



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 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 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 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 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, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128-4629.

The following acronyms are used in this report:

AML	Abandoned Mine Land
ATP	Authorization to Proceed
AVS	Applicant Violation System
EY	Evaluation Year
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
SWPPP	Storm Water Pollution Prevention Plan
TFO	Tulsa Field Office
TIPS	Technical Innovation & Professional Services

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 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 has been 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 EY 2007, 43,150,184 tons of lignite 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. One hundred percent of the production was lignite.

Most of the lignite production was used in the generation of electric power within the State. The lignite from one mine was used to produce activated carbon. Texas is the Nation's fifth ranked coal-producing State and the largest lignite producer in the world. Daily employment at the 21 permitted operations exceeds 2,000.

Climate is not a limiting factor for reclamation in Texas, although the permits near Laredo and Eagle Pass are west of the 100th 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

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. In the 2007 Performance Agreement, TFO and the State Regulatory Authority, RCT, agreed that TFO would evaluate handling of citizen's complaints and public participation in permitting actions and bond releases. RCT uses the State of Texas administrative procedures, which call for formal hearings and records on all significant actions.

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.

In EY 2007, TFO looked at RCT's files on citizen's complaints and public comments on permitting actions and bond releases. Throughout EY 2007, TFO monitored permitting documents and inspection reports to evaluate the performance in providing customer service. TFO reviewed RCT's files of permitting actions approved during EY 2007: one permit; three permit renewals; and, four significant revisions. TFO also reviewed RCT's files on the five citizen's complaints received during EY 2007.

Customer Service Activities: RCT maintains a log of customer service activities. The log includes a record of visits, telephone calls, and e-mails from customers. Customers in the log include a range of private citizens, company representatives (some from the coal industry, others from related industries), and government representatives. The log contained information on 67 visits, 49 telephone calls, and 12 e-mails. The inquiries include requests for information related to specific mining operations, requests for information related to coal and other minerals, and general questions about mining. The log indicated that all inquiries were satisfied. Citizen's complaints are not included in the log, but are recorded and handled separately.

Citizen's Complaints: During EY 2007, RCT received five citizen's complaints. In every citizen's complaint, even telephone complaints, RCT responded promptly in writing to the complainant and offered confidentiality. Three of the complaints were groundwater problems; one was a dust complaint, and one was a sedimentation problem. Of the five, two were determined not mining related, one could not be substantiated as a problem but was addressed by the company, one was resolved through company actions, and one is being resolved through remedial actions prescribed in a Notice of Violation. The complaints identified issues caused by four different mines. In each case, RCT met with the complainant and inspected the site identified in the complaints. RCT also conducted a detailed study of the issues and based its findings on the outcomes of the studies and field visits. RCT responded promptly with its findings and disposition of each complaint. RCT also provided information to each complainant on appealing the findings.

Permitting Actions: During EY 2007, RCT approved one new permit, three permit renewals, and four significant revisions. Each of the applications were announced in a newspaper legal advertisement that was published for 4 consecutive weeks. The

advertisements contained requests for public comments. The applications were placed on file for public review in the appropriate county clerks' offices and in RCT's offices. Government and other agencies with an interest were notified of the applications by letter. Only one of the permitting actions precipitated public comment: Revision 25 of Sabine Mine Company, South Hallsville Mine, Permit No 33G. The files on this permit revision contain letters, telephone conversation records, and e-mails from 23 different persons or groups. Most of the comments pertained to land issues such as whether their land would be mined or when it would be mined, but some asked questions about reclamation plans and water issues. RCT responded to each letter answering questions and providing requested information. RCT referred many of the commenters to the mining company when additional information from the company was needed. The files show that RCT continued responding to follow-up letters and telephone calls. RCT held a hearing on this permitting action in response to a request. The files show that the hearing was held formally, and each person who asked to speak was allowed to do so and/or present written comments.

Bond Releases: During EY 2007, RCT approved four bond releases. On each of the bond releases, the applicant advertised the proposed bond release for 4 weeks in a local newspaper and notified landowners, government agencies, and other entities typically notified such as public utility companies. The applications were placed on file for public review in the proper county clerks' offices and at RCT's offices. No comments were received on any of the four applications.

RCT appropriately provided for public participation on permitting actions and bond releases. RCT responded to all comments and questions on permitting actions appropriately, providing information and including others in the response to the comments to ensure that those who commented had been satisfied to the extent possible. All citizen's complaints were handled in accordance with the approved State program with prompt meetings, field investigations, and detailed studies on the issues that were followed by prompt reports on the findings to the complainants. RCT actively worked with the public to provide information and promote citizen's participation.

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

A. Regulatory Program

During EY 2007, RCT successfully operated its regulatory program so that there were no significant adverse environmental impacts from coal mining in Texas.

RCT has expressed concern that its Administrative and Enforcement grant award was only \$1.28 million for the EY 2007 grant period (November 2006-

November 2007), which is about 40 percent of the amount that was needed to fund the operation of the program rather than the 50 percent that is envisioned in 30 CFR 735.15.

B. Abandoned Mine Land Reclamation Program

On June 23, 1980, the Secretary of the Interior approved the Texas AML reclamation plan under Title IV of SMCRA. By August 19, 1992, Texas had completed reclamation on all inventoried coal related sites and was certified to use AML funds for the reclamation of noncoal abandoned mine lands. The Texas AML program had a full-time staff of five. This is a reduction of one full-time staff member compared to the previous evaluation year and a reduction of four full-time staff members since EY 2000. OSM's final distribution allotment of AML funds to RCT for FY 2007 was \$1,320,747. RCT received \$15,000 for the newly approved emergency program. No emergency projects were constructed during the evaluation period.

RCT anticipated completing construction of the Priority 2 Esse project near Peggy, Texas, in Live Oak County. Heavy rains resulted in some slope slippage and damage to a drop structure that will require repairs. The 158 acre uranium reclamation project remediated hazards associated with one Priority 2 hazardous water body, 3,000 linear feet of Priority 2 dangerous highwall, and 86 acres of Priority 3 spoils. Some areas of the spoils had low pH and/or elevated levels of radiation. Unsuitable spoil material was buried onsite.

Construction was completed on the 85 acre uranium regrade project known as Mabel New-Superior located west of Three Rivers, Texas, in Live Oak County. RCT reclaimed three pits, 72.3 acres of spoil piles, and 11,337 linear feet of Priority 2 dangerous highwalls associated with the pits. Spoil containing unsuitable levels of radioactive activity was buried onsite. Permanent vegetation was planted in May 2007.

The State AML program completed one small coal project in Garrison, Texas. A roughly 10' diameter opening and trough subsidence appeared in a residential lot in the Nacogdoches County community. The hole was located in the driveway with the adjacent trough subsidence impacting the handicap accessible ramp and deck at the front entrance of a mobile home. The collapsed area was associated with past underground extraction of lignite.

Construction was initiated on the Sickenius uranium regrade project near Falls City in Karnes County, Texas. When complete the 70 acre Priority 2 project will address hazards associated with 3,500 linear feet of highwalls associated with a water-filled pit and radioactive spoils. Due to the projected costs of construction and available funds from RCT's AML grant, the project will have

to be constructed in phases over multiple AML grants. Clearing and grubbing of the site were completed during EY 2007. Topsoil removal has been delayed by unusually wet weather.

In February 2007, OSM issued an ATP for the Strawn Shaft Closure project located northeast of Strawn, in Palo Pinto County. RCT reports the proposed project was cancelled due a combination of lack of interest by the landowner and confirmation the partially collapsed shaft closure was not as deep as originally estimated.

On February 6, 2007, OSM published a final rule in the *Federal Register* approving RCT's request for approval of a State AML Emergency Program.

OSM's inspections of construction projects found projects successfully met design goals. AVS checks were made on successful bidders. OSM found some problems with RCT meeting SWPPP inspection frequency on one project. No indication was found that delays in SWPPP inspections resulted in significant amounts of sediment leaving the AML construction site. RCT properly implemented interagency/intergovernmental coordination for AML projects. The approved plan was followed for obtaining necessary rights-of-entry.

Last year's review found RCT had procedures for postproject reviews to evaluate the long-term success of its AML projects, but postproject reviews had not always been implemented on the completed uranium projects. Apparently the reason postproject reviews were not always completed on the uranium projects was RCT's procedures lacked a specific event that triggered the start of its postproject reviews. RCT revised its procedures for project closeout and postproject review. This year's review found RCT has started implementation of its revised procedures for postconstruction reviews and has made significant progress in addressing the backlog of closeout reports for its uranium projects.

C. Program Amendments

During EY 2007, OSM processed the following amendments to the approved coal mining regulatory and reclamation programs in Texas:

TX-054-FOR. The proposed program amendment was submitted formally on July 26, 2005, to revise its rules on revegetation standards and husbandry practices for bobwhite quail and other grassland bird species habitat. OSM announced the receipt of the proposed amendment and opened a public comment period in the *Federal Register* on August 31, 2005. On October 17, 2005, and February 8,

2006, OSM sent comments from its review of the proposed amendment to RCT. RCT responded with revisions of the amendment on January 12, 2006, and March 10, 2006. OSM reopened the public comment period with a *Federal Register* notice on April 21, 2006. OSM announced approval of the amendment in the *Federal Register* on June 14, 2006. On July 28, 2006, RCT provided documentation showing that the amendment had been adopted into the approved State regulatory program.

TX-056-FOR. On October 11, 2006, RCT submitted a formal program amendment requesting delegation of the AML emergency program to RCT. OSM announced the receipt of the proposed amendment in the *Federal Register* and opened a public comment period on November 13, 2006. OSM processed the proposed amendment and approved it with publication of the final rule in the *Federal Register* on February 6, 2007. RCT provided documentation on March 21, 2007, that the amendment had been adopted into the approved State AML program.

TX-057-FOR. On February 14, 2007, RCT submitted a formal program amendment to revise its approved regulatory and AML programs. The proposed amendment revises several rules relating to postmining land use, bonding, revegetation standards for success, public hearings, notices of violations, civil penalties, assessment of penalties, hearings, and liens. OSM announced receipt of the proposed amendment in the *Federal Register* on April 30, 2007, and opened a public comment period. In its review of the proposed amendment, OSM identified concerns that it transmitted to RCT on June 5, 2007. On June 7, 2007, RCT responded to OSM's concerns with revised wording. OSM reopened the public comment period with a *Federal Register* notice on June 11, 2007. The amendment had not been approved at the end of the evaluation period.

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 of 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.

RCT has expressed its opinion that off-site impacts are not an appropriate measure of the effectiveness of the State program. On July 30, 2007, by letter, RCT again expressed this opinion:

I would however, like to express my opinion, as I have done in past years, concerning OSM using the number of off-site impacts at mines as a performance measure in determining the "success of the State program in preventing off-site impacts or reducing the number and severity of off-site impacts." As a regulatory authority, the Railroad Commission has no direct control over the day-to-day operations of a mine to ensure that appropriate management policies or practices are in place to minimize off-site impacts. As a regulatory authority, we can only attempt to influence a mining operation to reduce off-site impact events through enforcement actions, which are after-the-fact actions.

TFO collected data on off-site impacts through State inspections on all permits and Federal inspections on a sample of permits. RCT sent its off-site impact documents to TFO throughout the year as they were identified. Off-site impact documents included information on the nature of off-site impacts, degree of the impacts, and ability to repair the damage. The State's inspectable units list was used to calculate the number of sites that are free of off-site impacts. On each oversight inspection, TFO verified that sites that were identified as having no off-site impacts were free of off-site impacts. TFO also verified through its oversight inspections that off-site impacts that were identified were corrected.

TFO compiled off-site impacts from the documentation provided on both State and Federal inspections, ensuring that duplicates (from separate State and Federal inspections) were counted only once. TFO's verification procedures also included reviewing all of RCT's inspection reports. From the compilation, TFO summarized the impacts and evaluated the success of the State program in preventing off-site impacts or reducing the number and severity of off-site impacts.

On 31 inspectable units, RCT conducted 362 inspections. RCT defines an inspectable unit as a logical unit of a mining operation and has divided several of the 21 permitted operations into more than 1 inspectable unit. TFO inspected seven mining and reclamation operations in EY 2007, all of which were joint inspections. Thus there were 362 opportunities for off-site impacts to be observed. RCT identified 11 off-site impacts in EY 2007. The off-site impacts were: four minor and one moderate impact to land resources; and four minor and two moderate impacts to water. The off-site impacts were

observed on seven inspectable units, leaving 24 of the 31 inspectable units free of off-site impacts (77.4 percent). The off-site impacts are shown in Table 4 and are further described in off-site impact forms that were attached to inspection reports. These forms and the accompanying inspection reports can be found in TFO files.

The 11 off-site impacts were distributed among several operations. The impacts were distributed about evenly between land and water. Three impacts were moderate; the remaining eight were minor.

In EY 2006, 97 percent of the 30 inspectable units (29 of 30) were free of off-site impacts. In EY 2007, 77 percent of inspectable units (24 of 31) were free of off-site impacts. This indicates greater damage caused by coal mining and reclamation than was observed in EY 2006. In EY 2005, 90 percent of the inspectable units were free of off-site impacts. TFO did not identify a specific cause for the greater number of off-site impacts.

TFO recommends that RCT study the reasons for the greater number of off-site impacts to determine whether there is a particular cause, and based on the outcome of the study, implement actions to reduce the number of off-site impacts.

B. Reclamation Success

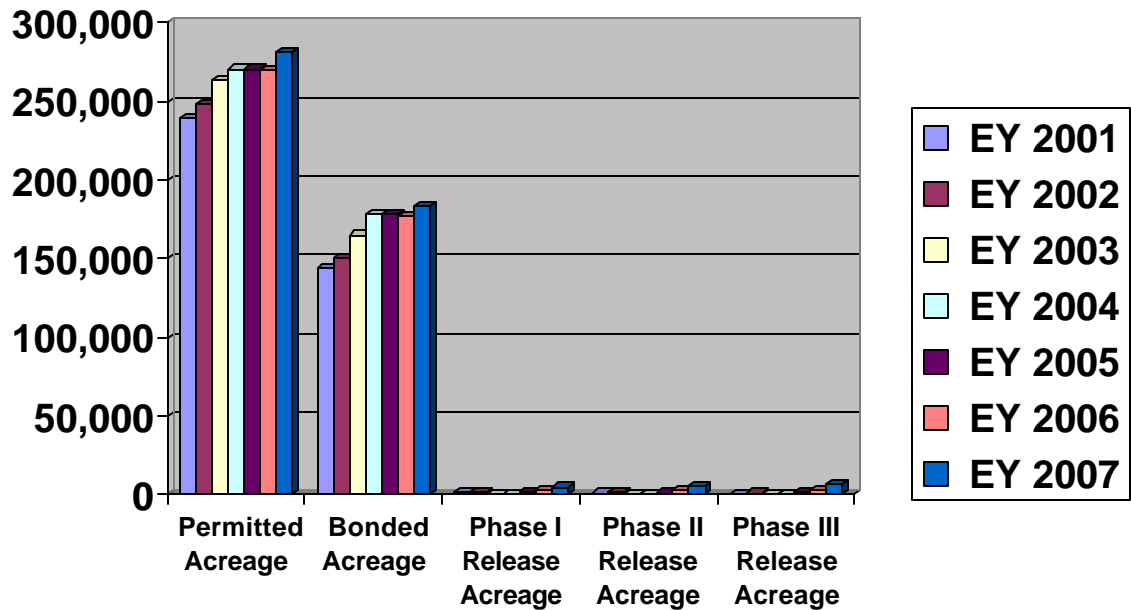
The number of acres that meet bond release standards is one of OSM's annual measures of a State program's effectiveness. During EY 2007, TFO monitored bond release applications from the mining operations in Texas. TFO participated in four bond release inspections. TFO also monitored inspection reports and permit revisions to follow the progress of each mining operation in achieving successful reclamation. Through these activities and through TFO's oversight mine inspections, TFO observed the results of reclamation on areas that were not yet part of a bond release application.

During EY 2007, the bond release acreage was much higher for all bond release phases than it was in EY 2006. The bond release acreage is still small in comparison with the acreage of land that was mined and reclaimed a number of years ago and should be ready for more release of bond than was sought. Since 2002, RCT has encouraged companies to seek bond release by requiring a bond release schedule as a part of the reclamation plan in new permitting actions. Table 5 illustrates bond release acreage at Texas coal mines during EY 2007. 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

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releases have not been sought. The table and chart that follows compare the permitted acreage, bonded acreage, and bond releases during the last 7 years.

Evaluation Year	Permitted Acreage	Bonded Acreage	Phase I Release Acreage	Phase II Release Acreage	Phase III Release Acreage
EY 2001	239,500	143,953	2,308	958	613
EY 2002	248,810	150,551	1,134	1,134	1,120
EY 2003	264,000	165,163	279	0	473
EY 2004	270,600	177,811	878	778	37
EY 2005	270,700	177,933	1,530	1,058	1,890
EY 2006	270,200	176,690	2,345	2,794	2,974
EY 2007	281,100	183,236	4,889	5,166	6,372



TFO was present for four bond release inspections and did not identify any problems on those inspections. The photograph below shows land that was reclaimed to pastureland, forest, and wildlife habitat and partially released from bond during EY 2007 (TXU Mining, Monticello Mine, Permit No. 34D).



TFO concluded that RCT has appropriately implemented its bond release program and its monitoring of reclamation success before bond release. Through these actions, RCT has ensured successful reclamation.

VI. OSM Assistance

OSM provided financial assistance to Texas in the form of grants, for 40 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.

VII. General Oversight Topic Reviews

A. Mine-Site Evaluation

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 conducted seven inspections on five mining and reclamation operations (three joint oversight inspections and participated in four bond release inspections), prepared inspection reports, read State inspection reports, and looked for trends and patterns. During EY 2007, TFO identified a problem on one of the joint oversight inspections concerning undesigned impoundments. TFO agreed with RCT's programmatic approach for requiring designs for similar impoundments.

State inspections are well documented with detailed narratives and photo coverage. RCT has appropriately ensured on-the-ground compliance with the approved State program.

B. Reclamation Success – Oil and Gas Development Impacts

In previous years as well as EY 2007, TFO found that reclamation at Texas coal mines has been successful (See Section V B). This has been shown by bond releases and reclaimed lands that are eligible for bond release. Oil and gas development on lands that have been reclaimed, and for which the coal companies are still responsible, has the potential to negatively impact the success of reclamation if not managed properly. Oil and gas owners can not be prevented from recovering their resources by State law; hence, the coal mining companies must work with the oil and gas developers to ensure that the coal mine reclamation plans have been met even with the oil and gas well disturbance.

TFO examined oil and gas well development in reclaimed coal mined land to:

- document the extent of impacts caused by oil and gas development;
- identify the impacts;
- determine whether the oil and gas development is causing problems with achieving the approved postmining land uses, approximate original contour, successful soil replacement or substitution, successful vegetation, and Odrainage patterns that move water without erosion and deposition.

Mining operations have usually handled the oil and gas development disturbance of reclaimed lands by changing the postmining land use for the affected areas to an industrial-commercial land use and applying for bond release on those areas. This has the potential for adversely impacting the areas surrounding the oil and gas development facility.

In this study, TFO looked at on-the-ground effects of oil and gas development at two lignite mines in Texas paying close attention to the effects on topsoil substitute, drainage, slope changes, and the achievement of the planned postmining land use. The two mines were selected because they were known to have oil and gas development in reclaimed areas. The amount of oil and gas development is easily seen in the aerial photograph of the Texas Westmoreland Coal Company, Jewett Mine, Permit 32F (below).



One other mine has as much disturbance by oil and gas development as these two, but most of the other mines have less disturbance. TFO also looked at documents approving postmining land use changes and bond releases.

Summary of Observations and Conclusions:

TFO's field observations identified some adverse effects from oil and gas well development in reclaimed areas of coal mines. At the two mines selected for this study, TFO observed adverse impacts:

- The oil and gas development well has the potential to cause surrounding land uses to be fragmented if not managed properly.
- The flow of water draining from the reclaimed areas could be diverted, blocked, and concentrated causing the potential for erosion and sedimentation (See photograph below).



- Land has been excavated and filled to make drill pads, roads, pipelines and sites for storage and pumping (See photograph below).



- Wildlife habitat can be temporarily impacted by barriers, noise, traffic, dust, and human presence (See photograph below).



- Topsoil substitute has been scraped aside and used as fill. Material that was covered with the topsoil substitute has been exposed (See photograph below).



RCT has been handling the disturbances caused by oil and gas development by monitoring the effects through routine mine inspections and through permitting actions. The coal mining operators regularly update maps to show oil and gas development features.

RCT has been approving postmining land uses to industrial/commercial in areas with oil and gas development through permit revisions or during permit renewals. TFO identified that SMRD documented the alternative postmining industrial/commercial land uses were compatible with the surrounding land uses.

RCT has been approving bond releases on oil and gas well development areas as industrial/commercial postmining land uses. RCT's inspection reports document that the areas have been stabilized and erosion has been controlled.

TFO recognizes that coal mining operators' and RCT's options in controlling disturbance caused by oil and gas development are limited. Thus, TFO recommends that RCT continue its close monitoring of the effects of oil and gas development in reclaimed lands. TFO also recommends that RCT encourage and participate in discussions with coal mining companies, the agency that regulates oil and gas development, and the oil and gas development companies to promote successful reclamation where coal mining and oil and gas development occur on the same land.

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 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 July 1, 2006, to June 30, 2007. Additional data used by OSM in its evaluation of Texas' performance is available for review in the evaluation files maintained by TFO.

Appendix B: State Comments on Report

The changes identified in the State's letter were incorporated into the final report.

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MICHAEL F. WILLIAMS, CHAIRMAN
VICTOR G. CARROLL, COMMISSIONER
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JOHN E. CAULDER, P.E., ACTING DIRECTOR

RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

September 12, 2007

Sent via Facsimile and First-Class Mail

Alfred L. Clayborne, Director
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Tulsa, Oklahoma 74128-4629

RE: Draft 2007 Annual Oversight Evaluation Report

Dear Mr. Clayborne:

I have reviewed the revised pages for the 2007 Draft Annual Oversight report you sent by facsimile on September 10, 2007. The facsimile included revised pages 5 and 12 through 16 of the draft report. I appreciate your time and effort in addressing my comments sent by letter on September 7, 2007. The changes made in the report did alleviate some concerns that I had by eliminating some of the highly specific information that, as you pointed out, has not typically been included in the annual evaluation report.

I continue to have concerns with the characterization of the oil and gas activities that are conducted in reclaimed areas in the context of the Texas coal mine regulatory program. As I stated in my previous letter, the occurrence of these oil and gas activities does create challenges in managing reclamation success at surface coal mines. While we deal with these challenges on a site-specific basis as they occur, it does not affect the overall performance of the program. The oil and gas activities are a part of the landscape in parts of Texas, whether or not the areas have been mined. These uses can be compatible with surrounding land uses, even for those used for enhancement of fish and wildlife habitat. The following is an itemized list of the phrases or words that, when used in the context of the entire draft evaluation report, continue to mischaracterize oil and gas activities, coal mining reclamation and the success of the Texas coal mine regulatory program. All changes are in bold type with deletions denoted by strikethrough and additions denoted by underline.

Page 12, first paragraph of Section VII.B., third sentence, "~~Increasingly,~~ Oil and gas development on lands that have been reclaimed, and for which the coal companies are still responsible, has the potential to negatively impact the success of reclamation if not managed properly ~~been impacting the~~ reclamation success." Texas has not made any determinations that oil and gas development activities have negatively impacted reclamation success and OSM has provided no evidence that the success of reclamation is compromised in Texas.

Page 12, second paragraph of Section VII.B., first bulleted item regarding the reasons OSM examined oil and gas well development in reclaimed coal mined land, "document the extent of ~~disturbance impacts~~ caused by oil and gas development;" Using the term disturbance to characterize the

1701 NORTH CONGRESS AVENUE * POST OFFICE BOX 12967 * AUSTIN, TEXAS 78711-2967 * PHONE:512/463-6900 FAX:512/463-6709
TDD 800/735-2189 or TTY 512/463-7284 * AN EQUAL OPPORTUNITY EMPLOYER * <http://www.rrc.state.tx.us>

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Implementation of a industrial/commercial land use implies that it is mining-related disturbance and that the mining company is conducting the oil and gas development. Implementing any land use can result in potential adverse impacts. The regulatory program is the vehicle under which monitoring and ensuring those impacts are minimized is performed. It is not the land use itself that is the fault for any potential impacts.

Page 12, second paragraph of Section VII.B., third bullet, "determine whether the oil and gas development is impacts-are causing problems with achieving the approved postmining land use..." should be revised to make this phrase more consistent with my understanding of OSM's intent for the purpose of the examination.

Page 12, third paragraph of Section VII.B., second sentence, "This has the potential for diminishing the quality of the particular land use that was envisioned at permit issuance and adversely impacting the areas surrounding the oil and gas development facility. Texas has found that not only are these oil and gas activities consistent with the regulatory definition and intent of industrial/commercial land use but that they can be compatible with the surrounding land uses and constitute a higher and better use based on land owner preference." OSM has offered no evidence to the contrary. The implementation of this land use, in terms of impact to surrounding areas, is not unlike the implementation of a cropland land use after establishment of vegetation. Both would require substantial disturbance to implement and could alter established drainage patterns, depending on the timing of implementation. In addition, there is no inherent hierarchy for one land use over another; all are legitimate land uses, regardless of when the use is proposed (48 FR 39893, September 1, 1983, and 47 FR 16155, April 14, 1982). As OSM is aware, the regulatory authority may approve a land use on the basis of its being a higher or better land use in terms of a higher economic value or nonmonetary benefit to the landowner or community than the postmining land use (FR, 39894, September 1, 1983).

Page 13, first and second full sentences, "The two mines were selected because they were known to have oil and gas development in reclaimed areas extensive disturbance of reclaimed areas by oil and gas development. The amount of oil and gas development disturbance is easily seen in the aerial photograph of the Texas Westmoreland Coal Company, Jewett Mine, Permit No. 32F 34F."

Page 13, Summary of Observations and Conclusions: OSM's observation that it "...identified some adverse effects from oil and gas well development in reclaimed areas of coal mines." The statement, if left unmodified, is inflammatory when taking the body of evidence of a few photos documenting some adverse effects from these activities. It is a common understanding that any inspection at any mine during any time of the year can result in occurrences of adverse impacts from mining activities. Implementation of an industrial/commercial land use such as oil and gas development is not dissimilar in this regard. Impacts from oil and gas development, if managed properly, are temporary and have not been found to create any long-term or irreversible adverse impacts to reclamation success. SMRD can provide documentation that these activities coexist and are compatible with surrounding land uses.

Page 13, Summary of Observations and Conclusions, first bulleted item, "The planned land uses were fragmented and altered by the oil and gas well development has the potential to cause surrounding land uses to be fragmented if not managed properly." The alleged fragmentation of land uses resulting from oil and gas development has not caused any documented adverse impacts to adjacent land uses and, in fact, are compatible with surrounding land uses once stabilized and managed properly.

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Evidence of this exists throughout Texas in both reclaimed mines and large areas undisturbed by mining activities.

Page 13, Summary of Observations and Conclusions, second bulleted item, "The flow of water draining from the reclaimed areas ~~could be has been~~ diverted, blocked, and concentrated causing ~~more the~~ potential for erosion and sedimentation and causing too much or too little water in various locations..." Diversion of water around the oil and gas well development is actually preferred, since it reduces the potential for adverse impacts to surrounding land uses from these activities. Reclamation plans can be and are successfully created and/or modified to account for these changes and they do not represent, in and of themselves, any more cause for concern than creation of water conveyance structures in the reclaimed landscape, absent oil and gas activities.

Page 15, Summary of Observations and Conclusions, top of page, "Wildlife habitat can be temporarily ~~has been~~ impacted by ~~water changes, vegetation changes,~~ barriers, noise, traffic, dust, and human presence..." The extent of impact to wildlife habitat seems to be somewhat overemphasized as well. Clearly these activities, during the period of time that a well is being drilled, will impact wildlife. Once a well is installed, the level of human activity probably is not appreciably more than that required to manage land for some other type of land use that requires routine maintenance, such as cropland or pastureland. If managed properly, corridors and riparian features that enhance wildlife habitat can be maintained so that the industrial/commercial land use is compatible with surrounding land uses. Most of the adverse impacts noted by OSM in the summary section are transitory or can be managed in such a way as to minimize the adverse impacts. It is simply one aspect of the regulatory program to ensure that this function is achieved so that reclamation can be successful.

Page 16, first paragraph, last sentence, "The coal mining operators regularly eventually update maps to show oil and gas development features." Land uses for most mines with active oil and gas development are updated at least annually to account for the changes that occur as a result of this development. This is becoming even more generally the standard practice subsequent to implementation of the requirement that reclamation timetables in permits include timing of submittal of documentation of certain reclamation milestones from initiation of the extended responsibility period through Phase III bond release.

Page 16, first paragraph, last sentence, "TFO identified that SMRD documented the alternative postmine industrial/commercial land uses were compatible with the surrounding land uses did not identify specific information or findings in the permit revision or renewals on the impacts of the oil and gas development on the remainder of the reclaimed lands." The SMRD's documentation of approval of revisions or renewals always contains a finding that the proposed alternative industrial/commercial land use is compatible with the surrounding land uses OSM has not cited a regulatory requirement that decisions approving permit renewal or revision applications are required to document additional findings regarding implementation of alternative land uses.

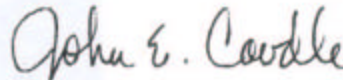
Page 16, second paragraph, second and third sentences, "~~The bond release applications and findings do not contain specific information on each industrial/commercial plot and how its release will impact the remaining unreleased land around it. However, RCT's inspection reports document that the areas have been stabilized and erosion has been controlled.~~" This is a nonsensical statement. Clearly, the release of land from bond will not result in any more or less impacts to the land surrounding

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the land released from bond. The judgment on the capability of the land to meet its intended alternative postmine land use is made at the time of approval of the land use. Frequent inspections ensure that these land uses remain compatible with the surrounding land uses and that they do not contribute sediment downstream. The bond-release inspections are used to confirm this status prior to release from bond.

We disagree with most of OSM's revised findings under the heading Summary of Observations and Conclusions as stated. The summary findings continue to do little else other than to describe issues that must be addressed matter-of-factly on a routine basis in the Texas program. The SMRD will continue to work with affected parties to ensure that oil and gas development does not adversely affect reclamation success. It seems unnecessary for OSM to recommend a continuation of a policy that is already implemented at this point. I would appreciate your consideration of the above-described modifications to the draft evaluation report. Please call me to schedule a meeting or if you need further clarification concerning these comments.

Sincerely,



John E. Caudle, P.E.
Surface Mining and Reclamation Division

JEC/tlj