



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 1993

(July 1, 1992 through June 30, 1993)

February 1994

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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.

Since it is neither possible nor necessary to fully evaluate each program element and sub-element every year, OSM's Albuquerque Field Office has developed a schedule (Appendix B) specifying when each element and sub-element will be reviewed during a three-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. Because of the nature of the three-year review cycle, some findings concern State performance prior to July 1, 1992. In these cases, the greatest emphasis is accorded to the most recent State actions reviewed.

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, 1992, through June 30, 1993. Detailed background information and comprehensive element-specific reports are available at the Albuquerque Field Office.

II. List of Acronyms

AER	Annual Evaluation Report
AFO	Albuquerque Field Office
AML	Abandoned Mine Land(s)
AMLIS	Abandoned Mine Lands Inventory System
AMLR	Abandoned Mine Land Reclamation
AMR	Abandoned Mine Reclamation
AMRA	Abandoned Mine Reclamation Act
AVS	Applicant Violator System
CO	Cessation Order
DOGMA	Division of Oil, Gas and Mining
EY	Evaluation Year

LSCI	Last State Complete Inspection
NEPA	National Environmental Policy Act
NOV	Notice of Violation
NPS	National Park Service
OSM	Office of Surface Mining Reclamation and Enforcement
PAD	Problem Area Descriptions
PAP	Permit Application Package
POV	Pattern of Violations
RSI	Random Sample Inspection
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten-Day Notice

III. Executive Summary

DOGM's accomplishments for EY 1993 included the resolution of virtually all 30 CFR Part 732 items relating to State Program Amendments except for the outstanding amendment issues under Administrative and Judicial Review; conducting the blaster training, examination, and certification program in accordance with the approved program; ensuring that permits were not improvidently issued; and maintaining good security and tracking systems for bonding instruments.

Many problems were identified by OSM with DOGM's implementation of the approved program to be consistent with the provisions in Section 102 of SMCRA. Those issues newly identified as problems during this evaluation year included the failure to follow internal policy with respect to civil penalty assessment in the assignment of points (i.e., good faith points) and the failure to adequately document the rationale for points assigned and the late payment of civil penalties to DOGM.

Those issues identified as problems in previous evaluation years, and continue to be problems, are: (1) citation of violations; (2) late assessment of proposed civil penalties; (3) failure to reclaim bond forfeiture sites; and (4) complete resolution of the statutory and rule changes to the State program concerning informal hearing and assessment conference processes.

OSM awarded DOGM almost \$17.4 million to administer its AMR Program and reclaim abandoned mine lands since the Plan was approved effective June 3, 1983. To date, DOGM has been funded to reclaim 34 coal projects and nine noncoal projects. Tables 19 and 20 in Appendix A present a summary of funding awarded to DOGM.

DOGM worked on a total of ten reclamation projects during EY 1993 including one funded by the NPS. Accomplishments included completion of five coal projects and three noncoal projects in addition to the noncoal project funded by NPS that included reclaiming 31 acres. Accomplishments also included project maintenance,

distribution of workbooks on AML hazards to fourth grade school children, assisting the NPS with project planning and reclamation, and continued project planning and engineering. Tables 21 and 22 summarize the Program's accomplishments during this evaluation period and since the date of Plan approval in greater detail.

DOGM's volunteer and other State and local entities and landowners assisted the AMR Program with hazard abatement and increasing public AML awareness. Since the volunteer effort started about four years ago, hazards associated with 65 portals and 36 vertical shafts have been abated in addition to those reclaimed with funding provided by the Abandoned Mine Reclamation Fund. Of those, 4 portals and 9 vertical shafts were closed during the period summarized by this report. Tables 21 and 22 include DOGM's volunteer accomplishments. These efforts, combined with the cooperation of the people of Utah, continue to be instrumental in keeping the number of reported abandoned mine related accidents relatively low.

IV. Overview of the Utah Coal Mining Industry

Coal is found beneath approximately 18 percent of the State, but only four 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.

The coal fields are divided into the Northern, Central, Eastern, and Southwestern Utah Coal Regions. The most productive region 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 to National Parks and other recreation areas.

Most of the coal is bituminous and is of Cretaceous Age. The BTU value 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 eight feet in thickness. There is one surface mine, permitted in 1993. The rest of the coal production is from underground mining. There are 32 inspectable units, 25 of which are currently operating. There are 138,700 acres of land currently under permit for mining with approximately 2,500 acres disturbed. Coal production has been steadily increasing since the early 1970's, producing 21.3 million tons in 1992. Utah's coal industry employs approximately 2,500 miners.

The climate of the Central Utah Coal Region is characterized by hot, dry summers and cold, relatively moist winters. Normal precipitation varies from six inches in the lower valleys to more than 40 inches on some high plateaus. The growing season

ranges from five months in some valleys to only 2 1/2 months in mountainous regions. These extreme climatic conditions make reclamation difficult.

Hazards in Utah associated with mines abandoned prior to enactment of SMCRA are varied, numerous, and widespread. Coal mine hazards most commonly include open vertical shafts, open portals often accompanied by methane emission, deteriorated structures, burning coal piles, unstable mine waste piles, underground coal mine fires, subsidence, and erosion of waste material into streams. Most abandoned coal mines are found in the Central Utah Coal Region where much of the State's coal mining took place, though they can be found in the southwestern, southcentral, and northeastern areas of Utah as well. DOGM has 99 coal Problem Area Descriptions in its inventory, many of which already have been reclaimed. Utah's noncoal abandoned mine hazards number in the thousands and are found throughout the State. Noncoal abandoned mine hazards in Utah most commonly include open vertical and inclined shafts, open portals, deteriorated structures, unstable waste piles, and subsidence.

No injuries or deaths associated with abandoned mines were reported in Utah during the 1993 evaluation period. Twenty-three reported incidents involving abandoned mines occurred in Utah since May 1982. Thirteen of those incidents involved injuries to people, three of which resulted in fatalities. Twenty of them involved abandoned noncoal mines.

V. Success in Achieving the Purposes of SMCRA

There are approximately 138,700 permitted acres in Utah. Of the permitted acreage, 2,533 acres have been disturbed. Limited reclamation has occurred on 173 acres since program approval. One site was approved for final bond release. Eight sites are awaiting various stages of bond release. Three other sites are in bond forfeiture.

One reason for the limited reclamation is the large percentage of underground mines which only minimally create surface disturbance. Another reason is the current stage of mining activities in Utah (ongoing mining or early reclamation), which have not achieved final reclamation. This makes it difficult to quantify reclamation success through yearly comparisons of acres disturbed, regraded and revegetated. Due to the early stages of bond releases in Utah, most of this review is based upon potential trends and not on final reclamation results.

As mentioned in the EY 1992 Annual Evaluation Report, regulation of roads, highwall elimination, and the timeliness of reclamation at bond forfeiture sites remain as concerns with Utah's mine reclamation progress. Final Federal Register notices are in process on the topics of roads and highwall elimination in Utah's rules. The issue of highwall elimination has delayed some bond releases in Utah. Bond forfeiture concerns are still an ongoing issue in Utah at three abandoned minesites, as

are noxious weeds, erosion, and water monitoring or water quality concerns at these minesites.

Reclamation completed by DOGM's AMR Program and as a result of volunteer assistance during this period eliminated safety and environmental hazards posed by 133 mine openings and 14 acres affected by underground mine fires. DOGM's reclamation restored about 31 acres of mined land to a condition that will be more compatible with surrounding areas and will be of greater use to the people and wildlife of Utah than if left unreclaimed. In that context, reclamation of abandoned mines performed by DOGM achieved the purposes of SMCRA.

VI. Status of Issues from Previous Annual Evaluation Report

The significant issues relating to DOGM's program that continue to need improvement include: (1) citation of violations; (2) late assessment of proposed civil penalties; (3) failure to reclaim bond forfeiture sites; and (4) complete resolution of the statutory and rule changes to the State program concerning informal hearings and assessment conference processes.

DOGM's record with respect to the citation of violations remained poor this year as only 16 percent of the violations believed to have existed during the LSCI were cited, as compared with a 25% citation rate in EY 1992.

Proposed civil penalties continued to be assessed late: 53% late in EY 1993, as compared with 40% late in EY 1992.

There are three minesites where the bond has been forfeited. In all three cases, there are not enough funds to reclaim the site to Title V standards. In two cases where the collateral was forfeited, one property needs to be sold and converted to cash. The second property was sold but not enough funds were collected. In the remaining case, DOGM is exploring legal avenues to collect additional monies. In the remaining case, DOGM has begun to revise the reclamation plan. DOGM contracted for an aerial overflight to map the current site condition at the third mine site.

DOGM partially resolved the statutory and programmatic changes concerning informal hearing and assessment conference processes that have existed since EY 1991. This issue was not completely resolved because DOGM wanted to amend the State Administrative Procedures Act. At this time, the informal amendment is being reviewed by OSM. This issue should be resolved during EY 1994.

The problem concerning DOGM's termination of enforcement actions based on plan submittal and approval, rather than plan implementation was reviewed in the element-

specific report on civil penalty assessments. It is now considered to be a minor problem.

No significant issues were noted in OSM's evaluation of DOGM's AMR Program in the previous report.

VII. Actions Affecting Program Implementation

OSM received two letters from the Southern Utah Wilderness Alliance during EY 1993 concerning a request for a review of the State program and a request to review a proposed mine permit. In the first instance, OSM determined that the OSM annual evaluation of each State provided adequate information on the State's performance. In response to the second request, OSM determined that Utah was properly allowing public participation when provided for in the State program.

No actions occurred during the 1993 evaluation period that affected implementation of DOGM's AMR Program.

VIII. Summary Findings

A. Regulatory Program

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Regulatory Program Element 1: Permitting Actions

Sub-elements Reviewed: A 1.1. Use and maintenance of the Applicant Violator System; and A.8 Remediation of Improvidently Issued Permits

Type of Review: 2, 2

Summary Findings: OSM reviewed all State permitting actions requiring AVS clearance and monitored State inspection activities during OSM RSI inspections. Additionally, AFO verified information in OSM quarterly AVS reports. OSM found that during EY 1993, DOGM used the AVS system and verified ownership and control information during complete inspections in a manner consistent with its regulations and the MOU with OSM. However, DOGM did not always maintain accurate information within the AVS system. OSM will continue to monitor information contained within the AVS database that is the responsibility of DOGM.

OSM reviewed all permitting actions requiring AVS clearance and monitored DOGM actions in cases where AVS recommendation was a conditional issue. DOGM made significant efforts to ensure that permits were not issued improvidently in EY 1993.

In EY 1991, governmental agencies and interested parties alleged in their comments to DOGM during the permitting review process, that three mines were causing negative impacts to the hydrologic regimes. This resulted in a review of DOGM's processing of hydrologic information by OSM hydrologists in EY 1992. OSM determined that DOGM technical staff was doing a good job in identifying deficiencies in the hydrologic information in permit applications but that DOGM was not reviewing information submitted in response to the deficiencies in a timely manner. In EY 1993, OSM found that DOGM continued to do a good job in identifying deficiencies in submittals, but has not reviewed or processed the information in a timely manner. As a result of this untimeliness, the issues are still outstanding. OSM will continue to monitor progress in these issues.

In EY 1991, OSM determined that DOGM approved permit renewals based on applications that were incomplete or inaccurate. During EY 1992, DOGM continued to repermit mines with significant deficiencies in the technical information presented in the PAP by issuing the permit in concert with a Division Order that required the deficiencies be addressed at a later time. This occurred on three of four renewals in EY 1992 on active mines. Only one mine was scheduled for renewal in EY 1993 and was renewed without stipulations. Deficiencies for some mines that were listed in the stipulations when the permits were issued in 1991 have not yet been resolved. In one case, DOGM continued resolution of the renewal issues into the midterm review.

Regulatory Program Element 2: Bonding

Sub-elements Reviewed: B. 1. Tracking and Security Systems; B.3. Verification of bond validity/value/lack of restriction; B.5 Adjustments and replacements.

Type of Review: 2, 2, 2

Summary Findings: OSM evaluated DOGM's administration of its coal mine performance bonds by accessing and reviewing all DOGM bonding files, and determined that the State maintains a good security system for bonding instruments. DOGM maintains a computerized system, the Coal Bond Status Report, to track bonding actions and instruments. The system is current and provides information about permitting actions that result in changes to bonds.

OSM reviewed six samples of executed bonding documents. Generally the documents were in compliance with State regulations and found to be valid. OSM recommended some editorial revisions and revisions in the language of some of the State's bond forms.

Bonding documents for one permit name two different companies as the permittee. Another permit reviewed is covered by a deed of trust for real property. OSM and the State are co-beneficiaries on the deed of trust; however, the document that retroactively designated OSM as a co-beneficiary was never recorded. Therefore, property transactions can take place without OSM's lien being a matter of record. OSM is requiring that the State take action to record the document that designates OSM as a co-beneficiary.

OSM found deficiencies with the execution of some bonding instruments during adjustment or replacement. A rider to a surety bond covering a permit that had been transferred to a new company did not include evidence of authority for the individual who signed the document and did not revise the corresponding Reclamation Agreement with a stipulation to change the name of the permittee. Additionally, OSM found that some surety bond riders executed to revise bonds covering permits with Federal lands do not name OSM as a co-obligee. To agree with the bond being amended, a rider must accurately describe the specific details of the bonding instrument being amended, including the name(s) of the obligee. OSM must be designated as a co-obligee with the State on all bonds and riders covering Federal lands.

As part of this review, OSM examined the surety bonds covering all permits with Federal lands and determined that, as required, all surety companies are listed in the U.S. Treasury Department's Circular 570 as companies authorized to issue bonds covering Federal obligees.

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Regulatory Program Element 3: Inspections

Sub-elements Reviewed: None

Type of Review: 0

Summary Findings: This element was not scheduled for review during EY 1993. The next scheduled review is during EY 1995.

Regulatory Program Element 4: Enforcement

Sub-elements Reviewed: D.1. Identification and citation of violations.

Type of Review: 3(d)

Summary Findings: In every evaluation report since 1987, DOGM's performance in citing violations has been identified as a problem. During EY 1993, OSM observed 31 violations which were believed to have existed during the LSCI. Of these 31 violations, DOGM cited 5 (16 percent) during the LSCI and did not cite 26 (84 percent). During EY 1992, DOGM's citation rate during LSCI's was 25 percent (4 of 16 violations). Both of the EY's findings were based on a 50 percent inspection sample. The EY 1993 data indicates that considerable improvement is still needed in identifying and citing violations when unaccompanied by OSM. This is especially noted in light of the 94 percent increase in LSCI violations from EY 1992 to EY 1993 (from 16 to 31 violations). It is noted that 15 of 31 (48 percent) of the LSCI violations were found at one minesite. This subelement will continue to be monitored in EY 1994.

During the RSI, DOGM cited 12 of the 26 not previously cited LSCI violations. OSM issued TDN's on 12 of the 26 not previously cited LSCI violations, which were either upheld or not appealed. It should also be noted that 13 of the 26 not previously cited LSCI violations were found at one minesite. One of the 26 violations was resolved by DOGM by working with the operator, and the remaining "violation" is allowed under the permit and the currently approved program.

In addition to the LSCI violations, OSM observed 18 violations that it believed to have occurred after the LSCI. Of these 18 violations, DOGM properly cited all violations during or after the RSI. This data reflects a trend noted in the EY 1992 and 1991 AER's that DOGM is more cooperative in citing violations when accompanied by OSM than it was during past EY's.

In addition to the violations noted above, OSM also observed two permit defects during RSI's. This is a considerable decrease from the 17 permit defects observed during the EY 1992.

Regulatory Program Element 5: Civil Penalties

Sub-elements Reviewed: E.1. Penalty assessment procedures; E.2. Documentation of rationale for penalty assessment amounts, waivers and adjustments; and E.3. Maintenance of enforcement value.

Type of Review: 2, 2, and 2

Summary Findings: OSM reviewed a 100 percent sample of proposed civil penalty assessments for all three evaluation years (E.1.). During EY 1993, DOGM assessed 53 percent of the proposed civil penalty assessments late. This is compared to 40 percent late in EY 1992 and 22 percent late in EY 1991. The database shows the range for timely assessments is 1 to 16 days before the 30th day, with 70 percent assessed on the 27th, 28th, 29th, and 30th day. The database shows that the range for untimely assessments is 1 to 31 days, with 82 percent being late by 5 days or less. Once again, this subelement has a problem which calls for additional refinement in this program area. This subelement will continue to be monitored in EY 1994.

DOGM did not meet the 60-day timeframe for 3 of 8 assessment conferences (38 percent) held in EY 1993. The late assessment conferences considered 26 percent (6 of 23) of the enforcement actions in EY 1993. This is an improvement over the previous 2 evaluation years when 47 percent (1992) and 41 percent (1991) of assessment conferences were late. The late assessment conferences in those evaluation years resulted in approximately 55 percent of enforcement actions being assessed late.

OSM reviewed a 100 percent sample for EY 1993 concerning the documentation of the rationale for penalty assessment amounts, waivers, and adjustments. At the time of evaluation, the sample contained 39 enforcement actions (NOV's and CO's). During EY 1993, OSM found problems with 50 percent of the civil penalty assessments problems. These problems were similar in nature to those found during EY's 1991 and 1992. The most commonly identified problems were: inadequate explanations for the proposed or reduced assessments, discrepancies in the assignment of points from one NOV to another, assignment of good faith points with no apparent documentation or contrary to documentation and DOGM's guidelines, or assessments issued or adjusted which did not appear to appropriately consider DOGM's inspectors' statements. The recommendation was made to DOGM that every proposed assessment, reduced assessment, and enforcement action termination date needs to be fully documented. Also, DOGM's guidelines concerning easy and difficult abatement and the awarding of points in other categories, especially for potential damage, needs to be followed. This subelement will continue to be monitored in EY 1994.

OSM reviewed all civil penalty payments for EY 1993, EY 1992, and EY 1991. During EY 1993, DOGM received 73 percent of the civil penalty payments late. This is an increase from 46 percent paid late in EY 1992 and 21 percent paid late in EY 1991. The principal reason for the large number of late payments is that the majority of paid assessments (34 percent)

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were made against a single company which is in financial difficulties. At this time, it appears that DOGM needs to review its internal procedure and increase its efforts to insure timely civil penalty payments. This subelement will continue to be monitored in EY 1994.