

**OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT**

**Annual Evaluation Summary Report**

for the

**Montana**

**Title V Reclamation Program**

for

**Evaluation Year 2001**

**(October 1, 2000 to September 30, 2001)**





## TABLE OF CONTENTS

I.	Introduction .....	1
II.	Overview of Coal Mining Industry .....	1
III.	Overview of Public Participation in the Program .....	2
IV.	Major Accomplishments/Issues/Innovations .....	3
V.	Success in Achieving the Purposes of SMCRA .....	4
	A. Off-site Impacts .....	4
	B. Bond Release.....	4
	C. Customer Service .....	4
VI.	OSM Assistance .....	5
	A. Office of Technology .....	5
	B. Technical Information Processing System .....	6
	C. National Technical Training Program.....	6
VII.	General Oversight Topic Reviews .....	7
	A. State Program Amendments .....	7
	B. Grants Management .....	7
	C. Inspection & Enforcement .....	8
	D. Approximate Original Contour and Postmine Topography Determination.....	9
	E. Contemporaneous Reclamation .....	12
	F. Permitting and Inspection Weakness in the State Program.....	16

Appendix A: Tabular Summary of Core Data to Characterize the Program .....21

Table 1	Coal Production
Table 2	Inspectable Units
Table 3	State Permitting Activity
Table 4	Off-Site Impacts
Table 5	Annual State Mining and Reclamation Results
Table 6	Montana Reclamation Summary
Table 6a	Reclamation Status of permanent program lands as of January 1, 1999
Table 7	State Bond Forfeiture Activity
Table 8	State Regulatory Program Staffing
Table 9	Regulatory Funds Granted to State by OSM
Table 10	Inspection Activity
Table 11	Enforcement Activity
Table 12	Lands Unsuitable

Appendix B: Montana's Comments on Draft Report

Appendix C: Casper Field Office Director's Response to Montana's Comments

\*Cover photo Highwall reclaimed to Approximate Original Contour\*

## **Regulatory Program**

### **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 and abandoned mine land programs that have been approved by OSM as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Montana regulatory program and the effectiveness of the Montana program in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of October 1, 2000 to September 30, 2001. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Casper, Wyoming, OSM Field Office.

The following list of acronyms are used in this report:

AOC	Approximate Original Contour
CAD	Computer Assisted Drafting
CFO	Casper Field Office (OSM)
EY	Evaluation Year
GIS	Geographic Information System
MT-DEQ	Montana Department of Environmental Quality
NTTP	National Technical Training Program
NOV	Notice of Violation
OTT	Office of Technology Transfer
OSM	Office of Surface Mining Reclamation and Enforcement
PMT	Post Mine Topography
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten Day Notice
TIPS	Technical Information Processing System

### **II. Overview of the Montana Coal Mining Industry**

Of the 15 major coal-producing states, Montana ranks first in coal resources and reserves and seventh based on overall production. Montana's demonstrated coal reserve base is

approximately 120 billion tons, or about 24.6 percent of the total U.S. reserve base. Coalfields are found throughout the State, but most are located east of the Continental Divide and in the south central part of the State. Of the 17 coalfields in the State, two (Fort Union and Powder River) currently have producing mines. Montana coal ranges in rank from lignite to high volatile A bituminous, with most of the coal currently mined being sub-bituminous. At the present rate of mining (approximately 40 million tons per year), Montana can sustain over 35 years of mining from the current mineable reserves.

Coal mining began in Montana over 100 years ago. Early coal production was almost entirely from underground mines and was largely used by smelters, railroads, and for domestic purposes by early settlers of the State. Early underground production ranged from a few hundred thousand tons to peaks of as high as five million tons during World Wars I and II. Larger surface mining techniques after WWII boosted production to a record of nearly 42 million tons in 1994.

Montana is currently ranked sixth among the U. S. coal producing states, with an annual production for 2000 of approximately 38.5 million tons, all of which came from surface mines. An average price per ton of Montana coal for calendar year 1999 was \$6.43, making the value of the production from 1999 at just over \$260 million. The coal industry also generates approximately \$36 million in severance taxes annually and has cumulatively produced approximately \$606.6 million in Federal and State royalties for Montana to date.

Nearly all of Montana's coal production is used in coal-fired electrical generation facilities to produce electrical power; however, small amounts continue to be used for heating and other domestic uses on a limited regional basis.

There are currently 12 active surface mining permits with a total direct industry employment at 800 to 900 people and an annual payroll of \$50 million. Montana's surface mining industry furnishes some of the highest paying and most sought after jobs in the State.

Mine size within the State ranges from 10 acres to nearly 24,000 acres. A total of approximately 55,000 acres are currently permitted in the State. Approximately 29,000 of the 55,000 acres permitted have been disturbed and 12,500 of these disturbed acres have been backfilled, graded, topsoiled, and permanently seeded to reclamation standards (see Table 6).

### **III. Overview of Public Participation in the Program**

Casper Field Office (CFO) staff has reviewed the Montana program with respect to opportunities for and participation in, the public review of permitting activities by the

Montana Department of Environmental Quality (MT-DEQ). The CFO review found that opportunities for public involvement in mine permitting under the Montana program exist at the following levels of their permanent program: 1) all new applications, major revisions, amendments and test pits, 2) permit renewals, 3) permit transfers, 4) applications for extensions of time to commence mining, 5) bond release applications and 6) public road relocations and mining within 100 feet of a public road. While public involvement is not available for new prospecting permit applications, renewals, amendments, or transfers, there are provisions in the Montana program for public notice and comment at bond release time.

Public notice requirements for most of the program actions listed above consist, at a minimum, of having the applicant place an advertisement in a newspaper of general circulation in the locality of the proposed activity for at least once per week for 4 consecutive weeks, followed by a 30 day allowance for comment. Any comments received or requests for an informal conference must be formally addressed on the record. Once the permitting actions are deemed “acceptable”, the MT-DEQ also publishes a notice of acceptability once per week for 2 consecutive weeks followed by a 10 day comment period, which again allows the public to participate in the State’s permitting process.

The CFO review indicates that all the required publications were documented and of sufficient content to meet the requirements of the Montana program. The MT-DEQ also has an open door policy of making all permit applications and approved permits available for review and since Montana is a fairly large state, these documents are available at two locations within Montana; at Helena and Billings.

#### **IV. Major Accomplishments / Issues / Innovations**

During the evaluation period, MT-DEQ completed two major mine permit application reviews that included the drafting and/or completion of accompanying “Cumulative Hydrologic Assessments”, “Environmental Assessments”, and “Written Findings”. An ORACLE database structure and map was drafted in an effort to assimilate data and correspondence into an electronic format and improve speed and efficiency in dealing with the many aspects of MT-DEQ business.

A few coal program staff and management participated in program related aspects of the 2000 Montana Legislature. Throughout the year, the agency presented summaries of various aspects of the State coal program and answered specific questions and requests for assistance to interested members of the public.

MT-DEQ participated in planning and facilitating OSM’s Bond Release Forum. A staff member gave a presentation at the forum and the MT-DEQ worked with representatives from industry in arranging presentations by those representatives.

Various staff members received training in advances in computer technology and in other technical areas. This training has proven beneficial in improving the effectiveness and efficiency of the agency. Numerous efforts throughout the year (meetings, guidance documents, etc.) were undertaken to address specific program issues and needs. For example, guidelines intended for use in drainage and channel reclamation were drafted, distributed and discussed with representatives of Montana's coal industry.

**V. Success in Achieving the Purposes of SMCRA**

**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. The State program must regulate or control the mining or reclamation activity or result of the activity causing an off-site impact. In addition, 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.

MT-DEQ conducted eighty-five complete inspections and one-hundred-nine partial inspections and issued seven Notices of Violation (NOVs). The CFO conducted three complete random sample inspections and eleven partial / focused inspections of coal mining operations in Montana and wrote no (0) Ten-Day-Notices (TDN).

A review of each of these inspections and enforcement actions by MT-DEQ and CFO staff indicates no negative off-site impacts were observed (see Table 4).

**B. Bond Releases**

OSM evaluates the effectiveness of the State program based on the number of acres that have received bond release (Table 5). Several factors combine to result in the low number of acres released from bond including: Bond release applications have been a lower priority (by both industry and Montana) than has mining, backfilling, grading, soiling and seeding activities. Many areas have been reclaimed beyond the minimum period of responsibility as specified by the Montana program, however, industry has been reluctant to apply for bond release. As a result less than 15% of the disturbed lands have received Phase I & II release and no lands have received Phase III final release.

Based on these numbers and the guidance from REG.8, the CFO believes that the Montana program is not effective in having all disturbed lands reclaimed to the approved postmining land use contemporaneously. Tables 5 and 6 summarize reclamation activity within the State.

**C. Customer Service**

The coal program in Montana is administered by the Industrial and Energy Minerals Bureau of the Montana Department of Environmental Quality. This Bureau provides service to all parties requesting assistance, documents, or information, and regulates the coal mining industry within the State. Their services include, but are not limited to attending or making presentations at public meetings, discussions with individuals or groups regarding the Montana coal program or related regulatory, reclamation, or governmental activities.

In addition to the services provided to the general public, the coal program staff and management also contribute to task forces and ad-hoc committees in relation to inter- and intra-agency problem solving committees and panels. Some coal program personnel also planned and/or participated in various symposiums, seminars, and workshops in relation to technical and legal aspects of coal prospecting, mining, and reclamation.

**VI. OSM Assistance**

**A. Office of Technology Transfer (OTT)**

Montana's Department Environmental Quality (MT-DEQ) continues to implement its electronic permitting program. In support of Montana's efforts to share GIS-based information with staff and/or the public in an integrated and scalable manner, the OSM Office of Technology Transfer (OTT) provided electronic permitting funds for a HP DesignJet 800PS color printer. This equipment cost \$7,573.27. The equipment has proven essential to Montana MT-DEQ's electronic permitting efforts, because it allows Montana MT-DEQ to print results of their technical analyses and integration of submitted electronic maps and data with appropriate MT-DEQ data and maps. Decision documents and reports now include relevant, high quality and easily interpreted information.

OSM's Technical Librarian filled five reference requests to MT-DEQ staff members; in addition, the Office of Technology Transfer (OTT) provided four publications and two CD-ROMs to MT-DEQ's technical library.

OTT provided sixteen hours of hands-on, on-site AutoCAD Workshop in Helena, Montana, on March 8-9, 2001, for 13 MT staff (eight from the Coal Division).

Using actual CAD drawings provided by two Montana coal mines, staff became familiar with the practical aspects of ACAD2000 as a tool in mining applications. OTT provided funds for the College of Technology's computer lab, the services of Susan Patton, Ph.D., Associate and Newmont Professor, Department of Mining, MT Tech of the University of Montana, and for a follow-up consulting with Professor Patton.

OSM also provided the opportunity for a MT-DEQ staff members to participate in planning, presenting a paper, and chairing panel discussions at OSM's interactive forum on Approaching Bond Release: Wildlife Habitat Construction and Wildlife Use of Reclaimed Lands in the Arid and Semi-Arid West which was held August 27-31, 2001, in Gillette, Wyoming. Mr. Chris Yde presented a paper entitled Bats: Their Presence and Importance at Montana's Coal Mines, he also co-authored a paper entitled Sharp-tailed Grouse Response to the Development of a Large-Scale Surface Coal Mine in Southeastern Montana; organized two panel discussions: Habitat Restoration Plan Review with Montana industry; and a Bond Release Panel Discussion on How to Assess the AMT-DEQ Adequacy of Wildlife Success with Western state technical representatives. In addition Chris presented the Forum's closing remarks.

OTT provided the opportunity for one MT-DEQ staff to participate in the OTT-sponsored workshop listed below:

Modeling Reconstructed Topography and Relief, and Associated Issues Relating to Approximate Original Contour (AOC), March 1-2, 2001, Denver, CO.

One MT-DEQ staff in addition to 10 industry representatives, consultants, and other State/Federal agency staff attended.

**B. Technical Information Processing System (TIPS)**

Montana did not have any personnel from the coal reclamation program participate in any TIPS training opportunities during this evaluation period; however, several personnel from Montana's Abandoned Mine Land program did take advantage of the TIPS Global Positioning System (GPS) training this year.

**C. National Technical Training Program (NTTP)**

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 NTTP provides a wide range of courses including engineering, hydrology, soils and revegetation, inspection and enforcement, and computer software. Two MT-DEQ employees attended courses from OSM's technical training program and one MT-DEQ employee assisted by instructing a course at a total cost of \$1,562 to OSM during EY2001.

Two MT-DEQ staff participated in the following NTTP sponsored courses:  
Historic and Archeological Resources  
Principles of Inspection  
One MT-DEQ staff participated in instructing the following NTTP sponsored course:  
Bonding; Legal and Administrative

## **VII. General Oversight Topic Reviews**

### **A. State Program Amendments**

The state program amendment process in Montana has been ongoing and constant since the Montana program was originally approved by OSM in April, 1980. Since that date, in response to rule challenges, court decisions and new rulemaking, the Federal reclamation regulations have also changed and evolved. In most cases, this evolution required corresponding adjustments to the Montana program. Montana has submitted nineteen formal amendment packages to OSM for review and approval since their original program was approved. Overall, Montana's program is consistent with SMCRA and the Federal regulations. However, several critical delays in submission of program amendments to OSM for review and approval have prevented the program from being in complete compliance with the Act.

During this evaluation period, Montana had five amendment packages actively being processed by OSM. One of these active packages was formally approved, three packages have been reviewed and are awaiting solicitor approval before final approval, and the last package is on hold with its approval contingent upon formal approval of one of the other active amendment packages. All five active amendment packages will finish the review process and be approved by early 2002.

The MT-DEQ and OSM have identified all outstanding program issues during past evaluation periods and Montana has addressed a majority of these issues. OSM is, however, waiting on a response to the April 2, 2001, 30 CFR Part 732 letter regarding valid existing rights, several required amendments as listed at 30 CFR Part 926.16, and formal submittal of rule changes initiated by the State in 1999. Montana is aware of these outstanding programmatic issues, but to date, has not submitted a schedule for addressing them. The CFO and MT-DEQ will continue to address these issues and anticipate producing formal amendment submittals to address these outstanding issues during the next evaluation year.

## **B. Grants Management**

CFO conducted financial oversight during the evaluation period. CFO visited MT-DEQ offices in Helena, Montana and reviewed financial information. Specifically, drawdowns, timeliness of grant applications and reports, audits, accounting, property and travel were reviewed.

A drawdown analysis was conducted for the existing Administration and Enforcement grant. All daily cash balances Between July 1, 2000 and June 30, 2001 were reviewed. No excess funds were being held.

MT-DEQ continues to report property and transfer property in a timely matter. A new property inventory was taken during the spring of 2001, meeting Common Rule requirements.

MT-DEQ was timely regarding both reporting financial status of the existing Administrations and Enforcement grant and filing their grant applications. MT-DEQ was allowed an extension for closing out the Administration and Enforcement grant that ended June 30, 2001. Over the past several years this has been a recurring problem. MT-DEQ was notified of this matter and they have been requested by the CFO to develop a work plan to resolve this issue so those closeouts of grants are timely.

Travel taken by the MT-DEQ personnel was reviewed to include Montana's travel policies and procedures and individual travel. Rates for per diem, lodging were allowable. Approvals as required by policy were also appropriate.

Indirect costs were reviewed. Questions had arisen regarding if there were duplicative costs being charged between direct and indirect costs. Generally, these were costs that were being approved as direct costs but are often typically indirect charges. As a result of this oversight review, it was found that such costs were being charged both as direct costs and indirect costs but were charged such that they were not duplicative, i.e., charges were charged to MT-DEQ on a per capita basis and those individuals involved in the Title V program were charged appropriately as direct costs and those in the administrative branch of MT-DEQ whose salaries and benefits are charged as indirect costs were charged the per capita amount as an indirect cost.

An A-133 Audit was completed during the evaluation period covering the Title V program for one year ending June 30, 2000. There were no findings for the Title V program. A new A-133 Audit is being planned and will cover two years ended June 30, 2001.

### **C. Inspection and Enforcement**

The MT-DEQ continues to conduct frequent and thorough inspections. MT-DEQ conducted eighty-five complete inspections and one hundred nine partial inspections and met or exceeded the required number of inspections for all permits during the evaluation year. The Casper Field Office conducted three complete random sample inspections and eleven partial / focused inspections of coal mining operations in Montana.

MT-DEQ inspection reports are complete, accurately document site conditions and mine activity, and give the status of any violations. The inspection reports have continuity with previous reports. All performance standards were reviewed and documented during complete inspections and the reports contain a discussion of the current mine status. Each partial inspection report documents performance standards reviewed and permit requirements reviewed as well as the portions of the mine site inspected.

MT-DEQ maintains an inspectable units list and a inspection database sufficient to meet its program requirements.

MT-DEQ issued seven Notices of Violation and no Imminent Harm or Failure to Abate Cessation Orders during this evaluation period. No patterns of violation exist or show cause hearings / alternative enforcement action (bond forfeiture) were initiate during this evaluation period.

The CFO did not issue any Ten-Day-Notices (TDNs) during this review period.

### **D. Approximate Original Contour and Postmine Topography Determinations**

MT-DEQ has recently developed AOC and PMT Guidelines for determining backfilling and grading compliance with the Montana program and SMCRA. During this evaluation period, the CFO conducted inspections to evaluate the implementation and use of these Approximate Original Contour and Postmine Topography guidelines in the field.

The State clarified the use of both the alternate reclamation and approximate original contour (AOC) provisions of their program through its use of the AOC and post mine topography (PMT) guidelines.

The State continues to use alternate reclamation provisions for changes in postmining land use, but will employ the AOC provisions of their program to recreate the diverse and unique topographic features that existed in the pre-mine topography and landscape. At the mine sites reviewed Montana is adhering to the the guidelines noted above. The following photos are the most recent sites where unique premine topography is being restored to the postmine reclamation.

***DECKER COAL COMPANY:***  
APPROVED WEST DECKER A-HILLS HIGHWALL REGRADE



***BIG SKY COAL COMPANY:***  
**AREA B NORTH PROPOSED HIGHWALL REGRADE**



## E. Contemporaneous Reclamation

Contemporaneous reclamation will be measured by evaluating the timeliness of Phase I, Phase II, and Phase III bond release. The intent of this measurement is to provide an overall general picture of how successfully reclamation is staying current with mining in the State.

During this and past reviews of Montana's contemporaneous reclamation practices, the CFO identified areas where Montana had granted mine operators variances to the approved state program requirement of backfilling and grading within 180 days of coal removal. During this evaluation period, CFO reviewed contemporaneous reclamation variances, extensions and temporary cessations to determine where and how the operators have used them. And where variances were approved by the State, if they complied with the Montana program. The CFO has concluded that the use of variances to contemporaneous reclamation and temporary cessation, while consistent with the approved State program, is delaying reclamation and is contributing to a delay in bond release. Montana amended its regulations on April 23, 1999 to changed these requirements to include:

17.24.501 (6) (b) Backfilling and grading must be completed within 2 years after coal removal from each pit has been concluded. For the purposes of this provision, "each pit" means any continuous dragline pass within a particular permit area.

Montana has *not* implemented these new regulations. The CFO will be reviewing the Montana program to determine the status and use of any regulatory changes prior to approval of OSM.

The following are examples where the CFO feels that variances to contemporaneous reclamation is contributing to a delay in reclamation and subsequent bond release.

### ***WESTERN ENERGY COMPANY AREA A***

The Area A permit contains approximately 24,000 feet (4 1/2 miles) of open highwall containing approximately 1,100 acres. There has been no highwall elimination at this permit. As reported in the 1998, 1999 and 2000 annual reports the company has completed backfilling, grading, resoiling and seeding a total of 1.1 acres on this permit during the last four reviews. Minor Revision # 99-03-02A allows for delays in highwall elimination until 2004. However, it does require the company to backfill and grade a portion of the highwall in Section 31

with 1 million cubic yards of material by 12-31-01 and an additional million yards each year in 2002 and 2003 with that section of highwall to be eliminated by 01-01-04.

**WESTERN ENERGY COMPANY**  
**AREA A:**

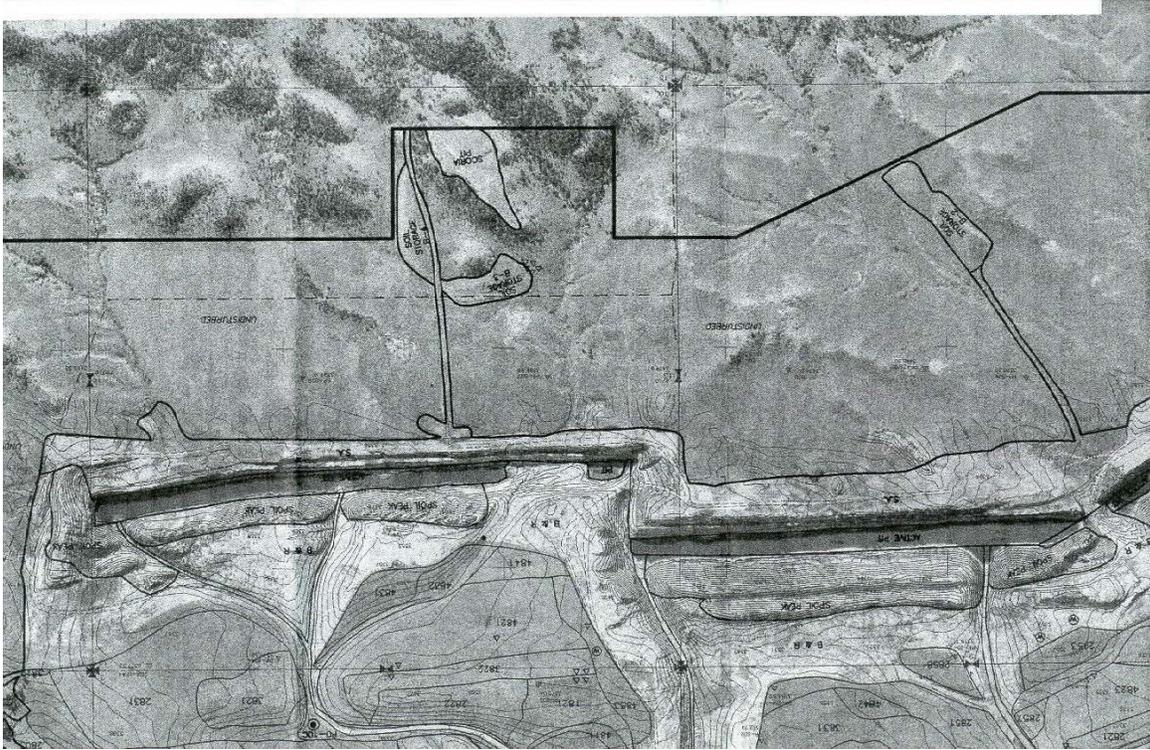


**AREA B**

The eastern portion of the permit area is inactive (eastern ½ of Section 9 and Section 10). Coal was last extracted in Section 10 in October 1983 and in Section 9 in the first quarter of 2001. The Section 10 area has received a backfilling and grading variance until 2004. The approved mining plan for Sections 7, 8, and western ½ of 9 indicates mining on an intermittent basis through 2005.

The company has continued to operate in the western portion of the Area B permit located in Sections 13, 14, 15 and 16. The last mining activity in the Area B Extension (sections 13, 14, 15 and 16) occurred in the summer-fall of 2000. The approved mine plan for these sections shows the company returning to the area in 2006 to resume mining. The operator has not applied for or received temporary cessation.

**AREA B:**  
**AREA B SECTIONS 10 and 9**



**AREA B SECTIONS 13, 14, 15 and 16:**  
**SECTIONS 13 & 14**



## SECTIONS 15 & 16



### *AREA C*

The eastern portion of the mine, which contains approximately 6 miles of highwall, is inactive. The company has received a delay of reclamation (MR# 93-03-01C) for that section of highwall (1 ½ mile) in sections 2 and 3 where the haulroad is contained within the final pit.

### AREA C EAST





#### **F. Permitting and Inspection Weaknesses in the State Program**

As noted in the September 20, 2001 Special Focus Inspection<sup>a</sup> report, there are approximately 300 to 400 acres of regraded spoils that have not been topsoiled or seeded at the Big Sky Mine despite a requirement, in the permit, to seed the area in the Fall of 1999. Montana DEQ has prohibited topsoil replacement pending submission and review and approval of a new topography plan. The revision has been submitted and is currently under review by MT-DEQ. Also topsoil replacement is halted as Montana has requested the company to submit a revised revegetation plan.

The State did not require a change to the permit by issuing a permit order (as outlined in 26-4-408 and 26-4-409) requiring the operator to alter his approved topography and revegetation plan.

The CFO has determined that these revision requests are resulting in a delay of reclamation. However, these permit revisions are consistent with the approved State program. The following photos document the condition noted above.

---

<sup>a</sup> The Special Focus inspection was conducted to assess why the mine appeared to be behind on reclaiming contemporaneously.

***BIG SKY MINE, AREA B-SOUTH***

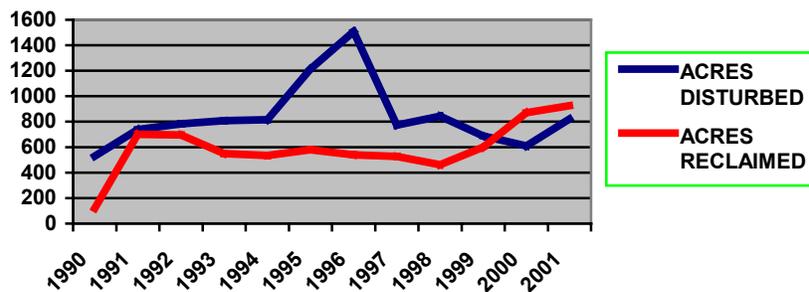
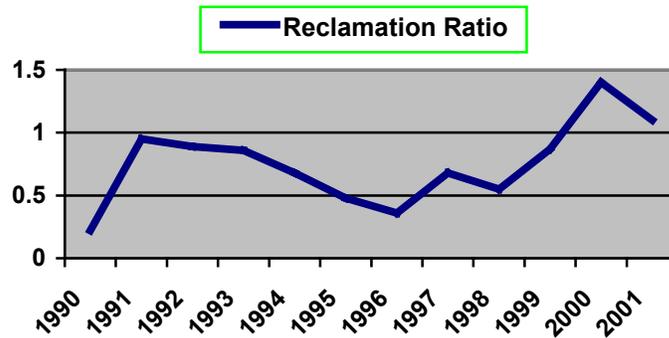


The following tables and charts are used to highlight the CFO's concern that the rate at which lands are being reclaimed in Montana is decreasing. The CFO will continue to evaluate this portion of the Montana program.

*Total acres reclaimed still exceed total acres disturbed on a statewide basis, however, there appears to be a downward trend as acres disturbed increase at a greater rate than reclaimed.*

**MONTANA STATEWIDE RECLAMATION SUMMARY**

YEAR	ACRES DISTURBED	ACRES RECLAIMED	RATIO OF RECLAMATION VS DISTURBED
1990	531	119	0.22
1991	737	700	0.95
1992	783	695	0.89
1993	807	550	0.86
1994	816	536	0.68
1995	1213	579	0.48
1996	1507	541	0.36
1997	773	527	0.68
1998	842	462	0.55
1999	687	601	0.87
2000	609	869	1.4
2001	821	925	1.1

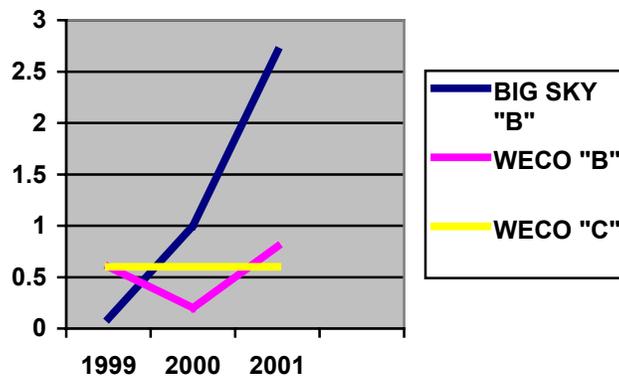


The number of acres that are being backfilled and graded are approximately one half the number of acres disturbed at WECO Areas B and C creating a backlog of regrading. While at Big Sky Area B the number of the acres being backfilled and graded are approximately twice that being disturbed.

**MINE SPECIFIC RECLAMATION SUMMARRY**

<i>YEAR COMPANY</i>	<i>ACRES DISTURBED</i>	<i>ACRES BACKFILLED &amp; GRADED</i>	<i>RATIO OF BACKFILLED &amp; GRADED VS DISTURBED</i>
<i>1999 WECO AREA "B"</i>	<i>136</i>	<i>84</i>	<i>.6</i>
<i>2000 WECO AREA "B"</i>	<i>285</i>	<i>67</i>	<i>.2</i>
<i>2001 WECO AREA "B"</i>	<i>105</i>	<i>81</i>	<i>.8</i>
<i>1999 WECO AREA "C"</i>	<i>81</i>	<i>50</i>	<i>.6</i>
<i>2000 WECO AREA "C"</i>	<i>62</i>	<i>37</i>	<i>.6</i>
<i>2001 WECO AREA "C"</i>	<i>333</i>	<i>193</i>	<i>.6</i>
<i>1999 BIG SKY AREA "B"</i>	<i>97</i>	<i>9</i>	<i>.1</i>
<i>2000 BIG SKY AREA "B"</i>	<i>133</i>	<i>129</i>	<i>1</i>
<i>2001 BIG SKY AREA "B"</i>	<i>61</i>	<i>166</i>	<i>2.7</i>

**RATIO OF BACKFILLED & GRADED VS DISTURBED**

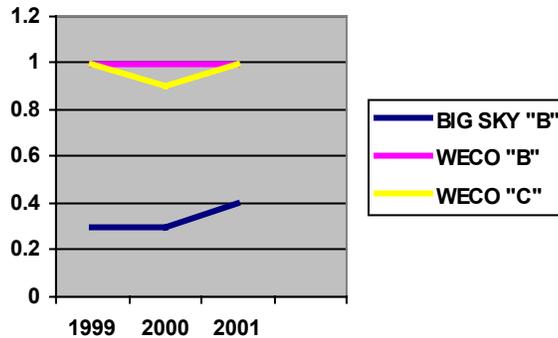


The number of acres that are being resoiled and seeded are approximately equal to the number of acres backfilled and graded at WECO Areas B and C. While at Big Sky Area B less than half of the acres being backfilled and graded are being resoiled and seeded creating a backlog of reclamation.

**MINE SPECIFIC RECLAMATION SUMMARRY**

<i>YEAR COMPANY</i>	<i>TOTAL ACRES BACKFILLED &amp; GRADED</i>	<i>TOTAL ACRES RESOILED, SEEDED &amp; PLANTED</i>	<i>RATIO OF BACKFILLED &amp; GRADED VS RESOILED, SEEDED &amp; PLANTED</i>
<i>1999 WECO AREA "B"</i>	<i>886</i>	<i>866</i>	<i>1</i>
<i>2000 WECO AREA "B"</i>	<i>948</i>	<i>933</i>	<i>1</i>
<i>2001 WECO AREA "B"</i>	<i>1006</i>	<i>974</i>	<i>1</i>
<i>1999 WECO AREA "C"</i>	<i>1355</i>	<i>1355</i>	<i>1</i>
<i>2000 WECO AREA "C"</i>	<i>1444</i>	<i>1352</i>	<i>.9</i>
<i>2001 WECO AREA "C"</i>	<i>1586</i>	<i>1583</i>	<i>1</i>
<i>1999 BIG SKY AREA "B"</i>	<i>770</i>	<i>198</i>	<i>.3</i>
<i>2000 BIG SKY AREA "B"</i>	<i>1112</i>	<i>327</i>	<i>.3</i>
<i>2001 BIG SKY AREA "B"</i>	<i>1165</i>	<i>494</i>	<i>.4</i>

**RATIO OF BACKFILLED & GRADED VS RESOILED, SEEDED & PLANTED**



## APPENDIX A:

The following tables represent data pertinent to the State and Federal regulatory program and activities within Montana. These tables also summarize funding provided by OSM and Montana staffing. Unless otherwise specified, the reporting period for the data contained in all tables is October 1, 2000 to September 30, 2001. Additional data used by OSM in its evaluation of Montana's performance is available for review in the evaluation files maintained by the Casper, Wyoming, OSM Office.

**TABLE 1**  
**COAL PRODUCTION**  
**(Millions of short tons)**

<b>Annual</b>			
<b>Evaluation</b>	<b>Surface</b>	<b>Underground</b>	
<b>Period</b>	<b>Mines</b>	<b>Mines</b>	<b>Total</b>
Coal production <sup>A</sup> for entire State:			
1998	42.653	0.000	<b>42.653</b>
1999	41.232	0.000	<b>41.232</b>
2000	38.425	0.000	<b>38.425</b>
<b>Total</b>	<b>122.310</b>	<b>0.000</b>	<b>122.310</b>

A Coal production as reported in this table is the gross tonnage which includes coal that is sold, used or transferred as reported to OSM by each mining company on form OSM-1 line 8(a). Gross tonnage does not provide for a moisture reduction. OSM verifies tonnage reported through routine auditing of mining companies. This production may vary from that reported by States or other sources due to varying methods of determining and reporting coal production.

**TABLE 2**  
**INSPECTABLE UNITS**  
As of September 30, 2001

	Number and status of permits									Permitted acreage <sup>A</sup> (hundreds of acres)		
	Active or temporarily		Inactive						Insp.			
	inactive		Phase II bond release		Abandoned		Totals			Units <sup>D</sup>		
Coal mines and related facilities	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	Total
<b>STATE AND PRIVATE LANDS REGULATORY AUTHORITY:</b>												
<b>STATE</b>												
Surface mines	0	12	2	1	1	0	3	13	16	1.48	546.5	548
Underground mines	0	0	0	0	0	1	0	1	1	0	42.76	42.76
Other facilities	0	0	0	0	0	0	0	0	0	0	0	0
Subtotals	0	12	2	1	1	1	3	14	17	1.48	589.3	590.8
<b>FEDERAL LANDS REGULATORY AUTHORITY:</b>												
<b>STATE</b>												
Surface mines	0	12	0	0	0	0	0	12	12	0	551.7	551.7
Underground mines	0	0	0	0	0	0	0	0	0	0	0	0
Other facilities	0	0	0	0	0	0	0	0	0	0	0	0
Subtotals	0	12	0	0	0	0	0	12	12	0	551.7	551.7
<b>ALL LANDS<sup>B</sup></b>												
Surface mines	0	12	2	1	1	0	3	13	16	1.48	546.5	548
Underground mines	0	0	0	0	0	1	0	1	1	0	42.76	42.76
Other facilities	0	0	0	0	0	0	0	0	0	0	0	0
Totals	0	12	2	1	1	1	3	14	17	1.48	589.3	590.7
Average number of permits per inspectable unit (excluding exploration sites)									1			
Average number of acres per inspectable unit (excluding exploration sites)									3,475			
Number of exploration permits on State and private lands:						39			On Federal lands <sup>C</sup> :		39	
Number of exploration notices on State and private lands:						4			On Federal lands <sup>C</sup> :		3	
<b>IP:</b> Initial regulatory program sites												
<b>PP:</b> Permanent regulatory program sites												
<sup>A</sup> When a unit is located on more than one type of land, include only the acreage located on the indicated type of land.												
<sup>B</sup> Numbers of units may not equal the sum of the three preceding categories because a single inspectable unit may include lands in more than one of the preceding categories.												
<sup>C</sup> Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management.												
<sup>D</sup> Inspectable Units includes multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.												

**TABLE 3**  
**STATE PERMITTING ACTIVITY**  
**As of September 30, 2001**

Type of Application	Surface mines			Underground Mines			Other facilities			Totals		
	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres <sup>A</sup>	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres
	New Permits	0	0	0	0	0	0	0	0	0	0	0
Renewals	3	3	16,363	0		0		0	0	3	3	16,363
Transfers, sales and assignments of permit rights	1	1		1	0			0	0	2	1	
Small operator assistance	0	0		0	0			0	0	0	0	
Exploration permits	1	1		0	0			0	0	1	1	
Exploration notices <sup>B</sup>		2			1			0			3	
Revisions (exclusive of incidental boundary revisions)		60			0			0			60	
Incidental boundary revisions		4	139		0	0		0	0		4	139
<b>Totals</b>	<b>5</b>	<b>69</b>	<b>16,502</b>	<b>1</b>	<b>1</b>	<b>0</b>		<b>0</b>	<b>0</b>	<b>6</b>	<b>69</b>	<b>16,502</b>
OPTIONAL - Number of midterm permit reviews completed that are not reported as revisions.												
<sup>A</sup> Includes only the number of acres of proposed surface disturbance.												
<sup>B</sup> State approval not required. Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining.												

**TABLE 4  
OFF-SITE IMPACTS**

<b>DEGREE OF IMPACT</b>		<b>RESOURCES AFFECTED</b>												
		<b>People</b>			<b>Land</b>			<b>Water</b>			<b>Structur es</b>			<b>Total</b>
		minor	moderate	Major	minor	moderate	major	minor	moderate	major	minor	moderate	major	
<b>TYPE</b>	Blasting													<b>0</b>
<b>OF</b>	Land Stability													<b>0</b>
<b>IMPACT</b>	Hydrology													<b>0</b>
	Encroachment													<b>0</b>
	Other													<b>0</b>
	<b>Total</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
Total number of inspectable units:				17										
Inspectable units free of off-site impacts:				17										

**OFF-SITE IMPACTS ON BOND  
FORFEITURE SITES**

<b>DEGREE OF IMPACT</b>		<b>RESOURCES AFFECTED</b>												
		<b>People</b>			<b>Land</b>			<b>Water</b>			<b>Structur es</b>			<b>Total</b>
		minor	moderate	Major	minor	moderate	major	minor	moderate	major	minor	moderate	major	
<b>TYPE</b>	Blasting													<b>0</b>
<b>OF</b>	Land Stability													<b>0</b>
<b>IMPACT</b>	Hydrology													<b>0</b>
	Encroachment													<b>0</b>
	Other													<b>0</b>
	<b>Total</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
Total number of inspectable units:				2										
Inspectable units free of off-site impacts:				2										

Refer to the report narrative for complete explanation and evaluation of the information provided by this table.

**TABLE 5**  
**ANNUAL STATE MINING AND RECLAMATION RESULTS**

		<b>Acreage released during this evaluation period</b>
<b>Bond release phase</b>	<b>Applicable performance standard</b>	
Phase I	- Approximate original contour restored	422.00
	- Topsoil or approved alternative replaced	
Phase II	- Surface stability	422.00
	- Establishment of vegetation	
	- Post-mining land use/productivity restored	0.00
	- Successful permanent vegetation	
Phase III	- Groundwater recharge, quality and quantity	
	restored	
	- Surface water quality and quantity restored	
	<b>Bonded Acreage Status<sup>A</sup></b>	<b>Acres</b>
Total number of bonded acres at end of last review period (September 30, 2000) <sup>B</sup>		
Total number of bonded acres during this evaluation year		
Number of acres bonded during this evaluation year that are considered remining, if available		0.00
Number of acres where bond was forfeited during this evaluation year (also report this acreage on Table 7)		0.00
<sup>A</sup> Bonded acreage is considered to approximate and represent the number of acres disturbed by surface coal mining and reclamation operations.		
<sup>B</sup> Bonded acres in this category are those that have not received a Phase III or other final bond release (State maintains jurisdiction).		

**TABLE 6**  
**MONTANA RECLAMATION SUMMARY**

ANNUAL ACREAGE					CUMULATIVE ACREAGE				TOTAL ACRES
YEAR	DISTURBED	BACKFILLED & GRADED	RESOILED	SEEDED	DISTURBED	BACKFILLED & GRADED	RESOILED	SEEDED	PERMITTED
1993	807	892	482	550	21,103	11,860	6,729	6,695	60,730
1994	816	650	394	536	21,966	12,530	7,116	7,141	60,354
1995	1,213	757	408	579	22,610	12,750	7,278	7,313	59,181
1996	1,507	739	464	541	24,075	13,768	8,008	8,022	58,963
1997	773	504	607	527	25,545	14,773	9,179	9,101	60,786
1998	842	896	580	462	26,061	15,751	9,193	9,084	59,550
1999	928	894	881	708	27,457	16,909	10,612	10,286	59,670
2000	853	1,354	1,121	1,121	27,759	12,513	11,038	11,038	54,806
2001	1,241	1,021	1,026	1,026	29,017	13,521	12,511	12,511	54,681

\* Data for EY 2000 and 2001 taken from GPRA tables and include totals from Interim Program (IP), Permanent Program (P) and Federal lands under the Crow Tribe.

**TABLE 6A**

Reclamation status of areas disturbed under the Montana Permanent Regulatory Program. All numbers in the table are in acres.  
 Mine type: surface Reporting year \_\_\_\_\_ Oversight evaluation year 2001 (EY 01, October 1, 2000 - September 30, 2001)

Permittee Mine Permit No. Permitted Acres Bond Mine Type	Disturbed area		3  Long-term mining or reclamation facilities <sup>1</sup>	4  Active mining areas (pits and areas in advance of the pits stripped of topsoil) and areas not yet backfilled and graded	Areas backfilled and graded		Areas where the regulatory authority (RA) has released phase I bond		Areas soiled and seeded/planted		Areas where RA has released phase II bond		Areas final seeded/planted for 5 or 10 years		Areas where RA has released phase III bond	
	1  EY 2001	2  Total (all years)			5  EY 2001	6  Total (all years)	7  EY 2001	8  Total (all years)	9  EY 2001	10  Total (all years)	11  EY 2001	12  Total (all years)	13  EY 2001	14  Total (all years)	15  EY 2001	16  Total (all years)
Westmoreland Resources, Inc. Absaloka Mine 85005 640 acres \$504,390.00	0	422	0	0	0	422	0	236	0	422	0	236	36.4	136.4	0	0
Western Energy Company Area A 86003A 4,122 acres \$18,202,793.00	2.5	2747.6	386.6	1,113.7	1.1	1236.3	0	1,003	1.1	1,236.3	0	1,003	0	957.9	0	0
Area B 84003B 6,040 acres \$41,910,694.00	105.1	3,044.7	361.3	1,657.2	73.2	1,006.1	0	717	41.5	974.4	0	717	0	724	0	0
Area C 85003C 9,455 acres \$24,607,000.00	333.4	3,564.4	484	1,467.8	143.5	1,585.5	151	1,083	193.4	1,582.9	151	1,083	188	603.2	0	0
Area D 86003D 3,267 acres \$18,921,305.00	65.3	1,936.6	206.8	784.8	17.9	945	119	299	28.5	941.8	119	299	26.9	86.8	0	0
Area E 81003E 1,485 acres \$13,516,888.00	3.8	1,263.8	53.4	59.1	41.7	1,141.7	152	852	41.7	1,141.7	152	852	131.4	614.5	0	0
Decker Coal Company East Mine 83007 4,361.4 acres \$58,253,264.00	0	2,014	935.3	730.4	12.9	348.3	0	0	12.9	348.3	0	0	0	36.3	0	0
West/North Mine 87001-C 7,056 acres \$84,194,514.00	177.3	4,277.3	1,287.2	1,645.2	267.4	1,344.9	0	0	274.8	1,118.1	0	0	0	404.6	0	0

Permitted Acres	Disturbed area		3 Long-term mining or reclamation facilities <sup>1</sup>	4 Active mining areas (pits and areas in advance of the pits stripped of topsoil) and areas not yet backfilled and graded	Areas backfilled and graded		Areas where the regulatory authority (RA) has released phase I bond		Areas soiled and seeded/planted		Areas where RA has released phase II bond		Areas final seeded/planted for 5 or 10 years		Areas where RA has released phase III bond	
	1 EY 2001	2 Total (all years)			5 EY 2001	6 Total (all years)	7 EY 2001	8 Total (all years)	9 EY 2001	10 Total (all years)	11 EY 2001	12 Total (all years)	13 EY 2001	14 Total (all years)	15 EY 2001	16 Total (all years)
WCCO-KRC Acquisition Corp. Savage Mine 84002 874 acres \$2,945,829.00	24.3	440.5	47.3	220.9	1	172.3	0	0	9.2	196.2	0	0	6.5	109	0	0
Big Sky Coal Company Big Sky Area A 83004CR 2,654.8 acres \$26,042,297.00	0	1,685.8	202.5	0	0	1,483.3	0	0	0	1,469.1	0	0	7	910.9	0	0
Big Sky Area B 88004B 5,458.7 acres \$8,426,505.00	61.3	1,982.8	383.9	434.2	53.2	1,164.7	0	0	166.6	493.6	0	0	0	0	0	0
Spring Creek Coal Company Spring Creek Mine 79012R 4,484.8 acres \$42,000,000.00	48.5	2,365.8	891	1,101.9	155.7	372.1	0	0	155.7	372.1	0	0	0	16.2	0	0
Blaine Warburton Black Jack II Mine 86016 7 acres \$1,400.00	0	7	0	0	0	7	0	7	0	7	0	7	0	7	0	0

<sup>1</sup> Long-term mining or reclamation facilities include haul and access roads; temporary dams and impoundments; permanent dams and impoundments; diversion and collector ditches; water and air monitoring sites; topsoil stockpiles; overburden stockpiles; offices; repair, storage, and construction areas; coal stockpile, loading, and processing areas; railroads; coal conveyors; refuse piles and coal mine waste impoundments; head-of-hollow fills; valley fills; ventilation shafts and entryways; and noncoal waste disposal areas (garbage dumps and coal combustion by-products disposal areas).  
Acreage is not broken out between Pre-law, Interim or Permanent Program. All categories are lumped together in this table.

**TABLE 7**  
**STATE BOND FORFEITURE ACTIVITY**  
**(Permanent Program Permits)**

<b>Bond Forfeiture Reclamation Activity by SRA</b>	<b>Number</b>	<b>Acres</b>
	<b>of Sites</b>	
Sites with bonds forfeited and collected that were unreclaimed as of September 30, 2000 (end of previous evaluation year) <sup>A</sup>	2	4,396.00
Sites with bonds forfeited and collected during Evaluation Year 2001 (current year)	0	0.00
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2001 (current year)	0	0.00
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2001 (current year)	0	0.00
Sites with bonds forfeited and collected that were unreclaimed as of September 30, 2001 (end of current year) <sup>A</sup>	2	4,396.00
Sites with bonds forfeited but uncollected as of September 30, 2001 (end of current year)	0	0.00
<b>Surety/Other Reclamation (In Lieu of Forfeiture)</b>		
Sites being reclaimed by surety/other party as of September 30, 2000 (end of previous evaluation year) <sup>B</sup>	0	0.00
Sites where surety/other party agreed to do reclamation during Evaluation Year 2001 (current year)	0	0.00
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2001 (current year)	0	0.00
Sites with reclamation completed by surety/other party during Evaluation Year 2001 (current year) <sup>C</sup>	0	0.00
Sites being reclaimed by surety/other party as of September 30, 2001 (current evaluation year) <sup>B</sup>	0	0.00
<sup>A</sup> Includes data only for those forfeiture sites not fully reclaimed as of this date		
<sup>B</sup> Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date		
<sup>C</sup> This number also is reported in Table 5 as Phase III bond release has been granted on these sites		

**TABLE 8**  
**MONTANA STAFFING**  
**(Full-time equivalents at the end of evaluation year)**

<b>Function</b>	<b>EY 2001</b>
<b>Regulatory Program</b>	8.7
Permit review	
Inspection	5.50
Other (administrative, fiscal, personnel, etc.)	2.00
<b>Regulatory Program Total</b>	<b>16.20</b>
<b>AML Program Total</b>	<b>8.70</b>
<b>TOTAL</b>	<b>24.90</b>

**TABLE 9**  
**FUNDS GRANTED TO MONTANA BY OSM**  
(Millions of dollars)  
**EY 2001**

Type of Grant	Federal Funds Awarded	Federal Funding as a Percentage of Total Program Costs
Administration and Enforcement	\$0.91	82
Small Operator Assistance	\$0.00	0
<b>Totals</b>	<b>\$0.91</b>	

**TABLE 10**  
**STATE OF MONTANA**  
**INSPECTION ACTIVITY**  
**PERIOD: OCTOBER 1, 2000 - SEPTEMBER 30, 2001**

<b>Inspectable Unit</b>	<b>Number of Inspections Conducted</b>	
	<b>Complete</b>	<b>Partial</b>
Active*	69	100
Inactive*	12	1
Abandoned*	4	8
<b>Total</b>	<b>85</b>	<b>109</b>
<b>Exploration</b>	<b>1</b>	<b>0</b>

\* Use terms as defined by the approved State program.

State should provide inspection data to OSM annually, at a minimum, and maintain inspection data on a continual basis. OSM offices responsible for Federal and Indian Programs need not complete this table since data will be queried from the I & E Tracking System.

**TABLE 11**  
**STATE OF MONTANA**  
**ENFORCEMENT ACTIVITY**  
**OCTOBER 1, 2000 - SEPTEMBER 30, 2001**

Type of Enforcement Action	Number of Actions*	Number of Violations*
<b>Notice of Violation</b>	7	7
<b>Failure-to-Abate Cessation Order</b>	0	0
<b>Imminent Harm Cessation Order</b>	0	0

\* Do not include those violations that were vacated.

State should provide enforcement data to OSM annually, at a minimum, and maintain data on a

continuous basis. OSM offices responsible for Federal and Indian Programs need not complete this table since data will be queried from the I & E Tracking System.



**TABLE 12**  
**LANDS UNSUITABLE ACTIVITY**  
**STATE OF MONTANA**  
**OCTOBER 1, 2000 - SEPTEMBER 30, 2001**

Number of Petitions Received	0		
Number of Petitions Accepted	0		
Number of Petitions Rejected	0		
Number of Decisions Declaring Lands Unsuitable	0	Acreage Declared as	0
		Being Unsuitable	
Number of Decisions Denying Lands Unsuitable	0	Acreage Denied as	0
		Being Unsuitable	
State should provide lands unsuitable data to OSM annually if there is any activity in this program area.			
OSM OFFICES RESPONSIBLE FOR FEDERAL AND INDIAN PROGRAM STATES MUST			
ALSO COMPLETE THIS TABLE.			



## Appendix B



APR 11 2002

RECEIVED  
Office of Surface Mining  
Casper Field Office  
*Rec'd Fed Ex*

Judy H. Martz, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • [www.deq.state.mt.us](http://www.deq.state.mt.us)

April 10, 2002

Mr. Guy Padgett, Director  
Casper Field Office  
Office of Surface Mining  
100 East "B" Street  
Casper, Wyoming 82601-1918

RE: Comments on Draft Annual Oversight Report

Dear Guy:

The Department has reviewed CFO's March 21 draft report and has the following comments.

In lines 3 and 4 of the first paragraph on page 3, the following correction needs to be made: "...1) all new applications, major revisions, or amendments, and test pits...".

The paragraph on public notices on page 3 needs the following changes to make the description correct. In line 1, insert the phrase "in 1), 2), 4), and 5)" after the word "above". In line 3, make this change: "...once per week for 2-4 consecutive weeks...". In line 4, this change is needed: "...followed by a 30-60 day allowance...". In line 5, make this change: "...for an informal hearing conference must be...". Also before the last sentence in this paragraph, the following or its equivalent needs to be inserted: "After applications pursuant to 1) and 2) above are deemed acceptable, the Department must publish a notice of acceptability once per week for 2 consecutive weeks, which is followed by a 10-day comment period. For permit transfer applications, the applicant must publish a one-time public notice, which is followed by a 15-day public comment period. For permits issued under in 1), 2), and 3) above, the Department must publish a one-time notice of decision. For mining within 100 feet of a public road or for public road relocations, the Department must publish a notice of a public hearing two weeks before the hearing."

In the first sentence of the second paragraph under section IV on page 3, the following corrections are needed: "~~Various~~ A few coal program staff...of the 2000] Montana Legislature."

On page 4, under B. Bond Releases, the second sentence is at best misleading and misconstrued. What is the basis for OSM indicating that there has been a "low number of acres released from bond..."? In the phrase "the CFO believes that the program is not effective in its goal of having all disturbed lands reclaimed...as contemporaneously as possible", who does "its", as in "its goal", refer to? Beyond that, in a legal context, this entire sentence only makes some sense if we have approved something that is not allowed by the regulations. Pursuant to our January meeting, one item in this general area was identified that needs to be rectified. In conjunction with our approval of a variance from the required timelines for backfilling and grading in Area A of Western Energy, we did not require a timeline for resumption of reclamation on the east side of Area A, if mining has not resumed by a particular date, and a reclamation schedule for the small pit that has been used for coal fines disposal. That is being rectified by a February 20 letter from the Department to Western, requesting these modifications to the approved variance. In conclusion, the second statement needs to be struck from the text of the report.

On page 7, under A, State Program Amendments, the last two sentences of paragraph 1 and certain statements made on pages 12 and 13 are also at best misleading and misconstrued and, unless OSM can otherwise explain, incorrect. Therefore, please delete the word "Overall" from the second to the last sentence and delete the last sentence entirely from paragraph one on page 7.

The following changes on pages 12 and 13 (additions noted in gray highlight, deletions in strike-through and highlight) are necessary to make the statements factually correct or accurate. As an explanation on one point in particular, during the report evaluation period (Oct. 2001-Sept. 2002), contrary to text in the draft report, the Department did not apply its new regulations for approving contemporaneous reclamation variances or "allowing large portions of the highwall and pit to remain unreclaimed", as you have stated. This statement and other related text are false and must be deleted from the report.

## **E. Contemporaneous Reclamation**

During this and past reviews of Montana's contemporaneous reclamation practices, the CFO noted that Montana had granted some mine operators variances to the approved state program required of backfilling and grading within 180 days of coal removal, ~~while other companies appear to have taken advantage of the "temporary cessation" provisions of the approved state program. In addition, Montana is enforcing new state regulations that have not been approved by OSM.~~

~~The following unapproved regulation is allowing large portions of the highwall and pit to remain unreclaimed.~~

~~17.24.501A(6)(b) Backfilling and grading must be completed within 2 years after coal removal from each pit has been concluded. For the purposes of this provision, "each pit" means any continuous dragline pass within a particular permit area.~~

During the evaluation period CFO reviewed contemporaneous reclamation variances, extensions and temporary cessation's to determine where and how they have been used by the operators and approved by the State and if processes being used comply with the Montana program. The CFO has concluded that: ~~1) The use of variances to contemporaneous reclamation and the use of temporary cessation have delayed final reclamation at some mines and may be contributing to a delay in bond release, but is consistent with the approved State program and; 2) Montana is implementing sections of their state program, that have not been submitted to or approved by OSM. The following are examples where the CFO feels this is occurring.~~

### **WESTERN ENERGY COMPANY AREA A**

The Area A permit contains approximately 24,000 feet (4 1/2 miles) of open highwall containing approximately 1,100 acres. There has been no highwall elimination at this permit. As reported in the 1998, 1999 and 2000 annual reports the company has completed backfilling, grading, resoiling and seeding a total of 1.1 acres on this permit during the last four reviews. Minor Revision #99-03-02 A allows for delays any in highwall elimination until 2004. However, it does require the company to backfill and grade a portion of the highwall in Section 31 with 1 million cubic yards of material by 12-31-01 and an additional million yards each year in 2002 and 2003 with that section of highwall to be eliminated by 01-01-04.

### **AREA B**

~~The Area B permit area is currently inactive. The operator has moved its dragline from the Area B permit to the Area C permit.~~ The eastern portion of the permit area is inactive (eastern 1/2 of Section 9 and

Section 10). Coal was last extracted in Section 10 in October 1983 and coal was last removed in the first quarter of 2001 in the northwest ¼ of Section 9 in December 1987. The section 10 area has received Temporary Cessation a backfilling and grading variance until 2004. The operator has not applied for Temporary cessation or submitted a reclamation plan for Section 9. The approved mining plan for Section 7, 8 and the western ½ portion of 9 indicates mining on an intermittent basis through 2005 2003.

The company has continued to operate in the western portion of the Area B permit located in Section 13, 11, 14, 15 and 16. The last mining activity in Area B Extension (Sections 13 and 14, 15 and 16) section 13 and 14 occurred in the summer-fall of 2001 2000. The approved mine plan for these section shows the company returning to the area in 2006 to resume mining. The operator has not applied for or received temporary cessation.

In Table 3, please make the following corrections. For transfers, sales, etc., the number of applications received and permits issues was one in each case. For explorations permits, change the respective numbers to one. For revisions, exclusive of IBC's, the number is 60. For incidental boundary revisions issues, the number was 4 and the acreage was -139.3. All of the above will, of course, change the totals.

In Table 5, our records show that the acreage released from Phase I and II during the evaluation period was 190, not 422.

In Table 7, the number of sites with bonds forfeited that were unreclaimed, etc. (line 1) was two and the acres in this line should be 4,396. These changes are due to the Coal Creek mine site.

Please contact me or Steve Regele if you have any questions.

Sincerely,

Neil Harrington  
Bureau Chief and Acting Reclamation Program Supervisor, Mine Permitting  
Industrial and Energy Minerals Bureau  
Phone: 444-4973  
Fax: 444-1923  
Email: [neharrington@state.mt.us](mailto:neharrington@state.mt.us)

NH/SR/CF/dv

FC: 626.61 (2002)

G:\IEM\COAL\OSM\OVERSIGH\DraftRep\_00-01\_com.doc

## APPENDIX C

### Casper Field Office Director's Response to Montana's Comments

On April 10, 2002, the Montana Department of Environmental Quality provided the Casper Field Office with their comments regarding the draft EY01 Annual Report (Appendix B). These comments and the Casper Field Office response are as follows:

**1. MT Comment:** In lines 3 and 4 of the first paragraph on page 3, the following correction needs to be made: "...1) all new applications, major revisions, ~~or~~ amendments, and test pits...".

**CFO Response:** The suggested changes have been incorporated into the report.

**2. MT Comment:** The paragraph on public notices on page 3 needs the following changes to make the description correct. In line 1, insert the phrase "in 1), 2), 4), and 5)" after the word "above". In line 3, make this change: "...once per week for ~~2- 4~~ consecutive weeks...". In line 4, this change is needed: "...followed by a ~~30-60~~ day allowance...". In line 5, make this change: "...for an informal ~~hearing~~ conference must be...". Also before the last sentence in this paragraph, the following or its equivalent needs to be inserted: "After applications pursuant to 1) and 2) above are deemed acceptable, the Department must publish a notice of acceptability once per week for 2 consecutive weeks, which is followed by a 10-day comment period. For permit transfer applications, the applicant must publish a one-time public notice, which is followed by a 15-day public comment period. For permits issued under in 1), 2), and 3) above, the Department must publish a one-time notice of decision. For mining within 100 feet of a public road or for public road relocations, the Department must publish a notice of a public hearing two weeks before the hearing."

**CFO Response:** The report has been edited to meet the intent of the suggested changes.

**3. MT Comment:** In the first sentence of the second paragraph under section IV on page 3, the following corrections are needed: "~~Various~~ A few coal program staff...of the 2000~~1~~ Montana Legislature."

**CFO Response:** The report has been changed to incorporate the suggested change.

**4. MT Comment:** On page 4, under B. Bond Releases, the second sentence is at best misleading and misconstrued. What is the basis for OSM indicating that there has been a "low number of acres released from bond..."? In the phrase "the CFO believes that the program is not effective in its goal of having all disturbed lands reclaimed...as contemporaneously as possible", who does "its", as in "its goal", refer to? Beyond that, in a legal context, this entire sentence only makes some sense if we have approved something that is not allowed by the regulations. Pursuant to our January meeting, one item in this general area was identified that needs to be rectified. In conjunction with our approval of a variance from the required timelines for backfilling and grading in Area A of Western Energy, we did not require a timeline for resumption of reclamation on the east side of Area A, if mining has not resumed by a

particular date, and a reclamation schedule for the small pit that has been used for coal fines disposal. That is being rectified by a February 20 letter from the Department to Western, requesting these modifications to the approved variance. In conclusion, the second statement needs to be struck from the text of the report.

#### **E. Contemporaneous Reclamation**

**CFO Response:** Less than 15% of the lands disturbed by mining in Montana have achieved Phase I and II release, no disturbed lands have achieved Phase III (100%) release. The statement “As a result of the low number of acres released from bond” will remain. “Its” as in “its goal” is the Montana Program. The report will be changed to incorporate “Montana” in place of “its”. The statement will be changed to read “the CFO believes that the Montana program is not effective in having all disturbed lands reclaimed to the approved postmining land use as contemporaneously as possible”.

**5. MT Comment:** On page 7, under A, State Program Amendments, the last two sentences of paragraph 1 and certain statements made on pages 12 and 13 are also at best misleading and misconstrued and, unless OSM can otherwise explain, incorrect. Therefore, please delete the word "Overall" from the second to the last sentence and delete the last sentence entirely from paragraph one on page 7.

**CFO Response:** The CFO disagrees with this comment. However, the report has been edited to further clarify the intent of these statements.

**6. MT Comment:** The following changes on pages 12 and 13 (additions noted in gray highlight, deletions in strike-through and highlight) are necessary to make the statements factually correct or accurate. As an explanation on one point in particular, during the report evaluation period (Oct. 2001-Sept. 2002), contrary to text in the draft report, the Department did not apply its new regulations for approving contemporaneous reclamation variances or "allowing large portions of the highwall and pit to remain unreclaimed", as you have stated. This statement and other related text are false and must be deleted from the report.

During this and past reviews of Montana's contemporaneous reclamation practices, the CFO noted that Montana had granted some mine operators variances to the approved state program required of backfilling and grading within 180 days of coal removal, ~~while other companies appear to have taken advantage of the "temporary cessation" provisions of the approved state program. In addition, Montana is enforcing new state regulations that have not been approved by OSM.~~

~~The following unapproved regulation is allowing large portions of the highwall and pit to remain unreclaimed.~~

~~17.24.501A(6)(b) Backfilling and grading must be completed within 2 years after coal removal from each pit has been concluded. For the purposes of this provision, "each pit" means any continuous dragline pass within a particular permit area.~~

During the evaluation period CFO reviewed contemporaneous reclamation variances, extensions and temporary cessation's to determine where and how they have been used by the operators and approved by the State and if processes being used comply with the Montana program. The CFO has concluded that: 1) ~~The use of variances to contemporaneous reclamation and the use of temporary cessation have~~

~~delayed final reclamation at some mines and may be contributing to a delay in bond release, but is consistent with the approved State program and, 2) Montana is implementing sections of their state program, that have not been submitted to or approved by OSM. The following are examples where the CFO feels this is occurring.~~

## WESTERN ENERGY COMPANY AREA A

The Area A permit contains approximately 24,000 feet (4 1/2 miles) of open highwall containing approximately 1,100 acres. There has been no highwall elimination at this permit. As reported in the 1998, 1999 and 2000 annual reports the company has completed backfilling, grading, resoiling and seeding a total of 1.1 acres on this permit during the last four reviews. Minor Revision #99-03-02 A allows for delays any in highwall elimination until 2004. However, it does require the company to backfill and grade a portion of the highwall in Section 31 with 1 million cubic yards of material by 12-31-01 and an additional million yards each year in 2002 and 2003 with that section of highwall to be eliminated by 01-01-04.

## AREA B

~~The Area B permit area is currently inactive. The operator has moved its dragline from the Area B permit to the Area C permit. The eastern portion of the permit area is inactive (eastern 1/2 of Section 9 and Section 10). Coal was last extracted in Section 10 in October 1983 and coal was last removed in the first quarter of 2001 in the northwest 1/4 of Section 9 in December 1987. The section 10 area has received Temporary Cessation a backfilling and grading variance until 2004. The operator has not applied for Temporary cessation or submitted a reclamation plan for Section 9. The approved mining plan for Section 7, 8 and the western 1/2 portion of 9 indicates mining on a intermittent basis through 2005 2003.~~

The company has continued to operate in the western portion of the Area B permit located in Section 13, 11, 14, 15 and 16. The last mining activity in Area B Extension (Sections 13 ~~and~~ 14, 15 and 16) ~~section 13 and 14~~ occurred in the summer ~~fall~~ of ~~2001~~ 2000. The approved mine plan for these section shows the company returning to the area in 2006 to resume mining. The operator has not applied for or received temporary cessation.

**CFO Response:** The report has been changed to incorporate the suggested change.

**7. MT Comment:** In Table 3, please make the following corrections. For transfers, sales, etc., the number of applications received and permits issues was one in each case. For exploration permits, change the respective numbers to one. For revisions, exclusive of IBC's, the number is 60. For incidental boundary revisions issues, the number was 4 and the acreage was -139.3. All of the above will, of course, change the totals.

**CFO Response:** The suggested corrections to the table have been incorporated into the report.

**8. MT Comment:** In Table 5, our records show that the acreage released from Phase I and II during the evaluation period was 190, not 422.

**CFO Response:** The bond release acreage from the report is compiled from and consistent with the data in Table 6a, which was provided to OSM and MT-DEQ by the operators through their annual reports. These apparent inconsistencies will be further evaluated and be corrected prior to next years report.

**9. MT Comment:** In Table 7, the number of sites with bonds forfeited that were unreclaimed, etc. (line 1) was two and the acres in this line should be 4,396. These changes are due to the Coal Creek mine site.

**CFO Response:** The suggested corrections to the table have been incorporated into the report.

