

MEMORANDUM OF AGREEMENT

BETWEEN

Department of the Interior
Office of Surface Mining Reclamation and Enforcement
Pittsburgh Field Division

AND

Pennsylvania Department of Environmental Protection
Bureau of Abandoned Mine Land Reclamation

AND

Department of the Interior
U.S. Fish and Wildlife Service
Pennsylvania Field Office

SUBJECT:

Reduction of paperwork and unnecessary review of certain Office of Surface Mining (OSM) Abandoned Mine Land (AML) Program projects implemented by the Pennsylvania Bureau of Abandoned Mine Land Reclamation (BAMR) or approved by OSM under the Watershed Cooperative Agreement Program which typically result in no adverse effects to federally listed, proposed, or candidate species.

PURPOSE:

The U.S. Fish and Wildlife Service is charged with protection of fish and wildlife resources, including federally listed and proposed species, migratory birds, and their habitats. In this role, the Service provides comment to OSM and the BAMR regarding the impacts of specific individual AML projects authorized under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). It is recognized that certain categories of AML projects activities typically result in no adverse impacts to the natural environment and that a detailed project review by the Service is not warranted for such projects. This Memorandum of Agreement (MOA) is intended to define the categories of projects that, when carried out under the OSM approved Title IV Pennsylvania AML program, do not require written comments from the Service. For the purposes of this agreement, SMCRA Title IV Eligible AML projects include those projects that are provided for under SMCRA Section 402, meet the eligibility requirements of SMCRA Section 404, and are identified under the annual AML grant to the Commonwealth, receive an authorization to proceed from the Office of Surface Mining Pittsburgh Field Division, or are approved by the Pittsburgh Field Division under the OSM Watershed Cooperative Agreement Program or the State Ten-Percent Set-Aside Program for mine drainage abatement.

SCOPE:

This MOA does not supersede the responsibilities and obligations of the Service or OSM or BAMR which are mandated by the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*), Endangered species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), or related regulations and agency policies. Several categories of projects have been evaluated in accordance with these statutes, regulations, and policies, and a conclusion has been reached by the Service, OSM, and BAMR that specific projects within these categories will not result in adverse effects to fish and wildlife resources, including endangered species. As a result, this MOA constitutes programmatic coordination pursuant to the Fish and Wildlife Coordination Act and a programmatic informal consultation pursuant to Section 7 of the Endangered Species Act for certain categories of projects proposed within the State of Pennsylvania.

SCREENING FOR FEDERALLY LISTED SPECIES:

Prior to undertaking any project pursuant to this MOA, BAMR as the administrator of the approved SMCRA Title IV Pennsylvania AML Program will screen the project area for the potential presence of federally listed species using the Pennsylvania Natural Heritage Program's on-line environmental review website (www.naturalheritage.state.pa.us). If a potential conflict with a federally listed species is identified, the receipt generated by the website will direct the inquirer to contact the Fish and Wildlife Service. In these cases, BAMR will consult with the Fish and Wildlife Service to resolve issues related to federally listed species prior to submitting the project for an authorization to proceed to OSM. OSM agrees to withhold any authorization to proceed for any project with unresolved issues. The Fish and Wildlife Service or the BAMR may at any time request the direct involvement of OSM in discussions to resolve any identified issues related to a project specific proposal. OSM may at any time enter into discussions with the Fish and Wildlife Service or BAMR to address concerns covered by this MOA on a proposed AML project.

CATEGORIES:

Provided no conflicts with federally listed species have been identified using the on-line environmental review website (see "Screening for Federally Listed Species"), and provided the project does not fall under the "Exceptions" (see below), the Service, OSM, and BAMR conclude that SMCRA Title IV eligible projects within the following categories will not result in adverse effects to fish and wildlife resources, including federally listed species. Any exceptions are detailed under the project category. This MOA does not alter the requirements for consultation under the existing Pennsylvania State Programmatic General Permit (SPGP) addressing project impacts to wetlands, open water habitats or stream channel. These projects should be submitted to the Service for review under the Fish and Wildlife Coordination Act in accordance with the SPGP.

1. Surface Burning – Activities associated with extinguishing grass and forest fires, refuse pile fires, and dwelling fires. Also included are activities that involve the containment of poisonous and combustible gases related to such fires.

2. Underground Burning – Activities associated with extinguishing fires within abandoned underground mine workings.
3. Clogged Streams and/or Clogged Stream Lands – Activities associated with the removal of accumulated sediments or other debris that are causing or are expected to cause impacts to the health, safety or general welfare of the public or to environmental resources. In addition, activities related to the reclamation of abandoned mine lands that are contributing sediment or other debris to receiving streams thereby causing or expected to cause impacts to the health, safety or general welfare of the public or to environmental resources. These activities generally include removal of existing vegetation, grading of barren mine spoils, and revegetation of the reclaimed area.
4. Dangerous Highwalls – Activities related to the reclamation of abandoned highwalls. These activities generally include removal of existing vegetation, filling and grading of steep highwalls, and revegetation of the reclaimed area.
5. Dangerous Landslides – Activities required to repair and permanently stabilize landslides that involve blockages of streams, blockages of roadways and driveways, or threats to structures and public facilities. These activities generally include removal of excess materials, grading and sloping of steep banks, revegetation, the provision of internal and surface drainage features, and the placement of riprap and gabion retaining walls.
6. Dangerous Impoundments – Activities required to the elimination of large volume water impoundments such as a mine waste embankment, sedimentation ponds, or underground mine pool water that threaten flooding or destruction of downstream property and human health, safety and general welfare in the event of rupture or breach. Such activities involve the pumping and treatment of water, removal of embankment materials and the provision for safe conveyance of surface or underground drainage. Also included are the grading and revegetation of affected areas.
7. Mine Openings – Activities associated with the permanent closure of abandoned mine portals, vertical shafts, or other openings that do not have the potential to support bats.

All mine openings proposed for closure will be evaluated using the attached protocols (Appendices A and B). If a mine opening has one or more characteristics making bat occupation unlikely (as specified in Appendix A), the mine opening may be closed at any time without further consultation. However, all other openings will undergo a survey in accordance with the specifications detailed in Appendix A. Appendix B details the course of action that will be taken for mine openings proposed for closure, based on the results of the bat survey.

8. Subsidence – All activities associated with the filling or elimination of subsidence cavities. This will include activities such as the short term operation of grouting and filling or the excavation of subsidence affected areas. Areas affected by the reclamation will be reclaimed and re-vegetated.
9. Dangerous Piles and Embankments – Activities required to remove and/or stabilize piles of earth, rock, coal, or mine wastes that are subject to leaching, erosion, and/or sudden slippage.
10. Hazardous Equipment and Facilities – Activities associated with the removal and disposal of abandoned mining equipment and facilities. Also included are land restoration activities on the sites including grading, replacement or development of topsoil, and revegetation of reclaimed areas..
11. Abandoned Mine Drainage – Activities associated with the development of active or passive treatment of pollutional discharges from SMCRA Title IV eligible AML lands. This may include the excavation for treatment areas, regrading and ditching of adjacent lands to establish necessary drainage patterns, hauling and placement of limestone, mushroom compost, or other materials used for passive treatment. Includes the construction, installation, operation, and maintenance of passive and chemical treatment facilities.
12. AML Land Reclamation - Activities associated with the reclamation of abandoned coal lands containing SMCRA Title IV eligible AML health, safety, and environmental problems. The lands may include reclamation of spoil banks that are barren and contributing to sediments or mine drainage to Commonwealth streams, unreclaimed open pits, abandoned water bodies and sediment ponds, waste dumps, haul roads, and mine benches. This reclamation is commonly accomplished as part of addressing the mine related problems listed above. Activities will include the removal of existing vegetation, regrading of mine affected areas, replacement or development of suitable topsoils, and revegetation of reclaimed areas.

EXCEPTIONS:

The following projects are *not* categorically excluded by this MOA, but will undergo further review by OSM and the Service.

1. Projects that will result in the closure of abandoned mine openings that have the potential to support bats. All mine openings proposed for closure will be evaluated using the attached protocols (Appendices A and B). Appendix B details what actions will be taken by OSM and BAMR at mine openings proposed for closure, based on bat survey results.
2. Projects that may affect federally listed or proposed species. If the Service or OSM becomes aware of the presence or potential presence of a federally listed or proposed

species in a proposed project area, that project is subject to further review by OSM and the Service. This information may become available via online project screening (see "Screening for Federally Listed Species"), a site visit or other sources.

GENERAL PROVISIONS:

This MOA only applies to the activities carried out pursuant to the OSM approved Abandoned Mine Lands Program within the state of Pennsylvania and projects authorized by the Pittsburgh Field Division as part of the OSM watershed cooperative agreement program.

Either agency may unilaterally withdraw from this agreement with 30 days written notice.

This MOA will remain in effect for 5 years. Revisions may be requested at any time by either agency. All revisions will be made in writing and require the concurrence of both agencies.

U.S. Fish and Wildlife Service, Pennsylvania Field Office

By: _____ SIGNED _____ Date: ___ May 2006 _____
Supervisor

Pennsylvania Department of Environmental Protection

By: _____ SIGNED _____ Date: ___ May 2006 _____
Deputy Secretary

Office of Surface Mining, Pittsburgh Field Division

By: _____ SIGNED _____ Date: ___ May 2006 _____
Division Chief