

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

Administered by the State

of

Texas

for

Evaluation Year 2005

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

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I. Introduction

The Surface Mining Control and Reclamation Act of 1977 created the Office of Surface Mining Reclamation and Enforcement in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that have been approved by OSM as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Texas program and the effectiveness of the Texas program in meeting the applicable purposes of SMCRA as specified in Section 102. The evaluation period covered by this report is July 1, 2004, to June 30, 2005.

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

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

The following acronyms are used in this report:

AML	Abandoned Mine Land Reclamation
AMLIS	Abandoned Mine Land Inventory System
ATP	Authorization to Proceed
AVS	Applicant Violation System
EPA	Environmental Protection Agency
EY	Evaluation Year
FONSI	Findings of No Significant Impact
FWS	U.S. Fish and Wildlife Service
NOV	Notice of Violation
OSM	Office of Surface Mining Reclamation and Enforcement

RCT	Railroad Commission of Texas, Surface Mining and Reclamation Division
SMCRA	Surface Mining Control and Reclamation Act of 1977
T&E	Threatened and Endangered
TCEQ	Texas Commission on Environmental Quality
TPDES	Texas Pollution Discharge Elimination System
TPWD	Texas Parks and Wildlife Department
TDN	Ten-Day Notice
TFO	Tulsa Field Office
TIPS	Technical Information Processing System

II. Overview of the Texas Coal Mining Industry

The near-surface coal deposits (200 feet) in Texas are about 97 percent lignite. The remainder is bituminous coal. The potential coal reserves are 23 billion tons of lignite and 787 million tons of bituminous coal. The sulfur content ranges from .7 to 1.5 percent for lignite and 1.4 to 3.6 percent for the bituminous coal. Cannel coal has been mined on three South Texas mines and has an average sulfur content of 2.2 percent. The coal seams mined in Texas average about 8 feet in thickness.

In the 1840's the first bituminous coal was mined along the Trinity River of Texas. As early as 1850, lignite was produced and used. Coal from both lignite and bituminous deposits was used by the railroads until the 1920's. In 1917, coal production in Texas was about 2.5 million tons, with approximately equal amounts of lignite and bituminous coal. From 1918 until 1950, only 18,000 tons of lignite were produced. In 1954, a lignite-fueled electric power-generating plant near Rockdale, Texas opened. Following that, annual coal production increased rapidly to meet the demand for electric power generation at additional plants. In 2004, 46.3 million tons of lignite and bituminous coal were produced in Texas from large surface mines using large equipment such as bucket-wheel excavators and cross pit spreaders in addition to draglines, scrapers, loaders, and trucks. Over 99.5 percent of the production was lignite.

Most of the lignite production is used in the generation of electric power within the State. The lignite from one mine is used to produce activated carbon. The bituminous production has been used intrastate by the cement, lime and light-weight aggregate industry to fire kilns, and boilers. The cannel coal mined near Laredo, Texas, has been exported to Europe for fireplace coal, and to South America for generation of electricity. It has also been used within the State by various industries such as cement production. Texas is the Nation's fifth ranked coal-producing State and the largest lignite producer in the world. Daily employment at the 21 permitted operations exceeds 2,000.

Climate is not a limiting factor for reclamation in Texas, although the permits near Laredo and Eagle Pass are west of the 100th meridian and use a 10-year extended responsibility period for bond release. Some mines have encountered acid-forming materials in the overburden that has complicated reclamation activities. In areas, where topsoil substitution is used, selective overburden handling techniques have proven successful.

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

OSM published in its Directive on Oversight of State Programs (REG-8) a statement that customer service was an integral and important part of the implementation of an approved State program. The oversight guidance calls for evaluating the State's performance on customer service annually. The aspects of customer service that are to be evaluated are: handling of citizen's complaints; permitting actions; bond releases; lands unsuitable petitions; administrative and judicial review; and AVS determinations. In the 2005 Performance Agreement, TFO and the State Regulatory Authority, RCT, agreed that TFO would evaluate handling of citizen's complaints, public participation in permitting actions and bond releases, and availability of information to the public. RCT uses the State of Texas administrative procedures, which call for formal hearings and records on all significant actions.

RCT provides for public input into the State program through several avenues. Citizens may comment on permit applications, be party to the proceedings, comment on amendments to the State program, or file complaints on mining operations.

Throughout EY 2005, TFO followed the performance agreement in reviewing RCT's performance on customer service. The following findings and conclusions resulted from the study:

Permitting Actions: TFO reviewed two permit renewal/revisions and four significant revisions in the study. All of the permitting actions were on continuing operations. On all six permitting actions, as required, the applicants had published a notice that the application was available for public review and comment, had placed the applications in a public office in the mine area, had notified landowners by letter, and had notified appropriate public offices and agencies by letter. There were five letters of comment on the permitting actions. RCT addressed each letter by referring it to the applicant for action. RCT also responded to the person commenting in each case explaining that the comment had been referred to the applicant or that the comment was not on a topic that RCT had the authority to regulate. RCT's letters offered opportunity for appealing the action taken in response to the comment letters. The applicants addressed each comment, explaining, by letter to the person

commenting, how the mining operation would prevent the potential adverse actions predicted by the comments. TFO found no continued correspondence or appeals on any of the comments. TFO also found no requests for public hearings or informal conferences.

Bond Releases: TFO reviewed four bond releases. The applicants, as required, had published a notice that the application was available for public review and comment, had placed the applications in a public office in the mine area, had notified landowners by letter, and had notified appropriate public offices and agencies by letter. TFO found only one letter of comment on the bond release applications. This letter came from one of the landowners who wanted several actions before the bond release was approved. As with the permitting actions, RCT referred the letter to the applicant. RCT also responded to the person who made the comment offering for them to attend the bond release inspection and explaining the right to appeal the action that was taken. The files show that the commenter participated in the inspection. The applicant responded to the person who made the comment, explaining the actions that the company could and would take, and explaining the lack of action where action was not required. TFO found no further correspondence on the comments and no requests for public hearings or informal conferences.

Citizen's Complaints: TFO reviewed files on citizen's complaints that had been received since the last review in March 2004. Eight citizen's complaints had been received during that period. In every citizen's complaint, RCT responded promptly in writing to the complainant and offered confidentiality. In each case, RCT met with the complainant and inspected the site identified in each of the complaints. RCT responded promptly with its findings and disposition of each complaint. RCT also provided information to each complainant on appealing the findings. One complainant requested confidentiality, and the files were marked and protected so as to protect the identity of the complainant.

The complaints received were on the following topics: erosion/sedimentation control, fugitive dust, perimeter signs, road maintenance, and groundwater. In EY 2004, six of the eight complaints were on groundwater.

At the time of the review, six of the eight complaints had been resolved. Two were resolved with a Notice-of-Violation that required correction of the problem; two were determined not to be mine-related or mine-caused; one was determined not out of compliance; one was corrected by the mine operator even though it was determined not to be out of compliance. The complaints were not concentrated on a single topic; even though three of the complaints were related to erosion/sedimentation control, they were different in nature.

The eight complaints occurred on six different mines. TFO found no continued correspondence nor appeals on any of the resolved complaints.

Availability of Records: All records, reports, inspection materials, or information obtained by the Commission are to be made available in the immediate area of the mining. Immediately available is defined to include providing copies promptly by mail and by having descriptions of information available, in a public office in the county of the mining. RCT has accomplished this through several means:

- RCT requires and ensures that applications for permits, significant permit revisions, renewals, and bond releases are kept on file in a public office in the county.
- RCT prepared a booklet entitled “Citizen’s Access to Coal Permit Records” that has been placed in public offices in each county where mining occurs. The booklet describes the records and materials that are available and includes addresses and telephone numbers for RCT offices.
- RCT maintains an internet web site that lists information on coal mining and reclamation permits, pending permitting actions, and how to contact RCT and mining companies.
- RCT’s mine inspections include periodic review of the public documents. RCT documents the results of the review in its inspection reports.

In every aspect that was reviewed, RCT appropriately provided for public participation. TFO found that RCT has an exceptionally good system for providing public access to coal mining and reclamation information. All citizen’s complaints were handled in accordance with the approved State program. No single mine-site generated an appreciable amount of public comment or citizen’s complaints. The topics of the complaints and comments did not indicate problematic trends.

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

A. Regulatory Program

During EY 2005, RCT successfully operated its regulatory program so that there were no significant adverse environmental impacts from coal mining in Texas.

RCT’s Surface Mining Division sponsored a workshop for the mining industry on March 3, 2005 on the topic of *Ground Cover and Productivity Data Collection*. This workshop was held to assist the mining industry in improving

the quality and accuracy of data submitted to support postmine revegetation performance measures.

During the State legislative session that ended in May 2005, the Texas Surface Coal Mining and Reclamation Act was amended to provide for new annual fees to be charged for bonded acres for each permit in effect on December 31 of each year (Section 134.055, Natural Resources Code). This amendment will be effective beginning in 2006, and will allow the Railroad Commission to set an annual fee for each bonded acre in addition to a fee for each acre mined. A program amendment will be submitted to OSM as soon as draft regulations have been developed.

RCT's Surface Mining Division is having continued difficulty in filling an engineering vacancy due to the State's non-competitive salary schedule when compared to the private employer sector. A State employee statewide salary increase of 4 percent effective September 2005, may marginally help to attract qualified applicants.

In 2004, TXU Mining Company's Martin Lake Mine received one of OSM's National Awards for outstanding reclamation. Overburden removal provided a unique opportunity for the development of water features in the reclamation. A pond-in-series design resulted in five wetland areas. Native grasses and forbs were planted and more than 40 acres of hardwood species are now established. This wetland resource provides the East Texas community with wildlife, fish, sediment retention, groundwater recharge and diverse aesthetics for years to come.

B. Abandoned Mine Land Reclamation Program

On June 23, 1980, the Secretary of the Interior approved Texas' AML reclamation plan under Title IV of SMCRA. Texas had completed reclamation on all inventoried coal related sites and was certified to use AML funds for the reclamation of noncoal abandoned mine lands. The Texas AML program has a full-time staff of 8. OSM awarded RCT \$131,015 in administrative funds for the AML program. OSM also awarded RCT \$2.8 million for construction projects in June 2004.

RCT completed construction on a Priority 2 project that closed 28 underground mine openings related to cinnabar, silver, lead, and zinc extraction in Presidio County, located in west Texas. The work was completed under difficult desert conditions. Some sites located in State Natural Areas required moving all materials by helicopter and manpower onto construction sites located in the Chinati Mountains. Work was started on a regrade project

at an open pit uranium mine and dirt work and planting of permanent vegetative cover was completed at another.

Late in the evaluation period OSM issued a FONSI and ATP for one open pit uranium reclamation project located in Live Oak County. Construction is scheduled to start in the late fall or winter of 2005.

RCT followed standard construction practices using State contracting procedures, OSM's inspections of construction projects found RCT completed projects in a manner consistent with its approved reclamation plan with projects meeting design goals. AVS checks were made on successful bidders. For one project the AVS check was completed after initiation of project construction. The late AVS check appeared to be caused by confusion related to rebidding the project and did not result in awarding an AML contract to a contractor that would have been ineligible due to violations contained in AVS. RCT was in compliance with storm water discharge requirements and properly implemented interagency/intergovernmental coordination. The approved plan was followed for obtaining necessary rights-of-entry. The State AML program has worked cooperatively with OSM to make necessary changes to the State's approved reclamation plan.

In July 2004, RCT provided OSM with a signed certification that it has a system in place that ensures the accuracy of data it enters into AMLIS.

C. Program Amendments

TX-051. On October 3, 2003, OSM received an informal amendment from RCT to revise its rules and add new rules pertaining to the use of coal combustion products and by-products in reclamation. OSM sent its comments to RCT on this informal amendment, and RCT submitted a formal amendment on December 15, 2003. On February 3, 2004, OSM announced in the *Federal Register* the opening of a public comment period on the proposed program amendment. In response to numerous requests for a public hearing on the proposed amendment, OSM held a hearing in Austin, Texas, on March 1, 2004. On May 7, 2004, OSM sent a letter to RCT explaining the concerns that arose from OSM's review of the amendment and from the public comments. On May 26, 2004, RCT responded with a letter stating that it would respond to OSM's concerns at a later date. At the end of EY 2005, RCT was still working on its response.

TX-052. On December 29, 2003, OSM received a proposed program amendment from RCT revising the rules on permit revisions. OSM announced the proposed amendment and opened a public comment period with the publication of a *Federal Register* notice on February 9, 2004. OSM received a

request for a public hearing, and in response, held a public meeting in Mt. Pleasant, Texas, on March 11, 2004. OSM sent a letter to RCT on April 19, 2004, explaining the concerns that arose from OSM's review of the proposed amendment and from the public comments. RCT responded on May 26, 2004, with a letter stating that it would respond to OSM's concerns at a later date. On July 15, 2005, RCT withdrew this proposed program amendment.

TX-053. On June 9, 2004, OSM received a proposed program amendment from RCT to revise its rules on annual fees. OSM announced the proposed amendment and opened a public comment period on July 19, 2004. OSM sent a letter to RCT on July 26, 2004, asking for more information about the amount of the proposed fee increase. RCT responded with additional explanatory information on August 3, 2004. OSM approved the proposed program amendment with a publication in the *Federal Register* on September 14, 2004.

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

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

A. Off-Site Impacts

The number of mine sites that are free of off-site impacts is one of OSM's annual measures of a State program's effectiveness. An off-site impact is defined as a negative regulated effect on people, land, or water outside of areas that have been permitted to be disturbed by coal mining and reclamation.

TFO collected data on off-site impacts through State inspections on all permits and Federal inspections on a sample of permits. RCT sent its off-site impact documents to TFO throughout the year as they were identified. Off-site impact documents included information on the nature of off-site impacts, degree of the impacts, and ability to repair the damage. The State's inspectable units list was used to calculate the number of sites that are free of off-site impacts. On each oversight inspection, TFO verified that sites that were identified as having

no off-site impacts were free of off-site impacts. TFO also verified through its oversight inspections that off-site impacts that were identified were corrected.

TFO compiled off-site impacts from the documentation provided on both State and Federal inspections ensuring that duplicates (from separate State and Federal inspections) were counted only once. TFO's verification procedures also included reviewing all of RCT's inspection reports. From the compilation, TFO summarized the impacts and evaluated the success of the State program in preventing off-site impacts or reducing the number and severity of off-site impacts.

On 31 inspectable units, RCT conducted 372 inspections. RCT defines an inspectable unit as a logical unit of a mining operation and has divided several of the 21 permitted operations into more than one inspectable unit. In addition, TFO inspected 8 mining and reclamation operations in Texas. This provided 380 opportunities for off-site impacts to be observed. RCT identified 5 off-site impacts in EY 2005. TFO did not identify any additional off-site impacts. Of those 5, 1 was a land stability impact, 1 was encroachment into an area not allowed to be disturbed, and 3 were hydrology impacts. Four of the impacts were considered minor, and 1 hydrology impact was considered moderate. The 5 off-site impacts occurred on 3 inspectable units leaving 28 inspectable units free of off-site impacts. This means that 90.3 percent of the inspectable units are free of off-site impacts. Three of the off-site impacts occurred on 1 mine (See Table 4).

RCT and TFO discussed off-site impacts when there was some question about the determination. In one situation, RCT and TFO discussed whether an operator that broke a buried pipeline with a bulldozer had caused an off-site impact. From OSM's definitions and instructions for off-site impacts, it was not clear whether this was an off-site impact. After consulting with OSM's Mid-Continent Region, TFO relayed to RCT that the circumstances of the pipeline and the activity that broke it were the determining factors, and the inspector should make the determination. RCT decided that the disturbance was not an off-site impact.

The 90.3 percent of inspectable units free of off-site impacts in EY 2005 is an improvement over the 87.1 percent in EY 2004. Except for the operation that had 3 of the 5 off-site impacts, the Texas operators and RCT ensured that mining and reclamation has been designed and conducted in a manner that minimizes off-site impacts.

B. Reclamation Success

The number of acres that meet bond release standards is one of OSM’s annual measures of a State program’s effectiveness. During EY 2005, TFO monitored bond release applications from the mining operations in the State. TFO participated in three bond release inspections, and did not identify any significant problems on those bond releases. TFO found no problems on bond release documentation that it reviewed.

During EY 2005, RCT approved release of bond at Phase I for 1,530.46 acres, Phase II for 1,057.64, and Phase III for 1,889.85 acres. This was an increase of bond release acreage for each phase and a significant increase for Phase III (See Table 5).

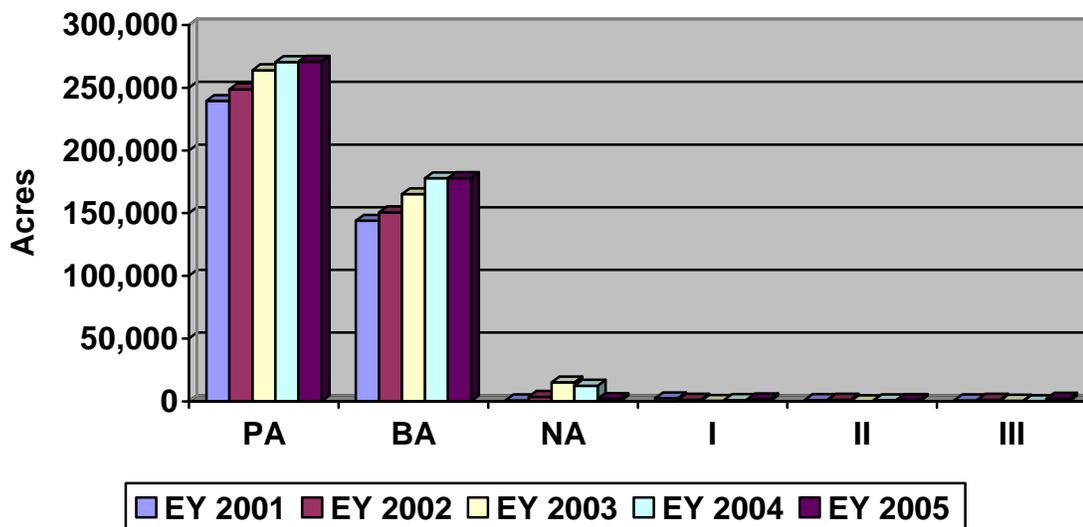
As shown in the table and chart below, bond release applications and approvals continue to represent only a fraction of the acres that have been permitted and bonded. From the comparison of permitted acreage with bonded acreage, it can be noted that the permitted acreage is significantly larger than the bonded acreage. Most of these permitted but unbonded acres are the result of permitting acres that will be bonded in the future or permitting buffer zones around the mining operations.

From its oversight inspections, OSM observed that reclamation is current on all mines and many acres appear to have been reclaimed successfully even though bond releases have not been sought. TFO concluded that RCT has appropriately implemented its bond release program and ensured successful reclamation.

Trends in Bond Release, Permitted and Bonded Acreage

Evaluation Year	Permitted Acreage (PA)	Bonded Acreage (BA)	New Bonded Acreage (NA)	Phase I Release Acreage	Phase II Release Acreage	Phase III Release Acreage
EY 2001	239,500	143,953	627	2,308	958	613
EY 2002	248,810	150,551	3,415	1,134	1,134	1,120
EY 2003	264,000	165,163	14,965	279	0	473
EY 2004	270,600	177,811	12,212	878	778	37
EY 2005	270,700	177,933	1,803	1,530	1,058	1,890

Trends in Bond Release, Permitted and Bonded Acreage



VI. OSM Assistance

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

VII. General Oversight Topic Reviews

A. Mine-Site Evaluation

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

TFO inspected a sample of mining and reclamation operations, prepared inspection reports, read State inspection reports, and looked for trends and patterns. During EY 2005, TFO did not identify any problems that should be cited as violations; thus TFO issued no TDN's.

RCT has appropriately ensured on-the-ground compliance with the approved State program.

B. Surface Water Monitoring

During EY 2003, OSM discovered during oversight inspections that some Texas coal mining and reclamation operations were not monitoring each surface water discharge point separately. Upon investigation, TFO found that TCEQ, the agency with State primacy over water quality, had allowed changes in the TPDES permits on mining operations to combine point source discharge samples and analyze the composite sample. TFO sent a TDN to RCT on this issue because 40 CFR 434 requires analysis of each discharge point, and 40 CFR 434 has been incorporated into Federal and State surface mining regulations. Some of the TPDES permits on Texas mines contain this conflicting sampling requirement. On August 22, 2003, EPA stated in a letter to TCEQ that each point source discharge must be sampled and reported separately. On September 5, 2003, RCT sent letters to permittees requiring compliance with the EPA's August 22, 2003 letter.

On February 3, 2005, TFO wrote to EPA asking about the status of the TPDES Permit revisions. EPA responded with a letter dated February 23, 2005, stating that TCEQ had reported that the TPDES permits were being revised to include the appropriate surface water monitoring and sampling requirements.

TFO conducted oversight inspections on 8 Texas permits in EY 2005 and found sampling and reporting of each surface water discharge. TFO also continued its communication with EPA and RCT on this issue.

Surface water monitoring has been accomplished in accordance with the State program requirements, but not all of the TPDES permits have been updated in response to EPA's finding that each surface water point-source discharge must be sampled. As the TPDES permits are renewed, they will be updated to include sampling of individual discharge points.

C. Inspection and Enforcement – Identifying and Citing Violations

TFO reviewed RCT's inspection reports and documents associated with violations that were identified and cited during the previous 3 years (January 2002 - December 2004).

TFO identified two violations on its inspections that RCT had not cited, but RCT promptly cited them upon receipt of the TDN. TFO became aware of another violation through a citizen's complaint. After extended discussion,

RCT cited that violation also. The citizen was not satisfied with the citation and continued to object to the action through administrative and judicial procedures.

All NOV's were properly cited and documented. Abatement prescriptions and times were appropriate, although the remedial measures could have been stated more clearly. Violations were tracked on subsequent inspections to ensure successful abatement and termination. Several abatement dates were modified when the permittee requested additional time. Three longer extensions were necessitated by actions beyond the control of the operator, which precluded the company from completing timely abatement of the violations. The extensions beyond 90 days were properly documented and approved.

The review indicated that the most commonly found violations were failure to protect surface and ground water quality (22), failure to follow the approved mining and reclamation plans (11), and encroachment into buffer zones and/or unbonded or unpermitted areas (7). TFO recognizes that while most water protection violations are preventable, some are precipitated by unforeseen circumstances such as unusual weather and climatic conditions.

RCT appropriately conducted a pattern of violation review in two instances. RCT found a pattern in one of the cases, but determined that the violations were not indicative of a willful failure to comply.

TFO concluded that RCT had properly identified and cited violations in accordance with the approved coal mining and reclamation program. RCT had also followed through on the citations to achieve on-the-ground correction of the violation.

D. Postmining Land Use

The postmining land use evaluation was part of a series of oversight topics to determine whether coal mining and reclamation operations in Texas have been designed for successful reclamation and whether the plans have been implemented to assure that the land is reclaimed according to the approved plans.

TFO reviewed a sample of permits to determine whether the land use requirements were met in approving the permitting actions and whether the postmining land use plans have been implemented as mines are reclaimed. The sample included recently issued permits and older permits where the plans have been in place long enough to have on-the-ground results. TFO visited the mines in the sample of permits where reclamation has been ongoing for a number of years to see the on-the-ground results.

TFO found that all of the permits in the review, old and recent, appropriately contained:

- all of the required information on premining land uses and the capability of the land to support a variety of land uses.
- complete postmining land use plans that were developed in consultation with landowners and represented the landowner plans.
- plans for reclaiming much of the land to alternative postmining land uses that represented higher and better uses of the land.
- plans for fish and wildlife habitat or enhancement.
- postmining land use plans that fit well into the surrounding land uses and caused no harm or danger.
- plans for significant increase in developed water resources, explaining that the water was necessary to support livestock production and fish and wildlife habitat enhancement. The increased acreage of developed water resources is more than would be necessary to support the livestock that could be produced on the land, but fish and wildlife enhancement justify additional water. Most of the developed water resources were constructed with shallow areas and with shorelines that were vegetated to enhance fish and wildlife habitat.
- plans for small areas of industrial/commercial land uses. Many of these are oil/gas well pads and roads.

TFO found that all older operations that were reviewed had achieved excellent on-the-ground implementation of the approved postmining land use plans. A comparison of adjacent area land uses and postmining land uses indicated that in all cases reviewed, the land has been returned to productive uses that were similar to or better than the uses of the land around the mine. TFO found that one operation's success may be short-lived as natural succession changes the postmining land use from what was approved to a land use that is more sustainable in the area. Desert shrubs have invaded and asserted dominance over the introduced pasture grasses that were established. Better management on the part of the operator might have kept the pastureland intact through the 10-year extended responsibility period, but succession is likely inevitable without continued intensive management. TFO is aware that RCT is working with the operator of that mine to reach a solution.

The State program requires seeking and considering comments from environmental protection and enhancement agencies and from landowners. This is especially important when alternative postmining land uses are proposed. TFO found objections from TPWD to the large tracts of land where the postmining land use plans produce a monoculture of introduced grasses. TFO found statements from landowners indicating agreement with the reclamation plans including the postmining land uses. TFO found the general

trend has been to weigh the landowner comments heavier than TPWD comments. TFO also found that most postmining land use plans contain wildlife enhancement features such as ponds, wetlands, tree plantings and corridors interspersed throughout the pasturelands that are the most common postmining land uses. RCT followed its approved program in seeking comments and addressing those comments.

TFO's conclusion was that RCT required appropriate postmining land uses and ensured that those land use plans were successfully implemented.

E. Threatened and Endangered Species – Implementation of the 1996 Biological Opinion

In 1996, OSM and FWS signed a Biological Opinion, which states that the Endangered Species Act Section 7 Consultation will be met if SMCRA is fully implemented. This means that the State Regulatory Authorities must:

- require T&E species information in permit documents,
- use that information to determine whether the mining operations will pose a threat to threatened and endangered species,
- provide the mining and reclamation plans to State and Federal fish and wildlife agencies for comment and recommendations, and
- ensure that the approved mining and reclamation plans provide protection for threatened and endangered species.

In 2002, OSM in cooperation with FWS and State Coal Mining and Reclamation Regulatory Authorities developed training to ensure that OSM, State Regulatory Authority, and FWS staff know what the Biological Opinion requires. That training was provided in 2003. This topic is being reviewed at this time to ensure that the Biological Opinion has been incorporated into State Program procedures and to ensure that T&E species have been afforded protection from coal mining and reclamation operations.

TFO reviewed Texas permitting documents to determine whether RCT has implemented its approved State regulatory program by requiring appropriate information and plans to identify the presence of T&E species and protect those that are found. TFO included recent permitting actions and older permits where protection plans for T&E species had been implemented to determine whether:

- information on T&E species has been provided in coal mining and reclamation permit applications,
- 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 plans to protect ones that are present, and coal mining and reclamation permit applications contain plans to protect T&E species that may be impacted by coal mining and reclamation.

TFO also included three permits where T&E species protection plans have been implemented to evaluate whether older permits ensured that T&E species are being protected in accordance with the approved regulatory program.

On recently issued permits, RCT appropriately required information on T&E species in permit packages. The information was provided or verified by FWS and TWPD. RCT appropriately required protection plans for T&E species that were found in the permit and surrounding areas. Those plans were developed in conjunction with FWS and TWPD. TFO concluded that the procedures of the Biological Opinion had been followed.

On permits where T&E species were found and protection plans have been implemented on-the-ground, RCT appropriately required T&E species information, required consultation with FWS and TWPD, required T&E species protection plans, and ensured that those plans were implemented to provide protection for T&E species. RCT has fully implemented its approved coal mining and reclamation regulatory program with respect to providing protection for T&E species. No changes were needed to implement the Biological Opinion.

Appendix A: Tabular Summaries of Data

These tables present data pertinent to mining operations and State and Federal regulatory activities within Texas. They also summarize funding provided by OSM and Texas 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 Texas' performance is available for review in the evaluation files maintained by TFO.

Appendix B: State Comments on Report