



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

Administered by the State

of

Kansas

for

Evaluation Year 2007  
(July 1, 2006, through June 30, 2007)

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## **I. Introduction**

The Surface Mining Control and Reclamation Act of 1977 created the Office of Surface Mining Reclamation and Enforcement 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 Kansas program and the effectiveness of the Kansas program in meeting the applicable purposes of SMCRA as specified in Section 102. The evaluation period covered by this report is July 1, 2006, to June 30, 2007.

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 Kansas' 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, 1645 South 101<sup>st</sup> East Avenue, Suite 145, Tulsa, Oklahoma 74128-4629.

The following acronyms are used in this report:

AML	Abandoned Mine Land
AMLIS	Abandoned Mine Land Inventory System
AVS	Applicant Violation System
EY	Evaluation Year
FTE	Full-Time Employee
OSM	Office of Surface Mining Reclamation and Enforcement
KDHE	Kansas Department of Health and Environment, Surface Mining Section
NOV	Notice of Violation
NRDAR	Natural Resource Damage Assessment & Restoration
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten-Day Notice

TFO	Tulsa Field Office
TIPS	Technical Innovation & Professional Services
USACE	United States Army Corps of Engineers

## **II. Overview of the Kansas Coal Mining Industry**

Coal reserves in Kansas are found in an area covering approximately 18,000 square miles, or 23 percent of the State. The demonstrated reserve coal base is estimated to be 976,700,000 tons, 0.2 percent of the United States coal reserves. Kansas coal varies from lignite, in north central Kansas, to highly volatile bituminous, in southeast Kansas. The average number of tons of overburden stripped to each ton of coal is about 13:1. Coal seams in Kansas are usually one to three feet thick. Only bituminous coal of southeast Kansas is currently being mined.

The first record of coal mining in Kansas dates to 1865 when settlers extracted the easily reached coal seams at and near the surface. Beginning in the 1880's, most of the coal produced in southeast Kansas was extracted by underground mining. By 1920, underground mining had been entirely replaced by surface mining. At the time SMCRA was enacted in 1977, approximately 46,000 acres in 41 counties were affected by coal mining. The current listing of hazardous conditions recorded in OSM's AMLIS, includes: 333,876 linear feet of dangerous highwalls; 479.9 acres of dangerous piles and embankments; 5 hazardous water bodies; 1,470 vertical openings; 35 hazardous facilities; 45.3 acres of unauthorized industrial and residential dumps on mine lands; and 1,138.6 acres of surface subsidence under towns and roads. These figures include both hazards that have been reclaimed and those to be addressed. Kansas is actively reclaiming these on a priority basis as AML funds become available.

Since the 1917 peak of 7,000,000 tons, coal production in Kansas has steadily declined. In 1981, coal production was 1,361,000 tons. As shown in Table 1, Kansas' mines produced 500,256 tons of coal in EY 2007. Coal produced in Kansas is used primarily for generation of electricity.

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

OSM published in its Directive on Oversight of State Programs (REG-8) a statement that customer service was an integral and important part of the implementation of an approved State program. The oversight guidance calls for evaluating the State's performance on customer service annually. The aspects of customer service that are to be evaluated are: handling of citizen's complaints; permitting actions; bond releases; lands unsuitable petitions; administrative and judicial review; and AVS determinations. During EY 2007, TFO's oversight focused on handling of citizen's complaints, public participation in permitting actions and bond releases, and

availability of information to the public. KDHE uses the State of Kansas administrative procedures, which call for formal hearings and records on all significant actions.

KDHE 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. TFO's review of opportunities for public participation resulted in the following findings and conclusions:

### **Citizen's Complaints / Contacts**

KDHE maintains a log of citizen's inquiries that describes the subject and then describes the action that is needed to answer the inquiry. There were 346 entries between July 1, 2006, and June 30, 2007. The entries range from telephone calls about old mining to office visits about bond releases. KDHE handled all calls and visits professionally by providing information or referring the caller to other agencies that would have more information. In some cases, KDHE met with visitors, listened to their concerns, and provided information that was available.

During EY 2007, KDHE staff members provided information to the public by speaking to and working with community organizations: Kiwanis Club, Pittsburg High School FOCUS, Pittsburg State University Soils Project.

During EY 2007, KDHE received one citizen's complaint. The complaint involved potential blasting damage to a personal residence and dust from coal trucks. In EY 2006, KDHE had investigated the blasting records and inspected the house and compared the results of the inspection with the preblast survey that the mining company had done before any blasting had occurred. The results of KDHE's EY 2006 investigation was that blasting was not the cause of the house's settling and cracking. With this new complaint, KDHE provided the complainant an opportunity to meet to discuss the complaint, but the complainant did not make an appointment. KDHE again reviewed the blasting plans and records and again found no reason to believe that blasting was causing the cracking and settling. Concerning the dust from coal trucks, KDHE advised the operator to keep the road wet to reduce dust. The records do not contain any further contact with the complainant. The KDHE staff member involved stated that there had been no further complaints but that the coal company had purchased the property from the complainant for future mining operations.

### **Public Comments on Permitting Actions**

During EY 2007, KDHE processed two major permitting actions. One was a permit renewal and the other was a new permit that re-permitted an old permit with additional acres.

On both actions, KDHE required publication of a notice of the permitting action in a local newspaper. The publication described the permitting action, the location of the permit, road variances requested, location of a copy of the permit application, and information on commenting on the action. The files documented that the publications ran for 4 weeks as was required. No comments were received from the public on either action.

KDHE notified government agencies and utility companies of the permitting actions by letter. The letters were sent to the list of agencies and utility companies that had been developed for permitting actions along with entities that were local to each of these permitting actions. No substantive comments were received on either permitting action from any of the agencies or utility companies. There were responses from those agencies where “concurrence” or “no adverse action anticipated” comments were needed.

No hearings on the permitting actions were requested and none was held.

### **Public Comments on Bond Release Actions**

During EY 2007, KDHE processed and approved three bond release applications. Each of the bond release applications requested Phase II and Phase III release. On each of the applications, KDHE required publication of a notice in a local newspaper. The notices included information on location of the mining operation, a description of the bond release that was being requested, location of a copy of the application that could be reviewed, and information on how to comment on the application. The files contained documentation that the newspaper notices ran 4 consecutive weeks as required. No public comments were received on any of the bond release applications.

KDHE notified all landowners of the land within the permitted operation and adjacent to the mining operation of the bond release application by letter. The letters identified the date of the bond release inspection and invited landowners to attend the inspection.

KDHE notified appropriate government agencies and utility companies of the bond release application. No substantive comments were received from any of the agencies or utility companies.

No hearing was requested on any of the bond release applications, and none was held.

KDHE acted on the single citizen’s complaint appropriately. KDHE’s contact log indicates that it has worked at maintaining a professional and helpful relationship with the public, with landowners, and with mining companies.

KDHE acted appropriately on providing opportunity for public comments on permitting actions and bond release actions.

#### **IV. Major Accomplishments/Issues/Innovations in the Kansas Program**

##### **A. Regulatory Program**

During EY 2007, KDHE implemented its approved regulatory program in a manner that ensured that coal mining and reclamation operations remained in compliance with the permitting rules and the performance standards.

##### **B. Abandoned Mine Land Reclamation Program**

On April 14, 1982, the Secretary of the Interior approved the Kansas AML reclamation plan under Title IV of SMCRA. The Kansas AML program operated with a staff of 8.8 FTE's and a grant of \$1,981,456 in EY 2007. Kansas' non-emergency AML program completed reclamation on Priority 2 coal and noncoal projects. Noncoal projects consisted of closing dangerous openings resulting from the underground mining of lead and zinc in the southeast corner of the State.

New Federal AML law was signed and went into effect December 20, 2006. The Surface Mining Control and Reclamation Act Amendments of 2006 changes the way funds to support AML reclamation are collected and disbursed. Minimum Program States such as Kansas will see an increase in overall AML funding, but the increase in funding will not be realized until 2010.

During the evaluation period, KDHE successfully remediated AML hazards associated with 1,200 linear feet of dangerous highwall, 1 acre of industrial/residential waste, .5 acres of subsided area, and 93 vertical openings.

Kansas followed standard construction practices using State contracting procedures. The Kansas AML program is conducted in a professional manner. Project plans are thoroughly analyzed and meet National Environmental Policy Act requirements. Project designs appear well thought out and result in projects that successfully meet project goals without causing unnecessary environmental consequences or excessive postconstruction maintenance. The designs also include any necessary mitigation for the protection or enhancement of areas designated as critical habitat for the endangered gray bat, *Myotis grisescens*.

The majority of KDHE's construction efforts during the evaluation period were on two projects located near Pittsburg, Kansas, on Kansas Department of Wildlife and Parks public recreation areas. Most of the internal road system within the public recreation areas was developed through old mine spoils. Many sections of road were located dangerously close to highwalls and water-filled pits and had areas of poor visibility. An adjacent county road ran along a long water-filled pit beside which KDHE had previously installed a guardrail.

Deteriorating highwall and fires had compromised the integrity of the guardrail. The section of highwall adjacent to the county road is being eliminated by backfilling of the pit. In addition to remediating the hazards associated with past surface coal mining KDHE is also addressing potential impacts the projects might have on gray bat habitat and mitigating project impacts to jurisdictional waters of the U. S.

In response to OSM's oversight findings of EY 2006, KDHE revised its inspection procedures to ensure that inspections of all AML construction projects' Storm Water Pollution Prevention Plan components are properly documented and in compliance with Storm Water Pollution Control permit requirements. During this year's review OSM found KDHE's implementation of its revised procedures was not consistent.

OSM looked to see if KDHE is following its approved State Reclamation Plan's process for including citizen input into reclamation project selection and found the Kansas State Reclamation Plan is outdated and in need of revision. The State Reclamation Plan does not reflect what KDHE has done in the area of including citizen input into reclamation project selection for several years. KDHE stated it intends to revise its process for including citizen input into reclamation project selection at the same time it submits revisions to address recent changes in Federal AML law . At the close of the evaluation period, OSM had yet to provide the States with specific guidance on revisions required to comply with Surface Mining Control and Reclamation Act Amendments of 2006.

KDHE completed required AVS checks on successful bidders of AML contracts. The AVS checks were completed prior to contract award/renewal for two of the AML projects reviewed and after contract award for the other two projects included in this year's review. The reason AVS checks are not consistently completed prior to contracts being awarded to successful bidders appears to be inadequate communication between the KDHE field office responsible for conducting AVS checks and the State contracting authority. In all cases AVS found the KDHE contractors had no violations in the system.

Project goals were achieved for all projects evaluated. KDHE has in place procedures for monitoring projects after completion of construction and is following its procedures.

During EY 2007, KDHE's AML emergency program conducted 120 emergency investigations with 38 determined to be eligible for funding of hazard abatement work under the program. KDHE completed 30 emergency backfilling projects under its blanket authorization addressing subsidence features located in residential/commercial areas and public roads. The emergency program also completed two additional backfilling projects that were handled under individual authorizations due to the size and costs of the



projects. The emergency program completed three drilling and grouting projects under structures and public roads. In addition to the new emergency projects completed during the evaluation period, KDHE addressed maintenance issues at two previous emergency projects. Emergency project costs for EY 2007 were \$226,354.

Emergency complaints are investigated in a timely manner. Most of the complaint investigations reviewed were conducted the same day KDHE received the complaint, with the remainder investigated the day after KDHE received the complaint. AML hazards determined to meet the program's emergency criteria were effectively mitigated within a reasonable time frame. At the AML emergency project sites reviewed, there were no remaining AML hazards after completion of the emergency projects. KDHE spent some emergency funds beyond what was needed to abate the emergency, but in all cases it was more cost effective to complete the project with emergency funds than to award a separate contract. Emergency funds used in excess of that needed for abatement of emergency hazards were a small percentage of the overall emergency expenditure and within the Federal Assistance Manual guidelines. KDHE properly implemented interagency/intergovernmental coordination.

The KDHE AML emergency program addressed voids, vertical openings, and subsidence features located near/under residential, commercial, industrial, and church structures. Emergency abatement projects were completed on public roads and right-of-ways. The extended period of dry weather during the previous evaluation period continued into the first half of EY 2007. The second half of EY 2007 was unusually wet in southeast Kansas. The result of the drastic change in precipitation was a significant increase in subsidence related complaints during the last half of the evaluation period.

### **C. Program Amendments**

During EY 2007, OSM reviewed KDHE's informal program amendment that proposed revising the revegetation success guidelines. OSM provided comments that resulted from its review, and KDHE proposed a change in the amendment in response to the comments. OSM responded that the changes adequately addressed the comments.

During EY 2007, Kansas promulgated updated regulations, which brought the State program into compliance with changes OSM had made in Federal regulations and resolved several outstanding 30 CFR 732 letters. The new State regulations became effective December 1, 2006.

**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 that provide additional details on how the following evaluations and measurements were conducted are available at TFO.

**A. Off-Site Impacts**

The number of mine sites that are free from off-site impacts is one of OSM's annual measures of a State program's effectiveness. An off-site impact is defined as a negative regulated effect on people, land, or water outside of areas that have been permitted to be disturbed by coal mining and reclamation.

During EY 2007, the KDHE inspected its six mining and reclamation operations and its three bond forfeiture sites regularly. TFO reviewed all of the State inspection reports for each operation and inspected four mining and reclamation operations in Kansas. On both State and Federal inspections, the inspector determined whether the mining operation had caused impacts outside the areas permitted to be disturbed and included that information in the inspection report. From these State and Federal inspection reports, and from data submitted by KDHE, TFO compiled the numbers, types, and severity of the off-site impacts for the evaluation year.

KDHE conducted 43 complete inspections and 72 partial inspections. This provides 115 opportunities for KDHE to observe off-site impacts, and with the four Federal joint inspections, there were a total of 115 opportunities to observe off-site impacts. One off-site impact was observed in EY 2007 on active operations or on bond forfeiture sites. That off-site impact had a moderate impact on land and a minor impact on water. Thus, five of six active mines and three of three bond forfeiture sites were free of off-site impacts. This totals to eight of nine sites that were free of off-site impacts (88.9 percent). The single off-site impact was identified and cited in an NOV and was remediated with the abatement of the violation. This is the first off-site impact in several years. (See Table 4)

Although there was one off-site impact, TFO concluded that KDHE successfully implemented its approved coal mining and reclamation regulatory program to ensure that operations prevented off-site impacts.

## **B. Reclamation Success**

The number of acres that meet bond release standards is one of OSM's annual measures of a State program's effectiveness. OSM will evaluate the State program effectiveness in four areas:

1. Land form/approximate original contour will be measured by the number of acres of Phase I bond releases.
2. Land capability will be measured by the number of acres of Phase II and Phase III bond releases.
3. Hydrologic reclamation will be measured by the number of acres of Phase III bond releases.
4. Contemporaneous reclamation will be measured by the timeliness of Phase I, II, and III bond releases.

KDHE has objected to OSM's measures of contemporaneous reclamation and provided its own evaluation based on the regulatory requirements of contemporaneous reclamation. KDHE's evaluation has been incorporated into this report.

During EY 2007, TFO monitored bond release applications from the mining operations in the State. OSM participated in one bond release inspection. TFO also reviewed KDHE's mine inspection reports and observed the general success of reclamation on its oversight inspections.

KDHE's evaluation of contemporaneous reclamation uses the backfilling and grading requirements of the approved State Regulatory Program to determine whether reclamation is contemporaneous.

During EY 2007, KDHE received three bond release applications, each including Phase II and Phase III, and processed them to full bond release. The three bond releases totaled 446.7 acres.

EY 2007 began with 4,670 permitted acres in Kansas. One permit was issued that overpermitted another permit and added 68 acres. Phase II and III bond releases were approved for 446.7 acres. At the end of EY 2007, there were 4,820 acres permitted. The bonded acreage at the beginning of the year was 4,798 acres and 4,536 acres at the end of the year (Table 5). KDHE has not tracked disturbed acres.

From its oversight mine-site evaluations, OSM observed that reclamation was current on the mines in the oversight inspection sample, and many acres appear to have been reclaimed successfully even though bond releases have not been sought.

KDHE found in its evaluation of contemporaneous reclamation that backfilling and grading on all active mining operations were within the 180-day backfilling and grading requirement and within four spoil ridges. In addition, all active mining operations had topsoil replaced within 120 days and were seeded and/or planted during the first favorable planting season.

KDHE approved Phase III bond release on three sites for a total of 446.7 acres. There are a number of other sites that have been reclaimed and are waiting only for proof that the vegetation remains successful throughout the extended liability period. The three bond releases that were approved and TFO's observations of reclamation on other sites led to the conclusion that permitted land has been reclaimed contemporaneously to approximate original contour, to productive land capability, and to appropriate groundwater recharge and surface water drainage without erosion or contamination. KDHE's contemporaneous reclamation evaluation concluded that all active mining operations were being reclaimed contemporaneously in accordance with the approved State program.

The overall conclusion is that KDHE has ensured, through proper implementation of its approved State program, that all mining operations have been and are being reclaimed successfully.

## **VI. OSM Assistance**

OSM provided financial assistance to Kansas in the form of grants, for 50 percent of the operational budget for KDHE's activity as the regulatory authority and 100 percent of KDHE's activity in AML.

OSM provided technical assistance to Kansas by conducting wetland delineations on three AML projects in Cherokee, Crawford and Linn Counties in accordance with U.S. Army Corps of Engineers, Section 404 Clean Water Act permitting procedures.

KDHE staff took the following OSM provided training:  
Introduction to GPS with Garmen XT;  
Geology & Geochemistry of AFM;  
GeoExplorer 3;  
AquaChem; and,  
AML Reclamation Projects

## **VII. General Oversight Topic Reviews**

### **Mine-Site Evaluations**

OSM is required to conduct oversight activities including mine inspections to

determine whether the approved State coal mining regulatory program has been properly implemented. OSM is required to identify how the State program implementation is reflected in on-the-ground conditions.

TFO inspected and prepared inspection reports on four permits. Three were oversight inspections, and one was a bond release inspection. All were conducted as joint inspections with KDHE. TFO reviewed State inspection reports, and looked for trends and patterns.

During EY 2007, TFO did not identify any negative trends nor violations that KDHE had not cited, and thus, issued no TDN's. KDHE has appropriately ensured on-the-ground compliance with its implementation of the approved State program.

## **Appendix A: Tabular Summaries of Data**

When OSM's Directive REG-8, Oversight of State Programs, was revised in December 2006, the reporting period for coal production on Table 1 was changed from a calendar year basis to an evaluation year basis. The change was effective for EY 2007. In addition to coal production figures for the current year, Table 1 also contains the coal production figures from annual evaluation reports for the 2 most recent prior years. Therefore, for the 2007 annual evaluation report, coal production figures are provided for 2005, 2006 and 2007. In order to ensure that coal production for these 3 years are directly comparable, the calendar year production figures from the 2005 and 2006 annual evaluation reports were recalculated on an evaluation year basis (July 1 – June 30). This should be noted when attempting to compare coal production figures from annual evaluation reports originating both before and after the December 2006 revision to the reporting period.

These tables present data pertinent to mining operations and State and Federal regulatory activities within Kansas. They also summarize funding provided by OSM and Kansas staffing. Unless otherwise specified, the reporting period for the data contained in all tables is July 1, 2006, to June 30, 2007. Additional data used by OSM in its evaluation of Kansas' performance is available for review in the evaluation files maintained by TFO.

## **Appendix B: State Comments on Report**



Kathleen Sebelius, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

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Division of Environment

August 31, 2007

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RE: Draft Evaluation Report for EY 2007

Dear Mr. Clayborne:

The following are the Kansas Department of Health and Environment's comments concerning the draft evaluation report for EY 2007:

1. On page 7 under Program Amendments, OSM may want to mention that KDHE promulgated regulations that became effective on December 1, 2006, bringing the State program into compliance with Federal laws, doing away with several outstanding 732 issues.
2. On page 8 under Off-site Impacts, OSM needs to indicate that the one off-site impact reported was identified through the notice of violation process and that the off-site impact was remediated in connection with abating the violation.

Thank you for this opportunity to review the draft report, should you have any questions or comments please feel free to contact me at (620) 231-8540.

Sincerely,

Murray J. Balk, Chief  
Surface Mining Section

BUREAU OF ENVIRONMENTAL REMEDIATION, SURFACE MINING SECTION,  
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