



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 2005

(July 1, 2004, through 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 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, 2004, to June 30, 2005.

The primary focus of OSM's oversight policy is an on-the-ground results-oriented strategy that evaluates the end result of State program implementation, i.e., the success of the State programs in ensuring that areas off the minesite are protected from impacts during mining, and that areas on the minesite are contemporaneously and successfully reclaimed after mining activities are completed. The policy emphasizes a shared commitment between OSM and the States to ensure the success of SMCRA 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
FFA	Future Farmers of America

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FTE	Full Time Employee
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
SMCRA	Surface Mining Control and Reclamation Act of 1977
T&E	Threatened and Endangered
TDN	Ten-Day Notice
TFO	Tulsa Field Office
TIPS	Technical Innovation and Professional Services
USFWS	U.S. Fish & Wildlife Service

### **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 both calendar years 2003 and 2004 was 1.6 million tons, an increase from the 1.4 million tons in 2002. Nine permits produced coal during 2004. One of the 9 producing permits was an underground mine, two were contour mines on gently sloping topography; while the remaining six were area surface mines. Oklahoma had 72 permits that included approximately 27,000 acres at the end of the evaluation period. ODM employed 19 people to administer the approved regulatory program. The AML program employed the equivalent of 9 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, bond releases, 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,

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

The Oklahoma Mining Commission holds six regular meetings throughout the year, and can call special meetings if necessary. 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 nine Student Outreach presentations during EY 2005. 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 issued 3 new surface mine permits during EY 2005. The State renewed 3 existing permits, approved 18 revisions and 2 incidental boundary revisions to existing permits. New permits, renewals and incidental boundary revisions totaled 2,116 acres (Table 3).

ODM approved Phase I bond releases on 52 acres, Phase II on 421 acres, and Phase III on 3,131 acres. Total bonded acres decreased statewide from 27,632 to 25,156.

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 9 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

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continued non-compliance with a State NOV. The County Court sided with the principle officer of the mining company, saying that the 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's inspection and enforcement have been operating under a new organizational structure since 2004. The coal inspectors have assumed inspection duties on non-coal mines, and additional duties for non-coal safety inspections.

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

OCC is the State AML Authority for the AMLR program. OCC operated with a grant of \$1.85 million during EY 2005. OCC's AML program had a staff of 9 FTE's, which is down from a previous 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 2005, OCC completed 5 regular AML projects, 1 CSI project, and 6 AML emergency projects. The regular AML and CSI projects reclaimed 141 acres, addressed 10 hazardous water bodies, 9,449 linear feet of dangerous highwalls, 1 vertical opening, and improved 1 to 2 miles of streams in EY 2005. Regular and emergency projects were located near/in roads, heavily visited commercial areas, schools, and residential housing. OCC followed standard construction practices using State contracting procedures. Since program approval OCC has reclaimed approximately 4,002 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. On November 1, 2004, OCC submitted a State initiated proposed amendment to the Oklahoma Plan that revised the requirements concerning project ranking and selection procedures and public participation policies. OSM approved the amendment on April 4, 2005, with a notice published in the Federal Register [70 FR 16941-16944]. The revision eliminated the requirement to hold annual regional public meetings and replaced them with annual public notices published in

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certain newspapers in the Oklahoma coalfields soliciting public input. The annual public notices were published in June 2005. Interagency/ intergovernmental coordination was successfully implemented for projects started during the evaluation period. The active sites inspected were in compliance with storm water discharge requirements. OCC completed required AVS checks on all AML contractors on all the new projects included in this year's review. The AVS checks were completed after the contract was issued instead of prior to contract issuance on the two emergency projects included in the study. The confusion over the appropriate time to conduct the required AVS checks on emergency projects was resolved during the evaluation period. The program followed the project planning requirements for obtaining the necessary rights-of-entry for all the projects reviewed. Completed projects reviewed met the goals of the project proposals.

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 six completed emergency projects addressed subsidence features located in public roads and rights-of-way, under an occupied residence, yards of occupied residences, and a parking area of a heavily visited commercial establishment. A grouting project under a four-lane U.S. Highway exhausted OCC's emergency construction funds, resulting in a request for additional funds for its emergency program. At the end of the evaluation period, OCC had not updated AMLIS to include reclamation completed in EY 2005 under its emergency program. OCC is expected to make changes in its procedures to ensure timely AMLIS updates in EY 2006.

In preparation for beginning the reclamation process on the Club Lake West project in Haskell County, OCC mitigated 1.7 wetland acres that would be impacted by the reclamation with 5.1 acres of wetlands. Used in the mitigation were 2,000 seedlings from the Oklahoma Forestry Department, 300 water plants, and 65 pounds of wetlands grass seed. The local FFA and 4-H clubs planted the trees, plants, and grass seed under the supervision of the Haskell County Conservation District. The project was let for bid, with the low bid received significantly over OCC's budget for construction. OCC redesigned the project to lower the estimated construction costs. The project will be rebid in early EY 2006.

### **C. Program Amendments**

During EY 2005, OSM completed the review of one amendment that OCC submitted on November 1, 2004 (OK-031-FOR). The amendment revised OCC's AMLR Plan. OSM published its approval of the amendment in the *Federal Register* on April 4, 2005.

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Another program amendment remains outstanding in Oklahoma (OK-030-FOR, rules that had been promulgated by the Oklahoma Legislature in 2004, involving subsidence and wildlife habitat). ODM submitted the amendment informally on February 9, 2004. OSM sent ODM comments on the informal proposed amendment on March 9, 2004. ODM responded to the comments and requested that the proposed amendment be considered a formal amendment on May 20, 2005. At the end of EY 2005, ODM and OSM were discussing a discrepancy between the formal submittal and the published rules.

### **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 14 off-site impacts during 698 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.

Twenty-nine violations were cited by ODM during EY 2005. Twelve of the twenty-nine were administrative in nature, and were not considered in the count for off-site impacts during the 2005 review. Seventeen violations were reviewed for off-site impacts, and eight of the seventeen, or 47 percent, were reported as having off-site impacts on active (not abandoned) permits. Two of the eight were reported to have moderate impacts, while the six 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 nine violations cited. Oklahoma is reporting 32 of 40 active inspectable units are free of off-site impacts (Table 4). Therefore, 80 percent of active inspectable units are reported as being free of off-site

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impacts. These are the inspectible units that do not meet the definition of abandoned at 30 CFR 840.11. ODM is accurately identifying off-site impacts on active mine sites.

ODM has put several abandoned permits back on the inspectable units list and feels the list is up to date. 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 six off-site impacts on five abandoned permits during this evaluation period. Four of the impacts were considered moderate and two were reported as having minor impacts (Table 4). Therefore, ODM is reporting that 79 percent of abandoned permits as free of off-site impacts. However, there is a question of whether or not all impacts from abandoned sites were reported. OSM and ODM discussed ways to identify and report all off-site impacts on abandoned permits. ODM has since committed to have the Coal Administrator accompany ODM inspectors during the second quarter of FY 2006 to check for on-going off-site impacts.

ODM Field Office staff has created, and continually modify 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. OSM and the States, through the Oversight Steering Committee, have decided that studies of reclamation and revegetation success that are done for bond release are the best 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 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 2005, 25,156 acres were permitted for coal mining in Oklahoma (Table 2). Phase III bond releases totaled 3,131 acres, Phase II bond releases were 421 acres, and Phase I bond releases totaled 52 acres (Table 5). Based on OSM's 17 bond release inspections and the review of State inspection reports and bond release documents in EY 2005, OSM

concludes that ODM is successfully implementing its program so that reclamation success is assured on lands where bonds have been released.

ODM continues 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 2005 (Table 6). However, bond forfeiture reclamation plans were developed and some bond forfeiture reclamation was conducted at two 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 citizens' complaints, objections to permits and permit revisions, objections to bond releases, public outreach programs, and the availability of records, ODM provided opportunities for public participation in each of these areas.

The State investigated and closed two written complaints by the end of the review period. A third written complaint involves monitoring of blasting operations by the State inspector, and was not yet completed at the end of EY 2005. The State inspector is using a seismograph and generally monitoring a mining operation that is progressing toward the house of a complainant. ODM also completed investigations of eight 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, and the citizens were notified of their appeal rights.

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 encourage permittees 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 Coal Division, the nature and production of coal in Oklahoma, and has lists of permit applications, revisions, inspectable units, NOV's, and citizen complaint information.

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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 2005 Oklahoma sent 16 participants (both coal and non-coal) to 18 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 CSI projects. OSM continued to provide assistance on a CSI project by way of reviews and comments on engineering designs for closing a dangerous air shaft and treating the AMD flowing from the shaft.

#### **Title V Assistance**

OSM is assisting ODM to evaluate citizen's concerns that an approaching area surface mine will impact a wetland, and the citizen's surface and groundwater down gradient from the mine. Two field visits were conducted, two rounds of water samples were taken, and a report on ground water hydrology is being prepared by OSM. The report will be supplied to ODM, to the mining company, and to 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 mine site.

OSM is continuing to work with ODM, a coal operator, and a citizen's group to insure that adequate bond is approved at a Title V AMD site. The citizen's group and OSM have 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 2005:

**A. Mine Site Evaluation**

During EY 2005, TFO conducted 11 complete joint inspections, 17 joint bond release inspections, and 5 other inspections of Oklahoma mines. ODM responded appropriately to the two TDN's containing three violations issued by TFO in EY 2005. The State initiated enforcement actions as a result of joint inspections whenever a violation was identified. OSM did not send any TDN's to ODM as a result of citizen's complaints, and did not issue any Federal enforcement actions during the review period.

**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 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. In October 2004, OSM met with ODM and the permittee to discuss the technical aspects of various treatment systems proposed for the site. The permittee submitted a revision to the permit in January 2005 that addresses the bond amount in question, but leaves the current treatment system unchanged. OSM has provided ODM with comments on the January 2005 revision, and has inspected the site several times to help ODM to establish the quantity and quality of AMD discharging from the permit.

### C. Fish & Wildlife Resources

OSM has reviewed the Fish and Wildlife portions of ODM's permits several 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. The field visits improve ODM's ability to identify high quality wildlife habitat, and to incorporate those findings into the permit review process.

A fish and wildlife evaluation was conducted by OSM in EY 2003, and showed that ODM had improved coordination with Federal and State fish and wildlife agencies.

ODM submitted an informal program amendment to OSM during EY 2004 that proposed 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 proposed 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. In EY 2005 ODM consulted with and obtained approval of the program amendment from the State agencies responsible for the administration of forestry and wildlife programs. At the end of the 2005 review period the program amendment was proceeding through the review and approval process.

Also in EY 2005, OSM conducted a topic-specific evaluation of ODM's implementation of USFWS and OSM's agreement entitled "Biological Opinion." The evaluation of 2 sample permits found that the provisions of the Biological Opinion are being incorporated into the permit procedures of the State Program. ODM has required information on T&E species and associated critical habitat in permit application packages. State and Federal fish and wildlife agencies have been given the opportunity to comment and provide recommendations on the presence of T&E species and/or critical habitat, and to approve the plans to protect those that are present. The approved permit application packages also contain plans to protect T&E species and critical habitat that may be impacted by coal mining and reclamation operations.

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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, 2004, to June 30, 2005. 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 2005 Annual Evaluation Report on August 31, 2005. Many of ODM's suggested revisions were incorporated into the Final Report.

By letter dated September 1, 2005, OCC submitted no comments for the EY 2005 Draft Annual Evaluation Report.