

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Summary Report

for the

Regulatory Program

Administered by the State

of

NEW MEXICO

for

Evaluation Year 2005

(July 1, 2004 to June 30, 2005)

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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 the Secretary of the Interior as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the New Mexico Program and the effectiveness of the New Mexico Program in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of July 1, 2004 to June 30, 2005.

Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Albuquerque Field Office (AFO), OSM.

II. Overview of the New Mexico Coal Mining Industry

The coal-bearing regions of New Mexico underlie about 25,000 square miles or 20.6 percent of the total area of the State. The majority of the coal-bearing regions lie under Indian lands that are regulated by OSM. The New Mexico Mining and Minerals Division (MMD) regulates mines on the remaining coal-bearing regions.

Most of the coal mined is located in the San Juan Basin in the northwestern part of the State and in the Raton area in the north-central part of the State. New Mexico's coal varies from Pennsylvanian to Paleocene Age. Coal resources in the San Juan Basin are of the late Cretaceous Age; those in the Raton area are of the Paleocene Age. The main coal-bearing strata are the Mesa Verde and Fruitland Formations in the San Juan Basin and the Raton and Vermejo Formations in the Raton area. San Juan Basin coal generally ranges from subbituminous A to high volatile bituminous C. Raton area coal ranges from high volatile A to bituminous B. The demonstrated coal reserve base is 4.65 billion tons, or about 1 percent of the national reserves.

The early Spanish settlers used small amounts of coal several centuries ago. Significant commercial coal mining began in 1861 when the U.S. Army opened a mine in the Carthage field for Fort Craig, New Mexico. By 1889, annual production exceeded one million tons for use by the railroads and by lead and copper smelters. Early coal production, stimulated by World War I, peaked in 1918 at more than four million tons for use by smelters, factories, and railroads. Conversion of the railroads to diesel and the smelters and factories to natural gas caused a decline in the use of coal until 1958. An increase in the production of coal was caused by inexpensive stripping methods and an increased demand for coal by electric utilities in the Southwest.

The climate of the State is arid. The average annual precipitation at the San Juan Mine in the Four Corners area is 9.67 inches. Most of the precipitation is in the form of thundershowers from July to September. Re-vegetation in parts of the San Juan Basin is

extremely difficult because of low rainfall amounts and because of highly erodible soil types.

III. Overview of Public Participation Process

The New Mexico Oversight Team (NMOT) met on November 9, 2004 and decided upon the content of the 2005 oversight Workplan. The Workplan was sent out for comment to eighteen (18) public and private agencies and interested parties. There were no responses with substantive comments.

IV. Major Accomplishments/Issues/Innovations in the New Mexico Program

The purpose of oversight is to evaluate to evaluate a State's or Tribe's ability to accomplish the goals and responsibilities of SMCRA. The NMOT (consisting of OSM and MMD personnel) developed a workplan that governed the oversight of the New Mexico Program for the 2005 evaluation period. The workplan focused on site-specific topics concentrating on the major goals of SMCRA: elimination of off-site impacts and achieving successful reclamation of the post-mining land use. Using the 2005 plan, the Team proactively investigated a number of variables that influence these two goals. Each element was designed to allow expansion in future years based on the information collected during previous oversight periods. The strategic plan adopted was to use oversight to generate ideas for improving regulatory efficiency, and on-the-ground reclamation.

The Team documented problems identified during the course of the oversight period, and addressed them as they arose. The 2005 Topic-Specific Evaluation Report summarizes the methods used, problems identified, and solutions implemented by the Team during the oversight period. This report is on file at AFO. The report provides a summary of the State's program performance during the oversight period based on the performance measurements described in the workplan, and provides recommendations for future oversight.

Reviewing the annual reports also enabled MMD to collect data on the quality and timeliness of reclamation. The information tabulated by MMD shows that a total nine (9) operations comprising 77,462 acres were under permit in New Mexico as of June 30, 2005. The program manages those permits in accordance with the requirements of SMCRA and the approved New Mexico Program.

Two bills that amended the State Surface Mining Act passed the 2005 New Mexico Legislature and were signed by the Governor. Both bills were the subject of discussions with the coal industry and environmental interests, and were endorsed by the interim Legislative Finance Committee. As a result, neither bill faced any opposition in committee hearings and were approved by unanimous votes in committees and on the floor.

House Bill 311 amends the Surface Mining Act to remove one level of administrative appeals and to eliminate an exemption for state officials from liability for attorney fees. Currently, the Act requires three (3) levels of administrative hearings before a permitting decision can be appealed to the courts; this bill eliminates the third level, which is a record review proceeding by the Coal Surface Mining Commission. The other change, the elimination of the attorney fee exemption, is necessary to make the State Surface Mining Act consistent with SMCRA and has been requested by OSM for many years.

House Bill 306 extends the sunset date for a number of boards and commissions, including the Coal Surface Mining Commission. The bill clarifies that the sunset provision applies only to the Commission and not to the entire State Surface Mining Act.

Overall, MMD is implementing its approved program consistent with the provisions established in Section 102 of SMCRA.

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 the end results, the findings from performance standard 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 and which meet the bond release requirements for the various phases of reclamation. Individual topic reports are available, at AFO, which provide the details on how the following evaluations and measurements were conducted.

A. Off-Site Impacts:

MMD conducted 85 partial and 32 complete inspections during the EY. All inspection reports filed for those inspections were reviewed by OSM. These inspections resulted in one (1) enforcement action. There were no references in any of the reports to any off-site impacts observed. Additionally, no off-site impacts were observed during any of the joint MMD/OSM inspections conducted during the oversight period. An Off-Site Impacts report for the New Mexico Program is on file at AFO.

B. Reclamation Success:

MMD approved 54 acres for phase III bond release during this EY. This information is recorded in Tables 5 and 6, Appendix A, of this report.

C. Customer Service:

Details of the response by MMD can be found in the 2005 Topic-specific Report for New Mexico, on file at AFO.

VI. OSM Assistance

Oversight for 2005 was conducted jointly by the NMOT, which consisted of MMD and OSM personnel. The mission adopted by the NMOT was to evaluate the State's ability to accomplish the goals and responsibilities associated with the Surface Mining Control and Reclamation Act, using OSM Directive REG-8, and the EY 2005 Workplan as its guidance. The Team investigated variables that influence the major goals of SMCRA: elimination of off-site impacts and achieving successful reclamation that meets the intended post-mining land use.

Annual Grant Award

MMD received \$737,526 in Federal assistance for the operation of the Coal Mine Reclamation Bureau (CMRB), which is the organizational subdivision of MMD responsible for administering the State Regulatory Program. The grant award represents 72% of the total budget for the CMRB.

OSM Office of Technology Transfer

New Mexico Mining and Minerals Division continues to be on the western fore-front in electronic permitting, GIS, and final bond release. MMD staff made significant contributions to the new technologies workshops conducted by the OSM Office of Technology Transfer (OTT) this year:

MMD made presentations at both OTT New Technologies Innovation Implementation Workshops. Additionally, four staff members attended the workshops.

At the Anchorage, AK meeting MMD presented "New Mexico's GIS Tools for Archeology", and "Parable of e-permitting – The Blind Men and the Elephant"; "New Mexico's Document Tracking/Imaging Initiative"; and "Development of Annual Report GIS Application". At the Helena meeting MMD presented an update on New Mexico GIS.

To support the new technologies implementation, this year OTT purchased the following for New Mexico MMD: Dell Latitude D810 Pentium for \$2,227; Ten 512 MB memory upgrades for \$730; Three Bluetooth enabled GPS iPAQ Navigation Systems for \$768; for a total of \$3,725.

Technical assistance to New Mexico in the area of bonding included Financial Assurance Consulting Services' workshop at a cost of \$1,120.

OSM's Technical Librarian filled 1 reference request, and provided 35 journal articles to MMD. In addition New Mexico received *Proceedings of State Regulation of Coal Combustion By-Product Placement at Mine Sites: A Technical Interactive Forum*; Research report on *Manganese Toxicity Thresholds for Restoration Grass Species*; USGS Information Circular *Coal – A Complex Natural Resource*; *Report on Status of Fires at Abandoned Underground Coal Mines in Colorado*; A DVD on underground longwall operation; MSHA CD on *Highwall Safety* video; 3 CDs: *Surface Mining Water Diversion Design Manual*, *Coal Mine Drainage Prediction and Pollution Prevention in Pennsylvania*, and *1994 International Land Reclamation and Mine Drainage Conference Proceedings*; in addition to two education outreach CDs, *Facts About Coal and Minerals 2004-2005*, and *American Energy for America's Future* brochure, that were distributed to OTT.

VII. General Oversight Topic Reviews

In addition to the required areas of program review OSM and MMD chose one additional areas for review. Details of how these reviews were conducted can be found in the Topic-Specific Report, on file at AFO. The findings are as follows:

A. Reclamation Success (bond release)

MMD granted a phase I bond release for 2,391.00 acres, in the amount of \$8,057,103, to the Ancho Mine, on July 7, 2004, a phase I release for 771.00 acres, to the San Juan Mine, on June 27, 2005, and a phase II&III bond release for 54.00 acres, in the amount of \$441,078.00, to the Cimarron Mine on June 14, 2005. OSM and MMD found the bond release applications to be accurate and approvable.

B. Reclamation Success (topsoil replacement)

OSM and MMD reviewed topsoil replacement issues at McKinley Mine on May 19, 2005. MMD was concerned about convex slopes in some areas of the reclamation. McKinley mine will resubmit new contours for some areas which will result in concave slopes that will hold tend to conserve topsoil. OSM and MMD also observed topsoil replacement results at the La Plata Mine on May 25, 2005, and found that the use of geomorphic drainage designs had resulted in very little topsoil loss.

APPENDIX A

These tables present data pertinent to mining operations and State and Federal regulatory activities within New Mexico. They also summarize funding provided by OSM and New Mexico staffing. Unless otherwise specified, the reporting period for the data contained in all tables is October 1, 2002 to June 30, 2003. Additional data used by OSM in its evaluation of New Mexico's performance is available for review in the evaluation files maintained at AFO.