

[62 FR 9951, Mar. 5, 1997, as amended at 62 FR 14310, Mar. 26, 1997; 62 FR 32687, June 17, 1997]

§ 935.30 State-Federal Cooperative Agreement.

The Governor of the State of Ohio, acting through the Department of Natural Resources, Division of Reclamation (Division), and the Secretary of the Department of the Interior, acting through the Office of Surface Mining Reclamation and Enforcement (OSMRE), enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION, PURPOSE, AND RESPONSIBLE ADMINISTRATIVE AGENCY

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement with the Secretary of the Department of the Interior for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of surface coal mining and reclamation operations and of coal exploration operations not subject to 43 CFR part 3480, subparts 3480 through 3487, on Federal lands in Ohio which are under the jurisdiction of the United States Department of Agriculture, Forest Service, except those lands containing leased Federal coal, consistent with State and Federal laws governing such activities in Ohio, the Federal lands program (30 CFR parts 740-745) and the Ohio State program (approved State program).

B. *Purpose:* The purpose of this Agreement is to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations; (b) eliminate inter-governmental overlap and duplication; and (c) provide uniform and effective application of the approved State program on all lands in Ohio, except those containing leased Federal coal, in accordance with the Act, the approved State program, and this Agreement.

C. *Responsible Administrative Agencies:* The Division shall be responsible for administering this Agreement on behalf of the Governor. The Assistant Secretary, Land and Minerals Management, acting through OSM, shall administer this Agreement on behalf of the Secretary in accordance with the regulations in 30 CFR Chapter VII. The Federal lands in Ohio covered by this Agreement are only those under the jurisdiction of the United States Department of Agriculture, Forest Service (Forest Service) and include all or parts of the Wayne National Forest. It

is understood by both parties that the Forest Service will continue to be involved in mining operations on its respective lands pursuant to its laws, regulations, agreements and restrictions. These requirements are in addition to the requirements discussed in this Agreement.

ARTICLE II: EFFECTIVE DATE

After it has been signed by the Secretary and the Governor, this Agreement shall be effective upon publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article V.B. or X.

ARTICLE III: DEFINITIONS

Any terms and phrases used in this Agreement which are defined in the Act, 30 CFR parts 700, 701, and 740, or the approved State program shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State program will apply, except in the case of a term or phrase which defines the Secretary's non-delegable responsibilities under the Act and other laws.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program in 30 CFR parts 740-745, the laws, regulations, terms and conditions of the approved State program (conditionally approved on August 10, 1982, 30 CFR part 935, or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to surface coal mining and reclamation operations on Federal lands in Ohio except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws or regulations.

This Agreement does not apply to surface coal mining and reclamation operations on lands containing leased Federal coal. This Agreement applies only to lands under the jurisdiction of the Forest Service.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Authority of State Agency:* The Division has and shall continue to have the authority under State law to carry out this Agreement.

B. *Funds:* Upon application by the Division and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section

705(c) of the Act and 30 CFR part 735. If the State requests funds and sufficient funds have not been appropriated to OSM, OSM and the Division shall meet promptly to decide on appropriate measures that will ensure that surface coal mining and reclamation operations are regulated in accordance with the approved State program. If agreement cannot be reached, then either party may terminate the Agreement. Funds provided to the State under this Agreement shall be reduced; in proportion to the amount of fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. Reports and Records: The Division shall make annual reports to OSMRE on the results of the Division's implementation and administration of this Agreement, pursuant to 30 CFR 745.12(d). Upon request, the Division and OSMRE shall exchange information developed under this Agreement, except where prohibited by Federal law. OSMRE shall provide the Division with a copy of any final evaluation report prepared concerning the Division's administration and enforcement of this Agreement.

D. Personnel: The Division shall have the necessary personnel to implement this Agreement fully in accordance with the provisions of the Act and the approved State program.

E. Equipment and Laboratories: The Division will assure itself access to facilities which are necessary to carry out the requirements of the Agreement.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

The Division shall assume the primary responsibility for the review of permit application packages for surface coal mining and reclamation and coal exploration operations on Forest Service lands covered by this Agreement. The Division shall coordinate the review of permit application packages with the Forest Service and other Federal agencies which may be affected by the proposed surface coal mining and reclamation operation to ensure compliance with Federal laws other than the Act and regulations other than the approved State program. When requested by the State, OSMRE shall assist the State in identifying Federal agencies other than the Forest Service which may be affected by the mining proposal.

A. Submission of Permit Application Package: The Division shall require an operator proposing to mine on Forest Service lands to submit a permit application package in an appropriate number of copies to the Division. The permit application package shall be in the format required by the Division and include any supplemental information (as specified by OSMRE or the Forest Service) needed to satisfy the requirements of non-delegable requirements of the Act, Federal

laws other than the Act, and regulations other than the approved State program.

B. Coordination With Affected Agencies: Upon receipt, the Division shall transmit a copy of the complete permit application package to the Forest Service and to other Federal agencies affected by the proposed surface coal mining and reclamation operation with a request for review pursuant to 30 CFR 740.13(c)(4). OSM shall determine whether or not a proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of section 522(e) of the Act (30 U.S.C. 1272(e)) and 30 CFR parts 760-762 with respect to Federal areas designated by Congress as unsuitable for mining and shall make any necessary determinations under section 522(b) of the Act. The Division shall obtain, in a timely manner, the comments of the Forest Service and other Federal agencies affected by the mining proposal.

C. Contact With the Applicant: As a matter of practice, OSMRE will not independently initiate contacts with the applicant regarding permit application packages. However, OSMRE reserves the right to act independently of the Division to carry out any non-delegable responsibilities under the Act, or under other Federal laws and regulations, provided, however, that OSMRE shall inform the Division of the necessity of such action taken and send copies of all relevant correspondence to the Division.

D. File and Records: The Division shall maintain a title of all original correspondence with the applicant and any information received which may have a bearing on decisions regarding surface coal mining and reclamation operations on Forest Service lands. Upon request, the Division shall provide, for OSMRE or Forest Service review, copies of any titles and records for surface coal mining and reclamation operations on Forest Service lands.

E. Permit Application Decision and Permit Issuance: After consultation with the Forest Service and after making a finding of compliance with the approved State program and other applicable requirements, the Division may approve a permit application or application for permit revision or renewal and issue a permit. The permit issued by the Division shall condition the initiation of surface coal mining and reclamation operations on compliance with the requirements of the approved State program and, as applicable, requirements of OSM or the Forest Service pursuant to Federal laws other than the Act and regulations other than the approved State program. After the Division issues its decision on the permit application, it shall promptly send a notice of the action to OSM and to the Forest Service.

ARTICLE VII: INSPECTIONS

The Division shall conduct inspections on Forest Service lands covered by this Agreement and prepare and file inspection reports in accordance with the approved State program.

A. *Inspection Reports:* The Division shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with the applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. *Division Authority:* The Division shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. *OSM Authority:* For the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands, without prior notice to the Division. In order to facilitate a joint Federal-State inspection, when OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or of a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact the Division, if circumstances and time permit, prior to the Federal inspection. OSM may conduct any inspections necessary to comply with 30 CFR part 842. If an inspection is made without Division inspectors, OSM shall provide the Division with a copy of the inspection report within 10 days after inspection.

D. *Witness Availability:* Personnel of the State and OSM shall be mutually available to serve as witnesses in enforcement actions taken by either party.

ARTICLE VIII: ENFORCEMENT

A. *Division Enforcement:* The Division shall have primary enforcement authority on Federal lands covered by this Agreement in accordance with the approved State program and this Agreement. During any joint inspection by OSM and the Division, the Division shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation.

B. *Notification:* The Division shall promptly notify the Forest Service of all violations of applicable laws, regulations, orders, and approved permits for surface coal mining and

reclamation operations on lands administered by the Forest Service.

C. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce violations of laws other than the Act. (2) During an inspection made solely by OSM or any joint inspection where the Division and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the Act or the applicable substantive provisions included in the regulations of the approved State program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

ARTICLE IX: BONDS

A. *Performance Bond:* The Division shall require all operators on Federal lands covered by this Agreement to submit a performance bond to cover the operator's responsibilities under the Federal Act and the approved State program, payable to both the United States and Ohio. The performance bond shall be of sufficient amount to comply with the requirements of the approved State program and any other conditions of the permit. Release of the performance bond shall be conditioned upon compliance with all applicable requirements. The Division shall obtain the concurrence of the Forest Service prior to releasing the operator from any obligation under the performance bond. If this Agreement is terminated, (1) the bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by the Division to OSM if only Federal lands are covered by the bond.

B. *Forfeiture:* In the event of forfeiture by an operator of the performance bond for surface coal mining and reclamation operations on Federal lands covered by this Agreement, the State shall use funds received from bond forfeiture and, where necessary, funds from the Ohio Reclamation Forfeiture Special Account (pursuant to section 1513.18 of the Ohio Revised Code) to ensure that reclamation is accomplished in accordance with the approved State program and the approved permit.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been reinstated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

A. *Effect of Changes:* The Secretary or the State may promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and the Division shall immediately inform each other of any final changes and of any effect such changes may have on the cooperative agreement. If it is determined to be necessary to keep this Agreement in force, the Division shall request necessary State legislative action and each party shall revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the approved State program and sections 501 and 523 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes:* The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

The Division and the Secretary shall, consistent with 30 CFR part 745, advise each other of substantial changes in statutes, regulations, funding, staff, or other changes which could affect the administration and enforcement of this Agreement.

ARTICLE XV: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in appendix A.

Approved:

Richard F. Celeste,
Governor of Ohio.

Date: April 19, 1989.

Manuel Lujan,
Secretary of the Interior.

Date: December 11, 1989.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*, 48 Stat. 401.

6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

10. The Reservoir Salvage Act of 1960, as amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

12. Executive Order 11988 (May 24, 1977), for flood plain protection.

13. Executive Order 11990 (May 24, 1977), for wetlands protection.

14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

16. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa, *et seq.*

17. The Constitution of the United States.

18. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, as amended.

19. 30 CFR chapter VII.

20. The Constitution of the State of Ohio.

21. Ohio Revised Code, Chapter 1531.

22. Ohio Administrative Code, Chapter 1501.

[49 FR 14739, Apr. 13, 1984, as amended at 54 FR 51743, Dec. 18, 1989]

PART 936—OKLAHOMA

Sec.

936.1 Scope.

936.10 State regulatory program approval.

936.15 Approval of Oklahoma regulatory program amendments.

936.16 Required regulatory program amendments.

936.20 Approval of Oklahoma abandoned mine land reclamation plan.