

Issued in Kansas City, Missouri, on April 20, 2007.

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

[OH-252-FOR]

#### Ohio Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We (OSM) are announcing receipt of a proposed amendment to the Ohio regulatory program (the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposes to revise the Ohio Revised Code (ORC) regarding changes to the State's alternate bonding system (bond pool), funding for its regulatory and abandoned mine land programs and its bond pool, permitting procedures for determining the potential that proposed mine sites may or may not produce acid-mine drainage, and authorizes rule-making if Ohio becomes covered by a State programmatic general permit issued by the U.S. Army Corps of Engineers for the discharge of dredged or fill material into waters of the United States by coal mining operations. The amendment is primarily intended to satisfy a program condition codified in the Federal regulations. This amendment replaces the State's bond pool amendment that the State previously submitted and that OSM announced, and requested public comments on, in the **Federal Register** dated February 13, 2006 (71 FR 7480).

This document gives the times and locations that the Ohio program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), May 30, 2007. If

requested, we will hold a public hearing on the amendment on May 25, 2007. We will accept requests to speak at a hearing until 4 p.m., local time, on May 15, 2007.

**ADDRESSES:** You may submit comments, identified by OH-252-FOR, by any of the following methods:

- E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov). Include OH-252-FOR in the subject line of the message;

- Mail/Hand Delivery: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 4605 Morse Road, Room 102, Columbus, OH 43230. Telephone: 614-416-2238.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Docket:* You may review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Pittsburgh Field Division listed below:

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement  
4605 Morse Road, Room 102,  
Columbus, OH 43230 614-416-2238.  
E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

Mr. Scott Kell, Acting Chief, Division of Mineral Resources Management, Ohio Department of Natural Resources,  
2045 Morse Road, Bldg. H-2,  
Columbus, Ohio 43229, Telephone:  
(614) 265-6633.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Rieger, Chief, Pittsburgh Field Division, Telephone: (717) 782-4849, extension 11; or 614-416-2238; or 412-937-2153. E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the Ohio Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

## I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 16, 1982, **Federal Register** (47 FR 34687). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

## II. Description of the Proposed Amendment

By letter dated March 6, 2007, Ohio sent us a proposed amendment to its program (Administrative Record Number OH-2185-28) under SMCRA (30 U.S.C. 1201 *et seq.*). In its letter, Ohio stated that in December of 2006, the Ohio legislature passed House Bill 443, which is intended to address many of the issues of concern relative to Ohio's bond pool. Ohio proposes to revise the Ohio Revised Code (ORC) regarding changes to the State's alternate bonding system (bond pool), funding for its regulatory and abandoned mine land programs and its bond pool, permitting procedures for determining the potential that proposed mine sites may or may not produce acid-mine drainage, and authorizes rule-making if Ohio becomes covered by a State programmatic general permit issued by the U.S. Army Corps of Engineers for the discharge of dredged or fill material into waters of the United States by coal mining operations.

The amendment is intended to satisfy a program condition codified in the Federal regulations at 30 CFR 935.11(h), and is in response to OSM's letter of May 4, 2005, issued under provisions of 30 CFR 733.12(b). The program condition provides that Ohio must submit a program amendment that demonstrates how the alternative bonding system will assure timely reclamation at the site of all operations for which bond has been forfeited.

The State also acknowledged that its March 6, 2007, submittal is intended to replace the bond pool amendment that the State had submitted to OSM on December 19, 2005. We published and requested public comment on that previous bond pool amendment in the **Federal Register** on February 13, 2006 (71 FR 7480). Because the State has requested that the current amendment replace its previous amendment, we are hereby withdrawing the proposed rulemaking that we announced in the **Federal Register** on February 13, 2006.

In its March 6, 2007, submittal, Ohio also stated that it realizes that the passage of HB 443 is only the first step in its efforts to establish a bonding program in Ohio that is in accordance with the requirements of SMCRA. Ohio anticipates that significant amendments to the Ohio Administrative Code (OAC) will be needed in order to ensure that the final program amendment, in whole, is consistent with the relevant Federal regulations. To that end, Ohio stated, the Division of Mineral Resources Management (DMRM) has chartered several workgroups made up of internal and external stakeholders to develop final procedures and policies that will be used as a basis for revising the OAC to implement the provisions of HB 443. Ohio has requested OSM's technical assistance on these workgroups.

The current amendment provides the following specific revisions. In the descriptions below, we have not identified the numerous paragraph renumbering and citation referencing changes that result from the substantive changes proposed in this amendment.

#### 1. *ORC 1513.01(W) Definition of "Performance Security"*

This definition is new, and provides as follows:

(W) "Performance security" means a form of financial assurance, including, without limitation, a surety bond issued by a surety licensed to do business in this state; an annuity; cash; a negotiable certificate of deposit; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States, this state, or a municipal corporation in this state; a trust fund of which the state is named a conditional beneficiary; or other form of financial guarantee or financial assurance that is acceptable to the chief.

In addition to the change quoted above, the State has amended or deleted terms throughout ORC Chapter 1513 in which the word "bond" appears, such as in the terms "performance bond" and "bond coverage," and has replaced those terms with the term "performance security."

#### 2. *ORC 1513.02(E)(3) Responsibilities of the DMRM*

This provision is being amended by deleting the phrase "coal mining administration and reclamation reserve fund created in section 1513.181 of the Revised Code" and revising that phrase to read: "Reclamation forfeiture fund created in section 1513.18 of the Revised Code."

#### 3. *ORC 1513.02(J) Responsibilities of DMRM*

This provision is new, and provides as follows:

(J) If this state becomes covered by a state programmatic general permit issued by the United States Army Corps of Engineers for the discharge of dredged or fill material into the waters of the United States by operations that conduct surface and underground coal mining and reclamation operations and the restoration of abandoned mine lands, the chief may establish programs and adopt rules and procedures designed to implement the terms, limitations, and conditions of the permit. The purpose of the programs, rules, and procedures shall be to enable the state to reduce or eliminate duplicative state and federal project evaluation, simplify the regulatory approval process, provide environmental protection for aquatic resources that is equivalent to Federal protection, and satisfy the requirements of the United States Army Corps of Engineers regulatory program under which the permit is issued and that is established under section 404 of the "Federal Water Pollution Control Act," 86 Stat. 48 (1972), 33 U.S.C. 1344, as amended by the "Clean Water Act of 1977," 91 Stat. 1600, 33 U.S.C. 1344; section 10 of the "Rivers and Harbors Act of 1899," 30 Stat. 1151, 33 U.S.C. 403; and section 103 of the "Marine Protection, Research, and Sanctuaries Act of 1972," 86 Stat. 1055, 33 U.S.C. 1413.

In its submittal, Ohio stated that "if" a General Permit is issued for Ohio by the U.S. Army Corps of Engineers regarding discharges into jurisdictional waters of United States from surface/ underground coal mining operations and abandoned mine land reclamation (AML) projects, then DMRM "may" establish programs, adopt rules and develop procedures to implement the General Permit.

#### 4. *ORC 1513.07(B)(1) Permit Application; Permit Fee*

Paragraph (B)(1) is proposed to be deleted in its entirety, and provides as follows.

(B)(1) Each application for a coal mining and reclamation permit or renewal of such a permit shall be accompanied by a permit or renewal fee in an amount equal to the product of seventy-five dollars multiplied by the number of acres, estimated in the application, that will comprise the area of land to be affected within the permit or

renewal period by the coal mining operation for which the permit or renewal is requested.

#### 5. *ORC 1513.07(B)(1)(o) Permit Application; Statement of Acid Generating Potential and Acid Neutralizing Potential*

The following new language is added at the end of this existing paragraph:

If the test borings or core samplings from the permit area indicate the existence of potentially acid forming or toxic forming quantities of sulfur in the coal or overburden to be disturbed by mining, the application also shall include a statement of the acid generating potential and the acid neutralizing potential of the rock strata to be disturbed as calculated in accordance with the calculation method established under section 1513.075 of the Revised Code or with another calculation method.

In its submittal, Ohio stated that this new provision directs applicants to provide an Acid Base Accounting statement pursuant to methodology prescribed in ORC 1513.075, or another method.

#### 6. *ORC 1513.07(E)(8) Permit Application; Monitoring and Recordkeeping Related to Potential Acidity and Neutralization Potential*

This paragraph is new and provides as follows:

(8) In the case of the issuance of a permit that involves a conflict of results between various methods of calculating potential acidity and neutralization potential for purposes of assessing the potential for acid mine drainage to occur at a mine site, the permit shall include provisions for monitoring and record keeping to identify the creation of unanticipated acid water at the mine site. If the monitoring detects the creation of acid water at the site, the permit shall impose on the permittee additional requirements regarding mining practices and site reclamation to prevent the discharge of acid mine drainage from the mine site. As used in division (E)(8) of this section, "potential acidity" and "neutralization potential" have the same meanings as in section 1513.075 of the Revised Code.

In its submittal, Ohio stated that this new paragraph provides for additional monitoring for Acid Mine Drainage if there is a conflict concerning the assessment of the potential for a mine to discharge AMD. In the event unanticipated AMD occurs during mining and reclamation, additional mining practices and reclamation shall be required in order to prevent AMD discharges.

#### 7. *ORC 1513.075 Definitions and Calculating Potential Acidity and Neutralization Potential*

This provision is new and provides as follows:

Sec. 1513.075. (A) As used in this section:

(1) "Potential acidity" means a laboratory measurement of the amount of acidity that could be produced by material in a rock strata proposed to be disturbed by mining and that is expressed by a numeral indicating the number of tons of that acidity that would be present in one thousand tons of disturbed overburden.

(2) "Neutralization potential" means a laboratory measurement of the alkalinity of a rock strata expressed as the amount of acidity that would be neutralized by material proposed to be disturbed by mining and that is expressed by a numeral indicating the number of tons of that alkalinity that would be present in one thousand tons of disturbed overburden.

(3) "Test borings or core samplings" refer to test borings or core samplings performed on rock strata in an area proposed to be covered by a permit for a coal mining operation, the results of which must be stated in the permit application in accordance with division (B)(1)(o) of section 1513.07 of the Revised Code.

(B) For purposes of the determination of the chief of the division of mineral resources management regarding whether to approve an application for a permit for a coal mining operation based on criteria established in divisions (E)(2)(a) and (c) of section 1513.07 of the Revised Code and related performance standards established in division (A)(10) of section 1513.16 of the Revised Code, the potential acidity and the neutralization potential of the rock strata that would be disturbed under the permit may be calculated in accordance with this section.

(C) The measurement of potential acidity may be based on laboratory analyses of the sulfur content of the coal and overburden to be disturbed by mining. If the results of test borings or core samplings include laboratory analyses of the pyritic form of sulfur, the applicant may base the calculation of the potential acidity for the area on the pyritic sulfur content of the coal and overburden to be disturbed by mining rather than on the total sulfur content.

(D) The tons of rock in the area represented by each core hole resulting from test boring or core sampling may be estimated and used to calculate the tons of potential acidity and tons of neutralization potential for each rock stratum. The sum of those values across the proposed permit area may be used to calculate the site's overall neutralization potential and potential acidity.

(E) The proposed permit area may not be considered to have the potential to create acid or other toxic mine drainage if either of the following applies:

(1) The numeral that indicates the site's overall neutralization potential divided by the numeral that indicates the site's overall potential acidity results in a quotient that is equal to or greater than two.

(2) The numeral that indicates the neutralization potential subtracted from the numeral that indicates the potential acidity results in a remainder that is equal to or less than either of the following:

(a) Negative five in the case that the total sulfur content of rock strata is used to calculate potential acidity;

(b) Negative ten in the case that the pyritic sulfur content of rock strata is used to calculate potential acidity.

In its submittal, Ohio stated that this new provision defines certain terms relative to potential acidity and neutralization potential of strata overlying the coal to be mined. The provision also provides for calculation of proposed mining operations' potential to create acid or toxic drainage based on specific criteria and indicates that proposed mining areas not meeting certain numeric criteria "may" not be considered as potential acid/toxic producers.

#### 8. ORC 1513.08 Requirement to File a Performance Security

This provision is amended by deleting, adding and rearranging language relating to performance security. Much new language is added to this provision, and the provision is reorganized to accommodate the new language. As amended this section provides as follows:

Sec. 1513.08. (A) After a coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall file with the chief of the division of mineral resources management, on a form prescribed and furnished by the chief, the performance security required under this section.

(B) Using the information contained in the permit application; the requirements contained in the approved permit and reclamation plan; and, after considering the topography, geology, hydrology, and revegetation potential of the area of the approved permit, the probable difficulty of reclamation; the chief shall determine the estimated cost of reclamation under the initial term of the permit if the reclamation has to be performed by the division of mineral resources management in the event of forfeiture of the performance security by the applicant. The chief shall send written notice of the amount of the estimated cost of reclamation by certified mail to the applicant. The applicant shall send written notice to the chief indicating the method by which the applicant will provide the performance security pursuant to division (C) of this section.

(C) The applicant shall provide the performance security in an amount using one of the following:

(1) If the applicant elects to provide performance security without reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code, the amount of the estimated cost of reclamation as determined by the chief under division (B) of this section for the increments of land on which the operator will conduct a coal mining and reclamation operation under the initial term of the permit as indicated in the application;

(2) If the applicant elects to provide performance security together with reliance on the reclamation forfeiture fund through

payment of the additional tax on the severance of coal that is levied under division (A)(8) of section 5749.02 of the Revised Code, an amount of twenty-five hundred dollars per acre of land on which the operator will conduct coal mining and reclamation under the initial term of the permit as indicated in the application. However, in order to be eligible to provide performance security in accordance with division (C)(2) of this section, an applicant shall have held a permit issued under this chapter for any coal mining and reclamation operation for a period of not less than five years. In the event of forfeiture of performance security that was provided in accordance with division (C)(2) of this section, the difference between the amount of that performance security and the estimated cost of reclamation as determined by the chief under division (B) of this section shall be obtained from money in the reclamation forfeiture fund as needed to complete the reclamation.

The performance security provided under division (C) of this section for the entire area to be mined under one permit issued under this chapter shall not be less than ten thousand dollars. The performance security shall cover areas of land affected by mining within or immediately adjacent to the permitted area, so long as the total number of acres does not exceed the number of acres for which the performance security is provided. However, the authority for the performance security to cover areas of land immediately adjacent to the permitted area does not authorize a permittee to mine areas outside an approved permit area. As succeeding increments of coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the chief additional performance security to cover the increments in accordance with this section. If a permittee intends to mine areas outside the approved permit area, the permittee shall provide additional performance security in accordance with this section to cover the areas to be mined.

An applicant shall provide performance security in accordance with division (C)(1) of this section in the full amount of the estimated cost of reclamation as determined by the chief for a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine. A permittee shall provide the performance security not later than one year after the effective date of this amendment for a permitted coal preparation plant or coal refuse disposal area that is in existence on the effective date of this amendment and that is not located within a permitted area of a mine.

(D) A permittee's liability under the performance security shall be limited to the obligations established under the permit, which include completion of the reclamation plan in order to make the land capable of supporting the postmining land use that was approved in the permit. The period of liability under the performance security shall be for the duration of the coal mining and reclamation operation and for a period coincident with the operator's responsibility

for revegetation requirements under section 1513.16 of the Revised Code.

(E) The amount of the estimated cost of reclamation determined under division (B) of this section and the amount of a permittee's performance security provided in accordance with division (C)(1) of this section may be adjusted by the chief as the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases. If the performance security was provided in accordance with division (C)(2) of this section and the chief has issued a cessation order under division (D)(2) of section 1513.02 of the Revised Code for failure to abate a violation of the contemporaneous reclamation requirement under division (A)(15) of section 1513.16 of the Revised Code, the chief may require the permittee to increase the amount of performance security from twenty-five hundred dollars per acre of land to five thousand dollars per acre of land.

The chief shall notify the permittee, each surety, and any person who has a property interest in the performance security and who has requested to be notified of any proposed adjustment to the performance security. The permittee may request an informal conference with the chief concerning the proposed adjustment, and the chief shall provide such an informal conference.

If the chief increases the amount of performance security under this division, the permittee shall provide additional performance security in an amount determined by the chief. If the chief decreases the amount of performance security under this division, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount of reduction to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief.

(F) A permittee may request a reduction in the amount of the performance security by submitting to the chief documentation proving that the amount of the performance security provided by the permittee exceeds the estimated cost of reclamation if the reclamation would have to be performed by the division in the event of forfeiture of the performance security. The chief shall examine the documentation and determine whether the permittee's performance security exceeds the estimated cost of reclamation. If the chief determines that the performance security exceeds that estimated cost, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief. Adjustments in the amount of performance security under this division shall not be considered release of performance security and are not subject to section 1513.16 of the Revised Code.

(G) If the performance security is a bond, it shall be executed by the operator and a corporate surety licensed to do business in this state. If the performance security is a cash deposit or negotiable certificates of deposit of a bank or savings and loan association, the bank or savings and loan association shall be licensed and operating in this state. The cash deposit or market value

of the securities shall be equal to or greater than the amount of the performance security required under this section. The chief shall review any documents pertaining to the performance security and approve or disapprove the documents. The chief shall notify the applicant of the chief's determination.

(H) If the performance security is a bond, the chief may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the chief the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.

(I) Performance security provided under this section may be held in trust, provided that the state is the conditional beneficiary of the trust and the custodian of the performance security held in trust is a bank, trust company, or other financial institution that is licensed and operating in this state. The chief shall review the trust document and approve or disapprove the document. The chief shall notify the applicant of the chief's determination.

(J) If a surety, bank, savings and loan association, trust company, or other financial institution that holds the performance security required under this section becomes insolvent, the permittee shall notify the chief of the insolvency, and the chief shall order the permittee to submit a plan for replacement performance security within thirty days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(1) of this section, the permittee shall provide the replacement performance security within ninety days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(2) of this section, the permittee shall provide the replacement performance security within one year after receipt of notice from the chief, and, for a period of one year after the permittee's receipt of notice from the chief or until the permittee provides the replacement performance security, whichever occurs first, money in the reclamation forfeiture fund shall be the permittee's replacement performance security in an amount not to exceed the estimated cost of reclamation as determined by the chief.

(K) A permittee's responsibility for repairing material damage and replacement of water supply resulting from subsidence may be satisfied by liability insurance required under this chapter in lieu of the permittee's performance security if the liability insurance policy contains terms and conditions that specifically provide coverage for repairing material damage and replacement of water supply resulting from subsidence.

(L) If the performance security provided in accordance with this section exceeds the estimated cost of reclamation, the chief may authorize the amount of the performance security that exceeds the estimated cost of reclamation together with any interest or other earnings on the performance security to be paid to the permittee.

In its submittal, Ohio summarized the amendments at ORC 1513.08 as follows.

Ohio stated that ORC 1513.08(B) requires the Chief of DMRM to determine the cost of reclamation, on a case by case basis, for all permit applications submitted. The cost of such reclamation shall be determined as if forfeiture of the performance security had occurred and DMRM is required to perform the reclamation. This determination shall be a basis for the amount of performance security, and shall be made subsequent to application approval, but prior to permit issuance. DMRM notifies the applicant via certified mail of the cost of performance security. Ohio stated that the applicant then responds and indicates the method of providing performance security at ORC 1513.08(C):

(C)(1) Full cost, incrementally, under the initial permit term, or

(C)(2) \$2,500/acre on land under initial permit term.

If choosing option (C)(2), the company will pay additional tax into the bond pool in the amount provided by ORC 5749.02(A)(8).

Ohio stated that if performance security is forfeited, the bond pool may be used to supplement the \$2,500/acre flat bond rate up to the Chief's determination of cost pursuant to ORC 1513.08(B). Only applicants holding permits in Ohio for at least 5 years have option (C)(2).

The minimum performance security shall be \$10,000 for any one permit. Existing (permitted) coal prep plants/refuse disposal facilities not within a permit of a mine must provide full cost performance security within one year of the effective date of the law.

Ohio stated that under ORC 1513.08(D), performance security liability is limited to obligations established under the permit.

Ohio stated that under ORC 1513.08(E), the Chief's estimated cost of reclamation and amount of performance security may be adjusted by DMRM based upon cost increases/decreases. Operators choosing the flat rate/bond pool option may have the bond rate increased to \$5,000/acre if a failure to abate cessation order is issued due to non-contemporaneous reclamation.

Ohio stated that performance security adjustments require notification to permittee, surety and any person who has a property interest in the performance security upon request. A permittee may request an informal conference regarding a proposed rate adjustment.

Ohio stated that ORC 1513.08(F), provides for a permittee to request reduction in performance security based upon documentation proving actual cost

of reclamation to the Division is less than the amount posted.

Ohio stated that under ORC 1513.08 (G), if performance security is issued in the form of a bond, the surety must be licensed to conduct business in Ohio. If the performance security is cash deposit or a certificate of deposit of a bank or savings and loan association, that business shall be licensed and operating in Ohio. Ohio further stated that the Chief is required to review performance security documents and approve of their use.

Ohio stated that ORC 1513.08(I) provides criteria for performance security held in trust. The Chief must review and approve trust documents.

Ohio stated that ORC 1513.08 (J) provides the following procedures for holder of performance security insolvency: Permittee notification to DMRM; Plan for replacement of performance; security; Replacement of full cost performance security in 90 days; Replacement of flat rate performance security in one year.

Ohio stated that ORC 1513.08(K) provides that subsidence damages and replacement of subsidence damaged water supplies may be satisfied by liability insurance in lieu of performance security. Such insurance specifically must address such damages.

Ohio stated that ORC 1513.08(L) provides that performance security exceeding the cost of reclamation may be returned to the operator along with interest or other earnings.

#### 9. ORC 1513.081 DMRM Priority Lien

This provision is new and provides as follows:

Sec. 1513.081. (A) If an operator becomes insolvent, the division of mineral resources management shall have a priority lien in front of all other interested creditors against the assets of that operator for the amount of any reclamation that is required as a result of the operator's mining activities. The chief of the division of mineral resources management shall file a statement in the office of the county recorder of each county in which the mined land lies of the estimated cost to reclaim the land. The estimated cost to reclaim the land shall include the direct and indirect costs of the development, design, construction, management, and administration of the reclamation. The statement shall constitute a lien on the assets of the operator as of the date of the filing. The lien shall continue in force so long as any portion of the lien remains unpaid or until the chief issues a certificate of release of the lien. If the chief issues a certificate of release of the lien, the chief shall file the certificate of release in the office of each applicable county recorder.

(B) The chief promptly shall issue a certificate of release of a lien under any of the following circumstances:

(1) Upon the repayment in full of the money that is necessary to complete the reclamation;

(2) Upon the transfer of an existing permit that includes the areas of the operation for which reclamation was not completed to a different operator;

(3) Any other circumstance that the chief determines to be in the best interests of the state.

(C) The chief may modify the amount of a lien under this section. If the chief modifies a lien, the chief shall file a statement in the office of the county recorder of each applicable county of the new amount of the lien.

(D) The chief may authorize an agent to hold a certificate of release in escrow for a period not to exceed one hundred eighty days for the purpose of facilitating the transfer of unreclaimed mine land.

(E) All money from the collection of liens under this section shall be deposited in the state treasury to the credit of the reclamation forfeiture fund created in section 1513.18 of the Revised Code.

In its submittal, Ohio stated that ORC 1513.081(A) provides for DMRM's priority lien ahead of other creditors in event of operator insolvency. Lien can be used to recover the cost of reclamation including all associated administrative costs. Lien must be filed by DMRM in the appropriate county recorder's office. Ohio stated that subsection (B) provides for the release of a filed lien and/or adjustment.

#### 10. ORC 1513.16(F)(8)(a) Alternative Financial Security (AFS)

This provision is new and provides as follows:

(8)(a) Except as provided in division (F)(8)(c) of this section, if the chief determines that a permittee is responsible for mine drainage that requires water treatment after reclamation is completed under the terms of the permit or that a permittee must provide an alternative water supply after reclamation is completed under the terms of the permit, the permittee shall provide alternative financial security in an amount determined by the chief prior to the release of the remaining portion of performance security under division (F)(3)(c) of this section. The alternative financial security shall be in an amount that is equal to or greater than the present value of the estimated cost over time to develop and implement mine drainage plans and provide water treatment or in an amount that is necessary to provide and maintain an alternative water supply, as applicable. The alternative financial security shall include a contract, trust, or other agreement or mechanism that is enforceable under law to provide long-term water treatment or a long-term alternative water supply, or both.

(b) The chief shall adopt rules in accordance with Chapter 119 of the Revised Code that are necessary for the administration of division (F)(8)(a) of this section.

(c) Division (F)(8)(a) of this section does not apply while the chief's determination of a permittee's responsibility under that division is the subject of a good faith administrative or judicial appeal contesting the validity of the determination. If after completion of the appeal there is an enforceable administrative or judicial decision affirming or modifying the chief's determination, the permittee shall provide the alternative financial security in an amount established in the administrative or judicial decision.

In its submittal, Ohio stated that ORC 1513.16(F)(8) provides provisions for an Alternative Financial Security (AFS) to address mine drainage treatment or alternative water supply replacement after reclamation is completed. An AFS is to be provided prior to release of remaining bond in the form of a contract, trust or other agreements enforceable under law to provide long-term water treatment or alternative supply. Subsection (b) requires the Chief to adopt new rules to administer the AFS.

#### 11. ORC 1513.16(F)(9) Termination of Jurisdiction

This provision is new and provides as follows:

(9) Final release of the performance security in accordance with division (F)(3)(c) of this section terminates the jurisdiction of the chief under this chapter over the reclaimed site of a surface coal mining and reclamation operation or applicable portion of an operation. However, the chief shall reassert jurisdiction over such a site if the release was based on fraud, collusion, or misrepresentation of a material fact and the chief, in writing, demonstrates evidence of the fraud, collusion, or misrepresentation. Any person with an interest that is or may be adversely affected by the chief's determination may appeal the determination to the reclamation commission in accordance with section 1513.13 of the Revised Code.

In its submittal, Ohio stated that this provision provides for the final release of performance security and terminates the Division's jurisdiction unless certain specific issues are subsequently found to be present.

#### 12. ORC 1513.171 Coal Reclamation Tax Credit

This provision is new, and provides as follows:

Sec. 1513.171. (A) For the purpose of claiming a credit under section 5749.11 of the Revised Code, an operator with a valid permit issued under section 1513.07 of the Revised Code may submit an application to the chief of the division of mineral resources management to perform reclamation on land or water resources that are not within the area of the applicant's permit and that have been adversely affected by past coal mining for which the performance security was

forfeited. The chief shall provide the application form. The application shall include all of the following:

- (1) The operator's name, address, and telephone number;
- (2) The valid permit number of the operator;
- (3) An identification of the area or areas to be reclaimed;
- (4) An identification of the owner of the land;
- (5) A reclamation plan that describes the work to be done to reclaim the land or water resources. The plan shall include a description of how the plan is consistent with local physical, environmental, and climatological conditions and the measures to be taken during the reclamation to ensure the protection of water systems.
- (6) An estimate of the total cost of the reclamation;
- (7) An estimate of the timetables for accomplishing the reclamation;
- (8) Any other requirements that the chief prescribes by rule.

The chief shall approve, disapprove, or approve with modifications the application concerning the proposed reclamation work. If the chief approves the application, the applicant may commence reclamation in accordance with the timetables included in the application. Upon the completion of the reclamation to the satisfaction of the chief, the chief shall issue a numbered reclamation tax credit certificate showing the amount of the credit and the identity of the recipient. Prior to the close of the fiscal quarter in which the tax credit certificate is issued, the chief shall certify to the tax commissioner the amount of the credit and the identity of the recipient.

(B) The chief shall determine the amount of the credit in accordance with this section and rules adopted under it. The amount of the credit shall be equal to the cost that the division of mineral resources management would have expended from the reclamation forfeiture fund created in section 1513.18 of the Revised Code to complete the reclamation.

(C) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that are necessary to administer this section. The rules shall establish all of the following:

- (1) A procedure that the chief shall use to determine the amount of the credit issued under this section;
- (2) A procedure by which the chief may obtain consent of the owners of land or water resources to allow reclamation work for purposes of this section;
- (3) A procedure for delivery of notice to the owners of land or water resources on which the reclamation work is to be performed. The rules shall require the notice to include the date on which the reclamation work is scheduled to begin.

In its submittal, Ohio stated that this provision establishes procedures for claiming tax credit pursuant to section 5749.11 of the ORC. A coal mine operator may submit an application to reclaim another mined area with forfeited bond. Once reclamation is

completed, the Chief shall issue numbered tax credits in the amount of the credit. Under subsection (B), the Chief shall determine the amount of the credit, equivalent to the cost of reclamation to the division if the work had been completed by the state. Subsection (C) requires the Chief to adopt rules to administer and establish procedures to address: Amount of tax credit; Consent of landowner or owner of the water resources to conduct reclamation; and Notification to landowner of reclamation work and schedule.

### 13. ORC 1513.18 Reclamation Forfeiture Fund

Subsection (B) is amended in the first sentence by deleting the phrase "any moneys transferred to it under this division from the unreclaimed lands fund created in section 1513.30." In place of that deleted language, the following phrase is added: "All money from the collection of liens under section 1513.081." The first sentence in subsection (B) is also amended by identifying that funds derived from certain fines will be added to the reclamation forfeiture fund. Language concerning the Chief's management of the fund is deleted. Language concerning the transfer of funds from the unreclaimed lands fund is deleted. Language concerning use of money from the reclamation forfeiture fund to cover administrative expenses has been added. As amended, subsection (B) provides as follows:

(B) The fund also shall consist of all money from the collection of liens under section 1513.081 of the Revised Code, any moneys transferred to it under section 1513.181 of the Revised Code from the coal mining and reclamation reserve fund created in that section, fines collected under division (E) of section 1513.02 and section 1513.99 of the Revised Code, fines collected for a violation of section 2921.31 of the Revised Code that, prior to July 1, 1996, would have been a violation of division (G) of section 1513.17 of the Revised Code as it existed prior to that date, and moneys collected and credited to it pursuant to section 5749.02 of the Revised Code. Disbursements from the fund shall be made by the chief in accordance with division (D) of this section for the purpose of reclaiming areas that an operator has affected by mining and failed to reclaim under a coal mining and reclamation permit issued under this chapter or under a surface mining permit issued under Chapter 1514. of the Revised Code.

The chief may expend moneys from the fund to pay necessary administrative costs, including engineering and design services, incurred by the division of mineral resources management in reclaiming these areas. The chief also may expend moneys from the fund to pay necessary administrative costs of the

reclamation forfeiture fund advisory board created in section 1513.182 of the Revised Code as authorized by the board under that section. Expenditures from the fund to pay such administrative costs need not be made under contract.

Subsection (C) is amended by adding the phrase "or trustee, if the performance security is held in trust," immediately following the words "or a contractor hired by the surety."

Subsection (D) is amended by amending the existing language, codifying the existing language as paragraph (1), and by adding three new paragraphs. As amended, subsection (D) provides as follows:

(D)(1) The chief shall expend money credited to the reclamation forfeiture fund from the forfeiture of the performance security applicable to an area of land or under section 1513.181 of the Revised Code the amount of money to pay for the cost of the reclamation of the land.

(2) If the performance security for the area of land was provided under division (C)(1) of section 1513.08 of the Revised Code, the chief shall use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit issued under this chapter.

(3) If the performance security for the area of land was provided under division (C)(2) of section 1513.08 of the Revised Code, the chief shall use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit issued under this chapter. If the money credited to the reclamation forfeiture fund from the forfeiture of the performance security provided under division (C)(2) of section 1513.08 of the Revised Code is not sufficient to complete the reclamation, the chief shall notify the reclamation forfeiture fund advisory board of the amount of the insufficiency. The chief may expend money credited to the reclamation forfeiture fund under section 5749.02 of the Revised Code or transferred to the fund under section 1513.181 of the Revised Code to complete the reclamation. The chief shall not expend money from the fund in an amount that exceeds the difference between the amount of the performance security provided under division (C)(2) of section 1513.08 of the Revised Code and the estimated cost of reclamation as determined by the chief under divisions (B) and (E) of that section.

(4) Money from the reclamation forfeiture fund shall not be used for reclamation of land or water resources affected by material damage from subsidence, mine drainage that requires extended water treatment after reclamation is completed under the terms of the permit, or coal preparation plants or coal refuse disposal areas not located within a permitted area of a mine if performance security for the area of land was provided under division (C)(2) of section 1513.08 of the Revised Code.

Subsection (F) is amended in the first sentence by adding the following proviso to the beginning of the sentence: "Except as otherwise provided in division (H) of this section."

New subsection (H) is added to provide as follows:

(H) All investment earnings of the fund shall be credited to the fund and shall be used only for the reclamation of land for which performance security was provided under division (C)(2) of section 1513.08 of the Revised Code.

#### 14. *ORC 1513.181 Coal Mining Administration and Reclamation Reserve Fund*

This provision is amended by deleting from the first paragraph, third sentence, the following phrase: "Or by surface mining under a surface mining permit issued under Chapter 1514 of the Revised Code." Also, the second paragraph, concerning the identification of fines collected that would be added to the coal mining administration and reclamation reserve fund is deleted. That deleted paragraph is replaced by the following new paragraph:

If the director of natural resources determines it to be necessary, the director may request the controlling board to transfer an amount of money from the coal mining administration and reclamation reserve fund to the unreclaimed lands fund created in section 1513.30 of the Revised Code.

#### 15. *ORC 1513.182 Reclamation Forfeiture Fund Advisory Board*

This provision is new, and provides as follows:

Sec. 1513.182. (A) There is hereby created the reclamation forfeiture fund advisory board consisting of the director of natural resources, the director of insurance, and seven members appointed by the governor with the advice and consent of the senate. Of the governor's appointments, one shall be a certified public accountant, one shall be a registered professional engineer with experience in reclamation of mined land, two shall represent agriculture, agronomy, or forestry, one shall be a representative of operators of coal mining operations that have valid permits issued under this chapter and that have provided performance security under division (C)(1) of section 1513.08 of the Revised Code, one shall be a representative of operators of coal mining operations that have valid permits issued under this chapter and that have provided performance security under division (C)(2) of section 1513.08 of the Revised Code, and one shall be a representative of the public.

Of the original members appointed by the governor, two shall serve an initial term of two years, three an initial term of three years, and two an initial term of four years. Thereafter, terms of appointed members shall be for four years, with each term ending on the same date as the original date of appointment. An appointed member shall

hold office from the date of appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the same manner as original appointments. A member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first. The governor may remove an appointed member of the board for misfeasance, nonfeasance, or malfeasance.

The directors of natural resources and insurance shall not receive compensation for serving on the board, but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the board. The members appointed by the governor shall receive per diem compensation fixed pursuant to division (J) of section 124.15 of the Revised Code and reimbursement for the actual and necessary expenses incurred in the performance of their duties.

(B) The board annually shall elect from among its members a chairperson, a vice-chairperson, and a secretary to record the board's meetings.

(C) The board shall hold meetings as often as necessary as the chairperson or a majority of the members determines.

(D) The board shall establish procedures for conducting meetings and for the election of its chairperson, vice-chairperson, and secretary.

(E) The board shall do all of the following:

(1) Review the deposits into and expenditures from the reclamation forfeiture fund created in section 1513.18 of the Revised Code;

(2) Retain periodically a qualified actuary to perform an actuarial study of the reclamation forfeiture fund;

(3) Based on an actuarial study and as determined necessary by the board, adopt rules in accordance with Chapter 119. of the Revised Code to adjust the rate of the tax levied under division (A)(8) of section 5749.02 of the Revised Code and the balance of the reclamation forfeiture fund that pertains to that rate;

(4) Evaluate any rules, procedures, and methods for estimating the cost of reclamation for purposes of determining the amount of performance security that is required under section 1513.08 of the Revised Code; the collection of forfeited performance security; payments to the reclamation forfeiture fund; reclamation of sites for which operators have forfeited the performance security; and the compliance of operators with their reclamation plans;

(5) Provide a forum for discussion of issues related to the reclamation forfeiture fund and the performance security that is required under section 1513.08 of the Revised Code;

(6) Submit a report biennially to the governor that describes the financial status of the reclamation forfeiture fund and the adequacy of the amount of money in the fund to accomplish the purposes of the fund and that may discuss any matter related to the

performance security that is required under section 1513.08 of the Revised Code;

(7) Make recommendations to the governor, if necessary, of alternative methods of providing money for or using money in the reclamation forfeiture fund and issues related to the reclamation of land or water resources that have been adversely affected by past coal mining for which the performance security was forfeited;

(8) Adopt rules in accordance with Chapter 119. of the Revised Code that are necessary to administer this section.

In its submittal, Ohio stated that ORC 1513.182 creates the reclamation forfeiture fund advisory board, establishes specific terms of appointments and per diem compensation, and establishes the duties of the board.

#### 16. *ORC 1513.29 Council on Unreclaimed Strip Mined Lands*

This existing provision is amended in the third paragraph by deleting the requirement to hold "at least four regular quarterly meetings each year," and amending the provision to authorize meetings "as necessary." The fourth paragraph is amended by deleting reference to the "strip mining reclamation fund," and in its place, adding reference to the "reclamation forfeiture fund created in section 1513.18 of the Revised Code." The fifth paragraph is amended by deleting the phrase "of the division of mineral resources management."

#### 17. *ORC 1513.30 Unreclaimed Strip Mined Lands Fund*

This provision is amended by deleting the following requirement to provide public notice:

At least two weeks before any meeting of the council on unreclaimed strip mined lands at which the chief will submit a project proposal, a project area will be selected, or the boundaries of a project area will be determined, the chief shall mail notice by first class mail to the board of county commissioners of the county and the board of township trustees of the township in which the proposed project lies and the chief executive and the legislative authority of each municipal corporation within the proposed project area. The chief also shall give reasonable notice to the news media in the county where the proposed project lies.

ORC 1513.30 is also amended by deleting a paragraph that authorized the controlling board to transfer excess funds from the oil and gas well fund.

ORC 1513.30 is amended by adding a new paragraph to authorize the controlling board to transfer money from the fund to the coal mining administration and reclamation reserve fund. The new paragraph provides as follows:

If the director of natural resources determines it to be necessary, the director may request the controlling board to transfer an amount of money from the fund to the coal mining administration and reclamation reserve fund created in section 1513.181 of the Revised Code.

**18. ORC 1513.37 Abandoned Mine Reclamation Fund**

This provision is amended at subsection (C)(3) by adding the words "performance security, or other form of financial guarantee" in three places following the word "bond."

**19. ORC 1513.371 Mined Land Set Aside Fund**

This provision is new and provides as follows:

There is hereby created in the state treasury the mined land set aside fund consisting of grants made by the United States secretary of the interior from the federal abandoned mine reclamation fund pursuant to section 402 of the "Surface Mining Control and Reclamation Act of 1977," 91 Stat. 445, 30 U.S.C. 1232. The chief of the division of mineral resources management shall administer the fund. Money in the fund shall be used solely for the purposes specified in divisions (B)(1) to (4) of section 1513.37 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

**20. ORC 5749.02 Excise Tax on Severance of Natural Resources**

Subsection (A) is amended at paragraph (A)(1) by increasing the severance tax levied on coal from "Seven" cents to "Ten" cents.

Subsection (A) is further amended by adding new paragraphs (8) and (9). New paragraph (A)(8) levies a tax of 14 cents per ton of coal to fund the bond pool, and paragraph (A)(9) levies a tax of one and two tenths cents per ton of coal. New paragraphs (A)(8) and (A)(9) provide as follows:

(8) Except as otherwise provided in this division or in rules adopted by the reclamation forfeiture fund advisory board under section 1513.182 of the Revised Code, an additional fourteen cents per ton of coal produced from an area under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code for which the performance security is provided under division (C)(2) of section 1513.08 of the Revised Code. If at the end of a fiscal biennium the balance of the reclamation forfeiture fund created in section 1513.18 of the Revised Code is equal to or greater than ten million dollars, the rate levied shall be twelve cents per ton. If at the end of a fiscal biennium the balance of the fund is at least five million dollars, but less than ten million dollars, the rate levied shall be fourteen cents per ton. If at the end of a fiscal biennium the balance of the fund is less than five million dollars, the rate levied shall be sixteen cents per ton. Not later than thirty days after the

close of a fiscal biennium, the chief of the division of mineral resources management shall certify to the tax commissioner the amount of the balance of the reclamation forfeiture fund as of the close of the fiscal biennium. Any necessary adjustment of the rate levied shall take effect on the first day of the following January and shall remain in effect during the calendar biennium that begins on that date.

(9) An additional one and two-tenths cents per ton of coal mined by surface mining methods.

In its submittal, Ohio stated that ORC 5749.02(A) has been amended by increasing the coal severance tax from seven cents to 10 cents per ton. New paragraph (8) provides that if performance security is provided by way of the bond pool and \$2,500 flat rate bond, then an additional 14 cents per ton is required by those operations.

If the forfeiture fund balance exceeds \$10 million at the end of a fiscal biennium, the rate is reduced to 12 cents per ton. If the balance is greater than \$5 million but less than \$10 million, 14 cents per ton is required. If the balance is less than \$5 million, 16 cents per ton is required.

Ohio stated that paragraph (9) provides for an additional one and two tenths cents per ton at all surface coal mines.

Subsection (B) is amended by changing the allocation values of the moneys received under the taxes levied under ORC 5749.02(A)(1), specifying that all of the moneys received under paragraph (A)(8) will be credited to the reclamation forfeiture fund, and specifying that all of the moneys received under paragraph (A)(9) will be credited to the unreclaimed lands fund. Paragraph (C), concerning a tax levied for the purpose of crediting moneys to the reclamation forfeiture fund is deleted. Paragraph (D) is amended by deleting the first paragraph (including its designation as (D)) concerning a tax levied for the purpose of crediting moneys to the reclamation forfeiture fund, and revising the second paragraph by adding language concerning adjustments to be made to the tax levied under paragraph (A)(8) based upon the balance of the reclamation forfeiture fund at the close of any fiscal year. As amended, ORC 5749.02(B) provides as follows:

(B) Of the moneys received by the treasurer of state from the tax levied in division (A)(1) of this section, four and seventy-six-hundredths per cent shall be credited to the geological mapping fund created in section 1505.09 of the Revised Code, eighty and ninety-five-hundredths per cent shall be credited to the coal mining administration and reclamation reserve fund created in section 1513.181 of the Revised Code, and

fourteen and twenty-nine-hundredths per cent shall be credited to the unreclaimed lands fund created in section 1513.30 of the Revised Code.

Fifteen per cent of the moneys received by the treasurer of state from the tax levied in division (A)(2) of this section shall be credited to the geological mapping fund and the remainder shall be credited to the unreclaimed lands fund.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(3) and (4) of this section, seven and five-tenths per cent shall be credited to the geological mapping fund, forty-two and five-tenths per cent shall be credited to the unreclaimed lands fund, and the remainder shall be credited to the surface mining fund created in section 1514.06 of the Revised Code.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(5) and (6) of this section, ninety per cent shall be credited to the oil and gas well fund created in section 1509.02 of the Revised Code and ten per cent shall be credited to the geological mapping fund. All of the moneys received by the treasurer of state from the tax levied in division (A)(7) of this section shall be credited to the surface mining fund.

All of the moneys received by the treasurer of state from the tax levied in division (A)(8) of this section shall be credited to the reclamation forfeiture fund.

All of the moneys received by the treasurer of state from the tax levied in division (A)(9) of this section shall be credited to the unreclaimed lands fund.

When, at the close of any fiscal year, the chief finds that the balance of the reclamation forfeiture fund, plus estimated transfers to it from the coal mining administration and reclamation reserve fund under section 1513.181 of the Revised Code, plus the estimated revenues from the tax levied by division (A)(8) of this section for the remainder of the calendar year that includes the close of the fiscal year, are sufficient to complete the reclamation of lands for which the performance security has been provided under division (C)(2) of section 1513.08 of the Revised Code, the purposes for which the tax under division (A)(8) of this section is levied shall be deemed accomplished at the end of that calendar year. The chief, within thirty days after the close of the fiscal year, shall certify those findings to the tax commissioner, and the tax levied under division (A)(8) of this section shall cease to be imposed after the last day of that calendar year on coal produced under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code if the permittee has made tax payments under division (A)(8) of this section during each of the preceding five full calendar years. Not later than thirty days after the close of a fiscal year, the chief shall certify to the tax commissioner the identity of any permittees who accordingly no longer are required to pay the tax levied under division (A)(8) of this section.

Ohio stated that subsection ORC 5749.02(B) is amended to provide that the moneys received from the ten-cent tax per ton of coal tax levied in ORC

5749.02(A)(1) is allocated as follows: 0.476 cents per ton to the geological mapping fund; 8.095 cents per ton to the coal mining administration fund; and 1.429 cents per ton to the State AML fund. Ohio also stated that all of the moneys received from the 1.2 cents per ton of on coal tax levied in ORC 5749.02(A)(9) is allocated to the State AML fund.

Ohio stated that subsection ORC 5749.02(C) is deleted to eliminate the tax levied at the rate of one cent per ton of coal, the moneys of which were allocated to reclaiming bond forfeiture lands.

Ohio stated that subsection ORC 5749.02(D) is amended to eliminate the one cent per ton of coal that was allocated to bond forfeited permits issued between April 10, 1972 and September 1, 1981. Subsection (D) also provides for cessation of the subsection (A)(8) tax (14 cents/ton) upon finding by Chief that funds in the reclamation forfeiture fund are adequate to address bond pool reclamation on a permit by permit basis; upon such finding operators listed as having provided adequate performance security shall no longer be required to pay the (A)(8) tax (14 cents/ton), provided such operators have made such payments during the preceding five years.

#### 21. ORC 5749.11 Nonrefundable Credit

This provision is new, and provides for a nonrefundable credit against the taxes imposed under ORC 5749.02(A)(8). This new provision provides as follows:

Sec. 5749.11. (A) There is hereby allowed a nonrefundable credit against the taxes imposed under division (A)(8) of section 5749.02 of the Revised Code for any severer to which a reclamation tax credit certificate is issued under section 1513.171 of the Revised Code. The credit shall be claimed in the amount shown on the certificate. The credit shall be claimed by deducting the amount of the credit from the amount of the first tax payment due under section 5749.06 of the Revised Code after the certificate is issued.

If the amount of the credit shown on a certificate exceeds the amount of the tax otherwise due with that first payment, the excess shall be claimed against the amount of tax otherwise due on succeeding payment dates until the entire credit amount has been deducted. The total amount of credit claimed against payments shall not exceed the total amount of credit shown on the certificate.

(B) A severer claiming a credit under this section shall retain a reclamation tax credit certificate for not less than four years following the date of the last tax payment against which the credit allowed under that certificate was applied. Severers shall make tax credit certificates available for inspection

by the tax commissioner upon the tax commissioner's request.

#### 22. Section 3 of the Amendment Submittal Provides as Follows

Section 3. It is the intent of the General Assembly to appropriate five million dollars for the reclamation of land affected by the surface mining of coal. Of that five million dollars, not more than fifty thousand dollars shall be used to study the management of the financial resources of the coal mining regulatory program of the Division of Mineral Resources Management in the Department of Natural Resources. The Chief of the Division of Mineral Resources Management, in consultation with a statewide association representing the coal mining industry and a statewide association representing environmental advocacy, shall develop an outline of the subjects for the study. The Chief shall select an objective third party that has knowledge in the management of finances to conduct the study. Upon completion of the study, the third party shall prepare a report of its findings and submit the report to the Director of [the Department of] Natural Resources.

#### 23. Section 6 of the Amendment Submittal Provides That Section 5749.02 of the Revised Code as Amended by This Act Shall Take Effect on April 1, 2007

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Ohio program.

#### Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Appalachian Region office identified above may not be logged in.

#### Electronic Comments

Please submit Internet comments as an e-mail or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. OH-252-FOR," your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the

Appalachian Region office at: (614) 416-2238.

#### Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time, on May 15, 2007. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### IV. Procedural Determinations

#### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 21, 2007.

**H. Vann Weaver,**

*Acting Regional Director Appalachian Region.*

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**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 943**

[Docket No. TX-057-FOR]

**Texas Regulatory Program and Abandoned Mine Land Reclamation Plan**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) and the Texas abandoned mine land plan (Texas plan) under the Surface Mining