

# Knoxville Field Office

Technical



Inspection



Program Support



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Evaluation Year 2003

***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 2003**

**(October 1, 2002, to September 30, 2003)**

*(November 2003)*

***TABLE OF CONTENTS***

I. Introduction .....2

II. Overview of Coal Mining Industry .....2

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

IV. Major Accomplishments/Issues/Innovations.....3

V. Technical Assistance .....10

VI. Success in Achieving the Purposes of SMCRA.....13

    A. Off-site Impacts.....13

    B. Bond Releases .....14

Appendix A: Tabular Summary of Core Data to Characterize the Program.....15

## **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 In Tennessee, OSM implemented the Federal regulatory program in October 1984 when the State repealed its surface mining law.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, 2002, to September 30, 2003. 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 72.4 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 ranked nineteenth in production of coal among the 26 coal-producing states in calendar year 2003. Coal production steadily declined from a high of 11,260,000 tons in 1972

to 2,680,888 tons in 1998. During 2001 and 2002, coal production has increased slightly and is fluctuating around 3 million tons annually. Currently, there are 21 active coal-producing mines that have permitted 9,374 acres for mining. Underground mines have permitted 815 acres (excluding shadow areas) at 8 active mines, and surface operations have permitted 8,559 acres at 13 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.

- **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.

- **Industry Meetings**

- 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**

- **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.

- **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 2003, KFO conducted one initial and three follow-up inspection/evaluations. The three sites where follow-up inspections were conducted, had all 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, one permit (Appolo Fuels' 3054) was found to have an adequate TMHP. 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. The initial inspection was conducted at Mountainside Coal Company permit 3058, due to unanticipated substandard effluents. The Team is requesting the KFO Technical Group re-evaluate the company's approved toxic materials handling plan for any needed revisions to address the problem effluents.

- **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.

- **Appalachian Clean Streams Program (ACSP)**

The Federal Program in Tennessee participates in the Appalachian Clean Streams Program 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 two summer interns during 2003 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. OSM also initiated the formation of a new watershed group. The five designated ACSP watersheds 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.

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. 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. The projects were under construction during FY 2003.

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.

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 *AI*mprove 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.

Big Creek. This watershed is about 40 miles north of Knoxville and empties into Norris Lake. The water intake for the City of LaFollette is also in Big Creek. The main tributaries are Thompson and Ollis Creeks and these watersheds were extensively mined and heavily impacted by acid mine drainage from the abandoned coalmines. NRCS, TVA and TDEC are currently collecting water quality data on the watershed and its tributaries.

- **Litigation**

**Save Our Cumberland Mountains, Inc. (SOCM) v. Norton**

On September 4, 2003, Save Our Cumberland Mountains, the Southern Appalachian Biodiversity Project, Appalachian Voices, and the Sierra Club (hereinafter SOCM) filed, against Secretary Norton and OSM, a six-count “Complaint for Declaratory and Injunctive Relief” together with a “Motion for Preliminary Injunction” alleging numerous violations of the National Environmental Policy Act (NEPA) in connection with OSM’s approval of a permit application submitted in July 2002 by the Robert Clear Coal Corporation (RCCC).<sup>1</sup>

In its permit application RCCC sought to conduct mountain top removal coal mining operations in Campbell and Scott Counties, Tennessee. As part of the permitting process, OSM prepared an “Environmental Assessment” (EA) under NEPA. On June 30, 2003, OSM issued a “Finding of No Significant Impact” (FONSI) concluding, based on the EA, that granting the permit requested by RCCC would have no long-term major impact on the quality of the human environment and, therefore, an environmental impact statement need not be prepared. Subsequently, OSM approved RCCC’s proposed mining operation and issued a SMRCA permit to the corporation.

In its complaint, SOCM alleges that OSM violated NEPA when it failed to consider a “reasonable range of alternatives” given that two of the three proposed alternatives (disapprove the permit/take no action) are allegedly identical alternatives in result and effect. SOCM further alleges that OSM failed to provide notice and to allow a comment period on the EA and FONSI in violation of both CEQ regulations and OSM’s internal guidelines. And, last, SOCM alleges that OSM’s decision not to require an EIS is arbitrary and capricious because OSM’s own guidelines allegedly require an EIS for mining operations of this size and type.

On September 26, 2003, the District Court Judge granted the motion of RCCC to intervene in the case.

On October 31, 2003, the Court issued an Order and Memorandum Opinion denying Plaintiffs’ motion for preliminary injunction. The decision held that “the Court cannot determine OSM’s decision as arbitrary and capricious without the benefit of reviewing the administrative record” (which has not yet been filed). However, the Court also observed

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<sup>1</sup> SOCM has also served the Department with a 60-day notice of intent to sue for numerous violations of Sections 7 and 9 of the Endangered Species Act (ESA). SOCM has indicated in its complaint that it intends to amend the complaint to include these ESA counts at the conclusion of the 60-day notice period.

that “plaintiffs’ position is that the EA is deficient ‘on its face.’” The Court proceeded, therefore, to consider Plaintiffs’ motion “based on a review of the record as it currently exists.” In the decision, the Court noted that it could not substitute its judgment for that of OSM regarding the environmental impact that the mining operation would have, stating that “[t]he Court’s role is to determine whether OSM ‘has, in fact, adequately studied the issue and taken a ‘hard look’ at the environmental consequences of its decision.” Turning to OSM’s 41 page EA, the Court held that it “cannot conclude that this analysis is insignificant.” The Court also concluded that the EA was properly “tiered” from the Tennessee Programmatic EIS. The Court found that OSM’s decision to issue an EA and FONSI and not to proceed with an EIS was not arbitrary and capricious based on the record that was before the Court. The Solicitor is continuing to work on the administrative record as well as a motion for summary judgment.

### **Appolo Fuels, Inc. v. United States**

This takings case is on appeal to the U.S. Court of Appeal for the Federal Circuit. Plaintiff filed its opening brief on August 26, 2003; the government’s response was due on November 10, 2003. The plaintiff claims alleged permanent and temporary takings of its coal reserves and mining rights based on OSM’s designation of the watershed of Little Yellow Creek in Claiborne County, Tennessee, as unsuitable for surface coal mining (but not for underground mining from portals outside the petition area), as well as OSM’s alleged delay in deciding the petition that requested the designation. The designated area encompasses Fern Lake, the sole drinking water supply for the city of Middlesboro, KY. Plaintiff’s valuation experts valued the property at approximately \$21,432,000 as of the alleged date of taking. The government’s expert valued the property within the petition area at \$7,400,000 (however, for legal reasons, we do not believe plaintiff would be entitled to that amount even if there were a taking). If plaintiff prevails on appeal, it can be expected to seek additional awards of interest on any just compensation, attorney fees, and costs.

On December 18, 2002, the U.S. Court of Federal Claims granted the government’s motions for summary judgment and in *limine*. In doing so, the court held that there had not been a categorical taking under the U.S. Supreme Court’s decision in *Lucas* (predicated on a denial of all economically viable use) or a partial taking under the Supreme Court’s three-tier *Penn Central* analysis. More specifically, the court ruled that: (1) plaintiff lacked a reasonable investment-backed expectation that “its land would be unfettered by regulatory imposition”; (2) the character of the government action favored the government because the designation was a proper exercise of the police power to protect against water pollution, an abateable nuisance under Tennessee statutory and decisional law; and (3) plaintiff failed to demonstrate the requisite economic impact of the designation; plaintiff, the court noted, could “exploit the portions of its leases that lie outside the petition area.” The court also ruled that there was not a temporary taking because OSM did not engage in “extraordinary delay.” Finally, in granting the government’s motion in *limine*, the court held that plaintiff could not attack the merits or factual bases of the designation in the U.S. Court of Federal Claims; rather, OSM is “entitled to a presumption that [the designation] was both authorized and legally correct.” On February 5, 2003, the court denied plaintiff’s motion for reconsideration.

**National Mining Association (“NMA”) v. Norton**

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 acid mine drainage (“AMD”). The plaintiff asserts that the Tennessee federal program had previously not 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 violate of both the APA and SMCRA.

The litigation has been held in abeyance since the summer of July 24, 2001, in response to NMA’s request that the parties jointly explore the potential for “compromise” of AMD bonding issues. The Department of Justice has been filing status reports with the court. 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 considered rulemaking. In May 2003 the Solicitor and DOJ conferred with the Director to discuss the feasibility of reopening settlement discussions with NMA. Based on that meeting, OSM has decided to explore settlement opportunities with NMA instead of going forward with the rule at this time. In September 2003, DOJ requested that OSM produce a “proposal” for settlement. OSM has indicated that a proposal will be drafted in the coming weeks.

**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, rev’g Eastern Minerals Int’l, Inc., v. United States*. 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.

The plaintiffs seek just compensation for an alleged regulatory taking of their “lessor’s interest” in the subject property based on extraordinary delay in the processing of its lessee’s permit application. On September 30, 1999, Judge Emily Hewitt granted in part and denied in part the government’s initial motion for summary judgment. Judge Hewitt dismissed the claim of Colten as unripe since neither Colten nor its lessee 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. The 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 filed their complaint in this case on August 25, 2000. Plaintiffs allege a compensable taking of the same property as above 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 permanent takings claim at approximately \$8,000,000 and their temporary takings claim at approximately \$7,500,000 (plaintiffs appear to believe they can recover on both their permanent and temporary takings theories). The government has valued the alleged permanent taking of the property within the designated area at \$770,000 and the alleged temporary taking at \$385,000.

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 complaint in this case was filed on August 7, 2002. The government filed its answer on October 4, 2002. The Wyatt plaintiffs 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. On October 11, 2002, the court granted plaintiffs' motion to consolidate this case with the Colten and Cane cases. The plaintiffs have valued the alleged permanent taking at approximately \$5,000,000; the government has valued the alleged permanent taking at \$697,000. Discovery closed on February 20, 2003. The court has not yet established a briefing or trial schedule.

On October 2, 2002, Judge Hewitt issued a decision denying plaintiffs' motion for partial summary judgment and granting in part and denying in part the government's cross-motion for summary judgment. 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.

On June 27, 2003, Judge Hewitt granted the government's motion for summary judgment in two of these consolidated cases, dismissing the claims of plaintiffs Cane and Colten. The court held that: (1) plaintiffs did not suffer the requisite economic impact; (2) plaintiffs lacked reasonable investment-backed expectations (having purchased their property after the enactment of SMCRA, plaintiffs were charged with notice of its restrictions); and (3) the character of the government action (*i.e.*, the designation of fragile and historic lands as unsuitable for surface coal mining operations) neither requires nor forecloses a finding of a taking. Weighing the three factors, the court concluded there was not a permanent taking as to plaintiffs Cane and Colten. The court also held that there was not a temporary taking because OSM did not engage in extraordinary delay or bad faith.

On October 3, 2003, the court granted in part and denied in part plaintiffs' motion for reconsideration. The court determined that there may be genuine issues of material fact that preclude summary judgment on the issue of timber valuation and also ordered supplementary briefing and additional factual development on the issue of investment-backed expectations. The Wyatt plaintiffs remain free to pursue their claims in No. 02-945L, which was not at issue in this round of briefing. On October 10, 2003, the government filed a motion for summary judgment in the *Wyatt* case.

### **Benchmark Res. Corp. v. United States**

Plaintiffs allege a regulatory taking of their coal reserves and mining rights based on OSM's March 24, 1987, designation of parts of the Rock Creek watershed in Hamilton and Bledsoe Counties, Tennessee, as unsuitable for surface coal mining operations. They allegedly own an undivided 50% interest in approximately 142,000,000 tons of coal affected by the designation. Plaintiffs seek just compensation in the amount of \$423,192,500 (the alleged value of their coal as of the date of the designation), as well as awards of interest, attorney fees, and costs. On March 25, 2003, the government filed its answer. Limited discovery on the issue of the statute of limitations is ongoing.

- **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.

- **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.

- **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:

- Monongahela River Project in Pennsylvania and West Virginia.
- Valley Fill Impact Study, Appalachian Region.
- Technical Information Processing System (TIPS) operation and next generation.
- Appalachian Region Technical Coordinating Committee.
- Experimental Practices in Kentucky, Virginia and Ohio.
- West Virginia Permit Review Team
- West Virginia Mountaintop Environmental Impact Statement
- Review Environmental Impact Statements and Environmental Assessments prepared by

U.S. Corps of Engineers for 404 permits on West Virginia mountaintop removal operations.

- Bond Handbook Committee
- National Blasting Work Group
- National Dam Safety Group
- Instructors for BTTI Training Courses
- Instructors for TIPS Training Courses
- Provide Report for Expert Witness in Court Hearing
- AMD Bonding
- Revegetation Issues
- Revegetation Task Force
- Reforestation Steering Committee
- Provide Technical Guidance in Bond Release to Various OSM Offices.
- Technical Support to OSM's Lexington and Charleston Field Offices for Federal Lands Issues
- Technical Support to Bureau of Land Management and Tennessee Valley Authority on Federal Lands issues such as leasing and NEPA requirements
- TIPS Hydrology Software Committee
- Hydrologic Issues Team for PHC/CHIA
- West Virginia Citizen Complaint
- AVS – Bond Forfeiture Project - Investigative assistance to West Virginia Office of Legal Services
- AVS B National ownership and control rule redesign team and the Appalachian Region EP Team, AVS-EP Interface Subteam
- Tennessee GIS Work Group
- Valley Fill Stability and Flooding Team (Part of the MTR EIS)

- State Program Amendments
- Market-Based Reclamation of Mined Lands Core Group Member
- 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.

**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 2003 KFO Reclamation Specialists evaluated all active minesites for off-site impacts. Off-site impacts resulting from SMCRA violations were directly reported via the AMinesite 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.

Ten permits were identified as having sixteen people, land, and water impacts. Ten off-site impacts to water (4 minor and 6 moderate) occurred due to changes in water chemistry during mining or sediment laden run-off leaving the sites for a short distances. Two moderate impacts to land resulted due to slide encroachment and sediment deposits off permit. Four minor nuisance impacts to people resulted due to blasting operations, coal haulage in residential areas and a brief interference with public cemetery access.

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 2003 complete inspections.

Seven off-site impacts (five minor and two moderate) were reported during EY >03. These impacts resulted from low pH discharges, at four separate sites and sediment deposits to receiving streams at two sites. Run-off from one site caused minor drainage problems for the adjacent land use.

**B. Bond Releases**

During the period October 1, 2002, through September 30, 2003, KFO processed 25 bond release requests. A total of 23 release actions were approved, consisting of 3 Phase I, 10 Phase II, and 10 Phase III releases. These actions resulted in returning all or a portion of the bond on more than 2,124 acres of reclaimed mine lands (see attached table). During this same period 2 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**

<b>COAL PRODUCTION</b> (Millions of short tons)			
<b>Period</b>	<b>Surface mines</b>	<b>Underground mines</b>	<b>Total</b>
Coal production <sup>A</sup> for entire State:			
Annual Period			
<b>2000</b>	1.240	1.450	<b>2.690</b>
<b>2001</b>	1.994	1.342	<b>3.336</b>
<b>2002</b>	2.052	1.113	<b>3.165</b>
<b>Total</b>	<b>5.286</b>	<b>3.905</b>	<b>9.191</b>

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**

<b>INSPECTABLE UNITS</b>													
<b>As of September 30, 2003</b>													
<b>Coal mines and related facilities</b>	<b>Number and status of permits</b>									<b>Insp. Units<sup>D</sup></b>	<b>Permitted acreage<sup>A</sup> (hundreds of acres)</b>		
	<b>Active or temporarily inactive</b>		<b>Inactive Phase II bond release</b>		<b>Abandoned</b>		<b>Totals</b>						
	<b>IP</b>	<b>PP</b>	<b>IP</b>	<b>PP</b>	<b>IP</b>	<b>PP</b>	<b>IP</b>	<b>PP</b>					
	<b>IP</b>	<b>PP</b>	<b>IP</b>	<b>PP</b>	<b>IP</b>	<b>PP</b>	<b>IP</b>	<b>PP</b>	<b>IP</b>		<b>PP</b>	<b>Total</b>	
<b>STATE AND PRIVATE LANDS REGULATORY AUTHORITY: STATE</b>													
Surface mines	2	51	2	14	96	32	100	97		37	237	274	
Underground mines	1	37	0	11	20	21	21	69		1	12	13	
Other facilities	1	37	0	10	3	4	4	51		2	24	26	
Subtotals	4	125	2	35	119	57	125	217	0	40	273	313	
<b>FEDERAL LANDS REGULATORY AUTHORITY: STATE</b>													
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	
<b>ALL LANDS<sup>B</sup></b>													
Surface mines	2	51	2	14	96	32	100	97		37	237	274	
Underground mines	1	37	0	11	20	21	21	69		1	12	13	
Other facilities	1	37	0	10	3	4	4	51		2	24	26	
Totals	4	125	2	35	119	57	125	217	0	40	273	313	
Average number of permits per inspectable unit (excluding exploration sites)									<u>1</u>				
Average number of acres per inspectable unit (excluding exploration sites)									<u>104</u>				
Number of exploration permits on State and private lands:									<u>0</u>		On Federal lands <sup>C</sup> :		<u>N/A</u>
Number of exploration notices on State and private lands:									<u>31</u>		On Federal lands <sup>C</sup> :		<u>N/A</u>
<p><b>IP:</b> Initial regulatory program sites  <b>PP:</b> Permanent regulatory program sites</p> <p><sup>A</sup> When a unit is located on more than one type of land, include only the acreage located on the indicated type of land.  <sup>B</sup> 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.  <sup>C</sup> 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.  <sup>D</sup> Inspectable Units includes multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.</p>													

**TABLE 3**

<b>STATE PERMITTING ACTIVITY</b>												
<b>As of September 30, 2003</b>												
<b>Type of Application</b>	<b>Surface mines</b>			<b>Underground mines</b>			<b>Other facilities</b>			<b>Totals</b>		
	<b>App. Rec.</b>	<b>Issued</b>	<b>Acres</b>	<b>App. Rec.</b>	<b>Issued</b>	<b>Acres<sup>A</sup></b>	<b>App. Rec.</b>	<b>Issued</b>	<b>Acres</b>	<b>App. Rec.</b>	<b>Issued</b>	<b>Acres</b>
New Permits	3	5	5,052	3	1	15	0	0	0	6	6	5,067
Renewals	1	4	1,998	3	2	25	6	4	210	10	10	2,233
Transfers, sales and assignments of permit rights	1	0		0	0		0	0		1	0	
Small operator assistance	0	0		0	0		0	0		0	0	
Exploration permits	0	0		0	0		0	0		0	0	
Exploration notices <sup>B</sup>		3			2			1			6	
Revisions (exclusive of incidental boundary revisions)		27			11			5			43	
Incidental boundary revisions		9	12		1	1		2	18		12	31
<b>Totals</b>	<b>5</b>	<b>48</b>	<b>7,062</b>	<b>6</b>	<b>17</b>	<b>41</b>	<b>6</b>	<b>12</b>	<b>228</b>	<b>17</b>	<b>77</b>	<b>7,331</b>

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

6

<sup>A</sup> Includes only the number of acres of proposed surface disturbance.

<sup>B</sup> State approval not required. Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining.

**TABLE 4**

<b>OFF-SITE IMPACTS</b>													
<b>RESOURCES AFFECTED</b>		<b>People</b>			<b>Land</b>			<b>Water</b>			<b>Structures</b>		
<b>DEGREE OF IMPACT</b>		minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
<b>TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE</b>	Blasting		2										
	Land Stability												
	Hydrology					1		4	6				
	Encroachment		1			1							
	Other		1										
<b>Total</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>4</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Total number of inspectable units:		156											
Inspectable units free of off-site impacts:		<u>146</u>											
<b>OFF-SITE IMPACTS ON BOND FORFEITURE SITES</b>													
<b>RESOURCES AFFECTED</b>		<b>People</b>			<b>Land</b>			<b>Water</b>			<b>Structures</b>		
<b>DEGREE OF IMPACT</b>		minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
<b>TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE</b>	Blasting												
	Land Stability												
	Hydrology							5	2				
	Encroachment												
	Other												
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Total number of inspectable units:		176											
Inspectable units free of off-site impacts:		<u>169</u>											

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

**TABLE 5**

<b>ANNUAL STATE MINING AND RECLAMATION RESULTS</b>		
<b>Bond release phase</b>	<b>Applicable performance standard</b>	<b>Acreage released during this evaluation period</b>
Phase I	- Approximate original contour restored - Topsoil or approved alternative replaced	402.00
Phase II	- Surface stability - Establishment of vegetation	823.70
Phase III	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	899.00
	<b>Bonded Acreage Status<sup>A</sup></b>	<b>Acres</b>
Total number of acres bonded at end of last review period (September 30, 2002) <sup>B</sup>		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

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

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

**TABLE 7**

<b>STATE BOND FORFEITURE ACTIVITY (Permanent Program Permits)</b>		
<b>Bond Forfeiture Reclamation Activity by SRA</b>	<b>Number of Sites</b>	<b>Acres</b>
Sites with bonds forfeited and collected that were unreclaimed as of September 30, 2002 (end of previous evaluation year) <sup>A</sup>	10	487.00
Sites with bonds forfeited and collected during Evaluation Year 2003 (current year)	0	0.00
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2003 (current year)	0	0.00
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2003 (current year)	1	80.00
Sites with bonds forfeited and collected that were unreclaimed as of September 30, 2003 (end of current year) <sup>A</sup>	9	407.00
Sites with bonds forfeited but uncollected as of September 30, 2003 (end of current year)	0	0.00
<b>Surety/Other Reclamation (In Lieu of Forfeiture)</b>		
Sites being reclaimed by surety/other party as of September 30, 2002 (end of previous evaluation year) <sup>B</sup>	3	62.50
Sites where surety/other party agreed to do reclamation during Evaluation Year 2003 (current year)	0	0.00
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2003 (current year)	0	0.00
Sites with reclamation completed by surety/other party during Evaluation Year 2003 (current year) <sup>C</sup>	1	17.50
Sites being reclaimed by surety/other party as of September 30, 2003 (current evaluation year) <sup>B</sup>	2	45.00
<sup>A</sup> Includes data only for those forfeiture sites not fully reclaimed as of this date		
<sup>B</sup> Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date		
<sup>C</sup> This number also is reported in Table 5 as Phase III bond release has been granted on these sites		

**TABLE 8**

<b>TENNESSEE STAFFING</b> (Full-time equivalents at the end of evaluation year)	
<b>Function</b>	<b>FY 2003</b>
<b>Regulatory Program</b>	
Permit review	12.00
Inspection	12.00
Other (administrative, fiscal, personnel, etc.)	18.00
<b>Regulatory Program Total</b>	<b>42.00</b>
<b>AML Program Total</b>	
<b>TOTAL</b>	<b>42.00</b>

**TABLE 10**

<b>STATE OF TENNESSEE INSPECTION ACTIVITY</b>		
<b>Period: October 1, 2002 - September 30, 2003</b>		
<b>Inspectable Unit Status</b>	<b>Number of Inspections Conducted</b>	
	<b>Complete</b>	<b>Partial</b>
Active*	460	793
Inactive*	205	105
Abandoned*	188	59
<b>Total</b>	<b>853</b>	<b>957</b>
<b>Exploration</b>	<b>98</b>	<b>14</b>

\* 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-A**

<b>STATE OF GEORGIA INSPECTION ACTIVITY</b>		
<b>Period: October 1, 2002 - September 30, 2003</b>		
<b>Inspectable Unit Status</b>	<b>Number of Inspections Conducted</b>	
	<b>Complete</b>	<b>Partial</b>
Active*	0	0
Inactive*	0	0
Abandoned*	6	1
<b>Total</b>	<b>6</b>	<b>1</b>
<b>Exploration</b>	<b>0</b>	<b>0</b>

\* 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**

<b>STATE OF TENNESSEE ENFORCEMENT ACTIVITY</b>		
<b>Period: October 1, 2002 - September 30, 2003</b>		
<b>Type of Enforcement Action</b>	<b>Number of Actions*</b>	<b>Number of Violations*</b>
<b>Notice of Violation</b>	25	34
<b>Failure-to-Abate Cessation Order</b>	3	3
<b>Imminent Harm Cessation Order</b>	1	1

\* 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-A**

<b>STATE OF GEORGIA ENFORCEMENT ACTIVITY</b>		
<b>Period: October 1, 2002 - September 30, 2003</b>		
<b>Type of Enforcement Action</b>	<b>Number of Actions*</b>	<b>Number of Violations*</b>
<b>Notice of Violation</b>	0	0
<b>Failure-to-Abate Cessation Order</b>	0	0
<b>Imminent Harm Cessation Order</b>	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**

<b>LANDS UNSUITABLE ACTIVITY</b>			
<b>Period: October 1, 2002 - September 30, 2003</b>			
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.