

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Summary Report

for the

Regulatory Program

Administered by the State

of

MISSISSIPPI

for

Evaluation Year 2003

October 1, 2002 to June 30, 2003

July 2003

EXECUTIVE SUMMARY

During the 2003 Evaluation Year, the Office of Surface Mining, Birmingham Field Office (BFO), conducted oversight evaluations of the Mississippi Office of Geology (MOG), the State coal mine regulatory authority. The oversight studies focused on the success of Mississippi in meeting the Surface Mining Control and Reclamation Act's goals for environmental protection of land mined for coal. An evaluation (performance) plan was cooperatively developed by the BFO and the State to tailor the oversight activities to the unique conditions of the State Program. The purpose for the oversight activities was to identify the need for and then provide financial, technical, and other program assistance to the State to strengthen its program. The performance period for EY 2003 was reduced from 12 to nine months to accommodate acceleration of the dates that annual OSM performance and accountability reports are due to the Office of Management and Budget and to Congress. The EY 2003 performance period covered the time period of October 1, 2002, through June 30, 2003.

In support of OSM's national initiatives, the BFO conducted studies in the areas of offsite impacts and customer service. OSM's national initiative on reclamation success was not reviewed because Mississippi has not processed any bond release actions since its first mining permit was issued on August 25, 1998.

The offsite impacts study demonstrated that no offsite impacts had occurred on the coal mining permit during the review period. No offsite impacts have been identified on the Red Hills Lignite Mine since mining commenced in 1998.

The BFO's customer service review concentrated on public participation in the permitting process. Mississippi's regulations provide for public participation in the permitting process. When an application is submitted to MOG, the applicant is required to provide public notice through newspaper advertisement in local and regional newspapers. In addition the permit and any revisions or modifications must be available for public review in the chancery court in the county where the mining is taking place. Following the 30-day review period after the last publication of the newspaper notices, MOG must consider comments and objections to the application prior to any decision to approve or disapprove the application. The regulations provide for public meetings if requested. The BFO's review determined that Mississippi has policies and procedures in place to assure public participation in the permitting process.

A general oversight topic review was conducted to evaluate Mississippi's inspection process. The BFO study evaluated the timeliness, quality, and thoroughness of the State's inspections. The file and field review indicated that MOG met its prescribed inspection frequency in a timely manner and performed quality and thorough inspections. The public has access to the inspection information through MOG's office located in Jackson, Mississippi.

A review of required State program amendments and responses to 30 Part 732 notices determined that Mississippi has taken prompt action to address required amendments and 30 Part 732 notices.

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LIST OF ACRONYMS USED IN THE REPORT

BFO - Birmingham Field Office

EY - Evaluation Year

MOG - Mississippi Office of Geology

MSDEQ - Mississippi Department of Environmental Quality

OSM - Office of Surface Mining Reclamation and Enforcement

Permit Board - Mississippi Environmental Quality Permit Board

Regulations - Regulations Governing Surface Coal Mining in Mississippi

RHPP - Red Hills Power Project

SMCRA - Surface Mining Control and Reclamation Act

VER - Valid Existing Rights

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 Mississippi Regulatory Program and the effectiveness of the Mississippi Program in meeting the applicable purposes of SMCRA as specified in section 102. The Mississippi Department of Environmental Quality (MSDEQ), Mississippi Office of Geology (MOG), administers the program. This report covers the period of October 1, 2002, to June 30, 2003. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at OSM's Birmingham Field Office (BFO), 135 Gemini Circle, Suite 215, Homewood, AL 35209.

II. OVERVIEW OF THE MISSISSIPPI COAL MINING INDUSTRY

The State of Mississippi was one of the first States to be awarded primacy to regulate coal mining within its borders after passage of SMCRA in August, 1977. For a number of years after primacy was awarded, no serious interest surfaced for mining the lignite deposits found in Mississippi. Exploratory drilling throughout the Mississippi lignite fields began in the mid-1970's and culminated in the issuance of a permit to mine lignite in Choctaw County in August, 1998.

Coal is present in Mississippi in the form of lignite, a brownish black coal that is intermediate between peat and bituminous coal. The lignite found in Mississippi is part of a band of lignite that extends from south Texas through Louisiana, Arkansas, Tennessee, Mississippi, and into central Alabama. Essentially all of the economically significant lignite in Mississippi is found in the Eocene Wilcox and Claiborne groups, which come into the state just east of Memphis, Tennessee and proceed through the state in a shallow eastern-progressing curve, exiting into Alabama approximately midway down the State. Typically, lignite beds or seams that can be mined for economic purposes range from two to nine feet in thickness. The 1978 estimates of the total lignite resources for the State in lignite beds two feet thick or greater and less than 200 feet in depth were 5 billion tons. Mississippi lignite resources equal about 13% of the total U.S. lignite resources of 40 billion tons. For the foreseeable future, lignite will primarily be used for the generation of electricity.

The Red Hills Power Project (RHPP) in Choctaw County developed as a result of an initiative by the Tennessee Valley Authority to explore options for additional power generation. The generation facility, with a net output of 440 MW of electricity, was estimated to consume about 3 million tons per year of lignite from the Red Hills Lignite Mine. The lignite mine is located between the generation facility and the Natchez Trace

Parkway near the town of Ackerman, Mississippi. Over the 30-year life of the 5,809-acre mine, about 4,700 acres will be disturbed – 1,400 acres by mine development activities and 3,300 by lignite removal operations. The remaining 1,109 acres will be used for buffer zones. Lignite will be mined from six seams.

Mine development began in September, 1998 with construction of access roads, mine support facilities, a lignite handling facility, temporary stream diversions, a stormwater runoff control pond and sedimentation control ponds. Overburden removal began in 1999 with actual lignite mining beginning in 2000. The power plant became fully operational on February 28, 2002. The mine plans to supply the RHPP with approximately 3.3 to 3.6 million tons of lignite per year through 2030.

MOG received its second permit application for the Red Hills Lignite Mine on September 21, 2001. MOG considered the application complete in November 2002. The permit application, MS-002, was approved on February 11, 2003. The new application requested to permit 3,901 new acres plus the original 1,908 acres permitted under MS-001 (a total of 5,809 acres). Of the 5,809 acres, 3,625 acres are bonded. As of the end of June 2003, 1,196 acres of the Red Hills Lignite Mine had been disturbed. The disturbance includes the completely revegetated excess spoil piles.

Mississippi has a small inventory of abandoned lignite mines. Nine sites have been identified in five counties. All of the sites for which acreage was available were listed as less than one acre in size. Three of the sites involved the underground mining of lignite. The lignite was typically used for blacksmithing and for home heating. An effort to identify other sites will be made as a part of the Mississippi abandoned mine lands program.

III. OVERVIEW OF THE PUBLIC PARTICIPATION OPPORTUNITIES IN THE OVERSIGHT PROCESS AND THE STATE PROGRAM

Opportunities for public participation occur at various points throughout the Mississippi regulatory program. They include the ability of the public:

- to initiate rulemaking;
- to initiate citizen suits;
- to request that areas be designated as unsuitable for mining;
- to review permit and modification applications;
- to receive newspaper notifications of permit applications;
- to request a formal hearing concerning actions of the Mississippi Environmental Quality Permit Board (Permit Board);
- to object to proposed bond releases; and,
- to request an inspection of a minesite.

Chapter 63 of the Mississippi Surface Coal Mining Regulations addresses the processing of citizen complaints.

By letter dated July 16, 2002, the BFO sought public comment from four organizations/agencies on OSM's 2003 evaluation year oversight process and the State regulatory program. These were the Mississippi Wildlife Federation, the Sierra Club, the National Park Service, and the U.S. Fish and Wildlife Service. The four entities were requested to contact the BFO if they had any questions, issues or concerns that the BFO's oversight studies could address. No responses were received.

IV. MAJOR ACCOMPLISHMENTS/ISSUES/INNOVATIONS IN THE MISSISSIPPI PROGRAM

The State is implementing the coal mine regulatory program in an effective manner. Inspections are being conducted as required, and conditions on the mine site are thoroughly documented. No violations of the Mississippi surface mining law or regulations were noted during the year. The new permit application, submitted on September 21, 2001, was reviewed and approved during this evaluation period on February 11, 2003. The BFO anticipates that MOG will continue to successfully manage its coal mine regulatory program and will continue to mature and grow as a result of oversight reviews and interactions with OSM and other coal mine regulatory programs.

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 and public participation evaluations are collected for a national perspective. For the majority of primacy States, these findings include descriptions of the number and extent of observed offsite impacts, the number of acres that have been mined and reclaimed and which meet the bond release requirements for the various phases of reclamation, and the effectiveness of customer service provided by the State. Since there have been no requests for bond release by the Mississippi Lignite Mining Company, only the evaluations of offsite impacts and customer service apply. Individual topic reports are available in the BFO that provide additional details on how the following evaluations and measurements were conducted.

A. Offsite Impacts:

OSM annually evaluates and reports on the effectiveness of State regulatory programs in protecting the environment and the public from offsite impacts resulting from surface coal mining and reclamation operations. Offsite impact data is gathered nationwide in order to portray the on-the-ground success of State programs in preventing or minimizing offsite impacts.

An offsite impact is defined as anything resulting from coal mining that causes a negative effect on resources (people, land, water, structures). The impact must also be regulated

or controlled by the State regulatory program. The impact must be coal mine related and must occur outside the area authorized by the permit for conducting mining and reclamation activities.

The Offsite Impacts study was accomplished by collecting data during one complete joint inspection. Because of the shortened evaluation year, only one joint BFO/State inspection was conducted. Data was also collected from MOG inspection reports, and the files were checked for any enforcement actions issued by MOG.

The BFO's joint inspection of the mine site was conducted on May 14, 2003, through May 15, 2003. No offsite impacts were identified during the joint inspection. No offsite impacts were noted on any of the inspection reports prepared by MOG. No State Notices of Violation containing offsite impacts were issued by MOG. Therefore, 100 percent of the inspectable units in Mississippi are free of offsite impacts.

B. Reclamation Success:

The first coal mining permit ever issued in the State of Mississippi was issued on August 25, 1998. The second permit, which incorporates the first permit, was issued on February 11, 2003. The Company has not requested that any bonds be released since the start up of the mine. Therefore, no bond release actions were processed during the review period.

C. Customer Service:

OSM annually evaluates the effectiveness of customer service provided by the State. OSM selects one State activity, such as the handling of citizen complaints, permitting actions, or the processing of lands unsuitable petitions, to evaluate the timeliness, accuracy, completeness and appropriateness of the State action.

Public participation in the permitting process was considered for review this year. The Regulations Governing Surface Coal Mining in Mississippi (the Regulations) provide the regulatory procedures through which MOG administers its regulatory program. The Regulations require that any person seeking to engage in surface coal mining and reclamation operations must first submit an application for and obtain a permit. Mississippi's second permit application was considered to be a complete application in November 2002.

The Regulations further provide for public participation in the permit approval or disapproval process. The applicant is required to provide public notice when a complete application has been submitted to the regulatory authority. MOG is required to notify local government agencies and specific State and Federal agencies of the applicant's intent to mine and the location of the mining. All applications for permits, modifications, or permit renewals are to be available, at reasonable times, for public inspection and copying. Following the review period (30 days after the last publication of the newspaper

notice), MOG must consider comments and objections to the application prior to any decision to approve or disapprove the application.

The regulations specify the information to be advertised, the frequency and period of time for the advertisement, and the general circulation requirements. The advertisement is to specify where the public can inspect and review the permit application, and where comments or requests for a public hearing can be submitted. Regulations require that a copy of the advertisement become part of the complete application as proof that the advertisement was published.

Upon receipt of a complete application for a permit, permit modification or renewal, the Permit Board shall issue a written notification of the applicant's intention to mine a specific tract of land, providing in the notice the application number, where a copy of the application can be inspected and where comments on the application may be submitted. The written notification is to be sent to: (1) Federal, State, and local government agencies with jurisdiction over or an interest in the area of the proposed operation; (2) local governmental agencies with jurisdiction to act with regard to land use, air or water quality planning for the area of the proposed operation; (3) sewage and water treatment authorities and water companies in the same area; (4) Federal or State agencies with the authority to issue all other permits and licenses needed by the applicant in connection with the proposed mining operation; and (5) regional planning agencies.

The applicant is also required to file a copy of the complete application, within ten days after filing with the Permit Board, with the clerk of the chancery court of the county where the mining will occur.

The newspaper notices, advertising the public notice concerning the complete permit application for the Red Hills Lignite Mine, were located in the permit file. Notices were run in the local and regional newspapers for the required length of time after the application was determined to be complete. The notices contained all of the information required by regulation.

Separate notices of a public hearing were run in local and regional newspapers simultaneously with the public notices for the filing of a permit application. The notices gave the time that the hearing would be held. The hearing provided opportunities for comment on the various air, water, and mining permit applications under review for the project. At the hearing MOG described the mining operation, told the attendees where to send any comments, and the date the comments were due. Prior to the meeting, attendees completed cards and indicated if they wished to speak; none did. Also, during the meeting, MOG offered several opportunities for the attendees to speak but none did. Thirty-nine (39) citizens were at the meeting along with four (4) State representatives.

The Permit Board Approval Meeting was held on February 11, 2003. At that time the permit was approved.

The regulations also required the State to notify specific governmental entities when the complete application was received. MOG sent notices to all but five of the entities that were to be notified. Opportunities to review and comment on the Red Hills Power Project and the mining application were offered through the public hearings. In addition, 55 agencies, interested citizens, and environmental groups – including the five entities listed above – were contacted when the application was approved.

Two revision applications were received for the permit during the evaluation period with Revision #1 being processed and approved. Revision #2 is under review. Revisions are not to be considered as modifications and are not subject to the public participation regulations. Revisions to the permit are required to be filed with the clerk of the chancery court at the same time they are filed with MOG.

Based on this review, the BFO has determined that MOG met the requirements of public participation in relation to the one permit action processed by the agency during the review period - notices were published in a local and regional newspaper and copies of the permit were available at the chancery court. As required, the revisions submitted during the review period were placed in the chancery court for public review. Forty-four (44) specific governmental entities were notified that a complete application was received; only five (5) were not notified that an application was received. In response to this issue MOG has modified its policies and procedures to assure that notifications are sent to all required agencies. All agencies and other required entities were notified when the permit was approved. At that time, the five entities that were not notified of the receipt of a complete application did not provide MOG with any comments.

VI. OSM ASSISTANCE

OSM's oversight role has shifted to focus more on on-the-ground reclamation success and end results than on processes. OSM's changing role now emphasizes assisting the State in improving its regulatory program by identifying program needs and offering financial, technical, and programmatic assistance as necessary to strengthen the State program. The BFO routinely provided information to MOG regarding new policy guidelines and procedures, as well as changes in existing guidelines and procedures.

VII. GENERAL OVERSIGHT TOPIC REVIEWS

Inspection Process Study

As a review topic, the BFO focused on evaluating the timeliness, quality, and thoroughness of the State inspections. In addition, the study reviewed how the inspection materials or information are made available to the public.

The Mississippi program conducts inspections on a monthly basis. During Evaluation Year (EY) 2003, MOG completed four complete and five partial inspections. The

inspections were conducted without prior warning to mining officials and were predominately conducted on an irregular basis. The State program is meeting its prescribed inspection frequency.

Inspection reports were completed in a timely manner and the inspectors signed off on the reports within eight calendar days of returning from the field. The inspection reports were very detailed and contained information accurately describing site conditions and operational activities. The inspection information and its level of detail were adequate to evaluate and effectively enforce the requirements of the State's Regulations.

The public has access to inspection and enforcement data through the State office, located in Jackson, Mississippi. Upon request, MOG will supply the requesting individual(s) with all available information except where prohibited by law or regulation. A letter is also posted at the chancery court, in Ackerman, Mississippi, detailing how and where this information can be located and obtained. This letter is posted with the permitting documents required to be made available to the public in or near the area(s) of mining.

Program Maintenance

Valid Existing Rights (VER) Rule – Mississippi:

Due to the changes in the Federal VER rule, under 30 CFR 732.17(d), MOG was notified that they must amend their program to be no less effective than the changes to the Federal regulations. An informal amendment was submitted to the BFO on December 22, 2000, covering required modifications to section 6511, revisions to the definition and application of valid existing rights, and adoption of revegetation success standards.

On February 2, 2001, a formal amendment was submitted to OSM covering the same areas. MOG revised its amendment to respond to concerns raised by OSM, and changes were submitted to OSM on July 22, 2002. The “reopened” public comment period closed on September 23, 2002. The final rule was published on December 3, 2002, approving this program amendment.

Mississippi has taken prompt action to address required program amendments and 30 CFR Part 732 notices provided by OSM. There are no outstanding program amendments at this time.

APPENDIX A

TABULAR SUMMARY OF CORE DATA TO CHARACTERIZE THE PROGRAM

The following tables present data pertinent to mining operations and State regulatory activities within Mississippi. They also summarize funding provided by OSM and Mississippi staffing. Unless otherwise specified, the reporting period for the data contained in all tables is the same as the evaluation year. Additional data used by OSM in its evaluation of Mississippi's performance is available for review in the evaluation files maintained by the Birmingham OSM Office.

APPENDIX B

**STATE COMMENTS
ON THE REPORT
AND
RESPONSES TO COMMENTS**