

OHIO DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINERAL RESOURCES MANAGEMENT

**\*\*POLICY/PROCEDURE DIRECTIVE\*\***

**Regulatory 97-1**

(which replaces Policy/Procedure Directive Regulatory 89-1)

**Subject:** Direct Negotiated *Mine Operator* Contracts  
**Effective:** 2-26-97  
**Purpose:** To establish procedures for the development of direct negotiated mine operator contracts adjacent to proposed permit areas or permitted areas.

**I Background**

This policy will provide consistency and cooperation with the coal and industrial mineral Regulatory programs, the Abandoned Mined Lands program, and provide the mining industry with a mechanism to incorporate reclamation of adjacent disturbed lands into the ongoing reclamation process. The intent is to provide a process for cost effective reclamation of abandoned mined lands by the Ohio mining industry by coordinating their mining and reclamation- efforts on active mine sites to coincide with reclamation of unreclaimed lands.

**II Identification and Coordination of Potential AML Reclamation Projects and Opportunities for Remining:**

Field staff, including inspectors, AML specialists, and the permitting. Environmental Specialists will coordinate review of permit applications and AML projects to determine if the potential exists for eliminating ANIL features in proximity to proposed mining operations or if the potential exists for remining where ANIL projects are planned. The permitting environmental specialist shall take the lead in identifying these areas coordinating the review with the other staff members.

Any time a potential exists for mining in the vicinity of an area affected by ANE or pollution source, the attached "Remining Survey Form" should be completed and forwarded to the DMR Remining Coordinator to provide information on the potential for remining and correcting the pollution source. The Remining Coordinator will arrange to have the appropriate DMR staff meet with the potential applicant, consultant, and/or landowner to explore ways of best addressing the source of pollution either through remining, AML contracting, or a combination of both.

### III Definitions

A. Direct Negotiated Contract: In accordance with Section 1513.27 of the O.R.C., the Chief of the Division of Mines and Reclamation may, with approval from the Director of the Department of Natural Resources and with written consent from the landowner, enter into a contract with a mine operator mining adjacent land under a valid permit, to carry out a plan of reclamation on unreclaimed lands. For the purpose of **ensuring that this intent is achieved, materials** (i.e. subsoil, spoil, dump rock, etc.) **required by the approved** reclamation plan may be acquired from the permit area for use in reclaiming those areas, pursuant to either a cost or no-cost AML contract. The area must have been affected by mining prior to April 10, 1972 or pursuant to a license issued before April 10, 1972 to be eligible under 1513.27 (State AML) and prior to August 12th 1982 to be eligible under 1513.37 (Federal AML). Disposal of excess spoil on unpermitted areas adjacent to a mining permit must be done in accordance with Regulatory PPD 97-2. There are two types of Direct Negotiated contracts as follows:

1. No Cost Contract – Although the operator need not document off-site environmental problems to be eligible for this contractual mechanism, a higher land use must be achieved by the proposed reclamation than exists in the unreclaimed state.
2. Cost Contract - Areas for which an operator may obtain a cost contract must be causing water pollution or damage to adjacent property. The reclamation project must result in the establishment of a vegetative cover and the substantial reduction or elimination of erosion, sedimentation, landslides, pollution, accumulation or discharge of acid water, flooding, or damage to adjacent property. Coal removal may occur if it is approved by the Chief, necessary to achieve the project goals, and incidental in nature. In addition, 50% or more of the project's total construction cost must be funded by Federal, State or Local government financing to be eligible for an exemption from the coal permitting requirements, per administrative rule 1501:13 - 1 - 04. Any revenues received from the sale of coal which was recovered incidental to reclamation shall be used to offset the cost of reclamation. Cost contract funding will be based on established Federal and State program priority system and available funds. In addition permits which have modified effluent limitations established under OAC 1501:13-4-15 are eligible for AML expenditures to assist in the design and construction of pollution abatement measures to be undertaken within the permitted area of the permit.

#### IV Eligibility Determination

Once a site is identified for probable re-mining or an AML project, a pre-application field review will be conducted to provide an opportunity for the applicant and DMR to conduct a preliminary evaluation of the site to determine eligibility for AML funding, monitoring points and other areas of concern as early in the planning process as possible. DMR staff including the ANM and regulatory field representatives and the hydrologist will coordinate with and advise prospective applicants on procedures to follow to address AW, areas through no-cost contracting, direct-negotiated contracts, re-mining or a combination of possibilities. Procedures may include negative Incidental Boundary Revisions (IBR), Application to Revise a Permit (ARP), modify a permit, special permitting conditions, modified NPDES effluent limitations, and contracting and design procedures. The project's eligibility, boundaries, hydrologic monitoring points (if applicable), design requirements/costs and associated matters will be established cooperatively with the appropriate DMR field staff (both AML and regulatory staff), the ANIL program coordinator, district engineer, and the applicant or contractor. If a consensus cannot be reached on the eligibility of the project the Chief will make the final determination. The Field Environmental Specialist will inform the applicant/contractor of DMR's decisions following the pre-application field review. The Field Hydrologist will inform the operator of hydrologic monitoring requirements per PPD 97-3.

#### V. AML and Regulatory Requirements

A. Direct Negotiated Mine QRM=Contract Adjacent to Permit Application Area: Upon being informed that a proposed project is eligible, the operator shall comply with the following:

1. At the time of submittal of a mining permit application the operator shall submit four (4) copies each of a base map and cross sections (certified by a professional engineer) and completed AML proposal forms to the Field Environmental Specialist. Revisions will be made according to applicable review comments which will include the appropriate technical reviews. (Note: a proposal may be submitted after the application is submitted or permit issued; however operators are encouraged to submit the proposals at the earliest possible time in the process.)
2. The operator shall submit a mining permit application which includes an application map clearly delineating the proposed AML area. In addition, if the AML proposal affects or applies to a particular application response, then the application response needs to describe how the AML project will affect the proposed regulatory area.

Note: Merely a reference to "see the AML plan" would not be acceptable. Permit applications will be submitted to the Columbus permitting/hydrology section following normal processing procedures.

3. The field environmental specialist's application review of the proposed AML area should be done in conjunction with the field team's representative as determined by the field team leader. The application manager will submit the field environmental specialist's comments along with the field manager's comments to the operator. When the revised ANS proposal is returned, a copy of it will be provided to the field permitting environmental specialist for review. When the proposal has been revised satisfactorily, both the field permitting environmental specialist and the field team representative will sign the appropriate blank on the last page of the proposal form and return the forms to the application manager. The application manager will then distribute copies of the finalized proposal to OSN4RE, the Columbus permitting section, and the field team representative when the application is approved. Changes to the reclamation plan after the proposal has been finalized must be reviewed by both the field permitting environmental specialist and the field team representative.

4. The permitting/hydrology manager may **conditionally approve** a mining permit application until the AML program supervisor has approved the finalized AML proposal, unless the operator desires to have the application approved without reference to the AML project. However, an ARP must be processed at a later date to include the AML project as outlined in Item IV.B. The operator shall not affect the AML project area until his receipt of a fully executed AML contract.

B. Direct Negotiated Mine Operator Contract On or Adjacent to Existing Permitted Areas:

The following regulatory procedures must be used depending on the situation: (1) Negative Incidental Boundary Revisions (IBR) and/or (2) Applications to Revise a Permit (ARP). In either case, the information required in Item W.A. 1. must be submitted to the appropriate office simultaneously with submission of the negative IBR, or ARP. The review process for ANE areas involving a negative IBR, or ARP shall generally be the same as outlined in item IV A.2 and 3, above. The ARP may or may not be considered a significant revision to the permit; however, this is dependent upon the nature and scope of the AML project. (Note: ARP's will be processed by the field offices.)

1. Negative IBR: The field permitting environmental specialist and field team representative will review AUL proposals for projects that involve portions of active permits. Such an IBR must meet the following criteria:
    - a. That the portion of the permit area being considered has not been affected by the active mining;
    - b. That removal of the area will not affect the reclamation plan for the remainder of the permit; and
    - c. If these findings are documented and approved, the permittee will then be notified in writing by the field permitting environmental specialist and field team representative. IBR/modification may be submitted to delete that area from in his permit. Once approved by permitting, it will be distributed as normal.
  2. ARP - If an AML proposal will affect the existing approved mining and reclamation plan, an ARP must be submitted in accordance with PPD-Permitting 96-1.
- C. All state and federal AML projects are subject to review and approval by the SHO. Federal projects are subject to NEPA requirements and should be coordinated with the Columbus Office EA specialist.

## **VI Drainage Controls**

Three options consistent with the existing regulations exist for addressing drainage from permitted and contiguous AML areas. These include acquisition of a small area drainage exemption by the operator, segregation of permitted and AML drainage by the operator, and integration of the drainage from both areas by the operator. These options are discussed below.

A. Small Area Drainage Exemption: The operator may seek a small area drainage exemption for a portion of the permitted area, if site conditions warrant.

B. Segregation of Drainage: Through the use of diversions and other means, operators may segregate drainage from permitted and AML areas and direct the drainage into their respective permitted and ANM ponds. Effluent limitation standards, as required by regulation, will be met on the permitted pond while the standards established by the AML contract will be met for the AML pond.

C. Integration of Drainage: the operator may integrate drainage from the permitted area and the AML contract area as long as all integrated

drainage passes through a pond on the permitted area. Discharges from the pond are required to meet applicable NPDES regulatory standards. Drainage from the permitted area in route to a pond on the permitted area may traverse the AML contract area via overland flows or drainage ways that are not part of the permitted area in accordance with provisions of the AML contract. The maintenance period for the AML contract period may have to be extended to coincide with regulatory maintenance requirements.

## **VII                    Agreements**

Upon approval by the Board on Unreclaimed Strip Mined Lands, the AML contract will be developed by the AML program team for execution between the operator and the Director of the Ohio Department of Natural Resources. The field team representative will execute the applicable Right of Entry Agreement with landowners who are involved at the earliest possible time in the process.

L Morris, Chief

LJM/RSB/ds