



**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**

**2009 Evaluation Period  
(July 1, 2008 - June 30, 2009)**

**FINAL REPORT  
September 2009**

## **Executive Summary**

Ohio, as with other states, is experiencing unprecedented budget deficits. However, because the regulatory authority for coal mining in Ohio is primarily funded by a tax on coal production, some general revenue funds, and Federal funds, the direct impact on this agency has been minimal so far. However, a 17 percent increase in coal production in 2008 increased direct program income by over \$300,000 from coal excise tax and, likewise, helped provide matching funds to enable an increase to the regulatory program grant provided by the Office of Surface Mining Reclamation and Enforcement (OSM). The final budget legislation in July 2009 did not include a proposed new dedicated fee on coal production that would have replaced current general revenue funding for program operations. General fund allocations to the coal program were not directly affected by the budget cuts for Ohio's new fiscal year that began on July 1, 2009. Due to the statewide budget constraints, filling of vacancies requires significantly more justification and is more time-consuming. However, Ohio was able to fill some vacancies in Evaluation Year (EY) 2009. The extent to which this will continue in EY 2010 is not known.

Ohio has completed their implementation of many of the major staffing changes that we summarized in last year's report. In EY 2009, they nearly completed their plan to return most regulatory staff to single program disciplines with placement of a manager to lead Ohio's coal inspection and enforcement program and reassignment of most inspectors to only coal program responsibilities. Ohio has made significant progress with its plan to increase the number of FTEs in its AML program.

Ohio has made significant progress in making major changes to its bonding program. These changes are in response to OSM's 2005 notice that, unless Ohio corrected the 1982 condition of the Secretary of Interior's approval of Ohio's regulatory program, OSM could recommend that part or all of that approval be rescinded. In EY 2009, Ohio continued to make substantial progress since the passage of Ohio House Bill (HB) 443 in January 2007. Three other pieces of legislation (HB 119, Ohio Senate Bills (SB) 386 and 73) have made changes to coal program provisions of the Ohio Revised Code (ORC) since HB 443 became law. Ohio adopted changes to 39 rules in EY 2009 and is drafting additional rule changes. Ohio submitted these changes to OSM as revisions to Program Amendment #82 on July 27, 2009. The remaining changes are expected near the end of 2010. Ohio will continue negotiating with the Ohio Coal Association (OCA) on any additional changes necessary to gain OSM's approval of these amendments. The Reclamation Forfeiture Fund Advisory Board (RFFAB) contracted an actuarial firm to complete the first actuary report required under provisions of HB 443. The RFFAB extensively reviewed the completed actuary report and sent it along with their observations to the Governor on June 29, 2009. The actuarial findings are summarized later in this report.

Ohio made progress toward resolving some issues. One particular example is their increased attention to acid-mine drainage (AMD) conditions identified on reclaimed mined areas. In EY 2009, they issued a procedure directive on identifying, reporting, sampling, and monitoring these sources. They also committed to a closer evaluation of previously identified sources to better seek final resolution from permittees responsible for AMD conditions. Another example of progress is that the number of off-site impacts identified in EY 2009 was 48 percent lower than EY 2008 and is the lowest number since 2002.

This report identifies several program implementation deficiencies. Some of these have been reported for several years and some are new. Some of these are regulatory enforcement matters pertaining to specific sites and some are programmatic in nature. Ohio has maintained their intention to resolve these deficiencies, but has not done so due to other higher priorities. Their reorganization should help direct more attention to these matters.

## TABLE OF CONTENTS

I.	<u>Introduction</u> .....	2
II.	<u>Overview of the Ohio Coal Mining Industry</u> .....	3
III.	<u>Overview of the Public Participation Opportunities</u> .....	4
IV.	<u>Major Accomplishments/Issues/Innovations</u> .....	7
	A. <u>Program Accomplishments and Initiatives</u> .....	7
	B. <u>Program Issues</u> .....	14
V.	<u>Success in Achieving the Purposes of SMCRA</u> .....	20
	A. <u>Off-Site Impacts</u> .....	20
	B. <u>Performance Security Release/Reclamation Success</u> .....	22
VI.	<u>OSM Assistance</u> .....	24
VII.	<u>General Oversight Topic Reviews</u> .....	24
	<u>OSM Part 732 Notices and Program Amendments</u> .....	29
	Appendix A: Tabular Summary of Core Data to Characterize the Program.....	32
	Appendix B: Ohio’s Comments on the Draft Report and OSM’s Response.....	

## **I. Introduction**

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created OSM in the Department of the Interior. SMCRA authorizes 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 its effectiveness in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of July 1, 2008, through June 30, 2009. 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.

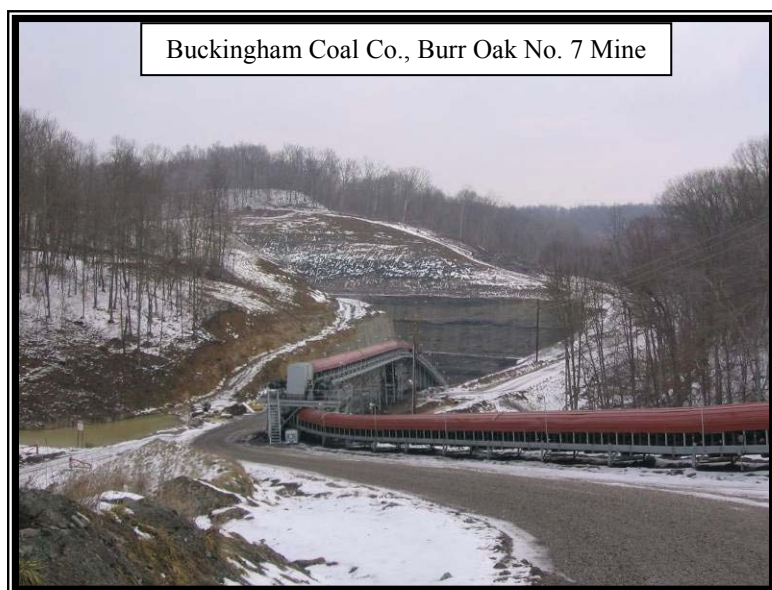
The following acronyms are used in this report:

ABS	Alternative Bonding System
AMD	Acid mine drainage
AMDAT	Acid-mine drainage abatement and treatment plan
AML	Abandoned mine land
AMLIS	Abandoned Mine Land Inventory System
ARRI	Appalachian Regional Reforestation Initiative
BFO	Bond Forfeiture Order
CPA	Civil Penalty Assessment
CSP	Clean Streams Program
CFR	Code of Federal Regulations
EY	Evaluation Year
FRA	Forestry Reclamation Approach
FTACO	Failure to Abate Cessation Order
FTE	Full-time equivalent
FWS	U.S. Fish and Wildlife Service
HB	Ohio House Bill
HRWRP	Huff Run Watershed Reclamation Partnership
MCRP	Monday Creek Restoration Project
NOV	Notice of Violation
NEPA	National Environmental Policy Act
OAC	Ohio Administrative Code
OCA	Ohio Coal Association
OEPA	Ohio Environmental Protection Agency
Ohio	Ohio Division of Mineral Resources Management or State of Ohio
ORC	Ohio Revised Code
OSM	Office of Surface Mining Reclamation and Enforcement
PA	Program Amendment
RFFAB	Reclamation Forfeiture Fund Advisory Board
SB	Ohio Senate Bill
SMCRA	Surface Mining Control and Reclamation Act
TDN	Ten-Day Notice
USACE	U.S. Army Corps of Engineers
USEPA	U.S. Environmental Protection Agency
USFS	U.S. Forest Service
VER	Valid Existing Rights

## II. Overview of the Ohio Coal Mining Industry

Thirty-one mining companies produced 26.0 million tons of coal in calendar year 2008, a 17 percent increase from the 2007 production of 22.3 million tons, the most production since 1998. The total coal sold in 2008 was 26.0 million tons with a value of \$1.025 billion. The average price per ton of coal was \$38.94, up 37 percent from \$28.42 in 2007.

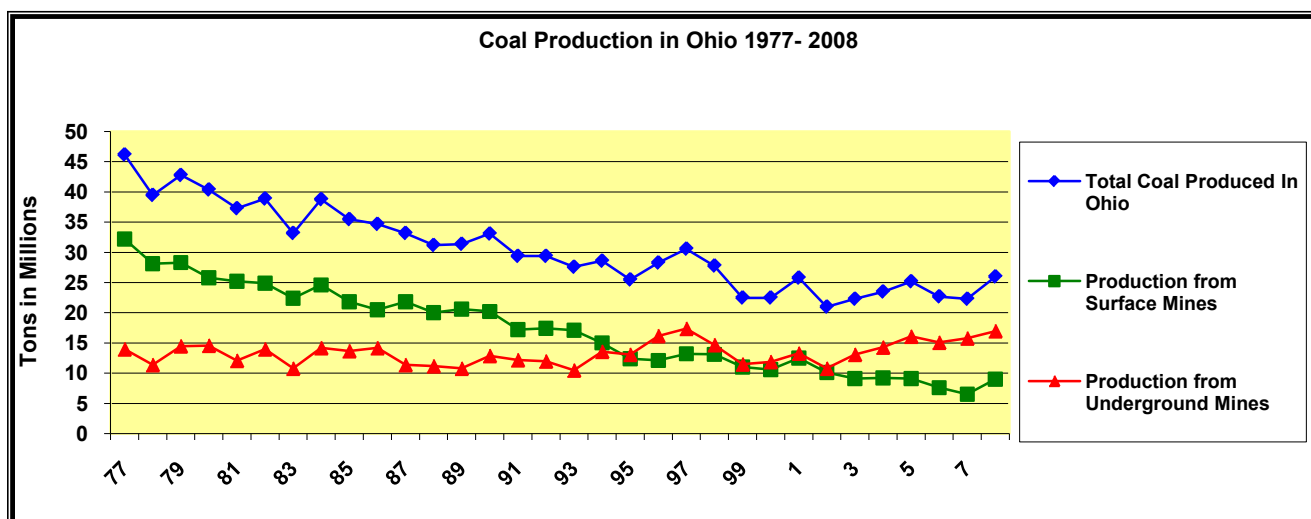
The number of coal-producing companies (31) in Ohio in 2008 remained the same as in 2007. The number of mines reporting production was 86, one less than in 2007.



During 2008, surface mining operations at 75 mines produced 9.0 million tons (35 percent of total production). Coal production from surface mines in 2008 increased by 38 percent from 2007.

Underground mining at 11 mines produced 17.0 million tons (65 percent of total production). Coal production from underground mines in 2008 increased about 8 percent from 2007. Longwall mining of 10.8 million tons accounted for 64 percent of the total underground production and 41 percent of total production.

Ohio's coal industry employed 2657 people in 2008, an increase of 20 percent over 2007. Production employees, numbering 1752, accounted for 66 percent of the 2008 coal work force. Total wages earned were over \$170 million.



Ohio moved up to 11<sup>th</sup> place from 14<sup>th</sup> place among the 25 coal-producing States in the nation, and produced 2.2 percent of the nation's coal in 2008. Ohio remained in third place nationally in coal consumption, behind Texas and Indiana.

Note: Production data reported in this section is based on data from the [Ohio Department of Natural Resources, Division of Geological Survey, Report on Ohio Mineral Industries](#) and is reported on a calendar year basis. Therefore, data will differ from that reported in Table 1.

### **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 inform the public 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 website, including the addition of most of their policy directives, guidelines, and a new link to Ohio's remining program with an on-line survey about remining. Ohio has continued to meet with a group of industry representatives on a quarterly basis to discuss field and program concerns and issues. Ohio continued with the teams of Ohio, OSM, and industry representatives that are developing procedures for implementing provisions of enacted HB 443 and SB 119 and SB 73. An environmental organization who was also asked to participate opted not to. Some of the initial teams have been consolidated and have continued to meet to develop procedures and rules to implement the provisions of the new law.

Ohio continues to promote its abandoned mine 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.

#### **OSM Outreach**

In addition to outreach efforts by Ohio, OSM also conducts public outreach. OSM, likewise, did not implement any new public outreach initiatives during EY 2009. OSM continues to provide a bi-monthly newsletter to interested parties representing State and Federal agencies, coal mining and environmental organizations, and citizens who have asked to be on our mailing list. OSM met with representatives of the Ohio Environmental Council, at their request, to discuss aspects of Ohio's regulatory program.

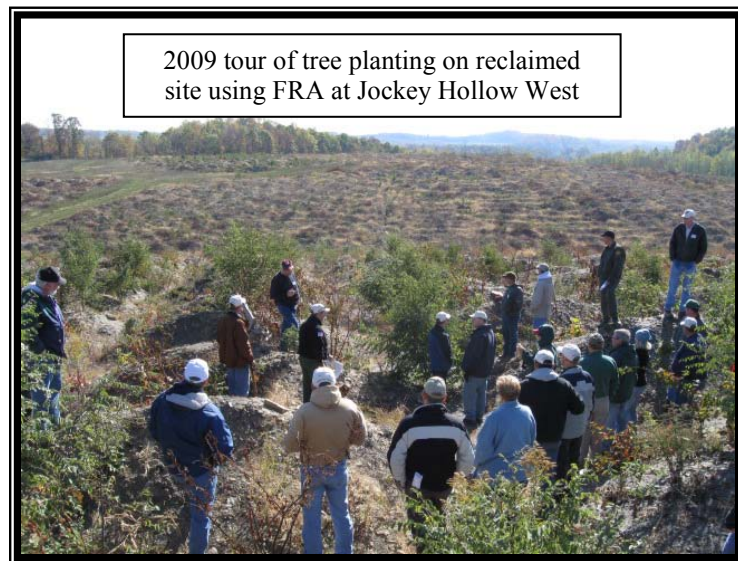
OSM and Ohio made presentations to promote the Appalachian Reforestation Initiative (ARRI) and the Forestry Reclamation Approach (FRA) to mined land reclamation. Presentations were given to the Ohio Chapter of American Foresters at the Ohio State University; the Southeast Ohio Watershed Group OSU Extension Office in Athens, Ohio; and the Ohio Mine Land Partnership, including a tour of the Jockey Hollow sites.



## **Appalachian Regional Reforestation Initiative**

### **Ohio ARRI Tour**

On October 22, 2008, Ohio, including the Ohio Divisions of Wildlife and Forestry, and OSM held a tour of reclaimed mine sites in the Jockey Hollow Wildlife Area in Harrison County, Ohio. Attendees were Federal, State and industry representatives from Alabama, Colorado, Illinois, Indiana, Mississippi, Ohio, Pennsylvania, Tennessee, and Washington. The tour was held in conjunction with OSM's Mid-Continent Region's efforts to expand reforestation of mined lands in the states in that region. Participants viewed typical Ohio mine land reclaimed as pastureland and the permittee's effort to reestablish trees surrounding a re-constructed wetland. The attendees also toured the Jockey Hollow East and West sites where the FRA was first used in Ohio's reforestation efforts.



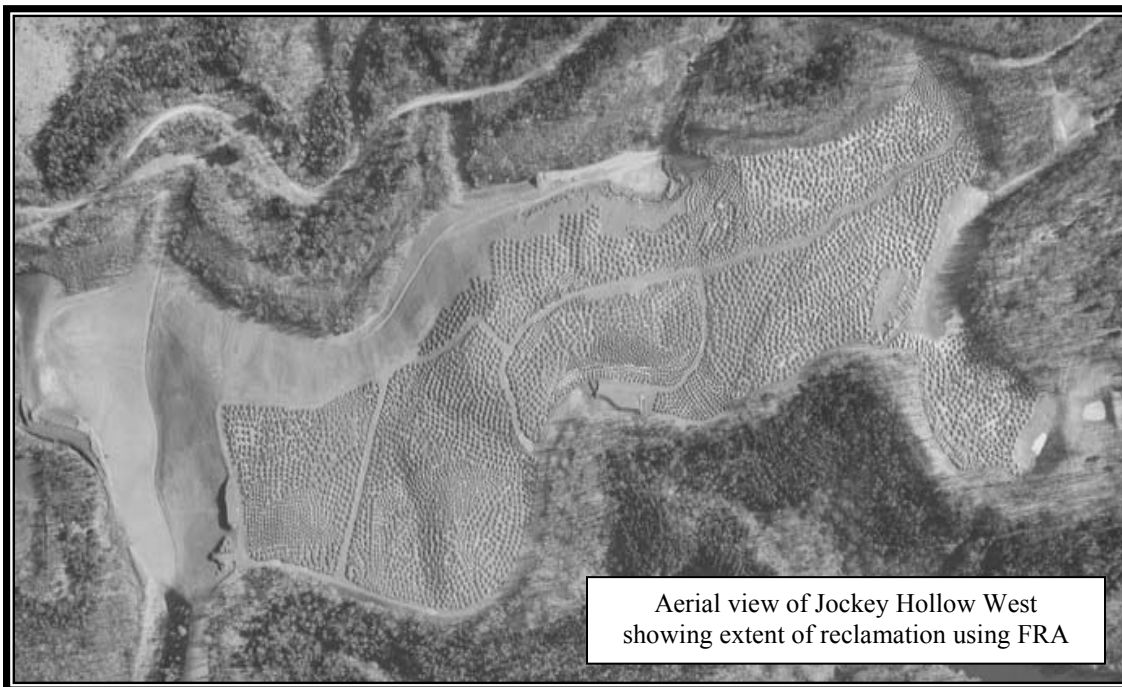
### **BARK Recognized for Tree-Planting Efforts**

The Barnesville Area Reforestation Kommittee (BARK) was recognized for their tree-planting effort with an ARRI State of Ohio award for outstanding reforestation and reclamation work. For the past six years, local organizers have planted trees in the Barnesville area on land mined and reclaimed by Oxford Mining Company, LLC. For the past three years, they have reclaimed portions of their surface mines using the FRA. This year, over 200 local volunteers planted six acres with over 3,000 hardwoods including: Walnut, American Chestnut, Hickory, Butternut, Redbud, and Oak. This year's theme was "Going out on a Limb to bring back the trees."



### **Oxford Mining Receives the Appalachian Regional Reforestation Award**

Because of their successful efforts of using the FRA in reclaiming mined lands, Oxford Mining Company, LLC received the OSM Appalachian Region's Excellence in Reforestation Award for 2008 for their mining and reclamation site known as Jockey Hollow West. This site is one of the first in Ohio to use the FRA method for reclamation. The FRA has been highly effective in accelerating the return of the Jockey Hollow mine site to a high-value hardwood forest. In 2008, Marshall Case, the president of the American Chestnut Foundation, stated that the site was "...the largest planting of American Chestnut on mine land in the eastern United States." The



survival rate of the seedlings planted in 2008 is estimated to be between 80 and 90 percent. The survival rate is exceptional as the area experienced mild drought conditions in the latter third of the growing season. Planting in 2009 consisted of an additional 1,080 hybrid American Chestnuts and 70,000 other hardwoods, for a total of approximately 5,000 American Chestnuts and 100,000 hardwood trees planted at Jockey Hollow West.

### **Tree Planting in the Little Beaver Creek Watershed**

The Columbiana County Park Commission and the Little Beaver Creek Watershed Group held an Arbor Day event on April 18, 2009, near Beaver Creek State Park. This tree-planting project involved ripping a compacted reclaimed surface mine along the Little Beaver Creek, a wild and scenic river.

The event was organized by an OSM VISTA volunteer with the Little Beaver Creek Land Foundation, the Columbiana County Park Commissioners, and OSM and Ohio ARRI Coordinators.



Funds for the ripping of reclaimed mine lands were provided by the Ohio State University for research into carbon sequestration and the tree planting on reclaimed mine lands using FRA practices, such as ripping. Three acres of land were ripped, and over 3500 trees were planted by local school and church groups and businesses.



Planting event at Little Beaver Creek on ripped mined land

#### **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 171 site visits on regulated mine sites, other oversight evaluations conducted during this review period, and by Ohio's inspection and enforcement information. In addition, OSM conducted about 30 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 site visits conducted.

Ohio conducted 3435 inspections on 290 inspectable units this year. Ohio conducted the required number of inspections on an average of 84 percent of the mine sites, compared to 94.5 percent last year. Ohio issued 106 enforcement actions during this evaluation period, compared to 184 last year, a decrease of 42 percent over last year.

OSM's evaluation of off-site impacts, based mainly on Ohio's enforcement actions, identified 41 off-site impacts, compared to 79 off-site impacts last year, a 48-percent decrease. The percent of sites free of off-site impacts in EY 2009 was 90 percent compared to the 85 percent free of off-site impacts last year. No off-site impacts were classified as causing a major impact this year as was also the case last year.

During EY 2009, the mining industry, in conjunction with Ohio, achieved final reclamation (Phase III performance security release) on 2792 acres; established soil replacement and vegetation for Phase II bond release on 1846 acres; and backfilled and graded mined areas for Phase I performance security release on 2126 acres. Ohio completed initial reclamation on three bond forfeiture sites covering 444.1 acres. Ohio terminated four bond forfeiture orders (BFO) after the permittee abated all violations related to the BFOs. Ohio did not issue any BFOs in EY 2009.

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. Based on OSM's review of a sample of 29 permits, the land uses identified in permit applications before mining were: 77 percent undeveloped, 20 percent pasture/grazing, 3 percent cropland, and 1 percent other. The post-mining land uses identified were: 24 percent undeveloped, 72 percent pasture/grazing, 3 percent cropland, and 1 percent other.

## **Regulatory Program Accomplishments**

### **Implementation of Provisions of HB 443, HB 119, SB 386, and SB 73**

During EY 2009, Ohio continued to make significant progress and has initiated several actions toward fully implementing the provisions of HB 443, HB 119, SB 386, and SB 73. SB 73 was signed by the Governor on June 15, 2009, and revises several significant statutory provisions in response to issues that OSM and Ohio identified with HB 443. Representatives of the agency, the coal industry, consultants, and OSM continued to meet to develop procedures for implementing these new laws. Ohio adopted changes to 39 rules in April 2009, some of which codify several policies adopted for implementing the above statutory changes. Ohio is drafting additional rule changes.

Last year, the Permitting/Inspection/Regulatory Work Group completed development of a reclamation cost estimation procedure for establishing the estimated cost for the State to reclaim a site if forfeiture would occur. Ohio has continued to refine the cost estimation procedure. Ohio completed estimates using this procedure on about 90 percent of the mine sites in EY 2009. Ohio completed training for coal industry representatives in August 2008. This work group has continued working on additional procedure directives related to the new statutory provisions, including completion of guidelines for permit renewals, transfers, and incidental boundary revisions.

The Performance Securities Work Group has developed draft trust agreements and procedure directives to implement the new alternative financial security provisions of HB 443. They continue to develop this process. In late EY 2009, Ohio began working with a coal company on developing the first trust agreement. This group also developed a policy directive to implement the tax credit provisions that are available to permittees that reclaim forfeiture sites. This policy was issued in early EY 2009.

The Hydrology Work Group continued to develop procedures and guidelines to implement the

acid-based accounting provisions of HB 443. This work group issued a policy directive in EY 2009 that provides procedures for identifying, sampling, and monitoring site conditions with questionable water quality. This policy directive may form a basis for determining whether a permittee must provide alternative financial security for long-term water treatment. It also provides more direction for holding permittees accountable for resolving AMD conditions identified on mine sites.

The RFFAB met several times during EY 2009. They selected an actuarial firm to conduct a review of assets and liabilities of Ohio's Reclamation Forfeiture Fund (performance security pool). The firm completed the first actuarial analysis of the fund in June 2009. The RFFAB provided the actuarial report and recommendations to the Governor by July 1, 2009, as required by law. Their findings and conclusions are listed later in this report under the section titled "OSM Part 732 Notices and Program Amendments."

### **Senate Bill 386**

Senate Bill 386 was introduced in the Ohio Senate late in 2008. Among other things, the legislation proposed a major transfer of authority for implementing many provisions of the Clean Water Act applicable to coal mining operations from the Ohio Environmental Protection Agency (OEPA) to Ohio. Although the bill was eventually passed and was signed into law, it was substantially modified. The proposed transfer of Clean Water Act authority was removed. The new law places some time limits on Ohio for processing coal mining permit applications. Ohio and OEPA directed significant time and effort regarding this legislation during the time it was being debated in the Ohio General Assembly.

### **Improved Coordination of Review of SMCRA and Clean Water Act Permit Applications**

In December 2008, the Governor asked Ohio to host an event using the Kaizen principles of process improvement. The event was organized to improve the coordination between various agency reviews of applications for coal mining permits under SMCRA and the Clean Water Act. Ohio, the U.S Army Corps of Engineers (USACE), OEPA, and other agencies worked together with the mining industry during a week-long event and developed the new Coordinated Application Process. The outcome of the event is a more streamlined permitting process resulting in projections of a 20 to 60 percent reduction in handling and processing time, a 70 percent reduction in handoffs between agencies, and a 60 percent reduction in the number of application revisions required. A significant reduction in mailing costs is also expected.

Following this event, Ohio, USACE, and OEPA hosted a day-long conference for the mining industry and consultants to discuss the new process.

Ohio conducted another Kaizen event to review their process for reviewing applications for permit revisions and incidental boundary revisions.

### **Remining**

Ohio reenergized their effort to promote remining through a new team of mining industry, OSM, and Ohio representatives, and by contracting with a retired Ohio employee to be their remining coordinator. Ohio developed and posted a remining survey on their website to obtain input about what is and is not working with the remining program in Ohio. The results of the survey will be available in early EY 2010. Ohio held several meetings with the mining industry and consultants around the state to promote remining and to answer questions about remining provisions of the Ohio Program.

### **Coal Removal Using a Highwall Miner**

Ohio established a group of representatives from the mining industry, OSM, and Ohio to consider possible changes to the statute and rules that may better address unique aspects of using a highwall miner to remove coal. Ohio is considering some draft changes to the program developed by the group.

### **Proposed Slurry Impoundment**

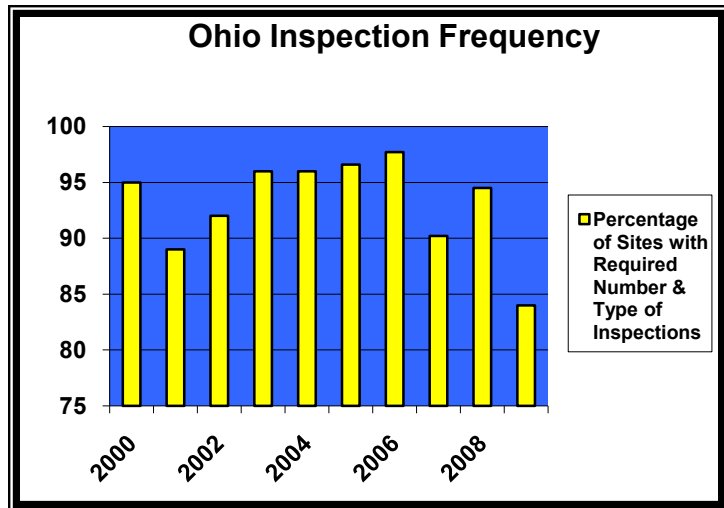
A mining company submitted applications to Ohio, OEPA, and the USACE to construct a slurry impoundment in the Casey Run watershed of Belmont County. Casey Run flows into Captina Creek, one of the best quality streams in the State. The OEPA and the USACE rejected the applications, resulting in appeals by the applicant. The Governor asked that Ohio organize a task force of representatives from each of the agencies and the applicant to consider all possible alternatives to minimize the potential impact of the proposed structure on the environment. OSM participated on the task force. The task force met many times in EY 2009, and developed and considered several potential alternatives.

The task force ultimately determined that many of the alternatives were not feasible. A meeting between the agencies and the applicant was held in June 2009, to familiarize representatives from the U.S. Environmental Protection Agency (USEPA), who had not participated with the task force to this point, with the proposal and the task force's work. The applicant is considering different design options and operational changes, and will likely submit new applications for agency consideration. The task force is continuing to evaluate alternatives.

### **Inspection Management**

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 and type of inspections for a ten-year period.

Ohio reports that the required number and type of inspections was conducted on an average of 84 percent of the mine sites during EY 2009, compared to 94.5 percent reported last year. This drop is attributed to several inspector vacancies occurring in a short period of time that mostly affected inspections in the fourth quarter of EY 2009. Ohio is filling vacancies and training new inspectors as soon as possible.



**Reclamation Status of Marietta Coal Company Permits**

Marietta Coal Company continued their progress on reclaiming sites and abating violations in EY 2009. Ohio issued BFOs in January 2005 on 15 of 27 of Marietta’s permits. Marietta and their bonding companies appealed the BFOs to the Ohio Reclamation Commission. Following site visits conducted by the Commission in EY 2009, they decided to delay hearings until EY 2010, pending the outcome of Marietta’s continuing reclamation activities.

Ohio terminated four BFOs following Marietta’s abatement of all violations related to the BFOs in EY 2009. Ohio also approved final performance security releases on three permits in EY 2009. Since 2005, Ohio has approved final performance security releases on nine permits and transferred one permit. Ohio has also terminated 12 of the 15 BFOs issued on Marietta permits in 2005. Marietta’s appeals have been withdrawn on all but the remaining three BFOs. Work is continuing on those three sites.

**AML Program Accomplishments**

**Emergency Program**

Ohio received 54 complaints of potential AML emergencies in EY 2009. Ohio identified 21 AML conditions that were referred to OSM for declaration as emergency projects. OSM concurred and declared emergencies on all of the 21 projects during the evaluation period. The emergency projects addressed 20 subsidence-related problems and one vertical opening. The 21 emergency



projects declared this year was slightly lower than the 29 declared last year. Ohio completed construction on 32 projects this year (some projects were declared in the prior year)

### **AML Project Accomplishments**

The Abandoned Mined Land Inventory System (AMLIS) is the official OSM record of AML conditions in each state. Ohio's entries into AMLIS show that Ohio addressed the following AML conditions during EY 2009.

- 1000 lineal feet Dangerous Highwall
- 3.0 acres Dangerous Landslide
- 2 Portals
- 1 Vertical Openings
- 35 Polluted Water Supplies, Human Consumption
- 5.0 acres Hazardous Water Bodies
- 395 Gallons per Minute of Water Treated

### **Clean Streams Program (CSP)**

OSM approved two new watershed cooperative agreements totaling \$168,773 during the review period. Ohio is continuing to work with the watershed groups to make full use of this program. Construction was begun on three projects during this evaluation year. Requests for funding for several new projects are expected to be submitted in early EY10.

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

The U.S. Forest Service (USFS) remains a strong partner in the watershed. This year the USFS completed work on the Happy Hollow project – work that included the planting of 4,000 chestnut trees as part of the reclamation. Additionally, the design of the Coe Hollow project was completed with construction expected to begin in EY 2010.

Shawnee Wastewater Steel-Slag Bed – MCRP received a watershed cooperative agreement for \$67,250 from OSM to fund a project that involved installation of a steel-slag leaching bed at the Shawnee sewage plant. The project routes the treated sewage discharge through a steel slag bed to add alkalinity to improve the amount of streams treated by the Jobs Doser. The project was completed on October 21, 2008. Algae problems in the leach bed have developed post construction. The group is planning to install a sand filter and sonic devices to address the algae and sedimentation problem.

The Lost Run Phase II project was contracted on August 28, 2007, at a cost of \$491,387. Construction was completed during this review period. This project involved the installation of a large steel-slag leach bed.



**Sunday Creek:** 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.

A watershed cooperative agreement for the Congo 11/ Little Hocking stream-capture project was approved during the review period. The estimated cost of the project is \$229,242. Construction was started during this year and completion is expected in early EY 2010.

**Raccoon Creek:** The Raccoon Creek Partners have remained active in terms of construction activities. The watershed group completed the following watershed project this year:

The East Branch Phase I was completed on March 2, 2008, at a cost of \$909,431. This project installed multiple steel-slag leach beds and open limestone channels in the Raccoon Creek headwaters to increase alkalinity. Unfortunately, the beds are not performing well due to plugging in the beds or the underdrains. Corrective action is planned for this year. A second phase of the project will also occur. The USFS coordinated with the group by stabilizing two headwater streams above the leach beds to reduce sedimentation.

Pierce Run – This project will use steel-slag leach beds in combination with wetlands created by installing limestone berms across the stream channel. The project was approved and the bid was awarded during this evaluation year, but, due to State budget issues, State funds were not awarded until early EY 2010. Construction is also expected to begin in early EY 2010.

Monitoring in Little Raccoon Creek has shown significant improvements as a result of the many projects that have been accomplished. Fish populations in the stream are now diverse and in significant numbers, where fish had previously been absent. Now the group is focusing on the headwater and middle sections of the Raccoon Creek main stem.

**Huff Run:** The Huff Run Watershed Restoration Partnership (HRWRP) has also made effective use of OSM's watershed cooperative agreement program through the following significant construction activities.

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. Construction began on this project late in EY 2009 and is expected to be completed in EY 2010.

Thomas Restoration – This project involves the reclamation of abandoned spoil piles and related acidic impoundments. The contract was awarded this year and construction is expected to begin in EY 2010.

Fern Hill Pits (HR42) – This cooperative agreement project was approved in March 2005 and construction was completed this year. The project eliminated several acidic impoundments that were located above a significant AMD seep. HRWRP also

completed work on the Belden Project this evaluation year. The project was bid in January 2008, and the contract was issued in March 2008, at a cost of \$688,330.

**Moxahala Creek:** No new projects were initiated this 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 and is currently collecting data for potential projects.

**Leading Creek:** The Leading Creek Improvement Committee Advisory Council has continued to meet regularly and fund projects related to agricultural practices and sediment control. 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. The Leading Creek Group receives a large portion of its funding from the U.S. Fish and Wildlife Service (FWS) which administers a fund established through a consent decree that was intended to fund restoration work in the watershed. Currently, Ohio is working on designing four projects in the watershed using a grant from FWS.

## **B. Program Issues**

### **733 Process on Ohio's Bonding Program**

See discussion in Section VII of this report.

### **AMD Inventory**

OSM and Ohio continued to evaluate sites on the inventory of long-term AMD-producing sites. The inventory includes active and bond-forfeited sites with actual and potential long-term treatment liabilities. Currently, there are 32 sites on the long-term inventory.

OSM continued to review and update the AMD inventory this year by verifying conditions through site visits. OSM conducted 12 site visits on the inventory sites to continue collecting water quality and quantity data on the previously identified AMD problems.

In late EY 2007, Ohio established a team comprised of members of their staff, OSM, and industry representatives to develop procedures for implementing certain elements of HB443 relating to toxic-forming materials and associated AMD issues. Ohio issued final procedures for evaluating post-mining discharges this year.

Ohio previously issued Chief's Orders on eight of the inventory sites. The orders generally established specific monitoring locations and sampling of discharges associated with the AMD problems at the site. The orders also require the development of abatement plans to correct the AMD conditions. Compliance and adherence to the steps outlined in these orders have been inconsistent. This evaluation year, Ohio and OSM began using the new procedures to review the

sites with Chief's Orders. Reviews of five of these sites began this year, with final recommendations due in early EY 2010.

In EY 2008, OSM had requested information from Ohio concerning their plans for addressing one of the inventory sites. Ohio issued a bond forfeiture order to the permittee in the early 1990s and reclamation was performed by the surety company. Data indicates severe AMD problems developed on the site prior to the reclamation and subsequent liability release of the surety bond. Ohio's initial response indicated that reclamation met all standards when the bond was released in 1995, and that they currently lack jurisdiction to enforce permit reclamation standards. In late EY 2008, OSM provided Ohio with a chronology of events on this site and requested additional information regarding their determination. Ohio assigned a hydrologist who is working with a local university to assess this site. They will provide further information to OSM in EY 2010.

OSM and Ohio plan to continue working together in EY 2010 to update the site inventory and to develop strategies for abating and/or treating sources of AMD on these sites.

### **Large Slurry Impoundments**

In EY 2004, Ohio and OSM completed a final report regarding large impoundments that overlie underground mines in Ohio. 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 was substantially dewatered and slurry removal and reprocessing was ongoing until last year. The company then stopped operations. In late EY 2009, Ohio notified the company to submit a revised reclamation plan that considers the current configuration of the impoundment by July 1, 2009. In addition, Ohio is requiring the company to remove accumulated water from the impoundment and keep the water pumped out of the impoundment until reclamation is completed.

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 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. The landowner appealed the Commission's decision denying standing. The appellate court ruled that the landowner did have standing and remanded the case back to the Ohio Reclamation Commission. The Reclamation Commission did not hold a hearing on the remand, pending the outcome of other related issues.

The permittee applied for an experimental practice in November 2005. If approved, that would have allowed the impoundment to remain as part of the post-mining land use. However, Ohio disapproved the company's application for experimental practice in November 2006, because the applicant did not or could not make the required demonstrations necessary for approval. OSM concurred with Ohio's disapproval. The permittee requested an informal review of Ohio's disapproval of the application in December 2006. Ohio issued a decision affirming the disapproval of the application for experimental practice in March 2008. The landowner appealed this decision. All appeals regarding this impoundment and other issues regarding this mine site

were consolidated. A hearing before the Reclamation Commission began in February 2009 and has not yet concluded as of the writing of this report.

### **Regulatory Program Staffing**

As previously reported, questions about adequate staffing to carry out all program requirements have existed for several years. Ohio continues to point to inadequate staffing resources as the main cause of incomplete implementation of some program areas. For example:

- Monitoring and mitigation of impacts of longwall mining
- Conducting the required number and type of inspections
- Alternative enforcement provisions
- Conducting mid-term permit reviews

In EY 2008, Ohio initiated the restructuring of management and staff back to specific program areas; i.e., management and their respective staff with responsibility for the coal regulatory program are being realigned to focus mainly on the coal program instead of dividing their attention among three program areas. A field coordinator for inspection and enforcement for all coal mining operations was named in EY 2009. Filling this position has nearly completed the realignment to specific program areas that began in EY 2008.

Several inspector positions have been vacated as two inspectors were promoted into management positions, three have transferred into AML positions, and one has retired. Due to state-wide budgetary problems, filling these vacancies has been slowed but is progressing.

A new engineer position was added to the Permitting and Hydrology section. While three new environmental specialist positions were added, they were filled by promotions from within. Ohio has not backfilled the vacancies created by the promotions. A hydrologist position was vacated by a retirement. This position is being temporarily filled on a half-time basis by a hydrologist from the oil and gas section. In summary, there was a net gain of one-half of a full-time equivalent (FTE) position in the Permitting and Hydrology Section.

In the past, Ohio has had difficulty accounting for and consistently reporting the number of FTE positions in its coal regulatory program. In 2008, OSM initiated a review of Ohio's staffing levels after noting a wide variance in FTEs between its 2008 grant request and its 2009 grant estimate. OSM and Ohio reviewed actual work effort to arrive at an appropriate FTE level. This study determined that employees were not consistently allocating their time to the appropriate program. Ohio attributed this to inexperienced staff, inadequate cross-training, and the institution of a new payroll system which lacked a grant-specific tracking method.

In response, Ohio undertook staff training, cross-training, and adopted new policy/procedures. These measures included direct supervisory review and verification of employee resource allocation and documentation. A cooperative effort between OSM and the program's fiscal section has produced significant improvement. OSM will continue to work with Ohio to continue to improve the administration of Federal grants.

### **Longwall Mining**

OSM's EY 2001 and EY 2004 oversight reports indicated that Ohio had not developed a data collection system to better track impacts from longwall mining and repairs/compensation for those impacts. Ohio reported that, absent a complaint, they do not monitor impacts to streams.

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 many years. OSM inspections and review of company records on three large underground mines in EY 2009 found that several properties did not have permanent water supplies replaced within 18 months as required by their permits. The companies provided several reasons for not meeting the permit requirements, including on-going negotiations between landowners and the mining company, installation of county water lines, and others. Ohio is not routinely issuing damage notices or enforcement actions regarding these problems as required by their procedures and nor do they appear to be monitoring the status of the older water supply problems or moving toward final resolution. As a result of an EY 2009 OSM inspection of an underground mine that has been closed since 1999, Ohio committed to determine the remaining outstanding liabilities for permanent water supply replacement at this mine to move closer to final resolution.

OSM studied impacts to streams from longwall mining beginning in 2002 and continuing into EY 2008. This study identified some impacted stream segments on which OSM has continued to monitor restoration efforts. Ohio had not issued damage notices concerning the impacted streams until OSM issued a TDN concerning these impacts in 2006. OSM revisited the damaged sections of streams in the spring of EY 2007 and found them all to be flowing well in late March. However, they were all dry by early May. Site visits to the same areas in EY 2008 and EY 2009 found them dry again. In response to Ohio's 2006 damage notice, the company provided a letter in EY 2008 that briefly described their plans for mitigation. Ohio was reviewing the plan at the end of the last evaluation period.

Ohio reported at the end of EY 2009 that the company has made some repairs to the impacted streams. The success of the work has not yet been verified. The company will provide a report on the work completed and the success of the repairs in early EY 2010. OSM will continue monitoring the mitigation efforts on the tributaries where problems were observed.

Ohio received a complaint about an acid-water discharge at an inactive longwall mine in southern Ohio in EY 2008. The investigation concluded that the acid water was due to a subsided stream bed allowing water to seep into lower strata where it became acidified. Ohio issued a damage notice to the permittee. The company hired a contractor to drill and grout the subsided stream bed to stop the stream loss into the lower strata. The work was partially successful, as much, but not all, of the surface flow returned. There is also still some acid discharge. The permittee has contracted a new firm to make a second attempt on this approximately 900 foot-long section of stream as the second phase of the repair. In mid-2009, Ohio reported that work completed last year was inadequate. Repairs are planned for later in 2009. Work on another stream segment is pending approval of a new scope of work and approval by the USACE.

As a result of provisions of HB 443 and SB 73, Ohio plans to develop a process for recording and tracking subsidence impacts. Such a process is needed to maintain current estimated costs to reclaim sites where subsidence occurs if a permittee should default on their reclamation obligations.

Ohio has planned for several years to assign additional resources to improve their monitoring of longwall mining, but has not yet done so. Ohio indicated last year that funding may allow them to hire an inspector dedicated primarily to longwall mines in the near future. There was no change in this program area in EY 2009. OSM will continue to encourage Ohio to improve their monitoring of the impacts from longwall mining operations.

### **Mid-Term Permit Reviews**

Both Federal and Ohio rules require the regulatory authority to review permits no later than the middle of a permit term or every five years, whichever is more frequent. Ohio acknowledged that they have not done mid-term permit reviews for several years. Ohio attributes this implementation deficiency to lack of resources and higher priorities for permitting staff.

Ohio said they will conduct mid-term permit reviews when a permit flaw is identified that is causing an on-the-ground problem. In EY 2009, Ohio requested OSM's assistance in revising current procedures for conducting mid-term permit reviews. Although some work to identify procedures used in other states was completed, actual revision of their procedures has not proceeded due to other higher priorities.

### **Alternative Enforcement Action**

In EY 2006, OSM conducted an oversight review of Ohio's implementation of the alternative enforcement provisions of their program. In response to the findings and recommendations in that report, Ohio indicated they would be hiring an enforcement coordinator to help implement the recommendations. Ohio has not yet hired an enforcement coordinator. On a related issue, Ohio issued proposed individual civil penalties (ICP) for five Failure to Abate Cessation Orders (FTACO) issued in EY 2008. However, as described in the summary of our EY 2008 review of Ohio's civil penalty assessment process, the effectiveness of the proposed ICPs was questionable, due to unclear guidelines that may conflict with established rules. This review reconfirmed that Ohio needs to direct additional attention to this program area. They also need to provide consistent procedures that implement the alternative enforcement provisions whenever necessary. Ohio did not make changes to the alternative enforcement or ICP procedures in EY 2009.



### **Permanent Impoundments**

In EY 2009, OSM determined that Ohio's response to a 2008 Ten-Day Notice regarding a permanent water impoundment that did not meet performance standards was arbitrary and capricious. Ohio's response acknowledged that although the impoundment did not maintain a stable water level as required, there were other impoundments in the vicinity that were adequate to support the intended land use. A few years ago, OSM had cited this same issue on another permanent impoundment. At that time, Ohio had drafted policy guidance for permanent impoundments to address the stable water level requirement, but they did not issue the guidelines.

The result of the TDN is that OSM opted not to take direct Federal enforcement action regarding the impoundment, because jurisdiction had been terminated and the impoundment posed no threat to the environment or public safety. In addition, Ohio agreed to resurrect and issue guidelines that should prevent any future approval of performance security release on sites unless permanent impoundments meet all performance standards.

### **Civil Penalty Assessment Process**

OSM completed a review of Ohio's civil penalty assessment (CPA) process in EY 2008. The report included two findings and several observations and recommendations for improving the process. The two findings were: 1. Ohio is doing an outstanding job of meeting the time requirements for their CPA process and is following the procedures outlined in their guidelines. 2. Although Ohio has improved by issuing individual civil penalties (ICP) when FTACOs are issued, the process is not meeting program standards or the purpose of an ICP.

OSM provided these recommendations: Ohio needs to correct implementation procedures regarding ICPs. Although Ohio is following their established guidelines for issuing CPAs, they waived 75 percent of the penalties. Thus, this process may not be achieving the objective of Ohio's and SMCRA's civil penalty provisions which is to deter violations. Ohio should consider revising its CPA guidelines to improve consistency when assessing individual components of CPAs and to increase the deterrent effect of the penalty process.

Although Ohio indicated last year they would consider OSM's recommendations, this year they reported they had not yet adopted any of OSM's recommendations.

## **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 Performance Security 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 performance security 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 evaluates and reports on 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.

Ohio sent us spreadsheets summarizing the data in their enforcement database at the end of each quarter. These sheets listed the Notices of Violation (NOV) and Cessation Orders (CO) Ohio issued each quarter, and included the off-site impacts cited by Ohio inspectors. OSM also reviewed the copies of all of the NOV's and CO's that Ohio sent to us for our files. OSM compared that data to the data Ohio submitted to ensure that all off-sites were cited.

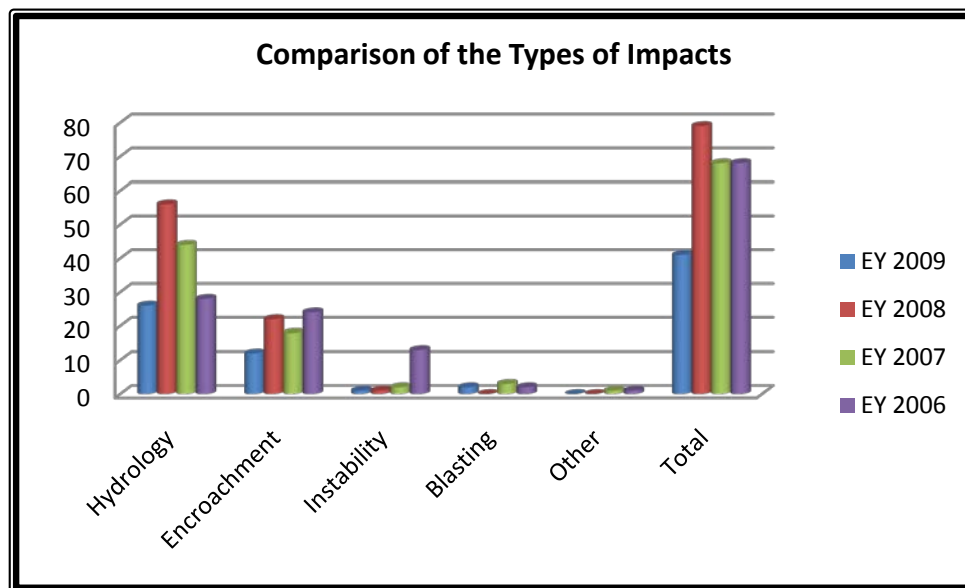
To independently verify the accuracy of Ohio's information, OSM gathers data during oversight inspections to determine what impacts may have occurred outside the authorized areas. At the end of each quarter, OSM and Ohio compared our data to ensure that all off-sites were listed.

At the end of this evaluation period, there were a total of 290 inspectable units - 228 active sites, 45 inactive sites, and 17 bond forfeiture sites.

There were a total of 41 off-site impacts identified on 28 sites during this evaluation period. We counted an impact only once, even if it affected more than one resource. This equates to the identification of off-site impacts on 10 percent of 273 active/inactive permits, with 90 percent of those permits free of off-site impacts. In EY 2008, 85 percent of the active/inactive permits were free of off-site impacts. There were 38 fewer off-site impacts identified in EY 2009, 48 percent less than in EY 2008 and the lowest number since 2002. In EY 2007, we reported a total of 64 off-site impacts compared to 79 in EY 2008.

Table 4 in Appendix A summarizes the number of resources affected and the extent of the off-site impacts identified. The 41 off-site impacts affected 52 resources including land, water, and structures. Of these, none caused major impacts, four caused moderate impacts, and 37 caused minor impacts. Seven sites had more than one impact.

This chart compares the types of impacts this year to the last three years. Note that one off-site impact can be classed as more than one type of impact. For example, a landslide could be



classified as both encroachment and instability. Therefore, it would be counted as two types of impacts.

As this chart shows, the number of types of off-site impacts decreased significantly this year. The two most frequently reported types of off-site impacts remain hydrology and

encroachment. However, there were 19 fewer hydrology impacts this evaluation period, a decrease of 33.9 percent.

The number of encroachment impacts is ten less, a decrease of 45.5 percent. Instability impacts remained the same as the last evaluation period, and blasting went from none during the last period to two this period. Both blasting impacts were attributed to flyrock being cast beyond the permit limits.

In our last four reports on this, OSM has recommended that:

Ohio should 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. This team could then lead an initiative within Ohio to increase emphasis on decreasing the number of off-site impacts.

Ohio and OSM should place increased emphasis on the AMD initiative and identifying conditions that lead to breached diversion ditches.

Ohio has not reported any specific action in response to these recommendations. However, Ohio did provide OSM with quarterly reports on off-site impacts this year. In addition, OSM and Ohio had several discussions during the year concerning off-sites. This may have contributed to the lower number this year.

Ohio issued 104 NOVs this year, compared to 176 last year. This is probably, in part, due to Ohio's having fewer inspectors during this evaluation year. With fewer inspections being done, this could have also contributed to fewer off-sites being identified.

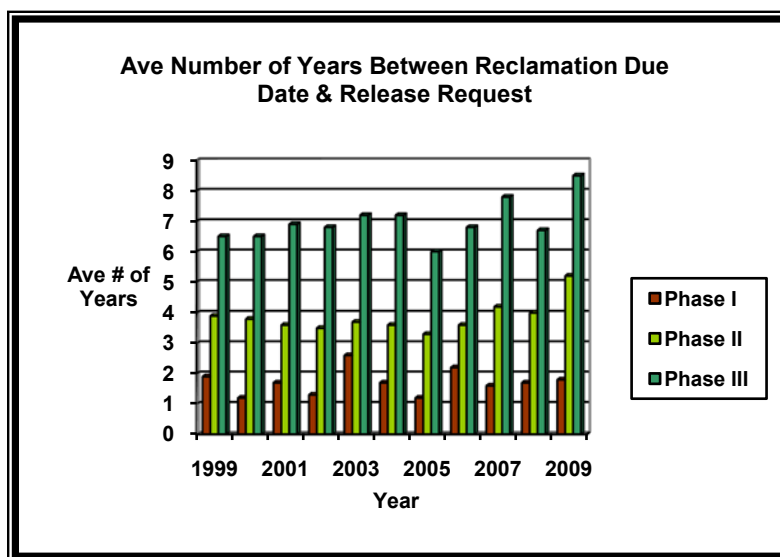
Finally, according to the Ohio Division of Water, the rainfall in the southeast portion of Ohio where the majority of the coal mining occurs was -1.57 inches (mild drought) for the twelve-month period ending in June 2009. For the same period last year, the rainfall for the same area was +9.44 inches (extreme moist spell). This could also be a contributing factor.

OSM appreciates Ohio’s efforts and cooperation in monitoring off-site impacts this year. As stated previously, one of the goals of OSM’s REG-8 is for each inspectable unit to have minimal or no off-site impacts. A 48 percent reduction from last year in the number of off-site impacts is certainly a big step toward reaching that goal.

**B. Performance Security Release and Reclamation Success**

OSM reported inspections on 44 segments or about 31 percent of the reclamation segments that the Ohio District Offices approved for performance security release between May 1, 2008, and April 30, 2009. OSM found that Ohio’s approval of performance security releases was proper in all reported cases for that period.

OSM measured contemporaneous reclamation using information provided by Ohio for all Phase I, II, and III performance security releases the District Offices approved between May 1, 2008, and April 30, 2009. The information provided the date the permittee first identified a segment for reclamation and the date the permittee submitted a performance security release request



that Ohio approved for that segment. This portion of the evaluation is based on Ohio’s approval of performance security releases on 147 segments totaling 6240 acres. The chart provides the average time frames for each phase of performance security release over the last ten years.

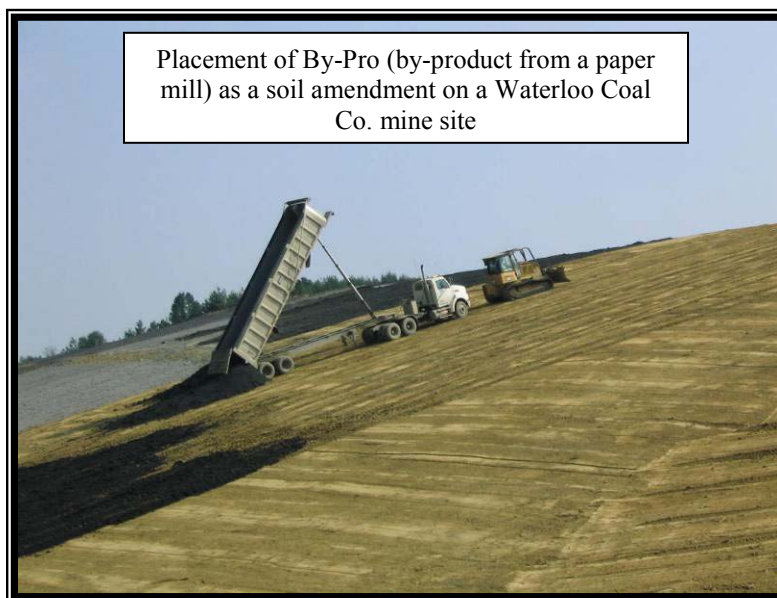
Findings from this evaluation concluded:

- Time frames for completing Phase I reclamation ranged from -0.7 years to 12.1 years<sup>1</sup> and averaged 1.8 years on 40 Phase I releases approved by Ohio. Performance security

<sup>1</sup>The 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 performance security 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 performance security 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 performance security 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.

release was requested within one year or less on 37 percent of the segments approved for phase I release.

- Time frames for completing Phase II reclamation ranged from -0.7 years to 21.7 years and averaged 5.2 years on 57 phase II releases approved by Ohio. Performance security release was requested within two years on 19 percent and within four years on 46 percent of the segments approved for phase II performance security release. The annual average drops to 4.1 years when dropping out the four highest times that are attributed to reclamation by a new permittee of a bond forfeiture site.
- Time frames for completing Phase III reclamation ranged from -0.4 years to 23.6 years and averaged 8.5 years on the 50 phase III releases approved by Ohio. Performance security release was requested within seven years on 56 percent of the segments approved for phase III performance security release. The annual average drops to 6.9 years when dropping out the six highest times that are attributed to reclamation by a new permittee of a bond forfeiture site.
- During EY 2009, the average time between identification of segments for reclamation and the operator's submitting Phase II and Phase III performance security release requests increased significantly from last year and were substantially more than the 11-year average time.



Placement of By-Pro (by-product from a paper mill) as a soil amendment on a Waterloo Coal Co. mine site

However, when dropping out the highest times for Phase II and Phase III as described above, the Phase II average is only 6 percent higher than the 11-year average and the Phase III is the same as the 11-year average.

As OSM recommended in past oversight reports on contemporaneous reclamation in 2005, 2006, 2007, and 2008, Ohio should monitor reclamation status on all permits and annual segments. Tracking could be accomplished through periodic reports that could be obtained from Ohio's database on performance security releases and reviewed by field managers who would pass on the information to inspectors for follow-up action. This tracking and follow-up could eventually reduce the number of sites and acres needing inspection in the future. Although tracking alone may not totally correct the problem, considering the other major factors that Ohio attributes to

the issue, it is an action that Ohio can take that may help to reduce the number of inspections required.

Ohio acknowledged the findings and attributed the increased timing of release approvals to a temporary reduction in the number of inspectors. They expect the vacancies to be filled in EY 2010. Ohio also committed to continuing to direct staff to focus attention on contemporaneous reclamation requirements and provide progress reports to OSM on a quarterly basis.

## **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. Listed below are brief descriptions of the specific areas where OSM assisted Ohio this year.

### **HB 443 Implementation Teams**

Three members of OSM's Columbus Office and a hydrologist from OSM's Pittsburgh Office continued working with Ohio's teams assigned to develop implementation procedures and rules necessary to carry out provisions of enacted HB 443. These teams include: Performance Securities, Permitting/Inspection/Regulatory, and Hydrology.

The OSM hydrologist is also assisting Ohio with development of water sampling protocols, quality assurance procedures, and acid-based accounting guidelines.

OSM participated on other Ohio teams concerning the following topics: remining initiative, highwall miner method of coal removal, and alternatives for a proposed slurry impoundment.

## **VII. General Oversight Topic Reviews**

### **OSM Oversight Inspections**

During the evaluation period, OSM completed 79 site visits for general compliance monitoring of coal mining operations to assess compliance with performance standards; 40 site visits to evaluate performance security releases approved by Ohio; and 52 other site visits including follow-up and assistance. Other OSM regulatory oversight inspection activity included 33 follow-ups that did not include a site visit, only an inquiry or document review. In addition, OSM conducted 23 site visits to monitor AML reclamation project construction and seven site visits to evaluate potential AML emergencies or to monitor AML emergency project construction.

OSM conducts general compliance monitoring inspections to determine how well Ohio is implementing its program through reviews of the impacts of mining operations. Other inspections are directed at very specific program areas such as performance security releases or special oversight studies. OSM received no citizen complaints during the evaluation period.



An OSM inspection in December 2008 resulted in a TDN regarding violations that remained unabated due to a permittee's non-compliance with a Notice of Violation (NOV) that Ohio issued in 2005. Ohio had not extended the abatement date and had allowed the NOV to remain unabated pending their review of an application to revise the permit. In response to the TDN, Ohio committed to extend the abatement date, establish a deadline for the permittee to address issues with the application to revise the permit, and issue a timely decision on the revised application. As of the writing of this report, Ohio has not fulfilled their commitment, but has indicated that a meeting is scheduled in mid-July 2009 with a new landowner to discuss reclamation of the site. OSM is deferring further action pending the results of that meeting and Ohio's action to address the violations.

An OSM inspection in October 2008 resulted in a TDN regarding three violations that remained unabated due to the permittee's non-compliance with NOVs that Ohio issued in 2007. Ohio had extended the time for abatement on these violations several times beyond 90 days without meeting the standards of Ohio's Program. Ohio defended the extensions based on their working with the permittee to reclaim other higher priority sites. The permittee has been working to avoid bond forfeiture on multiple sites, several of which are under appeal. OSM has been discussing this matter with Ohio and thought Ohio had agreed to include the violations on this site in a consent order or settlement agreement encompassing other sites with violations to establish an overall reclamation schedule. Although Ohio has reached agreement with the permittee on reclamation schedules on some of the sites with BFOs, sites that have violations without BFOs (as is the one subject to the TDN) have not yet been included. OSM is continuing to discuss this issue with Ohio.

### **Public Participation Provisions of the Performance Security Release Process**

OSM completed a review of Ohio's implementation of the public notice provisions of the performance security release process including notification of the general public, government officials, and landowners of requests for performance security release; and providing opportunities to participate in inspections, file written objections about the reclamation, and request informal conferences whenever a permittee requests approval of reclamation and release of performance security. The review made the following finding and recommendations:

The review confirmed that Ohio is properly implementing the public participation provisions of the performance security release process with minor exceptions. To address the minor exceptions, OSM recommended that Ohio should ensure that all inspectors clearly document in inspection reports that an inspection was conducted to evaluate the site for a specific performance security release(s), who participated on the inspection, any concerns raised by the public, and the outcome of the inspection.

Based on the provisions of OAC 1501:13-7-05(A)(7), a decision on a release request should be made within 60 days. If not, and if there are several months between the initial performance security release inspection of which landowners were notified and subsequent inspections on which a decision is made on the release request, landowners should be provided another opportunity to participate on the inspection; i.e., a new notice of release inspection. Likewise, if a permittee withdraws and resubmits a release request for which public notice was published in a

newspaper several months before a decision is actually made on the request, Ohio should consider requiring the permittee to publish a new public notice. Ohio agreed to discuss these recommendations with the inspection staff.

### **Extensions of Abatement Time beyond 90 Days**

OSM reviewed Ohio's granting of extensions beyond 90 days for abatement times to NOVs. One of our findings from a review in 1994 was that Ohio should provide its inspectors with guidance on granting extensions, specifying that extensions should only be granted if the operator has demonstrated due diligence toward abating a violation. The purpose of this review was to determine if Ohio has provided adequate guidance, if Ohio is following established guidelines when issuing extensions, and if Ohio is following established procedures when granting extensions beyond 90 days.

OSM found that Ohio is not following the provisions of their Policy/Procedure Directive (PPD) "Inspection and Enforcement 93-5," Ohio Administrative Code (OAC) 1501:13-14-02, and their inter-office communication dated June 13, 1995.

- The files reviewed did not always contain the required forms or did not have all of the required signatures on the forms. Ohio files show that, in some instances, extensions were granted without the signature/concurrence of the Chief and/or supervisor.
- The documentation to support the extensions (i.e., demonstration of due diligence) varied significantly among the inspectors. A few of the files had statements from the inspector. However, the majority of the files that did contain the required forms did not have anything to document the need for an extension.
- For 19 of the violations we reviewed, the abatement date had passed. For almost half of the NOVs reviewed, extensions of their abatement dates were issued well after the current abatement date had expired.
- We found only two instances where the operator submitted weather data to substantiate their claim of climatic conditions for the extension. The average length of time that these violations have remained unabated is 644 days, with the shortest period of time 178 days and the longest 1736 days. Since climatic conditions tend to be seasonal and not multi-year, we question the validity of extensions based on climatic conditions for more than one season or year.
- The average length of time that violations requiring an application to revise a permit have existed was 673 days, with the shortest period of time being 265 days and the longest being 1157 days. For a couple of these, we did find that Ohio had sent the operator a revision letter and that they were working on trying to resolve the issues.

As identified in previous OSM oversight findings, this review also found that Ohio's implementation of the provisions of OAC 1501:13-14-02 on most NOVs on which extensions to abatement times beyond 90 days have been granted is not meeting program standards. These program standards require that Ohio issue an FTACO whenever a violation is not corrected within the time period provided for abatement. Some of these NOVs have languished unabated for months and some for years lacking documentation to demonstrate that the standards for

approving extensions beyond 90 days were met. Some NOV's have remained unabated without a request by the permittee for an extension to the abatement time and some requests were not properly processed by Ohio. Between 2004, when the one of these violations was first issued, and now, Ohio has issued an average of 148 violations each year. Although the overall number of NOV's extended beyond 90 days is a relatively small percentage (15 percent) of the NOV's issued, they do indicate a deficiency in Ohio's enforcement system that must be corrected.

Ohio committed to resolve the administrative issues related to processing of extensions to abatement times.

### **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 improved over last year.

- **National Environmental Policy Act (NEPA) Compliance**

OSM issued nineteen "Authorizations to Proceed" during EY 2009, compared to eight for EY 2008. This level of activity is significantly greater than last year. All other oversight inspections showed that NEPA submittals accurately described the project sites and any mitigation required. Ohio submitted NEPA information in a timely manner.

- **Construction Contracting**

Ohio authorized ten contracts totaling \$1.2 million for construction during the review period, compared to nine contracts totaling \$2.7 million last year. There were also five unit-price work orders issued during this period for a total of 15 projects authorized. The lower contract costs for projects this year appears to be a result of the effects of the current economic recession.

<b>EY</b>	<b>Average time between bid openings and authorization of construction contracts</b>
2003	57.4 days
2004	47.8 days
2005	47.4 days
2006	48.0 days
2007	90.0 days
2008	63.7 days
2009	69 days

The table shows the average time between the bid openings and the authorization of construction contracts. The average in EY 2009 was 69 days. The increase in the number of days is most likely due to time involved in bringing new staff up to speed. OSM will continue to monitor this activity and work with Ohio to improve contracting times in the upcoming year.

- **AML Project Construction Completions**

Ohio completed seven projects during the review period, compared to 16 last year. These projects involved over \$1.7 million of construction funding administered by Ohio. The drop in projects completed this year is a direct result of the recent hiring of new employees in the AML section. We expect that as the new staff becomes familiar with the program that there will be a significant increase in projects started and completed in EY2010.

**AML Contracting Process Review**

The purpose of this review was to determine if Ohio's procurement and management of services acquired with Federal AML Funds are consistent with Federal requirements and are being properly implemented. This includes adequate management controls to prevent fraud, waste, abuse, and mismanagement of Federal funds. The review was also to determine if the program is being administered in an effective and efficient manner.

During the past two years, Ohio has continued to meet the State and Federal requirements with regard to contracting operations. Prior to that time, Ohio did not adhere to a number of requirements dealing with the closeout of the contracts and the lack of required documentation and approvals.

Ohio has made great strides in the operation and documentation of the contracting function since the addition of a trained contract officer, fiscal management, and support staff. For the older files, the staff has initiated a complete review of the closed files. Upon completion of each review, the contract officer generates a memo to the file certifying that all required actions have been completed. It is anticipated that the review of these old files will be completed over the next year or so.

**Grants Draw-Down Analysis**

OSM conducted an analysis of Ohio's draws on Federal grants. The review found that Ohio continues to meet the U.S. Department of Treasury requirements that Federal fund draws are expensed in a timely fashion and are used for authorized purposes only. OSM made an on-site visit on April 20, 2009, and conducted a review of drawdown reports and payments received. All draws but one were based on expenditures already recorded. The one draw was calculated on the State's payroll needs three days in the future which is acceptable.

The review also included an onsite interview and discussion of the Fiscal Branch's current and planned procedures concerning their drawdown practices. They have instituted a new policy of daily monitoring of the cash balances of their clearing accounts. The formal written procedures are still being developed. This process has been implemented to avoid any chance of the State's not drawing funds when the need exists. No problems or concerns regarding Ohio's management of Federal funds were noted during the drawdown review.

**OSM Part 732 Notice and Part 733 Notice, and Program Amendments****Program Condition and Initiation of 733 Action (PA 82)**

Ohio has one program condition remaining at 30 CFR 935.11 from OSM's 1982 approval of the Ohio permanent regulatory program. Ohio must demonstrate that its alternative bonding system (ABS) will ensure timely reclamation at the sites of all operations for which performance security has been forfeited.

On May 4, 2005, the OSM Director formally notified Ohio that he was taking action pursuant to 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 (PA) to address the deficiencies with the bonding program. Ohio submitted PA #81 to OSM in December 2005.

Subsequent to Ohio's submittal of PA #81, the Ohio General Assembly passed HB 443, which was signed into law on January 4, 2007. The provisions became effective on April 4, 2007. Following passage of this legislation, Ohio withdrew PA #81, and submitted PA #82 in March 2007, which includes enacted HB 443.

OSM completed its initial review of the amendment and sent a letter to Ohio in July 2007, identifying issues to which Ohio must respond before OSM could make a decision on the new amendment. Ohio responded to OSM's letter on January 18, 2008. Ohio agreed with most of the issues that OSM identified and committed to making some statutory changes and to drafting rules and procedures to support the new laws. Ohio's proposed schedule is to complete statutory and rule changes by the end of 2009. OSM responded to Ohio's January 2008 letter in January 2009.

SB 73 was signed into law on June 15, 2009. This law is intended to address some of the issues that OSM identified in its July 2007 letter on PA #82. In addition, Ohio revised 39 rules in April 2009. These changes are also intended to address some of the issues OSM identified. Ohio is expected to submit these changes and provisions of HB 119 and SB 386 as a revised PA #82 in early EY 2010.

Ohio will continue working with the OCA to resolve other issues that OSM has raised. Ohio is continuing to draft rules to address the remaining issues that OSM identified. Ohio has continued to focus substantial time on drafting procedures that have helped them proceed with implementing the new law. These procedures will help in the rule-drafting process.

The new RFFAB was very active in EY 2009. They contracted with an actuary firm to complete the first actuarial review of the Reclamation Forfeiture Fund. The actuarial report was completed on June 22, 2009. The RFFAB sent this report along with their recommendations regarding the fiscal condition of the Reclamation Forfeiture Fund to the Governor by July 1, 2009, as required by statute.

The actuarial report concluded that:

“...we find that the Fund is solvent on a short term basis as the current Fund assets exceed the current Fund outstanding liabilities and obligations for the forfeited reclamation projects.”

“However, on a long term solvency basis, we do not see the fund as meeting the standard currently nor does our projection of revenues place it in a complaint basis for some period of time into the future. There is currently a tremendous miss match between the revenues collected and the future exposure to reclamation forfeiture for which revenue and accumulated capital is needed.”

The report goes on to state:

“Based on the methodology and assumptions describe above, we have estimated the potential expected liability of the fund to be \$42.8 million.”

“In actuarial and insurance regulatory language, the fund has significant risk of material adverse deviation from the estimated expected loss.”

The RFFAB’s first report to the Governor made the following points:

- “The fund is adequately funded to address the current forfeiture backlog.
- The current liabilities are estimated to be \$1.9M and the fund has \$4.48M.
- The backlog of forfeited sites will be reclaimed by the end of calendar year 2011.
- It is important to note the fund never received \$5M from the legislature in 2007 to eliminate the backlog of forfeitures as intended by H.B. 443.
- The actuarial study begins at the point where the backlog has been eliminated and projects various liability scenarios into the future.
- The study concludes the fund will not be solvent in the future.
- The Division of Mineral Resources Management (DMRM) is doing a good job of regulating the coal industry’s performance regarding contemporaneous reclamation of permitted sites and of overseeing the reclamation of Forfeited Sites.
- Since the Fund appears to have a longer-term solvency issue, the abundance of caution dictates that the Board reviews the Fund’s status next year. Therefore, the board has approved a second actuarial study be conducted sometime in 2010. This will be in addition to the actuarial study and report due to the governor in 2011 as required by ORC 1513.182(D)(6).
- The board will further study the model prepared by Pinnacle to refine, improve and monitor this model of the Fund’s adequacy. In addition, the Board has asked DMRM to provide an analysis of Alternative Bonding Systems (“ABS”) conducted in other coal mining states. A careful study of these systems will help the Board understand the Ohio fund and its ability to meet prescribed needs.”



OSM will evaluate the actuary report findings and the RFFAB's report to the Governor when Ohio submits its other supporting information, and statutory and regulatory amendments in response to OSM's issues identified in its initial review of Program Amendment #82.

### **PA 75 Attorney Fees (Required Amendment)**

In 1998, OSM approved proposed revisions to ORC 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. In 2006, Ohio tried to include the OSM-approved language in a bill regarding changes to the bonding program. OCA proposed to change the approved language to a version that Ohio considered less effective than what OSM approved. Since Ohio and OCA did not agree on revised language, Ohio opted to leave the language as is. Ohio reported that legislation cannot be passed without OCA support. Therefore, status quo remains. OSM has not decided what action, if any, to take to resolve this issue.

### **PA 80 Remining**

Ohio submitted a formal PA 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. In EY 2009, Ohio expressed some interest in moving forward to adopt these rule changes, but has not yet done so.

### **Valid Existing Rights (Part 732 Notice)**

The United States Court of Appeals for the District of Columbia Circuit affirmed the 1999 Federal rules on valid existing rights (VER) in January 2008. OSM notified Ohio on March 11, 2008, of this ruling and the need for Ohio to now respond to the August 22, 2000, 30 CFR Part 732 notice regarding changes to Federal regulations pertaining to VER. Subsequent to this notice, the Appellate Court decision was appealed to the U.S. Supreme Court. In EY 2009, all appeals of these rules were concluded. Ohio requested OSM's assistance in reviewing draft changes to Ohio's VER rules which OSM provided. Ohio is expected to submit a formal program amendment in early EY 2010.

# **Appendix A**

## Tabular Summary of Core Data to Characterize the Program

<b>TABLE 1</b>			
<b>Coal Produced for Sale, Transfer, or Use</b> (Millions of Short Tons)			
<b>Period</b>	<b>Surface Mines</b>	<b>Underground Mines</b>	<b>Total</b>
<b>Coal production<sup>A</sup> for entire State:</b>			
<b>Calendar Year</b>			
CY 2006	7.068	15.254	22.322
CY 2007	6.969	16.291	23.260
CY 2008	9.110	16.814	25.924
<p>Coal production as shown in this table is the gross tonnage and includes coal produced during the calendar year (CY) for sale, transfer or use. The coal produced in each CY quarter is reported to OSM during the following quarter by each mining company on line 8 (a) of form OSM-1, 'Coal Reclamation Fee Report.' 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.</p> <p><sup>A</sup> Provide production information for the latest three full calendar years to include the last full calendar year for which data is available.</p>			

**TABLE 2**

**Inspectable Units  
As of June 30, 2009**

Coal mines and related facilities	Number and Status of Permits								Nbr. of Insp. Units <sup>A</sup>	Permitted Acreage <sup>B</sup> (100's of acres)				
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals			Federal Lands		State/Private Lands		All Lands
	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	IP	PP	Total
	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	IP	PP	Total
<b>LANDS FOR WHICH THE STATE IS THE REGULATORY AUTHORITY</b>														
Surface mines	0	187	0	40	0	16	0	243	243	0.0	0.0	0.0	91.2	91.2
Underground mines	0	21	0	2	0	0	0	23	23	0.0	0.0	0.0	5.9	5.9
Other facilities	0	20	0	3	0	1	0	24	24	0.0	0.0	0.0	4.2	4.2
Total	0	228	0	45	0	17	0	290	290	0.0	0.0	0.0	101.3	101.3

Total number of permits: 290  
Average number of permits per inspectable unit (excluding exploration sites): 1.00  
Average number of acres per inspectable unit (excluding exploration sites): 34.93  
Number of exploration permits on State and private lands: 0 On Federal lands<sup>C</sup>: 2  
Number of exploration notices on State and private lands: 0 On Federal lands<sup>C</sup>: 0

**IP:** Initial regulatory program sites  
**PP:** Permanent regulatory program sites

<sup>A</sup> Inspectable units include multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.

<sup>B</sup> When a single inspectable unit contains both Federal lands and State/Private lands, enter the permitted acreage for each land type in the appropriate category.

<sup>C</sup> 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.

**TABLE 3**

**State Permitting Activity  
As of June 30, 2009**

Type of Application	Surface mines			Underground mines			Other facilities			Totals		
	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres <sup>A</sup>	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres
New Permits	8	7	2,061	3	0	0	0	2	108	11	9	2,169
Renewals	14	16		5	0		6	3		25	19	
Transfers, sales, and assignments of permit rights	3	18		0	0		2	3		5	21	
Small operator assistance	0	0		0	0		0	0		0	0	
Exploration permits										0	0	
Exploration notices <sup>B</sup>											171	
Revisions (exclusive of incidental boundary revisions)		110			10			11			131	
Revisions (adding acreage but are not incidental boundary revisions)	10	4	141	13	9	16	2	2	57	25	15	214
Incidental boundary revisions	16	9	131	12	2	41	3	1	8	31	12	180
<b>Totals</b>	<b>51</b>	<b>164</b>	<b>2,333</b>	<b>33</b>	<b>21</b>	<b>57</b>	<b>13</b>	<b>22</b>	<b>173</b>	<b>97</b>	<b>378</b>	<b>2,563</b>

OPTIONAL - Number of midterm permit reviews completed that are not reported as revisions: 0

<sup>A</sup> Includes only the number of acres of proposed surface disturbance.

<sup>B</sup> 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 (excluding 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	2	1	0	0	1	0	0	0	0	0	0	0
	Land Stability	1	0	0	0	0	0	0	0	0	0	1	0
	Hydrology	26	0	0	0	10	0	0	26	1	0	0	0
	Encroachment	12	0	0	0	10	1	0	0	1	0	0	0
	Other	0	0	0	0	0	0	0	0	0	0	0	0
	Total	41	1	0	0	21	1	0	26	2	0	0	1

Total number of inspectable units (excluding bond forfeiture sites): 273

Inspectable units free of off-site impacts: 245

Inspectable units with off-site impacts: 28

## 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	0	0	0	0	0	0	0	0	0	0	0	0
	Land Stability	0	0	0	0	0	0	0	0	0	0	0	0
	Hydrology	0	0	0	0	0	0	0	0	0	0	0	0
	Encroachment	0	0	0	0	0	0	0	0	0	0	0	0
	Other	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0	0	0	0	0	0	0	0	0	0	0	0

Total number of inspectable units (only bond forfeiture sites): 17

Inspectable units free of off-site impacts: 17

Inspectable units with off-site impacts: 0

**TABLE 5**

**Annual State Mining and Reclamation Results**

Bond release phase	Applicable performance standard	During this Evaluation Year		
		Total acreage released	Acreage also released under Phase I	Acreage also released under Phase II
A	B	C	D	E
Phase I	- Approximate original contour restored - Topsoil or approved alternative replaced	2,126		
Phase II	- Surface stability - Establishment of vegetation	1,846	106	
Phase III	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	2,792	42	510
<b>Bonded Acreage <sup>A</sup></b>			<b>Acres during this evaluation year</b>	
Total number of new acres bonded during this evaluation year			2,811	
Number of acres bonded during this evaluation year that are considered re-mining, if available			0	
Number of acres where bond was forfeited during this evaluation year			0	
<b>Bonded Acreage Status</b>		<b>Cumulative Acres</b>		
Total number of acres bonded as of the end of last review period (June 30, 2008) <sup>B</sup>		51,644		
Total number of acres bonded as of the end of this review period (June 30, 2009) <sup>B</sup>		51,663		
Sum of acres bonded that are between Phase I bond release and Phase II bond release as of June 30, 2009 <sup>B</sup>		11,268		
Sum of acres bonded that are between Phase II bond release and Phase III bond release as of June 30, 2009 <sup>B</sup>		11,278		
<b>Disturbed Acreage</b>		<b>Acres</b>		
Number of Acres Disturbed during this evaluation year		1,974		
Number of Acres Disturbed at the end of the evaluation year (cumulative)		0		
<sup>A</sup> Bonded acreage is considered to approximate and represent the number of acres disturbed by surface coal mining and reclamation operations. <sup>B</sup> Bonded acres in this category are those that have not received a Phase III or other final bond release (State maintains jurisdiction).				

Brief explanation of columns D & E. The States will enter the total acreage under each of the three phases (column C). The additional columns (D & E & E) will "break-out" the acreage among Phase II and/or Phase III. Bond release under Phase II can be a combination of Phase I and II acreage, and Phase III acreage can be a combination of Phase I, II, and III. See "Instructions for Completion of Specific Tables," Table 5 for example.

**TABLE 6**

**State Bond Forfeiture Activity**  
(Permanent Program Permits)

Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Dollars	Acres
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2008 (end of previous evaluation year) <sup>A</sup>	14		999
Sites with bonds forfeited and collected during Evaluation Year 2009 (current evaluation year)	0	\$ 0	0
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2009 (current evaluation year)	0		0
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2009 (current evaluation year)	3		444
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2009 (end of current evaluation year) <sup>A</sup>	11		555
Sites with bonds forfeited but uncollected as of June 30, 2009 (end of current evaluation year)	3		462
<b>Surety/Other Reclamation (In Lieu of Forfeiture)</b>			
Sites being reclaimed by surety/other party as of June 30, 2008 (end of previous evaluation year) <sup>B</sup>	1		192
Sites where surety/other party agreed to do reclamation during Evaluation Year 2009 (current evaluation year)	4		592
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2009 (current evaluation year)	0		0
Sites with reclamation completed by surety/other party during Evaluation Year 2009 (current evaluation year) <sup>C</sup>	4		592
Sites being reclaimed by surety/other party as of June 30, 2009 (current evaluation year) <sup>B</sup>	1		192

<sup>A</sup> Includes data only for those forfeiture sites not fully reclaimed as of this date

<sup>B</sup> Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date

<sup>C</sup> This number also is reported in Table 5 as Phase III bond release has been granted on these sites



<b>TABLE 7</b>	
<b>State Staffing</b> (Full-time equivalents at end of evaluation year)	
Function	EY 2009
Regulatory Program	
Permit Review	18.98
Inspection	19.81
Other (administrative, fiscal, personnel, etc.)	11.93
Regulatory Program Total	50.72
AML Program Total	64.00
<b>Total</b>	<b>114.72</b>

**TABLE 8**

**Funds Granted To Ohio  
BY OSM**

(During the Current Evaluation Year)

**(Actual Dollars, Rounded to the Nearest Dollar)**

Type of Funding	Federal Funds Awarded During Current Evaluation Year	Federal Funding as a Percentage of Total Program Costs
Regulatory Funding		
Administration and Enforcement Grant	\$ 2,969,654	50.00 %
Other Regulatory Funding, if applicable	\$ 0	0.00 %
<b>Subtotal</b>	<b>\$ 2,969,654</b>	
Small Operator Assistance Program	\$ 0	100 %
Abandoned Mine Land Reclamation Funding <sup>A</sup>	\$ 12,242,481	100 %
<b>Totals</b>	<b>\$ 15,212,135</b>	

<sup>A</sup> Includes funding for AML Grants, the Clean Streams Initiative and the Watershed Cooperative Agreement Program.

**TABLE 9**

**State Inspection Activity  
During Current Evaluation Year**

<b>Inspectable Unit Status</b>	<b>Number of Inspections Conducted</b>	
	<b>Complete</b>	<b>Partial</b>
Active <sup>A</sup>	932	2,102
Inactive <sup>A</sup>	208	177
Abandoned <sup>A</sup>	16	0
<b>Total</b>	1,156	2,279
<b>Exploration</b>	0	0

<sup>A</sup> Use terms as defined by the approved State program.

**TABLE 10**

**State Enforcement Activity  
During Current Evaluation Year**

<b>Type of Enforcement Action</b>	<b>Number of Actions<sup>A</sup></b>	<b>Number of Violations<sup>A</sup></b>
Notice of Violation	104	104
Failure-to-Abate Cessation Order	0	0
Imminent Harm Cessation Order	2	2

<sup>A</sup> Do not include those violations that were vacated.

**TABLE 11**

**Lands Unsuitable Activity  
During Current Evaluation Year**

	Number	Acreage
Number Petitions Received	0	
Number Petitions Accepted	0	
Number Petitions Rejected	0	
Number Decisions Declaring Lands Unsuitable	0	0
Number Decisions Denying Lands Unsuitable	0	0

## Appendix B

### Ohio's Comments on Draft Report and OSM's Response



#### Ohio Department of Natural Resources

TED STRICKLAND, GOVERNOR

SEAN D. LOGAN, DIRECTOR

**John F. Husted, Chief**

*Division of Mineral Resources Management  
2045 Morse Road, Building H-3  
Columbus, OH 43229-6693  
Phone: (614) 265-6633; Fax: (614) 265-7999*

August 31, 2009

Mr. George Rieger  
Office of Surface Mining  
4605 Morse Rd, Rm 102  
Columbus, OH 43230

Dear Mr. Rieger:

RE: 2009 Annual Evaluation Summary

The Division has reviewed OSM's draft EY 2009 Annual Evaluation Summary Report. It is my understanding that DMRM has provided the information necessary to complete the report.

Ohio has no issue-specific comments regarding the report. OSM has provided a concise review of Ohio's accomplishments, and a useful summary of the challenges we'll face in the coming year.

Ohio is poised to take the "next steps" to move our coal regulatory program into a more structured, single-discipline environment, and we'll look forward to making continued improvements in 2010.

Thank you for your continued support.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Husted".

John F. Husted, Chief

PC: Lanny Erdos  
Dave Clark  
Terry Van Offeren

