OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

Administered by the State

of

Kansas

for

Evaluation Year 2005

(July 1, 2004, through June 30, 2005)

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I. Introduction

The Surface Mining Control and Reclamation Act of 1977 created the Office of Surface Mining Reclamation and Enforcement 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 Kansas program and the effectiveness of the Kansas program in meeting the applicable purposes of SMCRA as specified in Section 102. The evaluation period covered by this report is July 1, 2004, to June 30, 2005.

The primary focus of OSM's oversight policy is an on-the-ground results-oriented strategy that evaluates the end result of State program implementation, i.e., the success of the State programs in ensuring that areas off the minesite are protected from impacts during mining, and that areas on the minesite are contemporaneously and successfully reclaimed after mining activities are completed. The policy emphasizes a shared commitment between OSM and the States to ensure the success of SMCRA through the development and implementation of a performance agreement. Also, public participation is encouraged as part of the oversight strategy. Besides the primary focus of evaluating end results, the oversight guidance makes clear OSM's responsibility to conduct inspections to monitor the State's effectiveness in ensuring compliance with SMCRA's environmental protection standards.

OSM's oversight guidance emphasizes that oversight is a continuous and ongoing process. To further the idea of continuous oversight, this annual report is structured to report on OSM's and Kansas' progress in conducting evaluations and completing oversight activities, and on their accomplishments at the end of the evaluation period. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Office of Surface Mining, Tulsa Field Office, 5100 E. Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.

The following acronyms are used in this report:

AML	Abandoned Mine Land Reclamation
AMLIS	Abandoned Mine Land Inventory System
AVS	Applicant Violation System
EY	Evaluation Year
FTE	Full-Time Employee
OSM	Office of Surface Mining Reclamation and Enforcement
KDHE	Kansas Department of Health and Environment, Surface Mining Section
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten-Day Notice

TFO	Tulsa Field Office
TIPS	Technical Information Processing System

II. Overview of the Kansas Coal Mining Industry

Coal reserves in Kansas are found in an area covering approximately 18,000 square miles, or 23 percent of the State. The demonstrated reserve coal base is estimated to be 976,700,000 tons, 0.2 percent of the United States coal reserves. Kansas coal varies from lignite, in north central Kansas, to highly volatile bituminous, in southeast Kansas. The average number of tons of overburden stripped to each ton of coal is about 13:1. Coal seams in Kansas are usually one to three feet thick. Only bituminous coal of southeast Kansas is currently being mined.

The first record of coal mining in Kansas dates to 1865 when settlers extracted the easily reached coal seams at and near the surface. Beginning in the 1880's, most of the coal produced in southeast Kansas was extracted by deep shaft mining. By 1920, deep shaft mining had given way to strip mining. At the time SMCRA was enacted in 1977, approximately 46,000 acres in 41 counties were affected by coal mining. The current listing of hazardous conditions recorded in OSM's AMLIS, includes: 333,876 linear feet of dangerous highwalls; 479.9 acres of dangerous piles and embankments; 5 hazardous water bodies; 1,470 vertical openings; 35 hazardous facilities; 45.3 acres of unauthorized industrial and residential dumps on mine lands; and 1,138.6 acres of surface subsidence under towns and roads. These figures include both hazards that have been reclaimed and those to be addressed. Kansas is actively reclaiming these on a priority basis as AML funds become available.

Since the 1917 peak of 7,000,000 tons, coal production in Kansas has steadily declined. In 1981, coal production was 1,361,000 tons. As shown in Table 1, Kansas' mines produced 84,398 tons of coal in calendar year 2004. Coal produced in Kansas is used primarily for generation of electricity.

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

OSM published in its Directive on Oversight of State Programs (REG-8) a statement that customer service was an integral and important part of the implementation of an approved State program. The oversight guidance calls for evaluating the State's performance on customer service annually. The aspects of customer service that are to be evaluated are: handling of citizen's complaints; permitting actions; bond releases; lands unsuitable petitions; administrative and judicial review; and AVS determinations. During EY 2005, TFO's oversight focused on handling of citizen's complaints, public participation in permitting actions and bond releases, and

availability of information to the public. KDHE uses the State of Kansas administrative procedures, which call for formal hearings and records on all significant actions.

KDHE provides for public input into the State program through several avenues. Citizens may comment on permit applications, be party to the proceedings, comment on amendments to the State program, or file complaints on mining operations. TFO's review of opportunities for public participation resulted in the following findings and conclusions:

Permitting Actions. During EY 2005, KDHE reviewed one permit application. On this application, the applicant published (four consecutive weeks in a local newspaper) a notice briefly describing the application for a permit for coal mining and reclamation and announcing the opening of the public comment period on the permit application. KDHE requested comments and concurrences from the government agencies that the State program requires. TFO's review identified only one comment from an individual and no substantive comments from government agencies. KDHE also held an informal conference on the permit application. The commenting individual was concerned about the potential of the mining and reclamation operation to disturb the community around the mine. KDHE's communications with the individual explained that the operation had been designed in compliance with the approved State program. The individual also requested of the local zoning commission that they refuse to allow the mining operation into the area and requested KDHE to delay its decision until after the zoning commission acted. At the time of the review, the zoning commission had not reached its decision, but KDHE had determined that its decision did not need to be delayed.

Bond Releases: During EY 2005, KDHE received one application for bond release and approved that application. The application requested Phase I release for 301 acres and Phase III release for 59 acres that had not been disturbed by the mining and reclamation operation. The applicant published notice of the application in the local newspaper. KDHE notified government agencies of the application. KDHE conducted a bond release inspection inviting landowners and known interested parties and agencies. During the inspection, two of the landowners had questions that KDHE and the mining company answered (after a thorough investigation). OSM was the only government agency that attended. OSM had no concerns about KDHE's procedures in approving the bond release or about whether the on-the-ground conditions merited the requested bond release. No other comments were received and no hearing was requested or held.

Citizen's Complaints: KDHE maintains a log of citizen's inquiries that describes the subject and the action that is needed to answer the inquiry. One of these inquiries was a request for information about burning the old vegetation on a revegetated site. KDHE contacted the mining company, learned that burning was planned in the near future, and relayed this information to the person who made the inquiry.

During EY 2005, KDHE received one citizen's complaint. The complaint involved potential blasting damage to a personal residence. KDHE investigated the blasting records and inspected the house and compared the results of the inspection with the preblast survey that the mining company had done before any blasting had occurred. KDHE offered the complainant the opportunity to remain anonymous, but the complainant declined. The result of KDHE's investigation was that blasting was not the cause of the house's settling and cracking. KDHE relayed this decision to the complainant by letter with information on appealing the decision.

Availability of Records: TFO interviewed KDHE staff about the procedures for maintaining records as the State program requires so that citizens have immediate access to the records. TFO found that KDHE requires the permit application packages to be maintained in the county clerk's office during the public comment period. KDHE also keeps all records in its office, which is centrally located and not too distant from any mining counties. KDHE has an internet information site that includes contact information. However, KDHE has not maintained records, or descriptions of available records with information on receiving copies, in the counties where mining occurs as the State program requires.

In order to make records more available, KDHE stated that it would revise its internet site to include more detailed information on records that are available and how to obtain copies, and it would develop a brochure that will be made available in appropriate public offices in all mining counties. The brochure will include a description of records that are available and how to obtain copies of records.

KDHE acted in accordance with the State program in seeking and handling comments on permitting actions and bond releases. KDHE acted on the single citizen's complaint appropriately – offering confidentiality, investigating the complaint thoroughly, applying the State program requirements in reaching a decision, notifying all parties of its actions and decisions, and explaining rights and methods for appealing the decision.

KDHE expanded its procedures for making information and records available to the public.

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

A. Regulatory Program

During EY 2005, KDHE implemented its approved regulatory program in a manner that ensured that coal mining and reclamation operations remained in compliance with the permitting rules and the performance standards.

B. Abandoned Mine Land Reclamation Program

On April 14, 1982, the Secretary of the Interior approved the Kansas AML reclamation plan under Title IV of SMCRA. The Kansas AML program operated with a staff of 9.95 FTE's and a grant of $2.05 million in EY 2005. Kansas' non-emergency AML program completed reclamation on Priority 2 coal and noncoal projects. Noncoal projects consisted of closing dangerous openings resulting from the underground mining of lead and zinc in the southeast corner of the State.

Kansas followed standard construction practices using State contracting procedures. The Kansas AML program is conducted in a professional manner. Projects are designed and constructed in accordance with project approval documents. They are thoroughly analyzed and meet National Environmental Policy Act requirements. Project designs appear well thought out and result in projects that successfully meet project goals without causing unnecessary environmental consequences or excessive postconstruction maintenance. The designs also include any necessary mitigation for the protection or enhancement of areas designated as critical habitat for the endangered gray bat, *Myotis grisescens*. Construction monitoring, postconstruction monitoring, and project maintenance procedures ensure projects meet contract specifications, project objectives, and program goals. Review of AML projects identified a trend of completing required AVS checks after issuance of construction contracts. OSM found no indications that Kansas has awarded AML contracts to contractors that were ineligible to receive the contracts due to violations recorded in AVS. By letter dated July 14, 2005, Kansas notified OSM that it had reviewed its procedures for performing AVS checks on AML projects and had implemented OSM's recommended changes.

Emergency complaints are investigated in a timely manner. AML hazards determined to meet the program's emergency criteria are effectively mitigated within a reasonable time frame. The Kansas AML emergency program addressed voids, vertical openings and subsidence features located near/under occupied structures and in public roads and right-of-ways. The emergency program responded to burning oil shale near an occupied residential structure.

The fire was in combustible overburden spoil during a prelaw surface coal mine operation. Kansas stabilized a slide area caused by an unstable highwall located adjacent to a county road. The slide encroached into the right-of-way threatening a guardrail installed during a previous AML project, underground utilities, and the county road.

C. Program Amendments

During EY 2005, KDHE submitted no amendments to its approved regulatory and abandoned mine land reclamation programs. No program amendments were pending submittal or approval. OSM and KDHE discussed a possible discrepancy in KDHE's revegetation success guidelines on defining species that may be used in revegetation.

V. Success in Achieving the Purposes of SMCRA as Measured by the Number of Observed Off-Site Impacts and the Number of Acres Meeting the Performance Standards at the Time of Bond Release

To further the concept of reporting end results, the findings from performance standard evaluations and public participation evaluations are being collected for a national perspective in terms of the number and extent of observed off-site impacts and the number of acres that have been mined and reclaimed which meet the bond release requirements for the various phases of reclamation. Individual topic reports that provide additional details on how the following evaluations and measurements were conducted are available at TFO.

A. Off-Site Impacts

During EY 2005, the KDHE inspected its 8 mining and reclamation operations and its 4 bond forfeiture sites regularly. TFO reviewed all of the State inspection reports for each operation. TFO inspected 2 mining and reclamation operations in Kansas. On both State and Federal inspections, the inspector determined whether the mining operation had caused impacts outside the areas permitted to be disturbed and included that information in the inspection report. From these State and Federal inspection reports, and from data submitted by KDHE, TFO compiled the numbers, types, and severity of the off-site impacts for the evaluation year.

KDHE conducted 49 complete inspections and 95 partial inspections. This provided 144 opportunities for KDHE to observe off-site impacts, and with the 2 Federal inspections, there were a total of 146 opportunities to observe off-site impacts. No off-site impacts were observed in EY 2005 on active

operations or on bond forfeiture sites. One hundred percent of the operations were free of off-site impacts (See Table 4).

KDHE implemented its approved coal mining and reclamation regulatory program to ensure that all operations prevented off-site impacts.

B. Reclamation Success

During EY 2005, TFO monitored bond release applications from the mining operations in the State. TFO participated in the single bond release inspection. TFO also reviewed KDHE's mine inspection reports and observed the general success of reclamation on its oversight and bond release inspections.

During EY 2005, KDHE received and approved one bond release application. That application requested Phase I release for 301 acres and Phase III release for 59 acres that had been undisturbed by the mining and reclamation operation. EY 2005 began with 4,483 bonded acres and ended with 4,424 bonded acres (See Table 5).

KDHE believes that contemporaneous reclamation can be measured better by using State program requirements rather than bond release acreage. KDHE found in its evaluation of contemporaneous reclamation that backfilling and grading on all active mining operations were within the 180-day backfilling and grading requirement and within 4 spoil ridges. In addition, all active mining operations had topsoil replaced within 120 days and were seeded and/or planted during the first favorable planting season (See Table 5A).

During EY 2005, TFO and KDHE extensively discussed bond release vegetation requirements where fish and wildlife habitat is the approved postmining land use. The issue was whether KDHE's bond release guidelines allow annual species to be included in the data to prove that the site has adequate vegetative cover.

Another discussion between KDHE and TFO concerned whether KDHE's requirement for productivity sampling on prime farmland provided adequate information to determine whether the land had been returned to original productivity. In the situation that prompted the discussion, the landowner contacted TFO and complained that KDHE had been arbitrary in refusing to accept the 2004 productivity data. KDHE required sampling to be repeated to ensure that the sample was statistically adequate after wildlife and weather damage prevented data collection from all of the sample sites. TFO's analysis of the situation was that KDHE's decision was appropriately based on its approved coal mining and reclamation regulatory program.

Although the bond release data were limited to one site, that site met all bond release requirements for the phases of the bond release that were approved. There are a number of sites that have been reclaimed and are waiting only for proof that the vegetation remains successful throughout the extended liability period. The single bond release that was approved and TFO's observations led to the conclusion that permitted land has been reclaimed contemporaneously, to the approximate original contour, to productive land capability, and to appropriate groundwater recharge and surface water drainage without erosion or contamination.

VI. OSM Assistance

OSM provided financial assistance to Kansas in the form of grants, for 50 percent of the operational budget for KDHE's activity as the regulatory authority and 100 percent of KDHE's activity in AML. KDHE has access to and uses equipment provided by OSM for TIPS.

VII. General Oversight Topic Reviews

A. Mine-Site Evaluation

OSM is required to conduct oversight activities including mine inspections to determine whether the approved State coal mining regulatory program has been properly implemented. OSM is required to identify how the State program implementation is reflected in on-the-ground conditions.

TFO inspected and prepared inspection reports on two mining and reclamation operations. These were both joint inspections with KDHE.

On one of those inspections, TFO's and KDHE's inspectors identified two violations that KDHE cited. One was failure to protect topsoil, and the other was failure to comply with the approved permit by constructing a rock crossing of a diversion. KDHE cited both violations.

On the other inspection, TFO's observations led to two programmatic discussions between TFO and KDHE. One discussion was on the use of annual species in the species count to determine whether vegetative cover to control erosion had been achieved. TFO was concerned that KDHE's bond release guidelines did not authorize counting annual species and that the vegetation might not be permanent and be able to control erosion under adverse conditions. KDHE has been working with the State agencies on determining which species to allow in a fish and wildlife postmining land use.

This discussion led to OSM's deferring to KDHE on the species to be counted, while encouraging KDHE to clarify its guidelines.

The other discussion was on the release of surface water discharge monitoring requirements on land that had been reclaimed but had not had bond releases. TFO was concerned that the vegetation had not been proven to be sufficient to control erosion before the monitoring had been released. KDHE, in conjunction with Kansas Bureau of Water, has procedures for determining when surface water monitoring can be terminated. Briefly, these procedures state that KDHE will certify when ground cover will control erosion and with this certification, the Bureau of Water can terminate the National Pollution Discharge Elimination System permit. TFO agreed that the procedures allowed KDHE to determine when surface water monitoring could be terminated.

TFO reviewed State inspection reports, and looked for trends and patterns. During EY 2005, TFO did not identify any negative trends nor violations that KDHE had not cited, and thus, issued no TDN's.

KDHE has appropriately ensured on-the-ground compliance with its implementation of the approved State program.

Appendix A: Tabular Summaries of Data

These tables present data pertinent to mining operations and State and Federal regulatory activities within Kansas. They also summarize funding provided by OSM and Kansas staffing. Unless otherwise specified, the reporting period for the data contained in all tables is July 1, 2004, to June 30, 2005. Additional data used by OSM in its evaluation of Kansas' performance is available for review in the evaluation files maintained by TFO.

Appendix B: State Comments on Report