation period to assess compliance with performance standards; 12 site visits to evaluate bond releases approved by Ohio; 39 site visits specifically to obtain seasonal water quality and quantity data at sites with potential for AMD (AMD data was collected on six additional sites during site visits for other purposes); and nine other mine site visits to follow up on past issues. Over 36 percent of OSM's site visits were to collect water quality data in support of OSM/Ohio's AMD inventory initiative. In addition, OSM conducted 21 site visits to monitor AML reclamation project construction and ten site visits to evaluate potential AML emergencies or to monitor AML emergency project construction.

OSM conducts general compliance monitoring oversight inspections to learn how well Ohio is implementing its program by reviewing the on-the-ground impacts of mining operations. Other inspections are directed at very specific program areas such as bond releases or special oversight studies. OSM inspections identified issues related to expired permits, AMD, and hydrologic impacts. Hydrology issues, like AMD and impacts to water supplies, continue to be the cause of most off-site impacts, and are a focus of both agencies for improvement.

OSM received no formal citizen complaints during the evaluation period.

The results of OSM inspections related to OSM special studies concerning bond release, drainage control, coal waste disposal, contemporaneous reclamation, coal exploration, and off-site impacts are further discussed under separate topics elsewhere in this report.

Coal Exploration

The purpose of this review was to determine how effectively Ohio is implementing the coal exploration provisions of its program. The review answered these questions:

- How many and what type of exploration operations are being regulated in Ohio?
- Does Ohio's implementation of its inspection policy effectively monitor and regulate the impacts of coal exploration activities?
- Are exploration activities conducted and are sites reclaimed in accordance with the NOI or exploration permit? Are exploratory holes being managed as required by OAC 1501:13-9-02?

OSM's 1992 report on Ohio's exploration program made some of the same findings and recommendations contained in this report. Although Ohio changed policies and procedures resulting from OSM's 1992 report, implementation has not been consistent. Inconsistent implementation of the policy may be attributed to the fact that exploration operations do not pose a high risk of causing environmental harm compared to other program responsibilities that must

be implemented. Ohio should increase attention to this program area to ensure that program standards are met and compliance is achieved.

During the two-year period between January 1, 2001, and January 1, 2003, Ohio granted 130 Notices of Intent to Explore (NOI). Ohio is not ensuring that inspections are being conducted and/or consistently documented on every fifth NOI issued in each field office, as required by policy. Therefore, Ohio is monitoring less than 20 percent of the exploration activities and is usually not formally documenting the findings from those that are monitored. Ohio's policy of inspecting only every fifth NOI issued may not meet the standards required by the Ohio program. Most NOI holders are not consistently notifying Ohio field offices at the beginning or ending of exploration operations, and/or Ohio field offices are not consistently documenting the notices. This makes it more difficult for Ohio to monitor exploration activities and reclamation of exploration sites. OSM found that surface disturbance was not substantial, drill holes were filled, and sites where drilling was completed were generally reclaimed properly on the sites visited during this study.

OSM recommends that Ohio reconsider their policy on inspections on NOIs in consideration of the program requirement to inspect all coal exploration operations. Ideally, Ohio should conduct inspections on all NOIs. Ohio should ensure that, at a minimum, the field offices follow the currently established inspection policy. All inspections of NOIs should be documented consistently. Sites assigned for inspection should be tracked to ensure that inspections occur as required. Ohio should take enforcement or other action that will encourage holders of NOIs to notify the field offices upon starting and completing exploration and reclamation activities. Each office should document company notification or lack thereof.

Ohio acknowledged that monitoring of exploration sites did not meet policy standards. Ohio indicated that they have increased attention to this program area by reiterating the requirements to the inspection staff and the mining industry, improving inspection reporting, and better tracking of inspection assignments of exploration sites.

On a related note, Ohio, OSM, and the U.S. Forest Service consulted on two or more requests to conduct coal exploration operations on federal land in the Wayne National Forest. Ohio and OSM clarified the requirements about exploration in the Wayne National Forest for the mining companies and the Forest Service. Since land in a national forest is designated as unsuitable for mining, absent a determination of valid existing rights (VER), exploration can only be done after obtaining an exploration permit from Ohio.

Coal Waste Disposal

OSM issued a final report on its study, started in 2000, of the disposal of coal-processing wastes.

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

plans; and 3) to review environmental impacts of the disposal of coal-processing waste at surface coal mining operations.

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

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

Ohio's reorganization resulted in placing all of the engineers under a single manager. This should improve the assistance to the inspection staff. Improved communication between functional areas should result in permits that have special conditions such as coal-waste disposal clearly identified for the inspector and other Ohio staff.

OSM provided a number of observations and recommendations that affect the approval and assessment of coal-waste disposal operations. These recommendations are presented to enable Ohio and the industry to better understand the need for more detailed designs of proposed coal-waste disposal areas that allow better construction of disposal areas. These improvements should result in disposal areas with fewer adverse impacts on the environment.

OSM made the following recommendations to Ohio for improving the effectiveness of disposing of coal-wastes on surface coal mining operations.

- **Permitting:** Revise existing procedures for reviewing coal waste disposal plans to include: 1) installation of monitoring points to specifically detect ground water impacts due to the coal waste disposal operations; 2) detailed construction and operations plans to allow field evaluation of the plan implementation; 3) any critical phases of construction or operations that need to be evaluated by Ohio staff; and, 4) a re-analysis of the plans in conjunction with all permit revisions that affect the coal disposal operations.
- **Inspection:** Develop inspection procedures to document the construction and operations of the coal refuse disposal areas. Procedures should document operation on a quarterly basis, the critical construction phases as identified in the permit, and the need for technical assistance to evaluate the operations or construction of the disposal areas.
- **Meetings:** Prior to permit issuance, Ohio should require a meeting between the assigned inspector and the reviewing Ohio staff to identify characteristics and develop a specific evaluation document that identifies critical items contained in the coal waste disposal plans.

- Industry: Ohio should notify permittees of inspection and certification of critical construction phases for refuse disposal areas that are required of the permittee. The notification should be through conditions on permits or through a meeting with the permittee prior to issuing the permit.

OSM and Ohio discussed the report and recommendations. Ohio has assigned a team of technical, permitting, and inspection personnel, and an OSM representative. The team is developing guidelines for documenting, monitoring, and communicating AMD issues to the permittee during inspections. Ohio plans for this team to also develop guidelines for ensuring that coal waste disposal follows approved disposal plans in response to OSM's recommendations.

Drainage Controls

OSM completed a study of drainage control features constructed, operated, and maintained on coal-mining operations. This study was undertaken to evaluate how well the drainage control structures comply with design requirements and the effectiveness of those structures at controlling drainage from the permitted area to minimize off-site impacts.

Design standards are established and enforced to ensure that structures are constructed to protect the public and the environment. The Ohio program requires all drainage control structures to be designed under the direction of a registered professional engineer. A registered professional engineer must certify designs. Construction of drainage control systems must be certified by a registered professional engineer as meeting the approved design and as being in compliance with regulatory standards.

There are thousands of drainage control structures on mine sites in Ohio. OSM examined a sample of five different types of drainage control structures: sediment ponds, stream reconstruction, small area drainage exemptions (SADE), sumps, and diversions. We evaluated forty-eight separate structures. OSM determined that construction of many of these drainage control features deviated significantly from approved designs. Some of the deviations from the approved design may have no significant impact on the functioning of the structure. A few may actually function better than designed. However, some significant deviations from the design could potentially cause environmental problems and off-site impacts.

Although the review included only a small sample of the thousands of drainage control structures that exist, it does demonstrate that significant variations (greater than 20 percent of the standard) from approved designs do occur. Ohio has identified that they also have identified occasional variances between the size of ponds being constructed and the size of ponds approved for construction. Ohio has trained inspectors in ways of evaluating constructed drainage controls in comparison to approved designs. Since the leading cause of violations and off-site impacts is related to drainage control, Ohio should improve their verification, documentation, and enforcement processes to ensure that drainage control structures meet all critical design standards. Properly designed and maintained structures should decrease the number of water-related violations and off-site impacts.

OSM revised the draft report in response to Ohio's comments. OSM sent the final report to Ohio during the writing of this report. Ohio and OSM will continue to discuss this report and any changes in procedure during EY 04.

Study of Stream Impacts from Longwall Mining

OSM began a study of stream impacts from longwall mining in 2002. The study uses qualitative benthic sampling as a possible means of detecting water loss in perennial and intermittent streams overlying longwall panels. Sampling begins upstream of the longwall panels and progresses downstream until the last sampling is done downstream of the last longwall panel. The results of these samplings are compared to see if there are any notable differences in the relative numbers or types of organisms present in areas over longwall panels versus areas upstream or downstream of those panels. A significant decrease in the numbers of organisms or an absence of multi-year organisms over the panels could indicate a potential water loss.

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

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

OSM also tested the premise of the study by sampling above, across, and below an undermined stream section in the 2002 sampling area that was known to go dry during 2002's extremely dry summer. If anomalies are detected over the formerly dry section, it may re-enforce the theory that benthic sampling can be useful as a screening tool for detecting water loss. However, after discussing with the inspector how the determination was made that the stream was dry, there may be the possibility that the stream was interstitial (appearing dry, but still having water flow through the substrate), which most benthic organisms can tolerate.

None of the samples taken during the spring of 2003 have been analyzed as yet, so no conclusions can be drawn at this time. OSM would also like to study streams over another completed longwall mine in a different part of the state in a different coal seam. However, the streams at that mine do not flow from upstream of the panels to downstream of the panels, but emanate from within the mined area. As such, the study methodology used in the 2002 and 2003 sampling is not possible. OSM will attempt to locate suitable reference streams as close as

possible to the mined area, and do comparative sampling. Follow-up sampling after mining will also be done at the active mine in eastern Ohio. OSM will report the results of this study upon its conclusion.

Administrative Review Process

OSM completed a review of Ohio's administrative review process administered by the Ohio Reclamation Commission (Commission). The review provided an opportunity for OSM to consider how the current Commission is meeting its responsibilities and how administrative appeals have evolved over the last ten years in Ohio. The Commission, previously called the Ohio Reclamation Board of Review (RBR), has exclusive jurisdiction to initially hear and decide all administrative appeals of enforcement actions, penalties, and all decisions of the Chief of Ohio. OSM last reviewed Ohio's administrative review process in 1993.

OSM's review concluded that the Commission's caseload has decreased by 84 percent over the last 14 years. The caseload has dropped from 201 coal-related cases in 1989 to 27 cases in 2001. This decrease is reflective of the downturn in the Ohio coal industry. OSM found that the Commission generally schedules and holds hearings in a timely manner. The Commission's decisions, except those for temporary relief, are well documented and issued in a reasonably timely manner with only a few exceptions. The Commission granted temporary relief on 100 percent of the nine requests received and not withdrawn during the review period. The number of requests and decisions granting relief far exceed those in other states according to data contained in a 2002 survey conducted by the Interstate Mining Compact Commission. OSM determined that, although all written decisions on temporary relief cases restated the two standards that must be met before relief is granted, the decisions provide no written support or basis for the decision reached. The Commission's decisions to grant temporary relief for such a high percentage of requests, especially without documented reasons that are supported by program requirements, substitutes the Commission's views for the Chief's authority.

OSM also determined that the Commission has extended its authority by not issuing final decisions on three cases after concluding hearings. The Commission had not issued a final decision in one case they heard a year ago, as they were awaiting action by the Chief on a permit application. The Commission finally issued a decision affirming the Chief's bond forfeiture order one year later. They are holding two decisions in abeyance, awaiting action by a permittee that might correct a condition on a mine site.

OSM found that Commission members are filing annual statements of employment and financial interests with the Chief as required by OAC 1501:13-1-03. Commission members recuse themselves from proceedings that may affect their financial interests by reporting the conflict in Commission meeting minutes, in official hearing records, or by issuing an order of recusancy.

OSM met with the Commission to consider their comments on the draft report and discuss what actions may be taken to improve how the Commission carries out the program requirements. The Commission agreed to consider OSM's recommendations regarding temporary relief decisions. Because OSM oversight in the past has identified issues with the Commission's approach to temporary relief, OSM will conduct a follow-up review of all temporary relief decisions the Commission issues in EY 04.

Land Use

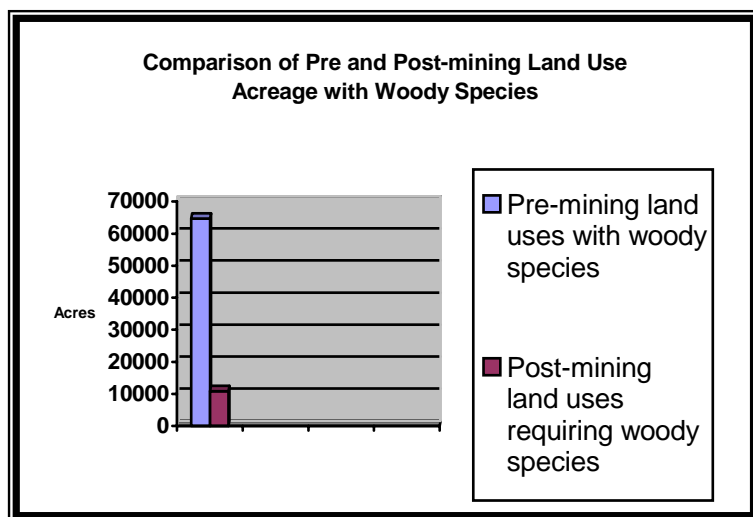
The purpose of this review was to report the results of Ohio's land use policies; to determine if the intent of SMCRA's land use restoration provisions is being met; and to consider whether other approaches may vary the results. This study answered the following questions:

- How does Ohio verify pre-mining land uses during their review of permit applications?
- What outcomes do mining and the current regulatory program have on land use trends and do they meet the intent of SMCRA?
- Is restored land capable of supporting the uses that existed prior to mining?
- Are there other approaches to implementing Ohio's land use requirements that may vary the end-result of mining and reclamation on land use trends?

The review reached the following conclusions:

Ohio permit application reviewers continue to correctly verify the pre-mining land use reported in permit applications based on their consideration of on-site management practices without the need for additional written guidelines.

Seventy-three percent of the permitted acres include a land use that had some amount of woody vegetation before mining. Only twelve percent of the permitted acres are restored to a use that requires woody vegetation after mining. Although approval of land use changes results in a dramatic decrease in the area requiring woody species, Ohio's approval of land use changes continues to be in compliance with their approved program.



The sites that OSM reviewed demonstrated the capability to support the multiple uses that existed before mining.

Voluntary initiatives, development of different reclamation techniques, technology transfer, education, and policy changes regarding the capability of steeper slopes to support limited land uses provide the best opportunities for increasing acreage planted with woody species.

OSM made no recommendations as a result of this review other than to continue developing different reclamation techniques, increasing technology transfer and education, and pursuing policy changes.

Cancelled and Reconstructed Projects in Ohio's AML Program

OSM reviewed Ohio's completed and proposed projects to determine the number of projects and the reasons they were cancelled or reconstructed over the history of Ohio's AML program.

Cancelled projects or ones that need to be reconstructed reduce the efficiency of Ohio's AML program. The review showed that about 5 percent of the projects proposed get cancelled, and about 8 percent of the completed projects require some reconstruction. Landowner problems were the most frequent cause for cancellation, and plugged mine drains were the most common cause for reconstruction. Ohio has improved the construction and maintenance of mine drains since 1993. Only 10 percent of the projects needing reconstruction work were completed after 1991. Ohio has also taken steps to improve project selection and landowner coordination to reduce project cancellations.

AML Construction Program

OSM reviewed Ohio's non-emergency AML construction processes for productivity and timeliness as compared to the previous year. OSM did this by maintaining a project database, conducting routine AML oversight inspections, and conducting special studies on environmental compliance and Ohio's AML design process. Ohio's overall AML productivity has increased on nearly all levels. Design productivity has increased significantly, as reflected by the increased number of authorizations to proceed and contracts issued. This is especially true considering that this year's review period is three months shorter. Only construction completions showed a decrease from last year, and these were weather related.

▪ National Environmental Policy Act (NEPA) Compliance

OSM issued 46 "Authorizations to Proceed" (ATP) during EY 2003 (9 months) compared to 19 for EY 2002 (12 months). Some of this improvement may be attributed to a contract for services with the Ohio Historic Preservation Office. Five of this year's ATPs were submitted as "Environmental Assessments" (EA). The remaining 41 were submitted as "Categorical Exclusions" (CE). Oversight inspections showed that NEPA submittals accurately described the project sites and any mitigation required. However, on some projects involving portal closures that were not reviewed by Ohio Division of Wildlife or consulting firms, it was not clear from the descriptions whether or not bat habitat was present. These sites were reviewed by OSM for bat habitat using criteria supplied by the FWS. None were found to be suitable bat habitat, but Ohio has developed a checklist, based on the FWS criteria, to improve project documentation in this area. Ohio does a good job of screening its portal closure projects for potential bat habitat. DOW or consulting firms review sites before deciding on a closure method. Bat gates are installed on all openings that provide suitable bat habitat, whether or not bats are present. This is particularly important because Ohio's coal fields are within the range of the endangered Indiana Bat, which requires mines or caves for winter hibernation.

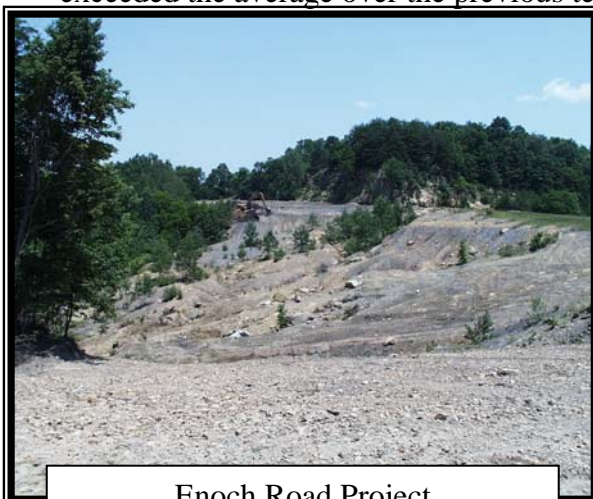
▪ Design Productivity

Ohio completed 28 project designs during the review period compared to 26 for the previous year. Ohio's in-house design staff completed 21 of the 28 designs, with consultants designing the remaining seven projects. Ohio's effort to do more in-house designs and rely less on consultants continues to be successful as there were seven consultant designs completed this year compared to nine last year, and 20 the year before.

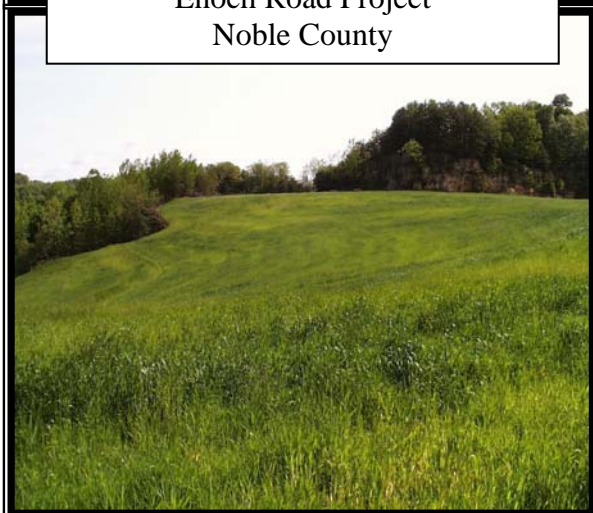
Conversely, there were 21 in-house designs completed this year compared to 17 for last year. OSM will continue to monitor Ohio's progress in this area, and assist Ohio in their efforts to improve their design productivity if possible. Any savings resulting from "in-house" designs will allow more money to be directed to construction projects.

- Construction Contracting

Ohio authorized 14 contracts totaling \$2.8 million dollars in construction contracts during the review period, compared to 14 contracts totaling \$3.8 million last year. The contracted amount over this year's shorter review period is on par with last year's that exceeded the average over the previous ten years. The number of projects contracted will



Enoch Road Project
Noble County



exceed last year's over a 12-month period. There were also several unit price contracts issued during this period, which were not included in the 14 calculated. The time between the bid openings and the authorization of construction contracts went from an all-time low of 48 days in 2000 to 57.4 days this year. This average was the third lowest average in the history of Ohio's program. This shows that Ohio has continued to issue contracts in a timely manner. Ohio has also expanded its use of unit-price contracts to include water well replacements, portal closures, and maintenance work in addition to backfilling subsidence. This has eliminated the need to design and administer each project separately in order to bid construction. Under unit-price contracts, multiple projects are constructed under one contract. This has helped to improve the productivity and efficiency of Ohio's AML program.

- AML Project Construction Completions

Ohio completed 11 projects during the review period, compared to 23 last year. This year's unusually wet spring and early summer have hindered construction work, thereby reducing the number of completions. There were no significant delays due to design changes or cost overruns.

Follow up on Ohio's Distribution of Personnel Costs

OSM initially reviewed Ohio's distribution of personnel costs in EY 2002. We finalized our report concerning that review in September of 2002. The purpose of this follow-up review was

to determine what actions Ohio has taken concerning our recommendations and to evaluate the effectiveness of their actions.

Ohio's fiscal staff is now preparing and distributing fund reports and payroll by fund reports for their managers.

OSM recommended that Ohio create written guidance to assist their employees in identifying the proper fund or account code for their work efforts. OSM also recommended that Ohio should initiate a study of all employees who perform multiple tasks to track their time to accurately establish a percentage to use when normal time tracking is not possible. At the time of our review, Ohio had not initiated a study or prepared any written guidance. However, they did agree to use the number of FTE's within the division to establish percentages for each program to use for their Administrative Branch and their Fiscal and Human Resources sections. They were working with their information technology staff to develop a computerized program for everyone to use to enter their time. Ohio recently informed us that a computerized program to track time by project and program area is now in place and operational. OSM has not yet reviewed the effectiveness of the program.

Our final finding was that Ohio was charging all salary and fringe benefit costs to either the Federal or the state regulatory account, rather than charging both accounts equally. They have begun alternating charging accounts each pay period. Our review showed the distribution of charges to be equal.

Hydrologic Monitoring Study

OSM is currently conducting a study of the ground water monitoring plans approved by Ohio for their surface mining permits. The study's purpose is to evaluate how accurately the approved plans characterize the effect of surface mining on the ground water system. A hydrologist from OSM's Appalachian Region Coordinating Center is providing technical assistance with the study. To date, seven newer permits and four older permits (issued five years ago or more) have been reviewed. We expect to complete the reviews, field-related activities, and the report during EY 04.

OSM Part 732 Notices and Program Amendments

Program Condition

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

area in EY 2002 again identified that Ohio's inability to complete timely reclamation of forfeited sites remains a significant issue. There has been little improvement in timeliness of reclamation in the last 20 years.

OSM sent three letters to Ohio since the conclusion of OSM's review of the bond forfeiture program in November 2002. The latest letter, dated May 13, 2003, notified Ohio that it is imperative that Ohio address the deficiencies identified during the current legislative session. Otherwise, OSM will be compelled to initiate proceedings under 30 CFR 732.13(j)(4) to withdraw approval of the Ohio program, in whole or in part. Ohio responded that discussions with the mining industry are occurring, but provided no expectation of when proposed changes and draft legislation to address deficiencies with Ohio's bonding system would be developed. The Regional Director will be recommending that the OSM Director initiate action under 30 CFR 732(j)(4) to withdraw approval of Ohio's program, in full or in part.

Program Amendment 69

During OSM's review of Ohio's administrative review process, we discovered that Ohio had not adopted changes to conflict of interest rules in OAC 1501:13-1-03. OSM approved Ohio's proposed changes contained in Program Amendment 69 on July 17, 1995. The changes were in response to an OSM review of conflict of interest provisions that suggested that Ohio clarify their rules. Due to an oversight, the rules were not promulgated. OSM and Ohio will be discussing whether the rules still need to be adopted or if Ohio should withdraw the amendment.

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. OSM expected that Ohio would have a sponsor introduce this revision, along with other statutory changes, to the Ohio Legislature during 2000, 2001, 2002, and again in 2003. There has been no change in the status of this issue. However, Ohio continues to pursue inclusion of the approved amendment in a legislative package.

Program Amendment 76

In 1997, OSM notified Ohio of Federal rule changes that have occurred over the past several years. The provisions affecting Ohio include:

- § Permitting and performance standards on siltation structures and impoundments
- § Variances from approximate original contour
- § Prime farmland
- § Affirmation by the applicant that reclamation requirements are met when applying for bond release

Ohio submitted a program amendment to address these provisions in late 1997. OSM approved the amendment in late 1998. The final rules were effective on February 15, 2003.

Program Amendment 79

During this evaluation period, Ohio submitted an amendment to revise its rules on blaster certification. The revised rules will require persons conducting blasting operations in non-coal mines to meet the same certification requirements as blasters in coal mines. The revisions also update training and testing requirements for certified blasters. The amendment was approved in September 2004.

Remining

Ohio is developing a formal program amendment on remining. The amendment is intended to address changes to Federal rules adopted by EPA regarding water quality standards in remining situations. OSM has assisted Ohio by reviewing and commenting on informal proposals during development of the formal amendment. Ohio expects to submit a formal amendment in the near future.

Valid Existing Rights

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

Appendix A

Tabular Summary of Core Data to Characterize the Program

Table 1

COAL PRODUCTION (Millions of short tons)			
Period	Surface Mines	Underground Mines	Total
Coal production ^A for entire State:			
Annual Period			
2000	10,689,959.000	11,840,976.000	22,530,935.000
2001	12,779,952.000	12,848,549.000	25,628,501.000
2002	10,121,933.000	10,725,363.000	20,847,296.000
Total	33,591,844.000	35,414,888.000	69,006,732.000

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

Table 2

INSPECTABLE UNITS

As of June 30, 2003

Coal mines and related facilities	Number and status of permits								Insp. Units ^D	Permitted acreage ^A (hundreds of acres)		
	Active or temporarily inactive		Inactive		Abandoned		Totals			IP	PP	Total
			Phase II bond release									
	IP	PP	IP	PP	IP	PP	IP	PP				
STATE AND PRIVATE LANDS REGULATORY AUTHORITY: STATE												
Surface mines	0	196	0	74	0	34	0	304	304	0	917.9	917.9
Underground mines	0	14	0	3	0	0	0	17	17	0	44	44
Other facilities	0	29	0	3	0	4	0	36	36	0	41	41
Subtotals	0	239	0	80	0	38	0	357	357	0	1003	1003
FEDERAL LANDS REGULATORY AUTHORITY: STATE												
Surface mines	0	1	0	1	0	0	0	2	2	0	3.7	3.7
Underground mines							0	0	0			0
Other facilities		1					0	1	1		0.04	0.04
Subtotals	0	2	0	1	0	0	0	3	3	0	3.74	3.74
ALL LANDS^B												
Surface mines	0	196	0	74	0	34	0	304	304	0	917.9	917.9
Underground mines	0	14	0	3	0	0	0	17	17	0	44	44
Other facilities	0	28	0	4	0	4	0	36	36	0	41	41
Totals	0	238	0	81	0	38	0	357	357	0	1003	1003
Average number of permits per inspectable unit (excluding exploration sites)									<u>1</u>			
Average number of acres per inspectable unit (excluding exploration sites)									<u>281</u>			
Number of exploration permits on State and private lands:									On Federal lands ^C : _____			
Number of exploration notices on State and private lands:									On Federal lands ^C : _____			
<p>IP: Initial regulatory program sites</p> <p>PP: Permanent regulatory program sites</p> <p>^A When a unit is located on more than one type of land, include only the acreage located on the indicated type of land.</p> <p>^B Numbers of units may not equal the sum of the three preceding categories because a single inspectable unit may include lands in more than one of the preceding categories.</p> <p>^C Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management.</p> <p>^D Inspectable Units includes multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.</p>												

TABLE 3**STATE PERMITTING ACTIVITY****As of June 30, 2003**

Type of Application	Surface Mines			Underground mines			Other facilities			Totals		
	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres ^A	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres
	New Permits	26	19	2,071	6	4	0				32	23
Renewals	32	21		0	0					32	21	0
Transfers, sales and assignments of permit rights	16	5								16	5	
Small operator assistance	1	6								1	6	
Exploration permits	0									0		0
Exploration notices ^B		50									50	
Revisions (exclusive of incidental boundary revisions)		171									171	
Incidental boundary revisions		27	116								27	116
Totals	75	299	2,187	6	4	0	0	0	0	81	303	2,187

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

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

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

TABLE 4

OFF-SITE IMPACTS														
RESOURCES AFFECTED			People			Land			Water			Structures		
DEGREE OF IMPACT			minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE	Blasting	3		1								2		1
	Land Stability	0												
	Hydrology	30			2	15	2		19	2	2	1		
	Encroachment	7				2	2		2	3	1	1		
	Other	7				6	1		1					
	Total	47	0	1	2	23	5	0	22	5	3	4	1	0
Total number of inspectable units:						<u>319</u>								
Inspectable units free of off-site impacts:						<u>291</u>								
OFF-SITE IMPACTS ON BOND FORFEITURE SITES														
RESOURCES AFFECTED			People			Land			Water			Structures		
DEGREE OF IMPACT			minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE	Blasting													
	Land Stability													
	Hydrology													
	Encroachment													
	Other													
	Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Total number of inspectable units:						<u>38</u>								
Inspectable units free of off-site impacts:						<u> </u>								

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

TABLE 5

ANNUAL STATE MINING AND RECLAMATION RESULTS		
Bond release phase	Applicable performance standard	Acreage released during this evaluation period
Phase I	- Approximate original contour restored - Topsoil or approved alternative replaced	3,670.00
Phase II	- Surface stability - Establishment of vegetation	2,214.00
Phase III	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	4,273.00
	Bonded Acreage Status^A	Acres
Total number of acres bonded at end of last review period (September 30, 2002) ^B		n/a
Total number of acres bonded during this evaluation year		n/a
Number of acres bonded during this evaluation year that are considered re-mining, if available		n/a
Number of acres where bond was forfeited during this evaluation year (also report this acreage on Table 7)		125.60

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

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

OPTIONAL TABLE(S) 6

(See Instructions)

Table 7

STATE BOND FORFEITURE ACTIVITY
(Permanent Program Permits)

Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Acres
Sites with bonds forfeited and collected that were unreclaimed as of September 30, 2002 (end of previous evaluation year) ^A	16	295.70
Sites with bonds forfeited and collected during Evaluation Year 2003 (current year)	3	125.60
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2003 (current year)	0	0.00
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2003 (current year)	5	86.60
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2003 (end of current year) ^A	14	334.70
Sites with bonds forfeited but uncollected as of June 30, 2003 (end of current year)	12	603.90
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of September 30, 2002 (end of previous evaluation year) ^B	7	1,193.50
Sites where surety/other party agreed to do reclamation during Evaluation Year 2003 (current year)	10	978.90
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2003 (current year)	0	0.00
Sites with reclamation completed by surety/other party during Evaluation Year 2003 (current year) ^C	4	900.30
Sites being reclaimed by surety/other party as of June 30, 2003 (current evaluation year) ^B	10	978.80
<p>^A Includes data only for those forfeiture sites not fully reclaimed as of this date</p> <p>^B Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date</p> <p>^C This number also is reported in Table 5 as Phase III bond release has been granted on these sites</p>		

TABLE 8

OHIO STAFFING (Full-time equivalents at the end of evaluation year)	
Function	EY 2003
Regulatory Program	
Permit review	6.28
Inspection	11.70
Other (administrative, fiscal, personnel, etc.)	8.02
Regulatory Program Total	26.00
AML Program Total	46.80
TOTAL	72.80

TABLE 9

FUNDS GRANTED TO OHIO BY OSM (Millions of dollars) EY 2003		
Type of Grant	Federal Funds Awarded	Federal Funding as a Percentage of Total Program Costs
Administration and Enforcement*	\$1,662,626.00	50
Small Operator Assistance	\$57,884.00	100
Totals	\$1,720,510.00	

* Grant was awarded on 8/12/03 and was effective 9/1/03.



Ohio Department of Natural Resources

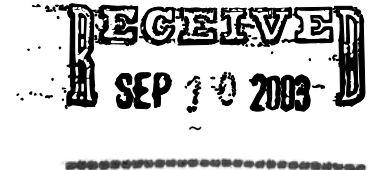
BOB TAFT, GOVERNOR

SAMUEL W. SPECK, DIRECTOR

Division of Mineral Resources Management *Michael L. Sponsler,*
Chief 1855 Fountain Square Court - Bldg.
H2 Columbus, OH 43224-1383
Phone: (614) 265-6633 Fax: (614) 265-7999

September 5, 2003

Mr. George Reiger
Program Manager
Office of Surface Mining
4605 Morse Road, Room 102
Columbus, OH 43230



RE: Draft Annual Evaluation Summary Report EY-03:

Dear George

Our respective program managers have reviewed the draft report and have the following comments.

Dave Clark and Wayne Schalk identified several corrections needed to the Phase II/III listings within OSM's evaluation of reclamation success in Ohio. These corrections may or may not have a bearing on information provided under "B" pages 18 and 19 of the draft report. Dave and Wayne will forward their respective changes to Dan Schrum.

Tom Tugend, John Husted, and Rose Mitrione have re-worked the numbers previously provide for Tables 5 (last item on table) and Table 7. Dan Schrum was forwarded this information on 9-3-03. With the new numbers, the highlighted portions of the draft report (pages 6 and 14) can be changed accordingly.

Page 5, #1: Please consider including the following:

Abandoned Mine Lands Educational Outreach Initiative

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

In 2002, the Division created a guide for developing abandoned mine lands as an informational resource to assist in evaluating past mining sites for house, road, or other types of development. A total of 700 copies of the guides were mailed to legislators, township trustees, county commissioners, and county engineers in 37 counties.

MRM developed a partnership in 2002, with the Division of Soil and Water and the Soil and Water Conservation Districts (SWCD) to assist in the educational effort with landowners and local officials. A total of 1845 copies of the guides have been mailed to the SWCD's for distribution in each county. MRM is holding Regional and State meetings with the SWCD's to better familiarize the staff with AML issues associated with the potential building problems. The SWCD's will also be a resource to landowners and local officials on this topic.

Page 15 Permit Renewals and Expired Permits

The report acknowledges the division has initiated program improvements to correct problems with the renewal process. However, it should be noted, the division has no control over the Reclamation Commission granting temporary relief, which has allowed mines to operate without renewed permits. We recommend this part of the report be expanded.

Page 26 Administrative Review Process

This section should be modified for consistency with the report of findings from the study.

Page 28-29. AML Construction Contracting

The division appreciates OSM pointing out program improvements in the AML program on the NEPA compliance such as

- The number of Authorizations to Proceed (ATP) from OSM increased from 19 in EY 2002 to 46 in EY 2003, which is a direct result of the contract for services with OHPO.
- The increases in "in-house" designs led to savings to put more money into construction.
- The AML program bettered the ten year average amount of dollars invested in AML construction.
- The unit price contracting initiative has led to greater program efficiencies

Page 30

VII. General Oversight Topic Reviews

Follow-up on Ohio's..... Costs

1st & 2nd Paragraphs

No references were made to accomplishments with TARS and tracking time by program and project. The updated TARS was in place and operational during OSM's reporting period. We recommend this accomplishment be acknowledged in the report.

Overall, we appreciate the "positive" tone taken in this years report and look forward to meeting with you and your staff to discuss oversight activities for EY04.

Sincerely,



Michael L. Sponsler, Chief
Division of Mineral Resources Management

Appendix C

OSM's Response to Ohio's Comments

OSM adopted most of the changes suggested by Ohio's comments. We did not expand the section on permit renewals and expired permits on page 15 as Ohio suggested. Concerns regarding the Reclamation Commission's decisions on temporary relief are addressed in the summary of that oversight study on page 26.