

OHIO DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINES AND RECLAMATION

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

**REGULATORY 99-1**  
(Replaces PPD Regulatory 98-1)

**SUBJECT:** Lands Eligible for Remining

**EFFECTIVE:** November 18, 1999

**PURPOSE:** To provide guidance for the implementation of changes to the Ohio Administrative Code (OAC) concerning remining. Changes to OAC 1501:13-1-02, 13-4-08, 13-4-10, 13-4-12, 13-4-15, 13-5-01, and 13-9-15 effective March 31, 1997, address permitting standards, unanticipated events, vegetation standards, liability periods and other provisions related to lands eligible for remining.

The main objective in remining is coal recovery. In addition, remining provides an opportunity to achieve reclamation of areas that were left unreclaimed by previous mining. Achieving reclamation of these areas is the reason that the standards contained in this PPD were developed. This policy is intended to increase remining opportunities by providing alternative performance standards on unreclaimed areas that are re-affected by current mining operations. The policy also identifies specific circumstances, which allow the same alternative standards to apply to those areas that have not been affected by past mining but are an integral part of correcting the AML condition being addressed by the remining operation.

This PPD provides policies and procedures concerning identifying lands eligible for remining, mapping requirements, permitting information concerning unanticipated events, new vegetation standards, and implementing the two-year liability period.

*Additional remining provisions are contained in OAC 1501:13-4-15, that provides criteria for seeking modified effluent limits on lands eligible for remining where pollution abatement areas for addressing water quality impacted by previous mining are proposed. Please refer to PPD Permitting 97-1 for policy and guidance for permitting provisions related to modified effluent limits and pollution abatement areas.*

## **Lands Eligible for Remining**

OAC 1501:13-1-02(OOO) defines lands eligible for remining as:

those lands that would otherwise be eligible for expenditures under section 1513.37 of the Revised Code.

Ohio Revised Code (ORC) 1513.37, 1513.27 identifies abandoned mine land (AML) conditions on which AML funds may be expended. Generally, lands abandoned or left in an inadequate reclamation status prior to August 3, 1977 and for which there is no continuing reclamation responsibility under State or Federal laws are eligible. However, there are a few unique exceptions to the August 3, 1977 date that are referenced in ORC 1513.37(C)(1) that must be considered. Lands that meet these standards may be considered as eligible for remining.

This PPD provides instruction and guidance for implementing these rules for both new permit applications and for revising existing permits. **Applicants applying for new permits or adjacent area permits that include lands that may be eligible for remining are encouraged to identify such lands at the time of application or during the revision process on those applications already submitted in order to ensure that all eligible lands are identified.** Although revisions to permits will be accepted after mining and reclamation has begun, it will be more difficult to verify all lands that may have been eligible once an area is affected by current mining.

### **New Permit Applications**

OAC 1501:13-4-12(L) specifies information required in a permit application to identify lands eligible for remining and identification of anticipated events associated with the remining operation. Attachment Number 33 is incorporated into the coal mining permit application. A copy of Attachment Number 33 is included with this PPD. In addition, OAC 1501:13-4-08(A)(15) and 1501:13-4-10(A)(6) require both hydrology and permit application maps to identify areas eligible for remining.

### **Identification of Lands Eligible for Remining:**

Part A of Attachment Number 33 requires a description of the proposed lands eligible for remining and a demonstration of how the lands meet the eligibility requirements of ORC 1513.37. As required by OAC 1501:13-4-08(A)(15) and 13-4-10(A)(6), applicants must identify the areas they propose as being eligible for remining on the hydrology and application map(s). Acreage identified as eligible for remining must be identified in the map legend. Maps may be supplemented with an appropriate overlay or aerial photo. The map(s) should be referenced in the narrative response to Part A along with an explanation as to why the proposed area is eligible. Information must include how the area is affected; i.e., unreclaimed spoil, unreclaimed highwall, impacted by acid mine drainage; and information to indicate approximately when the area was affected. The narrative should also describe how the remining operation will improve or correct the AML features associated with the land eligible for remining.

The area eligible for re-mining may be expanded, in certain circumstances, beyond that area affected by prior mining. Applicants may propose to include areas beyond those previously affected by mining if the applicant can demonstrate that affecting those areas is necessary to correct the associated eligible AML condition. For example, to eliminate a highwall remaining from prior mining and address toxic conditions in the mining area, the applicant may demonstrate that it is necessary to advance the highwall to obtain adequate material to eliminate the highwall and cover toxic conditions that exist. It is the applicant's responsibility to demonstrate to the satisfaction of the Chief how any area is eligible. Engineering, hydrologic and/or other analysis as appropriate, must be provided to demonstrate why disturbance of an unaffected area should be considered necessary for correcting the AML condition(s).

The level of detail necessary to make this demonstration is site-specific. Due to all of the possible variations and re-mining configurations, it is not reasonable to provide a standard distance or size that can be used in making an eligibility determination. The main consideration in determining eligibility is whether the additional area proposed to be affected is necessary for correcting the AML condition.

Consideration will also be given to the size and configuration of the area in relationship to the previously mined area and areas that are not eligible for re-mining. For example, in most cases it may be unreasonable to have a one-acre area that is not eligible for re-mining in the center of 25 acres that are eligible. Alternatively, depending on the site, it may be unreasonable to deem area eligible for re-mining that is beyond one cut width on an existing highwall.

**Previously unaffected areas** that are proposed to be affected by construction of roads, sediment control structures, topsoil piles, and other auxiliary uses that support mining and reclamation operations on lands eligible for re-mining will be considered as follows:

- Where 100 percent of the mining and spoil placement portions of a proposed permit area are determined to be lands eligible for re-mining; support operations such as access/haul roads, sediment control structures, and soil storage areas that are necessary to support the re-mining operation but must be placed **on previously undisturbed area** will be considered as lands eligible for re-mining.
- Where less than 100 percent of the mining and spoil placement portions of a proposed permit area are determined to be lands eligible for re-mining; support operations such as access/haul roads, sediment control structures, and soil storage areas will be considered as lands eligible for re-mining only where those operations solely support the designated re-mining area. Most support operations **on previously unaffected areas** that are shared between lands eligible for re-mining and the remaining permit area will not be considered for designation as lands eligible for re-mining.
- ♦ An exception to this provision may exist in rare instances where the use of any shared support operation(s) for areas that **are eligible** for re-mining clearly exceeds the need to use the shared support operation for any areas that **are not eligible** for re-mining. For example, if a haulroad is first used to support areas that **are not eligible** for re-mining and later on in the progression of the mining operation the road **only supports areas that are eligible** for re-mining, that haulroad may be reconsidered as eligible if there is a clear demonstration

provided by the permittee that the road **will no longer support any areas that are not eligible** for re-mining. Such demonstration must be provided in an Application to Revise a Permit (ARP) at the time the permittee wants the Division to reconsider determining eligibility of the support area.

In any case where undisturbed area is being proposed and approved as an area eligible for re-mining, the permit will clearly specify that all recoverable topsoil must be segregated, protected, and replaced. In no case will land identified as prime farmland be considered as land eligible for re-mining.

Where re-mining of abandoned deep mines is proposed and the surface is not impacted by previous mining, the surface area will not generally be considered as being land eligible for re-mining unless the applicant can demonstrate to the satisfaction of the Chief that the surface area meets the eligibility requirements. However, such areas may be eligible as a pollution abatement area under provisions of OAC 1501:13-4-15.

### Unanticipated Events

OAC 1501:13-1-02(J) defines "Unanticipated event or conditions" as:

Unanticipated event or condition as used in rule 13-5-01 of the Administrative Code, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for re-mining and was not contemplated in the applicable permit.

OAC 1501:13-5-01(D)(7) provides the requirements relative to unanticipated events as they relate to subsequent permit issuance. This rule provides that a permit cannot be denied based upon non-compliance with a violation that was issued because of an unanticipated event. The rule applies to a permittee mining on lands eligible for re-mining that incurs a violation because of a condition directly related to the past mining and that condition was not contemplated in the permit application for the current mining operation. Although the permittee is responsible for correcting the violation and is subject to all other penalties and enforcement relative to that violation, that violation cannot be used to block issuance of future permits if the permittee does not or cannot abate the violation.

The purpose of this rule is described by the following example. An unanticipated event could result because an unmapped or otherwise unknown flooded underground mine that was not identified in the permit application is encountered during current mining. As a result of encountering the unknown flooded underground mine, the permittee de-waters the mine resulting in an acid discharge that must be treated. Due to the volume and poor quality of the water, the permittee cannot treat it and a violation is issued. The permittee does not correct the violation, the untreated discharge continues, and a Cessation Order is issued. Although the permittee is responsible for correcting the violation, the unabated violation cannot be used as a reason for denying future permits to that permittee.

### **Identification of Anticipated Events:**

The preceding explanation about unanticipated events demonstrates the importance of the applicant and DMR application reviewers identifying all of those events related to past mining that can be expected during current mining and reclamation. Part B of Attachment 33 must identify those anticipated events.

Part B of Attachment Number 33 must identify, based on an investigation of the proposed site through visual observation, review of records of past mining, and environmental sampling tailored to current site conditions, any potential environmental and safety problems, conditions, or events related to the prior mining activity which could reasonably be expected to occur when the area is remined. Potential problems could be mine blow-out, acid mine drainage discharge, subsidence due to dewatering, impacts to local aquifers and water supplies, landslides due to unstable spoil, poor vegetation due to toxic conditions, among many others.

One example of a possible response for Part B: "Remining is expected to encounter and dewater an abandoned 25-acre underground mine complex that contains poor quality water. Dewatering of the mine could cause release of water, which does not meet effluent limits. Dewatering of the mine could cause subsidence in the shadow areas of the mine and dewatering of water supplies. Landslides could occur when mine spoil is placed on the unstable steep out slope. Revegetation may be less successful due to the absence of topsoil and presence of toxic overburden."

### **Mitigation of Anticipated Events:**

Part C of Attachment Number 33 must include a description or appropriate reference to another section of the permit application that describes mitigative measures that will be taken to ensure that the mining and reclamation standards will be met if problems, conditions, or events identified in Part B develop. Examples might include water treatment, special drilling program to identify underground mines, sealing techniques to be implemented upon encroaching into a deep mine, keeping pit dry, treating toxic material, among many other possibilities. Permittees should immediately notify the DMR inspector of unanticipated events when they occur.

One example of a possible response for Part C: "Core drilling ahead of the active highwall will identify where the abandoned underground mine begins. Measures to control the rate of dewatering will include pumping from the mine void or containing all mine water in the pit area for treatment and release into sediment control structures. The underground mine will be mined out which will likely result in improved water quality after mining. See Application Part II, section E (1)(2)(3)."

### **Existing Permits**

Permittees who would like to propose lands eligible for remining on permits that are already issued and are being mined or reclaimed may do so by submitting an ARP. The ARP must include an Attachment Number 33 with all necessary information explained above and a copy of the relevant portions of the application map with the proposed lands eligible for remining delineated. If an area has already been mined and reclaimed, the ARP must include adequate documentation to support

that the areas being proposed did, in fact, meet the eligibility requirements prior to the area being re-disturbed. Previously undisturbed area may be considered as eligible for remining on existing permits that have already been affected only where the permittee can provide a convincing demonstration that affecting undisturbed areas was necessary to correct the AML condition. Documentation should include aerial photos, delineation of the previously mined areas on application maps, or other verifiable information. Engineering, hydrologic and/or other analysis must be provided to demonstrate why disturbance of an unaffected area should be considered necessary for correcting the AML condition(s).

In the event that the area being requested as eligible for remining has previously been granted a phase I/phase II bond release, the ARP must identify the releases that have been granted and clearly identify the area proposed as eligible for remining. Segmenting of an area that has already received bond release will not be considered without clearly distinct mapped limits of the area eligible for remining.

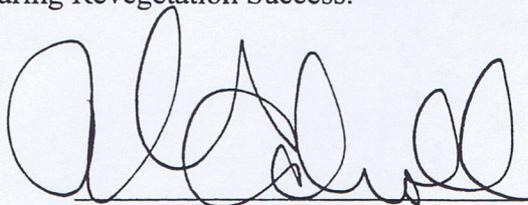
### **Annual, Final Maps and Bond Releases**

All lands approved as being eligible for remining must also be delineated separately on annual and final maps and include an acreage summary for each annual segment. It will not be possible to apply the two-year liability period to lands eligible for remining unless the affected areas are identified on annual and final maps. This delineation will be used to identify the portions of reclamation segments on which the two-year liability period and reduced vegetative cover standards will apply.

### **Inspection and Vegetation and Liability Period Standards:**

OAC 1501:13-9-15(F)(2)(A) states that the period of extend responsibility for revegetation success shall continue for **not less than two years on lands eligible for remining**. Lands eligible for remining must be approved in the permit or subsequent ARP and be delineated on all appropriate maps. Land that has been determined eligible for remining and meets all other standards for a phase III bond release is eligible for a phase III bond release two years after the last augmented seeding.

OAC 1510:13-9-15(O) provides revegetation success standards for each land use on lands eligible for remining. Major revisions include a reduction in the ground cover standard to a minimum of 70 percent and adequate to control erosion on most land uses, elimination of a production standard on pasture and grazing land, and reduction of productivity measurements on cropland from two years to one year. There are other slight changes applicable to each land use. Measurement of ground cover will follow DMR's Guidelines for Measuring Revegetation Success.



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