



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240

MAY 4 2005

Sam Speck, Director
Ohio Department of Natural Resources
2045 Morse Road, Bldg., D3
Columbus, Ohio 43229-6605

OH-2185-00

Dear Director Speck:

When the Secretary of the Interior approved Ohio's coal mining regulatory program in 1982, he imposed a number of conditions. Over the years, Ohio satisfied all of those conditions except the one described in 30 CFR 935.11(h)(1). That condition states:

*(h) Steps will be initiated to terminate the approval found in 935.10:
(1) Unless Ohio submits to the Secretary by September 30, 1985, a revised 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 Secretary's decision (see 47 FR 34697, August 10, 1982) identifies the following factors as forming the basis for imposition of this condition:

- Between 1977 and 1982, Ohio forfeited bond on 63 permits, including 1,220 acres with average bond of \$1,356 per acre.
- Ohio raised bond to \$2,500 per acre in 1981, and imposed a severance tax of one cent per ton of coal mined.
- The average cost to reclaim bond forfeiture sites at that time was \$4,700 per acre.
- Ohio estimated that the 63 sites on which bond was forfeited between 1977 and 1982 would not be reclaimed until 1986.
- At the time the condition was imposed, bond forfeiture was pending on 1,745 more acres, of which the State estimated that 30 percent (524 acres) would require reclamation.
- Existing funding mechanisms would not allow all sites to be reclaimed until 1987.
- The estimated time to complete reclamation of bond forfeiture sites did not meet the contemporaneous reclamation requirement of section 515(b)(16) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In addition, it would cause an unreasonable delay of implementation of the postmining land use, contrary to section 515(b)(2) of SMCRA.

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The status of Ohio's alternative bonding system remains relatively unchanged today. Current data show that Ohio's reclamation of forfeiture sites still does not meet SMCRA's standards for timeliness as described in the Secretary's 1982 decision. For nearly 23 years, Ohio has been unable to demonstrate that its alternative bonding system provides for timely reclamation of forfeiture sites. We attribute this to insufficient bond and/or inadequate revenue to support Ohio's alternative bonding system.

In the past, Ohio took some actions intended to address this condition. However, those actions have not resolved the problem of insufficient funding to reclaim bond forfeiture sites in a timely manner. Resolution of that problem will require additional funds that can only be obtained by revising the statute that created Ohio's alternative bonding system.

As we are both aware, efforts to persuade the legislature to address the issue in 2003 proved unsuccessful. Consequently, Brent Wahlquist, OSM's Appalachian Regional Director, notified you that he was recommending that I begin proceedings under 30 CFR Part 733 to ensure final resolution of this longstanding issue. In keeping with our policy of working closely with states, OSM has had numerous discussions with officials from the Division of Mineral Resources Management and your office in trying to resolve this program condition. More recently, officials representing your office have been meeting with representatives of the mining industry trying to develop draft legislation to correct the program condition and address program funding, which is also a critical aspect of adequately maintaining a regulatory program. Unfortunately, those efforts appear to have stalled without a solution that appears adequate.

Our regulations at 30 CFR 732.13(j)(4) authorize me to take one or more of the following corrective measures when deficiencies described in a Secretarial condition have not been complied with in a timely manner: initiate action to withdraw the Secretary's approval of the Ohio regulatory program; substitute direct Federal enforcement for State enforcement of the State program; and/or use the process provided by 30 CFR 733.12 (733 process) to address the state's inability to resolve the deficiency. I have chosen the 733 process option because of the greater flexibility inherent in that process. In addition, it provides Ohio another opportunity to fix the deficiencies in the alternative bonding system.

Under 30 CFR 733.12(b), I have an obligation to notify you if I have reason to believe that Ohio is not effectively implementing, administering, maintaining, or enforcing any part of the state's coal mining regulatory program that the Secretary of the Interior approved under SMCRA. Regrettably, as discussed in this letter, that situation now exists with respect to the State's alternative bonding system.

This letter provides notice that I am now initiating the 733 process. If Ohio does not take adequate remedial measures to resolve the condition at 30 CFR 935.11(h)(1), I expect to recommend to the Secretary of the Interior that she withdraw approval of the State program, in whole or in part, as authorized under 30 CFR 733.12(g) and implement a full or partial Federal regulatory program as authorized under 30 CFR Part 736. Should Ohio lose approval of all or part of its regulatory program and a full or partial Federal program be implemented, Ohio

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should, in accordance with 30 CFR 736.24, also expect to lose eligibility for Federal funding of its abandoned mine land reclamation program.

I find this action necessary because the timeliness of reclamation of bond forfeiture sites has not improved since the program condition was imposed. Under the current structure of the alternative bonding system, Ohio receives about \$1.7 million annually from the Reclamation Forfeiture Fund to supplement the monies collected from forfeiture of site-specific bonds. About \$1.3 million is available annually for construction, with the remaining \$400,000 used for administrative and design costs. The Reclamation Forfeiture Fund is responsible for reclamation of coal and non-coal forfeiture projects. In November 2004, Ohio estimated that it would cost about \$7.1 million to reclaim existing bond forfeiture sites including construction and annual administrative costs. Based on current revenue and expenditure projections, reclamation of the current 20 coal bond forfeiture sites and 17 non-coal bond forfeiture sites will not be completed until 2008. Coal forfeiture sites have been awaiting reclamation for an average of more than 5 years, the timeframe that resulted in the imposition of the Secretarial condition 23 years ago.

Furthermore, Ohio recently issued bond forfeiture orders on 15 permits and is considering issuing orders on 12 additional permits held by one company, representing a potential added reclamation liability of over \$8.9 million beyond the bond available. In addition, the outcome of pending appeals, collection actions, and surety reclamation negotiations on at least nine more coal and five more non-coal forfeitures could add another \$2.5 to \$4 million in reclamation liabilities.

In summary, I have reason to believe that Ohio's alternative bonding system does not meet the standards of 30 CFR 800.11(e)(1), which requires that an alternative bonding system "assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any area which may be in default at any time." Therefore, I am requiring that Ohio take the following remedial actions by the dates indicated:

- *Within 90 days from the date of this letter, 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.*

As previously noted, legislative action will be needed to increase the revenues available to the alternative bonding system sufficient to resolve this issue. I urge you to also address the adequacy of program funding in this same legislation. My staff is available to assist you with the efforts.

Under 30 CFR 733.12(c), you are entitled to an informal conference to discuss either the facts supporting the assertions contained in this letter, or the timeframe for initiating and completing the necessary remedial measures. You may request an informal conference no later than 105 days from the date of this letter.

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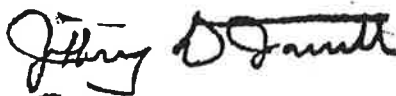
As provided in 30 CFR 733.12(d) and (e), after the conference, or after expiration of the time allowed to request a conference, whichever is later, I will notify you whether I still have reason to believe that Ohio is not adequately maintaining its regulatory program. If such a basis still exists, I will notify both you and the public and will then schedule a public hearing in Ohio.

Following the public hearing, if I find that the Ohio program still does not provide for timely reclamation of forfeited sites and I further find that Ohio has not demonstrated the capability and intent to resolve this outstanding condition of program approval, I will recommend to the Secretary of Interior that she take the actions necessary to ensure that surface coal mining and reclamation operations in Ohio are bonded consistent with SMCRA and its implementing regulations. Those actions may include withdrawal of approval of the Ohio regulatory program, in whole or in part, and implementation of a full or partial Federal regulatory program.

The 733 process serves two purposes. First, it provides OSM with a formal mechanism for communicating with State governments that immediate attention should be directed to the identified concerns, so that proper safeguards for the regulation of surface coal mining and reclamation operations can be put in place. Second, it provides the State with the opportunity to reassert its commitment to primacy and the effective administration of SMCRA's environmental protection standards. I am confident that Ohio will take this opportunity to meet the second purpose.

Please contact Brent Wahlquist, Regional Director for the Appalachian Region, at 412-937-2828 if you have any questions regarding this decision or if you would like to discuss options for consideration. Please contact George Rieger at 412-937-2153 for any assistance you may require in developing remedial measures. I look forward to a mutually satisfactory resolution of this longstanding issue.

Sincerely,



Jeffrey D. Jarrett
Director

cc: Michael Sponsler, Chief, Ohio Division of Mineral Resources Management
Brent Wahlquist, Regional Director, Appalachian Region
George Rieger, Chief, Pittsburgh Field Division
Michael Carey, President, Ohio Coal Association