

**OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
ALBUQUERQUE FIELD OFFICE**

TOPIC-SPECIFIC EVALUATION REPORT

**Evaluation Year 2003
New Mexico Regulatory Program**

I. Introduction

The purpose of oversight is to evaluate a State's or Tribe's ability to accomplish the goals and responsibilities of the Surface Mining Control and Reclamation Act (SMCRA). The New Mexico Oversight Team (consisting of OSM and State personnel) developed a workplan which governed the oversight of the New Mexico Title V program for the 2003 evaluation period. The workplan contained site-specific topics, which focused on the major goals of SMCRA: elimination of off-site impacts and achieving successful reclamation according to the requirements of the post-mining land use. Using the 2003 plan as guidance, the New Mexico Oversight Team investigated a number of variables, which influenced these two goals. The strategic plan was to use oversight to generate ideas for improving regulatory efficiency and on-the-ground- reclamation.

The regulatory sub-team agreed on topics for the Evaluation Year 2003 Workplan. These discussions took place telephonically and by e-mail. No formal meetings were held. The process resulted in a final State/Federal Workplan being issued on January 16, 2003.

The final oversight report summarizes the methods used, problems identified, and solutions implemented by the Team during the oversight period. The report provides a summary of the State's program performance during the oversight period based on the performance measurements described in the Workplan.

The reporting period for State Program evaluation is normally twelve months; beginning on October 1st and ending on September 30th. However, the reporting period was changed to nine months for 2003 because of a decision by the Office of Management and Budget (OMB) that all performance and accountability reports were due to OMB and Congress by February 1, 2003 and that the due dates for Fiscal Year 2004 reports will be November 15, 2004. In view of these changes, OSM did not believe that there would be sufficient time for completion of all agreed-upon procedures for State submission and finalization of FY 2003 annual performance report data. Accordingly, OSM revised the FY 2003 evaluation year to nine months, or October 1, 2002 through June 30, 2003, to ensure timely submission of required data. Beginning with Evaluation Year 2004, the reporting period will consist of a full twelve months, beginning on July 1, 2003 end ending on June 30, 2004.

This report is formatted to comply with OSM Directive REG-8.

II. List of Acronyms Used

AER	Annual Evaluation Report
AFO	Albuquerque Field Office
AOC	Approximate Original Contour
ASP	Approved State Program
BLM	U. S. Bureau of Land Management
EY	Evaluation Year
GPRA	Government Performance and Responsibility Act
NMAC	New Mexico Administrative Code
MMD	Mining and Minerals Division
NMOT	New Mexico Oversight Team
NOV	Notice of Violation
OSM	Office of Surface Mining Reclamation and Enforcement
SMCRA	Surface Mining Control and Reclamation Act

III. Topic-Specific Evaluations

Required Program Area of Review: **Off-site impacts**

Review Scope: MMD identified and reported the number, degree and cause of off-site impacts to OSM. The NMOT determined if any programmatic improvements were necessary to lessen the number and degree of any impacts reported. If evaluation of data related to off-site impacts indicated program or implementation related problems, MMD was to implement changes, where possible, to minimize recurring impacts. The goal of the effort was for OSM and MMD to direct efforts to decrease the occurrence of off-site impacts.

Review Methodology: OSM and MMD evaluated State and OSM inspection reports, enforcement actions, penalty assessment data and citizen complaints.

Dates of Review: The State's actions, documents pertaining to those actions, as well as the results of joint MMD/OSM inspections were evaluated from October 1, 2002 through June 30, 2003.

Findings: There were no documented off-site impacts this evaluation period. This finding is further documented in an off-site impact report which includes detailed information on data collection, verification, and analysis; conclusions on the effectiveness of the State program in preventing off-site impacts; and measures taken to address any identified program implementation deficiencies. The Off-Site Impact Oversight Report for EY-2003 is on file at AFO.

Facts Supporting the Findings: MMD conducted 116 partial and 42 complete inspections during the evaluation period. All inspection reports filed for those inspections were reviewed by OSM. These inspections resulted in no enforcement actions and there were no references in any of the reports to any off-site impacts observed. Because no

enforcement actions were taken by MMD during the period, there were no assessment reports to review.

List of Specific Permits, Mine Sites, or State Actions Reviewed: All inspection reports issued by MMD pertaining to the 156 inspections conducted during the evaluation period, OSM inspection reports, enforcement actions, penalty assessment data and citizen complaints occurring during the evaluation period.

The actual or Potential Impact or Significance of Any Deficiencies Identified: No impacts were identified and no deficiencies noted.

Description of Any Corrective Action Required or Recommended: None.

Technical or Administrative Assistance Offered: No deficiencies were identified; however, OSM will provide technical assistance in the future if requested.

Required Program Area of Review: **Reclamation Success**

Review Scope: OSM and MMD measured program performance in the areas of: a. Land form/approximate original contour, b. Land capability, c. Hydrologic reclamation, and d. Contemporaneous reclamation.

Review Methodology: OSM and MMD collect data on the reclamation status of areas disturbed by each mining operation under the jurisdiction of MMD. The data was used by OSM for its use in fulfilling its GPRA reporting requirements.

Dates of Review: The State's actions, documents pertaining to those actions, as well as the results of joint MMD/OSM inspections were evaluated from October 1, 2002 through June 30, 2003.

Findings: MMD reported all categories of information agreed upon in the 2003 Annual Workplan.

Facts Supporting the Findings: OSM reviewed the following data elements for each active mining operation under the jurisdiction of MMD: acreage of areas disturbed during EY-2003 and cumulatively for all years, long-term mining and reclamation facilities, active mining areas, areas backfilled and graded, areas where phase I bond release has been granted (during EY-2003 and cumulatively for all years), areas re-soiled and planted (during EY-2003 and cumulatively for all years), areas where phase II bond release has been granted (during EY-2003 and cumulatively for all years), areas planted for 10 years after the last year of augmented seeding (during EY-2003 and cumulatively for all years), and areas where phase III bond release has been granted (during EY-2003 and cumulatively for all years). As previously stated, OSM used this data to fulfill its GPRA reporting requirements. OSM's GPRA report for the New Mexico Program is on file at AFO.

Additionally, MMD reported the following history of bond release activity to OSM:

Mine/ Area	Total Acres	Acres Disturbed	Current Bond	Phase Release	Amount Released	Acres Released	Date
Ancho	15,909	2,080	\$10,000,000				
Black Diamond	249	23	\$89,732	I	\$134,597	23	1/3/94
Carbon No. 2	361	308	\$308,000	I	\$2,976,687	468.4	10/19/92
Cimarron	5,114	54	\$1,102,694				
De-Na-Zin	820	172	\$251,402	I II III	\$2,815,176 \$1,373,980 \$150,000	170 149.3 149.3	12/19/91 8/2/99 6/30/03
Fence Lake	17,702	0	\$7,739,773				
Fence Lake No. 1	500	116	\$998,743	I	\$665,829	92.6	2/11/87
Gateway	600	144	\$468,742	I II	\$703,113 \$260,811	144.1 144.1	5/11/92 4/3/00
La Plata	3,300	1,902	\$56,000,000				
Lee Ranch	15,522	4,835	\$75,500,000				
McKinley	10,727	4,262	\$44,489,000	Liability Release	\$0	1,745.6	12/14/94
Mentmore Sec. 33 Sec. 9, 16 and 21 Industrial Park	1,813	1,746	\$1,587,000	I I III	\$0 \$0 \$0	203 418.9 455.7	5/16/90 10/19/92 2/14/94
San Juan NW Pinon	18,050	5,127	\$67,000,000	I III	\$0 \$0	1832 236.74	12/30/98 5/24/01
York Canyon Surface	2,733	1,174	\$2,258,000	I & II	\$5,525,319	1053	9/24/01
York Canyon UG	4,792	650	\$14,598,577	I & II	\$2,210,019	190	9/24/01

List of Specific Permits, Mine Sites, or State Actions Reviewed: OSM reviewed data on the reclamation status of areas disturbed by each of the following mining operations:

Black Diamond Mine, Carbon II Mine, Mentmore Mine, Lee Ranch Mine, Ancho Mine, Cimarron Mine, Cimarron Underground Mine, Fence Lake Mine, La Plata Mine, San Juan Mine and Gateway Mine. These are all of the active coal mines regulated by MMD as of June 30, 2003.

OSM reviewed the following data elements for each active mining operations listed above: acreage of areas disturbed (during EY-2003 and cumulatively for all years), long-term mining or reclamation facilities, active mining areas, areas backfilled and graded, areas where phase I bond release has been granted (during EY-2003 and cumulatively for all years), areas re-soiled and planted (during EY-2003 and cumulatively for all years), areas where phase II bond release has been granted (during EY-2003 and cumulatively for all years), areas planted for 10 years after the last year of augmented seeding (during EY-2003 and cumulatively for all years), and areas where phase III bond release has been granted (during EY-2003 and cumulatively for all years). As previously stated, OSM used this data to fulfill its GPRA reporting requirements.

The Actual or Potential Impact of Significance of Any Deficiencies Identified: No deficiencies were noted.

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: No assistance is needed from OSM at this time.

Required Program Area of Review: **Customer Service**

Review Scope: OSM and MMD evaluated the State's responses to complaints and requests for assistance and services.

Review Methodology: During EY-2002, the team evaluated the State's timeliness, accuracy, completeness and appropriateness of the actions.

Dates of Review: The State's actions, documents pertaining to those actions, as well as the results of joint MMD/OSM inspections were evaluated from October 1, 2002 through June 30, 2003.

Findings: MMD responded to Citizen Complaints properly and in conformance with the approved State Regulatory Program.

Facts Supporting the Findings: One Citizen Complaint was received by OSM during the EY. The complaint alleged that a permittee was in violation of federal and state law because it had not demonstrated a valid right to enter lands over which the complainant held senior leasehold rights and, that MMD acted improperly when it issued the permit without the required proof of the right to enter. The complainant requested that OSM review the decision to issue the permit while the permittee's right to enter was in dispute.

OSM responded to the complaint by issuing a TDN to MMD charging that the permittee had failed to demonstrate a valid right to enter the lands described in the permit.

MMD responded within the required time period by showing, through competent presentation of fact, that the Permit, as approved, prohibits mining by the permittee on the lands in question unless and until all necessary federal approvals have first been obtained. In the response, MMD explained that the permittee had not yet commenced mining in the areas in question and, in fact was prohibited from doing so under the permit because the permittee had not obtained federal approval of the Resource Recovery and Protection Plan by the BLM. In fact, MMD explained, the BLM had specified that the dispute between the permittee and the complainant within the Permit must be resolved prior to the commencement of any coal mining.

OSM considered this response adequate and terminated the TDN.

List of Specific Permits, Mine Sites or State Actions Reviewed:

Original complaint, with exhibits, received by AFO on May 12, 2003.

Various e-mails, internal and external, received from MMD.

The TDN issued by AFO.

Correspondence between AFO and the complainant.

Correspondence between AFO and MMD.

The response to the TDN from MMD.

The actual or Potential Impact or Significance of Any Deficiencies Identified: None

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: OSM will provide technical assistance if requested by MMD.

Selected Program Area of Review: **Reclamation Success**

Review Scope: OSM and MMD reviewed final pit closures for compliance with the terms and conditions of the permit.

Review Methodology: OSM and MMD conducted joint inspection of final pit closures at the McKinley and La Plata mines. The information in the approved permit was compared to actual on-ground conditions.

Dates of Review: The State's actions, documents pertaining to those actions, as well as the results of joint OSM/MMD inspections were evaluated from October 1, 2002 through June 30, 2003.

Findings: OSM and MMD found that both mining operations were in compliance with the terms and conditions of the approved permit regarding final pit closures.

Facts Supporting the Findings: OSM and MMD inspected the McKinley Mine on June 4, 2003. Pitts 11A, 11C, 9B, and 9C were inspected and found to be in compliance with the approved permit regarding pit closure.

OSM and MMD inspected the La Plata Mine on June 11, 2003. The pit closures at Sundance Panel 9 and Northgate Channel were inspected and found to be in compliance with the approved permit regarding pit closure.

List of Specific Permits, Mine Sites, or State Actions Reviewed:

La Plata Mine Permit No. 2001-01

McKinley Mine Permit No. 2001-02

The Actual or Potential Impact or Significance of Any Deficiencies Identified: None

Description of Any Corrective Action Required or Recommended: None

Technical or Administrative Assistance Offered: OSM will provide technical assistance if requested by MMD.