OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

Administered by the State

of

Texas

for

Evaluation Year 2003

(October 1, 2002, through June 30, 2003)

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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. This report contains summary information regarding the Texas program and the effectiveness of the Texas program in meeting the applicable purposes of SMCRA as specified in Section 102. The evaluation period covered by this report is October 1, 2002, to June 30, 2003. The period was shortened to 9 months to allow the reporting to coincide with Congressional data needs.

The primary focus of OSM's oversight policy is an on-the-ground results-oriented strategy that evaluates the end result of State program implementation, i.e., the success of the State programs in ensuring that areas off the minesite are protected from impacts during mining, and that areas on the minesite are contemporaneously and successfully reclaimed after mining activities are completed. The policy emphasizes a shared commitment between OSM and the States to ensure the success of SMCRA through the development and implementation of a performance agreement. Also, public participation is encouraged as part of the oversight strategy. Besides the primary focus of evaluating end results, the oversight guidance makes clear OSM's responsibility to conduct inspections to monitor the State's effectiveness in ensuring compliance with SMCRA's environmental protection standards.

OSM's oversight guidance emphasizes that oversight is a continuous and ongoing process. To further the idea of continuous oversight, this annual report is structured to report on OSM's and Texas' progress in conducting evaluations and completing oversight activities, and on their accomplishments at the end of the evaluation period. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Office of Surface Mining, Tulsa Field Office, 5100 E. Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.

The following acronyms are used in this report:

AML	Abandoned Mine Land Reclamation
AVS	Applicant Violation System
EY	Evaluation Year
NPDES	National Pollution Discharge Elimination System
OSM	Office of Surface Mining Reclamation and Enforcement
RCT	Railroad Commission of Texas, Surface Mining and Reclamation Division
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten-Day Notice
TFO	Tulsa Field Office
TIPS	Technical Information Processing System

II. Overview of the Texas Coal Mining Industry

The near-surface coal deposits (200 feet) in Texas are about 97 percent lignite. The remainder is bituminous coal. The potential coal reserves are 23.37 billion tons of lignite and 787 million tons of bituminous coal. The sulfur content ranges from .7 to 1.5 percent for lignite and 1.4 to 3.6 percent for the bituminous coal. Cannel coal is mined on three South Texas mines and has an average sulfur content of 2.2 percent. The coal seams mined in Texas average about 8 feet in thickness.

In the 1840's the first bituminous coal was mined along the Trinity River of Texas. As early as 1850, lignite was produced and used. Coal from both lignite and bituminous deposits was used by the railroads until the 1920's. In 1917, coal production in Texas was about 2.5 million tons, with approximately equal amounts of lignite and bituminous coal. From 1918 until 1950, only 18,000 tons of lignite were produced. In 1954, a lignite-fueled electric power-generating plant near Rockdale, Texas opened. Following that, annual coal production increased rapidly to meet the demand for electric power generation at additional plants. In 2002, nearly 49 million tons of lignite and bituminous coal were produced in Texas from large surface mines using large equipment such as bucket-wheel excavators and cross pit spreaders in addition to draglines, scrapers, loaders, and trucks. Over 99.5 percent of the production was lignite.

Most of the lignite production is used in the generation of electric power within the State. The lignite from one mine is used to produce activated carbon. The bituminous production has been used intrastate by the cement, lime and light-weight aggregate industry to fire kilns, and boilers. The cannel coal mined near Laredo, Texas, has been exported to Europe for fireplace coal, to South America for generation of electricity, and used within the State by various industries such as cement production. Texas is the Nation's fifth ranked coal-producing State and the largest lignite producer in the world. Daily employment at the 20 permitted operations exceeds 2,000.

Climate is not a limiting factor for reclamation in Texas, although the mines near Laredo are west of the 100^{th} meridian and use a 10-year extended responsibility period for bond release. Some mines have encountered acid-forming materials in the overburden that has complicated reclamation activities. In areas, where topsoil substitution is used, selective overburden handling techniques have proven successful.

III. Overview of the Public Participation Opportunities in the Oversight Process and the State Program

RCT provides for public input into the State program through several avenues. Citizens may comment on permit applications, be party to the proceedings, comment on amendments to the State program, or file complaints on mining operations.

OSM reviewed RCT's performance on customer service, looking at citizen's complaints, permitting actions, and bond releases. The following findings and conclusions resulted from the study:

Bond Release: The sample of bond release files that was reviewed showed that, in every case, the applicants had published a notice of bond release application seeking public comment. No comments were received on either of the bond release applications.

Permitting Actions: The permitting actions that were reviewed showed that the applicants had published a notice that the application was available for public review and comment. RCT received comments on the applications and asked the applicants to address the comments. They were addressed by the applicants explaining how the commenters' concerns would be handled. The files contained no further correspondence, which would imply that the commenters had been satisfied by the response to their comments.

Citizen's Complaints: In every citizen's complaint, even telephone complaints, RCT responded promptly in writing to the complaint and offered confidentiality. In the three complaints that were reviewed, RCT met with the complainant and inspected the site identified in the complaint. In 2 cases, the permittee corrected the loss of groundwater problem that led to the complaint by providing an alternative water supply. No violations were cited. The other complaint was found, after investigation, not caused by mining. In every complaint, RCT responded promptly with its findings and disposition of the complaint. RCT also provided information to each complainant on appealing the findings.

During the evaluation period, OSM received a citizen's complaint concerning one permitted operation's decision to mine around the complainants property without prior approval for the changes. OSM transmitted the complaint to RCT in a Ten-Day Notice. RCT cited a violation, and the permittee applied for a permit revision.

RCT appropriately provided for public participation on every program aspect that was reviewed. All citizen's complaints were handled in accordance with the approved State program.

IV. Major Accomplishments/Issues/Innovations in the Texas Program

A. Regulatory Program

During EY 2003, RCT successfully operated its regulatory program so that there were no significant adverse environmental impacts from coal mining in Texas.

During EY 2003, the State of Texas experienced funding difficulties for State programs. This translated to reductions in the State appropriations for the coal mining

regulatory program. In order to accommodate the reductions in funding, RCT began several initiatives to preserve the integrity of the program:

The Surface Mining and Reclamation Division was reorganized, which resulted in closing one of the field offices and shifting functions to other offices.

Incentives were provided to encourage retirements of staff who were eligible.

Permit fees were increased through a State law. This program amendment was submitted to OSM on July 10, 2003.

B. Abandoned Mine Land Reclamation Program

On June 23, 1980, the Secretary of the Interior approved Texas' AML reclamation plan under Title IV of SMCRA. Texas has completed reclamation on all inventoried coal related sites and is certified to use AML funds for the reclamation of noncoal abandoned mine lands. The Texas AML program has a full-time staff of 8.

During EY 2003 the AML program oversaw the completion of hazard abatement at one open pit uranium mine. RCT also initiated construction of a regrade project on another open pit uranium mine. The State completed hazard abatement on one coal related subsidence project in Malakoff, Texas. The subsidence features were reported to RCT by the landowner during the previous evaluation period. The project addressed numerous subsidence features that resulted from roof failures of shallow underground coal extraction in unconsolidated material.

RCT followed standard construction practices using State contracting procedures. OSM's inspections of construction projects found RCT completed projects in a manner consistent with its approved reclamation plan with projects meeting design goals. AVS checks were made on successful bidders. RCT was in compliance with storm water discharge requirements and properly implemented interagency/intergovernmental coordination. The approved plan was followed for obtaining necessary rights-of-entry and RCT completed updates of the AML Inventory System.

In EY 2003, RCT completed hazard abatement on two projects. They did not report any completions, pending installation of final water control system and vegetation establishment on the projects

C. Program Amendments

During EY 2003, RCT submitted an amendment to change the coal mining regulatory and reclamation program (TX-43) to allow telephonic proceedings. OSM processed this amendment and approved it in June 2003.

TX-48 on Valid Existing Rights was approved in EY 2002 and promulgated into the State program in EY 2003.

At the end of EY 2003, no program amendments were pending. On July 10, 2003, RCT submitted a program amendment to change the permit fees.

V. 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 and public participation 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 TFO which provide additional details on how the following evaluations and measurements were conducted.

A. Off-Site Impacts

RCT conducted 162 partial and 77 complete inspections of coal mining and reclamation operations in EY 2003. OSM conducted 13 oversight inspections. This totals 252 inspections or opportunities for observations of off-site impacts. Only 1 off-site impact was observed, a moderate impact to water resources.

The impact was recorded on 1 of 21 mining operations; thus, 95 percent of the permitted sites produced no off-site impacts. The percentage was 85 percent in EY 2001 and 60 percent in EY 2002. The percentage in EY 2003 shows a marked improvement in preventing off-site impacts.

RCT and the mining operations have been effective in minimizing off-site impacts.

B. Reclamation Success

During EY 2003, which was shortened to 9 months, the bond release acreage was substantially lower than in EY 2002. However, from its oversight inspections, OSM observed that reclamation is current on all mines and many acres appear to have been

reclaimed successfully even though bond releases have not been sought or approved.

TFO concluded that RCT has appropriately implemented its bond release program and ensured successful reclamation.

VI. OSM Assistance

OSM provided financial assistance to Texas in the form of grants, for 50 percent of the operational budget for RCT's activity as the regulatory authority and 100 percent of RCT's activity in AML. RCT has access to and uses equipment provided by OSM for TIPS. OSM and RCT have been actively working on research and development with VoloView, Tsunami, and Raster Design 3 software. TFO presented its Stratigraphics course to RCT staff in December 2002.

VII. General Oversight Topic Reviews

A. Mine-Site Evaluation

During EY 2003, which was only 9 months, TFO found on-the-ground problems on most of its inspections (10 of 13). Some problems were minor, and some could be repaired during the inspection, but three resulted in TDN's issued to RCT for what TFO believed were problems that the State inspections should have addressed.

RCT cited violations in response to two of the TDN's. One of those was cited before the TDN was received following a discussion between TFO and RCT inspectors on the violation. RCT replied that the third was an NPDES permit problem that was not a violation because it was not the operator's fault. That problem is that water discharges are combined for analysis, which means that discharges that may exceed standards at one discharge point could be allowed because it is averaged with discharges from other points. OSM accepted this explanation but began discussions with RCT, the Texas Commission on Environmental Quality, and the Environmental Protection Agency on correcting the programmatic problem. Until it is resolved, there is the potential for water pollution from mining operations that would not be identified.

A fourth TDN was based on a citizen's complaint that alleged violations of the State program and the approved permit when the mine operator deviated from its approved mining sequence. RCT responded that it could not cite a violation. TFO found this response inappropriate. Following deliberations of the Railroad Commissioners, RCT reversed its earlier position and cited a violation that required cessation of the operations that were not approved in the permit (using auxiliary equipment to mine

areas that were not in the approved mining sequence). TFO determined that this response was appropriate.

B. On-the-Ground Compliance

State inspection reports often list problems that the State inspector identified during inspections and provide corrective actions and abatement periods for correcting the identified problems.

TFO appreciates the effort RCT has taken in preparing thorough inspection reports that document what was observed at the mine (including photographs). The reports help those who follow the progress of the mining operation (especially the public) to have a better view of the impacts of the operation.

Based on the problems identified on Federal inspections and the problems identified in State inspection reports, TFO concluded that RCT has become lax in citing violations of the State program. In its response to this conclusion in the topic-specific oversight report, RCT commented that many of the problems TFO identified were erosion problems that were in compliance with the soil stabilization plan included in the permit. RCT also commented that some of what TFO had interpreted as violations in the State inspection reports were conditions that were not yet violations but would become so if not corrected. Thus RCT's reports were a means of communicating with mine operators on potential problems. RCT also said that future reports would be more specific as to the status of problems that are discussed in the report. TFO believes that this practice will allow better communication with all readers.

TFO still believes that many of the on-the-ground problems that it identified were violations that should have been cited before OSM's inspection. Even some of the erosion problems exceeded what TFO believed was reasonable for compliance with the permit-specific soil stabilization plans and the State program. TFO recommends that RCT reevaluate its position on identifying and citing violations that are identified to ensure that mine operators and the public clearly understand what must be done to be in compliance with the State program.

C. Groundwater Monitoring

In recent years, there have been a number of citizen's complaints that were concerned about groundwater loss and contamination. In response to those complaints, TFO planned to look at groundwater protection plans in recently issued permits in EY 2003. This included looking at the on-the-ground implementation of the groundwater protection plans.

Due to the shortened evaluation year, TFO did not complete the evaluation it planned and will continue the study in EY 2004. As in previous years, the citizen's complaints in EY 2003 predominately concerned groundwater.

Appendix A: Tabular Summaries of Data

These tables present data pertinent to mining operations and State and Federal regulatory activities within Texas. They also summarize funding provided by OSM and Texas staffing. Unless otherwise specified, the reporting period for the data contained in all tables is October 1, 2002, to June 30, 2003. Additional data used by OSM in its evaluation of Texas' performance is available for review in the evaluation files maintained by the Tulsa Field Office.

Appendix B: State Comments on Report

By e-mail communication on September 9, 2003, Melvin Hodgkiss, Director, Surface Mining and Reclamation Division of the Railroad Commission of Texas, stated that RCT had no comments on the EY 2003 Annual Evaluation Report.