

**OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT**

**Annual Evaluation Summary Report**

**for the**

**Regulatory Program**

**Administered by the State**

**of**

**MISSISSIPPI**

**for**

**Evaluation Year 2004**

**July 1, 2003 to June 30, 2004**

**July 2004**



## EXECUTIVE SUMMARY

During the 2004 Evaluation Year, the Office of Surface Mining (OSM), 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.

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. The study reviewed the permittee's procedures for securing permission for road closures and MOG's procedures for assuring that the interest of the public and affected landowners are protected. Mississippi's regulations provide for public participation in the road closure process at the time of permit application, revision submittal, and prior to the actual road closure approval request. MOG defers to the county government to assure that the interest of the public and affected landowners is protected. The interest of the public is protected by the Choctaw County Board of Supervisors (the Board) through their procedures and requirements for road closures and distance variances processes. The public is notified by notices published in the local newspaper, comments are solicited, and public hearings are held. The mining company provides MOG with the Board's signed petition that denotes which roads are to be closed and/or distance variances granted. This document also contains the provisions for restoring the roads including timing and notification to the Board. MOG monitors the road closures and distance variances during their inspections of the mine. MOG plays a pivotal role in serving the public interest by assuring that roads are reconstructed per the Board's criteria.

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## **LIST OF ACRONYMS USED IN THE REPORT**

BFO - Birmingham Field Office

The Board – Choctaw County Board of Supervisors

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

## **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 July 1, 2003, to June 30, 2004. 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. It is projected that, 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.

The second permit for the Red Hills Lignite Mine, 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 June 30, 2004, 1339 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 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 mine site.

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

By letter dated May 15, 2003, the BFO sought public comment from four organizations/agencies on OSM's 2004 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 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. 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 two complete joint inspections. Data was also collected from MOG inspection reports, and the files were checked for any enforcement actions issued by MOG.

The BFO's joint inspections of the mine site were conducted on November 4 and 5, 2003, and May 4, 2004. No offsite impacts were identified during the joint inspections. 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, 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 actions.

This year's study reviewed the permittee's procedures for securing permission for road closures and MOG's procedures for assuring that the interest of the public and affected landowners are protected. The documents were examined and field visits performed from November 4 through November 6, 2003.

Mississippi's regulations provide for public participation in the road closure process at the time of permit application, revisions that contain proposed road closures, permit renewals, and prior to the actual road closure approval request. The applicant is required to provide public notice when a complete application has been submitted to the regulatory authority. Included in the public notice is a listing of the roads to be closed and a map showing the location of each road within the permit boundary. 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, MOG must consider comments and objections to the application, including road closures listed in the application, prior to any decision to approve or disapprove the application. After permit approval, road closures are addressed through the permit revision process. Public participation is required for the portion of a revision that concerns mining within 100 feet of a public road and where the permittee proposes to relocate or close any public road.

Within ten days after filing with the Permit Board, the applicant is required to file a copy of the complete application with the clerk of the chancery court of the county where the mining will occur. Revisions to the permit are also required to be filed with the clerk of the chancery court at the same time they are filed with MOG.

According to the Regulations, where the mining operation will be conducted within 100 feet of any public road or where the applicant proposes to relocate or close any public road, MOG or the local governmental entity with authority over the public road shall:

- 1) require the applicant to obtain necessary approvals from the authority with jurisdiction over the public road;
- 2) provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;
- 3) if a public hearing is requested, provide appropriate advance notice of the public hearing to be published in a newspaper of general circulation in the affected locale at least two weeks prior to the hearing; and
- 4) make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after a public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operation. No mining shall be allowed within 100 feet of the public road, nor may a road be relocated or closed, unless MOG or the public road authority determines that the interest of the public and affected landowners will be protected.

The Regulations further state that each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and affected landowners are protected if surface mining activities are to be conducted within 100 feet of a public road or if a public road is to be relocated or closed. In addition, each permit application is to contain a map that shows each public road located in or within 100 feet of the propose permit area.

The BFO reviewed the two revisions housed at the Chancery Court, Choctaw County Court House. Documents were examined at the Red Hills Mine Office, and company representatives were interviewed. A field visit was made to view the road closures. Then the BFO interviewed the officer of the Chancery Court and examined the public participation documents generated by the Choctaw County Board of Supervisors. The Board of Supervisors is responsible for publishing the notices for the public hearings and conducting the public hearings concerning the waiver of the 100 feet setback and road closures and relocations. The following observations were made:

The newspaper notices advertising the public notice for the Red Hills Lignite Mine's complete permit application and for the public hearing were located in the permit file. These notices contained a listing of the proposed road closures and a map showing the permit boundary, roads located within the permit, and all roads located within 100 feet of the permit's boundary. The subsequent public hearing provided opportunities for comment on the proposed road closures.

The permit addressed mining activities within 100 feet of a public road and relocation of public roads. The permittee described with appropriate maps and cross-sections, the

measures to be used to ensure that the interest of the public and landowners affected are protected. The applicant stated that the “Choctaw County Board of Supervisors (the “Board”) is the local government entity with authority over public roads within the county. Approval to operate within 100 feet ... of any public road or approval to close or relocate any public roads will be obtained from the County Board of Supervisors prior to the mining activity...” Each variance to be requested and each road to be closed was discussed in the application. The appropriate maps were included clearly showing all roads within 100 feet of the permit boundary, all roads within the permit boundary, current and future 100-foot operation variances, and current and future road closure variances including the estimated time of closure.

MOG addressed these proposals in their “Written Findings/Findings of Fact-Conclusions”. MOG stated that county approval, which includes detour routes, temporary roads, public notice, and opportunity for public comment, will be obtained prior to any road closure.

Only four roads have been scheduled for closure during the life of the permit. The segments of two roads have been closed. The remaining two roads will be closed as the mining operation advances in the direction of these roads.

The following procedures were followed and actions taken in closing segments of the roads:

- The company in advance of road closure proposals had spoken with each affected landowner.
- The company had submitted revisions concerning the road closures to MOG and filed those revisions simultaneously with the Choctaw County Chancery Court.
- The company petitioned the Choctaw County Board of Supervisors to close the roads.
- After receiving and reviewing the request, the Board ran the appropriate public notices for two weeks in the local paper including a request for public comment in writing or in person at the hearing and stated that the petition was on file at the Board of Supervisors at the Courthouse.
- A public hearing was held; no comments were received at the hearing or any written comments received.
- Following the hearing, the Board approved closure of portions of the roads.
- The Petition required that the company restore the roads to as good a condition as existed prior to the closing of the roads within a reasonable period of time after completion of the surface coal mining operations in the vicinity of the closed roads.
- The signed petition granting road closures was sent to MOG.
- The roads were closed; sturdy steel gates were placed across the roads with the appropriate road signs warning the public that the roads were closed. These gates remain locked at all times.
- The Board will continue to have jurisdiction over the closed roads and has the right to monitor the continued need for the road closure.

In conclusion, to assure that the interest of the public and affected landowners is protected, MOG defers to the county government. The Board has the primary responsibility for the approval of road closures and distance variances, road construction/reconstruction criteria, and authorizes the reopening of roads to the public.

The interest of the public and affected landowners is protected by the Choctaw County Board of Supervisors through their procedures and requirements for road closures and distance variances. Public participation is an integral part of the road closures and distance variances process. The public is notified by notices published in the local newspaper, comments are solicited, and public hearings are held. The company furnishes MOG with the Board's signed petition which denotes which roads are to be closed and/or distance variances granted. This document also contains the provisions for restoring the roads including timing and notification to the Board.

MOG makes a formal finding of fact for road closures and variances at the time of permit approval. MOG monitors the road closures and distance variances during their inspections of the mine. MOG plays a pivotal role in serving the public interest by assuring the roads are reconstructed per the Board's criteria.

## **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. No assistance activities were performed by OSM this review period.

### **(i) VII. GENERAL OVERSIGHT TOPIC REVIEWS**

No topical reviews or grant reviews were performed this review period.



## **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**

