

***OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT***

Annual Evaluation Summary Report

for the

Regulatory Program

Administered by the Knoxville Field Office

of

Tennessee

for

Evaluation Year 2002

(October 1, 2001, to September 30, 2002)

(October 2002)

TABLE OF CONTENTS

I. Introduction2

II. Overview of Coal Mining Industry2

III. Overview of Public Participation in the Program.....3

IV. Major Accomplishments/Issues/Innovations.....4

V. Technical Assistance10

VI. Success in Achieving the Purposes of SMCRA.....11

 A. Off-site Impacts.....12

 B. Bond Releases12

Appendix A: Tabular Summary of Core Data to Characterize the Program.....13

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. The Act also provides authority for OSM to implement a Federal regulatory program in the States without approved regulatory programs. In Tennessee, OSM implemented the Federal regulatory program in October 1984 when the State repealed its surface mining law. This report contains summary information regarding the Tennessee Federal Program and the effectiveness of the Federal Program in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of October 1, 2001, to September 30, 2002. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Knoxville, Tennessee OSM Office.

The following list of acronyms are used in this report:

ACSI	Appalachian Clean Streams Initiative
AMD	Acid Mine Drainage
BTTI	Branch of Technical Training
EIS	Environmental Impact Statement
EP	Electronic Permitting
KFO	Knoxville Field Office
MEIR	Minesite Evaluation Inspection Report
MTR	Mountain Top Removal
NRCS	Natural Resources Conservation Service
OSM	Office of Surface Mining
SMCRA	Surface Mining Control and Reclamation Act
TDEC	Tennessee Department of Environment and Conservation
TWRA	Tennessee Wildlife Resources Agency
TMHP	Toxic Material Handling Plan

II. OVERVIEW OF THE TENNESSEE COAL MINING INDUSTRY

Tennessee's coal resources are in 22 counties located in the Appalachian Region of the Eastern United States extending from the Kentucky border to the Alabama border in the east central portion of Tennessee. Mining in the northern counties is primarily in the steep slope areas of the Cumberland Mountain range. Mining in the southern counties is confined to area-type operations due to the relatively flat terrain associated with the Cumberland Plateau.

Tennessee's recoverable coal reserves of 75.5 million short tons exist in bituminous coal beds 28 to 42 inches in thickness at depths of up to 1,000 feet. Tennessee coal is used primarily for the generation of electric power.

Tennessee ranks nineteenth in production of coal among the 26 coal producing states thus far in calendar year 2002. Coal production steadily declined from a high of 11,260,000 tons in 1972

to 2,680,888 tons in 1998. During 2000 and 2001, coal production has increased slightly and is fluctuating around 3 million tons annually. Currently, there are 25 active coal-producing mines that have permitted 5,786 acres for mining. Underground mines have permitted 233 acres (excluding shadow areas) at 10 active mines, and surface operations have permitted 5,553 acres at 15 active mines.

III. OVERVIEW OF THE PUBLIC PARTICIPATION OPPORTUNITIES IN THE TENNESSEE FEDERAL PROGRAM

The Tennessee Federal Program provides numerous public participation opportunities in its program activities. Efforts are made to encourage participation and to inform the public of the avenues to participate in the regulatory program.

X Public/Citizen Participation in the Regulatory Process

Citizens, environmental groups, and industry representatives have complete access to all regulatory program files including permitting, inspection and enforcement, and bonding program files. Managers and staff have open-door policies for any segment of the public to discuss issues that may arise.

The KFO meets with individual citizens, during the permitting process, who have expressed concerns or have an interest in a pending permit. The purpose of these meetings are to answer questions relative to the concerns and to provide information/explanations with respect to the permitting actions at issue.

Public participation opportunities have been provided to the public in the review of 15 new permit applications processed/issued by KFO this year.

X Industry Meetings

X Pre-Permit Application Meetings with the Industry.

KFO continues to meet with individual coal companies or their consultant prior to submittal of a permit application to discuss potential issues that might arise during the permitting process and to seek resolution of concerns/problems that address regulatory requirements as well as the needs of the industry stakeholder. Because of the success of this initiative and the acceptance of this endeavor by the permit applicants, consultants, other participating agencies and OSM, this activity has become routine in the normal permitting process.

IV. MAJOR ACCOMPLISHMENTS/ISSUES/INNOVATIONS IN THE TENNESSEE FEDERAL PROGRAM

X Identification of Potential Problems

To assist operators in preventing environmental problems and reduce follow-up inspection hours, after issuance of notices of violation, the field office continues to place additional emphasis on inspectors identifying and advising operators of potential problems observed during inspections before they became citable violations. This initiative has reduced the number of notices of violation being issued and the number of required follow-up inspections.

X Water Quality Evaluation Inspections

The Knoxville Field Office continues to perform water quality evaluation inspections to identify potential problem water producers. The purpose of these inspections is to determine if the approved toxic material handling plans (TMHP) are effective in preventing problem water drainage. Information from these inspections is used to determine if mining practices need to be modified or if permit revisions are required.

During evaluation year 2002, KFO conducted six follow-up inspections/evaluations. All six had been inspected in the past and either the team could not determine if the site would be a problem water producer due to lack of information or the team needed to check on the operator's progress with TMHP changes. On these inspections, four permits (Appolo Fuels' 3054, Gatliff Coal Company's 2955, Hood Coal Company's 3061, and Tennessee Consolidated Coal Company's 2927) were found to have adequate TMHPs. The team continued to monitor Skyline Coal Company permit nos. 2846 and 2959 because of noncompliant effluent discharges of manganese and new seeps that have appeared below the minesite. The company is continuing to plan for the mitigation of the noncompliant discharges and is preparing proposed revisions to control the seeps. The team also re-inspected Cumberland Coal Company's permit no. 2981 to determine the progress made toward handling water quality problems previously identified. The company has obtained approval of permit revisions and is working very closely with the Tennessee Division of Water Pollution Control and OSM's Technical Group to mitigate the water quality problems.

X Abandoned Mine Land Projects in Tennessee

The Office of Surface Mining allocates approximately one million dollars of the Secretary of Interior's discretionary funding to reclaim high priority abandoned mine land sites in Tennessee annually. High priority refers to sites that are considered hazardous to the health and safety of the public or are causing harm to the environment. The OSM's Federal Reclamation Program staff from the Appalachian Regional Coordinating Center in Pittsburgh, Pennsylvania works very closely with the Tennessee Department of Environment and Conservation (TDEC), Land Reclamation Section, in selecting and reclaiming the sites. The State and OSM use the "cooperative agreement" method where

OSM funds the projects and the State's staff designs the projects, hires contractors to perform the work, and ensures the work is performed as designed.

X **Appalachian Clean Streams Initiative (ACSI)**

The Federal Program in Tennessee participates in the Appalachian Clean Streams Initiative as facilitator with local watershed efforts to mitigate the effects of acid mine drainage being discharged into watersheds from abandoned coalmines. The TDEC completed on-the-ground work using monies provided by local, State, and Federal agencies and OSM's Abandoned Mine Land (AML) fund. OSM provided three summer interns during 2002 to support the efforts of watershed groups in Tennessee. Also, OSM continued a watershed assistance program in Tennessee with the Volunteers in Service To America, VISTA, on two-year assignments to support the efforts of two watershed groups and another volunteer to organize watershed groups in two other areas. The four designated ACSI watershed groups are:

North Chickamauga Creek. This is a watershed near Chattanooga that has a formal citizen's group leading the clean-up effort. The North Chickamauga Creek Conservancy has been the driving force behind the watershed restoration activities, which include AMD treatment systems, land acquisitions for watershed preservation, stream bank stabilization projects, water monitoring programs, and Greenway trails and pathways. To date, cooperating agencies, private and corporate contributors, and in-kind services from the local communities have provided over five million dollars toward the restoration and preservation activities with OSM providing \$274,555.

Bear Creek. This is a watershed near Oneida in Scott County that flows into Big South Fork National River and Recreation Area. The TDEC installed numerous passive treatment systems at abandoned coalmines in the watershed and additional facilities will be installed in the future as funds become available. The TDEC, the Environmental Protection Agency, the Natural Resources and Conservation Service (NRCS) and OSM have contributed \$1,423,438.00 in funds and in-kind services. During FY '99, KFO provided technical assistance to the NRCS for design of AMD treatment facilities, which will be installed by the NRCS contractors. In FY 2000, OSM agreed to provide \$80,000.00, under OSM's Watershed Cooperative Agreement Program, for AMD mitigation projects with NRCS providing \$260,000.00 and the local community providing \$20,000.00. In FY 2002, OSM approved \$120,000.00 Watershed Cooperative Agreement with NRCS providing \$560,000.00 for mitigation projects to be installed by NRCS.

Big Laurel Creek. This is a watershed in Fentress County, Tennessee. The Tennessee Wildlife Resources Agency (TWRA), in cooperation with the TDEC is taking the lead for the mitigation projects. The State agencies have installed several passive treatment systems in the watershed using State and OSM's AML funds. The TDEC, the TWRA, and OSM have spent \$1,264,311.00.

Coal Creek. This watershed is about 30 miles north of Knoxville and the creek flows through Lake City and empties into the Clinch River, one of Tennessee's most used trout fisheries. The mission statement of the Coal Creek Watershed Foundation is to ■Improve the quality of Life in the Coal Creek Watershed•. The group was formed in late 1999 and has already been very active with clean up, educational, and outreach efforts. Many State, local, and Federal agencies are initiating studies in the watershed to determine the best approaches to meet the goals of the group.

X Litigation

Appolo Fuels, Inc. v. United States

On January 3, 2000, the plaintiff filed a complaint alleging permanent and temporary takings of its coal reserves and mining rights. The plaintiff's claims are based on OSM's designation of the watershed of Little Yellow Creek in Claiborne County, Tennessee, as unsuitable for surface coal mining (but not underground mining from portals outside the petition area), as well as OSM's alleged delay in deciding the petition that requested the designation. The government filed a motion for summary judgment on May 17, 2002. We also filed a motion in *limine*, asking the court to bar plaintiff from collaterally attacking the validity of the lands unsuitable designation at issue in this case. Plaintiff's consolidated responses to both motions were filed on August 29, 2002. The government filed its consolidated replies on October 11, 2002.

The designated area encompasses Fern Lake, the sole drinking water supply for the city of Middlesboro, Kentucky. The primary basis for the designation was the anticipated adverse impacts of surface coal mining on the Fern Lake water supply. Additionally, mining in the petition area would adversely affect the *backside dace*; a State-listed endangered species and a Federally listed threatened species, and adversely affect the view shed from an overlook of nearby Cumberland Gap National Historic Park. Plaintiff's valuation experts have valued the property at approximately \$21,432,000 as of the alleged date of taking. The government's expert has valued the property within the petition area at \$7,400,000.

National Mining Association ("NMA") v. Norton

On December 1, 2001, the Government filed its answer in this case. NMA challenges OSM's Knoxville Field Office's issuance of Field Office Policy Memorandum No. 37 which establishes procedures for revising permits and increasing reclamation bonds where there is unanticipated AMD. The plaintiff asserts that the Tennessee federal program had not previously recalculated the bond upon the occurrence of AMD and had released the bond even in cases where continued water treatment could be required to meet applicable effluent limitations. Accordingly, NMA argues that the Policy Memorandum's new procedures for recalculating bond amounts to account for long-term treatment of AMD are violative of both APA and SMCRA. OSM met with the NMA on July 24, 2001, in response to NMA's request that the parties jointly explore the potential for "compromise" of AMD bonding issues. OSM has sent a response document to NMA, setting forth the agency's understanding of the issues raised at the meeting, for further discussion. OSM, DOJ, and NMA had originally considered formulating a list of national AMD bonding issues for

alternative dispute resolution. More recently, OSM put those efforts on hold while the agency considers rulemaking. An advanced notice of proposed rulemaking was published on May 17, 2002, and the original comment period was scheduled to close on July 16, 2002. On that date, OSM extended the comment period for an additional 90 days, closing on October 15, 2002.

Cane Tennessee, Inc. v. United States; Colten, Inc. and Cane Tennessee, Inc. v. United States; and Mary Anne Wyatt, et al. v. United States

Plaintiffs in these consolidated actions own the fee interests (Cane Tennessee, Inc. and Colten, Inc.) and royalty interests (the Wyatts) in the property that was at issue in *Wyatt v. United States*, 271 F.3d 1090 (Fed. Cir. 2001), *rev'g Eastern Minerals Int'l, Inc., v. United States*, 36 Fed. Cl. 541 (1996); 39 Fed. Cl. 621 (1997), *cert. denied*, 122 S. Ct. 1960 (2002). The property is located in close proximity to Fall Creek Falls State Park in Tennessee. In *Wyatt*, the U.S. Court of Appeals for the Federal Circuit reversed the trial court's judgment in *Eastern Minerals International, Inc., v. United States*. In *Eastern Minerals*, the trial court ruled that OSM's "extraordinary delay" in processing Eastern Minerals' (Cane's lessee's) permit application affected a permanent regulatory taking of Eastern Minerals' right to mine coal under its lease with Cane. However, the court dismissed the claim of Van Buren Minerals (Colten's lessee) as unripe since Van Buren has never applied for a permit. In reversing *Eastern Minerals*, the Federal Circuit concluded, among other things, that the trial court's finding of extraordinary delay was clearly erroneous.

In *Cane Tennessee, Inc. v. United States*, the plaintiffs seek just compensation for an alleged regulatory taking of their "lessor's interest" in the subject property based on the same government action – extraordinary delay in processing Eastern Minerals' permit application - that is at issue in *Wyatt/Eastern Minerals*. On September 30, 1999, Judge Emily Hewitt granted and denied in part the government's previous motion for summary judgment, 44 Fed. Cl. 785 (1999). In our motion, filed on June 20, 1997, the government argued that plaintiffs' claims are: (1) barred by the doctrine of laches, due to plaintiffs' unexcused and prejudicial delay in filing their complaint; (2) not ripe for review, since plaintiffs never sought permits to mine the subject property, and because the claim of Colten is wholly derivative of Van Buren Minerals, which was a dismissed party in *Eastern Minerals*; and (3) noncompensable under the Supreme Court's decision in *Omnia Commercial Co. v. United States* and its progeny in that the claim amounts to mere frustration of contractual expectations. In her decision, Judge Hewitt dismissed the claim of Colten as unripe since neither Colten nor Van Buren has ever applied for a permit; held that Cane's property interest was a royalty rather than a contractual expectation and therefore rejected the government's contractual frustration defense; and held that there were genuine issues of material fact with regard to our laches defense. In *Cane*, plaintiffs' valuation expert has valued Cane's "lessor's interests" in the subject property at \$5,116,000, while the government's expert valued this interest at approximately \$175,000.

In *Colten, Inc. and Cane Tennessee, Inc. v. United States*, the plaintiffs filed their complaint on August 25, 2000. Plaintiffs allege a compensable taking of the same property that is at issue in *Wyatt/Eastern Minerals* as a result of the Secretary's designation of certain lands as unsuitable for surface coal mining operations under SMCRA § 522. The designation occurred on June 17, 2000. The plaintiffs have valued their temporary and permanent

takings claims in the aggregate amount of \$12,529,000 (including interest); the government has valued the alleged permanent taking of the property within the designated area at \$770,000 (excluding interest) and the alleged temporary taking at \$385,000 (excluding interest). The government does not believe that plaintiffs would be entitled to damages to both permanent and temporary takings.

The complaint in *Mary Anne Wyatt, et al. v. United States*, was filed on August 7, 2002. The government filed its answer on October 4, 2002. The Wyatt plaintiff's allege permanent and temporary takings of their 3.5% royalty interest. They claim that the Secretary's lands unsuitable designation affected a permanent taking and that a temporary taking occurred during the pendency of the lands unsuitable petition that requested the designation. Plaintiffs were also parties to *Wyatt v. United States*, 271 F.3d 1090 (Fed. Cir. 2001), *rev'g Eastern Minerals Int'l v. United States*, 36 Fed. Cl. 541 (1996); 39 Fed. Cl. 621 (1997), *cert. denied*, 122 S. Ct. 1960 (2002), in which the U.S. Court of Appeals for the Federal Circuit, among other things, reversed the trial court's ruling that OSM's permitting actions effected a taking of the Wyatts' royalty interests. On October 11, 2002, the court granted plaintiff's motion to consolidate this case with *Cane Tennessee, Inc. v. United States* and *Cane Tennessee, Inc. v. United States*.

On October 2, 2002, Judge Hewitt issued a decision denying plaintiff's motion for partial summary judgment and granting in part and denying in part the government's cross-motion for summary judgment. Plaintiff's motion, filed on March 29, 2002, asked the court to rule on the timing and scope of the alleged temporary and permanent takings and the appropriate "denominator" to be applied in the takings analysis. In assessing the economic impact of the government action, plaintiffs argued that the court should focus only on their coal interests (and not their surface rights). The government's cross-motion, filed on May 6, 2002, argued that there was no temporary taking and that the "denominator" should include all of plaintiffs' property, including surface interests. The court agreed with the government that as to plaintiff Cane, the "parcel as a whole" will include the entirety of Cane's interests, both surface and mineral. The court also ruled that any temporary taking could not have started before OSM accepted the lands unsuitable petition for processing on October 5, 1995. The court directed the parties to file a status report by October 30, 2002, proposing discovery (for the Wyatt claims) and other proceedings necessary to resolve this matter.

X White Oak Reforestation Project

The White Oak Reforestation Project is located in Campbell County, Tennessee. KFO has developed a partnership with Gatliff Coal Company and the Corbin High School Environmental Science class, with a focus on implementing current reforestation technology.

The initial phase of this project was to establish reforestation demonstration plots on an active mine site permitted by Gatliff Coal Company. KFO staff will be teaching high school courses in basic ecology, tree identification, and reforestation technology. The high school students will also be involved in sampling and data collection on the reforestation plots to determine the survival rates and growth rates of the planted tree and shrub species.

The long-range plans are to establish a permanent demonstration area to show the application of the Forestry Reclamation Approach technology. One of the main benefits of this partnership will be to provide real world applications for the environmental principals that will be taught to the high school students. Emphasis will be placed on explaining the environmental benefits that can be realized through creating highly productive forestland on reclaimed mine sites. These multiple benefits include restoration of clean water and air resources, carbon sequestration, soil conservation, wildlife and endangered species habitat, recreational opportunities, commercial forestry, and other economic opportunities based on forest products.

X Reforestation Enhancement Initiative

KFO has developed a Reforestation Enhancement Initiative and issued policy to encourage the selection of post-mining land uses, which include the planting of trees. This is being coordinated with the national reforestation enhancement initiative, which is managed by the OSM Reforestation Steering Committee.

As part of this effort, the Program Support Group has worked with the Western Regional Coordinating Center to produce a video entitled, "Reforestation: Build a Forest for the Future". This video will be used to provide education and to promote OSM's Reforestation Enhancement Initiative at a national level.

• Market Based Reclamation of Mined Lands

KFO is participating as a member of a core group, which is developing an OSM program to promote the concept of market-based approaches to mined land reclamation. This group includes members from OSM, DOE, and the Electric Power Research Institute (EPRI). This approach is based on the emerging field of eco-asset management, in which ecological resources, such as forestland, wetlands, endangered species habitat, and carbon sequestration, are developed and treated as financial assets. The Program Support Group has worked with headquarters personnel to develop an outreach packet entitled "Market-Based Mine Land Reclamation."

X Summary of Successes

KFO continues to improve its relationships with its customers and stakeholders by providing increased opportunities for participation in the regulatory functions of the Field Office and by meeting with the State, citizens, landowners, and industry to discuss concerns and to foster better working relationships. The results have produced enhancements in compliance with respect to operators anticipating and addressing potential problems before they develop into violations. There have also been enhancements in communications with operators and landowners, based on industry feedback since the outreach efforts began. This feedback has consisted of improved oral communications as well as input in draft (written) field office policies and procedures that affect industry operations.

V. TECHNICAL ASSISTANCE

KFO continues to have a number of its employees, primarily the Technical Group staff, serving on different projects, teams, and assignments that are of common interest to the Appalachian Region and to all of OSM. Several of these technical assistance activities are cooperative efforts with Program Support Division and ARCC. For the evaluation year, the Technical Group has spent approximately 70 percent of its time on Federal program activities and 30 percent on technical assistance activities. The projects/activities, which involve KFO employees, are as follows:

- X Monongahela River Project in Pennsylvania and West Virginia.
- X Valley Fill Impact Study, Appalachian Region.
- X Technical Information Processing System (TIPS) operation and next generation.
- X Appalachian Region Technical Coordinating Committee.
- X Experimental Practices in Kentucky, Virginia and Ohio.
- X West Virginia Permit Review Team
- X West Virginia Mountaintop Environmental Impact Statement
- X Review Environmental Impact Statements and Environmental Assessments prepared by U.S. Corps of Engineers for 404 permits on West Virginia mountaintop removal operations.
- X Bond Handbook Committee
- X National Blasting Work Group
- X National Dam Safety Group
- X Instructors for BTTI Training Courses
- X Instructors for TIPS Training Courses
- X Provide Report for Expert Witness in Court Hearing
- X AMD Bonding
- X Revegetation Issues
- X Revegetation Task Force

- X Reforestation Steering Committee
- X Provide Technical Guidance in Bond Release to Various OSM Offices.
- X Technical Support to OSM's Lexington and Charleston Field Offices for Federal Lands Issues
- X Technical Support to Bureau of Land Management and Tennessee Valley Authority on Federal Lands issues such as leasing and NEPA requirements
- X TIPS Hydrology Software Committee
- X Hydrologic Issues Team for PHC/CHIA
- X West Virginia Citizen Complaint
- X AVS – Bond Forfeiture Project - Investigative assistance to West Virginia Office of Legal Services
- X AVS ■ National ownership and control rule redesign team and the Appalachian Region EP Team, AVS-EP Interface Subteam
- X Tennessee GIS Work Group
- X Valley Fill Stability and Flooding Team (Part of the MTR EIS)
- X State Program Amendments
- X Market-Based Reclamation of Mined Lands Core Group Member
- X White Oak Reforestation Project

VI. 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 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 are available in the Knoxville Office, which provide additional details on how the following evaluations and measurements were conducted.

A. **Off-Site Impacts**

Active Sites:

One of the intents of SMCRA is to prevent adverse affects to the public and to the environmental resources adjacent to a permitted surface coal mining operation. While conducting complete and partial inspections during EY 2002 KFO Reclamation Specialists evaluated all active minesites for off-site impacts. Off-site impacts resulting from SMCRA violations were directly reported via the Minesite Evaluation Inspection Report (MEIR). The MEIR data was transferred to a database and a summary report was developed for year-end reporting purposes. In addition to MEIR data collection, citizen complaint files were evaluated and interviews with individual inspectors were conducted to determine if off-site impacts from other sources had occurred.

Eleven permits were identified as having twenty-four people, land, and water impacts. Fifteen off-site impacts to water (13 minor and 2 moderate) occurred due to changes in water chemistry during mining or sediment laden run-off leaving the sites for a short distances. Five impacts to land (2 minor and 3 moderate) resulted due to encroachment off permit and a coal spill. Four minor nuisance impacts to people resulted due to blasting operations.

All violations were considered to be either permittee negligence or related to high precipitation events. For this reason, improvements in the regulatory functions or processes are not deemed necessary at this time.

Bond Forfeiture Sites

KFO is responsible for conducting inspections of bond-forfeited sites at reduced frequencies including at least one complete inspection per year. Many of these sites have remained in abandoned status for several years and natural vegetative processes have stabilized the disturbances. KFO Reclamation Specialists were asked to report off-site impacts resulting from EY 2002 complete inspections.

Three off-site impacts (two minor and one moderate) were reported during EY 2002. These impacts resulted from low pH discharges at two separate sites and reduced pH combined with elevated iron and manganese at another site.

B. **Bond Releases**

During the period October 1, 2001, through September 30, 2002, KFO processed 36 bond release requests. A total of 33 release actions were approved, consisting of 9 Phase I, 16 Phase II, and 8 Phase III releases. These actions resulted in returning all or a portion of the bond on more than 3,583 acres of reclaimed mine lands (see attached table). During this same period three bond release requests were disapproved.

APPENDIX A:

These tables present data pertinent to mining operations and Federal regulatory activities within Tennessee. Unless otherwise specified, the reporting period for the data contained in all tables is the same as the evaluation year. Additional data used by the Knoxville Field Office in its evaluation of performance is available for review in the evaluation files maintained by the Knoxville OSM Office.

TABULAR SUMMARY OF CORE DATA TO CHARACTERIZE THE PROGRAM

Table 1: Coal Production

Table 2: Inspectable Units

Table 3: Tennessee Permitting Activity

Table 4: Off-Site Impacts

Table 5: Annual State Mining and Reclamation Results

Table 7: State Bond Forfeiture Activity

Table 8: Tennessee Staffing

Table 9: Funds Granted to Tennessee by OSM (*Not Applicable to Tennessee*)

Table 10: Inspection Activity

Table 10A: Inspection Activity in Georgia

Table 11: Enforcement Activity

Table 11A: Enforcement Activity in Georgia

Table 12: Lands Unsuitable Activity

TABLE 1

COAL PRODUCTION (Millions of short tons)			
Period	Surface mines	Underground mines	Total
Coal production ^A for entire State:			
Annual Period			
1999	1.560	1.560	3.120
2000	1.240	1.450	2.690
2001	1.994	1.342	3.336
Total	4.794	4.352	9.146

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. **Provide production information for the latest three full calendar years to include the last full calendar year for which data is available.**

TABLE 2

INSPECTABLE UNITS													
As of September 30, 2002													
Coal mines and related facilities	Number and status of permits									Insp. Units^D	Permitted acreage^A (hundreds of acres)		
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals						
	IP	PP	IP	PP	IP	PP	IP	PP					
	IP	PP	IP	PP	IP	PP	IP	PP	Total				
STATE AND PRIVATE LANDS REGULATORY AUTHORITY: STATE													
Surface mines	3	47	2	16	101	32	106	95		40	180	220	
Underground mines	1	41	0	10	20	22	21	73		1	12	13	
Other facilities	1	41	0	9	3	3	4	53		1	24	25	
Subtotals	5	129	2	35	124	57	131	221	0	42	216	258	
FEDERAL LANDS REGULATORY AUTHORITY: STATE													
Surface mines							0	0				0	
Underground mines							0	0				0	
Other facilities							0	0				0	
Subtotals	0	0	0	0	0	0	0	0	0	0	0	0	
ALL LANDS^B													
Surface mines	3	47	2	16	101	32	106	95		40	180	220	
Underground mines	1	41	0	10	20	22	21	73		1	12	13	
Other facilities	1	41	0	9	3	3	4	53		1	24	25	
Totals	5	129	2	35	124	57	131	221	0	42	216	258	
Average number of permits per inspectable unit (excluding exploration sites)									<u>1</u>				
Average number of acres per inspectable unit (excluding exploration sites)									<u>73.3</u>				
Number of exploration permits on State and private lands:							<u>0</u>		On Federal lands ^C :		<u>N/A</u>		
Number of exploration notices on State and private lands:							<u>39</u>		On Federal lands ^C :		<u>N/A</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 September 30, 2002												
Type of Application	Surface mines			Underground mines			Other facilities			Totals		
	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres^A	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres
New Permits	6	1	447	6	2	78	0	0	0	12	3	525
Renewals	4	3	1,170	3	2	15	9	9	2,141	16	14	3,327
Transfers, sales and assignments of permit rights	2	1		1	0		6	1		9	2	
Small operator assistance	0	0		1	1		0	0		1	1	
Exploration permits	0	0		0	0		0	0		0	0	
Exploration notices ^B		10			7			1			18	
Revisions (exclusive of incidental boundary revisions)		6			3			36			45	
Incidental boundary revisions		4	661		0	0		3	318		7	978
Totals	12	25	2,278	11	15	94	15	50	2,459	38	90	4,830

OPTIONAL - Number of midterm permit reviews completed that are not reported as revisions.

14^A Includes only the number of acres of proposed surface disturbance.^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												
	Land Stability												
	Hydrology							13	2				
	Encroachment				2	1							
	Other		4			2							
Total	0	4	0	0	2	3	0	13	2	0	0	0	0
Total number of inspectable units:		<u>171</u>											
Inspectable units free of off-site impacts:		<u>160</u>											
*One minor impact to land resulted from an exploration (NOI) site disturbance. This off-site impact is indicated in the above numbers.													
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												
	Land Stability												
	Hydrology								2	1			
	Encroachment												
	Other												
Total	0	0	0	0	0	0	0	0	2	1	0	0	0
Total number of inspectable units:		<u>181</u>											
Inspectable units free of off-site impacts:		<u>178</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	1,148.00
Phase II	- Surface stability - Establishment of vegetation	1,690.00
Phase III	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	745.00
	Bonded Acreage Status^A	Acres
Total number of acres bonded at end of last review period (September 30, 2001) ^B		16,629.00
Total number of acres bonded during this evaluation year		16,409.00
Number of acres bonded during this evaluation year that are considered remining, if available		not available
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).

[Please specify State name and date here]

OPTIONAL TABLE(S) 6

(See Instructions)

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 September 30, 2001 (end of previous evaluation year) ^A	17	628.00
Sites with bonds forfeited and collected during Evaluation Year 2002 (current year)	0	0.00
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2002 (current year)	0	0.00
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2002 (current year)	7	141.00
Sites with bonds forfeited and collected that were unreclaimed as of September 30, 2002 (end of current year) ^A	10	487.00
Sites with bonds forfeited but uncollected as of September 30, 2002 (end of current year)	0	0.00
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of September 30, 2001 (end of previous evaluation year) ^B	2	38.00
Sites where surety/other party agreed to do reclamation during Evaluation Year 2002 (current year)	1	25.00
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2002 (current year)	0	0.00
Sites with reclamation completed by surety/other party during Evaluation Year 2002 (current year) ^C	0	0.00
Sites being reclaimed by surety/other party as of September 30, 2002 (current evaluation year) ^B	3	83.00
^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

TENNESSEE STAFFING (Full-time equivalents at the end of evaluation year)	
Function	EY 2002
Regulatory Program	
Permit review	14.00
Inspection	14.00
Other (administrative, fiscal, personnel, etc.)	23.00
Regulatory Program Total	51.00
AML Program Total	
TOTAL	51.00

TABLE 9

<p align="center">FUNDS GRANTED TO TENNESSEE BY OSM (Millions of dollars) EY 2002</p>		
Type of Grant	Federal Funds Awarded	Federal Funding as a Percentage of Total Program Costs
Administration and Enforcement	\$0.00	0
Small Operator Assistance	\$0.00	0
Totals	\$0.00	

TABLE 10

STATE OF TENNESSEE INSPECTION ACTIVITY		
PERIOD: OCTOBER 1, 2001 - SEPTEMBER 30, 2002		
Inspectable Unit Status	Number of Inspections Conducted	
	Complete	Partial
Active*	467	800
Inactive*	207	107
Abandoned*	204	61
Total	878	968
Exploration	138	54

* Use terms as defined by the approved State program.

State should provide inspection data to OSM annually, at a minimum, and maintain inspection data on a continual basis. OSM offices responsible for Federal and Indian Programs need not complete this table since data will be queried from the I & E Tracking System.

TABLE 10

STATE OF GEORGIA INSPECTION ACTIVITY		
PERIOD: OCTOBER 1, 2001 - SEPTEMBER 30, 2002		
Inspectable Unit Status	Number of Inspections Conducted	
	Complete	Partial
Active*	0	0
Inactive*	0	0
Abandoned*	12	7
Total	12	7
Exploration	0	0

* Use terms as defined by the approved State program.

State should provide inspection data to OSM annually, at a minimum, and maintain inspection data on a continual basis. OSM offices responsible for Federal and Indian Programs need not complete this table since data will be queried from the I & E Tracking System.

TABLE 11

STATE OF TENNESSEE ENFORCEMENT ACTIVITY		
PERIOD: OCTOBER 1, 2001 - SEPTEMBER 30, 2002		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	28	38
Failure-to-Abate Cessation Order	2	2
Imminent Harm Cessation Order	2	2

* Do not include those violations that were vacated.

State should provide enforcement data to OSM annually, at a minimum, and maintain data on a continuous basis. OSM offices responsible for Federal and Indian Programs need not complete this table since data will be queried from the I & E Tracking System.

TABLE 11

STATE OF GEORGIA ENFORCEMENT ACTIVITY		
PERIOD: OCTOBER 1, 2001 - SEPTEMBER 30, 2002		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	0	0
Failure-to-Abate Cessation Order	0	0
Imminent Harm Cessation Order	0	0

* Do not include those violations that were vacated.

State should provide enforcement data to OSM annually, at a minimum, and maintain data on a continuous basis. OSM offices responsible for Federal and Indian Programs need not complete this table since data will be queried from the I & E Tracking System.

TABLE 12

LANDS UNSUITABLE ACTIVITY			
PERIOD: OCTOBER 1, 2001 - SEPTEMBER 30, 2002			
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

State should provide lands unsuitable data to OSM annually if there is any activity in this program area. OSM OFFICES RESPONSIBLE FOR FEDERAL AND INDIAN PROGRAM STATES MUST ALSO COMPLETE THIS TABLE.

