

A man in a light blue shirt and sunglasses stands in a field of tall, golden-brown grass. In the background, there are rolling hills and a clear blue sky with scattered white clouds. The entire scene is framed by a thick blue border.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Summary Report

for the

Regulatory Program

Administered by the

Reclamation Division

of the

North Dakota Public Service Commission

North Dakota

For

Evaluation Year 2004

(July 1, 2003 to June 30, 2004)

October 2005

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(Cover Photo: Reclaimed wheat field at the Freedom Mine)

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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 standard specified by SMCRA. This report contains summary information regarding the North Dakota program and its effectiveness in meeting the applicable purposes of SMCRA as specified in Section 102. This report covers the period from 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 the Casper Field Office (CFO).

Comments regarding the oversight process, recommendations for additional review topics and suggestions for improving future reports are encouraged and should be submitted to the Director of the Casper Field Office.

The following is a list of acronyms used in this report:

A&E	Administration and Enforcement
CFO	Casper Field Office
EY	Evaluation Year
NOV	Notice of Violation
NTTP	National Technical Training Program
OSM	Office of Surface Mining Reclamation and Enforcement
OTT	Office of Technology Transfer
PSC	North Dakota Public Service Commission
RSI	Random Sample Inspection
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten Day Notice
TIPS	Technical Information Processing System

II. Overview of the North Dakota Coal Mining Industry

The coalfields in North Dakota are located in the Williston Basin, which is part of the Great Plains Coal Province. They underlie approximately 40 percent of the State's surface area. Most of the coal is produced commercially from two mining districts located in the western part of the State: (1) Beulah-Zap and (2) Hagel. Recoverable coal reserves in North Dakota are generally classified as lignite, which is characterized by low heating value (6,600 BTU), average high moisture content (40 per cent) and low sulfur content (less than 1.0 per cent). The mineable beds in the Williston Basin vary in thickness from three to 30 feet; economic stripping ratios range from 1.5:1 to 11:1. All active mines in North Dakota are currently large-scale surface mines that provide coal for mine-mouth or regional electrical generation facilities and a nearby coal gasification facility.

The first commercial mine in North Dakota opened in Morton County in 1873. As the railroad developed across the State, demand for coal increased and was supplied by underground mines. North Dakota was one of the first states to shift from underground to large-scale commercial surface mining. By 1927, 40 per cent of the State's production was by surface mining methods, compared with 2 per cent for the nation. In 1959, 86 per cent of North Dakota's coal production was from surface mines, and since 1966, the State's total production has been from this mining method. In 1884, North Dakota produced 35 thousand tons of lignite; in 2003 it produced 31 million tons.

In 1969, North Dakota enacted its first reclamation law and followed in 1973 and 1975 with major revisions to this law. A new law was enacted in 1979 that is consistent with SMCRA. Coal mining in North Dakota is concentrated around the western half of the State. This area consists of approximately 28,000 square miles, and has an estimated total resource of 350 billion tons of coal, or about two-thirds of the total lignite reserves of the United States. North Dakota has a demonstrated recoverable coal reserve base of 35 billion tons.

North Dakota mines provide direct employment for approximately 900 people in five counties with another 2,000 people indirectly employed by the lignite industry, which has an annual payroll of over \$115 million. However, the coal industry's substantial impact on the State's population and economy has secondary in-state multiplier effects, since most of the State's coal production also fuels electric power generation plants within North Dakota that supply most of the State's electrical needs.

III. Opportunities for Public Participation

The North Dakota coal reclamation and enforcement program allows for public input and participation throughout the program. The North Dakota Public Service Commission (PSC) is the State agency charged with the responsibility for the permitting and regulation of the coal mining industry in North Dakota. OSM's programmatic reviews of the North Dakota program indicate that the PSC is adhering to the State's policies and procedures regarding opportunities for public participation.

IV. Major Program Accomplishments / Issues / Innovations

The North Dakota Public Service Commission (PSC) administers a very successful coal regulatory program as set forth in Section 102 of the Surface Mining Control and Reclamation Act of 1977. North Dakota's permanent regulatory program has been in place since 1980.

North Dakota's regulatory program is run very efficiently and effectively considering the small number of staff that work with this program and the amount of land mined and reclaimed each year. Reclamation Division staff members that review mine permit and revision applications also carry out the compliance inspections and evaluate bond release applications. This allows them to remain very familiar with both the field operations and

mining and reclamation plans in approved permits. The PSC continues to maintain a very good working relationship with their customers that include industry, landowners, citizen groups and OSM. Any issues and concerns that arise are resolved in a timely and fair manner. The PSC carries out its duties using the appropriate technical expertise and with a high level of professionalism.

The pattern of excellence in mine land reclamation continues to be one of the most outstanding aspects of the North Dakota Regulatory program. The high quality of reclamation work carried out is reflected in the number of national Excellence in Surface Mining and Reclamation awards that North Dakota mines have received from OSM. Since 1986, North Dakota mines have received thirteen national reclamation awards. The high quality of reclamation work and sense of environmental responsibility is also reflected in the very low number of violations that have been issued in the past.

The PSC continues to encourage mining companies to file bond release applications as reclaimed land becomes eligible for release. Numerous reclaimed tracts that were subject to North Dakota's permanent regulatory program have received final bond release. Tracts that have received final bond release under the permanent program include lands reclaimed to cropland, hayland, native grassland, tame pastureland, woodland, recreation and industrial use.

The Reclamation Division has also modified some rules and provisions in its revegetation success standards to encourage companies to submit final bond release applications sooner. In addition, the Reclamation Division is working with an industry task force and a citizen's group to propose policy changes that will reduce some of the burdens involved in the bond release process. An interim legislative committee also conducted a study on bond release issues between North Dakota's 2003 and 2005 legislative sessions.

The Reclamation Division has been working closely with mining companies to take advantage of new technology. The PSC has approved electronic versions of three permits for the Falkirk Mine. During the 2004 evaluation period, the PSC also approved the electronic permit for a new 17,051 acre permit area at the Freedom Mine. The premine environmental resource information, detailed mining and reclamation plans and other information for each of these large permit areas were submitted on one compact disk. This information has been copied to the PSC's computer network where staff members have access to the entire permits from their desktop PC's. Several bond release applications with all supporting information were also submitted electronically. The Reclamation Division has been encouraging other companies to submit applications in an electronic format.

The Reclamation Division has also scanned and converted many of its paper documents to an electronic format. This has been primarily done using temporary employees during the summer months. To date, converted documents include more than twenty-five years of inspection reports, annual mine maps, surface and ground water monitoring reports, and wildlife monitoring reports. The Reclamation Division, State Water Commission and State Health Department are also working with an industry task force for submitting

surface and ground water monitoring reports electronically for incorporating into a common database. North Dakota's reclamation law and rules, policy memorandums to mine operators, application and bond forms, notices, and other related information are available to interested parties on the PSC's website.

Overall, North Dakota has an excellent coal regulatory program and staff at the PSC continue to implement the program in a highly professional, cooperative, and fair manner. The Reclamation Division has the necessary technical expertise for carrying out its functions to ensure that all of the requirements of SMCRA are met.

V. Success in Achieving the Purposes of SMCRA

A. Off-Site Impacts

No off-site impacts were reported by the PSC as a result of on the ground inspections, nor were any off-site impacts observed by OSM during oversight inspections (See Table 4).

B. Reclamation Success

The coal mining area of North Dakota is primarily agricultural with deep rich soils. The premining land use of much of the coal mining area is highly productive cropland and native grasslands. Cropland is defined as land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with perennial crops. Hayland is defined as land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed. Reclaimed lands in North Dakota are progressing towards bond release. Measurement of soil productivity and revegetation success have been initiated within the 10 year liability period.

During the evaluation period, 1,062 acres received phase I bond release; 1,228 acres received phase II and 2,400 acres received phase III, which is equivalent to phase IV under North Dakota bonding system (See Table 5.). During this evaluation period 1,091 acres were added to total bonded acreage. Currently there are 76,635 acres bonded. During this evaluation period, 2.4 times more acres were released than added to the total bonded acreage.

Much of the reclaimed mined lands in North Dakota are candidates for partial bond release meeting requirements for phase I and phase II bond release.

C. Customer Service

The PSC uses a computer program to record requests for information and any concerns or complaints that are received. The PSC's Public Contact System is used to record the date, name of the person contacting the Reclamation Division, the nature of the request or concern, and resolution of the matter.

Answers to requests are usually provided immediately, except in instances where the subject matter has to be researched before a verbal or written response can be provided.

This involves either the review of past decisions or researching the rationale for a particular requirement.

About four requests per month are received from landowners and the general public. The Reclamation Division provides the appropriate information to those requestors. If a question pertains to matters under the jurisdiction of another agency, the requestor is referred to that agency. Commonly asked questions and information requests are generally related to reclamation requirements, general mining plans for a particular area, the status of mining and reclamation activities at a mine, and other mine specific questions.

The PSC responds to customer requests for information and complaints in an appropriate, timely and professional manner.

VI. OSM Assistance

A. Training

National Technical Training Program (NTTP)

OSM offers training courses through the National Technical Training Program (NTTP) to State regulatory authority employees at no expense to the State or the attendee (other than salary and benefits). OSM's technical training program provided a wide range of courses (some listed below). North Dakota staff members attended five NTTP courses at a cost of \$9,797 during EY2004.

<u>Courses</u>	<u>Number of Staff</u>
Advanced Blasting-	1 staff
Blasting-	2 staff
Bonding Workshop -	1 staff
Historic / Archeological -	1 staff
Wetlands Awareness	2 staff

Technical Innovation and Professional Services (TIPS)

OSM held an Introduction to Arc GIS/ ARC Info course for both the North Dakota Regulatory and AML staff in August 2003. There were 17 participants in the course. There was no cost to TIPS associated with this course. In addition, one staff member attend the TIPS Blasting Log Evaluation Program (BLEP) course at a cost to TIPS of \$1418.

B. Office of Technology Transfer (OTT)

Having successfully developed the paperless permitting process, North Dakota Public Service Commission staff continue to participate in the technological advances, exchanging electronic information with their industries, converting non-electronic documents to electronic format, and developing a GIS for bond release. North Dakota staff made significant contributions to the new technologies workshops conducted by

OTT this year by attending, participating, and sharing their expertise in round table discussions at all three workshops.

To support North Dakota's new technologies implementation, this year OTT provided funds for the design, construction and data population of an ArcGIS support system for data management and analysis.

For bonding, OTT provided advice and information on changes to the Treasury Department's Circular 570, including liquidation notice, termination notice, and surety company liquidation notice. Also, OTT provided guidance with regards to standby letters of credit to secure collateral bonds, and bond forms for use with phased bonding.

OSM's Technical Librarian provided 47 journal articles to North Dakota staff. In addition North Dakota received 7 technical publications.

OTT added Dr. Stephen Schroeder's Revised Universal Soil Loss Equation (RUSLE) tutorial, and RUSLE narrative, to its e-learning page on the WRCC/OTT website.

VII. General Oversight Topic Reviews

A. State Program Amendments

Overall, the PSC has kept its program in compliance with SMCRA and any changes to the counterpart Federal regulations. The North Dakota program has been maintained in a contemporaneous and professional manner. At this time, there are no outstanding programmatic issues unresolved in the North Dakota program.

North Dakota does an excellent job of keeping OSM informed of any proposed changes to its program. This informal process allows for input from industry, citizen groups, the general public and other agencies like OSM, prior to formalized rulemaking. Any issues or problems with the proposed rule changes can then be identified and dealt with early in the process, making the formal program changes proceed through the rulemaking process easier and more efficiently.

B. Inspection and Enforcement

The CFO conducted one complete oversight inspection in North Dakota during the EY 2004 to evaluate North Dakota PSC's inspection and enforcement program. The CFO and PSC also conducted a joint partial inspection of all active coal mines in the State during an aerial over-flight.

North Dakota PSC inspectors continue to exceed the number of inspections required to monitor and evaluate compliance at all coal mines in the State. All inspection reports prepared by PSC were forwarded electronically to the CFO. All State inspection reports were reviewed by the CFO and found to be complete, documented site/mine conditions,

tracked violation status and provided continuity with previous inspections. One notice of violation was issued by the PSC during this evaluation period.

No Ten-Day-Notices (TDN's) were issued by the CFO during this review period.

C. Financial Administration

CFO conducted financial oversight during the evaluation period. CFO visited PSC offices in Bismarck, North Dakota and reviewed financial information. Specifically, drawdowns, timeliness of grant applications and reports, program income, travel, accounting, audits, AML competitive bidding and property were reviewed.

A drawdown analysis was conducted for the existing Administration and Enforcement grant. A sample draws from the current grant were reviewed. North Dakota drew the correct amounts for each draw and the draws followed appropriate expenditures, i.e., all draws were reimbursable.

The PSC was timely regarding both reporting financial status of the existing Administration and Enforcement grant and filing their grant application.

Travel policies and procedures were reviewed and travel vouchers were sampled to ensure that the PSC is following their own travel policies and procedures. The travel vouchers for four staff members were reviewed for the past year. Authorization, per diem and other cost allowances were found to meet the requirements of the policies and procedures.

A review was made of the salary and benefits spent from both existing grants to ensure that only individuals conducting Title V work were being paid from OSM grant funds. The accounting system was reviewed and no problems were found.

No A-133 Audit was performed for the Title V program because under A-133 procedures the program does not meet the program dollar criterion as qualifying for audit. Discussions were held with the State Auditor's office. State Auditors had performed a recent risk analysis as required by A-133 and an audit was not deemed necessary.

The PSC continues to report property and transfer property in a timely matter. A new property inventory was taken early in CY2004, meeting Common Rule requirements.

APPENDIX A

Tabular Summaries of Data Pertaining to Mining, Reclamation and Program Administration

These tables represent data pertinent to mining operations, State and Federal regulatory activities within North Dakota. They also summarize funds provided by OSM and the North Dakota staffing. Unless otherwise specified, the reporting period for the data contained in all tables is the 2004 evaluation year (July 1, 2003 – June 30, 2004). Additional data used by OSM in its evaluation of North Dakota's performance is available for review in the evaluation files maintained by the Casper Field Office.

Appendix B:
State Comments on the Report

State Comments on the Report

From: Deutsch, James R. [jdeutsch@state.nd.us]

Sent: Friday, October 14, 2005 8:30 AM

To: Mark Humphrey; Harv Gloe

Cc: Rick W. Buckley

Subject: Draft 2004 oversight report

Attachments: 08052004_15.JPG; 92503-6.JPG; 07292004_23.JPG; DSCN0025.JPG;
Draft2004ReportComments.doc

Mark and Harv,

The attached Word document contains my suggested corrections for the draft 2004 oversight report. I believe the evaluation period covered the full year from July 1, 2003 to June 30, 2004, rather than a nine month period that began October 1, 2003. The corrections are shown in the underline/strikethrough format and are highlighted in yellow. Also, you may want to add more details under the OSM assistance item to include NTTP and TIPS training courses that Reclamation Division staff attended during the 2004 evaluation period.

Also attached are photos that can be used in the report. Captions for the photos are the following:

Tree planting at the Falkirk Mine

Sedimentation pond cleanout at the Beulah Mine

Reclaimed wheat field at the Freedom Mine

Soil removal area at the Center Mine

Please call if you have any questions. However, I will be out of the office Monday-Wednesday (Oct. 17-19) next week.

Jim Deutsch

Appendix C:

CFO Response to State Comments

Appendix C: CFO Response to State Comments

North Dakota comments were highlighted, struck, and underlined changes to electronic copy of the report. These comments included corrections to dates, numbers, and typos, as well as, a request to input NTTP and TIPS training information and clarification of a text.

CFO agrees with North Dakota's comments and has incorporated every suggested change into the final report.