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United States Department of the Interior

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January 10, 1991

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DIVISION OF  
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Dr. Dianne R. Nielson, Director  
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Division of Oil, Gas and Mining  
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Dear Dr. Nielson:

The final 1990 Annual Evaluation Report for Utah is enclosed.

If you have any questions, please call Brian Smith or me at  
(505) 766-1486.

Sincerely,

*[Handwritten signature]*  
Robert H. Hagen, Director  
Albuquerque Field Office

Enclosure

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

Administered by the State

of

UTAH

for

Evaluation Year 1990

(July 1, 1989 through June 30, 1990)

January 1991

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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 to oversee the regulation of coal exploration and surface coal mining and reclamation operations and the reclamation of lands adversely affected by past mining practices. SMCRA provides that, if certain conditions are met, a State may assume primary authority for the regulation of surface coal mining and reclamation operations and the reclamation of abandoned mine lands within its borders. Once the State has obtained such approval, OSM has the responsibility to make the investigations, evaluations, and inspections necessary to determine whether the State programs are being administered and enforced in accordance with the approved program provisions.

Because it is neither possible nor necessary to fully evaluate each program element and subelement every year, OSM's Albuquerque Field Office has developed a schedule (Appendix B) specifying when each element and subelement will be reviewed during a 3-year evaluation cycle. This schedule will be revised as necessary to respond to changing conditions within Utah and concerns identified by the public or OSM oversight activities. Comments regarding the oversight process, recommendations for additional review topics, and suggestions for improvement of future reports are encouraged and should be submitted to the Director of the Albuquerque Field Office.

Set forth below are the summary findings of the Director of OSM's Albuquerque Field Office regarding the performance of Utah for the period July 1, 1989 through June 30, 1990. Detailed background information and comprehensive element-specific reports are available for review at the Albuquerque Field Office.

## II. Overview of the Utah Coal Mining Industry

Coal is found beneath approximately 18 percent of the State of Utah, but only 4 percent is considered minable at this time. The demonstrated coal reserve base is about 6.4 billion tons, 1.3 percent of the national reserve base. Most of Utah's coal resources are held by the Federal Government and Indian Tribes.

Utah's coal fields are divided into the Northern, Central, Eastern, and Southwestern Utah coal regions. The most productive region has been, and is, the Central Utah Coal Region which includes the Book Cliffs, Wasatch Plateau, and Emery Coal Fields. There are vast, substantially undeveloped coal fields in the Southwestern Utah coal region. Development of these fields will probably be difficult because of environmental concerns resulting from the proximity of the coal fields to national parks and other recreation areas.

Most of Utah coal is bituminous and is of Cretaceous Age. The BTU value of Utah coal is high compared to other western States. Sulfur content ranges from medium to low in the more important coal fields.

Most current operations mine seams that exceed 8 feet in thickness. All coal production is from underground mining. There are 30 permitted operations in Utah, 26 of which are currently operating (Table 2). There are 119,876 acres of land currently under permit for mining with approximately 2,300 acres disturbed. Utah's coal production has been increasing steadily since the early 1970's, producing 20.8 million tons in 1989 (Table 1). Utah's coal industry employs approximately 2500 miners.

The climate of the Central Utah Coal Region is characterized by hot, dry summers and cold, relatively moist winters. Normal precipitation varies from 6 inches in the lower valleys to more than 40 inches on some high plateaus. The growing season ranges from 5 months in some valleys to only 2-1/2 months in mountainous regions of the State. These extreme climatic conditions can make land reclamation difficult.

### III. Executive Summary

#### A. Overall Performance in Program Implementation

##### 1. Regulatory Program

Since the previous evaluation, the Division of Oil, Gas and Mining's (DOGM) permitting program has shown improvement in the timeliness of processing midterm permit reviews and in processing some permit revisions. Problems remain, however, with the amount of time being taken to accomplish permit revisions necessary to bring an operation into compliance in response to oversight inspections. Problems were noted where DOGM used permitting actions that were not in accordance with its approved program. These permitting actions include: Approving temporary permits, approving small area exemptions or drainage control by the "best technology currently available" without requiring the operator to demonstrate that effluent limitations can be met, and giving operators oral approval to change operations or reclamation plans. DOGM also did not require permittees to permit haul and access roads that are designated as public roads and may involve some degree of public use in addition to the use by the mining operations. This issue requires DOGM to re-evaluate how program jurisdiction requirements apply to these types of roads in order to be consistent with direction provided by a Federal court decision. DOGM and OSM are currently re-evaluating the procedure used to determine exemptions from regulation.

DOGM continues to conduct substantially all inspections mandated by its program.

The past three annual evaluation reports noted that DOGM did not identify and cite all violations that existed during complete inspections. This issue continued into the 1990 evaluation period, and little progress has been made toward resolution. DOGM personnel also administratively vacated two enforcement actions for reasons that OSM believes conflict with program requirements.

DOGM properly performs proposed civil penalty assessments, basing the assessment on the appropriate criteria and in a consistent manner. However, DOGM does not always adhere to timeframes specified in its program for assessing proposed penalties; 30 out of 47 assessments were made beyond the 30-day time limit.

DOGM reviews enforcement actions relating to the validity of the fact of violation during assessment conferences. The fact of violation should be considered during assessment conferences only as it relates to the appropriateness of the civil penalty. Based on informal assessment conference reviews, the Assessment Conference Officer vacated four enforcement actions. OSM believes that it is inappropriate to vacate enforcement actions during assessment conferences; the formal hearing process should be utilized for such actions. OSM also believes that the reasons for vacating those enforcement actions conflicted with program requirements.

DOGM is diligent in requiring that employees file statements of employment and financial interests and otherwise conform to conflict of interest provisions. However, employees of the Utah Industrial Commission who administer the Blaster Certification Program were not initially required to file statements but did file statements during the first quarter of the 1991 evaluation period.

The Executive Summary for the 1989 Annual Evaluation Report for Utah stated: "In summary, while DOGM has the ability and expertise to administer Utah's regulatory program properly, there are some major problems that severely impact the overall effectiveness of Utah's program." The 1990 evaluation indicates DOGM made little progress during the evaluation period toward correcting the regulatory problems that impact program effectiveness.

Because of the continuing nature of many of the issues in Utah and OSM's previous inability to bring about change, OSM has increased emphasis on the resolution of issues with

DOGM's administration of the State program. A Memorandum of Understanding (MOU) is being developed to obtain DOGM's commitment to corrective actions in regard to citing all violations. A formal "Progress Report" is being established to monitor remedial activities in other program areas. DOGM has been cooperative in this effort. Since the end of the evaluation period and with the initiation of the MOU and Progress Report, progress is being made toward correcting problems. The current status of specific problems can be found in the Summary Findings section of this Report under Status of Problems.

## 2. Abandoned Mine Lands Program

Since commencement of Utah's Abandoned Mine Reclamation (AMR) Program on June 3, 1983, OSM has awarded DOGM \$8,770,000 for the reclamation of 22 coal projects, 19 of which are completed. That funding also provided for reclamation of six noncoal projects, five of which are completed. OSM also awarded Utah a total of \$3,630,000 to administer its AMR Program and \$333,254 in set-aside money to fund reclamation after 1992.

DOGM worked on activities ranging from coal and noncoal project reclamation to developing educational materials. Accomplishments of the AMR Program during this period include completing reclamation of six coal projects. DOGM continued reclamation on two additional coal projects and one noncoal project. DOGM performed planning and engineering tasks to enable it to tentatively complete all its remaining coal reclamation by the end of 1992. Other accomplishments include providing technical assistance to the National Park Service for reclamation projects on Park Service lands and publishing an educational workbook on abandoned mine hazards for general distribution to 4th-grade classes. One particularly notable accomplishment involves DOGM's volunteer AMR Program. For the past 2 years, DOGM's AMR volunteers have been successful in working with other State and local agencies and landowners to increase awareness and to abate abandoned mine land (AML) hazards other than those for which reclamation was funded through OSM. The combined efforts of the AMR Program and its volunteers have been instrumental in keeping the number of reported AML-related accidents relatively low in Utah. Accomplishments shown on Table 15 include 19 mine portals and 16 vertical shafts closed largely through the efforts of DOGM's volunteers.

Administrative problems were noted with the AMR Program throughout the evaluation period. Most of the problems concerned administrative requirements related to grant



applications, approvals, and reporting. The most significant occurred when DOGM did not obtain written OSM approvals for project scope changes before incurring costs. OSM and DOGM addressed every problem and are working to prevent their recurrence. All other aspects of the AMR Program in Utah are properly being implemented in accordance with Section 102(h) of SMCRA.

B. Status of Unresolved Issues From Previous Evaluations

1. Regulatory Program

Several issues were identified in the 1989 Annual Evaluation Report as being unresolved or tentatively resolved. The status of those issues is as follows:

DOGM's timeliness in conducting midterm reviews has improved, and this issue is considered resolved. Permitting actions, in general, are also more timely; however, permit revisions resulting from Ten-Day Notices (TDN) have not always been accomplished in a timely manner.

DOGM's use of permitting actions that do not conform to the approved State program, such as issuing temporary permits and approval of sediment control practices for small areas, continues to be an issue. Also, DOGM's performance in processing permit transfers still needs improvement.

Bonding concerns on a Federal lands permit were identified during the last evaluation period where: (1) DOGM accepted an inappropriate collateral bond; and (2) OSM was not listed as a copayee on the bond. Those concerns were resolved, but a similar situation developed on another Federal lands permit during this evaluation period where DOGM and OSM have been extensively involved in negotiations regarding a settlement agreement to replace bonding coverage.

DOGM's performance in identifying and citing violations remains an issue. The improper vacation of enforcement actions, both administratively by DOGM and in informal assessment conferences by the Assessment Conference Officer, also continued to be an issue. During the first quarter of the 1991 evaluation period, DOGM submitted a proposed revision to the assessment conference process to address the identified concerns.

OSM has not observed problems with pattern of violations reviews during this evaluation period; therefore, this issue from the previous evaluation period is considered resolved.

During the 1989 evaluation period, OSM expressed concerns about an MOU between DOGM and the Department of Health concerning citing water quality violations. DOGM is now working with the Department of Health to amend this MOU.

2. Abandoned Mine Lands Program

There were no unresolved issues from the 1989 Annual Evaluation Report.

C. Success of the State Program in Achieving Overall Reclamation Success

1. Regulatory Program

To evaluate the overall success of Utah's regulatory program in achieving reclamation of mined lands, OSM began collecting data during routine statistical oversight inspections with which it intends to build a data base to measure on-the-ground reclamation success (quantity, quality, and timeliness of reclamation). Because procedures for collecting data were not in place until midway through the evaluation period, OSM was unable to collect sufficient data during the 1990 evaluation period to draw conclusions regarding the overall success of Utah's regulatory program in achieving reclamation. Also, all of the mining operations in Utah are underground mines, many of which have been active since inception of the State program and are expected to remain active for many more years. Because of this, compiling statistics and comparing the number of acres disturbed, regraded, and revegetated would not be meaningful or provide an accurate picture of the progress of reclamation in Utah.

During this evaluation period, OSM made general observations that reflect the overall success of Utah's program. These observations were made during statistical oversight inspections, during a bond release inspection, through document review, and through discussions with the State Regulatory Authority. OSM observation in three areas indicated that improvement is needed in the administration of the State program to ensure successful reclamation. These areas are highwall elimination, protection of surface waters, and timeliness of reclamation.

During a phase I bond release inspection, OSM found that DOGM had allowed the operator to leave highwalls exposed. Utah's approved program allows for the retention of highwalls if certain conditions exist; however, OSM believed the conditions were not applicable to the situation in question. The Utah Board of Oil, Gas and Mining

subsequently approved retention of highwalls at this site. OSM is reviewing this action. OSM also has concerns regarding compliance with backfilling and grading requirements at another mine where retention of highwalls was authorized.

OSM is concerned about the protection of surface waters. One site in Utah has been responsible for oil emulsion discharges and other discharges of coal-fine-laden water into a trout stream. The initial discharge occurred in April 1989 and resulted in a fish kill affecting 3.3 miles of stream and reduced the macroinvertebrate population in a section of the stream by approximately 90 percent. At least two additional discharges occurred in May 1989, further damaging the stream. In response to these discharges, DOGM issued a Notice of Violation (NOV), a failure-to-abate Cessation Order, and an imminent-harm Cessation Order. Both Cessation Orders were later vacated during an informal assessment conference. DOGM worked closely with the Utah Division of Environmental Health (Health) to coordinate abatement requirements which included repairs to in-mine piping, adding a back-up sediment pond, and establishing a stream restoration program. DOGM also worked with Health and the Division of Wildlife Resources to initiate research on the potential toxicity of water-soluble emulsions and flocculents. However, water quality problems continued at the site with two additional enforcement actions relating to oil and grease discharges being issued in November and December 1989. Abatement measures for the enforcement action issued in December were not completed until June 1990 pending review and approval of a stream enhancement plan by DOGM, which DOGM held in abeyance until after the spring runoff.

During document review associated with a 1990 oversight inspection, OSM found that a similar situation occurred at another site in 1988 when a DOGM inspector discovered a bank-to-bank layer of detergent foam in a trout stream that was originating at a mine site. As a result of violations discovered at the mine, the inspector issued two NOV's and an imminent-harm Cessation Order. DOGM later vacated the two NOV's and terminated the Cessation Order prematurely, although its actions resulted in the operator discontinuing the use of certain types of emulsions because of toxicity concerns.

The third area of concern regarding overall reclamation success is the timeliness of reclamation. One mine on Federal lands in Utah has been inactive and without a permit since 1983. During this evaluation period, OSM required that abatement work be performed to bring the site into

compliance and that the operator obtain a permit or reclaim the site. At this time, OSM and DOGM are working to accomplish as much reclamation as possible this year and to expeditiously complete permitting to accommodate planned use of some of the facilities for a future mining operation.

2. Abandoned Mine Lands Program

DOGM's reclamation of six projects and work on two others in this period eliminated safety hazards associated with 73 portals, 15 vertical shafts, 1 highwall, 1 deteriorated structure, and more than 483,000 cubic yards of material in steep-sided and often burning coal waste piles on 26 acres of disturbed land. Approximately 30 reclaimed acres were returned to a condition that is more beneficial and safer for use by the people of Utah than if left unreclaimed. In addition, reclamation reduced the adverse effects of past mining on wildlife and other natural resources (See Table 15).

IV. Actions Affecting Program Implementation

A. Regulatory Program

There were no significant legal, legislative, or budgetary actions impacting implementation of Utah's program during this evaluation period.

B. Abandoned Mine Lands Program

Nothing occurred during the evaluation period that would affect implementation of Utah's AMR Program.

V. Summary Findings

Summary findings for the specific program elements reviewed during the evaluation period begin on the following page.

UTAH

Regulatory Program Element: Permitting Actions

Subelements Reviewed: (1) Processing of New Mining Permit Applications; (2) Processing of Exploration Applications; (3) Processing of Applications for Permit Revisions, Transfers, Sales, and Assignments; and (4) Conduct of Midterm and Other Reviews Required by 30 CFR 774.11

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Summary Findings: No new permit applications were received during this evaluation period. However, an application which proposes significant alteration to the original permit must be processed as a new permit. DOGM processed one such application, taking all appropriate actions. (See Table 4.)

OSM reviewed DOGM's coordination and consideration of comments from governmental agencies and the State Historic Preservation Officer and determined that, generally, DOGM was adequately coordinating with the appropriate agencies.

DOGM did not receive any applications for exploration over 250 tons; therefore, no review occurred in this area.

DOGM processed three permit transfers during the 1990 evaluation period. OSM believed that two of these transfers, both involving Federal lands, were not handled appropriately because issues such as right-of-entry, ownership and control, and bond validity were not verified prior to permit transfer, and public notice requirements were not met prior to permit transfer.

OSM reviewed the overall processing of revisions and found DOGM's actions to be appropriate with the exception of timeliness of permit revisions resulting from Ten-Day Notices. The untimeliness of processing these revisions was an issue noted in the 1989 Annual Evaluation Report; while improvement has been made, some problems continued into this evaluation period.

The 1989 Annual Evaluation Report indicated that DOGM was taking as long as a year to do midterm reviews. This has improved; midterm reviews done in the 1990 evaluation period ranged from being on time to being 4 months late. OSM found that DOGM did thorough midterm reviews; administration of midterm reviews was found to be appropriate with the exception of problems with information transmittal to OSM.

As was noted during last year's evaluation, DOGM uses permitting actions that are not in accordance with its approved program. During the 1990 evaluation year, DOGM granted a temporary permit to a company that OSM believed did not meet deadlines in submitting a complete and accurate

permit renewal application and gave oral approval to operators to change their operations or reclamation plans.

The State program allows DOGM to determine on a case-by-case basis what constitutes the "best technology currently available" (BTCA) for areas that do not pass through a sedimentation pond and do not qualify for a small area exemption (SAE). The program allows approval of SAE's when the operator demonstrates that sedimentation ponds and alternative sediment control measures are not necessary for effluent to meet water quality standards. For the majority of approvals during the 1990 evaluation period, DOGM did not document the basis for its determinations that alternative sediment control measures were BTCA. SAE's were also approved without the appropriate demonstrations that water quality would be adequate.

As noted earlier, DOGM does not require permitting of access and haul roads that it considers public roads exempt from regulation. In 1985, following a Federal Court decision, OSM disapproved a part of the Utah program that specified criteria for exemption of public roads from the affected area. The disapproval had the effect of requiring that all access and haul roads be regulated because the State program states that "The affected area includes \* \* \* all areas covered by new or existing roads used to gain access to or for hauling coal to or from coal mining and reclamation operations. Discussions between OSM and DOGM toward resolution of this issue have continued for several years; however, negotiations have become more intense during the past evaluation period.

DOGM's use and maintenance of the Applicant Violator System met all program requirements during the evaluation period.

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Status of Problems (if any): OSM will continue to work with DOGM to improve: (1) The timeliness of processing revisions resulting from TDN's; (2) the transmittal of information to OSM offices; and (3) the appropriateness of permitting actions. The issue concerning timeliness of midterm reviews appears resolved.

The issues of sediment controls for small areas and permitting of haul roads continue into the 1991 evaluation year. DOGM and OSM are currently re-evaluating the road exemption procedures.

UTAH

Regulatory Program Element: Performance Bonds

Subelements Reviewed: (1) Tracking; (2) Computation and Adequacy; (3) Verification of Bond Validity/Value/Lack of Restrictions; and (4) Processing of Bond Release Applications - Evaluation of Reclamation Success

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Summary Findings: DOGM's system of tracking bonds is professional and well maintained. System security is also well kept. OSM found minor problems with the execution of some bonds reviewed and on the bond forms DOGM was using. DOGM responded to OSM concerns and made changes to its bond form.

OSM concerns with existing bonds were minor, except for two situations. One company had as bond a Certificate of Deposit (CD) that was found to be made payable solely to the permittee and in possession of the issuing bank. Another company that is self-bonded was found to be financially vulnerable. The company's capital stock is owned by a parent company that is in Chapter 11 bankruptcy due to the complexity of the companies' financial co-commitments; there is no way to predict what effects Chapter 11 resolution will have on the mining company's solvency.

No program deficiencies were found in the review of bond calculations and amounts.

There were no bond releases during the evaluation period.

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Status of Problems (if any): The issue concerning the CD used for bond but not posted in DOGM's name has been resolved. Because the operator refused to reissue the CD to DOGM, DOGM proposed an "assignment of deposit" for the CD. The assignment form, approved by OSM and executed by the permittee, resulted in compliance.

DOGM has informed OSM of the limitations of self bonding. DOGM has not requested that the self-bonded company substitute a different form of bond in this specific case.

The 1989 Annual Evaluation Report indicated that a bonding concern relating to a permit transfer was pending resolution through a Memorandum of Understanding between OSM and DOGM. This resolution occurred.

UTAH

Regulatory Program Element: Inspections

Subelements Reviewed: (1) Inspection Frequency; and (2) Maintenance of Inspectable Units List and Inspection Database

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Summary Findings: DOGM conducted 245 partial and 136 complete inspections on 30 inspectable units. DOGM met the required inspection frequency for all sites except one where it missed a complete inspection (Table 3).

DOGM's program requires inspections as necessary on coal exploration sites to ensure compliance with the State program. During the evaluation period, DOGM conducted eight complete inspections on eight coal exploration sites.

DOGM adequately maintains an inspectable units list and an inspection database.

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Status of Problems (if any): OSM did not identify any problems during review of this program element.