

***OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT***

Annual Evaluation Summary Report

for the

Regulatory Program

Administered by the Knoxville Field Office

of

Tennessee

for

Evaluation Year 2000

(October 1, 1999, to September 30, 2000)

(December 2000)

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I. INTRODUCTION

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that have been approved by OSM as meeting the minimum standards specified by SMCRA. The Act also provides authority for OSM to implement a Federal regulatory program in the States without approved regulatory programs. In Tennessee, OSM implemented the Federal regulatory program in October 1984 when the State repealed its surface mining law. This report contains summary information regarding the Tennessee Federal Program and the effectiveness of the Federal Program in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of October 1, 1999, to September 30, 2000. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Knoxville, Tennessee OSM Office.

The following list of acronyms are used in this report:

ACSI	Appalachian Clean Streams Initiative
AMD	Acid Mine Drainage
BMP	Best Management Practice
BTTI	Branch of Technical Training
CA	Cooperative Agreement
DBNF	Daniel Boone National Forest
DSMRE	Kentucky Department for Surface Mining Reclamation and Enforcement
EIS	Environmental Impact Statement
EP	Electronic Permitting
EPACT	Environmental Policy Act
IUL	Inspectable Unit List
KFO	Knoxville Field Office
LFO	Lexington Field Office
MEIR	Minesite Evaluation Inspection Report
MTR	Mountain Top Removal
MWP	Mining Without a Permit
NRCS	Natural Resources Conservation Service
NREPC	Kentucky Natural Resources and Environmental Protection Cabinet
NOI	Notice of Intent to Explore for Coal
NRCS	Natural Resource Conservation Service
OSM	Office of Surface Mining
PED/EIS	Petition Evaluation Document/Environmental Impact Statement
SMCRA	Surface Mining Control and Reclamation Act
SOCM	Save Our Cumberland Mountains
TDEC	Tennessee Department of Environment and Conservation
TWRA	Tennessee Wildlife Resources Agency
TMHP	Toxic Material Handling Plan
VER	Valid Existing Rights

II. OVERVIEW OF THE TENNESSEE COAL MINING INDUSTRY

Tennessee's coal resources are in 22 mining counties located in the Appalachian Region of the Eastern United States extending from the Kentucky border to the Alabama border in the east central portion of Tennessee. Mining in the northern counties is primarily in the steep slope areas of the Cumberland Mountain Range. Mining in the southern counties is confined to area-type operations due to the relatively flat terrain associated with the Cumberland Plateau.

Tennessee's recoverable coal reserves of 78.2 million short tons exist in bituminous coal beds 28 to 42 inches in thickness at depths of up to 1,000 feet. Tennessee coal is used primarily for the generation of electric power.

Tennessee ranks nineteenth in production of coal among the 26 coal producing states thus far in calendar year 2000. Coal production steadily declined from a high of 11,260,000 tons in 1972 to 2,680,888 tons in 1998. During 1999 and 2000, coal production has increased slightly and is fluctuating around 3 million tons annually. Currently, there are 20 active coal producing mines that have permitted 5,531 acres for mining. Underground mines have permitted 118.5 acres (excluding shadow areas) at 8 active mines, and surface operations have permitted 5,412.3 acres at 12 active mines.

III. OVERVIEW OF THE PUBLIC PARTICIPATION OPPORTUNITIES IN THE TENNESSEE FEDERAL PROGRAM

The Tennessee Federal Program provides numerous public participation opportunities in its program activities. Efforts are made to encourage participation and to inform the public of the avenues to participate in the regulatory program.

Public/Citizen Participation in the Regulatory Process

Citizens, environmental groups, and industry representatives have complete access to all regulatory program files including permitting, inspection and enforcement, and bonding program files. Managers and staff have open-door policies for any segment of the public to discuss issues that may arise.

The KFO meets with individual citizens, during the permitting process, who have expressed concerns or have an interest in a pending permit. The purpose of these meetings are to answer questions relative to the concerns and to provide information/explanations with respect to the permitting actions at issue.

Public participation opportunities have been provided to the public in the review of four new permit applications processed/issued by KFO this year. One informal conference has been conducted for a significant revision approved for U.S. Coal, Inc., permit No. 2788.

Industry Meetings

Pre-Permit Application Meetings with the Industry.

KFO continues to meet with individual coal companies or their consultant prior to submittal of a permit application to discuss potential issues that might arise during the permitting process and to seek resolution of concerns/problems that address regulatory requirements as well as the needs of the industry stakeholder. Because of the success of this initiative and the acceptance of this endeavor by the permit applicants, consultants, other participating agencies and OSM, this activity has become routine in the normal permitting process.

Post-Permit Issuance Meetings.

Following the issuance of permits, KFO technical staff, as appropriate, are visiting these minesites to review the effectiveness of the approved plan and to discuss with the operator potential modifications/improvements to the approved plan. The purpose of this outreach effort is to improve the permitting process and to answer questions that the operator and/or the inspector might have about the mining operation and reclamation plan, during initial stages of implementation.

Outreach Meetings with External Stakeholders

During this evaluation year, KFO conducted numerous meetings with State and Federal stakeholders to discuss regulatory issues and concerns, to enhance information sharing, and to strengthen partnerships in protection of the environment. The participants at these meetings included the Tennessee Division of Natural Heritage, Tennessee Wildlife Resources Agency, U.S. Fish and Wildlife Service, Tennessee Water Pollution Control - Mining Division, Tennessee Department of Environment and Conservation, representatives from the Office of the State Historic Preservation Officer, U.S. Geological Survey, Kentucky DSMRE, Virginia DMLR, and Tennessee-Kentucky Federal GIS Users Group.

IV. MAJOR ACCOMPLISHMENTS/ISSUES/INNOVATIONS IN THE TENNESSEE FEDERAL PROGRAM

Identification of Potential Problems

To assist operators in preventing environmental problems and reduce follow-up inspection hours, after issuance of notices of violation, the field office continued to place additional emphasis on inspectors identifying and advising operators of potential problems observed during inspections before they became citable violations. This initiative has reduced the number of notices of violation being issued and the number of required follow-up inspections.

AMD Inspection/Evaluation Initiative

The Knoxville Field Office continued its acid mine drainage (AMD) inspection/evaluation initiative of identification of potential AMD producers. The purpose of these inspections is to determine if the approved toxic material handling plans are effective in preventing acid mine drainage. Information from these inspections is used to determine if mining practices need to be modified or if permit revisions are required.

During evaluation year 2000, the KFO completed five inspections at three separate surface mines. One site was found to have an effective toxic material handling plan. Another site, Gatliff Coal Co., was found to have toxic material which was not reflected in the approved permit. The Inspection Team has recommended that additional analysis be performed to compare the content of the approved permit with what was identified on the ground. The third site, Cumberland Coal Company, was referred to the Technical Group in 1998. The Technical Group is currently processing a revision submitted by the company to resolve water quality issues at the mine site.

Abandoned Mined Lands Projects in Tennessee

The Office of Surface Mining (OSM) allocates approximately one million dollars of the Secretary of Interior's discretionary funding to reclaim high priority abandoned mined land sites in Tennessee annually. High priority refers to sites that are considered hazardous to the health and safety of the public or are causing harm to the environment. The OSM's Federal Reclamation Program staff from the Appalachian Regional Coordinating Center in Pittsburgh, Pennsylvania works very closely with the Tennessee Department of Environment and Conservation, Abandoned Mined Lands Section, in selecting and reclaiming the sites. The State and OSM use the cooperative agreement method where OSM funds the projects and the State's staff designs the projects, hires contractors to perform the work, and ensures the work is performed as designed. In FY2000, three projects were selected and funded for reclamation activities at an estimated cost of \$950,000.

OSM also approved a Watershed Cooperative Agreement with the Cumberland Mountain Natural Resources and Conservation Council (the Council) for mitigation of acid mine drainage (AMD) from abandoned mines in Scott County and the Bear Creek Watershed. This is an initiative to provide the final funding needed to complete the construction of a project. OSM provided \$80,000, the Natural Resources and Conservation Service provided \$260,000, and the Council provided \$20,000. The facilities constructed to mitigate the AMD will be completed within two years.

Appalachian Clean Streams Initiative (ACSI)

The Federal Program in Tennessee participates in the Appalachian Clean Streams Initiative as facilitator with local watershed efforts to mitigate the effects of acid mine drainage being discharged into watersheds from abandoned coal mines. The Tennessee

Division of Water Pollution Control and Reclamation Section completed on-the-ground work using monies provided by local State and Federal agencies and OSM s Abandoned Mined Land (AML) fund. OSM provided two summer interns during 2000 to support the efforts of watershed groups in Tennessee. Also, OSM initiated a watershed assistance program in Tennessee with the Volunteers in Service To America, VISTA, on two-year assignments to support the efforts of two watershed groups and another volunteer to organize watershed groups in two other areas. These volunteers are expected to be in place during 2001. In evaluation year 2000, the Coal Creek Watershed Foundation formed and joined three other groups that have been designated ACSI watershed groups:

North Chickamauga Creek. This is a watershed near Chattanooga that has a formal citizen s group leading the clean-up effort. The North Chickamauga Creek Conservancy has been the driving force behind the watershed restoration activities which include AMD treatment systems, land acquisitions for watershed preservation, stream bank stabilization projects, water monitoring programs, and Greenway trails and pathways. To date, cooperating agencies, private and corporate contributors, and in-kind services from the local communities have provided \$5,287,512.00 toward the restoration and presentation activities with OSM providing \$274,555. During 2000, OSM funded a summer intern for the group to prepare an educational video and an informational brochure to be used at schools and community outreach activities.

Bear Creek. This is a watershed near Oneida in Scott County that flows into Big South Fork National River and Recreation Area. The Land Reclamation Section installed numerous passive treatment systems at abandoned coal mines in the watershed and additional facilities will be installed in the future as funds become available. The Tennessee Department of Environmental and Conservation, the Environmental Protection Agency and the Natural Resources and Conservation Service have contributed \$1,269,410.00 in funds and in-kind services. During FY 98, OSM obligated AML funds (\$200,000) in a cooperative effort with the Natural Resources and Conservation Service (NRCS) and the National Park Service for construction of AMD mitigation projects over a two year period. During FY 99, the Knoxville Field Office provided technical assistance to the NRCS for design of AMD treatment facilities which will be installed by the NRCS contractors. In 2000, OSM agreed to provide \$80,000.00, under OSM s Watershed Cooperative Agreement Program, for AMD mitigation projects with NRCS providing \$260,000.00 and the local community providing \$20,000.00.

Big Laurel Creek. This is a watershed in Fentress County, Tennessee. The Tennessee Wildlife Resources Agency, in cooperation with the Tennessee Division of Water Pollution Control is taking the lead for the mitigation projects. The State agencies have installed several passive treatment systems in the watershed using State and OSM s AML funds. The Tennessee Department of Environment and Conservation and the Tennessee Wildlife Resources Agency and OSM have spent \$1,255,083.00.

Coal Creek. This watershed is about thirty miles North of Knoxville and the creek flows through Lake City and empties into the Clinch River, one of Tennessee s most

used trout fisheries. The mission statement of the Coal Creek Watershed Foundation is to Improve the quality of Life in the Coal Creek Watershed . The group formed in late 1999 and has already been very active with clean-up, educational, and outreach efforts. Many State, local, and Federal agencies are initiating studies in the watershed to determine the best approaches to meet the goals of the group.

Lands Unsuitable for Mining

Fall Creek Falls Unsuitability Petition OSM accepted a petition to designate the 85,588 acre watershed and viewshed of Fall Creek Falls State Park and Natural Area in Bledsoe and Van Buren counties, Tennessee, as unsuitable for mining on October 5, 1995. The petitioners were Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, and 49 citizens.

The allegations in the petition primarily concerned disturbing the acid- and/or toxic-producing zone in the shale that overlies the Sewanee coal seam, the dominant seam of importance in the southern Tennessee coal fields. Historical mining of the Sewanee coal seam has resulted, at times, in the production of acid mine drainage (AMD) and, on at least eight sites resulted in water pollution problems requiring long-term treatment. The petitioners alleged that the technology does not currently exist to mine the Sewanee coal seam and prevent AMD. The petitioners supported the allegation by referring to the permits issued to Skyline Coal Company (Skyline) by the OSM which are now producing AMD, namely Pine Ridge Mine and Glady Fork Mine. Consequently, the petitioners concluded that mining the Sewanee seam in the petition area without the technology to prevent AMD would result in adverse water quality impacts to the surface water regime within Fall Creek Falls State Park which, in turn, would impact other natural resources and the socioeconomics of the park.

Processing of the petition drew a high degree of public and media interest due primarily to the focus on protecting Tennessee s premier state park, Fall Creek Falls.

The notice of availability for the Fall Creek Falls draft Petition Evaluation Document/Environmental Impact Statement (PED/EIS) was published on May 1, 1998, in the Federal Register. Three public comment periods were open on the draft: May 1, 1998, to July 30, 1998; August 21, 1998, to September 16, 1998; and January 29, 1999, to April 29, 1999.

On June 18, 1998, OSM held a public hearing in Crossville, Tennessee, to accept both written and oral statements on the draft PED/EIS. Approximately 350 citizens attended the public hearing and 45 citizens presented oral comments. At the close of the last comment period, OSM received 606 letters commenting on the draft PED/EIS. OSM evaluated all written and oral comments and revised the draft PED/EIS accordingly.

OSM published the notice of availability for the Fall Creek Fall final PED/EIS on March 3, 2000. On June 17, 2000, the Secretary of the Interior, Bruce Babbitt, issued a decision to partially designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area as unsuitable for surface coal mining operations. The Secretary s decision resulted in designating 61,240 out of 85,588 acres as unsuitable for surface coal mining operations.

Bond Adjustment on Permitted Sites Requiring Long-Term Treatment of Pollutional Discharges

On May 30, 2000, KFO finalized its Field Office Policy Memorandum entitled *Policy for Requiring Bond Adjustments on Permitted Sites Requiring Long-Term Treatment of Pollutional Discharges*. The policy describes the procedures for adjusting performance bonds on mine sites requiring long-term treatment of unanticipated pollutional discharges. KFO has determined that 12 permitted sites, involving 3 companies, require bond adjustment for long-term treatment of pollutional discharges. Permittees for 7 of the 12 sites have been notified, in writing, of the requirement to increase their performance bonds. KFO's decision to require bond adjustment on these 7 sites has been appealed to the Office of Hearings and Appeals by the permittees and is currently pending before an Administrative Law Judge. KFO is in the process of calculating the cost for long-term treatment on the remaining 5 sites and OSM will notify the companies of the bond adjustment once the calculations are completed.

In a related matter, the National Mining Association (NMA) filed suit, on October 2, 2000, for declaratory and injunctive relief against Bruce Babbitt, Secretary of the Interior, OSM, KFO, and George C. Miller, Director, Knoxville Field Office in the United States District Court for the Eastern District of Tennessee. NMA is seeking relief from the defendants for acting in violation of the Administrative Procedure Act of 1977 (APA) and the Surface Mining Control and Reclamation Act of 1977 (SMCRA) relative to KFO's implementation of the Field Office Policy Memorandum entitled *Policy for Requiring Bond Adjustments on Permitted Sites Requiring Long-Term Treatment of Pollutional Discharges*. NMA alleges that the defendants acted unlawfully by: (1) issuing and requiring compliance with the unlawful field office policy memorandum requiring mine operators to radically increase their performance bonds, (2) retroactively altering the terms of permits to radically increase mine operators liabilities under those permits, and (3) violating the rule making requirements of the APA by issuing and enforcing the field office policy memorandum unlawfully.

Replacement of Bond Instruments

Frontier Insurance Company's Certificate of Authority issued by the U.S. Department of Treasury as an acceptable surety company for providing Federal bonds has been terminated effective May 31, 2000. Treasury requires replacement bonds where significant liability remains outstanding. Performance bonds written by Frontier Insurance Company are pending on 44 permits for a total of \$35,198,850. Some have already been replaced and accepted, or are currently being processed. However, Notices of Violation (NOV) were issued on 30 permits for failure to post acceptable replacement bonds. These NOVs remain outstanding.

Litigation

Appolo Fuels, Inc. v. United States

On January 3, 2000, the plaintiff filed a complaint alleging both a permanent and temporary taking of its coal reserves and mining rights. The plaintiff's claims are based on OSM's designation of the watershed of Little Yellow Creek in Claiborne County, Tennessee, as unsuitable for surface coal mining (but not underground mining), as well as OSM's alleged delay in deciding the petition which requested the designation. The United States filed its answer on March 3, 2000, and served initial discovery requests on August 7, 2000.

Eastern Minerals International, Inc., et al. v. United States

The plaintiffs filed this action seeking compensation for an alleged regulatory taking under the Fifth Amendment resulting from OSM's alleged delay in processing Eastern Minerals 1984 mining permit application. OSM originally denied Eastern's application in 1986. After an ALJ ordered OSM to specify what adverse impacts would be caused by the proposed mining operation, OSM undertook a technical review of the hydrological effects, and sought additional geological and hydrological information from the applicant. When Eastern Minerals failed to provide the required technical information, OSM denied the permit again in 1994. The plaintiffs claimed that OSM's delay in processing their permit application caused them to lose their leasehold interest in the coal as of August 31, 1990.

On October 2, 1996, Judge Robert Hodges of the U.S. Court of Federal Claims issued a decision finding a permanent regulatory taking of plaintiffs' property interests. On December 22, 1998, the Clerk of the Court of Federal Claims entered judgment against the United States in the amount of \$13,700,000 plus compound interest at the tax overpayment rate. The plaintiffs also seek an award of attorneys' fees equal to one third of the final judgment, or, in the alternative, the lodestar amount of approximately \$1,100,000, and an award of costs of approximately \$200,000. This case is on appeal to the U.S. Court of Appeals for the Federal Circuit. The briefing concluded on October 25, 1999, and oral argument was held on March 6, 2000.

Cane Tennessee, Inc., et al. v. United States

On September 30, 1999, Judge Emily Hewitt granted in part and denied in part the government's motion for summary judgment in this regulatory takings case. 44 Fed. Cl. 785 (1999). Plaintiffs in this case—Cane Tennessee, Inc. and Colten, Inc.—are the fee holders of the property at issue in *Eastern Minerals*. In *Eastern Minerals*, Judge Hodges ruled that OSM's extraordinary delay in processing Eastern Minerals (Cane's lessee) permit application effected a permanent regulatory taking of Eastern Minerals' right to mine coal under its lease with Cane. However, he dismissed the claim of Van Buren Minerals (Colten's lessee) as unripe, since Van Buren had never applied for a permit. In this case, plaintiffs seek just compensation for an alleged regulatory taking of their

lessor's interest in the subject property based on the same government action—delay in processing Eastern Minerals' permit application—that is at issue in Eastern Minerals.

The trial in this case has been informally stayed pending resolution of the appeal in *Eastern Minerals International, Inc. v. United States*.

The plaintiffs' valuation expert has valued Cane's lessor's interests in the subject property at \$5,116,000, while the government's expert valued this interest at approximately \$175,000.

Colten, Inc. and Cane Tennessee, Inc. v. United States

On August 25, 2000, plaintiffs Colten, Inc. and Cane Tennessee, Inc., filed a claim for compensation under the Fifth Amendment with the U.S. Court of Federal Claims. The complaint alleges a compensable taking of the plaintiffs' coal rights as a result of the Secretary's designation of certain lands as unsuitable for surface coal mining, under SMCRA section 522. The lands are located in proximity to Fall Creek Falls State Park in Tennessee. The designation occurred on June 17, 2000. Plaintiffs also seek consolidation with their pending takings claim concerning largely the same coal rights, related to OSM's permitting action that is at issue in Eastern Minerals.

Rith Energy, Inc. v. United States

This case is now on appeal from a June 25, 1999, decision in which the United States Court of Federal Claims, the Hon. John P. Wiese, granted summary judgment in favor of the Government. The plaintiff filed this action in August 1992, claiming that OSM had effected a compensable taking of plaintiff's leasehold when it suspended the company's mining permit because the company did not have a toxic materials handling plan adequate to prevent acid mine drainage (AMD).

In reaching his decision that no taking had occurred, Judge Wiese noted that the production of AMD by Rith had been determined to be highly likely if Rith had continued mining and that the AMD would have constituted a nuisance under Tennessee's Water Quality Control Act of 1977, Tenn. Code Ann. §§ 69-3-102 - 69-3-131 (1995 & Supp. 1998). Consequently, according to Judge Wiese, OSM's denial of the permit represented an exercise of regulatory authority indistinguishable in purpose and result from that to which plaintiff was always subject under Tennessee nuisance law. Judge Wiese then concluded that no compensable taking had occurred.

On September 10, 1999, Rith noted its appeal, and on December 15, 1999, it filed its appellant brief. The Government filed its appellee brief on February 23, 2000, Rith filed its reply brief on April 12, and, to address recent developments in takings law, the Government filed a supplemental brief on June 1, 2000.

Bat Conservation Initiative

KFO is participating as a member of a private and State/Federal interagency steering committee to promote the education of OSM staff, state agencies, and Indian Tribes on the beneficial aspects of bat conservation methods to safeguard bat habitat and public health, and ways to mitigate for loss of bat roosts and habitats. This effort is in response to a Memorandum of Understanding signed by OSM and Bat Conservation International on December 15, 1998.

Reforestation Enhancement Initiative

The Knoxville Field Office has developed a Reforestation Enhancement Initiative and issued policy to encourage the selection of postmining land uses which include the planting of trees. This is being coordinated with the national reforestation enhancement initiative, which is managed by the OSM Reforestation Steering Committee.

As part of this effort, the Program Support Group has worked with the Western Regional Coordinating Center to produce a video entitled, Reforestation: Build a Forest for the Future . This video will be used to provide education and to promote the OSM Reforestation Enhancement Initiative at a national level.

The Knoxville Field Office has worked with Gatliff Coal Company to revise the reclamation plan of two permits to include the principles of reforestation enhancement. This will include the planting of commercially valuable hardwood trees, which will provide a postmining benefit to the landowner and community, and provide environmental and wildlife enhancement.

Summary of Successes

The Knoxville Field Office continues to improve its relationships with its customers and stakeholders by providing increased opportunities for participation in the regulatory functions of the Field Office and by meeting with the State, citizens, landowners, and industry to discuss concerns and to foster better working relationships. The results have produced enhancements in compliance with respect to operators anticipating and addressing potential problems before they develop into violations. There have also been enhancements in communications with operators and landowners, based on industry feedback since the outreach efforts began. This feedback has consisted of improved oral communications as well as input in draft (written) field office policies and procedures that affect industry operations.

V. TECHNICAL ASSISTANCE

The Knoxville Field Office (KFO) continues to have a number of its employees, primarily the Technical Group staff, serving on different projects, teams and assignments that are of

common interest to the Appalachian Region and to all of OSM. Several of these technical assistance activities are cooperative efforts with PSD and ARCC. For the evaluation year, the Technical Group has spent approximately 61 percent of its time on Federal program activities and 39 percent on technical assistance activities. The projects/activities which involve KFO employees are as follows:

Monongahela River Project in Pennsylvania and West Virginia.

Reasonably Available Spoil (RAS) experimental practices (EP) in Virginia.

Valley Fill Impact Study, Appalachian Region.

Technical Information Processing System (TIPS) operation and next generation.

Appalachian Region Technical Coordinating Committee.

Experimental Practices in Kentucky, Virginia and Ohio.

IMCC Remining Team

Regional Remining Team

West Virginia Permit Review Team

West Virginia Process Improvement Team

West Virginia Interagency Process Improvement Team

Permit Findings Team

Bond Handbook Committee

National Blasting Work Group

National Dam Safety Group

Instructors for BTTI Training Courses

Instructors for TIPS Training Courses

Medical Requirements Team

AMD Bonding

Revegetation Issues

Revegetation Task Force

Reforestation Steering Committee

Provide Technical Guidance in Bond Release to Various OSM Offices.

Technical Support to OSM's Lexington and Charleston Field Offices for Federal Lands Issues

Technical Support to Bureau of Land Management and Tennessee Valley Authority on Federal Lands issues such as leasing and NEPA requirements

TIPS Hydrology Software Committee

Hydrologic Issues Team for PHC/CHIA

West Virginia Citizen Complaint

Assisted in Rewriting the Experimental Practice Directive

AVS National ownership and control rule redesign team and the Appalachian Region EP Team, AVS-EP Interface Subteam

Tennessee GIS Work Group

Contemporaneous reclamation special study in West Virginia

Valley Fill Stability and Flooding Team (Part of the MTR EIS)

Succession Planning Core Team Member

Beech Creek Hydrologic Investigation

Technical Assistance to Evaluate Topsoil Substitute

Bat Conservation Steering Committee

An Inspection Group staff person assisted Headquarters and Field Offices with Aviation Safety Training, a safety training course required for all staff members using helicopters in OSM's missions. The course was provided in Charleston, West Virginia, Lexington, Knoxville and in Washington, D.C. with a total of 50 people in attendance.

VI. SUCCESS IN ACHIEVING THE PURPOSES OF SMCRA AS MEASURED BY THE NUMBER OF OBSERVED OFF-SITE IMPACTS AND THE NUMBER OF ACRES MEETING THE PERFORMANCE STANDARDS AT THE TIME OF BOND RELEASE

To further the concept of reporting end results, the findings from performance standard evaluations are being collected for a national perspective in terms of the number and extent of observed off-site impacts and the number of acres that have been mined and reclaimed which meet the bond release requirements for the various phases of reclamation. Individual topic reports are available in the Knoxville Office which provide additional details on how the following evaluations and measurements were conducted.

A. Off-Site Impacts

Active Sites:

One of the intents of SMCRA is to prevent adverse effects to the public and to the environmental resources adjacent to a permitted surface coal mining operation. While conducting complete and partial inspections during EY 2000 KFO Reclamation Specialists evaluated all active minesites for off-site impacts. Off-site impacts resulting from SMCRA violations were directly reported via the Minesite Evaluation Inspection Report (MEIR). The MEIR data was transferred to a database and a summary report was developed for year end reporting purposes. In addition to MEIR data collection, citizen complaint files were evaluated and interviews with individual inspectors were conducted to determine if off-site impacts from other sources had occurred.

Eight permits were identified as having eighteen people, land and water impacts. Seven off-site impacts (2 minor, 4 moderate and 1 major) occurred due to changes in water chemistry during mining and sediment laden run-off leaving the sites for short distances. Four moderate impacts to land resulted due to off-site erosion. Two minor impacts to people resulted from an uncontrolled water release and the remaining five impacts to people were minor nuisance impacts resulting primarily from blasting operations.

One violation for elevated manganese effluents has resulted in an ordered permit revision to address the situation. All other violations were considered to be either permittee negligence or related to high precipitation events. For this reason, improvements in the regulatory functions or processes are not deemed necessary at this time.

Bond Forfeiture Sites

The Knoxville Field Office (KFO) is responsible for conducting inspections of bond forfeited sites at reduced frequencies including at least one complete inspection per year. Many of these sites have remained in abandoned status for several years and

natural vegetative processes have stabilized the disturbances. KFO Reclamation Specialists were asked to report off-site impacts resulting from EY 2000 complete inspections.

Two off-site impacts (one minor and one moderate) were reported during EY 00. These impacts resulted from low pH discharges at two separate sites.

B. Bond Releases

During the period October 1, 1999, through September 30, 2000, the Field Office processed 42 bond release requests. A total of 36 release actions were approved, consisting of 12 Phase I, 10 Phase II, and 14 Phase III releases. These actions resulted in returning all or a portion of the bond on more than 3,492 acres of reclaimed mine lands (see attached table). During this same period three bond release requests were disapproved, and three bond release requests were withdrawn.

APPENDIX A:

_____ These tables present data pertinent to mining operations and Federal regulatory activities within Tennessee. Unless otherwise specified, the reporting period for the data contained in all tables is the same as the evaluation year. Additional data used by the Knoxville Field Office in its evaluation of performance is available for review in the evaluation files maintained by the Knoxville OSM Office.

TABULAR SUMMARY OF CORE DATA TO CHARACTERIZE THE PROGRAM

Table 1: Coal Production

Table 2: Inspectable Units

Table 3: Tennessee Permitting Activity

Table 4: Off-Site Impacts

Table 5: Annual State Mining and Reclamation Results

Table 7: State Bond Forfeiture Activity

Table 8: Tennessee Staffing

Table 9: Funds Granted to Tennessee by OSM *(Not Applicable to Tennessee)*

Table 10: Inspection Activity

Table 11: Enforcement Activity

Table 12: Lands Unsuitable Activity

TABLE 1

COAL PRODUCTION (Millions of short tons)			
Period	Surface	Underground	
Calendar	Calendar	Calendar	Total
Year	Year	Year	
mines		mines	
Coal Production ^A for entire State:			
1997	1.75	1.58	3.33
1998	1.62	1.06	2.68
1999	1.56	1.56	3.12

^A Coal production as reported in this table is the gross tonnage which includes coal that is sold, used or transferred as reported to OSM by each mining company on form OSM-1 line 8(a). Gross tonnage does not provide for a moisture reduction. OSM verifies tonnage reported through routine auditing of mining companies. This production may vary from that reported by States or other sources due to varying methods of determining and reporting coal production.

TABLE 2

INSPECTABLE UNITS														
As of September 30, 2000														
Coal mines and related facilities	Number and status of permits								Insp. Unit^D	Permitted acreage^A (hundreds of acres)				
	Active or temporarily inactive		Inactive		Abandoned		Totals							
	IP	PP	Phase II release		IP	PP	IP	PP		IP	PP	IP	PP	Total
			Phase I	Phase II										
STATE and PRIVATE LANDS REGULATORY AUTHORITY: STATE														
Surface mines	3	44	2	14	103	28	108	86		40	155	195		
Underground mines	1	46	0	6	20	21	21	73		1	12	13		
Other facilities	1	49	0	5	3	4	4	58		1	32	33		
Sub totals	5	139	2	25	126	53	133	217	0	42	199	241		
FEDERAL LANDS REGULATORY AUTHORITY: STATE														
Surface mines														
Underground mines														
Other facilities														
Sub totals	0	0	0	0	0	0	0	0	0	0	0	0		
ALL LANDS^B														
Surface mines	3	44	2	14	103	28	108	86	0	40	155	195		
Underground mines	1	46	0	6	20	21	21	73	0	1	12	13		
Other facilities	1	49	0	5	3	4	4	58	0	1	32	33		
Totals	5	139	2	25	126	53	133	217	0	42	199	241		
Average number of permits per inspectable unit (excluding exploration sites)											<u>1</u>			
Average number of acres per inspectable unit (excluding exploration sites)											<u>68.8</u>			
Number of exploration permits on State and private lands:											<u>0</u>	On Federal lands: <u>0</u> ^C		
Number of exploration notices on State and private lands:											<u>29</u>	On Federal lands: <u>0</u> ^C		
<p>IP : Initial regulatory program sites.</p> <p>PP : Permanent regulatory program sites.</p> <p>^A When a unit is located on more than one type of land, includes only the acreage located on the indicated type of land.</p> <p>^B Numbers of units may not equal the sum of the three preceding categories because a single inspectable unit may include lands in more than one of</p> <p>^C Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management.</p> <p>^D Inspectable Units includes multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.</p>														

TABLE 3

**TENNESSEE PERMITTING ACTIVITY
As of September 30, 2000**

Type of application	Surface mines			Underground mines			Other facilities			Totals		
	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres ^A	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres
New permits	2	1	797	1	0	0	1	0	0	4	1	797
Renewals	0	0	0	5	1	28.5	4	2	111	9	3	140
Transfers, sales and assignments of permit rights	1	1		0	0		0	1		1	2	
Small operator assistance	0	0		0	0		0	0		0	0	
Exploration permits	0	0		0	0		0	0		0	0	
Exploration notices ^B	7	7		1	1		0	0		8	8	
Revisions (exclusive of incidental boundary revisions)	25	22		12	21		13	17		50	60	
Incidental boundary revisions	4	3	1.5	0	3	1.3	3	3	28.6	7	9	31.4
Totals	32	27	799	18	25	30	21	23	140	71	75	968

OPTIONAL - Number of midterm permit reviews completed that are not reported as revisions 23

^A Includes only the number of acres of proposed surface disturbance.

^B Federal approval not required. Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining.

TABLE 4

OFF-SITE IMPACTS														
DEGREE OF IMPACT		RESOURCES AFFECTED												Total
		People			Land			Water			Structures			
		minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major	
TYPE OF IMPACT	Blasting	2												2
	Land Stability	1			2				2					5
	Hydrology	2			2			2	2	1				9
	Encroachment	1												1
	Other	1												1
	Total	7	0	0	4	0	0	2	4	1	0	0	0	18
Total number of inspectable units: <u>171</u>														
Inspectable units free of off-site impacts: <u>163</u>														
OFF-SITE IMPACTS ON BOND FORFEITURE SITES														
DEGREE OF IMPACT		RESOURCES AFFECTED												Total
		People			Land			Water			Structures			
		minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major	
TYPE OF IMPACT	Blasting													0
	Land Stability													0
	Hydrology							1	1					2
	Encroachment													0
	Other													0
	Total	0	0	0	0	0	0	1	1	0	0	0	0	2
Total number of inspectable units: <u>179</u>														
Inspectable units free of off-site impacts: <u>177</u>														

Refer to the report narrative for complete explanation and evaluation of the information provided by this table.

TABLE 5

ANNUAL STATE MINING AND RECLAMATION RESULTS		
Bond release phase	Applicable performance standard	Acreage released during this evaluation period
Phase I	* <input type="checkbox"/> Approximate original contour restored * <input type="checkbox"/> Topsoil or approved alternative replaced	1,519
Phase II	* <input type="checkbox"/> Surface stability * <input type="checkbox"/> Establishment of vegetation	647
Phase III	* <input type="checkbox"/> Post-mining land use/productivity restored * <input type="checkbox"/> Successful permanent vegetation * <input type="checkbox"/> Groundwater recharge, quality and quantity restored * <input type="checkbox"/> Surface water quality and quantity restored	1,326
	Bonded Acreage Status^A	Acres
	Total number of bonded acres at end of last review period (September 30, 1998) ^B	17,948.7
	Total number of bonded acres during this evaluation year	17,298.1
	Number of acres bonded during this evaluation year that are considered remining, if available	(Not Available)
	Number of acres where bond was forfeited during this evaluation year (also report this acreage on Table 7)	0
<p>^A Bonded acreage is considered to approximate and represent the number of acres disturbed by surface coal mining and reclamation operations. ^B Bonded acres in this category are those that have not received a Phase III or other final bond release (State maintains jurisdiction).</p>		

TABLE 7

STATE BOND FORFEITURE ACTIVITY

(Permanent Program Permits)

	Number of Sites	Dollars	Disturbed Acres
Bonds forfeited as of September 30, 2000 ^A	46	3,084,381 00	1707.0
Bonds forfeited during EY 2000	3	370,900 00	46.0
Forfeited bonds collected as September 30, 2000 ^A	42	2,755,751 00	1,635
Forfeited bonds collected during EY 2000 ^B	1	2,868 00	4.0
Forfeiture sites reclaimed during EY 2000	1	295,516 ^C	62
Forfeiture sites repermited during EY 2000	0		0
Forfeiture sites unreclaimed as of September 30, 2000	17		639
Excess reclamation costs recovered from permittee	0	0	0
Excess forfeiture proceeds returned to permittee	0	0	0
^A Includes data only for those forfeiture sites not fully reclaimed as of this date. ^B KFO received an additional \$2,868 from the liquidation of the surety company that was deposited into the bond forfeiture account for Dynasty Coals, Inc., Permit No. 83-C-014 ^C Cost of reclamation, excluding general administrative expenses.			

TABLE 8

STATE STAFFING (Full-time equivalents at end of evaluation year)	
Function	EY 2000
Regulatory Program	
Permit review	13.00
Inspection	14.00
Other (administrative, fiscal, personnel, etc.)	24.00
SUB-TOTAL	51.00
AML Program	
TOTAL	51.00

TABLE 10

STATE OF TENNESSEE		
INSPECTION ACTIVITY		
PERIOD: October 1, 1999 - September 30, 2000		
Inspectable Unit Status	Number of Inspections Conducted	
	Partial	Complete
Active*	469	228
Inactive*	484	468
Abandoned*	59	206
Exploration	18	97
TOTAL	1030	999

* Use terms as defined by the approved State program.

In addition to the inspections for the State of Tennessee identified above, the Knoxville Field Office conducted six complete inspections and one partial inspection at six abandoned minesites located in the State of Georgia.

TABLE 11

STATE OF TENNESSEE		
ENFORCEMENT ACTIVITY		
PERIOD: October 1, 1999 - September 30, 2000		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	38	39
Failure-to-Abate Cessation Order	0	0
Imminent Harm Cessation Order	0	0

* Do not include those violations that were vacated.

TABLE 12

<p align="center">LANDS UNSUITABLE ACTIVITY STATE OF TENNESSEE</p> <p align="center">PERIOD: October 1, 1999 - September 30, 2000</p>			
Number of Petitions Received	0		
Number of Petitions Accepted	0		
Number of Petitions Rejected	0		
Number of Decisions Declaring Lands Unsuitable	1	Acreage Declared as Being Unsuitable	61,240
Number of Decisions Denying Lands Unsuitable	0	Acreage Denied as Being Unsuitable	0

State should provide lands unsuitable data to OSM annually if there is any activity in this program area. OSM offices responsible for Federal and Indian Program States must also complete this table.