



Office of Surface Mining Reclamation and Enforcement

Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

Administered by the State

of

Oklahoma

for

Evaluation Year 2004

(July 1, 2003 through June 30, 2004)

# 2004 Annual Evaluation Report

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### I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that have been approved by OSM as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Oklahoma program and the effectiveness of the Oklahoma program in meeting the applicable purposes of SMCRA as specified in Section 102. The evaluation period covered by this report is July 1, 2003, to June 30, 2004.

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 and the parallel State laws, through the development and implementation of performance agreements that detail the evaluation activities for a given year. The policy continues to encourage public participation 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.

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 Oklahoma's progress in conducting evaluations and completing oversight activities. It also reports accomplishments and problems during 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:

ADR	Alternative Dispute Resolution
AEA	Alternative Enforcement Action
AMD	Acid Mine Drainage
AML	Abandoned Mine Land
AMLIS	Abandoned Mine Land Inventory System
AMLR	Abandoned Mine Land Reclamation
AOC	Approximate Original Contour
AVS	Applicant Violator System
BTCA	Best Technology Currently Available
CFR	Code of Federal Regulations
EY	Evaluation Year

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GIS	Geographic Information Systems
IBLA	Interior Board of Land Appeals
NOV	Notice of Violation
OCC	Oklahoma Conservation Commission
ODM	Oklahoma Department of Mines
OSM	Office of Surface Mining Reclamation and Enforcement
RIF	Reduction in Force
SMCRA	Surface Mining Control and Reclamation Act of 1977
SWPPP	Storm Water Pollution Prevention Plans
TDN	Ten-Day Notice
TFO	Tulsa Field Office
TIPS	Technical Information Processing System

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

The coal-bearing strata in Oklahoma occur in the eastern portion of the State. The coal is bituminous and is Middle and Late Pennsylvanian in age. The demonstrated coal reserves are 1.6 billion tons, or 0.3 percent of the total U.S. coal reserves. About 8,000 square miles in Oklahoma have coal-bearing strata that are considered to be of commercial value with seams ranging from 10 inches to 8 feet thick.

Coal production in calendar year 2003 was 1.6 million tons, an increase from the 1.4 million tons in 2002. Eight permits produced coal during 2003. One of the 8 producing permits was an underground mine, two were contour mines on gently sloping topography, while the remaining five were area surface mines. Oklahoma had 65 permits that included approximately 28,000 acres at the end of the evaluation period. ODM employed 21 people to administer the approved regulatory program. The AML program employed the equivalent of twelve full-time employees.

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

#### **A. Public Participation in the State Program**

ODM provides for public input into the State program in several ways. Citizens may comment on permit applications, significant revisions, amendments to the State program, or file complaints on mining and reclamation operations. The State program regulations encourage citizens to participate in the various conferences, hearings, and inspections that are part of the permitting and enforcement process. For example, the regulations allow citizens to participate in "Citizen Complaint" inspections. Also, ODM inspectors invite landowners to participate in pre-permit inspections where they can review the permit application with a State inspector to identify permanent pond locations, planting mixtures,

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and other postmining land use information. Landowners are also invited to participate in Phase I, II, and III bond releases.

ODM held six Oklahoma Mining Commission meetings throughout the evaluation year. The meetings are open to the public and are advertised on ODM's Web Site. The meetings are a forum for Commissioners to discuss the current coal and non-coal program issues and to receive comments from the public, government agencies, and the mining industry.

ODM inspectors and support staff conducted four Student Outreach presentations during EY 2004. The presentations entitled, "The Oklahoma Mining Experience" is offered to schools and other public institutions throughout the eastern part of the State. Seven ODM employees participated in the events, where they used literature, activities, and visual aids to describe mining and reclamation in Oklahoma.

### **B. Public Participation in OSM's Oversight**

OSM distributed "Citizen Information Cards" in an effort to educate the public about their rights, and what to do if they have a concern about a mining operation or an AML site. OSM participated in bond release inspections, citizen complaint inspections, attended public Commission meetings, and inspections of bond forfeiture sites throughout the year to encourage OSM and ODM interaction with landowners and the general public.

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

### **A. Regulatory Program**

ODM did not issue any new surface mine permits during EY 2004. The State renewed 1 existing permit, approved 20 revisions and 3 incidental boundary revisions to existing permits. Renewals and incidental boundary revisions totaled 1,626 acres (Table 3).

ODM approved Phase I bond releases on 2,556 acres, Phase II on 4,807 acres, and Phase III on 2,909 acres. Total bonded acres decreased statewide from 30,876 to 28,068.

ODM continued its review of a permittee for possible AEA's. The AEA for an injunction to reclaim an abandoned 1,174-acre permit has been in litigation with ODM for 8 years. ODM's Legal Department participated in oral arguments in the case during January 2003. The County/District Court Judge ruled against ODM in its attempt to enjoin an individual's continued non-compliance with a State NOV. The County Court sided with the principle officer of the mining company, saying that the

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appointment of a bankruptcy trustee for the corporate debtor displaced any personal liability of the principle officer. ODM appealed that portion of the County/District Court's decision to the Oklahoma Supreme Court, who remanded the case to the Civil Court of Appeals where ODM continues to pursue its case.

ODM reorganized their inspection staff in EY 2004. One inspector was moved out of the coal program to non-coal duties, and the remaining three coal inspectors assumed additional duties for non-coal safety inspections.

The State of Oklahoma experienced funding difficulties due to a reduction in State revenues. ODM took more than a 20 percent cut in State appropriations. The agency was able to offset the reduction through the acceptance of an early-out program by five employees (three coal program employees) at the beginning of the State's fiscal year. The coal mining regulatory program was impacted because State dollars were not adequate to provide the necessary match to fully use the Federal grant funds. Despite the reduction in funds, ODM met the requirements of the State coal program and no reduction in inspections or enforcement activities occurred.

### **B. Abandoned Mine Land Reclamation Program**

OCC is the State AML Authority for the AMLR program. OCC operated with a grant of \$1,752,613 during EY 2004. OCC's AML program had a staff of 12 FTE's. Project selection is based on a system that considers protection of the public's health, safety, general welfare, and property from the dangers of past coal mining practices. The selection process used to identify projects for construction complied with Section 403 of SMCRA and the approved AMLR program.

In EY 2004, OCC completed 5 regular AML projects and 5 AML emergency projects. The regular projects reclaimed 168.2 acres, addressed 3 hazardous water bodies, 8,320 linear feet of dangerous highwalls, 1 vertical opening, 2 subsidence areas, 3 hazardous equipment/facilities, and 1 acre of industrial/residential waste in EY 2004. Regular and emergency projects were located near/in roads, schools, and residential housing. OCC followed standard construction practices using State contracting procedures. Since program approval OCC has reclaimed approximately 3,859 acres of abandoned mine lands.

Public notices for non-emergency projects were published in local newspapers seeking recommendations on potential projects for reclamation. OCC AML did not hold public meetings during the evaluation period. OCC stated it is considering amending its approved State AMLR Plan to eliminate the requirement to hold four regional public

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meetings a year. Interagency/intergovernmental coordination was successfully implemented for projects started during the evaluation period. Maintenance of a perimeter sediment barrier was behind the schedule set in the SWPPP on the 1 active project reviewed. Hay bales were blown out in areas where surface runoff concentrated. The SWPPP states any necessary repairs shall be performed within 24 hours after any storm event greater than 0.5 inches. State inspection records indicate it had been a week since the site received a 3.1 inch rain event. For the three projects reviewed, OCC completed required AVS checks on all AML contractors with the exception of one contractor. The program followed the project planning requirements for obtaining the necessary rights-of-entry for all the projects reviewed. The completed project reviewed met the goals of the project proposal but failed to meet the schedule established in the State's contract. OCC assessed the contractor a penalty to recover its additional project costs associated with the contractor's failure to finish project construction on time.

Emergency projects in Oklahoma were promptly investigated and abatement action was taken within a reasonable time. Emergency recommendations made during the evaluation met program criteria. The 5 completed emergency projects addressed subsidence features, 1 in a city street, 1 under an occupied residence, 2 in yards of occupied residences and 1 in a pasture where a horse broke through and fell into an underground mine. At the end of the evaluation period, OCC had not updated AMLIS to include reclamation completed under emergency projects in EY 2004.

Two actions occurred that took effect at the beginning of EY 2004. An already understaffed State contracting agency undertook a RIF, laying off the contracting officer responsible for handling AML construction contracts. The Oklahoma Department of Central Services no longer provides a contracting officer for mandatory AML onsite prebid conferences. The AML field staff previously consisted of part-time contract workers. The State legislature converted the field staff to FTE's most of whom are now be eligible for benefits. This action has increased OCC's personnel costs under its AML program.

### **C. Program Amendments**

During EY 2004, ODM submitted an informal program amendment package on its own initiative that addressed a variety of regulations, as follows:

1. Removing the requirement for slope measurements from some portions of permit application packages.

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2. Exempting operators from conducting a subsidence survey of buildings or structures if the operator does not intend to use underground mining technology that provides for planned subsidence. Also, the proposed amendment removes provisions for the rebuttal of presumption regarding subsidence damage from the State's regulations.
3. Proposing a rule to locate embankment slopes of impoundments no closer than 100 feet to a public road, and the area between the road right-of-way and the impoundment slopes shall not exceed 1V:6H.
4. Proposing program-wide planting and stocking plans for areas with postmining land uses of fish and wildlife habitat, recreation, shelter belts, and forest products.
5. Changing the procedures for citizens to appeal a State's decision not to inspect or enforce from an informal review by the Director or his/her designee, to an Informal Conference.

OSM has provided ODM with comments on the proposed informal amendments.

### **V. Success in Achieving the Purposes of SMCRA as Determined by Measuring and Reporting End Results**

To further the concept of reporting end results, the findings from performance 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 and the effectiveness of customer service provided by the State. Individual topic reports are available in TFO that provide additional details on how the following evaluations and measurements were conducted.

#### **A. Off-Site Impacts**

State and Federal personnel observed six off-site impacts during 742 opportunities for observations during the evaluation period. An observation is defined as an inspection, either State or Federal, partial or complete. When a Federal observation leads to a State observation, or the inspections are conducted jointly, the observation is counted once. No types of mine sites are excluded from observations. An off-site impact is any unapproved activity resulting from a surface coal mining or reclamation operation that has a negative effect on people, land, water, or structures, outside areas approved for the disturbance.

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Twelve violations were cited by ODM during EY 2004. Six of the twelve, or 50 percent, were reported as having off-site impacts on active (not abandoned) permits. Three of the six were reported to have moderate impacts, while the three remaining violations had minor impacts. No violations were reported as having major impacts on people, land, water or structures. OSM agrees with ODM that no off-site impacts occurred on the other six violations cited. Oklahoma is reporting 40 of 45 active inspectible units that are free of off-site impacts (Table 4). Therefore, 88 percent of active inspectible units are reported as being free of off-site impacts. These are the inspectible units that do not meet the definition of abandoned at 30 CFR 840.11.

During the past several years Oklahoma has been gradually putting abandoned permits, that were removed from the inspectable units list in the 1980's and 90's, back on the inspectible units list. The permits are being inspected to determine compliance with Title V standards, in accordance with 30 CFR 840.11. State personnel have agreed to identify all of the off-site impacts on these permits in order to document the impacts, and to later determine if the impacts are degrading. ODM personnel reported some off-site impacts on abandoned permits during this evaluation period (Table 4). All impacts from abandoned permits were not reported. ODM and OSM have agreed to report off-site impacts on abandoned permits once each evaluation year.

ODM Field Office staff has created, and continually modifies the forms needed to track off-site impacts. They have constructed a data base of impacts that is reviewed by the office manager periodically.

### **B. Reclamation Success**

SMCRA and the Oklahoma program describe coal mining as a temporary use of the land. OSM has established final bond release as an indication that the land had been successfully reclaimed and returned to the landowner in a productive condition. Studies on reclamation and revegetation success that are done for bond release are the only conclusive ways to evaluate whether reclamation has been successful and timely. At Phase I bond release AOC has been achieved, and usually topsoil or an approved alternative soil medium has been replaced on the disturbed areas. At Phase II bond release surface stability has been achieved, and vegetation established. Phase III bond release is the final step in reclamation performance bond release with implementation of the postmining land use, return of vegetation productivity and restoration of surface-and ground-water hydrology.

At the end of EY 2004, 28,068 acres were permitted for coal mining in Oklahoma. Phase III bond releases totaled 2,909 acres, Phase II bond

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releases were 4,807 acres, and Phase I bond releases totaled 2,556 acres (Table 5). Based on bond release inspections in EY 2004, OSM concluded that ODM successfully implemented its program so that reclamation success was assured on lands where bonds have been released.

ODM and OSM have continued working together to refine the processes for ensuring that bonds are forfeited on abandoned sites, violations are corrected, and reclamation plans are completed. ODM forfeited the available bond in previous years, and there was no bond forfeited in EY 2004 (Table 6). However, bond forfeiture reclamation plans were developed and some bond forfeiture reclamation was conducted at three sites where bond was collected in previous years (see cover photo). ODM has improved the quality of reclamation plans for forfeited permits, and contracted for reclamation that complies with the State program.

### C. Customer Service

Based on OSM's review of all citizen's complaints, objections to permits and permit revisions, objections to bond releases, and the availability of records, ODM provided opportunities for public participation in each of these areas.

The State investigated and closed nine written complaints by the end of the review period. ODM also completed investigations of five oral complaints that they were not required to inspect. Investigating oral complaints provides a very useful service to the citizens of Oklahoma, a service that is above that required by the State program. All of ODM's citizen complaint investigations were conducted in a timely manner.

OSM telephone interviews with a majority of the complainants revealed that even though the citizens did not always agree with ODM's final decision, most felt that the ODM inspector did his best to address their concern. All of the citizens contacted believed that ODM responded to their requests in a timely and courteous manner.

Review of permitting documents that operators make available to the public at county courthouses resulted in the original documents being available, but the revisions or other updates to the permit application packages were often not available. The issue of Oklahoma operators making permitting documents available to the public has been discussed with ODM personnel who have agreed to work with OSM to determine what can be done to make permitting documents more readily available to the public.

ODM distributes information to the public through an Internet Web Site ([www.mines.state.ok.us](http://www.mines.state.ok.us)). The Web Site describes the organization of the

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Coal Division, the nature and production of coal in Oklahoma, and has lists of permit applications, revisions, inspectable units, NOV's, and other miscellaneous information. The Web Site is well organized, but due to technical problems some data was not available during the review by OSM.

ODM has been conducting a Public Outreach program since 2001. The program is offered to schools and other public institutions to educate citizens about mining and reclamation. Feedback from citizens who have participated in the program has been positive.

### **VI. OSM Assistance**

#### **General**

The State requested and OSM provided assistance in:

OSM's Branch of Training and Technical Information provides training to ODM employees throughout the year. ODM employees attended courses that addressed the technical aspects of mining and reclamation. These courses were provided for State and OSM employees as well as industry and others on a space available basis. During EY 2004 Oklahoma sent 8 participants to 5 OSM courses.

Through the Administrative and Enforcement and Federal Lands Cooperative Agreement grants, OSM provided ODM with 63 percent of its operating costs for administration of its regulatory program. Through AML Administration and Construction grants, 100 percent of funds were provided for Oklahoma's AML reclamation program.

#### **Title IV Assistance**

OSM conducted limited water quality sampling and analysis on Oklahoma Clean Streams Initiative projects. OSM provided a conceptual plan for remediation of an air shaft AMD discharge followed by reviews and comments on engineering design contract specifications, engineering drawings, and cost estimates.

#### **Title V Assistance**

OSM continued to participate with Oklahoma AML, The Oklahoma Water Quality Division, and the Corps of Engineers on the Gaines/Pit Creek Clean Streams project. Additional mining and geologic data was obtained for the basin that will be used to extend geologic modeling with the TIPS software *earthvision*, and to add to the State's GIS data.

OSM is assisting ODM to evaluate citizen's concerns that an approaching area surface mine will impact a wetland (see cover photo), and the citizen's surface and groundwater down gradient from the mine. Two field visits were conducted, and a report on surface

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water hydrology and a second report on ground water hydrology was prepared by OSM and supplied to ODM, to the mining company, and to the interested landowners. ODM and OSM are continuing to work with the coal company to clearly define the surface and ground water conditions in and around the new mine site.

OSM is continuing to work with Oklahoma, a coal operator, and a citizen's group to insure that adequate bond and a new water treatment system are approved at a Title V AMD site. All parties agreed to the ADR process to resolve the issue of adequate bonding rather than the citizen's group continuing its appeal to the IBLA.

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

The following topics were evaluated in EY 2004:

#### **A. Mine Site Evaluation**

During EY 2004, TFO conducted 11 complete joint inspections, 24 joint bond release inspections, and 3 other inspections of Oklahoma mines. OSM sent 2 TDN's to ODM as a result of citizen's complaints but did not issue any Federal enforcement actions during the review period. ODM responded appropriately to the 2 TDN's issued in EY 2004. The State initiated enforcement actions during joint inspections whenever a violation was identified.

#### **B. Bonding for AMD Sites**

In April 1999, ODM and OSM created a self-directed team that drafted a policy for ODM concerning unanticipated AMD. The team completed the policy and delivered it to the ODM Director in February 2000. The State reported in EY 2001 that they were using the draft policy to promulgate regulations for the permitting and bonding of sites with unanticipated acid-mine drainage. In 2002, ODM decided to not promulgate regulations until OSM finalizes its policy on the bonding of sites with AMD.

OSM completed, and supplied to ODM, a report on the BTCA and bonding aspects of a permit with AMD during EY 2002. The report shows that with a few improvements the "temporary treatment facility" can be the BTCA, and then ODM could determine an adequate bond amount. During both EY 2002 and EY 2003, the permittee, a citizens group and OSM met, and using the ADR process, agreed to a timetable for developing a new plan for treating the AMD and to provide sufficient bond adequate for the new treatment plan. The mine operator contracted with the University of Oklahoma and a consultant in EY 2003 and EY 2004 to design a passive treatment system to replace the existing chemical treatment system at the site. OSM will help Oklahoma to evaluate the new AMD treatment design and the site once the system is in place and

operating. A bond adjustment is anticipated if the installation is approved and successfully constructed.

### **C. Fish & Wildlife Resources**

OSM has reviewed the Fish and Wildlife portions of Oklahoma permits five times since 1993. In response to oversight review findings in EY 2001, ODM has implemented an internal policy that requires permit application review staff to conduct site visits of the proposed permit area. These site visits are designed to be conducted at the start of the application review process, and again before the permit is issued. These field visits should improve ODM's ability to identify high quality wildlife habitat, and to incorporate those findings into the permit review process.

The last fish and wildlife evaluation by OSM was conducted in EY 2003 and showed that ODM has continued to improve coordination with Federal and State fish and wildlife agencies.

ODM submitted an informal program amendment to OSM during EY 2004 that proposes to revise their regulations to eliminate the need for review and approval by the State's forestry and wildlife agencies of every fish and wildlife habitat revegetation plan submitted in permit application packages. Oklahoma proposes to substitute a program-wide planting and stocking plan for areas with postmining land uses of fish and wildlife habitat, recreation, shelter belts, or forest products. ODM is planning to consult with and obtain approval of the program amendment from the State agencies responsible for the administration of forestry and wildlife programs.

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### **Appendix A: Tabular Summaries of Data**

These tables present data pertinent to mining operations and State and Federal regulatory activities within Oklahoma. They also summarize funding provided by OSM and Oklahoma staffing. Unless otherwise specified, the reporting period for the data contained in all tables is July 1, 2003, to June 30, 2004. Additional data used by OSM in its evaluation of Oklahoma's performance is available for review in the evaluation files maintained by TFO.

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### Appendix B: State Comments on Report

ODM supplied TFO with comments and suggested revisions to the Draft EY 2004 Annual Evaluation Report on September 7, 2004. All of ODM's suggested revisions were incorporated into the Final Report.

By telephone communication with Mike Kastl, AML Program Director, OCC on September 21, 2004, Mr. Kastl stated they have no comments on the AML section of the Draft EY 2004 Annual Evaluation Report.