

***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 2004

(October 1, 2003, to September 30, 2004)

(December 2004)

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I. INTRODUCTION

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to 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 In Tennessee, OSM implemented the Federal regulatory program in October 1984 when the State repealed its surface mining law.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, 2003, to September 30, 2004. 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 is 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 69.8 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 increased slightly but showed a decrease in 2003 to 2.564 million tons. Currently, there are 25 active coal-producing mines that have permitted 10,807 acres for mining. Underground mines have permitted 140 acres (excluding shadow areas) at 9 active mines, and surface operations have permitted 10,667 acres at 16 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.

C 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 is 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 23 new permit applications processed/issued by KFO this year.

C 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

C 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.

C 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 2004, KFO conducted two follow-up inspection/evaluations. The sites 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. 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 revised the permit and implemented a plan for the mitigation of the noncompliant discharges. Additional monitoring of the site is required to ensure that the revision works. 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.

C 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.

C **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 coal mines. The TDEC completed on-the-ground work using monies provided by local, State, and Federal agencies and OSM's Abandoned Mine Land (AML) fund. As in past fiscal years, OSM provided summer interns during 2004 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 ten 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 coal mines 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 \$2,433,235.00 in funds and in-kind services. In EY 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 EY 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 completed during EY 2004.

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 "Improve the quality of Life in the Coal Creek Watershed". The group was formed in late 1999 and has 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 coal mines. NRCS, TVA and TDEC are currently collecting water quality data on the watershed and its tributaries.

C **Litigation**

National Mining Ass'n 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 late October 2003 we requested (per DOJ) that OSM provide the Office of the Solicitor with an initial proposal for settlement of the Tennessee bonding issues. DOJ and NMA have exchanged settlement offers.

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). On Friday, 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." However, the Court also observed 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.” 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 complete administrative record was filed with the Court in early December 2003. A scheduling conference was held on January 8, 2004. As a result of that conference, the United States was ordered to supply the Plaintiffs with a second, but abbreviated, copy of the administrative record. This was done on January 14, 2004. Dispositive motions were filed on April 16, 2004, with responses filed on May 14, 2004. In addition, on April 16, Plaintiffs filed a Modified Motion for Preliminary Injunction and a Motion to Supplement the Record. Responses to these Motions were filed. Oral arguments were heard on July 2, 2004. On July 9 the Court issued an Order denying Plaintiffs’ Modified Motion for Preliminary Injunction and taking the other pending motions (including primarily the cross-motions for summary judgment) under advisement.

Appolo Fuels, Inc. v. United States

On August 30, 2004, the U.S. Court of Appeals for the Federal Circuit affirmed the U.S. Court of Federal Claims’ grant of summary judgment in favor of the United States in this regulatory takings case. On September 13, 2004, the plaintiff/appellant filed a petition for rehearing or rehearing en banc, asking the court to reconsider and set aside its August 30, 2004 decision. 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 sought \$21,432,000 in just compensation and, had it prevailed, would likely have sought additional awards of compound interest, attorney fees, and costs. 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 was a taking). In affirming the trial court’s decision, the Federal Circuit first held that there had not been a categorical taking under *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992), because the designation did not deprive plaintiff of all economically viable use of its coal leases. Next, the court held that there had not been a partial taking under *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978), because plaintiff lacked reasonable investment-backed expectations to mine in the designated area and because OSM was exercising the police power to protect public health and safety. Finally, the court ruled that there was not a temporary taking because OSM did not engage in “extraordinary delay” in deciding the lands unsuitable petition.

Cane Tennessee, Inc. v. United States; Colten, Inc. v. United States; Mary Anne Wyatt v. United States (consolidated)

Plaintiffs in these consolidated actions own the fee interests (Cane Tennessee, Inc. and Colten, Inc.) and royalty interests (the Wyatts) in property in close proximity to Fall Creek Falls State Park in Tennessee.

(a.) Cane Tennessee, Inc. v. United States, and Colten, Inc. v. United States,

In the Cane case, plaintiffs seek just compensation for an alleged regulatory taking of their “lessor’s interest” in the subject property based on OSM’s alleged 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. 44 Fed. Cl. 785 (1999). 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. In the Cane case, 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.

Plaintiffs filed their complaint in the Colten 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. In the Colten case, 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.

On October 2, 2002, Judge Hewitt issued a decision in the Cane case and Colten case 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 the Cane case and the Colten case, dismissing all of the claims of the plaintiffs. 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 plaintiff Cane's motion for reconsideration. The court determined that there may be genuine issues of material fact that preclude summary judgment on the issues of timber valuation and whether Cane had reasonable investment-backed expectations. After the close of a supplemental discovery period, the government filed a renewed motion for summary judgment on July 29, 2004, asking the court to dismiss Cane's remaining claims. Plaintiffs filed a response on September 24, 2004.

(b.) *Mary Anne Wyatt v. United States*

The complaint in Wyatt 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 Cane and Colten cases. In the Wyatt case, plaintiffs have valued the alleged permanent taking at approximately \$5,000,000; the government has valued the alleged permanent taking at \$697,000. On May 28, 2004, the court found the government liable for a categorical, permanent taking of some of the plaintiffs' property interests. If the decision is allowed to stand, the total judgment could be as high as approximately \$5 million, plus compound interest from 2000, attorney fees, and costs. The government filed a motion for reconsideration on June 14, 2004; plaintiffs filed a response on September 17, 2004.

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. On May 28, 2004, the government filed a motion to dismiss for lack of subject matter jurisdiction on the theory that plaintiffs' claims are barred by the applicable six-year statute of limitations; plaintiffs filed a response brief on June 24, 2004; and the government filed its reply brief on July 9, 2004. Oral arguments have not been scheduled.

C *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 Forestry Reclamation Approach technology.

The initial phase of this project was to establish a 130 acre FRA demonstration area on a mine site reclaimed by Gatliff Coal Company. KFO staff will be conducting training courses with the high school students in basic forestry, tree identification, and FRA technology. The high school students will also be involved in sampling and data collection on permanent reforestation plots established on the project area to determine the survival rates and growth rates of the planted trees.

The long-range plans are to establish a permanent demonstration area to show the application of the FRA. 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.

- **Appalachian Regional Reforestation Initiative**

The Co-Team Leaders for ARRI are staff members of KFO. Established in 2004, the Appalachian Regional Reforestation Initiative (ARRI) is a cooperative effort among the States of Kentucky, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia; the Office of Surface Mining, including the Tennessee Federal Program; their partners in industry; environmental organizations; academia; local, State and Federal government agencies; and local citizenry. The goals of the initiative are to plant more high-value hardwood trees on reclaimed coal mined lands in Appalachia and to increase the survival rates and growth rates of the planted trees. Forestry research has proven that these goals can be accomplished by reclaiming coal mines using the following five-step Forestry Reclamation Approach (FRA).

- Create a suitable rooting medium for good tree growth that is no less than 4 feet deep and comprised of topsoil, weathered sandstone and/or the best available material.
- Loosely grade the topsoil or topsoil substitutes established in step one to create a non-compacted growth medium.
- Use native and non-competitive ground covers that are compatible with growing trees.
- Plant two types of trees; early succession species for wildlife and soil stability, and commercially valuable crop trees.
- Use proper tree planting techniques.

FRA technology is currently being used to reclaim a number of active and abandoned mine sites in each of the seven States within the Appalachian Region. This ongoing initiative will promote reforestation through training, information sharing, and research.

- **KFO Reforestation Initiative**

The KFO has continued to develop the KFO Reforestation Initiative. KFO has issued policy and guidelines to encourage the selection of post-mining land uses which include the planting of trees, and to promote the use of Forestry Reclamation Approach Technology. This initiative is being closely coordinated with the larger Appalachian Regional Reforestation Initiative.

KFO will promote and strive to implement the use of Forestry Reclamation Approach (FRA) technology in permits issued where tree planting is required. KFO will continue to conduct meetings with industry representatives, consultants, landowners, and KFO technical and inspection staff to educate the individuals in the changes that must occur to successfully implement FRA. KFO also plans to develop a reforestation web page that will include reforestation success stories in Tennessee as well as technical information relating to the current FRA technology.

- C **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:

- C Valley Fill Impact Study, Appalachian Region.
- C Technical Information Processing System (TIPS) operation and next generation.
- C Experimental Practices in Kentucky, Virginia and Ohio.
- C West Virginia Mountaintop Environmental Impact Statement

- C National Blasting Work Group
- C National Dam Safety Group
- C Instructors for BTTI Training Courses
- C Instructors for TIPS Training Courses
- C Revegetation Issues
- C Revegetation Task Force
- C Appalachian Regional Reforestation Initiative
- C KFO Reforestation Initiative
- C Provide Technical Guidance in Bond Release to Various OSM Offices.
- C Technical Support to OSM's Lexington and Charleston Field Offices for Federal Lands Issues
- C Technical Support to Bureau of Land Management and Tennessee Valley Authority on Federal Lands issues such as leasing and NEPA requirements
- C TIPS Hydrology Software Committee
- C Hydrologic Issues Team for PHC/CHIA
- C West Virginia Citizen Complaint
- C Market-Based Reclamation of Mined Lands Core Group Member
- C Slurry Impoundment Review for KY
- C Valley Fill Inspection Consistency for WV
- C 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 2004 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.

Thirteen permits were identified as having 28 people, land and water impacts. Sixteen off-site impacts to water (13 minor, 2 moderate and 1 major) occurred due to changes in water chemistry during mining or sediment laden runoff leaving the sites for short distances. The major impact to water occurred when a slide encroached into the receiving stream causing significant sediment deposits. Eight impacts to land (6 minor and 2 moderate) resulted from slide encroachment and impacts from uncontrolled blasting. Four minor impacts to people resulted from blasting noise and vibration and a small slide, which temporarily interfered with a public electric supply.

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 2004 complete inspections.

Four off-site impacts (two minor and two moderate) were reported during EY '04. The two minor impacts resulted from off-site erosion into receiving streams and water quality impacts due to elevated manganese levels. The two moderate impacts resulted from elevated iron deposits to stream flow and a low pH discharge to receiving stream.

B. **Bond Releases**

During the period October 1, 2003, through September 30, 2004, KFO processed 40 bond release applications. A total of 33 release actions were approved, consisting of 11 Phase I, 4 Phase II and 18 Phase III releases. These actions resulted in returning all or a portion of the bond on more than 4,199 acres of reclaimed mine lands (see attached table). During this same period 5 bond release applications were disapproved and 2 bond release applications were withdrawn.

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			
2001	1.994	1.342	3.336
2002	2.052	1.113	3.165
2003	1.907	0.657	2.564
Total	5.953	3.112	9.065

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, 2004													
Coal mines and related facilities	Number and status of permits								Insp. Units^D	Permitted acreage^A (hundreds of acres)			
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals			IP	PP	Total	
	IP	PP	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	2	52	2	10	95	32	99	94		36	220	256	
Underground mines	1	41	0	8	20	20	21	69		1	13	14	
Other facilities	1	38	0	6	2	4	3	48		1	23	24	
Subtotals	4	131	2	24	117	56	123	211	0	38	256	294	
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	2	52	2	10	95	32	99	94		36	220	256	
Underground mines	1	41	0	8	20	20	21	69		1	13	14	
Other facilities	1	38	0	6	2	4	3	48		1	23	24	
Totals	4	131	2	24	117	56	123	211	0	38	256	294	
Average number of permits per inspectable unit (excluding exploration sites)									<u>1</u>				
Average number of acres per inspectable unit (excluding exploration sites)									<u>87.35</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>19</u>									On Federal lands ^C :		<u>N/A</u>		
<p>IP: Initial regulatory program sites PP: Permanent regulatory program sites</p> <p>^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.</p>													

TABLE 3

STATE PERMITTING ACTIVITY												
As of September 30, 2004												
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	4	1,790	1	6	118	3	1	9	10	11	1,917
Renewals	0	0	0	5	4	89	8	5	149	13	9	238
Transfers, sales and assignments of permit rights	2	1		7	0		4	0		13	1	
Small operator assistance	0	0		0	0		0	0		0	0	
Exploration permits	0	0		0	0		0	0		0	0	
Exploration notices ^B		8			0			0			8	
Revisions (exclusive of incidental boundary revisions)		46			13			10			69	
Incidental boundary revisions		7	26		1	1		0	0		8	27
Totals	8	66	1,816	13	24	208	15	16	158	36	106	2,182

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

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^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		3			2	1						
	Land Stability		1			2	1		2				
	Hydrology								10	2			
	Encroachment					2						1	
	Other								1				
Total	0	4	0	0	6	2	0	13	2	1	0	0	0
Total number of inspectable units:		180											
Inspectable units free of off-site impacts:		<u>167</u>											
OFF-SITE IMPACTS ON BOND FORFEITURE SITES													
RESOURCES AFFECTED		People			Land			Water			Structures		
DEGREE OF IMPACT		minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major
TYPE OF IMPACT AND TOTAL NUMBER OF EACH TYPE	Blasting												
	Land Stability												
	Hydrology								2	2			
	Encroachment												
	Other												
Total	0	0	0	0	0	0	0	2	2	0	0	0	0
Total number of inspectable units:		173											
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

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	2,885.00
Phase II	- Surface stability - Establishment of vegetation	248.00
Phase III	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	1,066.00
	Bonded Acreage Status^A	Acres
Total number of acres bonded at end of last review period (September 30, 2003) ^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).

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, 2003 (end of previous evaluation year)	9	407.00
Sites with bonds forfeited and collected during Evaluation Year 2004 (current year)	0	0.00
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2004 (current year)	0	0.00
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2004 (current year)	3	75.00
Sites with bonds forfeited and collected that were unreclaimed as of September 30, 2004 (end of current year) ^A	6	332.00
Sites with bonds forfeited but uncollected as of September 30, 2004 (end of current year)	0	0.00
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of September 30, 2003 (end of previous evaluation year) ^B	2	42.00
Sites where surety/other party agreed to do reclamation during Evaluation Year 2004 (current year)	0	0.00
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2004 (current year)	0	0.00
Sites with reclamation completed by surety/other party during Evaluation Year 2004 (current year) ^C	0	0.00
Sites being reclaimed by surety/other party as of September 30, 2004 (current evaluation year) ^B	0	42.00
^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	FY 2004
Regulatory Program	
Permit review	12.00
Inspection	11.00
Other (administrative, fiscal, personnel, etc.)	18.00
Regulatory Program Total	41.00
AML Program Total	
TOTAL	41.00

TABLE 9

<p align="center">FUNDS GRANTED TO TENNESSEE BY OSM (Millions of dollars) FY 2004</p>		
<p align="center">Type of Grant</p>	<p align="center">Federal Funds Awarded</p>	<p align="center">Federal Funding as a Percentage of Total Program Costs</p>
Administration and Enforcement		
Small Operator Assistance		
<p align="center">Totals</p>	<p align="center">\$0.00</p>	

TABLE 10

STATE OF TENNESSEE INSPECTION ACTIVITY		
Period: October 1, 2003 - September 30, 2004		
Inspectable Unit Status	Number of Inspections Conducted	
	Complete	Partial
Active*	528	841
Inactive*	145	22
Abandoned*	152	43
Total	825	906
Exploration	92	26

* 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

STATE OF GEORGIA INSPECTION ACTIVITY		
Period: October 1, 2003 - September 30, 2004		
Inspectable Unit Status	Number of Inspections Conducted	
	Complete	Partial
Active*	0	0
Inactive*	0	0
Abandoned*	3	1
Total	3	1
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, 2003 - September 30, 2004		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	36	65
Failure-to-Abate Cessation Order	0	0
Imminent Harm Cessation Order	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

STATE OF GEORGIA ENFORCEMENT ACTIVITY		
Period: October 1, 2003 - September 30, 2004		
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, 2003 - September 30, 2004			
Number of Petitions Received	0		
Number of Petitions Accepted	0		
Number of Petitions Rejected	0		
Number of Decisions Declaring Lands Unsuitable	0	Acreage Declared as Being Unsuitable	0
Number of Decisions Denying Lands Unsuitable	0	Acreage Denied as Being Unsuitable	0

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.