

OFFICE OF SURFACE MINING
Annual Evaluation Summary Report
for the
Regulatory and Abandoned Mine Land Programs
Administered by the Commonwealth
Of
VIRGINIA
For
Evaluation Year 2004
(July 1, 2003 to June 30, 2004)

September 2004

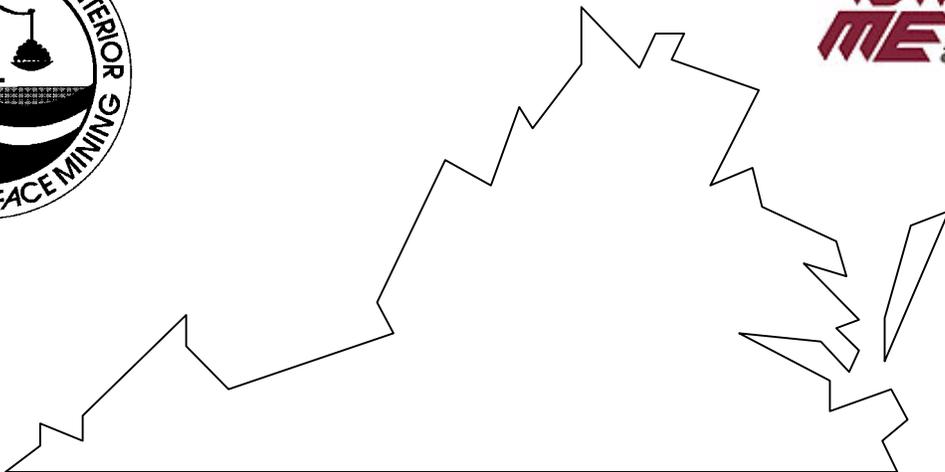


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I. Introduction

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 us to oversee the implementation of and provide Federal funding for State regulatory and abandoned mine land programs that have been approved by us as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Virginia program and its effectiveness in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of July 1, 2003, to June 30, 2004. The evaluation year was shortened by three months to bring the Agency in line with reporting requirements for the Government Performance Results Act (GPRA). Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Big Stone Gap OSM Office.

The following list contains acronyms used in this report:

AML	Abandoned Mine Land
DMLR	Division of Mined Land Reclamation
EY	Evaluation Year
NEPA	National Environmental Policy Act
SMCRA	Surface Mining Control and Reclamation Act

II. Overview of the Virginia Coal Mining Industry

Coal is Virginia's most abundant indigenous energy resource and has been important to the State's development since the colonial period. The first commercial production of coal in the United States was in 1748 from the Richmond Coalfield just west of Richmond, Virginia. This coalfield flourished until the Civil War, which destroyed much of Virginia's coal fueled industry. In 1883, the Norfolk and Western Railway opened the first major production mine in Southwestern Virginia at Pocahontas in Tazewell County. Since that time, the seven counties comprising the Southwestern Virginia Coalfields: Wise, Buchanan, Dickenson, Tazewell, Lee, Russell and Scott (in descending order based on 1998 production) have dominated Virginia coal production, accounting for 100 percent of Virginia's production.

The Southwestern Virginia Coalfield is part of the Central Appalachian Coalfield that includes Eastern Kentucky and Southern West Virginia. In Virginia, the bituminous coal is produced from over two dozen Pennsylvanian age coal seams that vary in thickness from under one foot to occasionally over six feet. The coalfield area is characterized by steep slopes and narrow valleys with some local areas having a less rugged, rolling topography. Due to steep topography, Virginia mines are predominantly drift mouth underground and contour surface operations. There are a limited number of mountaintop removal, deep shaft, and area-type operations.

Since the effective date of SMCRA, Virginia coal production increased from 29 million tons in 1978 to a high of 47 million tons in 1990. Last year's production was a little over 28 million tons. According to 2002 U. S. Department of Energy statistics Virginia's production ranked eleventh among the coal producing states (<http://www.eia.doe.gov/cneaf/coal/page/acr/table1.html>). In 2000 Virginia ranked eighth in coal production. Approximately 69 percent of the production comes from underground mines and 31 percent from surface mining. Virginia produces higher quality coal with higher BTU's (British Thermal Units) and lower sulfur content than the national average. This has historically made Virginia coal attractive for metallurgical coke production and for the export market. However, foreign competition continues to have a major impact on Virginia's export market.

During 2001, coal accounted for less than one percent (0.18) of Virginia's Gross State Product (Source: U. S. Bureau of Economic Analysis <http://www.bea.doc.gov/bea/regional/gsp/>). Coal production and related industries have a significant economic impact in Southwest Virginia. In the seven coal producing counties, coal mining is one of the major industries. Employee compensation of \$312 million was derived from the coal industry during 2000 as compared to 1999 earnings of \$296 million (Source: U. S. Bureau of Economic Analysis). Coal mining employment in Virginia peaked at 20,741 in 1981 and declined to 5,872 in 2000 (Source: U. S. Bureau of Economic Analysis). In 2001, approximately 8 percent of the coalfield counties' workforce worked in the mining industry. In 2002 unemployment averaged 7 percent in the coal counties. In 2003, unemployment in the coalfield counties ranged from 5.3 to 14.5 percent and averaged 7.3 percent. The overall State unemployment average was 4.1 during 2003. (Source: Virginia Employment Commission (VEC) <http://www.vec.state.va.us/vecportal/lbrmkt/lausc/labor.cfm>)

Virginia currently has 612 inspectable mining units in Virginia, 167 are surface mines, 286 are underground mines, 97 are support activities, and 62 are exploration notices. There are 143 producing surface mines and 231 producing underground mines. The average permitted acreage is 363 acres for surface mines, 30 acres for underground mines, and 80 acres for support facilities. For comparative purposes, in 1991, we had 1,130 inspectable units of which 298 were surface mines, 492 underground mines, 163 support facilities, and 177 exploration notices. In 1991, the average permitted acreage was 124 acres for surface mines, 18 acres for underground mines, and 54 acres for support facilities. Although we have seen a reduction in the number of inspectable units during the past 12 years, the trend toward fewer, larger operations is evident.

Since the 1950's, Virginia has documented twelve deaths associated with coalfield abandoned mine land hazards. The last reported death occurred in 2000. Five deaths were drowning, three were falls from highwalls, two were burning refuse suffocations, one was caused by a gob waste landslide into a residence, and one was caused by a rock slide associated with abandoned underground mine subsidence. Two injuries have been documented from a collapsing refuse pile and one injury is documented from a slumping underground face-up area that slid into a residence. A large number of AML related hazards are still present in the coalfields and are being addressed on a priority basis.

The abandoned mine land program has had a significant impact in Virginia. The following is just a sampling of the many accomplishments that the abandoned mine reclamation program has had in Virginia. Since 1978, Virginia has restored 76 miles of streams and reclaimed 947 acres of clogged stream lands; eliminated 25 dangerous impoundments; reclaimed 276 acres of dangerous piles and embankments; sealed 1,145 dangerous mine openings and 119 vertical openings; replaced 2,514 water supplies adversely impacted by mining; and reclaimed over 6 miles of dangerous highwalls. (<http://ismhdqa02.osmre.gov/scripts/OsmWeb.dll>) Funding for this program expires this year without a Congressional extension. About a billion dollars remains un-appropriated in the fund.

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

At the beginning of the 2004 oversight year, OSM and DMLR developed an annual oversight plan. During the process of developing this plan, we published an announcement in newspapers of general circulation in the coalfields soliciting input into the plan. We also mailed notices to interested citizen, industry and environmental groups. We did not receive any comments as a result of the advertisement or direct mailing.

We also met with citizens, industry, and agencies on numerous occasions during the year to discuss issues such as re-mining, experimental practices, and Clean Streams. The Field Office participated in or assisted on advisory and/or ad-hoc committees for re-mining, AML, American Heritage Rivers (New River Community Partners), the Powell River Ecosystem Study, the Guest River Group, Upper Tennessee River Roundtable and the Big Sandy watershed protection conference.

DMLR continues to work with the U. S. Army Corps of Engineers, LENOWISCO Planning District, and Black Diamond Resource Conservation and Development, Inc. to plan and conduct stream restoration projects related to acid mine drainage in the Powell River. They also participated in numerous meetings of the Upper Tennessee River Watershed Roundtable to address mining related issues in the Clinch and Powell Rivers in Virginia. DMLR also partnered with local watershed groups to secure non-federal funding to reclaim priority 3 abandoned mine land sites.

State staff has met with citizens on numerous occasions to discuss citizen concerns. Additionally, several other meetings were held addressing agency permitting initiatives, informational exchange on “mined fields to soccer fields,” electronic permitting initiatives, and re-mining.

DMLR staff also conducted other public meetings, made presentations, and taught classes benefiting local schools, educational facilities, and government agencies.

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

This year marks the 23rd anniversary of a primacy program in the Commonwealth of Virginia. The maturation of the program over the past 23 years has protected the public and minimized environmental impacts within the Virginia coalfields. A leader in annual strategic planning, DMLR continually evaluates its operations to improve the quality of its services. Over the past year we monitored DMLR's performance in meeting the goals and objectives of the approved State program. Once again we find that DMLR is successfully implementing both its regulatory and abandoned mine land programs. A list of the oversight reviews used to reach this conclusion is included in section VII of this report. We look forward to working cooperatively with Virginia during the next year.

Major accomplishments and innovations in the program this year include:

- Assisted the Virginia Department of Environmental Quality in developing Total Maximum Daily Loads (TMDL's) limits for the state's impaired coalfield streams. During the past year, the first three TMDL reports for resource extraction impaired streams in Virginia have been approved by the U.S. Environmental Protection Agency. These streams, Guest River in Wise County, Dumps Creek in Russell County, and Black Creek in Wise County, have abandoned mined lands that contribute sediments and dissolved minerals to the water. The TMDL studies and reports identify the specific reductions in those pollutants needed to restore the stream's water quality and biological communities. DMLR played the lead role in the completion of these TMDLs by obtaining funding, contracting with environmental consulting firms, providing data sets & mapping, and furnishing mining expertise.

DMLR continues to develop resource extraction TMDLs for Straight Creek, Callahan Creek, Middle Creek, and Russell Prater Creek.

A significant part of TMDL development is the public participation process. Although DEQ takes the lead with public participation, DMLR is involved at all public meetings regarding TMDLs. DMLR also participates in a number of watershed organizations. These organizations include the Upper Tennessee River Roundtable, the Guest River Group, the Powell River Alliance, and the Clinch Headwaters Association.

- Through a partnership with the United States Army Corps of Engineers, LENOWISCO, the Tennessee Valley Authority, and Lee County, DMME accomplished the completion of the first construction project of the North Fork Powell River Ecosystem Restoration Project. This project successfully treated two major discharges of acid mine drainage into Ely Creek, a tributary to the North Fork Powell. The funding partnership was 65% Corps funds and 35% DMME funds. DMME funding came through annual AML grants as Appalachian Clean Streams Initiative and the 10% set aside.
- In partnership with The Nature Conservancy, secured \$500,000 to fund a carbon sequestration pilot project on coal mined land in southwest Virginia.

- DMME partnered with the Guest River Restoration Project to secure funding for a priority 3 AML site in the Guest River watershed. Site reclamation was completed in June, 2004.
- DMME partnered with The Black Diamond Resource Conservation and Development to fund and reclaim a priority 3 AML site in the North Fork Powell River Watershed.
- DMME assisted Hands Across the Mountains, a local watershed group, in obtaining a \$100,000 Watershed Cooperative Agreement to help fund an acid mine drainage project in Lee County, Virginia.
- DMME cooperated with the Daniel Boone Soil and Water Conservation District and the Natural Resources Conservation Service to pursue special initiative funding for the North Fork Powell River watershed.
- With LENOWISCO, the local planning district, DMME submitted an abandoned tiple site as a Brownfields demonstration project that was selected by federal agencies to provide technical assistance to clean up and beneficially reuse the mine-scarred land.
- DMLR Technical Services staff members assisted with the environmental science curriculum for the Mountain Empire Community College Tech Prep camp.
- This year DMLR developed the second generation of electronic permitting, EP II. The revision was released in August, 2004. The addition of software for comparison of files and documents, optional modules for water monitoring, well construction data and map legends are among the new features. This release brings DMLR one step closer to a paperless and Web-based permit application. At present, 93 percent of current permitting activity is in an electronic format. Electronic, and "hard copy," permitting forms and guides are available via DMLR's Internet homepage (www.mme.state.va.us.)
- Began receiving bond release and bond reduction applications through the Electronic Permitting system, again reducing the volume of paper applications, thus making tracking and issuance of applications easier and quicker.
- DMLR Technical Services staff members participated in OSM's TIPS and Technical Training programs as instructors, providing valuable training and information sharing to OSM and other States' regulatory authority personnel.
- DMLR Technical Services staff members participated in over two dozen Abandoned Mined Land design projects, providing solutions and remediation for both emergency and non-emergency projects, and providing thousands of dollars of savings by doing in-house design work as opposed to contracting the design work to outside vendors.
- DMLR environmental section employees promoted water quality and assisted identifying the local fish species and invertebrates through a program called "Kids in the Creek". Personnel demonstrated sampling techniques using an electro shocker and field test kits that are commonly used during the application process

for obtaining surface mining permits. DMLR utilized a hands-on approach and allowed the students to handle the fish and invertebrate bugs. The students gained valuable information, thus promoting the environmental resources of our area.

- DMLR Geologist presented a talk and hands-on demonstration on the geology and formation of Natural Tunnel to middle school honors students from across Southwest Virginia. DMLR assisted Natural Tunnel State Park Staff in a day-long series of science activities at the Park for those students.
- DMLR Geologist and Engineering Technicians made presentations to teachers from throughout the State who participate in the Virginia Tech Summer Energy Education Program for Virginia science teachers, "Teaching Environmental Topics: Coal to Electricity." The program educates teachers about DMLR, the geology of the coal-producing region, mining, permitting and mapping.
- A DMLR Enforcement Inspector prepared and conducted a classroom and field exercise on July 8th and 9th about the 1996 Lone Mountain Slurry Spill for a group of 20 students in the Access 2004 Program. The Inspector gave the group of rising juniors at Lee High School a look at how a single event can affect people in different ways. The group also met with officials of the coal company and the community impacted by the spill. The Inspector described the DMME's regulatory role in handling events after the spill. This included enforcement actions, civil penalties and the disbursement of fine monies levied against Lone Mountain.

This program, Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), is a federal program offered in Virginia as the Access Program. It is designed to better prepare participants for college through mentoring programs, scholarships and new academic preparation and awareness programs

- DMLR and the U.S. Army Corps of Engineers (USCOE) continue to study the impacts of acid mine drainage (AMD) in the Powell River watershed. Efforts continue toward a comprehensive construction project, the Powell River Ecosystem Restoration Project, to mitigate acid mine drainage impacts. DMLR assisted the USCOE in acquisition of property on Puckett Creek to facilitate this project.
- DMLR maintains an inventory of long-term pollutional discharges from Title V permits in the state of Virginia. This inventory comprises a segment of the inventory for the entire Appalachian region (Pennsylvania, Maryland, Virginia, West Virginia, Ohio, Kentucky, and Tennessee) and is used to pinpoint the geographic location where coal mine drainage problems occur, to characterize the extent of water pollution problems for defined geographic areas, and to establish strategies for addressing the impacts of actual and defined discharges.
- Encouraged industry to use AML no-cost agreements to reclaim abandoned lands. Primarily no-cost agreements allow mining companies to use excess spoil from permitted mining operations to eliminate abandoned mine highwalls that normally would not be reclaimed. In addition to reclaiming several miles of abandoned

mine land highwalls, the practice also minimizes the development of new valley and hollow fills and reduces impacts to coalfield streams.

- DMLR continues to support work on the remining permit in the Black Creek watershed and the Black Creek watershed restoration Clean Streams Project in Wise County, Virginia. When completed, some 1,940 acres of previously mined land will be reclaimed and eight miles of acid mine drainage impacted stream will be revitalized.
- As a result of studies into the impacts of approximate original contour variances and post mining land uses in Virginia and the need to limit stream degradation, DMLR has capitalized on the availability of previously mined lands to dispose of excess spoil from mining operations.
- Supports the Interstate Mining Compact Commission and National Association of Abandoned Mine Land Programs efforts to encourage Congressional reauthorization of the AML program.
- Encourages the use of experimental practices to develop industry and commercial sites for the region.
- DMLR continues using multi-interest work teams to address remining and clean streams issues. The ad-hoc teams are comprised of State, Federal, academic, environmental, and industry representatives.
- DMLR's approved program is current. An amendment responsive to a Federal Part 732 Notice on Valid Existing Rights has been developed by DMLR. DMLR is waiting on settlement of Federal litigation on VER before submitting the amendment.
- DMLR and the Virginia Division of Mineral Resources continued to maintain the coal bed mapping program. This year DMLR began scanning, digitizing and geo-referencing work on several collections of old mine maps, performed with funding provided by a \$ 308,000 MSHA grant. This program supports a geographic information system data base of all known mining within the Virginia coalfields. This information aids permit reviews and decisions, and complaint investigations. This information is available to the public.
- The U. S. Environmental Protection Agency has delegated their Clean Water Act responsibilities for regulating mine discharges directly to the DMLR. DMLR issues joint mining and National Pollutant Discharge Elimination Systems (NPDES) permits. Jointly issued NPDES and SMCRA permits are convenient for both permitting and regulatory purposes.
- During the evaluation period the abandoned mine land program completed 7 non-emergency projects, and 13 emergency projects. The AML hazards or features have been effectively abated on these project areas.
- Continues a partnership with the Nature Conservancy promoting carbon sequestration. The agreement provides for a cooperative effort between the two Agencies related to reforestation of selected abandoned mine land sites. There is a

high probability that a major eastern utility will fund a project to reforest an abandoned mine site and reclaim abandoned mine lands. The Nature Conservancy will acquire title to the land to ensure long-term success of the reforestation efforts.

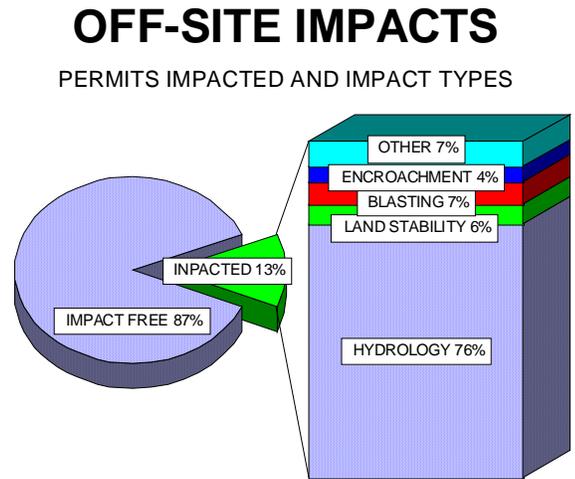
- DMLR led development of the DMME University, a computer-based training inventory and training record. Employees can request training events electronically, the supervisor can approve the training request electronically and employees can evaluate the training electronically.
- DMME supported Virginia Tech's Powell River Project research to determine the cost of mitigation for the effects of hollow fills on aquatic functions and values. This research will help establish in-lieu fee rates whereby permittees may pay a fee instead of completing actual mitigation. The fees would be used by a third party to mitigate other mine related problems.
- DMLR began discussion with the Army Corps of Engineers on the use of in-lieu fees for mitigation of stream impacts. DMLR and The Nature Conservancy (TNC) would partner in use of the fees to reclaim abandoned mine lands directly impacting streams. The TNC would acquire any title or easements to ensure long-term success.
- In its 2003-2004 Operational Plan, DMLR devised new performance measures to better track the attainment of agency goals and objectives. Many of these performance measures are identical to OSM performance measures, which will increase the effectiveness of inter-agency reporting.
- DMLR developed and implemented a bond release tracking procedure in its electronic permitting system. This allows easier tracking of performance related measures.
- Virginia and OSM continue to review refuse impoundments to ensure compliance with the new OSM, Mine Safety and Health Administration, and National Academy of Sciences recommended safety standards.

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 are being reported nationally in terms of the number and extent of observed off-site impacts and the number of acres that have been mined and reclaimed and which meet the bond release requirements for the various phases of reclamation. Individual topic reports are available in the Big Stone Gap OSM Office. These reports provide additional details on how the following evaluations and measurements were conducted.

A. Off-Site Impacts:

During the evaluation year, DMLR inspectors conducted 5,959 inspections on 612 mines and exploration notices. We analyzed off-site impact data (Table 4) from 2,679 complete (includes 200 complete inspections on exploration notices) and 3,280 partial State inspections. Eighty-seven percent of mine sites inspected were free of off-site impacts. Thirty-two percent of the 425 violations identified by DMLR resulted in off-site impacts. The number of mine-sites with off-site impacts increased by 3 percent over last year. Data indicates that hydrology performance standards are violated most often (69 percent) and result in the most off-site impacts (76 percent) compared to 64.5 percent and 85 percent last year. Appendix I, [Table 4](#), details the distribution of and resources impacted by off-site impacts. DMLR considered the impacts to resources as moderate or minor 84 percent of the time, a 6 percent increase from last year.



We inspected 123 sites and gathered data on off-site impacts to verify DMLR findings. Inspectors found that 89.4 percent of the sites visited were free of off-site impacts. The data collected by us shows trends similar to those found by DMLR in the larger population. Both DMLR and our data indicate that the off-site impacts to resources are being minimized.

B. Bond Release:

During the evaluation year, we found that 286 acres of land were reclaimed to Phase I bond release standards. This implies that only this amount of acreage was reclaimed to approximate original contour and topsoil replaced. This is misleading because a Phase I release depends on the permittee applying for the Phase I reduction. In reality, most permittees do not apply for a Phase I bond reduction and often do not apply for Phase II reductions, opting to apply for a Phase III (final) bond release only.

We found that 863 acres of land were successfully revegetated with surface stability achieved in order to receive a Phase II bond release. This figure is higher than last year's Phase II bond release acreages.

DMLR records indicate that 1,694 acres of land received Phase III bond release during the evaluation year. As part of a special study, we reviewed 12 of 38 operations that applied for Phase III bond release during the evaluation year. We found on-the-ground reclamation successful on the sampled sites. The post-mining land use was achieved on the sites.

Our review of DMLR's bond release program found again that DMLR was timely in responding to public comments and bond releases were processed in a timely manner.

C. Customer Service:

The DMLR is customer service oriented. Customer service is an integral part of the States strategic planning. The Department of Mines, Minerals and Energy maintains a "client assistance center" in its office in Big Stone Gap to better serve its customers. We believe that the State is providing the utmost in service to all of its customers. Our review of DMLR's bond release program found that DMLR responded to public comments and concerns in a timely manner.

During the year, DMLR initiated website procurement of contractor services on AML projects. Additionally, they developed and implemented customer satisfaction surveys to measure performance on citizen complaints, electronic permitting and the Client Assistance Center.

VI. OSM Assistance

During the past year we provided technical training to DMLR staff members on a variety of subjects through OSM's Technical Training and Tips staffs. Technical staff assisted DMLR investigations of both AML and Regulatory technical issues by providing engineering, geologic and hydrologic expertise. The technical staff also processed a number of experimental practice applications.

We participated on several ad-hoc committees such as remining and the State's AML Advisory Council and assisted the State in implementing its remining initiative. We continued to work with DMLR to develop the "mined fields to soccer fields" program and supported state AML enhancement and "no cost" reclamation efforts.

OSM's Appalachian Region partnered with the States to develop the *Appalachian Regional Reforestation Initiative (ARRI)*, a program that promotes the reforestation of mined lands. *ARRI's* goal is re-establishment of a productive and healthy forest.

Additionally, we provided the State matching grant funds to operate the regulatory program. We also provided 100 percent funding for the abandoned mine land and emergency programs.

VII. General Oversight Topic Reviews

During the evaluation year we and/or DMLR evaluated the following oversight topics. Unless otherwise noted, copies of the detailed reports for these topics are available at our office in Big Stone Gap, Virginia.

- *Active/reclamation active permit inspections* - We inspected, jointly with DMLR, 75 active mine sites during the evaluation year. We focused on compliance with performance standards and assessment of off-site impacts, if applicable. Off-site impacts are discussed in section V. A. of this report.

Additionally, we targeted three areas, acid mine drainage inventory verification, mitigation plans, and remining delineation. The review found that the Division of Mined Land Reclamation (DMLR) is successfully requiring innovative and effective mitigation plans on permits that impact streams, wetlands, and riparian zones. The acid mine drainage review found that all permits with acid mine drainage were on the DMLR Acid Mine Drainage Inventory. Permits issued by DMLR effectively identified areas disturbed prior to passage of the Act.

- *Phase III Bond Release Reclamation Success* - This review was conducted to evaluate Virginia's program related to approving final bond releases on Title V permits and closing out reclaimed bond forfeitures. The review found that DMLR has successfully implemented the program goals and objectives for processing and releasing bonds during Evaluation Year (EY) 2004. DMLR has also effectively met program goals for reclaiming and closing out bond forfeiture sites during EY 2004. DMLR has enhanced the implementation of the bond release program by initiating electronic processing of bond release applications. This is reducing the average time it takes to process a bond release application and approve the release. The bond forfeiture program has been enhanced by reducing the time frame for initiating reclamation after completing forfeitures and for continuing to reduce the number of un-reclaimed forfeitures.
- *AML Long-Term Project Success* – We evaluated DMLR's long-term success in abating abandoned mine land hazards. These AML hazards were eliminated through both AML non-emergency and AML emergency projects conducted under the Virginia Coal Surface Mining Reclamation Regulations and Virginia's AML Reclamation Plan.

We found that DMLR's reclamation and construction methods, materials used, site monitoring, and occasional maintenance projects, resulted in the successful long term elimination of AML hazards. However, site inspections did reveal two instances where maintenance work was recommended to ensure long-term success of the project. We also found that a significant number (five of nine) of project sites have been partially re-disturbed by third party activities.

- *Impoundments* - Following the coal slurry impoundment spill in Martin County, KY, in 2000, Congress funded a study by the National Research Council (NRC). The Council was tasked to examine ways to reduce the potential for similar accidents. As an outgrowth of the Council's activities, the Big Stone Gap Field Office reviewed the procedures and State staffing workloads related to MSHA class impoundments. Our study found that the Virginia Division of Mined Land

Reclamation's current staffing is adequate to handle the current and expected future workloads associated with MSHA class impoundments.

During the year we completed two draft reports on specific high risk impoundments. These reports are currently being reviewed and commented on by DMLR. Copies of these reports will be available once finalized. We have completed field work on four additional impoundments and reports are forthcoming.

- *Applicant Violator System (AVS)* - This review was conducted to evaluate Virginia's operation, maintenance, and use of the AVS. The review found that DMLR uses all databases to verify ownership and control data and enters ownership and control data into the AVS timely and accurately. However, DMLR does not always request a final OSM evaluation report within 5 days prior to permit issuance as recommended by AVS System Advisory Memorandum (SAM) #2. DMLR has committed additional resources and expects to meet all requirements of SAM #2 in the future. The review found that DMLR adds/deletes operator/contractor relationships in the AVS as required.
- *Blasting Compliance* - A team of Virginia Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (DMLR) and Office of Surface Mining (OSM) staff evaluated Virginia's implementation of its blasting regulations. Our review found that DMLR is successfully implementing the program to assure compliance with the blasting regulations and is protecting the public from the potential impacts of blasting.
- *Conflict of Interest* – We evaluated this topic during the year. We have requested additional review by the Agency Ethics Office which has not been completed. As soon as the Agency Ethics Office completes its review we will finalize a report and make it available to the public.
- *Civil Penalty Assessments* - The review evaluated DMLR's performance in following program requirements of timeliness, file documentation, adhering to mandatory program provision, withholding of permits for non-payment of civil penalties and other civil penalty collection efforts.

We found that generally DMLR adhered to the program provisions involving the civil penalty assessment processes. Assessments were based upon approved regulatory program criteria. Files were properly documented. Assessment proceedings were conducted in accordance with program provisions and DMLR was found to be successful in civil penalty collection efforts. There were a few isolated instances where specified regulatory timeframes for service of the civil penalty assessment or the assessment conference officer's decisions was not met.

National Environmental Policy Act (NEPA) Compliance Reviews - During EY 2004, we conducted reviews of environmental documents submitted by DMLR for NEPA

compliance and issued authorizations on 20 non-emergency AML sites. We also conducted NEPA reviews and declared emergencies on 15 sites with AML hazards.

APPENDIX A

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

TABLE 1

COAL PRODUCTION (Millions of short tons)			
Period	Surface mines	Underground mines	Total
Coal production ^A for entire State:			
Annual Period			
2001	10.112	22.099	32.211
2002	9.057	19.629	28.686
2003	10.028	21.000	31.028
Total	29.197	62.728	91.925

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

TABLE 2

INSPECTABLE UNITS													
As of June 30, 2004													
Coal mines and related facilities	Number and status of permits									Insp. Units^D	Permitted acreage^A (hundreds of acres)		
	Active or temporarily inactive		Inactive		Abandoned		Totals						
	IP	PP	Phase II bond release										
			IP	PP	IP	PP	IP	PP	IP		PP	IP	PP
STATE AND PRIVATE LANDS REGULATORY AUTHORITY: STATE													
Surface mines	143		24				0	167			60.5	60.5	
Underground mines	228		55				0	283			8.6	8.6	
Other facilities	86		9			2	0	97			7.7	7.7	
Subtotals	0	457	0	88	0	2	0	547	0	0	76.8	76.8	
FEDERAL LANDS REGULATORY AUTHORITY: STATE													
Surface mines							0	0				0	
Underground mines	3						0	3			0	0	
Other facilities							0	0				0	
Subtotals	0	3	0	0	0	0	0	3	0	0	0	0	
ALL LANDS^B													
Surface mines	143		24				0	167			60.5	60.5	
Underground mines	231		55				0	286			8.6	8.6	
Other facilities	86		9			2	0	97			7.7	7.7	
Totals	0	460	0	88	0	2	0	550	0	0	76.8	76.8	
Average number of permits per inspectable unit (excluding exploration sites)									<u>1</u>				
Average number of acres per inspectable unit (excluding exploration sites)									<u> </u>				
Number of exploration permits on State and private lands:									<u>0</u>		On Federal lands ^C :		<u>0</u>
Number of exploration notices on State and private lands:									<u>62</u>		On Federal lands ^C :		<u>0</u>
IP: Initial regulatory program sites PP: Permanent regulatory program sites ^A When a unit is located on more than one type of land, include only the acreage located on the indicated type of land. ^B Numbers of units may not equal the sum of the three preceding categories because a single inspectable unit may include lands in more than one of the preceding categories. ^C Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management. ^D Inspectable Units includes multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.													

TABLE 3

STATE PERMITTING ACTIVITY												
As of June 30, 2004												
Type of Application	Surface mines			Underground mines			Other facilities			Totals		
	App. Rec.	Issued	Acres^A	App. Rec.	Issued	Acres^A	App. Rec.	Issued	Acres^A	App. Rec.	Issued	Acres
New Permits	6	8	4,735	8	4	147	1	1	141	15	13	5,023
Renewals	23	12	6,035	49	47	2,611	32	29	2,628	104	88	11,275
Transfers, sales and assignments of permit rights	5	16		6	17		4	6		15	39	
Small operator assistance	0	0		0	0		0	0		0	0	
Exploration permits	0	0		0	0		0	0		0	0	
Exploration notices ^B											76	
Revisions (exclusive of incidental boundary revisions)		116			107			23			246	
Incidental boundary revisions		25	169		25	-3		1	1		51	167
Totals	34	177	10,939	63	200	2,756	37	60	2,770	134	513	16,465
OPTIONAL - Number of midterm permit reviews completed that are not reported as revisions.										<u>43</u>		
^A Includes only the number of acres of proposed surface disturbance. Includes 1553 acres for surface and 139 acres for other that was added to existing permits under new permit procedures.												
^B State approval not required. Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining.												

TABLE 4

OFF-SITE IMPACTS														
RESOURCES AFFECTED			People			Land			Water			Structures		
DEGREE OF IMPACT			minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE	Blasting	8	0	0	6	2	0	1	1	0	1	0	0	2
	Land Stability	8	0	1	1	2	3	1	1	2	1	1	2	1
	Hydrology	102	6	1	2	13	3	2	67	19	4	2	2	2
	Encroachment	6	0	1	0	3	1	0	3	0	0	0	0	1
	Other	10	0	0	0	1	2	0	4	2	3	0	0	0
	Total	134	6	3	9	21	9	4	76	23	9	3	4	6
Total number of inspectable units:						<u>550</u>								
Inspectable units free of off-site impacts:						<u>480</u>								
OFF-SITE IMPACTS ON BOND FORFEITURE SITES														
RESOURCES AFFECTED			People			Land			Water			Structures		
DEGREE OF IMPACT			minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE	Blasting		0	0	0	0	0	0	0	0	0	0	0	0
	Land Stability		0	0	0	0	0	0	0	0	0	0	0	0
	Hydrology		0	0	0	0	0	0	0	0	0	0	0	0
	Encroachment		0	0	0	0	0	0	0	0	0	0	0	0
	Other		0	0	0	0	0	0	0	0	0	0	0	0
	Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Total number of inspectable units:						<u>0</u>								
Inspectable units free of off-site impacts:						<u>0</u>								

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

TABLE 5

ANNUAL STATE MINING AND RECLAMATION RESULTS		
Bond release phase	Applicable performance standard	Acreage released during this evaluation period
Phase I	- Approximate original contour restored - Topsoil or approved alternative replaced	286.00
Phase II	- Surface stability - Establishment of vegetation	863.00
Phase III	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	1,694.00
Bonded Acreage Status^A		Acres
Total number of acres bonded at end of last review period (June 30, 2003) ^B		64,599.00
Total number of acres bonded during this evaluation year		63,875.00
Number of acres bonded during this evaluation year that are considered remining, if available		N/A
Number of acres where bond was forfeited during this evaluation year (also report this acreage on Table 7)		0.00

^A Bonded acreage is considered to approximate and represent the number of acres disturbed by surface coal mining and reclamation operations.

^B Bonded acres in this category are those that have not received a Phase III or other final bond release (State maintains jurisdiction).

OPTIONAL TABLE(S) 6

Not Used

TABLE 7

STATE BOND FORFEITURE ACTIVITY (Permanent Program Permits)		
Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Acres
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2003 (end of previous evaluation year) ^A	3	36.99
Sites with bonds forfeited and collected during Evaluation Year 2004 (current year)	0	0.00
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2004 (current year)	0	0.00
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2004 (current year)	2	35.16
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2004 (end of current year) ^A	1	1.83
Sites with bonds forfeited but uncollected as of June 30, 2004 (end of current year)	0	0.00
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of June 30, 2003 (end of previous evaluation year) ^B	1	96.10
Sites where surety/other party agreed to do reclamation during Evaluation Year 2004 (current year)	0	0.00
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2004 (current year)	0	0.00
Sites with reclamation completed by surety/other party during Evaluation Year 2004 (current year) ^C	1	96.10
Sites being reclaimed by surety/other party as of June 30, 2004 (current evaluation year) ^B	0	0.00
^A Includes data only for those forfeiture sites not fully reclaimed as of this date ^B Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date ^C This number also is reported in Table 5 as Phase III bond release has been granted on these sites		

TABLE 8

VIRGINIA STAFFING (Full-time equivalents at the end of evaluation year)	
Function	EY 2004
Regulatory Program	
Permit review	23.00
Inspection	26.00
Other (administrative, fiscal, personnel, etc.)	30.00
Regulatory Program Total	79.00
AML Program Total	16.00
TOTAL	95.00

TABLE 9

FUNDS GRANTED TO VIRGINIA BY OSM (Millions of dollars) EY 2004		
Type of Grant	Federal Funds Awarded	Federal Funding as a Percentage of Total Program Costs
Administration and Enforcement		
State Lands	\$3,205,435.00	50%
Federal Lands	\$3,998.00	100%
Small Operator Assistance	\$0.00	NA
Sub-Total	\$3,209,433.00	
Abandoned Mine Land	\$7,225,496.00	100%
Totals	\$10,434,929.00	

TABLE 10

STATE OF VIRGINIA INSPECTION ACTIVITY		
PERIOD: JULY 1, 2003 - JUNE 30, 2004		
Inspectable Unit Status	Number of Inspections Conducted	
	Complete	Partial
Active*	1,671	3,168
Inactive*	778	92
Abandoned*	30	20
Total	2,479	3,280
Exploration	200	0

* Use terms as defined by the approved State program.

TABLE 11

STATE OF VIRGINIA ENFORCEMENT ACTIVITY		
PERIOD: JULY 1, 2003 - JUNE 30, 2004		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	362	410
Failure-to-Abate Cessation Order	3	4
Imminent Harm Cessation Order	11	11

* Does not include those violations that were vacated.

TABLE 12

LANDS UNSUITABLE ACTIVITY

PERIOD: JULY 1, 2003 - JUNE 30, 2004

Number of Petitions Received	0		
Number of Petitions Accepted	0		
Number of Petitions Rejected	0		
Number of Decisions Declaring Lands Unsuitable	0	Acreage Declared as Being Unsuitable	0
Number of Decisions Denying Lands Unsuitable	0	Acreage Denied as Being Unsuitable	0

APPENDIX B
STATE COMMENTS ON THE REPORT
OSM DISPOSITION OF STATE COMMENTS

From: "Vincent, Les" <Les.Vincent@dmme.virginia.gov>
To: "Ian Dye (E-mail)" <idyed@osmre.gov>
Date: 8/31/2004 3:15:52 PM
Subject: draft annual report

DMLR has reviewed the draft report and offers the following comments.

- * On page 11, last bullet, it refers to the Martin County slurry spill as occurring in 2002. It occurred in the year 2000.
- * DMLR Permitting staff has provided corrected permitting action statistics to your office.
- * Two things should be added to the Accomplishments section 1) DMLR began receiving completion reports electronically through electronic permitting and 2) encouraged the use of the AML Enhancement Rule to clean up several refuse piles.
- * Page 3 - Recommend stating that fee collection that funds the program is set to expire this year.

- * (There is over a billion dollars in funding that has not been appropriated)

- * Page 3 - In the 2nd paragraph of Part III the report should also note that OSM participated with the Upper Tennessee River Roundtable.

- * Page 7 - Recommend deleting the bullet about DMLR's work with the Soccer Foundation. This was done in previous years.

- * Page 22 - There is some question as to how to accurately reflect DMLR staffing as a result of seamless operations. Recommend the report use the staffing noted in our 2004 AML Consolidated Grant

I appreciate the assistance and cooperation provided to our agency by the staff in your office and other OSM offices during EY04. This great collaboration has enhanced our work in Virginia and we look forward to working with your office during EY05.

Thanks

Les Vincent, PE
Customer Services Unit Manager
Department of Mines, Minerals & Energy
Division of Mined Land Reclamation
P.O. Drawer 900
3405 Mountain Empire Rd.
Big Stone Gap, VA 24219
(276) 523-8156
<mailto:les.vincent@dmme.virginia.gov>

CC: "Barker, Ernie" <Ernie.Barker@dmme.virginia.gov>, "Collins, Gerald" <Gerald.Collins@dmme.virginia.gov>, "Wampler, Benny"

<Benny.Wampler@dmme.virginia.gov>, "Williams, Roger"
<Roger.Williams@dmme.virginia.gov>
From: "Vincent, Les" <Les.Vincent@dmme.virginia.gov>
To: "Ian Dye (E-mail)" <idy@osmre.gov>
Date: 9/3/2004 3:08:10 PM
Subject: FW: 2004-08-23 RE: Draft Annual Report typo

Additional typo

Thanks

Les Vincent, PE
Customer Services Unit Manager
Department of Mines, Minerals & Energy
Division of Mined Land Reclamation
P.O. Drawer 900
3405 Mountain Empire Rd.
Big Stone Gap, VA 24219
(276) 523-8156
<mailto:les.vincent@dmme.virginia.gov>

-----Original Message-----

From: Haynes, Lynn
Sent: Monday, August 23, 2004 12:55 PM
To: Vincent, Les
Cc: Collins, Gerald
Subject: 2004-08-23 RE: Draft Annual Report

I think the overall report looks good; just a couple of minor comments.

page # 5 - Accomplishments bullet notes EP II "is scheduled for release during August, 2004";
should change to state "was released..."

page #12 - Typo in Blasting Compliance bullet - "requaltions" instead of "regulations."

-----Original Message-----

From: Collins, Gerald
Sent: Monday, August 23, 2004 8:30 AM
To: Slack, David; Haynes, Lynn; Egan, Gary; Belcher, John
Subject: FW: Draft Annual Report

Please review and make any comments by Friday, Aug 27.

-----Original Message-----

From: Vincent, Les
Sent: Thursday, August 19, 2004 2:08 PM

To: Haynes, Lynn; Egan, Gary; Slack, David; Barker, Ernie; Collins, Gerald; Williams, Roger
Cc: Bledsoe, Gavin; Gates, Marilyn; Lambert, Butch; Mooney, Harve; O'Quinn, Joey; Rivers, J.
H.; Smith, Sandy; Warner, Billie; Whitt, Deborah; Zentmeyer, Jan
Subject: FW: Draft Annual Report

Please have appropriate staff review and provide comments back to me by August 30.

Thanks

Les Vincent, PE
Customer Services Unit Manager
Department of Mines, Minerals & Energy
Division of Mined Land Reclamation
P.O. Drawer 900
3405 Mountain Empire Rd.
Big Stone Gap, VA 24219
(276) 523-8156
<mailto:les.vincent@dmme.virginia.gov>

-----Original Message-----

From: Ian B. Dye Jr. [mailto:idy@osmre.gov]
Sent: Thursday, August 19, 2004 2:02 PM
To: Vincent, Les
Cc: Constance Kite; Douglas E. Stone; Debra H. Zirkle; Harry Morris;
Robert A. Penn; Ronnie W. Vicars; Sandy E. Tolbert; Timothy T. Brehm;
Victor B. Virts; William Arnett; Walt F. Wieder
Subject: Draft Annual Report

Les,

I have attached the Draft 2004 Annual Evaluation Report. Please distribute this to your management team for review and comment. We would like to have your consolidated comments back no later than September 2, 2004. Thanks!

Ian



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
1941 Neeley Road, Suite 201
Big Stone Gap, Virginia 24219

SEP 13 2004

Acting Director
Virginia Division of Mined Land Reclamation
P. O. Drawer 900
Big Stone Gap, Virginia 24219

Dear Acting Director:

Thank you for your e-mail comments of August 31 and September 3, 2004, on the draft 2004 Virginia annual evaluation report. We have changed the report as requested to reflect your comments. A copy is enclosed for your reference. We will be posting the final version on the internet shortly and will make arrangements to have the final version printed.

I too appreciate the assistance and cooperation of our agencies during the year and look forward to a continued cooperative relationship. If you have questions, please contact either Ian Dye, Jr. or me at 276 523-4303.

Sincerely,

Robert A. Penn, Director
Big Stone Gap Field Office

Enclosure