

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

TOPIC-SPECIFIC EVALUATION REPORT

**Evaluation Year 2004
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 2004 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 according to the requirements of the post-mining land use. Using the 2004 plan as guidance, the New Mexico Oversight Team investigated a number of variables, which influenced these two goals. The strategic plan was to use oversight to generate ideas for improving regulatory efficiency and on-the-ground- reclamation.

The regulatory sub-team agreed on topics for the Evaluation Year 2004 Workplan. These discussions took place telephonically and by e-mail. No formal meetings were held. The process resulted in a final State/Federal Workplan being issued on January 15, 2004.

The final oversight report summarizes the methods used, problems identified, and solutions implemented by the Team during the oversight period. The report provides a summary of the State's program performance during the oversight period based on the performance measurements described in the Workplan.

The reporting period for this evaluation began on July 1, 2003 and ended on June 30, 2004.

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
BLM	U. S. Bureau of Land Management
EY	Evaluation Year
GPRA	Government Performance and Responsibility Act
NMAC	New Mexico Administrative Code
MMD	Mining and Minerals Division
NMOT	New Mexico Oversight Team
NOV	Notice of Violation
OSM	Office of Surface Mining Reclamation and Enforcement
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 July 1, 2003 through June 30, 2004.

Findings: There were no documented off-site impacts this evaluation period. 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 implementation deficiencies. The Off-Site Impact Oversight Report for EY-2004 is on file at AFO.

Facts Supporting the Findings: MMD conducted 125 partial and 50 complete inspections during the evaluation period. All inspection reports filed for those inspections were reviewed by OSM. These inspections resulted in two enforcement actions. There were no references in any of the reports to any off-site impacts observed. No civil penalties were assessed.

List of Specific Permits, Mine Sites, or State Actions Reviewed: All inspection reports issued by MMD pertaining to the 175 inspections conducted during the evaluation period, OSM inspection reports, enforcement actions, penalty assessment data and citizen complaints occurring during the evaluation period.

The actual or Potential Impact or Significance of Any Deficiencies Identified: No impacts were identified and no deficiencies 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: **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 collect 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 July 1, 2003 through June 30, 2003.

Findings: MMD reported all categories of information agreed upon in the 2004 Annual Workplan.

Facts Supporting the Findings: OSM reviewed the following data elements for each active mining operation under the jurisdiction of MMD: acreage of areas disturbed during EY-2004 and cumulatively for all years, long-term mining and reclamation facilities, active mining areas, areas backfilled and graded, areas where phase I bond release has been granted (during EY-2004 and cumulatively for all years), areas re-soiled and planted (during EY-2004 and cumulatively for all years), areas where phase II bond release has been granted (during EY-2004 and cumulatively for all years), areas planted for 10 years after the last year of augmented seeding (during EY-2004 and cumulatively for all years), and areas where phase III bond release has been granted (during EY-2004 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 Name	Phase	Amt. Released	Acres Released	Date Approved
Black Diamond	I	\$134,597.00	23.00	1-3-1994
Cimarron	I	\$661,616.00	54.00	3/5/2004
Carbon No. 2	I	\$2,976,687.00	468.40	10-19-1992
Carbon No. 2	II	\$1,676,458.00	308.00	2-5-1999
Carbon No. 2	Final	\$308,000.00	308.00	3-8-2002
De-Na-Zin	I	\$2,815,176.00	170.00	12-19-1991
De-Na-Zin	II	\$1,373,980.00	149.30	8-2-1999
De-Na-Zin	Final	\$150,000.00	149.30	7/1/2003
Fence Lake No. 1	I	\$665,829.00	92.60	2-11-1987
Fence Lake No. 1	II & Final	\$998,743.00	500.00	1/21/2004
Fence lake Mine	Final*	\$7,739,773.00	0.00	5/6/2004
Gateway	I	\$703,113.00	144.10	5-11-1992
Gateway	II	\$260,811.00	144.10	4-3-2000

Gateway	Final	\$207,931.00	144.10	1/12/2004
Mentmore Section 33	I	\$0.00	203.00	5-16-1990
Mentmore 9, 15,16 &21	I	\$0.00	418.90	10-19-1992
Mentmore 3 & 4	I & II	\$0.00	867.70	10/10/2003
Mentmore 9,15, 16, 21&33	II	\$0.00	1131.70	10/10/2003
Mentmore Industrial	Final	\$0.00	455.70	2-14-1994
McKinley Pre/Interim	Liability	\$0.00	1745.60	12-14-1994
San Juan	I	\$0.00	1832.00	2-14-1994
San Juan NW Pinion	Final	\$0.00	236.74	5-24-2001
York Canyon Surface	I&II	\$5,525,319.00	1053.00	9-24-2001
York Canyon Undergnd	I&II	\$2,210,019.00	190.00	9-24-2001
Total Releases		\$28,408,052.00	10789.24	
*Permit withdrawn no disturbance				

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, Mentmore Mine, Lee Ranch Mine, Ancho Mine, Cimarron Mine, Cimarron Underground Mine, La Plata Mine, San Juan Mine. These are all of the active coal mines regulated by MMD as of June 30, 2004.

OSM reviewed the following data elements for each active mining operations listed above: acreage of areas disturbed (during EY-2004 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-2004 and cumulatively for all years), areas re-soiled and planted (during EY-2004 and cumulatively for all years), areas where phase II bond release has been granted (during EY-2004 and cumulatively for all years), areas planted for 10 years after the last year of augmented seeding (during EY-2004 and cumulatively for all years), and areas where phase III bond release has been granted (during EY-2004 and cumulatively for all years). As previously stated, OSM used this data to fulfill its GPRA reporting requirements.

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

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: No assistance is needed from OSM at this time.

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-2004, 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 July 1, 2003 through June 30, 2004.

Findings: MMD responded to Citizen Complaints and inquiries properly and in a manner that went beyond mere conformance with the approved State Regulatory Program.

Facts Supporting the Findings: MMD received one citizen inquiry regarding the design and placement of a culvert under a haul road associated with a mining permit. Flooding had affected property owned by the inquirer and this person was concerned that improper design and/or alignment of the culvert were the cause.

Even though no formal complaint was filed, MMD responded by conducting an inspection within six (6) days of receiving the inquiry. The MMD inspector conducted a thorough field review of the area and held a meeting with both parties. A formal response and finding of no violation was sent to the citizen inquirer four (4) days after the inspection.

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

Letter from MMD to Citizen Inquirer with a finding of no violation and a complete justification for that finding.

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 reviewed bond release applications expected from three mining operations.

Review Methodology: OSM and MMD conducted joint inspections of areas identified for bond release in the applications. The information contained within the applications was compared to actual field conditions.

Dates of Review: The State's actions, documents pertaining to those actions, as well as the results of joint OSM/MMD inspections were evaluated from July 1, 2003 through June 30, 2004.

Findings: OSM and MMD found that the five (5) bond release applications received were accurate and approvable.

Facts Supporting the Findings: OSM and MMD inspected the bond release application areas pertaining to the following mining permits; Cimarron, De-Na Zin, Fence Lake No. 1, Fence Lake Mine, and Gateway on.

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

Cimarron Mine – documentation pertaining to the phase I bond release approved on March 5, 2004.

De-Na-Zin Mine Permit No. – Documentation pertaining to the phase III bond release approved on July 1, 2004.

Fence Lake No. 1 Permit No. – Documentation pertaining to the phase III bond release approved on January 21, 2004.

Fence Lake Mine Permit No. - Documentation pertaining to the phase III bond release approved on May 6, 2004

Gateway Mine Permit No. - Documentation pertaining to the phase III bond release approved on January 12, 2004.

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

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 reviewed topsoil replacement results at one mining operation.

Review Methodology: OSM and MMD conducted a joint inspection of areas reclaimed areas at the San Juan Mine.

Dates of Review: The results of a joint OSM/MMD inspection at the Sam Juan Mine conducted on June 3, 2004 were evaluated.

Findings: OSM and MMD found that the San Juan Mine was in full compliance with the terms of the permit regarding topsoil replacement. However, very small areas of reclamation, represented by few sampling points may require additional sampling.

Facts Supporting the Findings: OSM and MMD inspected the Pinon, Juniper and South Lease Extension reclaimed areas of the San Juan Mine on June 3, 2004 and found San Juan Mine to be in full compliance with permit requirements regarding topsoil replacement.

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

San Juan Mine – Soil depth verification measurements performed in the Pinon, Juniper and South Lease Extension Areas.

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

Description of Any Corrective Action Required or Recommended: None

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