



Office of Surface Mining Reclamation and Enforcement

Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

Administered by the State

of

Oklahoma

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 Oklahoma program and the effectiveness of the Oklahoma 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 and the parallel State laws, through the development and implementation of performance agreements that detail the evaluation activities for a given year. The policy continues to encourage public participation 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.

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 Oklahoma's progress in conducting evaluations and completing oversight activities. It also reports accomplishments during 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:

ADR	Alternative Dispute Resolution
AEA	Alternative Enforcement Action
AMD	Acid Mine Drainage
AML	Abandoned Mine Land
AMLIS	Abandoned Mine Land Inventory System
AMLR	Abandoned Mine Land Reclamation
AOC	Approximate Original Contour
ARCC	Appalachian Regional Coordinating Center

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AVS	Applicant Violator System
BTCA	Best Technology Currently Available
CFR	Code of Federal Regulations
EY	Evaluation Year
FTE	Full Time Employee
GIS	Geographic Information Systems
IBLA	Interior Board of Land Appeals
NOV	Notice of Violation
OCC	Oklahoma Conservation Commission
ODM	Oklahoma Department of Mines
OSM	Office of Surface Mining Reclamation and Enforcement
RIF	Reduction in Force
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 Coal Mining Industry

The coal-bearing strata in Oklahoma occur in the eastern portion of the State. The coal is bituminous and is Middle and Late Pennsylvanian in age. The demonstrated coal reserves are 1.6 billion tons, or 0.3 percent of the total U.S. coal reserves. About 8,000 square miles in Oklahoma have coal-bearing strata that are considered to be of commercial value with seams ranging from 10 inches to 8 feet thick.

Coal production in calendar year 2002 was 1.4 million tons, a decrease from the 1.7 million tons in 2001. Eight permits produced coal during 2002. One of the 8 producing permits was an underground mine, three were contour mines on gently sloping topography, while the remaining four were area surface mines. Oklahoma had 87 permits that included 31,000 acres at the end of the evaluation period. ODM employed 25 people to administer the approved regulatory program. The AML program employed an additional eight full-time and seven part-time employees.

III. Overview of Public Participation in the Program

A. Public Participation in OSM's Oversight

OSM distributed "Citizen Information Cards" in an effort to educate the public about their rights, and what to do if they have a concern about a mining operation or an AML site. OSM participated in bond release inspections, citizen complaint inspections, attended public Commission

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meetings, and inspections of bond forfeiture sites throughout the year that resulted in significant interaction with landowners and the general public.

B. Public Participation in the State Program

ODM allows public input into the State program through several avenues. Citizens may comment on permit applications, amendments to the State program, or file complaints on mining operations. The State program regulations encourage citizens to participate in the various conferences, hearings, and inspections that are part of the permitting and enforcement process. For example, ODM inspectors invite landowners to participate in pre-permit inspections where they can review the permit application with a State Inspector to identify permanent pond locations, planting mixtures, and other postmining land use information. Landowners are also invited to participate in Phase I, II, and III bond releases.

ODM Inspectors and support staff conducted three Student Outreach presentations during the EY 2003. The presentations entitled, "The Oklahoma Mining Experience" is offered to schools throughout the eastern part of the State. Six ODM employees participated in the events, where they used literature, activities, and visual aids to construct a portrayal of mining and reclamation in Oklahoma.

IV. Major Accomplishments/Issues/Innovations

A. Regulatory Program

ODM issued two new surface mine permits containing 2,011 acres during EY 2003. The State renewed 4 existing permits, approved 16 revisions and 2 incidental boundary revisions to existing permits. Newly permitted acreage includes new permits and incidental boundary revisions, totaling 2,183 acres in EY 2003 (Table 3).

ODM approved Phase I bond releases on 1,380 acres, Phase II on 3,559 acres, and Phase III on 1,989 acres. Total bonded acres increased statewide from 30,855 to 30,876.

ODM continued its review of candidates for possible AEA's. The AEA for individual civil penalties from the principle officer of an abandoned 1,174-acre permit has been in litigation with ODM for 7 years. ODM's Legal Department participated in oral arguments in the case during January 2003. The State District Court Judge ruled against ODM in their attempt to recover assets to reclaim, because the abatement date in the NOV for failure to reclaim was after the operators bankruptcy date. ODM has appealed that portion of the District Court's decision to the Oklahoma Supreme Court.

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During EY 2003, the State of Oklahoma experienced funding difficulties due to reductions in State revenues. This resulted in less money for the State coal mining regulatory program. In order to accommodate the reductions in funding, ODM offered an early-out program, and five employees from the coal and non-coal programs took the early-out and left ODM in July 2003.

B. Abandoned Mine Land Reclamation Program

OCC is the State AML Authority for the AMLR program. OCC operated with a grant of \$1,600,000 during EY 2003. OCC's AML program had a full-time staff of eight and seven part-time employees. The contract field staff has been used on an as-needed basis for engineering, surveys, and as construction inspectors. Project selection is based on a system that considers protection of the public's health, safety, general welfare, and property from the dangers of past coal mining practices. The selection process used to identify projects for construction complied with Section 403 of SMCRA and the approved AMLR program.

In EY 2003, OCC completed four regular AML projects and three AML emergency projects. The regular projects reclaimed 104.2 acres of Priority 2 water-filled coal mine strip pits, highwalls, and associated Priority 3 spoils. OCC addressed 6 hazardous water bodies and 7,190 linear feet of dangerous highwalls in EY 2003. Regular and emergency projects were located near/in roads, schools, and residential housing. OCC followed standard construction practices using State contracting procedures. Since program approval OCC has reclaimed approximately 3,691 acres of abandoned mine lands.

Public notices for non-emergency projects were published in local newspapers seeking recommendations on potential projects for reclamation. AML held two public meetings during the evaluation period. One addressed a proposed project in the northeast corner of the State, and another addressed an emergency project in the southeast corner of the State, as well as addressing the local resident's concerns with the extensive abandoned underground mining in the southeast portion of Oklahoma. OCC had indicated its intention to include AML project selection on the agenda of at least four County Conservation District meetings in EY 2003. At the end of the shortened evaluation period OCC had not initiated its plan to participate in the County Conservation District meetings. Interagency/intergovernmental coordination was successfully implemented for projects started during the evaluation period. Storm water pollution prevention requirements were met on the projects reviewed. OCC also completed required AVS checks on selected contractors. The program followed the project planning requirements for obtaining the necessary rights-of-entry for all the projects reviewed. OCC

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had not updated AMLIS to include reclamation completed under emergency projects and to show the funding of regular AML projects in EY 2003.

Emergency projects in Oklahoma were promptly investigated. Despite what appeared to be adequate preconstruction evidence that an emergency project reviewed was related to an abandoned underground mine, excavation revealed that it was not related to mining, and that it did not meet the criteria of the approved emergency program. The other emergency recommendations made during the evaluation met program criteria. One emergency project involves moving a residential structure located over a subsidence feature. This project was not completed at the end of the evaluation period. The two completed emergency projects each addressed a subsidence feature, one in a city road at a public school, and one in a parking lot associated with a rodeo arena. Hazard abatement was accomplished promptly on the emergency projects completed during EY 2003.

Two actions occurred that took effect at the beginning of EY 2004. An already understaffed State contracting agency undertook a RIF, laying off the contracting officer responsible for handling AML construction contracts. It is anticipated the RIF may result in delays in getting proposed AML projects to construction. The AML field staff consists of part-time contract workers. The State legislature recently converted the field staff to FTE's who will now be eligible for benefits. This action will increase OCC's personnel costs under its AML program.

C. Program Amendments

During EY 2003, OSM approved OK-28, a State program amendment revising the rules on re-mining. The rule had already been promulgated by the State.

The only pending program amendment is OK-25, concerning Ownership and Control. The 732 letter was sent on January 6, 1997, but because of lawsuits and additional Federal rule changes, OSM will revise the letter to indicate what changes are needed. OSM has not yet revised the 732 letter, so no State action is required.

V. Success in Achieving the Purposes of SMCRA as Determined by Measuring and Reporting End Results

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

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the bond release requirements for the various phases of reclamation and the effectiveness of customer service provided by the State. Individual topic reports are available in TFO that provide additional details on how the following evaluations and measurements were conducted.

A. Off-Site Impacts

State and Federal personnel observed one off-site impact during 621 opportunities for observations during the 9 month evaluation period. An observation is defined as an inspection, either State or Federal, partial or complete. When a Federal observation leads to a State observation, or the inspections are conducted jointly, the observation is counted once. No types of mine sites are excluded from observations. An off-site impact is any unapproved activity resulting from a surface coal mining or reclamation operation that has a negative effect on people, land, water, or structures, outside areas approved for the disturbance.

Eight violations were cited by ODM during EY 2003. None of the eight were reported as having off-site impacts. OSM agrees with ODM that no off-site impacts occurred on the majority of the violations cited. However, one impact resulted from an operator placing approximately 20 loads of coal on topsoil at an unpermitted location. The State cited the incident, issuing two violations, but did not report an off-site impact reasoning that no permit was approved for the site, so the violations could not be "off-site." OSM is reporting the incident as having a moderate off-site impact to soil resources (Table 4).

During EY 2003, Oklahoma put several abandoned permits back on the inspectible units list. The permits are being inspected to determine compliance with Title V standards, in accordance with 30 CFR 840.11. State personnel are attempting to identify all of the off-site impacts on these permits in order to document the impacts, and to later determine if the impacts are degrading. Two impacts were reported from abandoned permits in EY 2003. OSM is working with the State to ensure that impacts from abandoned permits are recorded, and that REG-8 is interpreted by OSM and ODM Inspectors in the same manner.

ODM has taken several steps to improve their ability to accurately record off-site impacts. For example, the ODM Field Office staff has created, and continually modifies the forms needed to track impacts. They have constructed a data base of impacts that is reviewed by the inspection staff on a quarterly basis.

B. Reclamation Success

SMCRA and the Oklahoma program describe coal mining as a temporary use of the land. OSM has established final bond release as an indication that the land had been successfully reclaimed. Studies on reclamation and revegetation success that are done for bond release are the only conclusive ways to evaluate whether reclamation has been successful and timely. At Phase I bond release AOC has been achieved, and usually topsoil or an approved alternative soil medium has been replaced on disturbed areas. At Phase II bond release surface stability has been achieved, and vegetation established. Phase III bond release is the final step in reclamation performance bond release with implementation of the postmining land use, return of vegetation productivity and restoration of surface-and ground-water hydrology.

At the end of EY 2003, 30,876 acres were permitted for coal mining in Oklahoma. Phase III bond releases were 1,989 acres, down from the previous year when 3,521 acres were released. Phase II bond releases increased to 3,559 acres from 1,601 acres in EY 2002, while Phase I releases decreased to 1,380 acres from 3,265 acres (Table 5). Based on bond release inspections in EY 2003, OSM concluded that ODM successfully implemented its program so that reclamation success was assured on lands where bonds have been released. In addition, ODM has been discussing with OSM the adequacy of the treatment facility and bond amount on a permit with AMD. The permittee has been working with the State to design a passive treatment facility and has contracted with the University of Oklahoma and a consulting firm to complete the designs. The coal company is also working with OSM and a citizen's group to address the problem of adequate bond for perpetual treatment. The permittee has been made aware that the site cannot receive a final bond release as long as a passive or other treatment system is needed to meet water quality compliance standards.

ODM and OSM have continued working together to refine the processes for ensuring that bonds are forfeited on abandoned sites, violations are corrected, and reclamation plans are completed. ODM forfeited the available bond in previous years, and there was no bond forfeited in EY 2003 (Table 6). However, bond forfeiture reclamation plans were developed and some bond forfeiture reclamation was conducted at sites where bond was collected in previous years. ODM has improved the quality of reclamation plans for forfeited permits, and contracted for reclamation that complies with the State program.

C. Customer Service

Based on OSM's review of all citizen's complaints, objections to permits and permit revisions, objections to bond releases, and the availability of records, OSM found that ODM provided good service and opportunities for public participation in each of these areas.

ODM's investigations of the two written complaints were completed in a timely manner, usually on the same day that the complaint was received, and complied with the State program. The only exception to ODM's service of written complaints was the State not offering one citizen an informal review by the agency Director of an authorized representative's decision concerning an alleged violation. ODM plans to submit a program amendment to clarify how citizen complaints are handled and to change the procedure for administrative review of all complaints.

ODM investigated three complaints that were not followed by a written statement from a citizen. The State treated these complaints as if they were written complaints by conducting inspections. The State is not required to investigate oral complaints until a written statement is received; therefore, treating these as if they were written complaints provided a level of customer service that is above that required by the State program. Customer service on oral complaints was very good during EY 2003.

OSM reviewed a sample of bond release applications and found that ODM provided citizens the opportunity to review the applications, participate in the bond release inspections, and offer comments about the releases.

ODM made records available to the public through a web page (www2.mmind.net/odmmcfo) that captures all the information required to comply with 460:20-57-7. The web page contains lists of permits, revisions, and violations along with instructions for obtaining copies. The web pages are available to the public through internet accessible computers, including computers that are available to citizens at public libraries.

VI. OSM Assistance

General

The State requested and OSM provided assistance in:

OSM's Branch of Training and Technical Information provides training to ODM employees throughout the year. ODM employees attended courses that addressed the technical aspects of mining and reclamation. These courses were provided for

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State and OSM employees as well as industry and others on a space available basis. During EY 2003 Oklahoma sent 9 participants to 14 OSM courses.

Through the Administrative and Enforcement and Federal Lands Cooperative Agreement grants, OSM provided ODM with 62 percent of its operating costs for administration of its regulatory program. Through AML Administration and Construction grants, 100 percent of funds were provided for Oklahoma's AML reclamation program.

Title IV Assistance

OSM is assisting Oklahoma AML by developing a conceptual design for a water treatment system at this flowing, pre-law dewatering borehole. Ground survey and water quality data previously collected by the State and OSM are being used to develop a treatment design. Draft design documents including reclamation plans were sent to Oklahoma in November 2002. In May 2003, OSM provided Oklahoma with comments on contract specifications, and CAD check print drawings for the project. At the end of June, Oklahoma was accepting construction bids for the project.

OSM is assisting the Oklahoma AML Program with development of a conceptual design for a mine closure and water treatment system for this dewatering mineshaft. LIDAR airborne survey data were acquired for the site. ARCC provided the services of their borehole camera in April 2003 to evaluate the suitability of the abandoned shaft for construction of a vertically-oriented Anoxic Limestone drain. The borehole camera identified a wooden partition and some limited deterioration in the shaft wall planking that will be addressed in the design. Additional mining and geologic data was obtained for the basin that will be used to extend geologic modeling in the Mine 7 area with the TIPS software *earthvision*, and to add to the State's GIS data.

Title V Assistance

OSM completed its review of discharge structures from sedimentation ponds with a meeting between ODM, OSM and the Oklahoma mining industry. Meeting participants discussed the designs of spillways from sediment ponds, and the current State pond certification form. Industry participants welcomed the opportunity to participate in revision of the pond certification form. The new certification form was successfully used in EY 2003.

OSM was asked by ODM to review an application for an experimental practice. The proposal involved changing the postmining land use for two final pit impoundments to a commercial/industrial land use. The site will be used as a supplemental water source for a local community. However, the applicant has withdrawn the revision application and the request for an experimental practice.

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OSM continued to participate with Oklahoma AML, The Oklahoma Water Quality Division, and the Corps of Engineers on the Gaines/Pit Creek Clean Streams project. Additional mining and geologic data was obtained for the basin that will be used to extend geologic modeling with the TIPS software *earthvision*, and to add to the State's GIS data.

OSM is assisting ODM to evaluate claims of off-site surface and groundwater impacts voiced by landowners down stream and down gradient from a large area mine. A field visit was conducted, and analysis of permit data is being prepared.

OSM is continuing to work with Oklahoma, a coal operator, and a citizen's group to insure adequate bond and a new water treatment system at a Title V AMD site. All parties agreed to the ADR process to resolve the issue rather than the citizen's group appealing to the IBLA.

Oklahoma is actively working with the TIPS CAD Team on R&D efforts on Tsunami and Raster Design 3 software. As part of the TIPS Action Plan, the State received a Trimble ProXRS GPS system, a 3D Labs Wildcat 6110 Graphics Card, and Sterioscope for working with satellite and aerial photography through the ERDAS Imagine software. OSM is also working with the State on the ERDAS Imagine software.

Reports and other documents concerning topics reviewed during EY 2003 are available at OSM's Tulsa Field Office located at 5100 E. Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.

VII. General Oversight Topic Reviews

The following topics were evaluated in EY 2003:

A. Mine Site Evaluation

During EY 2003, TFO conducted 4 complete inspections and 7 bond release inspections of Oklahoma mines. OSM sent no TDN's nor issued any Federal enforcement actions in Oklahoma during the review period.

B. Bonding for AMD Sites

In April 1999, ODM and OSM created a self-directed team that drafted a policy for ODM concerning unanticipated AMD. The team completed the policy and delivered it to the ODM Director in February 2000. The State reported in EY 2001 that they were using the draft policy to promulgate regulations for the permitting and bonding of sites with unanticipated acid-mine drainage.

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OSM completed, and supplied to ODM, a report on the BTCA and bonding aspects of a permit with AMD during EY 2002. The report shows that with a few improvements the “temporary treatment facility” can be the BTCA, and then ODM could determine an adequate bond amount. During both EY 2002 and EY 2003, the permittee, a citizens group and OSM met, and using the Alternative Dispute Resolution process, agreed to a timetable for developing a new plan for treating the AMD and to provide sufficient bond adequate for the new treatment plan. Within the last year OSM and ODM have been evaluating a passive treatment system for the long-term AMD discharge at this same permit. The mine operator has contracted with the University of Oklahoma to design a passive treatment system to replace the existing chemical treatment system at the site. OSM will help Oklahoma to evaluate the site once the system is in place and operating. A bond adjustment is anticipated if the installation is approved and successfully constructed.

C. Fish & Wildlife Resources

OSM has reviewed the Fish and Wildlife portions of Oklahoma permits five times since 1993. The EY 2003 review showed that ODM has continued to improve coordination with Federal and State fish and wildlife agencies. ODM has also continued their efforts to protect threatened and endangered species. OSM identified one permit specific deficiency and one program enhancement recommendation during the EY 2003 review.

ODM is developing methods to implement the three program enhancements recommended during the EY 2000 review. ODM is still evaluating methods that they may use to implement the two program enhancements recommended during the EY 2001 review.

In response to oversight review findings in EY 2001, ODM has implemented an internal policy that requires permit application review staff to conduct site visits of the proposed permit area. These site visits are designed to be conducted at the start of the application review process, and again before the permit is issued. These field visits should improve ODM's ability to identify high quality wildlife habitat, and to incorporate those findings into the permit review process.

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Appendix A: Tabular Summaries of Data

These tables present data pertinent to mining operations and State and Federal regulatory activities within Oklahoma. They also summarize funding provided by OSM and Oklahoma 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 Oklahoma's performance is available for review in the evaluation files maintained by TFO.

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Appendix B: State Comments on Report