

October, 2007

***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 2007

(October 1, 2006, to September 30, 2007)

TABLE OF CONTENTS

I. Introduction3

II. Overview of Coal Mining Industry3

III. Overview of Public Participation in the Program.....4

IV. Major Accomplishments/Issues/Innovations.....5

V. Technical Assistance11

VI. Success in Achieving the Purposes of SMCRA.....12

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

 B. Bond Releases13

 Appendix A: Tabular Summary of Core Data to Characterize the Program.....14

REG-8 Tables.....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 In Tennessee, OSM implemented the Federal regulatory program in October 1984 when the State repealed its surface mining law.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, 2006, to September 30, 2007. 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. You can also view this report on the OSM Appalachian Regional website at <http://arcc.osmre.gov/AnnualReports.asp>

The following list of acronyms is used in this report:

ACSP	Appalachian Clean Streams Program
AMD	Acid Mine Drainage
AML	Abandoned Mine Land
ARRI	Appalachian Regional Reforestation Initiative
FRA	Forestry Reclamation Approach
KFO	Knoxville Field Office
MEIR	Minesite Evaluation Inspection Report
NMA	National Mining Association
NRCS	Natural Resources Conservation Service
NTTP	National Technical Training Program
OSM	Office of Surface Mining
SMCRA	Surface Mining Control and Reclamation Act
TDEC	Tennessee Department of Environment and Conservation
TIPS	Technical Innovation and Professional Services
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 60.7 million short tons exist in bituminous coal beds from less than 28 inches 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 twentieth in production of coal among the 26 coal-producing states in fiscal year 2006. Coal production declined from a high of 11,260,000 tons in 1972 to 2.564 million tons in 2003. Coal production has increased since calendar year 2003 with 3.385 million tons reported during calendar year 2005. Currently, there are 20 active coal-producing mines that have permitted 9,498 acres for mining. Underground mines have permitted 130 acres (excluding shadow areas) at 4 active mines, and surface operations have permitted 9,368 acres at 16 active mines as of September 30, 2007.

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.

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

Public participation opportunities have been provided in the review of two new permit applications processed by KFO this year.

- **Agency Participation in the Regulatory Process**

Just as with participation of the public in the SMCRA regulatory process, KFO solicits input from numerous local, State, and Federal agencies that may have an interest in a proposed permitting action. In addition to providing written notification to these agencies, KFO began participating in periodic meetings with agencies such as the Tennessee Department of Environment and Conservation, U. S. Fish and Wildlife Service, and the National Park Service to discuss issues related to coal mining in Tennessee.

- **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.

- Stakeholder Meetings with the Industry

In implementing the regulatory program in Tennessee, KFO may from time to time determine that a stakeholder meeting is warranted to discuss programmatic issues which may affect the coal industry in Tennessee. These meetings are designed to solicit input from the industry for consideration during the agency decision making process. KFO conducted one such meeting during the past year to solicit stakeholder input in the development of a guidance document for the protection and enhancement of the blackside dace, a species of fish listed as “threatened” under the Endangered Species Act.

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 improved compliance.

- **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 Office 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 (AMD) 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. 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. In evaluation year 2007, TDEC installed an additional passive water treatment project to treat water from abandoned underground mines and they also completed the reclamation of 20 acres of spoil and highwall in the watershed. Also, KFO continued to provide water monitoring assistance to the watershed group’s partners in order to prioritize water improvement project needs and to document the effects the water improvement projects have on the creek.

Bear Creek. This is a watershed near Oneida in Scott County that flows into the 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 evaluation year 2007, NRCS continued construction activities on two watershed cooperative agreement projects that will be used to reclaim toxic spoils and treat water from abandoned mines in the areas. The work should be completed in FY 2008.

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. During 2007, field office personnel continued to provide water monitoring assistance to the partners in the watershed improvement group in order to prioritize water improvement project needs.

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. During 2007, KFO staff participated in watershed clean-up days to support the efforts of the partners. Field office personnel also provided information to the public about OSM's Appalachian Clean Streams Program and the activities performed to mitigate the effects of acid mine drainage.

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. In evaluation year 2007, KFO personnel provided water monitoring assistance to partnership members that use the data to document water quality conditions and to identify water improvement project needs. The partners completed water improvement projects with watershed cooperative agreement funds that OSM approved in FY 06. This will be the first of multi-year projects in an effort to clean up the streams that were heavily impacted by drainage from abandoned mines.

- **White Oak Reforestation Project**

The White Oak Reforestation Project is located in Campbell County, Tennessee. The initial phase of this project was to establish a 130-acre Forestry Reclamation Approach (FRA) demonstration area on a mine site reclaimed by Gatliff Coal Company in 2002.

During 2007 the project area was used to show effective reforestation to coal companies and OSM staff to encourage the use of the FRA on other mine sites in Tennessee. Emphasis is 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**

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. KFO staff served as members of the ARRI Core Team and as Co-Liaison for the ARRI Academic Team. 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. KFO has been successful in promoting and achieving the goals of ARRI. In 2007, the four permits issued by KFO incorporated the FRA into their mining and reclamation plans.

During 2007 KFO staff received the Forest Conservationist of the Year Award from the Tennessee Wildlife Federation for work with ARRI in Tennessee, made a presentation on ARRI and the FRA at the American Society of Mining and Reclamation Conference, and served on the planning committee and made presentations at the 2007 ARRI conference.

- **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 State and Federal agencies, 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 into development of field office policies and procedures such as development of guidance documents for the protection and enhancement of Federally-listed species such as the Indiana bat and the blackside dace and agency rules and regulations such as the recent regulatory changes related to reforestation and the establishment of trust funds to guarantee the long-term treatment of post-mining pollutional discharges for mine sites in Tennessee.

- **Litigation**

Cane Tennessee, Inc. et al. v. United States, No. 96-237L; *Colten, Inc. et al. v. United States*, No. 00-513L (Fed. Cl.) (consolidated)

Plaintiffs claim permanent and temporary takings of their coal interests based on OSM's permitting actions and the Secretary of the Interior's designation of certain lands as unsuitable for surface coal mining operations. The subject property is located in close proximity to Fall Creek Falls State Park in Tennessee. On June 27, 2003, the Court of Federal Claims granted the government's motion for summary judgment, dismissing the claims of plaintiffs Cane and Colten. On October 3, 2003, the court granted Cane's motion for reconsideration. (Colten did not seek reconsideration.) On reconsideration, the court determined that there may be genuine issues of material fact that preclude summary judgment against Cane on the issue of "economic impact" and also ordered supplementary briefing and

additional factual development on the issue of investment-backed expectations. The government filed a renewed motion for summary judgment on July 29, 2004.

On January 25, 2005, the court granted in part and denied in part the government's renewed motion. The court agreed with the government that Cane lacked "reasonable investment-backed expectations" but concluded there are genuine issues of material fact on the issue of "economic impact" of the government action and ordered a trial on that issue. After a trial on the economic impact issue, the court, on October 27, 2005, issued a decision in favor of the government. The court found that Cane's property had significant timber value after the lands unsuitable designation, and, therefore, the economic impact of the designation was not sufficiently serious to constitute a taking. Weighing this factor with the court's previous rulings (particularly the fact that Cane lacked reasonable investment-backed expectations), the court held that the designation did not effect a regulatory taking. The U.S. Court of Appeals for the Federal Circuit affirmed the trial court's ruling in favor of the government on January 10, 2007.

Benchmark Res. Corp. et al. v. United States, No. 03-178L (Fed. Cl.)

On January 24, 2003, plaintiffs filed a complaint alleging 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. Plaintiffs filed an amended complaint on October 14, 2005. Plaintiffs allegedly own approximately 142,000,000 tons of coal affected by the designation. Plaintiffs seek just compensation in an amount "not less than \$846,385,000" (the alleged value of their coal), as well as awards of interest, attorney fees, and costs. On March 17, 2005, the court denied the government's motion to dismiss. In its motion, the government had argued that plaintiffs' claims, having been filed nearly 16 years after the relevant government action, are barred by the applicable six-year statute of limitations.

On November 22, 2006, the U.S. Court of Federal Claims granted the government's motion to dismiss the claims of all plaintiffs (Benchmark Resources Corporation, Gentry Corporation, and Sunrise Holding, Inc.) in this regulatory takings case. In its November 22 opinion, the court held that: (1) the claims of all plaintiffs are not ripe for review because plaintiffs have never sought permits to mine the portions of their property that are unaffected by OSM's designation and (2) the claim of Sunrise Holding, Inc., is barred by the applicable six-year statute of limitations. (The court previously denied the government's motion to dismiss the claims of plaintiffs Benchmark Resources and Gentry on statute of limitations grounds.) The court dismissed plaintiffs' claims without prejudice and plaintiff did not file an appeal.

National Mining Ass'n v. Kempthorne, No. 00-0549 (E.D. Tenn.)

The National Mining Association (NMA) challenges KFO's issuance of Field Office Policy Memorandum No. 37, which establishes procedures for revising permits and increasing reclamation bonds where there is unanticipated AMD. The plaintiff asserts that the Tennessee Federal Program had 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 both the Administrative Procedure Act and the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On April 6, 2006, OSM published a proposed rule in the *Federal Register* that provides for the use of trust funds and annuities to fund the treatment of postmining pollutional discharges from surface coal mining operations and thus satisfy performance bond obligations for treatment of those discharges. A public hearing on the proposal was held on June 1, 2006, and written comments were accepted until June 30, 2006. The final rule was published in the *Federal Register* on March 2, 2007. The parties continue settlement negotiations.

Save Our Cumberland Mountains, Inc. et al. v. Kempthorne, No. 3:03-CV-462 (E.D. Tenn.); No. 05-5663 (6th Cir.)

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 in connection with OSM's approval of a permit application submitted in July 2002 by the Robert Clear Coal Corporation (RCCC). On October 31, 2003, the court issued an order and memorandum opinion denying plaintiffs' motion for a preliminary injunction. The court found that OSM's decision to issue an "environmental assessment" and "finding of no significant impact" and not to proceed with an "environmental impact statement" was not arbitrary and capricious based on the record that was before the court. On February 23, 2005, after briefing and argument on plaintiffs' motion for summary judgment, the court entered a decision dismissing all of plaintiffs' claims with prejudice. On April 21, 2005, plaintiffs filed a notice of appeal with the U.S. Court of Appeals for the Sixth Circuit. In a unanimous decision filed on June 29, 2006, the Sixth Circuit affirmed the District Court's decision which dismissed the plaintiffs' case and upheld OSM's NEPA decisions. On August 14, 2006, plaintiffs filed a petition for an en banc and panel rehearing. On December 6, 2006, the Sixth Circuit concluded that the issues raised in the petition were fully considered in the original decision on the case and denied the plaintiff's petition.

Tennessee Clean Water Network et al v. Kempthorne, No. 3:05-CV-214 (E.D. Tenn.)

On April 27, 2005, the Tennessee Clean Water Network, Save Our Cumberland Mountains, the Southern Appalachian Biodiversity Project, Appalachian Voices, and the Sierra Club filed, against Secretary Norton and OSM, a

seventeen-count complaint for declaratory and injunctive relief together with a motion for a preliminary injunction alleging numerous violations of the National Environmental Policy Act (NEPA) and the Surface Mining Control and Reclamation Act of 1977 (SMCRA). At issue in this case is whether OSM complied with NEPA when it issued a “supplemental environmental assessment” as part of a revision to a SMCRA permit to the National Coal Corporation (successor to Robert Clear Coal Corporation), on March 2, 2005, to conduct a surface coal mining operation. Plaintiffs challenge OSM’s decision to prepare only a “supplemental environmental assessment” and “finding of no significant impact” and assert that it should have prepared an “environmental impact statement.” A similar suit was filed when the mining permit was initially issued (*see* previous item). Several pleadings were filed by the government: a motion for partial dismissal; a response to plaintiffs’ motion for preliminary injunction; and a reply to plaintiffs’ motion for leave to take deposition. The discovery issue was before a Magistrate Judge, who issued an order on July 29, 2005, denying plaintiffs’ motion. The hearing on plaintiffs’ motion for preliminary injunction took place on August 24, 2005. On October 4, 2005, the District Court entered an order, with accompanying memorandum opinion, denying the plaintiffs’ motion for preliminary injunction; granting the government’s motion for dismissal of the SMCRA counts; and denying the government’s motion to strike extra-record exhibits filed by the plaintiffs. On April 20, 2006, plaintiffs filed a motion asking for leave to amend their complaint. On June 20, 2006, the defendants filed a response opposing plaintiffs’ motion on grounds that: (1) many of plaintiff’s new claims are still the subject of on-going agency action and are not final; (2) on those claims that are final, plaintiffs have failed to exhaust administrative remedies, and (3) some of plaintiffs’ claims involve discretionary actions by OSM and therefore the Court does not have jurisdiction to hear those claims under the citizen suit provisions of SMCRA. On October 20, 2006, the District Court issued an Order allowing plaintiffs to amend their complaint, but allowing them to add only new NEPA counts against the defendants. On December 14, 2006, the defendants filed their answer. The parties subsequently filed Motions for Summary Judgment and responses to those motions. Oral arguments were heard on July 3, 2007. On July 27, 2007, the District Court concluded that the defendants did not violate the provisions of NEPA or SMCRA and as such, granted the government’s motion for summary judgment, denied the plaintiff’s summary judgment motion, and dismissed the complaint.

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 the Program Support Division within ARC. For the evaluation year, the Technical Group has spent approximately 93 percent of its time on Federal program activities and 7 percent on technical assistance activities. The projects and activities, which involve KFO employees, are as follows:

- National Blasting Work Group
- Instructors for NTTP Training Courses
- Instructors for TIPS Training Courses
- Appalachian Regional Reforestation Initiative
- KFO Reforestation Initiative
- Technical support to OSM=s Lexington and Charleston Field Offices for oversight and Federal Lands issues
- Technical support to Bureau of Land Management on Federal Lands issues such as leasing and NEPA requirements
- Technical support for joint OSM / State initiative to apply geospatial technology in implementation of the SMCRA regulatory program.
- New River Mussel Survey
- Technical support to National Park Service and other Federal / State agencies in development of a hydrologic database for the New River watershed

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 2007 KFO Reclamation Specialists evaluated all active mine sites 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.

Eleven permits (all in Tennessee) were identified as having 21 events that impacted 24 resources (people, land and water). Twelve off-site impacts to water (6 minor, 5 moderate and 1 major) occurred due to changes in water chemistry during mining or sediment laden run-off leaving the sites for short distances. The one major impact resulted from a breached diversion ditch, which deposited a significant amount of sediments into a stream tributary. Nine impacts to land (4 minor and 5 moderate) resulted from erosion, encroachment off permit and spoil placed on the downslope. Three minor impacts to people were due to blasting noise and vibration and an instance of excessive haulroad dust.

The majority of the violations were considered to be permittee negligence. For this reason, improvements in the regulatory functions or processes are being reviewed.

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 2007 complete inspections.

Four off-site impacts (two minor and two moderate) were reported during EY 2006. All four impacts resulted from low pH runoff discharges into receiving streams.

B. Bond Releases

During the period October 1, 2006, through September 15, 2007, KFO processed 49 bond release applications. A total of 20 release actions were approved, consisting of 5 Phase I, 5 Phase II, and 10 Phase III releases. These actions resulted in returning all or a portion of the bond on 721 acres of reclaimed mine lands (see attached table). During this same period 5 bond release applications were disapproved, 19 bond release applications were returned as incomplete and 5 bond release applications were withdrawn. As a result of an Alternative Internal Management Control Review, KFO is developing new procedures for receiving and processing bond release applications.

APPENDIX A:

These tables present data pertinent to mining operations and Federal regulatory activities within Tennessee. The reporting period for the data contained in the tables is October 1, 2006, through September 15, 2007. This abbreviated reporting period is to facilitate the request to report all REG-8 table data by October 2, 2007. Additional data used by KFO in its evaluation of performance is available for review in the evaluation files maintained by the KFO.

TABULAR SUMMARY OF CORE DATA TO CHARACTERIZE THE PROGRAM

- Table 1: Coal Production in Tennessee
(NOTE: The reporting period for coal production was changed from calendar year to fiscal year. Fiscal year 2007 information was not available as of the report preparation date.)
- Table 2: KFO Inspectable Units in Tennessee
- Table 2: KFO Inspectable Units in Georgia
- Table 3: KFO Permitting Activity in Tennessee
- Table 4: Off-Site Impacts in Tennessee
- Table 4: Off-Site Impacts in Georgia
- Table 5: Annual State Mining and Reclamation Results for Tennessee
- Table 6: KFO Bond Forfeiture Activity
- Table 7: KFO Staffing
- Table 8: Funds Granted to State by OSM
- Table 9: KFO Inspection Activity in Tennessee
- Table 9: KFO Inspection Activity in Georgia
- Table 10: KFO Enforcement Activity in Tennessee
- Table 10: KFO Enforcement Activity in Georgia
- Table 11: Lands Unsuitable Activity

TABLE 1

Coal Produced for Sale, Transfer, or Use
(Millions of Short Tons)

Period	Surface Mines	Underground Mines	Total
Coal production[^] for entire State:			
Evaluation Year			
EY 2005	2.149	1.156	3.305
EY 2006	1.785	1.254	3.039
EY 2007	1.696	0.996	2.692

[^] 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 evaluation years to include the last full evaluation year for which data is available.**

TABLE 2

**Inspectible Units
As of September 30, 2007**

Coal mines and related facilities	Number and Status of Permits								Nbr. of Insp. Units ^A	Permitted Acreage ^B (100's of acres)				
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals			Federal Lands		State/Private Lands		All Lands
	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	IP	PP	Total
LANDS FOR WHICH THE STATE IS THE REGULATORY AUTHORITY														
Surface mines	2	50	1	8	94	31	97	89	186	0.0	2.0	34.8	245.2	282.0
Underground mines	0	34	0	4	21	21	21	59	80	0.0	1.6	1.5	9.5	12.6
Other facilities	1	36	0	3	2	5	3	44	47	0.0	0.0	0.0	23.1	23.1
Total	3	120	1	15	117	57	121	192	313	0.0	3.6	36.3	277.8	317.7

Total number of permits:	313
Average number of permits per inspectible unit (excluding exploration sites):	1.00
Average number of acres per inspectible unit (excluding exploration sites):	101.49
Number of exploration permits on State and private lands:	1
Number of exploration notices on State and private lands:	30
On Federal lands ^C :	0
On Federal lands ^C :	0

IP: Initial regulatory program sites
PP: Permanent regulatory program sites

^A Inspectible units include multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.

^B When a single inspectible unit contains both Federal lands and State/Private lands, enter the permitted acreage for each land type in the appropriate category.

^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.

TABLE 2

**Inspectable Units
As of September 30, 2007**

Coal mines and related facilities	Number and Status of Permits								Nbr. of Insp. Units ^A	Permitted Acreage ^B (100's of acres)					
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals			Federal Lands		State/Private Lands		All Lands	
	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	IP	PP	Total	
	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	IP	PP	Total	
LANDS FOR WHICH THE STATE IS THE REGULATORY AUTHORITY															
Surface mines	0	0	0	0	4	0	4	0	4	0.0	0.0	1.3	0.0	1.3	
Underground mines	0	0	0	0	2	0	2	0	2	0.0	0.0	0.1	0.0	0.1	
Other facilities	0	0	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
Total	0	0	0	0	6	0	6	0	6	0.0	0.0	1.4	0.0	1.4	
Total number of permits:										6					
Average number of permits per inspectable unit (excluding exploration sites):										1.00					
Average number of acres per inspectable unit (excluding exploration sites):										23.33					
Number of exploration permits on State and private lands:										0	On Federal lands ^C :		0		
Number of exploration notices on State and private lands:										0	On Federal lands ^C :		0		
<p>IP: Initial regulatory program sites PP: Permanent regulatory program sites</p> <p>^A Inspectable units include multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.</p> <p>^B When a single inspectable unit contains both Federal lands and State/Private lands, enter the permitted acreage for each land type in the appropriate category.</p> <p>^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.</p>															

TABLE 3

**State Permitting Activity
As of September 30, 2007**

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	3	4	1,556	2	0	0	1	0	0	6	4	1,556
Renewals	1	0		4	2		3	10		8	12	
Transfers, sales, and assignments of permit rights	1	0		1	1		1	0		3	1	
Small operator assistance	0	0		0	0		0	0		0	0	
Exploration permits										0	1	
Exploration notices ^B											13	
Revisions (exclusive of incidental boundary revisions)		47			14			13			74	
Revisions (adding acreage but are not incidental boundary revisions)	0	0	0	0	0	0	0	0	0	0	0	0
Incidental boundary revisions	13	11	80	1	1	1	3	3	11	17	15	92
Totals	18	62	1,636	8	18	1	8	26	11	34	120	1,648

OPTIONAL - Number of midterm permit reviews completed that are not reported as revisions: 22

^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 (excluding bond forfeiture sites)

RESOURCES AFFECTED	People			Land			Water			Structures		
	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major
DEGREE OF IMPACT												
Blasting	2	0	0	0	0	0	0	0	0	0	0	0
Land Stability	0	0	0	0	0	0	0	0	0	0	0	0
Hydrology	15	0	0	3	3	0	6	5	1	0	0	0
Encroachment	3	0	0	1	2	0	0	0	0	0	0	0
Other	1	0	0	0	0	0	0	0	0	0	0	0
Total	21	3	0	4	5	0	6	5	1	0	0	0

Total number of inspectable units (excluding bond forfeiture sites): 139

Inspectable units free of off-site impacts: 128

Inspectable units with off-site impacts: 11

OFF-SITE IMPACTS ON BOND FORFEITURE SITES

RESOURCES AFFECTED	People			Land			Water			Structures		
	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major
DEGREE OF IMPACT												
Blasting	0	0	0	0	0	0	0	0	0	0	0	0
Land Stability	0	0	0	0	0	0	0	0	0	0	0	0
Hydrology	4	0	0	0	0	0	2	2	0	0	0	0
Encroachment	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Total	4	0	0	0	0	0	2	2	0	0	0	0

Total number of inspectable units (only bond forfeiture sites): 174

Inspectable units free of off-site impacts: 170

Inspectable units with off-site impacts: 4

TABLE 4

OFF-SITE IMPACTS (excluding bond forfeiture sites)

RESOURCES AFFECTED	People			Land			Water			Structures		
	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major
TYPE OF IMPACT	0	0	0	0	0	0	0	0	0	0	0	0
Blasting	0	0	0	0	0	0	0	0	0	0	0	0
Land Stability	0	0	0	0	0	0	0	0	0	0	0	0
Hydrology	0	0	0	0	0	0	0	0	0	0	0	0
Encroachment	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	0	0	0									
NUMBER OF EACH TYPE	0	0	0									

Total number of inspectable units (excluding bond forfeiture sites): 0

Inspectable units free of off-site impacts: 0

Inspectable units with off-site impacts: 0

OFF-SITE IMPACTS ON BOND FORFEITURE SITES

RESOURCES AFFECTED	People			Land			Water			Structures		
	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major
TYPE OF IMPACT	0	0	0	0	0	0	0	0	0	0	0	0
Blasting	0	0	0	0	0	0	0	0	0	0	0	0
Land Stability	0	0	0	0	0	0	0	0	0	0	0	0
Hydrology	0	0	0	0	0	0	0	0	0	0	0	0
Encroachment	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	0	0	0									
NUMBER OF EACH TYPE	0	0	0									

Total number of inspectable units (only bond forfeiture sites): 6

Inspectable units free of off-site impacts: 6

Inspectable units with off-site impacts: 0

TABLE 5

Annual State Mining and Reclamation Results

Bond release phase	Applicable performance standard	During this Evaluation Year		
		Total acreage released	Acreage also released under Phase I	Acreage also released under Phase II
A	B	C	D	E
Phase I	- Approximate original contour restored - Topsoil or approved alternative replaced	227		
Phase II	- Surface stability - Establishment of vegetation	167	0	
Phase III	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	327	26	167
Bonded Acreage ^A			Acres during this evaluation year	
Total number of new acres bonded during this fiscal year			1,648	
Number of acres bonded during this fiscal year that are considered remining, if available			0	
Number of acres where bond was forfeited during this fiscal year			19	
Bonded Acreage Status			Cumulative Acres	
Total number of acres bonded as of the end of last review period (Sept. 30, 2006) ^B			16,550	
Total number of acres bonded as of the end of this review period (Sept. 30, 2007) ^B			17,852	
Sum of acres bonded that are between Phase I bond release and Phase II bond release as of Sept. 30, 2007 ^B			0	
Sum of acres bonded that are between Phase II bond release and Phase III bond release as of Sept. 30, 2007 ^B			0	
Disturbed Acreage			Acres	
Number of Acres Disturbed during this fiscal year			432	
Number of Acres Disturbed at the end of the fiscal year (cumulative)			0	
<p>^A Bonded acreage is considered to approximate and represent the number of acres disturbed by surface coal mining and reclamation operations.</p> <p>^B Bonded acres in this category are those that have not received a Phase III or other final bond release (State maintains jurisdiction).</p>				

Brief explanation of columns D & E. The States will enter the total acreage under each of the three phases (column C). The additional columns (D & E & E) will "break-out" the acreage among Phase II and/or Phase III. Bond release under Phase II can be a combination of Phase I and II acreage, and Phase III acreage can be a combination of Phase I, II, and III. See "Instructions for Completion of Specific Tables," Table 5 for example.

TABLE 6

State Bond Forfeiture Activity
(Permanent Program Permits)

Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Dollars	Acres
Sites with bonds forfeited and collected that were unreclaimed as of Sept. 30, 2006 (end of previous fiscal year) ^A	6		391
Sites with bonds forfeited and collected during Fiscal Year 2007 current fiscal year)	2	\$ 57,700	19
Sites with bonds forfeited and collected that were re-permitted during Fiscal Year 2007 (current fiscal year)	0		0
Sites with bonds forfeited and collected that were reclaimed during Fiscal Year 2007 (current fiscal year)	4		300
Sites with bonds forfeited and collected that were unreclaimed as of Sept. 30 2007 (end of current fiscal year) ^A	4		110
Sites with bonds forfeited but uncollected as of Sept. 30 2007 (end of current fiscal year)	0		0
Surety/Other Reclamation (In Lieu of Forfeiture)			
Sites being reclaimed by surety/other party as of Sept. 30, 2006 (end of previous fiscal year) ^B	0		0
Sites where surety/other party agreed to do reclamation during Fiscal Year 2007 (current fiscal year)	0		0
Sites being reclaimed by surety/other party that were re-permitted during Fiscal Year 2007 (current fiscal year)	0		0
Sites with reclamation completed by surety/other party during Fiscal Year 2007 (current fiscal year) ^C	0		0
Sites being reclaimed by surety/other party as of Sept. 30, 2007 (current fiscal year) ^B	0		0

^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 7

State Staffing (Full-time equivalents at end of evaluation year)

Function	FY 2007
Regulatory Program	
Permit Review	11.00
Inspection	10.00
Other (administrative, fiscal, personnel, etc.)	15.00
Regulatory Program Total	36.00
AML Program Total	0.00
Total	36.00

TABLE 8

**Funds Granted To Tennessee
BY OSM**

(During the Current Fiscal Year)

(Actual Dollars, Rounded to the Nearest Dollar)

Type of Funding	Federal Funds Awarded During Current Evaluation Year	Federal Funding as a Percentage of Total Program Costs
Regulatory Funding		
Administration and Enforcement Grant	\$ 0	0.00 %
Other Regulatory Funding, if applicable	\$ 0	0.00 %
Subtotal	\$ 0	
Small Operator Assistance Program	\$ 0	100 %
Abandoned Mine Land Reclamation Funding ^A	\$ 103,032	100 %
Totals	\$ 103,032	

^A Includes funding for AML Grants, the Clean Streams Initiative and the Watershed Cooperative Agreement Program.

TABLE 9**State Inspection Activity
During Current Fiscal Year**

Inspectable Unit Status	Number of Inspections Conducted	
	Complete	Partial
Active ^A	472	886
Inactive ^A	71	28
Abandoned ^A	26	1
Total	569	915
Exploration	74	34

^A Use terms as defined by the approved State program.

TABLE 9**State Inspection Activity
During Current Fiscal Year**

Inspectable Unit Status	Number of Inspections Conducted	
	Complete	Partial
Active ^A	0	0
Inactive ^A	0	0
Abandoned ^A	0	0
Total	0	0
Exploration	0	0

^A Use terms as defined by the approved State program.

TABLE 10

State Enforcement Activity

During Current Evaluation Year

Type of Enforcement Action	Number of Actions ^A	Number of Violations ^A
Notice of Violation	44	63
Failure-to-Abate Cessation Order	7	19
Imminent Harm Cessation Order	2	2

^A Do not include those violations that were vacated.

TABLE 10

**State Enforcement Activity
During Current Evaluation Year**

Type of Enforcement Action	Number of Actions^A	Number of Violations^A
Notice of Violation	0	0
Failure-to-Abate Cessation Order	0	0
Imminent Harm Cessation Order	0	0
^A Do not include those violations that were vacated.		

TABLE 11

Lands Unsuitable Activity

During Current Fiscal Year

	Number	Acreage
Number Petitions Received	0	
Number Petitions Accepted	0	
Number Petitions Rejected	0	
Number Decisions Declaring Lands Unsuitable	0	0
Number Decisions Denying Lands Unsuitable	0	0