

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT



Evaluation Year 2003

(October 1, 2002 to June 30, 2003)

September 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 Wyoming Program and the effectiveness of the Wyoming program in meeting the applicable purposes of SMCRA as specified in section 102. The 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 the Casper Field Office.

The following list of acronyms is used in this report:

ACHP	Advisory Council on Historic Preservation
AQD	Air Quality Division
BLM	Bureau of Land Management
CFO	Casper Field Office
DEQ	Department of Environmental Quality
EQC	Environmental Quality Council
EY	Evaluation Year
LQD	Land Quality Division
MIER	Mine Inspection Evaluation Report
NOV	Notice of Violation
NOx	Nitrogen oxides
NTTP	National Technical Training Program
OSM	Office of Surface Mining Reclamation and Enforcement
OTT	Office of Technical Transfer
PRBRC	Powder River Basin Resource Council
RSI	Random Sample Inspection
SHPO	State Historic Preservation Office
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten-Day Notice
TIPS	Technical Information Processing Systems
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
WQD	Water Quality Division
WRCC	Western Regional Coordinating Center
WOC	Wyoming Outdoor Council
WWF	Wyoming Wildlife Federation

II. Overview of the Wyoming Coal Mining Industry

Wyoming is the top coal producing state in the nation. Table 1 shows the past three years' coal production for Wyoming. Over ninety-nine percent of the current coal production in Wyoming is from surface coal mines and 92 percent of all coal produced is being mined in the Powder

River Coal Basin near Gillette, Wyoming. Until 1954, underground mines out-produced surface mines, but in that year surface mines began to dominate production. By the late 1970's, surface coal mining production in the Powder River Basin became a major contributor to the Nation's total coal production. Coal-bearing formations underlie more than 40,000 square miles, or approximately 41 percent of Wyoming's total land area. The coal mining industry directly employs approximately 4,700 people providing substantial income and secondary employment in the State. Approximately 97 percent of coal produced in Wyoming is used for electrical generation in 37 states, Canada and Spain. Coal production increased 8 percent in the last year.

The Wyoming Geological Survey estimates the quantity of Wyoming open pit coal reserves is in excess of 26.3 billion tons; an additional 38.3 billion tons of coal reserves can be recovered by underground mining methods. Coal seams in the Wasatch Formation and the underlying Fort Union Formations can exceed 100 feet in thickness with 30 to 80 foot seams being common; 220 foot thick seams have been uncovered. Wyoming coals range from lignite to high volatile A bituminous in rank with the majority of the coal produced being sub-bituminous. Wyoming has the largest reserves of "compliance coal" in the lower 48 States; that is coal of such high quality that utility companies can burn the coal in power plants without expensive scrubbers to remove sulphur dioxide emissions. Currently, over 7 billion tons of coal is leased and 339,140 acres are permitted (Table 2).

Thirty-five active mining operations are permitted in Wyoming; 31 are surface operations, two (2) are underground operation, one permit for a dragline move from one mine site to another and one in-situ operation. The dragline move and in-situ operations are listed as "other facilities" in Table 2 of this report. Currently, twenty mines of the thirty-five permitted operations are producing coal. Four mines are in temporary cessation, and nine mines and two "other facilities" are conducting final reclamation. Table 3 shows the permitting activity for the past nine month evaluation period.

III. Overview of the Public Participation Opportunities in the Oversight Process and the State Program

A. OSM Outreach Efforts

The Casper Field Office (CFO) actively encourages public involvement in the Wyoming oversight and regulatory program. This includes CFO initiated contacts with citizen groups and participation in industry activities. Specifically, CFO has visited with citizens representing the Powder River Basin Resource Council (PRBRC), Wyoming Outdoor Council (WOC), Wyoming Wildlife Federation (WWF), and the Wyoming Mining Association (WMA). The purpose of these contacts is to notify these groups of OSM's activities and to provide the opportunity to interested parties to suggest how OSM's oversight role can assist in improving the State's regulatory program. In the past, CFO held public meetings; however, there was very limited public participation.

CFO has a good working relationship with the PRBRC, WOC and WWF. These organizations are actively involved in OSM and State permitting and inspection oversight activities. Such involvement has resulted in helpful changes in the State program, thus improving the overall quality of the program. PRBRC has taken an active part in the oversight process and meets with the CFO a couple times a year. PRBRC and WOC have

been focused more on coalbed methane and natural gas development and less on coal. WWF have been less actively in coal mining issues for several years. CFO maintains communications with these groups, informing them of meetings and issues and offering opportunities to participate in meetings.

CFO has met with the WMA several times during the evaluation period. The latest meeting was set up in June 2003, where the WMA met with the Director of OSM. The other citizen groups were given the same opportunity, but were unable to meet with the Director.

B. Wyoming Outreach Efforts

LQD has an advisory board (Land Quality Division Advisory Board) that provides recommendations to the Land Quality Division through a public forum. The Environmental Quality Council (EQC) rules on regulatory matters for all Divisions within the Department (including LQD), and also serves as the administrative hearings board for all Divisions (i.e., Land Quality, Air Quality and Water Quality Divisions) in DEQ. Wyoming's outreach efforts include, but are not limited to LQD Advisory Board meetings, and Environmental Quality Council hearings and public meetings. LQD has met on several occasions with the special interest groups (PRBRC, WOC, WWF, and WMA) to discuss their concerns. In addition, LQD has hosted several technical forums addressing current issues.

LQD is also involved in its own public participation program during their permitting, bond release, and enforcement processes. During the permitting and bond release processes, notices are published and comments are solicited. Citizen complaints are investigated as part of the enforcement process. Previous oversight reviews have found that LQD is highly receptive to the concerns of public, industry and citizen groups. DEQ also has an internet website at: <http://deq.state.wy.us/> with information for the public on permits, current rules, proposed rule changes and contact information.

CFO monitors DEQ's and LQD's meetings and outreach efforts and believes the State does a good job interacting with citizens.

IV. Major Accomplishments/Issues/Innovations in the Wyoming Program

A. Accomplishments

Although the State has not addressed all the outstanding regulatory program deficiencies, the State of Wyoming continues to administer an excellent Title V program (See VII. General Oversight Topic Reviews, B. Monitoring, Program Maintenance). Wyoming actively works to improve its program. Under the State's permitting functions, plans for an intranet system and modifying the format for reporting data in the permit Annual report are examples of these efforts and achievements.

The Wyoming Department of Environmental Quality, Land Quality Division (LQD) has addressed the majority of the outstanding program deficiencies. LQD has submitted and received approval for four program amendments since 1995. There are six remaining program amendments addressing 36 program deficiencies. Two amendments have been submitted to OSM for review, and one amendment is in the final stages of the State's rulemaking process. One of the remaining amendment packages contains "Ownership &

Control rules” (18 deficiencies). WRCC has suggested that LQD delay working on these rules to the last, due to OSM’s current rule litigation relating to the valid existing rights, and ownership and control rules.

B. Issues

1. Cooperative Agreement

On December 7, 1999, CFO hosted a forum to discuss Federal land coordination which included participants from four BLM and three LQD offices, the U.S. Forest Service (USFS), WRCC, and CFO. A work group was assembled to establish a Working Agreement under the Wyoming Cooperative Agreement.

The group developed a document outlining the coordination between the LQD and the Federal agencies including the procedures for coordinating between LQD, USFS, BLM and OSM as it relates to each agency’s area of responsibilities. During the evaluation period, there have been three meetings with LQD, BLM, USFS and OSM personnel. The intent of the meetings was to discuss and clarify the implementation of the agreement. Thus far, the procedure for this agreement appear to be working and opening lines of communications among the agencies that had not occurred in the past.

2. Fugitive Dust

In the past 5 years, the Powder River Basin has experienced air quality problems cited by the EPA. A large portion of this air quality problem can be attributed to fugitive dust. During this time, the expansion of coalbed methane development in the Powder River basin quadrupled. The coalbed methane industry is not as strictly regulated as the coal mining industry, yet in many cases, existing adjacent to each other. If the air quality issue is not resolve, EPA may prohibit further expansion in the basin. State, county and both the coalbed methane and coal mining industries are working to reducing the fugitive dust and other pollutants in the Powder River Basin. (See photo on next page.)

C. Innovations

LQD with the assistance of OSM’s WRCC and support of the Powder River Basin Coal Company’s Caballo mine has initiated a GIS/GPS case study. The purpose of the study is to determine the feasibility of using GPS in the field and integrating the data into a GIS data bank to track reclaimed lands and bond releases. The agreement among the LQD, OSM and Powder River Basin Coal Company was signed including the North Antelope/Rochelle mine complex and Caballo mines in the GIS/GPS project. The software and hardware installation and field work began in June 2003. The results of the study may be available in EY 2005.



Photo of smoke from coal fires at the North Antelope/Rochelle mine complex observed during an OSM oversight flight in 2003.

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 standards and public participation evaluations are being collected for a national perspective in terms of the number and extent of observed off-site 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. Individual topic reports are available in the Casper Field Office providing additional details on how the following evaluations and measurements were conducted.

A. Off-Site Impacts

For the purpose of oversight, an off-site impact is defined as anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on people, land, water, or structures outside the permit. The impact on the resource must be substantiated as being related to a mining and reclamation activity, and must be outside the area authorized by the permit for conducting mining and reclamation activities.

During the nine month evaluation period, LQD conducted 111 complete inspections and 176 partial inspections resulting in 7 Notices of Violation (NOVs) and no Cessation Orders (COs) being issued. CFO review state inspection reports to determine if off-site impacts occurred and no off-site impacts were observed. In addition, CFO conducted two complete random sample inspections and ten partial / focused inspections of coal mining operations in Wyoming (MIER). Table 4 reflects the fact that there were no off-site impacts were observed by CFO or by State inspectors

B. Bond Release

Wyoming LQD completed 2 bond release actions during this evaluation period. There was one Phase I release of 4,520 acres, and one Phase III release of 271 acres (Table 5).

Reclamation bonds have become more difficult to acquire for mining companies, yet there is no noticeable increase in bond release applications. Instead, the mining industry appears to be attempting to change the performance requirements for bond. Only two coal companies have applied for all or portion of the three phases of bond release. Very few companies have even applied for the initial Phase I release.

OSM evaluates the effectiveness of the Wyoming program based on the number of acres that meet bond release standards and have received bond release (Tables 5 and 6). The CFO believes this measure may not capture the total effectiveness of the Wyoming program in part due to the type of mining operations, the large size of western mining operations and company policies (not to apply for release until large management units are eligible for final bond release). The number of acres released from bond is relatively small in Wyoming when compared to those acres that have been graded, topsoiled and revegetated. Currently in Wyoming approximately 103,478 acres have been disturbed, 35,661 acres have been backfilled and graded and of those acres 7,358 acres have received Phase I release, 1,011 acres Phase II release and 876 acres Phase III released. Also, records indicate at least 8,086 acres have been reclaimed for a minimum of 10 years and may be eligible for full Phase III release. As defined by OSM Directive REG-8 (Oversight of State Regulatory Programs) it appears that the Wyoming program is not effective in facilitating and encouraging bond release, as indicated by the small number of acres released from bond, compared to the large quantity of acreage available for release.

The Wyoming coal regulatory program has an approved alternative bonding system, differing from Federal and other State coal regulatory programs. Wyoming's bonding system consists of an "area bond" and an "incremental bond." The area bond moves each year with the pit progression, which is adjusted through the submission and review of the permit annual report. The incremental bond covers the entire permit area.

There were no bond forfeitures during the past two years. There have been only two bond forfeitures since the approval of the Wyoming program in 1981. Those two bond forfeitures were for two underground mines. None of the large surface coal mines have experienced a bond forfeiture.

C. Reclamation Success and Program Performance

OSM evaluates and reports annually on the effectiveness of State programs in ensuring successful reclamation on lands affected by surface coal mining operations. Success is determined based on the number of acres that meet the bond release standards and have been released by the State. In addition, Field Offices conduct specific evaluations to evaluate the State’s performance.

Using the number of acres released from bonds as the criteria, the Wyoming program has not achieved a large amount of reclamation success. However, as described above, bond release may not accurately reflect the performance of the program. Tables 5 and 6 summarize reclamation activity within the State.

Information was collected to measure program performance in the following areas four performance areas.

1. Reclamation Success As Measured By Bond Release

Backfilling and grading achievements are measured by the acres of phase I bond release as required by OSM Directive REG-8, p.I-9. This is depicted in Chart 1. Only about 20 percent of the lands that have been backfilled and graded to the approved postmine topography/approximate original contour and resoiled have received Phase I bond release.

The proper placement of soil resources and vegetation stability are measured by the acres released under Phase II release (REG-8, p I-10). Only about 3 percent of the lands that have been revegetated have received Phase II bond release.

The success of postmining land use, successful revegetation, and the restoration of surface and ground water quality and quantity are measured by the acres of Phase III bond release (REG-8, pp. I-11-12). Only about 11 percent of the lands have been successful revegetated for at least 10 years and received Phase III final bond release.

Chart 1. Bond Release –as a Measurement of Reclamation Success

Measurement of Reclamation Success	Acres available for bond release	Acres of Area Bonds Release and %	Acres of Bond Released		
			Phase I / %	Phase II & %	Phase III & %
Backfill & Grade	36,106	7,358 / 20.4%	NA	NA	NA
Soil Replacement	34,653		1,011/ 2.9%	NA	NA

Measurement of Reclamation Success	Acres available for bond release	Acres of Area Bonds Release and %	Acres of Bond Released		
			Phase I / %	Phase II & %	Phase III & %
Revegetation	34,653			1,011 / 2.9%	NA
Achieve Postmining Use, Hydrologic Reclamation, and Timeliness of Reclamation	8,086				876 / 10.8%

As mentioned previously, the measure of reclamation success solely by bond release does not accurately reflect the total effectiveness or success of the coal regulatory program. CFO believes that monitoring the progress of on-going reclamation in relation to the mining progression is a better measure of the effectiveness and success of a reclamation program.

CFO will continue reviewing the permit annual reports during the next evaluation period to determine the acres that have been rough backfilled and those area bonds have progressed onto newly disturbed areas. Such areas are considered eligible for Phase I bond releases after final grading is completed under the Wyoming program.

2. Program Performance

a. Contemporaneous Reclamation

While contemporaneous reclamation is not reflected by bond releases as depicted in Table 5, it is the intent of SMCRA to assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible on the ground. Table 6 provides an overall perspective of the relationship between disturbance and reclamation. Chart 2 and Graph 1 further depict this relationship, while Graph 2 illustrates the cumulative relationship between disturbance versus reclamation of lands.

The intent of contemporaneous reclamation is to provide a balance between disturbance and reclamation and an overall picture of the success of reclamation is keeping step with the mining progression in the State. Information provided to complete Table 5 and Table 6 in the annual reports summarizes mining and reclamation activity and should be considered a source for this measurement.

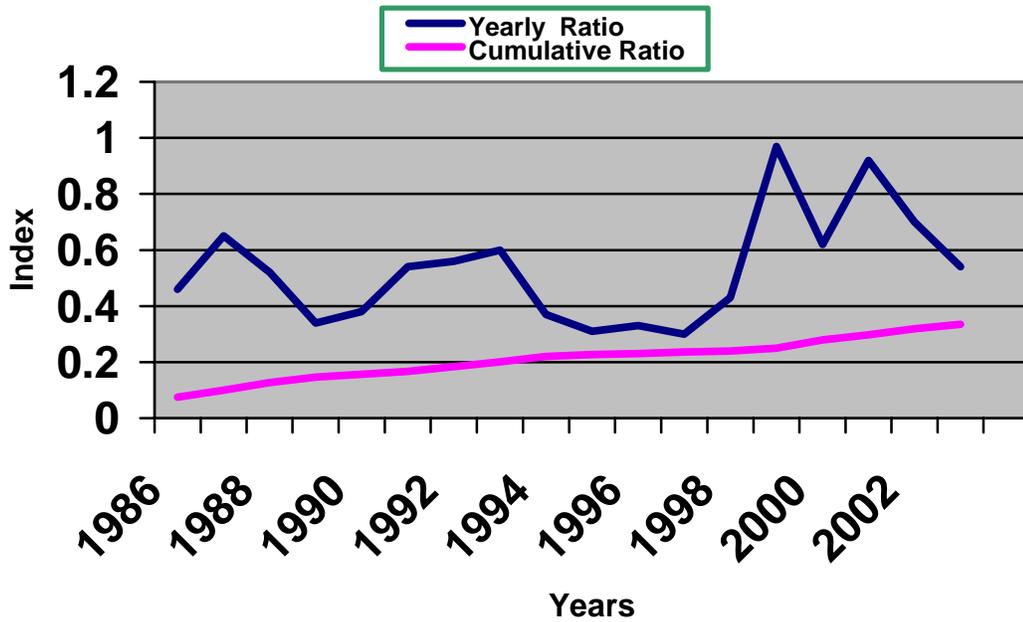
The following charts and graphs are used to highlight the CFO's concern that the rate at which lands are being reclaimed in Wyoming is decreasing when compared to the rate of disturbance, approximately 3 to 1, thereby creating a backlog of lands needing reclamation, contributing to a delay in contemporaneous reclamation and subsequent bond release.

Chart 2. WYOMING STATEWIDE RECLAMATION SUMMARY

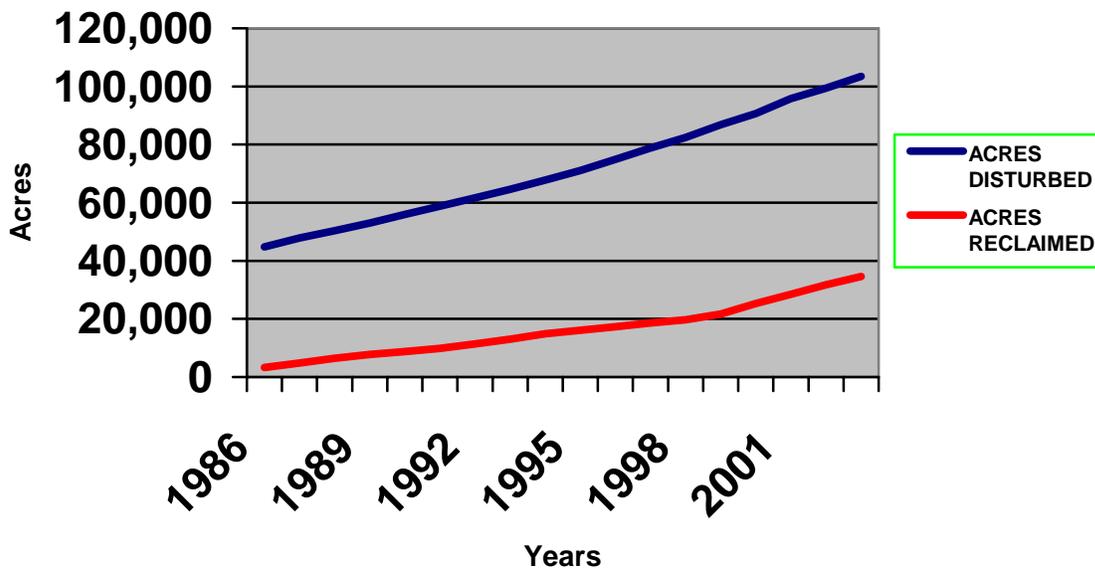
<u>YEAR</u>	ACRES DISTURBED	Cumulative Acres Dist.	ACRES RECLAIMED	Cumulative Acres Recl.	RATIO OF RECLAM VS DISTURB	Cumulative RATIO OF RECLAM VS DISTURB
1986	3152	44,742	1456	3,335	.46	.075
1987	2521	47,894	1630	4,791	.65	.100
1988	2610	50,415	1355	6,421	.52	.127
1989	2967	53,025	994	7,776	.34	.147
1990	2833	55,992	1068	8,770	.38	.157
1991	2807	58,825	1517	9,838	.54	.167
1992	2919	61,632	1641	11,355	.56	.184
1993	3173	64,551	1888	12,996	.60	.201
1994	3327	67,724	1219	14,884	.37	.220
1995	3873	71,051	1234	16,103	.31	.227
1996	3954	74,924	1311	17,337	.33	.231
1997	3613	78,878	1098	18,648	.30	.236
1998	4303	82,491	1973	19,746	.43	.239
1999	3868	86,794	3541	21,719	.97	.250
2000	5185	90,662	3174	25,260	.62	.279
2001	3564	95,847	3295	28,434	.92	.297
2002	4067	99,411	2857	31,729	.70	.319
2003	5459	103,478	2924	34,653	.54	.335

Total acres disturbed equaled 103,478 and total acres reclaimed equaled 34,653 for a Ratio of .33 on a statewide basis.

Graph 1. Reclamation Index

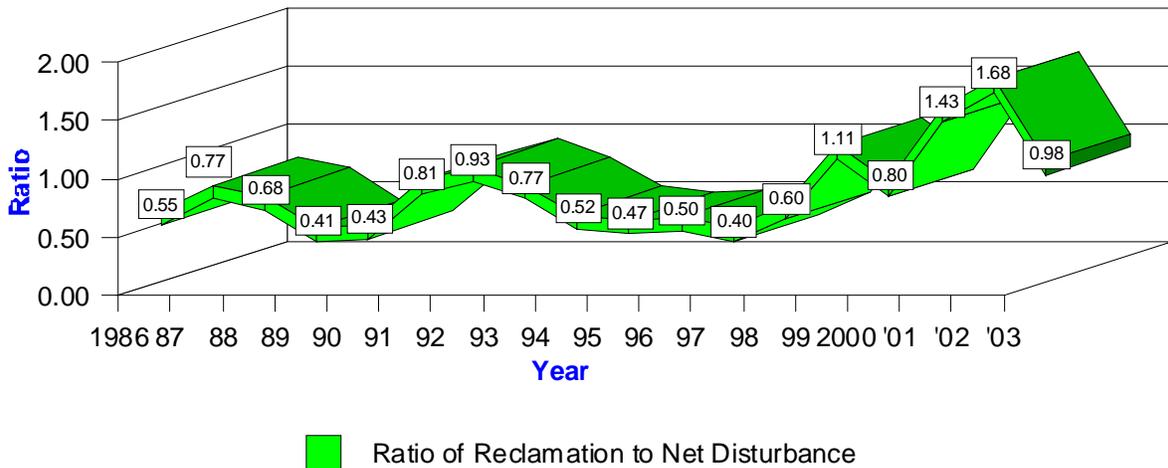


Graph 2. Cumulative Disturbed vs Cumulative Reclaimed Acreage



Approximately 339,136 acres are currently bonded (Table 5). During the evaluation period, an additional 2,656 acres were permanently reclaimed with a permanent seed mixture. Approximately, 32,000 acres are ready for Phase I and Phase II bond release. Table 6 depicts data collect from 1986 to 2003, giving a long overview of the mining and reclamation activities in Wyoming.

Graph 3. Reclamation Ratio



Graph 3. illustrates the ratio of the yearly permanent reclamation compared with the net disturbance found in Table 6. Net disturbance consists of areas available for reclamation that are not being used for long-term approved disturbances such as: stockpiles, active pits, access roads, haul roads, railroad right-of-ways, coal preparation and loading sites, offices, shops, sediment ponds, and other approved uses. The 2003 ratio shows a 2.3 percent increase of reclamation, as well as, a 34.2 percent increase of newly disturbed lands. Approximately 20 percent (1,007 acres) were newly disturbed areas for long-term facilities. The ratio of reclamation to net disturbance for EY 2003 is 0.98. A ratio of 1.0 indicates that the reclamation and net disturbance are equal. A ratio higher than 1.0 indicates that the reclamation is greater than the net disturbance, while a ratio less than 1.0 indicates the opposite

b. Inspection and Enforcement

The LQD continues to conduct frequent and thorough inspections. As mention before, the LQD conducted 111 complete inspections and 176 partial inspections during the nine-month evaluation period. There are 32 coal mines with active NPDES permits. The Wyoming Water Quality Division (WQD) conducted 98 inspections during the nine-month evaluation permit, complementing LQD's complete inspections. There were more than the minimum required inspections for the Wyoming Program. All LQD performance standards were reviewed and documented during complete inspections and the reports contain a discussion of the current mine status.

The Casper Field Office conducted two complete random sample inspections and ten partial / focused inspections of coal mining operations in Wyoming.

In addition, Wyoming Water Quality Division (WQD) only conducted 98 inspections, two more inspections than required. Each partial inspection report documented performance standards reviewed and permit requirements reviewed as well as the portions of the mine site inspected.

LQD maintains an inspectable units list and a inspection database sufficient to meet its program requirements. LQD has made this database available to the CFO.

LQD issued 7 Notices of Violation and no Imminent Harm or Failure to Abate Cessation Orders during this nine month evaluation period. No pattern of violation exists or show cause hearings / alternative enforcement action (bond forfeiture) were initiate during this evaluation period.

The CFO issued four (4) Ten-Day-Notices (TDNs) during this review period. Two of the TDNs were resolved during the evaluation period.

VI. OSM Assistance

A. Training

OSM offers training courses to State regulatory authority employees at no expense to the State (other than salary and benefits) or the attendee. OSM's technical training program provided a wide range of courses (listed below). Thirteen Wyoming LQD employees received training from OSM's technical training program at a cost of about \$15,000 during EY2003.

The thirteen LQD employees participated in the following National Technical Training Program (NTTP) sponsored training:

Bonding: Cost Estimation -	1 staff
Engineering-	1 staff
Evidence Preparation and Testimony -	2 staff
Historic / Archeological -	5 staff
NEPA Procedures -	1 staff
SMCRA Biological Assessment	2 staff
Subsidence -	1 staff

B. Office of Technology Transfer (OTT)

LQD has installed public access computer workstations in Lander and Sheridan in order to assist the public in viewing electronic documents and files. Lander District Office of LQD prepared for desktop computer review of a pending electronic permit submittal.

In order to assist LQD in its pilot project *GIS Utilization for Bond Release Purposes*, OTT provided TIPS a copy of the *Research and Development of a GIS-based Data*

Management and Model Integration Tool for Coal Mine Permitting and Reclamation in Wyoming software, as well as facilitated the meeting between Powder River Coal Company's GIS consultant and TIPS GIS staff. OSM provided electronic permitting funds in the amount of \$ 3,566.95 to support digital imaging efforts for the electronic permitting program, scanner, document feeder and software.

OSM's Technical Librarian provided 18 journal article reprints to LQD staff members. OTT provided 17 publications in the subject areas of soils, sediment transport, and interim and final Wyoming Abandoned Coal Mine Land Research reports, in addition to 3 CDs to the LQD's technical library. Additional copies were also provided for Lander and Sheridan District Office technical libraries.

OSM provided reclamation bonding technical assistance on the following topics: bond riders for permit renewals; regulatory requirements for letters of credit relating to requirements for banks to provide notice to the Regulatory Authority of alleged or actual bank insolvency; corporate assets – tangible versus intangible assets and mineral leases. Also, OSM provided updates to the status of sureties and bonding agents listed in Circular 570 and advice regarding the notices; notified state bonding staff of fraudulent bonds being issued by an illegal Florida agent - U.S. Treasury notice on the Circular 570 website.

OSM provided the opportunity for seventeen LQD staff members to attend and participate in the *Joint Conference of the 9th Billings Land Reclamation Symposium and the 20th Annual Meeting of American Society of Mining and Reclamation*. In addition eight LQD staff received training by participating in *Stream Channel Design Reclamation* workshop; four each in *Invasive Species Management on Reclaimed Lands*, and *Riparian and Wetlands Health Assessments* workshops; three in *Using High Resolution Satellite Imagery at Active Coal Mines in Support of Engineering, Permitting, Environmental Monitoring, and Bonding* workshop; one each in *Understanding Unsaturated Zone Hydrology and Its Role in Developing Integrated Control and Closure Plans for Mine Waste*, *Soil Ecology in Relation to Land Reclamation*, and *Remote Sensing* workshops.

C. Computer Support (TIPS)

TIPS personnel gave a brief presentation regarding TIPS' intent to provide scientific and engineering software directly to desktop workstations in TIPS customer locations. ArcInfo and AutoCAD software were delivered to the State with instructions for desktop and server installations.

KeyServer will be used to distribute software licensing to most TIPS software applications. TIPS advised each of state that the remaining TIPS software will be delivered by the end of the calendar year.

D. Cultural Resources

The CFO continues to coordinate the National Historic Preservation Act, Section 106 cultural resource compliance for the State of Wyoming. The CFO cultural resource

coordinator works closely with the OSM Archaeologist in WRCC, Wyoming Department of Environmental Quality (DEQ), Bureau of Land Management (BLM), Wyoming State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP), U. S. Forest Service (USFS) and the affected mining companies to process cultural resource clearances on new mining lands and previously permitted areas that have not been surveyed for cultural resources. This detailed involvement is necessary because the Wyoming DEQ does not have a qualified archaeologist on staff and therefore, the SHPO will not accept cultural resource work from them. The SHPO has taken the position that, by law, the Section 106 process is the responsibility of the lead Federal agency and that requires that OSM be responsible for this work on any mines under permit. Prior to OSM involvement with any parcel of land, the land managing agency (BLM or USFS) would be the lead Federal agency and would initiate the Section 106 process. The DEQ has indicated that they have no plans to place an archaeologist on staff since all Section 106 clearances are covered by Federal agencies. During this reporting period, action was taken on 9 projects in Wyoming, which included 4 Memorandum of Agreements with the agencies mentioned above.

E. Revegetation Success Standards

During the 2003 Evaluation Year an OSM representative met several times with Wyoming staff as part of ongoing assistance in development of technical vegetation success standards. The OSM representative was also involved in discussions on the development of criteria for evaluating vegetative diversity and the selection and description of vegetation sampling techniques. Wyoming's goal is to revise and update its revegetation regulations to include appropriate success standards and statistically valid sampling techniques. As part of this assistance the OSM representative attended several meetings with Wyoming staff, including personnel from the three regions within the State. The OSM representative also participated in a pre bond release inspection with State personnel. OSM continues to provide technical assistance in this area at the request of the State.

VII. General Oversight Topic Reviews

A. Program Maintenance (Amendments)

Wyoming's Coal Regulatory Program contains unresolved program issues identified in OSM's letters issued pursuant to 30 CFR 732.17 and subsequent required program amendments and disapprovals identified under 30 CFR 950. Wyoming and OSM has identified all of the program deficiencies and established a schedule for submitting program amendments to OSM.

Wyoming has not been successful in meeting its schedule for rule changes. There have been bureaucratic and political barriers within the State's rulemaking process hindering progress. Many amendments are heard before the Land Quality Advisory Board and Environmental Quality Council several times without passing through to final rulemaking and submission to OSM for review and final decision.

CFO and LQD have thoroughly reviewed the outstanding program deficiencies. CFO has concluded, on the basis of its review and field monitoring, that there were no immediate potential environmental problems or threats attributed to the program deficiencies.

Of the original 126 deficient rules identified in 1994; 52 have been approved, 38 are currently in amendment packages (either being reviewed by OSM or within the LQD's rulemaking process), and 36 remain to be addressed (18 of these are Ownership & Control rules). In summary, a total of 57 issues are outstanding. Wyoming has completed four program amendments since 1995 and submitted them to OSM for approval. There are six remaining program amendments. Two amendments have been submitted to OSM for review, and one amendment is in the final stages of the State's rulemaking process. The following is the current schedule for submitting amendments to OSM as proposed by LQD and approved by CFO:

Hydrology	Draft F.R. June 2003
Permit Processing and Administration	Submitted April 2002
Roads	Submitted Dec. 2002
Coal Exploration	December 2003
Bond Release and Vegetation	March 2004
Non Coal Waste	March 2005
Valid Existing Rights	Postponed at OSM request
Ownership and Control	Postponed at OSM request

The Wyoming Department of Environmental Quality, Land Quality Division (LQD) has addressed the majority of the outstanding program deficiencies. LQD has submitted and received approval for four program amendments since 1995. There are six remaining program amendments addressing 36 program deficiencies. Two amendments have been submitted to OSM for review, and one amendment is in the final stages of the State's rulemaking process. One of the remaining amendment packages contains "Ownership & Control rules" (18 deficiencies). WRCC has suggested that LQD delay working on these rules to the last due to OSM's current rule litigation.

As of October 2002, LQD lost its principle rulemaking specialist. LQD has hired a replacement. It will take time for this new individual to learn the complicated process. The Vegetation amendment package (1-S) has been prepared. Independent of the LQD amendment package (1-S), the WMA prepared a vegetation package. Land Quality Advisory Board directed the LQD to review the WMA's amendment proposal and compare it with Amendment package 1-S and try to resolve differences with the WMA. The Coal Exploration amendment package (1-R) was passed by the board and is waiting for an EQC hearing date. The Administrative Procedures for Bond release amendment (1-P) was also passed by the board and will follow package 1-R to the EQC.

B. Financial Administration

OSM funds DEQ matching funding each year. Table 9 depicts the latest grant awards. CFO conducted financial oversight during the evaluation period. CFO visited DEQ offices in Cheyenne, Wyoming and reviewed financial information. Specifically, drawdowns, timeliness of grant applications and reports, program income, travel, Federal lands documentation, accounting, audits and property was reviewed.

A drawdown analysis was conducted for the existing Administration and Enforcement (A&E) grant as well as the previous grant. All draws from the current grant were reviewed and 3 from the previous grant were reviewed. Wyoming drew the correct amounts for each draw and the draws followed appropriate expenditures except for one. For this draw, the State drew too little relative to the expenditure. All draws were reimbursable.

DEQ was timely regarding both reporting financial status of the existing Administrations and Enforcement grant and filing their grant application.

All program income earned under the A&E grant is being reported and applied to the grant. Permit fees are the source. No problems were found.

Travel policies and procedures were reviewed and travel vouchers were sampled to ensure that DEQ is following their own travel policies and procedures.

Authorization, per diem and other cost allowances were found to meet the requirements of the policies and procedures.

Because the State permits substantial Federal lands, a review was made of how the Federal lands share amount of the A&E grant is determined. This review helps ensure that the State/Federal dollar split of the A&E grant is accurate. Each year, DEQ requests an acreage report from each permittee and uses it as the basis for determining Federal lands share. All permittee reports were reviewed and they agreed with the Federal acreage amounts reported in the grant application. No problems were found.

Wyoming DEQ has completed an A-133 Audit for one year ended June 30, 2002. There were two minor findings with no questioned costs. OSM is in the process of resolving them with DEQ. There are no outstanding findings for any previous A-133 Audits. A current audit is being conducted for the year ended June 30, 2002.

DEQ continues to report property and transfer property in a timely matter. A new property inventory was taken during the Spring of 2003, meeting Common Rule requirements.

Appendix A:
Tabular Summary of Core Data to Characterize the
Program

Appendix B:
State Comments on the Report



The State
of Wyoming

OCT 1 2003

RECEIVED
Office of Surface Mining
Casper Field Office



Department of Environmental Quality

Dave Freudenthal, Governor

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002

ADMIN/OUTREACH (307) 777-7758 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7368 FAX 777-6937	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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September 29, 2003

Guy Padgett
Office of Surface Mining
Federal Building
100 East "B" Street
Casper, WY 82601-1918

RE: Annual Evaluation Summary Report for EY 2003

Dear Mr. Padgett:

I have reviewed the draft report and my comments are listed below.

Page 4, C.:

Under innovations, both the Caballo and NA/RM mines are part of the GIS/GPS project.

Page 7 Chart 1:

Wyoming's bond release is different in that backfill and grade is not part of Phase I but is separate in the Area Bond. Our Phase I is soil replacement and Phase II is the establishment of vegetation commensurate with the seed mix. Phase III is final bond release the same as OSM's Phase III.

Page 14, VII, A:

At the end of the page, package 1-S did not go to the Advisory Board for review but for advice on how to proceed since WMA submitted their own version of the rules. Also the Annual Evaluation Summary Report did not contain a discussion of rule package 1-P which deals with bond release and addresses one program deficiency (notarized statement by the operator). This package has passed the Board and we will request a hearing after the hearing on package 1-R.

Table 2:

The average number of acres per inspectable unit seems to be an order of magnitude too high. I think it should be 9,689 rather than 96,896. The total number of acres listed on Table 5 appears to support this.

Table 8:

The total regulatory program FTE is around 29 or 30 rather than 21.57. Steve Toalson will contact you with the correct number.

Thank you for the opportunity to comment.

Sincerely,

Richard A. Chancellor
Administrator
Land Quality Division

Appendix C:

CFO Response to State Comments

Appendix C: CFO Response to State Comments

LQD COMMENT

Page 4, C:

Under innovations, both the Caballo and NA/RM mines are part of the GIS/GPS project.

CFO RESPONSE:

NA/RM was added to the text.

LQD COMMENT

Page 7 Chart 1:

Wyoming's bond release is different in that backfill and grade is not part of Phase I but is separate in the Area Bond. Our Phase I is soil replacement and Phase II is the establishment of vegetation commensurate with the seed mix. Phase III is final bond release the same as OSM's Phase III.

CFO RESPONSE:

The table was revised to add a separate column for "Area Bond" and the acreage was adjusted accordingly.

LQD COMMENT

Page 14, VII, A:

At the end of the page, package 1-S did not go to the Advisory Board for review but for advice on how to proceed since WMA submitted their own version of the rules. Also the Annual Evaluation Summary Report did not contain a discussion of rule package 1-P which deals with bond release and addresses one program deficiency (notarized statement by the operator). This package has passed the Board and we will request a hearing after the hearing on package 1-R.

CFO RESPONSE:

Although the Advisory board hearing occurred after the evaluation period, the text was revised to reflect the current status.

LQD COMMENT

Table 2:

The average number of acres per inspectable unit seems to be an order of magnitude too high. I think it should be 9,689 rather than 96,896. The total number of acres listed on Table 5 appears to support this.

CFO RESPONSE:

The error has been corrected.

LQD COMMENT

Table 8:

The total regulatory program FTE is around 29 or 30 rather than 21.57. Steve Toalson will contact you with the correct number.

CFO RESPONSE:

Steve Toalson provided corrected FTE numbers and the table has been updated.