



Office of Surface Mining Reclamation and Enforcement

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

Administered by the

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

for

2005 Evaluation Period

(July 1, 2004 to June 30, 2005)

**FINAL REPORT
September 2005**

Executive Summary

Ohio is generally administering SMCRA regulatory and abandoned mine land (AML) programs in compliance with State and Federal standards with some exceptions. The Ohio regulatory and abandoned mine lands programs had some notable accomplishments, including resolution of some difficult and costly legal issues during this year. However, oversight data indicate there are a number of program areas where activities are not keeping pace with program demands. This is a concern to future program achievement and will be our focus for more in-depth reviews in the upcoming evaluation period.

Despite years of OSM's support and encouragement, Ohio has been unable to resolve a condition placed on the Secretary of Interior's 1982 approval of Ohio's regulatory program with respect to its alternative bonding system (ABS). Therefore, OSM initiated the 30 CFR Part 733 process by notifying Ohio on May 4, 2005, that unless they submit a program amendment addressing the ABS deficiencies, OSM will recommend that the Secretary of Interior withdraw approval of all or part of the State program. Ohio has not yet been successful in obtaining adequate bond and/or excise tax funding to support its ABS. Although Ohio and the mining industry have been discussing possible solutions to the ABS and regulatory program operation funding problems, agreement on a solution has not been reached. Ohio's response to OSM's 733 notice is currently due by November 4, 2005.

Ohio settled a takings claim based on a past designation that an area was unsuitable for coal mining. However, the settlement cost Ohio several million dollars. Ohio acknowledges one result of the 2002 Ohio Supreme Court's ruling in this case and the potential cost of future takings claims is that they may be unable to continue to implement SMCRA's lands unsuitable provisions.

Although further confirmation is necessary, OSM oversight is seeing signs that Ohio's implementation of some regulatory program provisions is less than expected and may need more attention to ensure compliance with required program standards. This finding may be partially due to Ohio's decreasing regulatory program staffing levels. Preliminary OSM reports show that regulatory staffing decreases have outpaced decreases in inspectable units and that the ratio of the number of inspectable units to Ohio regulatory staff is much higher when compared to other states in the region. Examples that complete program implementation may be declining include: not issuing civil penalties within the time specified by the program; not taking alternative enforcement actions; not making improvements necessary to properly monitor and regulate impacts from longwall mining; reluctance to take enforcement actions on some aspects of non-contemporaneous reclamation and other performance standards until identified by OSM; and an increased number of off-site impacts. Another area of concern is Ohio's inability to promulgate a required program amendment that OSM approved in 1998 regarding eligibility for legal fees.

In keeping with the premises of OSM's oversight policy, OSM has focused attention to the on-the-ground/end-result success of Ohio's Program. In so doing, OSM has identified strengths and also some potential on-the-ground and procedural weaknesses. OSM is committed to further examining possible causes of these weaknesses and helping Ohio correct them. OSM will continue to direct its evaluation and assistance resources to these specific problem areas during EY 2006.

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I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that OSM has approved as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Ohio Program and the effectiveness of the Ohio Program in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of July 1, 2004, through June 30, 2005. 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.

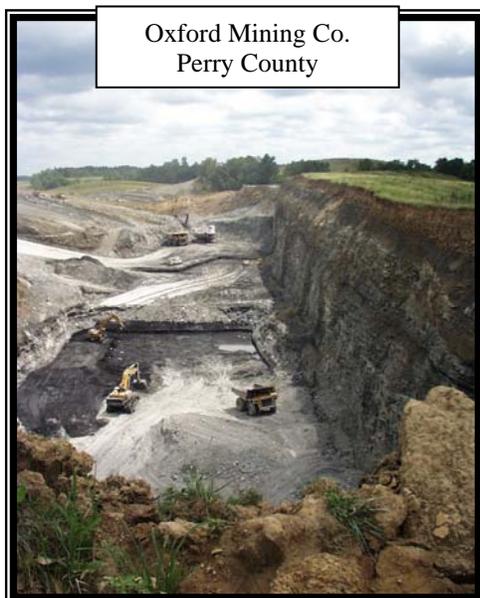
The following acronyms are used in this report:

ABS	Alternative Bonding System
ACOE	U.S. Army Corps of Engineers
ACSP	Appalachian Clean Streams Program
AMD	Acid mine drainage
AML	Abandoned mine land
AMLIS	Abandoned Mine Land Inventory System
ARRI	Appalachian Regional Reforestation Initiative
ATP	Authorization to Proceed
AVS	Applicant Violator System
CFR	Code of Federal Regulations
EY	Evaluation Year
FRA	Forestry Reclamation Approach
FTE	Full-time equivalent
FWS	U.S. Fish and Wildlife Service
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
ODNR	Ohio Department of Natural Resources
OEPA	Ohio Environmental Protection Agency
Ohio	Ohio Division of Mineral Resources Management or State of Ohio
OSM	Office of Surface Mining Reclamation and Enforcement
PA	Programmatic Agreement
SMCRA	Surface Mining Control and Reclamation Act
SWCD	Soil and Water Conservation Districts
TMDL	Total maximum daily loading
USFS	U.S. Forest Service
VER	Valid Existing Rights

II. Overview of the Ohio Coal Mining Industry

Thirty-one mining companies produced 23.5 million tons of coal in 2004, an increase of five percent over 2003 production. The total coal sold in 2004 was 23.1 million tons with a value of \$533.6 million. The average price per ton of coal was \$22.85, up from \$21.12 in 2003.

The number of coal-producing companies (31) in Ohio in 2004 declined from 37 in 2003. The number of producing mines decreased from 103 to 95 in 2004.



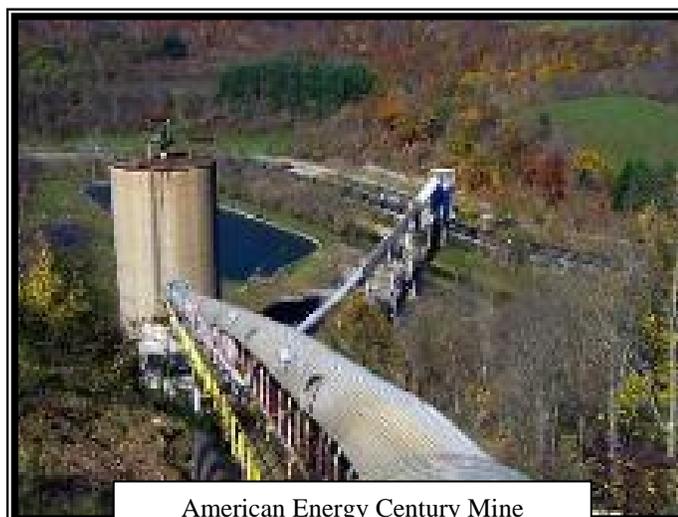
Oxford Mining Co.
Perry County

During 2004, surface mining operations at 87 mines produced 9.2 million tons (39 percent of total production). Coal production from surface mines in 2004 increased slightly (1 percent) from 2003. Underground mining at eight mines produced 14.3 million tons (61 percent of total production). Coal production from underground mines in 2004 increased by 1.2 million tons, about 9 percent from 2003. Longwall mining of nine million tons accounted for 63 percent of the total underground production (38 percent of total production).

Ohio's coal industry employed 2295 people in 2004, an increase of one percent over 2003. Production employees, numbering 1535, accounted for 67 percent of the 2004 coal work force.

Ohio retained its 14th place rank among the 26 coal-producing States in the nation and produced 2.2 percent of the nation's coal in 2004, up from 2.1 percent in 2003. Ohio was ranked third nationally in coal consumption, behind Texas and Indiana.

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



American Energy Century Mine
Belmont County

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

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

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

Ohio has added a link to their web site for the Appalachian Regional Reforestation Initiative (ARRI) at: www.dnr.state.oh.us/mineral/coal/arri.htm.

Ohio sponsored its fourth annual Applied Research Conference at Ohio University. The conferences “provide mineral resource professionals with an opportunity to discuss current issues and new research and technologies relating to mineral resources extraction throughout the Ohio Valley.” The conferences are attended by representatives of State and Federal agencies, watershed groups, mineral extraction industries, consultants, and students.

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

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

In 2004, Ohio distributed 1726 AML Development guides and 307 videos to individuals, companies, watershed groups and local officials. Ohio also held eight public presentations, and responded to 52 inquiries from realtors, consultants, and individuals.

OSM Outreach

In addition to outreach efforts by Ohio, OSM also conducts outreach to the public. OSM, likewise, did not implement any new public outreach initiatives during 2004. OSM continues to provide a periodic newsletter to 121 interested parties representing State and Federal agencies, coal mining and environmental organizations, and citizens who have asked to be on our mailing list.

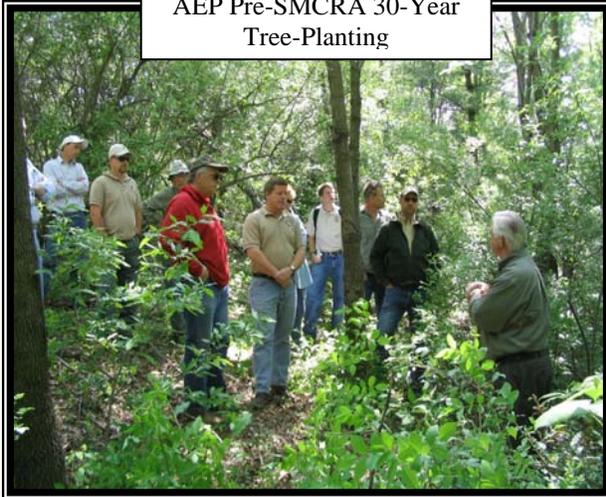
Appalachian Regional Reforestation Initiative (ARRI)

During Evaluation Year (EY) 2005, OSM, Ohio, and many other states and organizations signed a Statement of Mutual Intent to support and promote ARRI. OSM and Ohio have continued to promote ARRI and its support of the Forestry Reclamation Approach (FRA) for reclaiming surface mines to forest lands. The FRA technology increases survival and growth rates of trees, increases overall productivity, and promotes natural invasion and succession of plant and animal communities. Representatives of the Ohio ARRI Team have made presentations to the mining industry, consultants, Ohio regulatory and AML staff, and other State and Federal agencies to promote the use of FRA technology in reclaiming surface mines.

AEP Experimental Practice Site, 13-Year Old Post-SMCRA Tree-Planting.



AEP Pre-SMCRA 30-Year Tree-Planting



On May 18, 2004, American Electric Power (AEP) hosted a tour of AEP reforestation property. Among those attending were ARRI team members from Ohio, West Virginia, and Kentucky; OSM employees; representatives from The Wilds; and members from the ARRI academia team from Ohio State, West Virginia, and Southern Illinois Universities. The tour included visits to 30-year old reforested surface mines, an experimental practice tree-planting project, and many post-SCMRA reclaimed areas planted with trees.

The Ohio ARRI team leaders continue to meet with and encourage individual coal companies and landowners that may be interested in reclaiming surface mined lands using the FRA technology.

OSM representatives also participated in the following outreach events during EY 2005:

- Ohio Watershed Leaders Workshop at Cuyahoga Valley National Park
- Ohio Mine Land Partnership meeting and watershed tour at Huff Run

- Assistant Secretary of Interior, Steve Griles, attended a tour of the Misco West Project where he met with State and local officials and members of the Moxahala Watershed Restoration Project.
- The 10th Anniversary dinner of the Monday Creek Restoration Project, where OSM received an award of appreciation.
- Ohio's Applied Research Conference at Ohio University in Athens, Ohio.
- A meeting of the Eastern Coal Roundtable, a coalition of watershed groups, including several from Ohio.
- A groundbreaking ceremony for the Lyons Acid Mine Drainage (AMD) Project sponsored by the Huff Run Watershed Restoration Partnership.
- Several technical advisory committees for watershed groups throughout the year.

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 AML programs to protect coal-field citizens and to restore land to pre-mining conditions.

Observations regarding industry compliance and off-site impacts are supported by OSM's findings from 122 site visits on regulated mine sites and other oversight evaluations conducted during this review period and by Ohio's inspection and enforcement information. In addition, OSM conducted 50 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.

As evidenced by a 24 percent increase in the number of enforcement actions issued by Ohio in EY 2005, industry compliance has declined. However, about 50 percent of the all enforcement actions (255 Notices of Violation and Cessation Orders) that Ohio issued this year were issued to one mining company. Ohio issued bond forfeiture orders on 15 of 27 of this company's permits covering 1892 acres. These orders are under appeal. The status of the 12 remaining permits is pending final results of a show cause hearing. Ohio has been encouraged by the company's recent success in correcting many violations and remains hopeful that the company will correct its problems and complete reclamation of its sites.

OSM's evaluation of off-site impacts, mostly based on enforcement actions taken by Ohio, identified 74 impacts outside permitted areas, a slight increase from last year. The number of off-site impacts has increased annually since 2001. Ohio classified three events as causing major off-site impacts including mining without a permit; sedimentation into a stream; and a landslide.

During EY 2005, the Ohio mining industry, in conjunction with the Ohio Division of Mineral Resources Management, achieved final reclamation (Phase III bond release) on 2801.0 acres, a decrease of 45 percent from the previous year; established soil replacement and vegetation for Phase II bond release on 2585.7 acres, an increase of three percent; and backfilled and graded

mining areas for Phase I bond release on 3734.6 acres, an increase of 34 percent. Ohio completed initial reclamation on five bond forfeiture sites covering 276.6 acres. In addition, Ohio completed three maintenance projects on forfeiture sites where initial reclamation was completed in the past.

The on-the-ground, end-result of the mining and reclamation process continues to be predominantly restoration of mined lands to a pasture/grazing post-mining land use, with permanent water impoundments interspersed to support the land use.

Regulatory Program Accomplishments

Integrated Permit Process

Ohio, the U.S. Army Corps of Engineers (ACOE), and Ohio Environmental Protection Agency (OEPA) continue to work out details of their integrated permit process with the mining industry.

The process developed last year is intended to streamline the separate permitting processes under each agency's responsibility whenever proposed coal mining operations may impact streams or wetlands. In addition, this year the agencies started working on a regional permit that may take the place of a Nationwide 21 ACOE permit. The agencies have also been working to clarify permit application and mitigation procedures for impacted streams and wetlands that may be affected by remining operations.

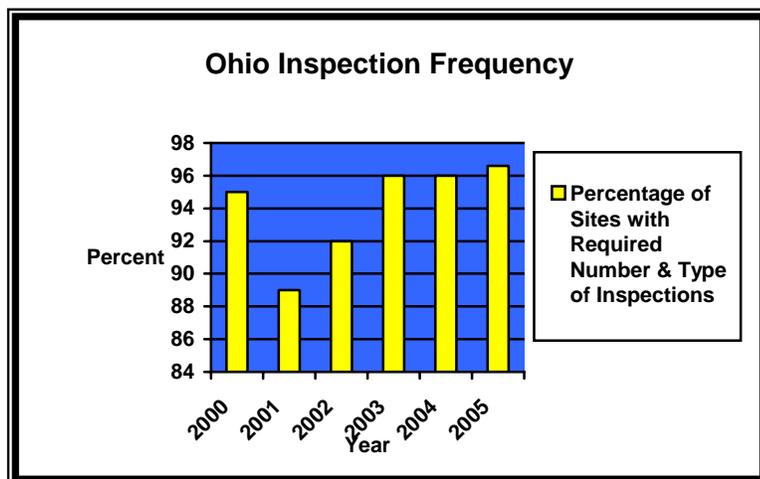
Underground Mining Permit Application that includes Federal Land

Ohio received a permit application for an underground mine with a portion of the proposed surface effects being on Federal land. Ohio forwarded a copy of the application to OSM for a compatibility determination by the Secretary of Interior pursuant to 30 CFR 761.11(b). OSM's review will determine if there are significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations that are incidental to an underground coal mine within a national forest. OSM's determination is pending resolution of issues between the applicant and the U.S. Forest Service (USFS).

Inspection Management

Ohio has continued to manage its inspection workload to ensure the required number of inspections is conducted on each site.

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



Ohio reports that the required number of inspections was conducted on an average of 96.6 percent of the mine sites during the evaluation period. Although, the required number of inspections is generally being conducted, other factors indicate that the quality of inspections may be adversely affected by time constraints and reduced staff levels.

Hydrology Database Development

Ohio entered into a contract for development of the Environmental Information Management System Water Quality Database. This contract firm has developed similar systems for other States. Ohio established a team of State and OSM personnel to provide guidance, monitor development, and to review the development of the database. This database will include water quality information from both mining and oil and gas well operations, will provide for tracking of reportable information like quarterly water monitoring results, will enable electronic transfer of water quality data via the Laboratory Information Management System, and will allow users to evaluate water quality trends through graphics interface. The contractor has developed several modules of the system that are currently under review and testing.

Decision on Petition to Designate Lands Unsuitable for Mining

Ohio issued a decision on a petition from the Village of Barnesville to designate 5035 acres within a one mile area around the village limits as unsuitable for coal mining. In February 2005, Ohio determined that the area was not unsuitable for mining based on protections provided by the current regulatory program, among other reasons. An appeal of this decision was filed with the Ohio Reclamation Commission.

Permit to Mine Beneath Dysart Woods Affirmed

Ohio successfully defended their issuance of a permit that will allow room-and-pillar mining under the old growth portions of Dysart Woods. After several months of hearings on appeals filed by three parties opposing the permit issuance, the Ohio Reclamation Commission affirmed Ohio's issuance of the permit. The Commission determined that the permit was properly issued and that it would provide adequate protection of the forest by allowing only room-and-pillar mining under the old-growth portions of Dysart Woods. The Commission's decision has been appealed.

Temporary Relief Decisions

In July 2004, OSM met with the Ohio Reclamation Commission to discuss the Commission's approach to temporary relief and how their interpretation may conflict with State and Federal standards based on prior oversight findings. The meeting resulted in an open exchange of ideas, concepts, and different approaches that the Commission agreed to consider.

The Chairman and Vice Chairman of the Commission have denied temporary relief in response to the last six requests for relief on which a decision was issued. Decisions on five other requests for temporary relief were not necessary because the requests were either withdrawn, stricken, dismissed, or lacked standing. No requests for temporary relief have been granted during the review period.

OSM had planned to conduct a follow-up review on temporary relief in EY 2005. This follow-up review would meet OSM's requirement to conduct a review of one aspect of customer service provisions of the program. Since the Commission did not grant any requests for temporary relief, OSM did not conduct a follow-up study. However, OSM is acknowledging an apparent shift in the way the Commission is viewing temporary relief. Based on the decisions issued on temporary relief during this review period, the Commission has favorably considered and apparently effectuated some of OSM's recommendations from prior oversight reports regarding temporary relief.

AML Program Accomplishments

Historic Resource Preservation Agreement

Ohio, OSM, the Ohio Historic Preservation Office, and the National Advisory Council on Historic Preservation drafted a programmatic agreement (PA). The agreement allows Ohio to waive consultation requirements on AML projects that have been reviewed by qualified professionals and found to have no adverse impact on historic properties. The PA was finalized and signed by all parties in January 2005. Ohio has implemented the agreement and it appears to be working well.

Emergency Program

Ohio identified 39 AML conditions that OSM declared as emergency projects during the evaluation period. The emergency projects addressed 25 subsidence-related problems, ten landslides, and four vertical openings. The 39 emergency projects declared this year represented a 30 percent increase over the 30 emergency projects declared in EY 2002, which had been the highest annual number of projects in the past four years. Ohio completed construction on 28 emergency projects.

The increase was mostly attributed to heavy rains, flooding, and numerous landslides that occurred in eastern Ohio last August and September. The Belmont County Emergency Management Agency alone requested assistance on reviewing 64 landslides they thought may be mine-related. Ohio determined that several landslides were potentially mine-related and required further review and investigation to determine if they met the criteria of an AML emergency. The increase in the number of AML emergency complaint investigations did cause some delays in eligibility determinations, contracting, and construction.

Due to the increased number and severity of projects, funding for Ohio's AML emergency program was nearly depleted prior to the end of the grant period. OSM de-obligated funds remaining from Ohio's FY 2003 emergency program grant and re-obligated \$541,000 to the FY 2004 grant to help meet Ohio's need until the new grant cycle began in August 2005.

AML Project Accomplishments

Ohio reported the following AML project completions in the Abandoned Mined Land Inventory System (AMLIS). AMLIS is the official OSM record of AML conditions in each state.

Ohio's project completions addressed the following AML conditions during the EY 2005 evaluation period:

- 233.9 acres Clogged Stream Lands (CSL)
- 0.2 miles Clogged Streams (CS)
- 9500 lineal feet Dangerous Highwall (DH)
- 17.2 acres of Dangerous Landslide (DS)
- 20 acres Gob (GO)
- 75 Portals (P)
- 22.2 acres Subsidence (S)
- 3.3 acres Surface Burning (SB)
- 28 Vertical Openings (VO)
- 32 Polluted Water Supplies, Human Consumption (PWHC)
- 1 Hazardous Water Body (HWD)

Appalachian Clean Streams Program (ACSP)

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

OSM approved four new watershed cooperative agreements totaling \$436,779 during the review period. Ohio is continuing to work with the watershed groups to make full use of this program. Ohio has also continued its use of the ACSP funds within its AML grants, with approximately 44 percent of the \$5.2 million dollars in AML construction bids for AMD projects.

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

ACOE Feasibility Study - This study is combined with the OEPA's 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 ACOE and OEPA. This has been completed, and the study has undergone final revisions. Numerous projects identified by the study have a projected cost of about ten million dollars.

USFS has continued to be a strong partner in the watershed. Construction has been completed at both the Snake Hollow and Big Four Hollow projects.

Jobs Doser - This project was partially funded by an OSM Watershed Cooperative Agreement. The doser construction was completed in October 2004 and currently the doser is in use and is neutralizing approximately six miles of the Monday Creek headwaters.

* Sunday Creek: The group's watershed cooperative agreement for the Congo Subsidence Closure project was completed in July 2004. The group is currently concentrating its efforts on closing subsidence features that capture stream flow to reduce the amount of AMD generated from the abandoned mines. The group is also working on a demonstration project at the Corning discharge.

* Raccoon Creek: The Raccoon Creek Improvement Committee has been the most active watershed in terms of construction activities. The watershed group has worked with various partners in applying for and receiving two new watershed cooperative agreements and completing those approved in the previous year as follows:

Hope Mine Project – Hocking Technical College has completed reclamation of an abandoned strip mine contributing sediment and AMD directly into Raccoon Creek.

Mulga Run Project - The Mulga Run watershed cooperative agreement project was contracted in July 2003 and completed in August 2004. This project includes installation of limestone and steel slag leach beds, and limestone channels in combination with some priority two work to reduce residential and road flooding. This previously acid stream is now alkaline at its mouth.

Flint Run East – This recently approved cooperative agreement project started in the spring of 2005 and will divert drainage away from acid-producing materials, drain several old pits, and treat the residual AMD using passive treatment. This project, along with the recently proposed Lake Milton Project, will neutralize the AMD from Flint Run, which is the single biggest producer of AMD in the Little Raccoon Creek basin.

Middleton Run – This project, also started this spring, involves land reclamation, pit removals, and the installation of a steel slag leach bed treatment system.

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

Lindentree Project – This project, which has drained and reclaimed old acid pits, was contracted last year and was completed in November 2004. Water quality improvements have already been noted.

Lyons Project – This project was started this spring and will drain old pits. A steel slag alkalinity producing system will be installed to buffer downstream waters.

Mineral Zoar AMD Project – This cooperative agreement project was approved in January 2005. The project will use passive treatment to treat AMD that is flowing through the much visited Mineral City Park. Work had not started as of the end of the review period.

Fern Hill Pits – This cooperative agreement project was approved in March 2005. The project will drain old pits that are located above a significant AMD seep in order to reduce the amount of AMD. Work had not started as of the end of the review period.

* Moxahala Creek: The watershed group has nearly completed its Acid Mine Drainage Abatement and Treatment Plan. They worked with Ohio to apply for a watershed cooperative agreement through the non-profit Clay Valley Foundation to construct the Misco west project. This involves sealing off seepage into a large gob pile that is generating significant amounts of AMD. The watershed cooperative agreement was approved and the work was contracted in June 2004. Construction is currently underway.

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

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

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, but has yet to pick an appropriate project for their first effort.

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

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

reclaiming old pits suspected of being the source of AMD seeping into a private pond and a public water supply reservoir.

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

B. Program Issues

733 Process Started on Ohio's Bonding Program

In November 2002, OSM completed an oversight study and issued a final report on Ohio's bond forfeiture program. The report reaffirmed problems with Ohio's alternative bonding system (ABS) and Ohio's inability to correct a condition placed on the Secretary of Interior's initial approval of Ohio's regulatory program in 1982.

Following the November 2002 report, OSM sent letters to Ohio encouraging them to make necessary changes to the bonding program. Ohio responded on August 14, 2003, acknowledging the bonding problem, but reporting no progress toward resolution. On December 3, 2003, the Regional Director of OSM's Appalachian Regional Office notified Ohio that he was recommending that the OSM Director initiate action to withdraw approval of Ohio's bonding program under 30 CFR Part 733. On May 4, 2005, the OSM Director formally notified Ohio, pursuant to 30 CFR 733.12, that he would recommend that the Secretary of Interior withdraw approval of Ohio's bonding program unless Ohio submits a program amendment that addresses the deficiencies with the bonding program. The Director's letter provides Ohio 90 days to submit the program amendment.

Since May 2004, Ohio has been working with the Ohio coal industry on revisions to the bonding program that might address the program condition. Although agreement on the terms of a bonding program has not been reached, talks between Ohio and the mining industry continue. The OSM's Director's deadline for Ohio to submit an amendment is currently November 4, 2005, following the Director's granting of an extension.

Ohio's estimated current (September 1, 2005) forfeiture reclamation liability is approximately \$6.5 million on 1200.6 acres of coal and non-coal forfeiture sites. In addition, there is an estimated reclamation liability of \$11.8 million on 2796 acres pending resolution of appeals and collection actions on currently issued bond forfeiture orders. Performance bond covers only about one-fourth of the estimated liability. Available funding from Ohio's ABS is limited to about \$1.7 million per year. These funds are provided by excise taxes on coal and non-coal minerals. The annual funds provided by the ABS are not sufficient to allow Ohio to reclaim forfeiture sites in a timely manner. The average time between forfeiture orders and reclamation is about five years, with some sites taking over nine years to reclaim.

Bond forfeitures issued this year have exacerbated Ohio's problems with its ABS. Ohio issued 15 bond forfeiture orders to one company in January 2005. Ohio is currently evaluating whether the company has the ability to complete reclamation on 12 additional mine sites. The 27 mine sites represent a potential of over \$9 million in estimated liability to Ohio's bond pool. All forfeiture orders are currently under appeal. Ohio is working with bonding companies, the estate of the company's deceased owner, and the current company owners in an attempt to get reclamation completed. Ohio remains optimistic that the mining company and/or its surety bond companies will reclaim the sites to avoid actual bond forfeiture. The company has abated several violations over the past few months.

Regulatory Takings Case Settled

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 Ohio's determining that 833 acres were unsuitable for coal mining. Ohio's 1994 determination was in response to a 1988 petition from the Village of Pleasant City. 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.

Ohio and R.T.G. reached a settlement of \$4.35 million on the monetary claim during this evaluation period. Although the settlement was less than initially sought by R.T.G., the court's decision and resulting settlement will have significant budgetary and future programmatic impacts on Ohio's lands unsuitable program. Ohio is seeking assistance from OSM regarding their ability to continue to comply with SMCRA's lands unsuitable provisions in consideration of the Ohio Supreme Court's ruling on takings.

AMD Inventory

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

This year, OSM continued to review and refine the AMD inventory by verifying conditions on the sites through site visits. OSM conducted 19 site visits to continue collecting water quality and quantity data on the previously identified AMD problems. Some of the inventory sites were reviewed twice, once during the low-flow period and once during the high-flow period, to better characterize the water chemistry and flow variations on the sites.

OSM and Ohio continued to refine the procedures for adding and removing sites from the AMD inventory. These procedures identify monitoring frequencies and results for removing sites, in addition to granting bond releases on permits on the inventory. Both agencies have agreed that, for a site to be removed or have bond released, the site must have four consecutive quarters of acceptable water quality discharges. During this evaluation year, several bond release requests were evaluated on segments of permits on the AMD inventory. Of the ones reviewed, the original AMD issues were no longer a problem and the releases were approved.

OSM site visits found that conditions on four permits had improved and the sites were removed from the AMD Potential list. These permits met the criteria where AMD was not generated for at least one year. In addition, one permit was added to the Long-Term Inventory and one to the Potential Inventory list.

During EY 2006, OSM plans to more closely evaluate data from each of the sites in the inventory and revise the inspection frequency accordingly. 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.

Coal Waste Disposal

OSM issued a final report in EY 2003 on the disposal of coal-processing wastes. 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.

To address the report and recommendations, Ohio assigned a team of technical, permitting, and inspection personnel, and an OSM representative. The team developed guidelines for documenting, monitoring, and communicating AMD issues to the permittee during inspections. Ohio planned for this team to also develop guidelines for ensuring that coal waste disposal follows approved disposal plans in response to OSM's recommendations. The guidelines were not developed in EY 2004 and no further progress was made during EY 2005 due to staffing shortages.

Developing Underground Mine Pool

Ohio has notified a coal company to make plans for abating an expected mine water discharge from a developing underground mine pool in the company's closed mine. Discharge from the mine pool was not anticipated when the mining permits were approved in 1984 for this mining complex that opened prior to the passage of SMCRA. Ohio and the company are discussing the extent of possible impacts from an eventual long-term discharge of mine water and ways of preventing or mitigating any problems that may result.

Large Slurry Impoundment

In EY 2004, Ohio and OSM completed a final report regarding large impoundments that overlie underground mines in Ohio. The report was in response to impoundment breakthroughs into underground mines in other states. The report concluded that two of four impoundments located within 500 feet of active or known abandoned underground mines present some risk for potential breakthrough. One of the impoundments has been substantially dewatered and slurry removal and reprocessing is ongoing.

In the EY 2004 annual report, we noted that dewatering and reclamation of the other impoundment was expected to begin because Ohio had approved the final dewatering and reclamation plans. However, during EY 2005, the landowner of the property appealed Ohio's approval of the plan to remove the impoundment. The Ohio Reclamation Commission ruled that the landowner did not have standing to appeal Ohio's approval of the reclamation plan. Ohio issued a Notice of Violation to the permittee when removal of the impoundment was not started in accordance with the approved reclamation schedule. The landowner appealed the decision denying standing. The appellate court granted temporary relief that prevents the permittee from reclaiming the impoundment and prevents Ohio from enforcing their violation until the court issues a decision on the merits of the appeal. The impoundment remains, pending a hearing and decision on the landowner's appeal to the appellate court.

Civil Penalty Assessments

A mining company appealed Ohio's issuance of two civil penalty assessments because the proposed assessments were not issued in the time specified by the Ohio program. The Ohio Reclamation Commission ruled that Ohio's issuance of the civil penalties in 252 and 134 days was arbitrary and capricious because the Ohio law requires that proposed penalties be issued within 30 days. The Commission vacated both of the proposed penalties. Ohio indicated that lack of available personnel caused the delay in issuing the proposed penalties.

The personnel issue raised in this case is noteworthy because OSM has highlighted the declining number of staff in Ohio's regulatory program as a preliminary concern. Ohio recently added an assistant manager position that will help with issuing civil penalty assessments. The extent of Ohio's implementation of the civil penalty provisions of their program may be the subject of an OSM oversight review in EY 2006.

Alternative Enforcement

OSM was assisting Ohio on some ownership and control and collection investigations. In that process, OSM learned that Ohio has not been routinely pursuing alternative enforcement actions as required when a permittee fails to abate violations within 30 days after a cessation order is issued. Ohio has acknowledged that they had not been issuing individual civil penalties against corporate officials. However, Ohio indicated they recently issued proposed individual civil penalties to corporate officers of one company. Again, Ohio has attributed their not pursuing alternative enforcement to staff shortage. However, adding the assistant manager position in the South Region is expected to help better implement this program requirement. OSM may conduct an oversight review of Ohio's use of alternative enforcement in EY 2006.

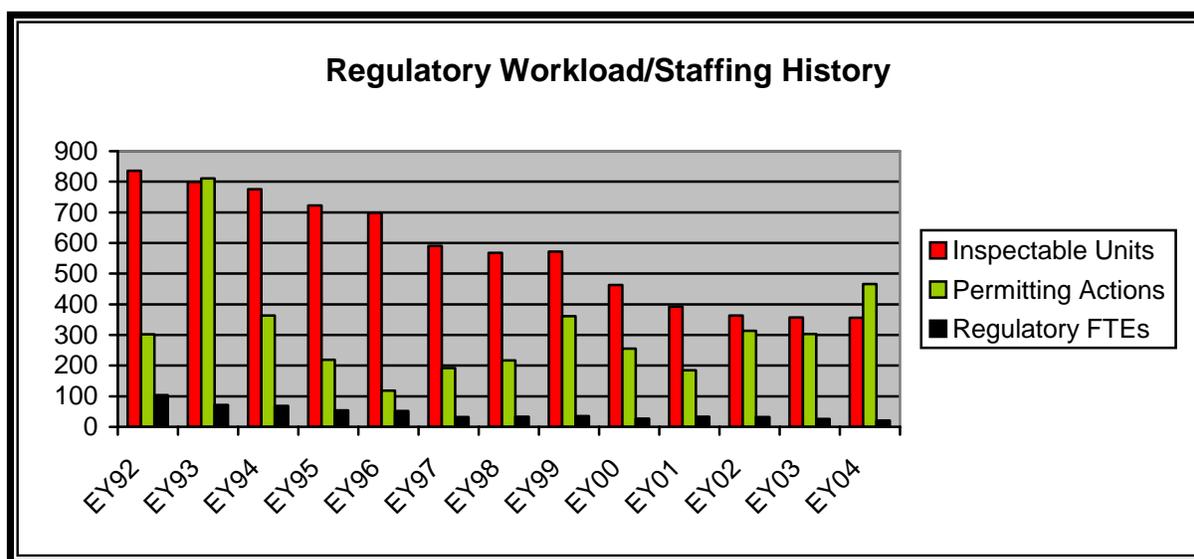
Ohio was successful in collecting part of a significant unpaid civil penalty against an owner of a company that forfeited bond. Ohio is considering pursuit of reclamation costs against the same individual. Ohio has also reached tentative agreement with another individual on payment of a significant portion of reclamation costs related to bond forfeitures by this individual in the 1980's. Based on this payment agreement, the individual will likely be cleared from responsibility for these past forfeitures and Applicant Violator System (AVS) permit blocks will be removed.

Regulatory Program Staffing

In December 2004, OSM notified Ohio that they have fewer inspection and program staff per inspectable unit than the other states in the Appalachian Region. In 2003, in the six states in the Appalachian Region, there was an average of one regulatory full-time equivalent (FTE) for every 18 inspectable units. The lowest ratio in the region was one FTE for every 11 inspectable units compared to one FTE for every 31 inspectable units in Ohio.

In March 2005, OSM concluded a short follow-up review of Ohio’s staffing of their regulatory and AML programs. In 1992, 72 percent of Ohio’s staff was regulatory and 28 percent was AML. In 2004, 34 percent was regulatory and 66 percent AML. During this period, the number of AML staff has remained fairly constant as has the AML workload. However, the decrease in regulatory staff has outpaced the decrease in inspectable units.

In 1992, Ohio had 104 regulatory FTEs and in 2004 there were 21 FTEs. In 1992, there were 836 inspectable units and in 2004 there were 356. The number of inspectable units has decreased by 57 percent while the number of regulatory staff has decreased by 80 percent. Also noteworthy is that the number of permitting actions has increased from 1992 to 2004, even though the number of inspectable units has decreased.



OSM will continue to monitor any potential impacts of staffing decreases on program performance through routine oversight activities.

Longwall Mining

In 2001 and 2004, OSM released final oversight reports on longwall mining. The 2001 report addressed longwall mining and the processes Ohio and the mining industry use to implement the Ohio program requirements and to interact with affected property owners. The report provided five findings and recommendations regarding: permanent water supply replacement; cost of public water; documenting extent of impacts; repair and compensation for damage to structures; and communication, information, and understanding between Ohio, industry, and landowners.

The 2004 report provided a follow-up to the 2001 findings and recommendations.

Both reports indicate that Ohio has not developed a data collection system to better track impacts and repairs/compensation. Both reports also identified that mining companies were not providing permanent water supply replacements within 18 months as required by their permits. Although companies are providing temporary water supplies, some permanent replacements have gone unresolved for several years.

In 2004, Ohio was working on clarifying its water supply replacement policy to address some of the issues raised in the OSM reports. Although a revised policy was drafted, it has not been issued. This year, OSM also identified impacts to streams caused by longwall mining. OSM has questioned Ohio's monitoring, notification, and mitigation requirements of stream impacts and the length of time specified in their permits before mitigation is required.

Just after the end of EY 2005, OSM sent a letter to Ohio requesting their response to the issues identified by OSM's oversight findings. A meeting will be scheduled with Ohio to discuss these issues in early EY 2006.

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.

Our primary source of information for identifying off-site impacts is enforcement data that Ohio provides on a quarterly basis. Ohio's inspection staff provides this data based on their off-site impact assessments for every enforcement action. OSM reviewed reports from Ohio's district office on all of the Notices of Violation (NOVs) and Imminent Harm Cessation Orders (IHCO) they issued. OSM compared the Districts' logs to Ohio's reports from their enforcement database to identify any violations that may not have been reported as an off-site impact in the database.

To independently verify Ohio's information, OSM conducted oversight inspections to determine what impacts may have occurred outside the authorized areas. Ohio and OSM met periodically

during the year to review Ohio's reported off-site impacts and those that OSM identified to reach an agreement on the number and the degree of impact.

At the end of this evaluation period, there were a total of 338 inspectable units - 224 active sites, 63 inactive sites, and 51 bond forfeiture sites. Ohio usually does not take enforcement action once they have issued bond forfeiture orders. Therefore, no off-site impacts were identified on bond forfeiture/abandoned sites. The 51 bond forfeiture sites were not included in the 287 sites inspected by Ohio and OSM for purposes of the evaluation of off-site impacts.

There were a total of 74 off-site impacts identified on 41 sites. We counted an impact only once, even if it affected more than one resource. This equates to the identification of off-site impacts on 14.3 percent of the permits, with 85.7 percent of the permits free of off-site impacts.

Table 4 summarizes the number of resources affected and extent of the off-site impacts identified. The 74 off-site impacts affected 100 resources of people, land, water, and structures. Three caused major impacts, 24 caused moderate impacts, and 73 caused minor impacts. The three major impacts, occurring on three different sites, were mining without a permit, sedimentation into a stream, and a landslide.

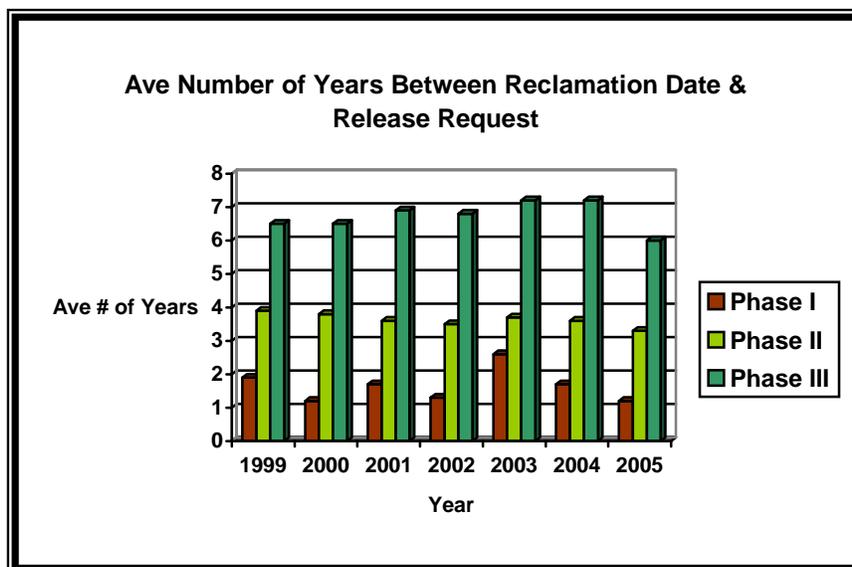
The number of off-site impacts has increased every year since 2001. Several factors may be contributing to this increase, including an increased awareness of off-site impacts on the part of Ohio and a resulting increase in the number identified. Ohio's regulatory program staffing levels have decreased at a pace greater than the decrease in the number of inspectable units. Staffing decreases could mean that inspectors have less time to work with operators to prevent the violations that cause off-site impacts. In addition, the staff may not have time to focus on identifying the cause of these impacts to minimize or prevent their reoccurrence.

During EY 2005, 49 of these off-site impacts were attributed to three companies. One company was responsible for 25 (33.8 percent) of the 74 off-site impacts on twelve of its 27 permits. Ohio issued this company 16 NOVs and five IHCOs to address these violations. Another company was responsible for 13 (17.5 percent) of the impacts on nine of its permits. Ohio issued nine NOVs and one IHCO to address these violations. A third company was responsible for 11 (14.8 percent) of the impacts on two of its permits. Thus, three companies accounted for 49 (66 percent) of the off-site impacts. The remaining 25 off-site impacts were on 19 permits issued to 14 different companies.

Our recommendations to Ohio included that they create a team including inspectors to establish ways to identify and prevent the conditions that result in off-site impacts, especially those resulting in hydrology and encroachment impacts; that Ohio and OSM should place increased emphasis on the AMD initiative and identifying conditions that lead to breached diversion ditches; OSM and Ohio will meet throughout EY 06 to review the off-site impacts; that Ohio managers should monitor how their inspectors are completing the off-site impact assessment worksheet to ensure that they understand and are correctly identifying off-site impacts; and that both Ohio and OSM managers should emphasize to their inspectors the need to come to a conclusion regarding the existence and extent of off-site impacts at the end of inspections.

B. Bond Release and Reclamation Success

OSM conducted inspections on 45 segments on 30 permits or 25 percent of the reclamation segments that the Ohio District Offices approved for bond release between July 1, 2003, and May 31, 2004. OSM found that Ohio's approval of bond releases was proper except for two cases. In both exceptions, stream restoration was not completed as planned. One of the sites also had a small source of AMD that had not been addressed during the bond release evaluation. OSM issued Ten-Day Notices and Ohio responded appropriately by taking action to have the site conditions corrected. Table 5 in the Appendix tabulates information on bond releases processed by Ohio during the review period.



OSM measured contemporaneous reclamation using information provided by Ohio for all Phase I, II, and III bond releases the District Offices approved between July 1, 2004, and May 31, 2005. 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 177 segments totaling 8293.6 acres. The chart provides the average time frames for each phase of bond release over the last seven years. Findings from this evaluation concluded:

- Time frames for completing Phase I reclamation ranged from -0.3 years to 7.0 years¹ and averaged 1.2 years on 64 Phase I releases approved by Ohio. Bond release was requested within one year on 56 percent of the segments approved for phase I release.
- Time frames for completing Phase II reclamation ranged from 0.7 years to 10.0 years and averaged 3.3 years on 46 phase II releases approved by Ohio. Bond release was requested within two years on 35 percent and within four years on 72 percent of the segments approved for phase II bond release.

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

- Time frames for completing Phase III reclamation ranged from 1.7 years to 13.5 years and averaged 6.0 years on the 67 phase III releases approved by Ohio. Bond release was requested within seven years on 78 percent of the segments approved for phase III bond release.

During EY 2005, the average time between segments being identified for reclamation and the operator's submitting a bond release request decreased for each of the phases. This indicates that, on average, permittees are completing reclamation and requesting bond release more timely than in the past. This year's data shows that the average time for requesting Phase I bond release was the shortest since 2000 and is just slightly over the expected one-year time frame. The number of acres approved for Phase I release in 2005 was 21 percent higher than in 2004. The average time for requesting Phase II bond release is the lowest since we began tabulating this data in 1999. The number of acres approved for Phase II release in 2005 decreased slightly from 2004, likely due to the 11-month period in 2005. The average time for requesting Phase III release showed a significant decrease from last year, and is also the lowest average since we began reporting this data in 1999. Phase III bond release requests, on average, are meeting the expected six-year time frame. The acreage approved for Phase III bond release in 2004 decreased by 51 percent from 2004.

VI. OSM ASSISTANCE

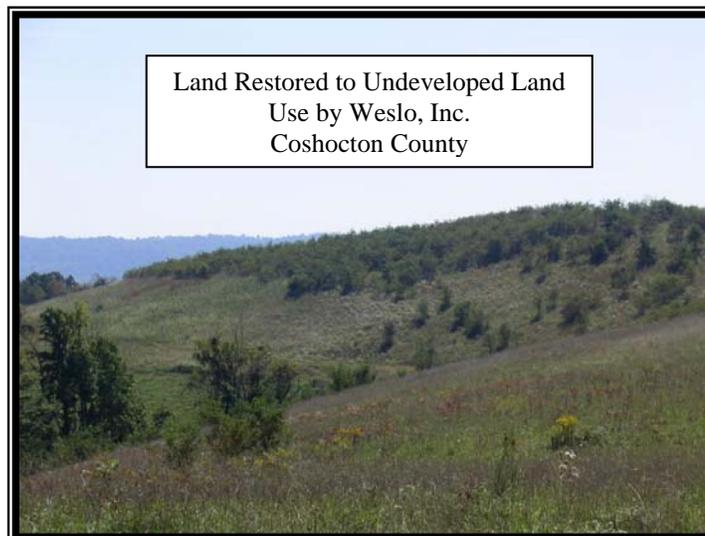
During the evaluation period, OSM provided assistance to Ohio on different initiatives. The purpose of this assistance was to help Ohio more efficiently implement their program. Both OSM and Ohio found that working together cooperatively to resolve problems has been positive and successful. Listed below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

AML Emergency Complaint Investigation

To help Ohio assess potential AML emergency program eligibility, OSM conducted site visits on 28 of over 90 complaints that Ohio received because of heavy rains and severe flooding in eastern Ohio in September 2004. The site visits helped determine if the damage was mining-related and possibly eligible for assistance through the AML Emergency Program.

Promoting ARRI

OSM and other members of the Ohio ARRI Team made presentations promoting ARRI and the FRA to the Ohio field and permitting staff on several occasions. They also made a presentation during a Permitting Work Group quarterly meeting attended by representatives of the mining industry, consultants, OEPA, ACOE, and U.S. Fish and Wildlife Service (FWS).



Enforcement Investigations

Staff members from OSM's Applicant Violator System Office conducted two investigations to determine if a person responsible for two bond forfeitures in the 1980s was controlling two current mining companies. The investigations resulted in the AVS Office's issuing Findings of Control against the person claiming to work for his son's mining companies and having no ownership and control responsibility. The investigations determined that the person was in fact in control of the two companies. AVS now contains this information resulting in the person's being blocked from obtaining mining permits or operating on coal mining permits due to past bond forfeitures in Ohio. Ohio has reached a tentative agreement with the person on payment of a significant portion of the reclamation costs incurred by the State's reclaiming the forfeiture sites. Once the agreement is final, the AVS permit block will likely be lifted.

The AVS Office also assisted Ohio by obtaining corporate and individual asset information on owners of two other companies that have forfeited bond or are currently involved in forfeiture proceedings. The information may have helped Ohio collect on unpaid civil penalties against one corporation and may help Ohio as they consider pursuing collection of reclamation costs against the corporation. The information may also help Ohio in its attempts to secure assets from an estate to ensure reclamation of several mine sites currently under bond forfeiture orders.

Huff Run Mapping

OSM provided the Huff Run Watershed Restoration Partnership with assistance in developing theme-specific maps for inclusion in their Watershed Plan. The maps included information on riparian zones, well locations, and illegal dump sites. The Watershed Plan contains a comprehensive inventory of the watershed's characteristics and problems, along with proposed ways to mitigate the problems. This plan, submitted to OEPA and Ohio, will be used to determine future funding for watershed projects.

Endangered Species

In EY 2004, Ohio, OSM, and FWS signed a memorandum of understanding (MOU) that outlines how the agencies will improve coordination and consideration of endangered species during processing of mining permit applications. In addition to signing the MOU to address endangered

species in general, the agencies developed species-specific conservation measures for protection and enhancement of habitat of the endangered Indiana bat. During EY 2005, the agencies have continued to work through implementation issues with the mining industry about the Indiana bat policy that became effective in May 2004.

Policy Review

Ohio began a project of reviewing and updating all of their policy memoranda and asked OSM to assist with this review. The project and OSM's assistance may continue into EY 2006.

VII. General Oversight Topic Reviews

OSM Oversight Inspections

During the evaluation period, OSM completed 63 site visits for general compliance monitoring of coal mining operations to assess compliance with performance standards; 31 site visits to evaluate bond releases approved by Ohio; 19 site visits specifically to obtain seasonal water quality and quantity data at sites with potential for AMD; eight mine site visits to follow up on issues, and one site visit in response to a citizen complaint.. In addition, OSM conducted 35 site visits to monitor AML reclamation project construction and 28 site visits to evaluate potential AML emergencies or to monitor AML emergency project construction.

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

OSM received three formal citizen complaints during the evaluation period. Two complaints were about blasting and exceeding distance prohibitions. One complaint was about the permittee not making timely repairs to structural damage caused by mine subsidence. Ohio responded to the complaints appropriately.

The results of OSM inspections related to OSM special studies concerning roads, contemporaneous reclamation, policy implementation, bond release, reclamation success, and off-site impacts are further discussed under separate topics elsewhere in this report.

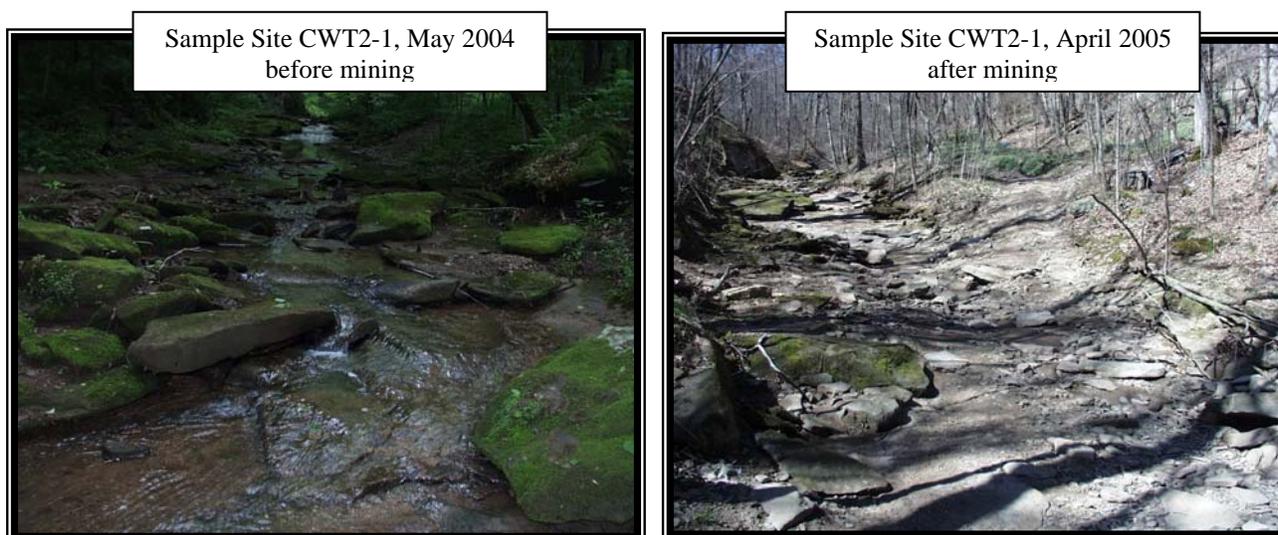
Study of Stream Impacts from Longwall Mining

OSM began a study of stream impacts from longwall mining in 2002. The study uses qualitative benthic sampling as a possible means of detecting water loss in perennial and intermittent streams overlying longwall panels. For post-mining determinations, 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. For active longwall mines, before and after sampling is the preferred method of study.

OSM conducted additional sampling at an active longwall mine in the same vicinity during the springs of 2003 and 2004, 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 collected follow-up samples at the active site in the springs of 2004 and 2005. The sample sites included those sampled in 2003 plus several samples taken over recently proposed panels. The 2005 samples have not been analyzed yet. However, some significant observations were made. A small tributary that had been undermined and was dry in 2003 was flowing in 2004. A small tributary that was flowing prior to mining in 2003 was dry after mining in 2004 and had not recovered as of April 2005. Another tributary had a visibly diminished flow and benthic community immediately downstream of an undermined area in 2004 and was completely dry in 2005.



OSM completed a report on the sampling done in 2003 and 2004 along with the observations of additional dry streams in 2005. The report recommends that Ohio provide formal damage notices to the coal company concerning stream loss. It also recommends that Ohio consider reducing the five-year period allowed by the permit for monitoring before corrective actions are attempted.

OSM will also continue monitoring the tributaries where problems were observed. This will provide a better picture of if and when those streams recover.

AML Construction Program

OSM reviewed Ohio's non-emergency AML construction processes for productivity and timeliness compared to the previous year. OSM did this by maintaining a project database and conducting routine AML oversight inspections. Ohio's overall AML productivity was somewhat lower than last year. However, design productivity, construction contracting, and contract completions all remained relatively high, as reflected by the number of authorizations to proceed, contracts issued, and project completions compared to previous years.

▪ National Environmental Policy Act (NEPA) Compliance

OSM issued 32 "Authorizations to Proceed" (ATP) during EY 2005 compared to 55 for

EY 2004. This level of activity is less than last year's. This may be an indication that Ohio has reduced the backlog of small projects since the inception of its unit price contracts a couple of years ago. The unit price contracts allow Ohio to avoid unnecessary administrative delays, thereby creating a fast-track for small projects. Oversight inspections showed that NEPA submittals accurately described the project sites and any mitigation required. Ohio submitted NEPA information in a timely manner. The information included adequate descriptions of potential bat habitat, an improvement from past years.

- **Design Productivity (AMD and Non-Emergency AML)**

Ohio completed 37 project designs during the review period compared to 49 for the previous year. Ohio's in-house design staff completed 29 of the 37 designs, with consultants designing the remaining 12 projects. Ohio's effort to do more in-house designs and rely less on consultants continues to be successful. There were 29 in-house designs completed this year compared to 30 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 19 contracts totaling \$5.2 million dollars in construction contracts during the review period, compared to 30 contracts totaling \$6.5 million last year. There were also several unit-price contracts issued during this period, which were not included in the 19 calculated.

The average time between the bid openings and the authorization of construction contracts went from 57.4 days in 2003, 47.8 days in 2004 (previous low was 48.0 days in 2000), to 47.4 days this year (not including the Shuler project which had a non-responsive low bidder). This shows that Ohio has continued to issue contracts in a timely manner. Ohio has also expanded its use of unit-price contracts to include water well replacements, portal closures, and maintenance work in addition to backfilling subsidence. This has eliminated the need to design and administer each project

separately in order to bid construction. Under unit-price contracts, multiple projects are constructed under one contract. This has helped improve the productivity and efficiency of Ohio's AML program.

- **AML Project Construction Completions**

Ohio completed 47 projects during the review period, compared to 52 last year. There were no significant delays due to design changes or cost overruns again this year.

Abandoned Mined Land Inventory System (AMLIS)

In 2003, the Department of Interior Inspector General released an audit report on AMLIS. The report found that a significant amount of data entered into AMLIS was inaccurate. In response to the audit, OSM agreed to conduct oversight in 2004 to ensure that states had a system in place to ensure the accuracy of data entered into AMLIS and to periodically check the system in subsequent years. OSM reviewed Ohio's AML procedures manual and found that Ohio has procedures in place to identify how and when AMLIS updates will be made. Ohio has only one person authorized to enter this data, which should ensure that the data entries are consistent and accurate. As such, Ohio has a system in place to ensure the accuracy of data being entered into AMLIS. OSM reviewed a sample of 24 completed projects in 2005 to verify that Ohio's system is working. The study showed that Ohio is submitting accurate updates in a timely manner.

Hydrologic Monitoring Study

OSM completed the oversight study of the ground water monitoring plans approved by Ohio for their surface mining permits. The study's purpose was to evaluate whether the approved plans were adequate to characterize the effect of surface mining on the ground water system. A hydrologist from OSM's Appalachian Region provided technical assistance with the study.

OSM provided a draft report to Ohio in late May 2005. Ohio and OSM met in June 2005 to review the report and findings. Ohio's permitting hydrologists are reviewing the report and preparing comments for OSM's review. Once OSM receives these comments, we will revise and finalize the report.

Mine Roads

OSM conducted a study of haulage and access roads during the review period by reviewing 20 permits for certifications and on-the-ground impacts. The results of the study showed that roads are being properly constructed and certified in nearly all instances. Where problem do arise, Ohio has adequately addressed them. Permanent roads and those reclaimed have been left in a condition that is compatible with the post-mine land use.

In-Stream Ponds

OSM began a study on in-stream sediment ponds by conducting a literature search on the subject, and conducting benthic samples and temperature readings upstream and downstream of in-stream ponds. Sampling has been postponed due to hot, dry weather, and will recommence

sometime this winter. In-stream ponds are discouraged by the OEPA and are required to be removed in most cases. However, the ponds are often valuable resources for fish and wildlife. The goal of the study is to determine what, if any, environmental impacts are occurring as a result of the ponds. It should aid Ohio in making more informed decisions regarding in-stream ponds

Contemporaneous Reclamation

The purpose of this study was to determine how effectively Ohio is ensuring that mine operators comply with all requirements pertaining to contemporaneous reclamation. Due to a limited sample size of permits where concurrent backfilling, grading, and soil replacement could be evaluated, OSM will extend that portion of the review into EY 2006.

Based on the sample considered by this review, OSM found a number of mine sites and a larger number of annual reclamation segments that have minor to significant problems that have not been corrected in a reasonable time preventing the various phases of bond release.

OSM also found that Ohio had not acted to compel permittees to correct problems on several sites until after an OSM inspection. OSM determined that both Ohio's documentation of problems preventing release and action to resolve the problems were inconsistent. This could indicate that Ohio inspectors are reluctant to properly document needed corrective measures and timeframes, are reluctant to take enforcement action, or do not have a clear understanding of the program requirements on contemporaneous reclamation.

Ohio's monitoring of reclamation status on mines sites and on each annual segment is limited to inspections and use of OSM's two-year/six-year lists. An additional monitoring approach is needed to ensure that contemporaneous reclamation rules and policy are carried out on all permits and annual segments.

To address these findings, OSM recommended that Ohio could better document problems preventing each phase of bond release and establish reasonable timeframes for correction of problems on each annual segment to ensure permittees are making continual progress. In all cases, Ohio should establish and enforce timeframes on the permittee for acting to correct problems preventing release, including following up on any paperwork that is needed. Enforcement action should be taken when problems, including completion of necessary paperwork, are not corrected within a reasonable time. During EY 2006, OSM plans to conduct further evaluation of Ohio's enforcement practices to determine how effectively they are citing violations for non-contemporaneous reclamation and all other program standards.

From its own databases, Ohio could develop a report that provides a summary bond release status of all annual segments on all permits. Managers could use such a report to track the reclamation status of all annual segments on each permit. Such tracking would help managers

work with inspectors to better ensure that permittees are taking corrective actions necessary to achieve each phase of bond release on all annual segments in a timely manner.

Procedures Implementation

OSM reviewed Ohio's implementation of several specific program areas as part of oversight inspections. These areas include: stream buffer zone variances, excess spoil and blending, landslides, temporary inactive status, and hydrologic impacts at bond release. Most of these program areas are addressed by Ohio procedure directives (PPD) and internal operating guidelines intended to improve implementation of program requirements. Several of these

policies either resulted from Ohio's recognizing a need for further guidance for staff or were based on recommendations from previous OSM oversight activities. Some were cooperatively developed by Ohio and OSM.

The review found that Ohio is properly implementing their procedures for review and approval of buffer zone variance requests. Increased attention to mining impacts on streams from OEPA and ACOE has also resulted in more detailed stream restoration and mitigation plans. Ohio should ensure, through its inspection staff, that permittees carry out all provisions of approved stream buffer zone variances and stream restoration and mitigation plans on the ground. Ohio should continually reiterate and educate the inspection staff and the mining industry of the importance and necessity of being aware of stream buffer zone and stream restoration provisions. Ohio inspectors must enforce all provisions of the approved permit.

Ohio is generally implementing its guidelines on temporary cessation and landslides, but not totally across the board. Ohio should reiterate the guidelines to the inspection staff, especially those on landslides, and monitor the timeliness of complete reclamation on all annual segments. If landslides are identified as a contributing factor that is preventing bond release, managers should determine if inspectors are properly applying the guidelines.

OSM identified no issues with excess spoil disposal and blending based on the five sites where these provisions applied. Excess spoil disposal outside the mined area is not a widely practiced mining activity in Ohio.

We believe Ohio inspectors are completing the hydrologic assessment forms as part of each bond release inspection. However, OSM did identify two instances where small AMD sources were identified on the bond release segments and Ohio may not have documented its consideration of the AMD in relation to the bond release and/or potential for water pollution. Sources of AMD, no matter the extent, should always be documented as to why they are or are not considered as a source of pollution before any bond release is approved.

AML Storm Water Pollution Prevention

OSM reviewed two projects for each of Ohio's seven project officers for a total of 14 projects. The study showed that while Ohio is incorporating storm water pollution prevention into their design plans, there is room for improvement. The plans are not always implemented in a timely manner, and sometimes the plans themselves are technically inadequate. Ohio has formed a storm water committee to improve this area of their program.

OSM Part 732 Notices and Program Amendments

Program Condition and Initiation of 733 Action

Ohio has one program condition remaining at 30 CFR 935.11 from OSM's 1982 approval of the Ohio permanent regulatory program. Ohio must demonstrate that its ABS will ensure timely reclamation at the sites of all operations for which bond has been forfeited. OSM also issued a Part 732 letter to Ohio on this issue on October 1, 1991. The letter notified Ohio that it must revise the Ohio program to ensure that the ABS will have sufficient funds to complete the

reclamation plans for any areas in default at any time. An actuarial analysis of Ohio's ABS as of December 31, 1992, found that Ohio's ABS is solvent if certain assumptions are fulfilled. In February 1994, Ohio reported that its ABS continues to have a \$1.5 million deficit. On June 30, 1995, Ohio and OSM updated an Improvement and Monitoring Plan for the Ohio ABS. OSM's review of this program area in EY 2002 again identified that Ohio's inability to complete timely reclamation of bond forfeiture sites remains a significant issue. There has been little improvement in timeliness of reclamation in the last 20 years.

On May 4, 2005, the OSM Director formally notified Ohio that he was implementing action under 30 CFR Part 733 and would recommend that the Secretary of Interior withdraw approval of Ohio's bonding program unless Ohio submitted a program amendment to address the deficiencies with the bonding program. The Director's letter provides Ohio 90 days to submit the program amendment.

Since May 2004, Ohio has been working with the Ohio coal industry on revisions to the bonding program that might address the program condition. Although agreement on the terms of a bonding program has not been reached, talks between Ohio and the mining industry continue. The OSM's Director's deadline for Ohio to submit an amendment is currently November 4, 2005.

Program Amendment 69

During OSM's review of Ohio's administrative review process, we discovered that Ohio had not adopted changes to conflict of interest rules in OAC 1501:13-1-03. OSM approved Ohio's proposed changes contained in Program Amendment 69 on July 17, 1995. The changes were in response to an OSM review of conflict of interest provisions that suggested that Ohio clarify their rules. Due to an oversight, the rules were not promulgated. OSM and Ohio will be discussing whether the rules still need to be adopted or if Ohio should withdraw the amendment. No progress occurred toward final resolution during the review period. However, Ohio has since indicated they will clarify their intentions with regard to this amendment and will withdraw it. The purpose of the amendment partly concerned the filing of financial interest statements by the Reclamation Commission members. The Commission members are filing these statements annually.

Program Amendment 75 Attorney Fees

In 1998, OSM approved proposed revisions to the Ohio Revised Code concerning award of attorney fees. This issue has been a long-standing legal issue with the Ohio Program. OSM expected that Ohio would have a sponsor introduce this revision, along with other statutory changes, to the Ohio Legislature during 2000, 2001, 2002, 2003, 2004, and again in 2005. 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, possibly along with amendments regarding Ohio's bonding system in EY 2006.

Program Amendment 80 Remining

Ohio submitted a formal program amendment on remining on November 7, 2003. The amendment is intended to address changes to Federal rules adopted by USEPA regarding water quality standards in remining situations. OSM approved this amendment in August 2004. Ohio has not yet adopted the approved rules pending final resolution of an appeal of a Federal Court decision that remanded portions of the Federal remining water quality standards to USEPA.

Valid Existing Rights

OSM notified Ohio on August 22, 2000, of recent changes to Federal regulations pertaining to valid existing rights (VER). Ohio is deferring its final response pending the outcome of legal challenges to OSM's VER rule.

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			
2002	10,121,933.000	10,725,363.000	20,847,296.000
2003	8,830,597.400	13,002,429.150	21,833,026.550
2004	9,067,000.460	14,070,967.840	23,137,968.300
Total	28,019,530.860	37,798,759.990	65,818,290.850

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

TABLE 2

INSPECTABLE UNITS

As of June 30, 2005

Coal mines and related facilities	Number and status of permits								Insp. Units ^D	Permitted acreage ^A <i>(hundreds of acres)</i>		
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals			IP	PP	Total
	IP	PP	IP	PP	IP	PP	IP	PP				
STATE AND PRIVATE LANDS REGULATORY AUTHORITY: STATE												
Surface mines	175		60		46		281		281	908.6		908.6
Underground mines	19		1		1		21		21	59.8		59.8
Other facilities	30		2		4		36		36	44.7		44.7
Subtotals		224		63		51		338	338		1013	1013
FEDERAL LANDS REGULATORY AUTHORITY: STATE												
Surface mines					1					0.1		0.1
Underground mines												
Other facilities					1					0.04		0.04
Subtotals						2		2			0.14	0.14
ALL LANDS^B												
Surface mines	175		60		46		281		281	908.6		908.6
Underground mines	19		1		1		21		21	59.8		59.8
Other facilities	30		2		4		36		36	44.7		44.7
Totals		224		63		51		338	338		1013	1013
Average number of permits per inspectable unit (excluding exploration sites)									<u>1</u>			
Average number of acres per inspectable unit (excluding exploration sites)									<u>299.7</u>			
Number of exploration permits on State and private lands:						<u>2</u>		On Federal lands ^C : _____				
Number of exploration notices on State and private lands:						<u>73</u>		On Federal lands ^C : _____				
<p>IP: Initial regulatory program sites 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. ^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. ^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. ^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, 2005												
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	19	13	2499	2	1	80				21	14	2579
Renewals	15	14		3	2	413	1			19	16	413
Transfers, sales and assignments of permit rights	8	10								8	10	
Small operator assistance	1	0								1	0	
Exploration permits	2									2	0	
Exploration notices ^B		73									73	
Revisions (exclusive of incidental boundary revisions)		198									198	
Incidental boundary revisions		25	86								25	86
Totals	45	333	2585	5	3	493	1	0	0	51	336	3078

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

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

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

TABLE 4

OFF-SITE IMPACTS														
RESOURCES AFFECTED			People			Land			Water			Structures		
DEGREE OF IMPACT			minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE	Blasting	1	1											
	Land Stability	9	1		1	7		1		1		1	1	
	Hydrology	48			21	2		31	8	1		1		
	Encroachment	15			10	4	1	4	2					
	Other	1			1									
	Total	74	2	0	0	33	13	1	36	10	2	2	2	1
Total number of inspectable units:						<u>287</u>								
Inspectable units free of off-site impacts:						<u>246</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>51</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	3734.6
Phase II	- Surface stability - Establishment of vegetation	2585.7
Phase III	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	2801.0
Bonded Acreage Status^A		
Total number of acres bonded at end of last review period (June 30, 2003) ^B		Not Available
Total number of acres bonded during this evaluation year		48602.7
Number of acres bonded during this evaluation year that are considered remining, if available		Not Available
Number of acres where bond was forfeited during this evaluation year		1975.3

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

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

TABLE 7

STATE BOND FORFEITURE ACTIVITY (Permanent Program Permits)		
Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Acres
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2004(end of previous evaluation year) ^A	18	884.3
Sites with bonds forfeited and collected during Evaluation Year 2005 (current year)	11	587.1
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2005 (current year)	0	0.00
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2005 (current year)	5	276.6
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2005 (end of current year) ^A	24	1194.8
Sites with bonds forfeited but uncollected as of June 30, 2005 (end of current year)	18	2020.2
Sites being reclaimed by surety/other party as of June 30, 2004 (end of previous evaluation year) ^B	9	811.2
Sites where surety/other party agreed to do reclamation during Evaluation Year 2005 (current year)	1	192.1
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2005 (current year)	0	0.0
Sites with reclamation completed by surety/other party during Evaluation Year 2005 (current year) ^C	2	160.30
Sites being reclaimed by surety/other party as of June 30, 2005 (current evaluation year) ^B	4	533.5
<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 2005
Regulatory Program	
Permit review	8.48
Inspection	13.12
Other (administrative, fiscal, personnel, etc.)	14.04
Regulatory Program Total	35.64
AML Program Total	43.79
TOTAL	79.43

TABLE 9

FUNDS GRANTED TO OHIO BY OSM (Millions of dollars) EY 2005		
Type of Grant	Federal Funds Awarded	Federal Funding as a Percentage of Total Program Costs
Administration and Enforcement	\$1.87	50
Small Operator Assistance	\$0.05	100
Totals	\$1.92	

AML funding = \$7.93 million 100% Federal funding

Appendix B
Ohio's Comments on the Draft Report and OSM's Response

August 30, 2005

Mr. George Rieger
Office of Surface Mining
Oversight & Inspection Office
4605 Morse Road, Room 102
Columbus, OH 43230

Re: Draft Annual Report Comments

Dear Mr. Rieger:

Thank you for the opportunity to review the Ohio draft annual report for Evaluation Year 2005. Our meeting of this date answered most of the questions the Divisions had about the report. The division finds the report well researched and well written and has only a few comments as follows:

1. Page 15 - The dollars and acreage reclamation liability for coal and non-coal bond forfeitures is not accurate. Please contact John Husted at 265-7072 for updated numbers.
2. Page 18 – With the hiring of an assistant manager in Jackson, the Division expects the timeliness of civil penalty assessments to improve.
3. Page 22 – The year for Phase 1 release data requires correction.
4. Page 29 – While the Division has referred to a series of procedure communications as *Policy and Procedures Directives*, the Division does not view them as policies in the sense that they add any additional requirement not required by the regulations. Therefore, we would prefer the title of this section be modified to be “Procedures Implementation” with corrections to the wording in the text to replace the word *policy* with the word *procedure* as appropriate.
5. Page 30 – The Division will clarify its intentions with respect to Program Amendment 69 and will withdraw it. It should be noted the Reclamation Commission files the conflict of interest forms.

Sincerely,

By email
Mike Sponsler
Chief
Division of Mineral Resources Management

Cc: Tugend
Kell
Simmers
Clark
Hines
Van Offeren

OSM adopted all of Ohio's comments as reflected in this final report.