

**Office of Surface Mining Reclamation and Enforcement
Albuquerque Field Office**

Topic-Specific Evaluation Report

**Evaluation Year 2001
New Mexico Regulatory Program**

I. Introduction

The purpose of oversight is to evaluate a State's or Tribe's ability to accomplish the goals and responsibilities of the Surface Mining Control and Reclamation Act (SMCRA). The New Mexico Oversight Team (consisting of OSM and State personnel) developed a workplan, which governed the oversight of the New Mexico Title V program for the 2001 evaluation period. The workplan contained site-specific topics, which focused on the major goals of SMCRA: elimination of off-site impacts and achieving successful reclamation to the post-mining land use. Using the 2001 plan as guidance, the New Mexico Oversight Team (NMOT) investigated a number of variables, which influenced these two goals. Each element was designed to allow expansion in future years based on the information collected during previous oversight periods. The strategic plan was to use oversight to generate ideas for improving regulatory efficiency and on-the-ground reclamation.

The regulatory sub-team of the NMOT met on February 2, 2001, and agreed on topics for the EY-2001 Workplan. Drafts were exchanged by e-mail and fax and comments received and recognized. This process resulted in a final State/Federal Workplan being issued on March 1, 2001. The sub-team met again on November 8, 2001 to update information for the final reports.

The final oversight report summarizes the methods used, problems identified, and solutions implemented by the Team during the oversight period. It also identifies longer-term problem areas and proposes mitigation measures. The report provides a summary of the State's program performance during the oversight period based on the performance measurements described in the Workplan, and provides recommendations for future oversight.

This report is formatted to comply with OSM Directive REG-8.

II. List of Acronyms Used

AER	Annual Evaluation Report
AFO	Albuquerque Field Office
AOC	Approximate Original Contour
ASP	Approved State Program
EY	Evaluation Year
GPRA	Government Performance and Responsibility Act
NMAC	New Mexico Administrative Code
MMD	Mining and Minerals Division
NHPA	National Historic Preservation Act
NMOT	New Mexico Oversight Team
NOV	Notice of Violation
OSM	Office of Surface Mining Reclamation and Enforcement
PAP	Permit Application Package
SHPO	State Historic Preservation Officer
SMCRA	Surface Mining Control and Reclamation Act

III. Topic-Specific Evaluations

Required Program Area of Review: Off-site impacts

Review Scope: MMD identified and reported the number, degree and cause of off-site impacts to OSM. The NMOT determined if any programmatic improvements were necessary to lessen the number and degree of any impacts reported. If evaluation of data related to off-site impacts indicated program or implementation related problems, MMD was to implement changes, where possible, to minimize recurring impacts. The goal of the effort was for OSM and MMD to direct efforts to decrease the occurrence of off-site impacts.

Review Methodology: OSM and MMD evaluated State and OSM inspection reports, enforcement actions, penalty assessment data and citizen complaints.

Dates of Review: The State's actions, documents pertaining to those actions, as well as the results of joint MMD/OSM inspections were evaluated from October 1, 2000 through September 30, 2001.

Findings: There was one, documented off-site impact this Evaluation Year. This finding is further documented in an off-site impact report which includes detailed information on data collection, verification, and analysis; conclusions on the effectiveness of the State program in preventing off-site impacts; and measures taken to address any identified program or implementation deficiencies. The Off-Site Impact Oversight Report for EY-2001 is on file at AFO.

Facts Supporting the Findings: MMD conducted 120 partial and 60 complete inspections during the Evaluation Year. All inspection reports filed for those inspections were reviewed by OSM. These inspections resulted in four (4) NOV's. OSM also reviewed the Proposed Penalty Assessment reports, produced by MMD, for each NOV. A description of the nature and circumstances of these violations follows:

NOV 602 was issued for failing to pass surface flow through a sediment pond before leaving the permit area. MMD reported that the quantity of the untreated discharge was small and, therefore, the probability of actual water pollution was unlikely. However, MMD stated that a small amount of sediment had been carried off the permit area without the benefit of treatment. OSM agrees with the action taken by MMD and the rationale used to support that action. However, OSM believes that there was a minimal off-site impact resulting from the event. OSM has reported the impact in the Off-Site Impact Oversight Report for EY-2001, which is on file at AFO.

NOV 644 was issued for failing to renew the permit 120 days prior to expiration. MMD described the action as an administrative violation. The entire permit area has been in reclamation and in the process for qualifying for bond release for ten (10) years. Because it was unlikely that any new issues had developed since the previous permit was approved, MMD determined that the full 120-day period would not have been required to review a renewal application. OSM agrees with the action taken by MMD and the rationale used to justify the action. OSM also agrees that there were no off-site impacts due to the administrative nature of

the violation.

NOV 648 was issued for failing to comply with the terms and conditions of the permit. Specifically, the operator was not in compliance with the approved reclamation schedule. MMD characterized the impact as one of delay of reclamation and confined to the permit area. OSM agrees with the action taken by MMD and the rationale used to justify the action. OSM also agrees that there were no off-site impacts from this violation.

NOV 670 was issued for failing to protect cultural resources from disturbance prior to receiving written approval from MMD. Although there was a partial disturbance of an archaeological site identified in the permit, MMD determined that it was unlikely that the site suffered any adverse impacts. MMD also reported that mitigation efforts conducted by an archaeological contractor after the violation occurred did not detect any occupational or buried features. The violation was apparently caused by failure of the operator to accurately mark the site. OSM agrees with the action taken by MMD and the rationale used to justify the action. OSM also agrees that there were no off-site impacts from this violation because the damage occurred within the permit area.

All violations have been abated and no civil penalties were assessed.

List of Specific Permits, Mine Sites, or State Actions Reviewed:

All inspection reports issued by MMD pertaining to the 180 inspections conducted during the evaluation period.

NOV 602, the accompanying inspection report and penalty assessment report

NOV 644, the accompanying inspection report and penalty assessment report

NOV 648, the accompanying inspection report and penalty assessment report

NOV 670, the accompanying inspection report and penalty assessment report

The Actual or Potential Impact or Significance of Any Deficiencies Identified: One minimal impact was identified. MMD addressed the event appropriately by issuing an NOV and in persuading the operator to take extraordinary measures to abate the violation.

Description of Any Corrective Action Required or Recommended: No programmatic deficiencies noted because MMD took appropriate action when violations of the ASP were found.

Technical or Administrative Assistance Offered: No deficiencies were identified, however, OSM will provide technical assistance, in the future, if requested.

Required Program Area of Review: Reclamation Success

Review Scope: OSM and MMD measured program performance in the areas of: a. Land form/approximate original contour, b. Land capability, c. Hydrologic reclamation, and d. Contemporaneous reclamation.

Review Methodology: OSM and MMD collected data on the reclamation status of areas disturbed by each mining operation under the jurisdiction of MMD. The data was used by OSM for its use in fulfilling its GPRA reporting requirements.

Dates of Review: The State's actions, documents pertaining to those actions, as well as the results of joint MMD/OSM inspections were evaluated from October 1, 2000 through September 30, 2001.

Findings: MMD reported all categories of information as agreed upon in the 2001 Annual Workplan.

Facts Supporting the Findings: OSM reviewed the following data elements for each active mining operation listed above: acreage of areas disturbed during EY-2001 and cumulatively for all years, long-term mining or reclamation facilities, active mining areas, areas backfilled and graded, areas where phase I bond release has been granted (during EY-2001 and cumulatively for all years), areas re-soiled and planted (during EY-2001 and cumulatively for all years), areas where phase II bond release has been granted (during EY-2001 and cumulatively for all years), areas planted for 10 years after the last year of augmented seeding (during EY-2001 and cumulatively for all years), and areas where phase III bond release has been granted (during EY-2001 and cumulatively for all years). As previously stated, OSM used this data to fulfill its GPRA reporting requirements. OSM's GPRA report for the New Mexico Program is on file at AFO.

Additionally, MMD reported the following history of bond release activity to OSM:

Mine/Area	Phase	Amt. Released	Acres Released	Date Approved
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	Released			
Fence Lake No. 1	I	\$665,829	92.6	2/11/87
Mentmore Section 33	I	\$0	203	5/16/90
De-Na-Zin	I	\$2,815,176	170	12/19/91
	II	\$1,373,980	149.3	8/2/99
Gateway	I	\$703,113	144.1	5/11/92
	II	\$260,811	144.1	4/3/00
Carbon No. 2	I	\$2,976,687	468.4	10/19/92
	II	\$1,676,458	308	2/5/99
Mentmore Sections 9, 16 and 21	I	\$0	418.9	10/19/92
Black Diamond	I	\$134,597	23	1/3/94
McKinley/Pre-Law Interim Areas	Liability Release	\$0	1745.6	12/14/94
Mentmore Industrial Park	III	\$0	455.7	2/14/94
San Juan NW Pinion	I	\$0	1832	12/30/98
	Final	\$0	236.74	5/24/01
York Canyon Surface	I&II	\$5,525,319	1,053	9/24/01
York Canyon Underground	I&II	\$2,210,019	190	9/24/01

List of Specific Permits, Mine Sites, or State Actions Reviewed: OSM reviewed data on the reclamation status of areas disturbed by each of the following mining operations: Black Diamond Mine, Carbon II Mine, Mentmore Mine, Lee Ranch Mine, Ancho Mine, Cimarron Mine, McKinley South Mine, York Canyon Surface Mine, York Canyon Underground Mine, Fence Lake No. 1 Mine, Fence Lake Mine, La Plata Mine, San Juan Mine and Gateway Mine. These are all of the active coalmines regulated by MMD.

OSM reviewed the following data elements for each active mining operations listed above: acreage of areas disturbed during EY-2001 and cumulatively for all years, long-term mining or reclamation facilities, active mining areas, areas backfilled and graded, areas where phase I bond release has been granted (during EY-2001 and cumulatively for all years), areas re-soiled and planted (during EY-2001 and cumulatively for all years), areas where phase II bond release has been granted (during EY-2001 and cumulatively for all years), areas planted for 10 years after the last year of augmented seeding (during EY-2001 and cumulatively for all years), and areas where phase III bond release has been granted (during EY-2001 and cumulatively for all years). As previously stated, OSM used this data to fulfill its GPRA reporting requirements. OSM's GPRA report for the New Mexico Program can be found as an addendum to this report.

The Actual or Potential Impact or Significance of Any Deficiencies Identified: No deficiencies

were noted.

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: No deficiencies were identified, however, OSM will provide technical assistance, in the future, if requested.

Required Program Area of Review: **Customer Service**

Review Scope: OSM and MMD evaluated the State's responses to complaints and requests for assistance and services.

Review Methodology: During EY-2001, the team evaluated the State's timeliness, accuracy, completeness and appropriateness of the actions.

Dates of Review: The State's actions, documents pertaining to those actions, as well as the results of joint MMD/OSM inspections were evaluated from October 1, 2000 through September 30, 2001.

Findings: Two Citizen Complaints were received by MMD during the evaluation period. MMD's response was timely, accurate, complete and appropriate.

The first complaint was received by MMD on April 2, 2001. The complaint alleged a violation of regulations pertaining to fugitive dust emanating from a surface coal mining operation. MMD contacted the complainant by telephone the same day. Additionally, MMD met with the complainant for approximately two (2) hours on April 5, 2001. At that meeting, MMD discussed the subject matter with the complainant and provided instructions on how to request an inspection of the mine site on which the violation was alleged. At the April 5, 2001 meeting, MMD explained the rules and regulation governing fugitive dust.

The second complaint was received by OSM in Washington D.C., on July 18, 2001. It alleged that a violation of air quality standards occurred at a surface coal mining operation on July 6, 2001. The complaint was forwarded to the Field Office on July 19, 2001. The Field Office contacted MMD immediately and sent a copy of all materials received by OSM. MMD responded to the complainant on July 20, 2001 by issuing a letter and fax to the complainant. Because an inspection was requested, MMD escorted the complainant and their attorney to the mine. During the inspection, data from the air monitoring station for July 6, 2001 (the day that the violation was alleged to have occurred) was examined. After the inspection, MMD provided a letter that explained the rules and regulations governing fugitive dust.

MMD informed both complainants that the mine was in compliance with Subpart 2050 of the NMAC and, therefore, no enforcement action would be taken. OSM agrees with the action taken by MMD.

Facts Supporting the Findings: The U. S. Environmental Protection Agency and the New Mexico Environment Division do not classify the surface coalmine as a point source. The mine is regulated in accordance with Subpart 2050. A-D of 19 NMAC 8.2, Air Resources Protection. These regulations require a monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control program. The mine uses monitoring equipment that measures to a point source standard because it is the only equipment available. Although an imprecise means of isolating the dust emanating from the mine from ambient dust from many sources in the area, MMD considers the point source measurements a “yardstick” to determine effectiveness of the fugitive dust control program. Over the past several years, MMD and the mine personnel have adjusted the standard to compensate for changes in conditions, such as the proximity of active mining to populated areas. If measurements consistently exceeded the “yardstick” standard, MMD would require operational equipment shutdown until readings would drop below the required standard. At other times, MMD has required the mine to shut down equipment when there was a temperature inversion even when readings were less than the threshold number. OSM verified this information during the 1998 oversight period.

List of Specific Permits, Mine Sites, or State Actions Reviewed:

MMD Report of investigation dated April 11, 2001, with attachments.

Complaint letter dated April 20, 2001 and accompanying photographs.

MMD report of investigation dated July 31, 2001, with attachments.

Subpart 2050. A-D of 19 NMAC 8.2, entitled Air Resources Protection.

1998 OSM Topic-specific Oversight Report for the New Mexico Regulatory Program.

The Actual or Potential Impact or Significance of Any Deficiencies Identified: None

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: OSM will provide technical assistance if requested by MMD.

Selected Program Area of Review: **Reclamation Success**

Review Scope: OSM and MMD will review projections for achieving AOC against mass balance calculations for spoil, topsoil, and PATFM from a “total mine perspective”.

Review Methodology: Regulatory jurisdiction for this mine is split between OSM and MMD. OSM is the Regulatory Authority for the portion of the mine, which is considered Indian Lands for regulatory purposes, and MMD is the Regulatory Authority for the portion of the mine, which is considered State Lands for regulatory purposes. Coordination between the two Regulatory Authorities is essential in order to obtain a clear picture of the final reclamation product for the entire mine. The NMOT, which included additional, appropriate personnel from OSM and MMD as needed, attempted to evaluate the current backfilling and grading practices and to project the likely outcome in terms of approximate original contour (AOC), required handling of potential acid and toxic forming material (PATFM) and topsoil coverage and compare this information to the outcome predicted in the State and Federal Permits. The reviewers were also charged with evaluating the presently approved “envelope” distances to determine if they are appropriate for the desired reclamation outcome.

Dates of Review: The State’s actions, documents pertaining to those actions, as well as the results of joint MMD/OSM inspections were evaluated from October 1, 2000 through September 30, 2001.

Findings: The analysis is not yet complete.

Facts Supporting the Findings: The permittee informed the NMOT that new post-mining contours will be submitted for a substantial portion of the operation. The new information was not available as of the end of the oversight period.

List of Specific Permits, Mine Sites, or State Actions Reviewed:

The Actual or Potential Impact or Significance of Any Deficiencies Identified: None

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: OSM will provide technical assistance in the form of digitizing the new post-mining contours and analyzing them against satellite imagery of the amounts of spoil material presently available to determine if the predicted elevations are attainable.

Selected Program Area of Review: **Reclamation Success**

Review Scope: Reclamation of Exploration Sites

Review Methodology: OSM and MMD conducted on-ground inspections of 21 sites and made written findings (reports) on the condition of each site.

Dates of Review: The evaluation took place from October 1, 2000 through September 30, 2001.

Findings: All sites inspected were reclaimed in accordance with the requirements of the exploration permit and the requirements of the State program regulations.

Facts Supporting the Findings: OSM and MMD conducted inspection of exploration sites near Raton, New Mexico and within the proposed South Hospah Permit Application Area near Hospah, New Mexico. In all, 21 sites were inspected. The following facts were reported in OSM inspection reports:

On April 17, 2001, OSM and MMD conducted on-ground inspections of coal exploration sited within the South Hospah Permit Application Area. MMD and OSM concluded that all sites inspected conformed to the requirements of the New Mexico Regulatory Program.

On July 10, 2001, OSM and MMD conducted inspections of exploration drilling reclamation conducted under permit No. E-88. The sites inspected are located in Gardner and Dutchman Canyons, west of Raton, NM. OSM and MMD accessed 17 of the 21 holes drilled under this permit. Only 3 drill sites, numbers 3, 11, and 18, were recognizable and each was adequately reclaimed. Disturbances at the other 14 sites were not detectable. Based on this evidence, MMD decided to release the permittee of any further reclamation obligation under this permit.

List of Specific Permits, Mine Sites, or State Actions Reviewed:

Exploration Permit No. E-88

Exploration Permit No. E-83

The Actual or Potential Impact or Significance of Any Deficiencies Identified: None

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: OSM will provide technical assistance if requested by MMD.

Selected Program Area of Review: **Customer Service**

Review Scope: OSM and MMD will determine if compliance with all requirements of the National Historic Preservation Act have been met.

Review Methodology: OSM and MMD reviewed all permitting actions taken by MMD during the evaluation period for compliance with the NHPA. OSM and MMD utilized appropriate, expert personnel to conduct the review.

Dates of Review: Documents pertaining to permitting actions taken by MMD from October 1, 2000 through June 19, 2001, were evaluated.

Findings: MMD followed all requirements of the NHPA when processing permitting actions. Additionally, MMD's findings, and conclusions regarding identification, mitigation and protection of cultural resources were very well documented.

Facts Supporting the Findings: OSM and MMD reviewed all permitting actions undertaken by MMD during the oversight period for compliance with the requirements of NHPA. All mining operations have either complied with MMD's requirements or compliance is well underway. There are two new actions pending. They are Star Lake and South Hospah (anticipated permit applications). The findings for these actions contain applicable references to NHPA and cultural resources. The findings also reference appropriate appendices of the PAP. The PAP's contain standard stipulations regarding new discoveries and special stipulations where necessary to address unique circumstances. The letters revealed a solid eligibility consultation process. MMD requires written notification to proceed with all activities that may affect cultural properties. There was one NOV issued for a relocation of a power pole disturbed without prior permission.

MMD held public meetings for Fence Lake permit renewal. Comments were received on a number of issues, including special stipulations proposed by MMD to protect historic/sacred sites. Although there was evidence of responses from SHPO outside of the mandated time frames, MMD is managing the process very well. OSM believes that MMD has a well-administered program for addressing cultural resource issues. The specific documents reviewed are listed below.

List of Specific Permits, Mine Sites, or State Actions Reviewed:

Mine Name	Permit No.	Document
Fence Lake	96-04	Director's Order of Approval With Findings of Fact Conclusions Of Law and Permit Conditions
Fence Lake	96-04	Letter of April 27, 2001, from MMD To SHPO Re: Section 106 Consultation NHPA, Permit Renewal Application, 2001-04: Fence Lake Surface Coal Mine
Lee Ranch	19-2P	Letter of February 20, 2001, from MMD to SHPO Re: Identification of New Archaeological Site LA 131958

South Hospah	Proposed	Letter of June 5, 2001, from MMD To SHPO Re: Consultation on need for inventory: Lee Ranch Coal Company's South Hospah Mine
Star Lake	Proposed	Letter of June 18, 2001, from MMD To SHPO Re: Consultation on need For inventory: Peabody Coal Company's Star Lake Mine
Ancho (Gachupin-Brackett)	97-02	Letter of April 13, 2001, from MMD To SHPO Re: Gachupin-Brackett Phase III Treatment Plan SW 444C
Ancho (Gachupin-Brackett)	97-02	Letter of December 29, 2000, from MMD to SHPO Re: Gachupin- Brackett Preliminary Excavation Report SW 445B.8
York Canyon Surface Mine	2001-03	Letter of March 19, 2001, from MMD to SHPO Re: Section 106 Consultation NHPA, Permit Renewal Application, York Canyon Surface Coal Mine Permit 2001-03
Ancho (Gachupin-Brackett)	97-02	Letter of January 16, 2001, from MMD to Permittee Re: Archaeological Clearance SWAC Preliminary Report 455B.8
La Plata Mine	2001-01	Letter of November 16, 2000, from MMD to SHPO Re: Permit Renewal Application Package (PAP), La Plata Coal Mine, Permit 2001-01
Ancho (Gachupin-Brackett)	97-02	Programmatic Agreement Among The New Mexico Energy, Minerals And Natural Resources Department, Mining and Minerals Division, The Office of Surface Mining, U.S. Department Of The Interior And The New Mexico Historic Preservation Division Regarding The Identification, Evaluation And

Treatment of Historic Properties
Affected By The Gachupin-Brackett
Surface Coal Mine

Lee Ranch Mine	19-2P	Proposed Penalty Assessment NOV 670, 1 of 1 issued for Unauthorized partial disturbance Of Site No. 431-116
Lee Ranch Mine	19-2P	Letter of June 1, 2001, from MMD To SHPO Re: Lee Ranch Coal Mine Preliminary Excavation Report for LA22199, LA65404, LA120592, LA121772, LA121744, and LA121773, (SW Report 443b)
McKinley Mine	2001-02	Letter of January 3, 2001, from MMD to SHPO Re: Permit Renewal Application, McKinley Surface Coal Mine, Permit 2001-02
Star Lake Mine	proposed	Programmatic Agreement Among The New Mexico Energy, Minerals And Natural Resources Department, Mining and Minerals Division, The Office of Surface Mining, U.S. Department Of The Interior And The New Mexico Historic Preservation Division Regarding The Identification, Evaluation And Treatment of Historic Properties Affected By The Star Lake Surface Coal Mine

The Actual or Potential Impact or Significance of Any Deficiencies Identified: None

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: OSM will provide technical assistance if requested by MMD.

Selected Program Area of Review: **Hydrologic Reclamation**

Review Scope: The selected stream channel sections were evaluated for conformance to the permit stipulation agreed to.

Review Methodology: MMD has permitted the La Plata Mine to build permanent stream channels, which employ the most current thinking for integrating constructed channels with natural streams. These channels have been constructed to integrate into the natural geomorphic process of the entire watershed and in so doing, achieve equilibrium between aggradational and degradational forces. OSM and MMD evaluated these features for conformance to the permit stipulations agreed to in the mine permit.

OSM and MMD believed that the practice was worthy of national attention. Therefore, in addition to reviewing the on-ground results for conformance with the permit, OSM and MMD decided to collect sufficient data on the design and performance of the channels to develop an application for an Annual Reclamation Award to be submitted for consideration in EY-2002.

Dates of Review: The review was conducted from October 1, 2000 through June 19, 2001.

Findings: The selected channels conform to the permit stipulations. As a result, the McDermot spoil disposal area is an example of the most current thinking in land reclamation technology. Use of the ROSGIN techniques for constructing the drainage channels has created a more natural-looking area that blends into the surrounding landscape by integrating the features of the surrounding undisturbed lands.

In recognition of the excellent work performed by the permittee, the New Mexico Energy, Minerals, and Natural Resources Department presented La Plata Mine with an Excellence in Mine Reclamation award at the annual meeting of the New Mexico Mining Association. The annual award is designed to recognize exemplary restoration of mined lands in New Mexico.

Facts Supporting the Findings: As a result of inspections conducted on February 22, 2001, and September 25, 2001 OSM and MMD determined that the permittee was in compliance with permit stipulations pertaining to drainage channels constructed using the ROSGIN method.

List of Specific Permits, Mine Sites, or State Actions Reviewed: Stipulations governing installation of drainage channels using the ROSGIN method.

The Actual or Potential Impact or Significance of Any Deficiencies Identified: None

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: OSM will develop an application for an Annual

Reclamation Award from data collected during inspections, information in the permit and other data and information provided by the permittee and MMD.