

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

**Annual Evaluation Summary Report
For the**

North Dakota Public Service Commission Regulatory Program



Evaluation Year 2024

**Produced by the Denver Field Division
Casper Area Office**

EXECUTIVE SUMMARY

This report covers the period of July 1st, 2023, to June 30th, 2024. Over the past year, the Office of Surface Mining Reclamation and Enforcement (OSMRE) monitored North Dakota's performance in meeting the goals and objectives of the approved state program. Operators generally maintained both consistent rates of production and reclamation. Based on the topics evaluated this year, North Dakota has an effective program with no issues in need of corrective action.

Overview of Public Participation and Outreach Efforts

Both North Dakota and OSMRE continue to solicit public comment and input on individual applications and the regulatory program at large. North Dakota staff participated in several public hearings and meetings.

Major Accomplishments and Innovations

During EY2024, North Dakota updated Policy Memorandum No. 16 to Mine Operators - Reclamation Cost Estimating Guidelines.

Off-Site Impacts/Enforcement Actions

During EY2024, there were no off-site impacts. NOV-2301 was issued to Westmoreland Beulah Mining LLC. No other enforcement actions were issued.

Reclamation Success

Currently in North Dakota, a total of 137,163 acres have been permitted, with approximately 92,716 acres disturbed by mining activity to date. Of these disturbed acres, approximately 63,659 acres have been backfilled, graded, top-soiled and seeded; or 69% of the lands disturbed have been reclaimed to the point of establishing vegetation. Of the 63,659 acres that have been backfilled, graded, top-soiled and seeded, 18,426 acres (29%) have received final bond release.

Customer Service

An informal conference was held on August 17, 2023, related to Revision 8 to Permit BNCR-1101 at the Center Mine. Issues discussed included, blasting, proposed haul roads, mining operations within 500 feet of residences, dust, noise, and lack of communication from the mine on past agreements and future mining plans. The Commission's order was issued on September 14, 2023.

A formal hearing was held on December 22, 2023, related to landowner concerns at the Coyote Creek Mine. The issues discussed were projected suitable plant growth material (SPGM) respread depths, actual SPGM respread depths, annual soils handling plan, spoil properties, and graded spoil testing. The PSC issued an order from the formal hearing on February 14, 2024. The PSC's order was appealed to district court on March 13, 2024.

Maintenance of the Approved Program

North Dakota has submitted two program amendments, which are both currently being processed. State Program Amendment XLII (SATS #: ND-056-FOR) adds a perfected lienor security interest in real property to the definition of collateral bond and the conditions that must be met for real property pledged as collateral bond. The final PRN has been published in the federal register on May 19, 2023.

State Program Amendment XLIII (SATS #: ND-057-FOR) increases the time in which an informal hearing must be held, increases the time to submit permit renewal applications, shifts responsibilities from the Dept. of Health to the Dept. of Environmental Quality, changes the name of the State Water Commission to the Dept. of Water Resources, and moves some duties of the state engineer to the Dept. of Water Resources. The final PRN has been published in the federal register on May 19, 2023.

Oversight Inspections

NDPSC conducted 82 complete inspections and 343 partial inspections during EY2024, exceeding the required 80 complete inspections and 120 partial inspections. OSMRE completed 4 complete inspections, 1 partial inspection, and one federal bond release inspection, exceeding the number of required inspections.

Special Study Oversight Topics

OSMRE and NDPSC have jointly conducted an evaluation of the extent and number of permit amendments that are subject to public notice and comment in North Dakota Evaluation Year (EY) 2024.

OSMRE Assistance

For this past year, the North Dakota Regulatory Program conducted operations for OSMREs 2023 fiscal year (July 1st, 2023, to June 30th, 2024) with a budget of \$1,695,369.50. OSMRE awarded the program \$1,086,714.35, or 64% of the total budget, in federal assistance (Grant No. S23AP00111. During the evaluation year, a total of twelve student slots were filled by NDPSC reclamation staff at eight NTTP classes. One student slot was filled by NDPSC reclamation staff at a TIPS class. OSMRE's library services received no requests for information.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF COAL MINING INDUSTRY IN NORTH DAKOTA.....	2
III.	OVERVIEW OF THE PUBLIC PARTICIPATION AND OUTREACH EFFORTS.....	5
A.	OSMRE.....	6
B.	North Dakota.....	6
IV.	MAJOR ACCOMPLISHMENTS AND INNOVATIONS.....	8
V.	SUCCESS IN ACHIEVING THE PURPOSES OF SMCRA	9
A.	Off-site Impacts	9
B.	Reclamation Success.....	10
C.	Customer Service.....	17
VI.	NATIONAL PRIORITY AND GENERAL OVERSIGHT TOPIC REVIEWS.....	19
A.	National Priority Reviews.....	19
B.	General Oversight Topic Reviews	19
C.	Special Study Topics.....	21
VII.	PROGRAM PROBLEMS AND ISSUES.....	22
VIII.	OSMRE ASSISTANCE.....	23
A.	National Technical Training Program (NTTP).....	23
B.	Technical Innovation and Professional Services (TIPS).....	23
C.	Financial.....	24
IX.	CONCLUSION.....	24
	APPENDIX 1: Summary of Core Data to Characterize the Regulatory Program	26
	APPENDIX 2: Comments of State of North Dakota on the Report	43

Cover Page Photograph: Dragline 903 removing overburden in Permit NACT-0201 at the Freedom Mine on April 24, 2024.

I. INTRODUCTION

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSMRE) in the Department of the Interior. SMCRA provides authority to the OSMRE to oversee the implementation of, and provide federal funding for, the state regulatory programs and abandoned mine land programs that have been approved by the Secretary of the Interior as meeting the minimum standards specified by SMCRA.

In addition to conducting oversight of approved state programs, the OSMRE provides technical assistance, staff training, financial grants and assistance, as well as management assistance to each state program. This report contains summary information regarding the North Dakota Regulatory Program and the effectiveness of the North Dakota Regulatory Program in meeting the applicable purposes of SMCRA as specified in Section 102. This report covers the 2024 Evaluation Year (EY) July 1st, 2023, to June 30th, 2024.

Detailed background information and comprehensive reports for the program elements evaluated during the EY are available for review and copying at the OSMRE, Denver Field Division (DFD), Casper Area Office (CAO), 100 East B St., Room 4100, Casper, WY 82601. To arrange an appointment time, contact Jeff Fleischman via telephone (307) 261-6550 or email jfleischman@osmre.gov. The reports are also available on the OSMRE oversight documents website at <http://odocs.osmre.gov>. Adobe Acrobat Reader® is needed to view these documents. Acrobat Reader® is free and can be downloaded at <http://get.adobe.com/reader>.

Follow these steps to gain access to the document of interest:

1. Select North Dakota from the drop-down box labeled “State”. Also select 2024 as the “Evaluation Year”, and then click “Submit”. The search can be narrowed by choosing selections under the “Keyword” or “Category” headings.
2. The oversight documents and reports matching the selected state and evaluation year will appear at the bottom of the page.
3. Select “View” for the document that is of interest and the report will appear for viewing, saving, and/or printing.

The following acronyms are used in this report:

AOC	Approximate Original Contour
ASRS	American Society of Reclamation Sciences
AVF	Alluvial Valley Floor
AVS	Applicant Violator System
BLM	Bureau of Land Management
CAO	OSMRE’s Casper Area Office

CO	Cessation Order
DFD	OSMRE's Denver Field Division
DOJ	Department of Justice
DSU	Dickinson State University
EY	Evaluation Year
FAM	OSMRE's Federal Assistance Manual
GIS	Geographic Information System
GPS	Global Positioning System
IMCC	Interstate Mining Compact Commission
IT	Industrial Technology
LEC	Lignite Energy Council
NDCC	North Dakota Century Code (Law)
NDAC	North Dakota Administrative Code (Rules)
NDDH	North Dakota Department of Health
NDPSC	North Dakota Public Service Commission
NDSU	North Dakota State University
NOV	Notice of Violation
NTTP	National Technical Training Program
OMB	Office of Management and Budget
OSMRE	Office of Surface Mining Reclamation and Enforcement
PA	Performance Agreement
PSC	Public Service Commission
REG-8	OSMRE Directive REG-8
SMCRA	Surface Mining Control and Reclamation Act of 1977
SPGM	Suitable Plant Growth Material
TDN	Ten-Day Notice
TIPS	Technical Innovation and Professional Services
WR	OSMRE Western Region (Unified Regions 5, 7, 8, 9, 10 and 11)

II. OVERVIEW OF COAL MINING INDUSTRY IN NORTH DAKOTA

Coal is the most abundant fossil fuel in the world. The United States holds the world's largest estimated recoverable reserves of coal at approximately 27%. Based on current production levels, the United States has enough estimated recoverable reserves of coal to last more than 200 years. Coal is classified into four main types or ranks (anthracite, bituminous, subbituminous, and lignite), depending on the amounts and types of carbon it contains and on the amount of heat energy it can produce. North Dakota has approximately 25 billion tons of recoverable coal reserves consisting primarily of lignite.

The coalfields of North Dakota are located in the Williston Basin, which is part of the Great Plains Coal Province. They underlie approximately 40 percent of the State's surface area. Most of the coal is produced commercially from two mining districts located in the western part of the State: (1) Beulah-Zap and (2) Hagel. Recoverable coal reserves in North Dakota are generally classified as lignite, which is characterized by low heating value (6,500 BTU), average high moisture content (40 percent) and low sulfur content (less than one percent). The mineable beds in the Williston Basin vary in thickness from three to 30 feet. The relatively shallow beds allow for economic stripping ratios ranging from 1.5:1 to 11:1. The low sulfur content of North Dakota lignite contributes to the general lack of acidification problems experienced at current and historic coal mining operations within the State. All four actively producing coal mines in North Dakota are currently large-scale surface operations and provide for mine-mouth or regional electrical generation facilities and a nearby coal gasification facility. Two, inactive coal mines have ceased production and are solely engaged in reclamation activities.

The first commercial mines in North Dakota opened in Morton County in 1873. As the railroad developed across the State, demand for coal increased and was supplied by underground mines. North Dakota was one of the first states to shift from underground to large-scale commercial surface mining. By 1927, 40 percent of the State's production was by surface mining methods, compared to two percent for the nation. By 1959, eighty six percent of North Dakota's coal production was from surface mines, and since 1966, the State's total production has been derived from this mining method. In 1884, North Dakota produced 35 thousand tons of lignite; in 2023, it produced approximately 23.96 million tons (Appendix 1, Table 1) using modern surface mining methods and equipment.

Coal mining in North Dakota is concentrated around the western half of the State. This area consists of approximately 28,000 square miles and has an estimated total resource of 350 billion tons of coal, or about two-thirds of the total lignite reserves of the United States. North Dakota has a demonstrated recoverable coal reserve base of 25 billion tons. North Dakota enacted its first reclamation law in 1969 and major revisions to that law followed in 1973 and 1975. A new law was enacted by North Dakota in 1979 that is consistent with SMCRA.

According to 2022 data from the Department of Agricultural Economics at North Dakota State University, the lignite industry in North Dakota accounts for \$5.8 billion in gross business volume within the state. It is estimated that the lignite industry collectively supports more than 12,000 direct and secondary jobs in the state. Of the more than 12,000 jobs, 3,250 jobs were supported by mining, 7,725 jobs were supported by coal conversion and electricity generation, and 1,060 jobs were supported by transmission and distribution. The coal industry's substantial impact on the State's population and economy has secondary in-state multiplier effects. The combination of coal mining, coal conversion, lignite coal-fired electricity generation and

electricity transmission and distribution generated nearly \$2.2 billion towards the state's domestic gross product in 2022.

Most of the State's coal production fuels electric power generation plants within North Dakota that supply most of the State's electrical needs. Alongside the economic benefits, the state receives affordable and reliable electricity from the lignite industry. Thanks to more than \$2 billion invested in clean coal technology, North Dakota is one of only four states that has never violated federal ambient air regulations and is among only 17 clean air states as reported by the Environmental Protection Agency.

North Dakota currently has six surface coal mining operations, with a total of 20 permits. Fifteen permits are actively mining while the remaining five are exclusively in reclamation. The state began and ended EY2024 with 20 active permits and reported another three exploration sites with permits. A total of 137,163 acres are currently permitted and all those acres are bonded in North Dakota. Of the total acres permitted, 18,112 acres are federal lands, while the remaining 119,051 acres are State/Tribal and Private lands (Appendix 1, Tables 2 and 6).

Approximately 92,716 permitted acres have been disturbed by mining operations, and 63,659 of those acres have been backfilled, graded, top-soiled and seeded to achieve the intended post-mining land use. Of the 63,659 acres that have been backfilled, graded, top-soiled and seeded, 18,426 acres have received final bond release. Of currently permitted acres, 2,681 have previously received Phase I bond release. No currently permitted acres have previously received Phase II bond release.

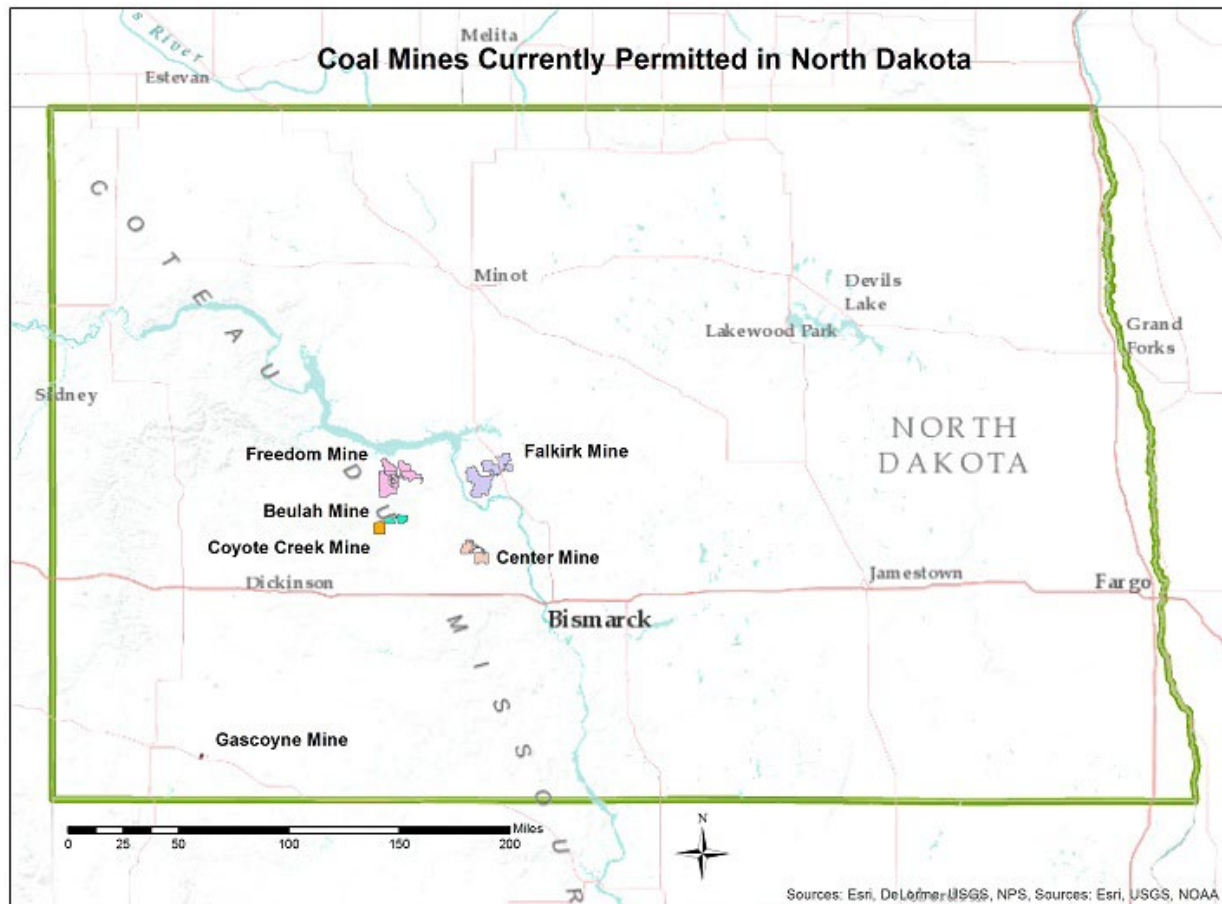


Figure 1: Map of Permitted Coal Mines in North Dakota

III. OVERVIEW OF THE PUBLIC PARTICIPATION AND OUTREACH EFFORTS

The term “public” includes all stakeholders (i.e., citizenry at large, industry, other federal, state, or local agencies, and environmental groups). Opportunities for public participation occur at significant points in the North Dakota Regulatory Program and involve the ability of the public to:

- Request that areas be designated as unsuitable for mining;
- Receive notification by advertisement of permit and significant revision application receipt;
- Review permit and revision applications;
- Contest the decision of the Commission on permit applications and revisions;
- Request an inspection of a mine site;
- Submit blasting, groundwater well, and/or general permit complaints if public believes a violation of regulations is taking place;
- Object to proposed bond releases;
- Initiate civil suits; and
- Petition to initiate rulemaking.

The North Dakota Regulatory Performance Agreement (PA) for EY2024 was signed on June 29, 2023. The PA describes the team's purpose and the topics selected for review to evaluate the performance of the Regulatory program. The North Dakota Regulatory Performance Agreement (PA) for EY2025 was signed on July 2, 2024.

The public can also access the OSMRE Annual Oversight Reports and Performance Agreements via the internet at the OSMRE Oversight Documents website at <http://odocs.osmre.gov/>. The Introduction section of this report details how to access information using this website.

A. OSMRE

The OSMRE-DFD provides for transparency in the oversight process by conducting outreach to stakeholders and encouraging public participation throughout the OSMRE-DFD's annual oversight activities.

Each evaluation year, the OSMRE-DFD solicits input from the public and interested parties to comment on oversight and provide suggestions for potential oversight evaluation topics. Sharing of information with the public is highly encouraged by both the OSMRE and the State. The public may include a variety of stakeholders, including, but not limited to; citizenry at large, other federal, state, or local agencies, or environmental groups. OSMRE's public solicitation for comment on the 2024 evaluation year was distributed on March 22nd, 2023, and OSMRE's public solicitation for comment on the 2025 evaluation year was distributed on March 9th, 2024. To be included in future solicitations, please make the request by contacting the OSMRE, Denver Field Division (DFD), Casper Area Office (CAO), at 100 East B St., Room 4100, Casper, WY 82601.

B. North Dakota

The North Dakota Public Service Commission (NDPSC) is the State agency charged with the responsibility for the permitting and regulation of the coal mining industry in North Dakota. North Dakota continues to solicit public comment and input on individual projects and the regulatory program at large. North Dakota mining companies publish notices for proposed permit revisions in local and state newspapers and the NDPSC places notices on its website and solicits public comment and requests for public meeting participation.

The NDPSC encourages public participation through public meetings, press contacts, and by responding to public inquiries. The NDPSC commonly hosts, or participates in a variety of public meetings, conferences, and workshops.

For new or revised permits, NDCC 38-14.1-18 requires that applicants filing for a new permit or making significant changes to an existing permit advertise the ownership, location and boundaries of lands proposed to be affected by the permit or permit revision, and to identify where the application will be available for public inspection. The advertisements must be posted

in applicable county newspapers and other daily newspapers of general circulation in the locality of the mining operation at least once a week for four consecutive weeks. A notice of the opportunity to submit comments or objections is also required to be sent to all owners of surface rights of lands within the permit area. Any person with an interest that may be adversely affected has the right to file written comments or objections and may request an informal conference with the NDPSC. Further clarification of public notice requirements for new permits and permit renewals can be found at NDAC 69-05.2-10 and NDAC 69-05.2-11.

For bond release applications, NDCC 38-14.1-17 requires that applicants filing for release of all, or part of a performance bond advertise the location and number of acres affected, the permit and date approved, the amount of bond filed, and the amount sought for release, the types and approximate dates of reclamation performed, and the right to file written objections and to request a public hearing or informal conference with the NDPSC. The advertisements must be posted in applicable county newspapers and other daily newspapers of general circulation in the locality of the mining operation at least once a week for four consecutive weeks. Surface owners and county officials are also provided the opportunity to participate in bond release inspections. The requirements for bond release notification are further clarified by NDPSC Policy Memo 9.

During the 2024 evaluation year, the North Dakota Regulatory Program participated in the following public meetings, conferences, workshops or other events involving the press or public notification:

- Monthly interagency (OSM, BLM, USFWS, PSC) conference calls regarding federal coal leases and mine plan approvals for the Center, Freedom, Coyote Creek and Falkirk Mines.
- Interstate Mining Compact Commission (IMCC) Midyear meeting was held in Bozeman, Montana and the Annual meeting was held in Anchorage, Alaska
- Annual NDSU Reclamation Workshop
- North Dakota staff responded to numerous Freedom of Information Act (FOIA) requests for information.
- Lignite Energy Council (LEC) Quarterly & Midyear Meetings
- Lignite Energy Council (LEC) Annual Meeting
- Staff participated in several professional related meetings (ND Joint Water Convention, Geological Society)
- One staff member attended the Best in the West Drill and Blast conference in Spearfish, SD and participated as a regulatory panel member discussing blasting.
- Staff attended the western region grant recipient information session hosted by OSMRE (virtual)

The NDPSC maintains a web site at: <http://www.psc.nd.gov> that includes links to information on state laws and rules, interpretive documents, formal notices, consumer information, and a list of mine operators.

OSMRE's programmatic reviews of the North Dakota program indicate that the NDPSC is adhering to the State's policies and procedures regarding opportunities for public participation in all phases of their reclamation program.

IV. MAJOR ACCOMPLISHMENTS AND INNOVATIONS

Over the past year, the OSMRE monitored North Dakota's performance in meeting the goals and objectives of the approved state program. North Dakota's regulatory program is handled by a relatively small number of staff (Appendix 1, Table 8) considering the amount of land mined and reclaimed each year. The NDPSC Reclamation Division staff members that review permit and revision applications also carry out the compliance inspections and evaluate bond release applications. This allows staff to remain very familiar with the ongoing field operations and approved mining and reclamation plans. The NDPSC has a very good working relationship with their customers that include industry, landowners, citizen groups, and other governmental agencies, including the OSMRE. The Reclamation Division carries out its duties using the appropriate technical expertise and with a high level of professionalism. OSMRE has determined that, for EY2024 North Dakota has been successful in implementing its regulatory mine land program. The OSMRE looks forward to working cooperatively with North Dakota during the next year.

The Reclamation Division continues to work closely with mining companies and encourages the submittal of permit related applications in an electronic format. All active permits for the Coyote Creek, Falkirk and Freedom Mines, and three of the six permits at the Center Mine are all in an electronic format. The only permits that remain in a paper format are: BNCR-8106, BNCR-8202, and BNCR-8602 at the Center Mine, KRGC-8101 at the Gascoyne Mine, and KRSB-8802 at the Beulah Mine. Much of the monitoring data submitted by the mining companies is now submitted in an electronic format. Most incoming correspondence is also scanned and filed electronically using a structure that is very similar to the paper filing system.

The following accomplishments by the North Dakota Regulatory Program during the 2024 evaluation year are worthy of note:

- North Dakota updated Policy Memorandum No. 16 to Mine Operators - Reclamation Cost Estimating Guidelines. This document was initially developed and approved in 1985. It has been periodically updated, with the most recent version, prior to the 2024 update, being last updated in 2009. The update included updates to the bucket size of the

CAT 993K loader, updated fuel consumption rates, and productivity data for the equipment outlined in Policy Memorandum No. 16.

The NDPSC staff continues to implement the program in a professional, cooperative, and fair manner. The Reclamation Division uses new technology to become more efficient and make information more readily available to the public. The NDPSC has the necessary technical expertise for carrying out its functions to ensure that all the requirements of SMCRA are met.

V. SUCCESS IN ACHIEVING THE PURPOSES OF SMCRA

To further the concept of reporting end-results and on-the-ground success, the findings from performance reviews and public participation evaluations are collected by the OSMRE for a national perspective on the number and extent of observed off-site impacts, the number of acres that have been mined and reclaimed to meet bond release requirements for the various phases of reclamation, and the effectiveness of customer service provided by the state. Individual topic-specific reports that provide additional details on how the following evaluations and measurements were conducted are available online at <http://odocs.osmre.gov> or at the Casper Area Office.

A. Off-site Impacts

For the purpose of oversight, a negative off-site impact is defined as anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on people, land, water, or structures outside the permit area. The State program must regulate or control either the mining or reclamation activity, or the resulting off-site impact. In addition, the impact on the resource must be substantiated and be related to mining and reclamation activity. It must be outside the area authorized by the permit for conducting mining and reclamation activities.

Several sources of information have been selected for identifying off-site impacts. These include but are not limited to: State and OSMRE inspection reports, enforcement actions, civil penalty assessments, citizens' complaints, special studies, and information from other environmental agencies. If an off-site impact is identified, the sources of information and the basis used to identify and report these impacts will be clearly recorded. Field evaluations for off-site impacts were conducted during routine inspections by the NDPSC and the DFD. During EY2024, North Dakota reported that twenty-five out of twenty-five (100%) inspectable units were free of off-site impacts. (Appendix 1, Table 5). At the beginning of EY 2024, the total number of inspectable units included fifteen active mine permits and five inactive permits. A total of three exploration sites with permits were also reported.

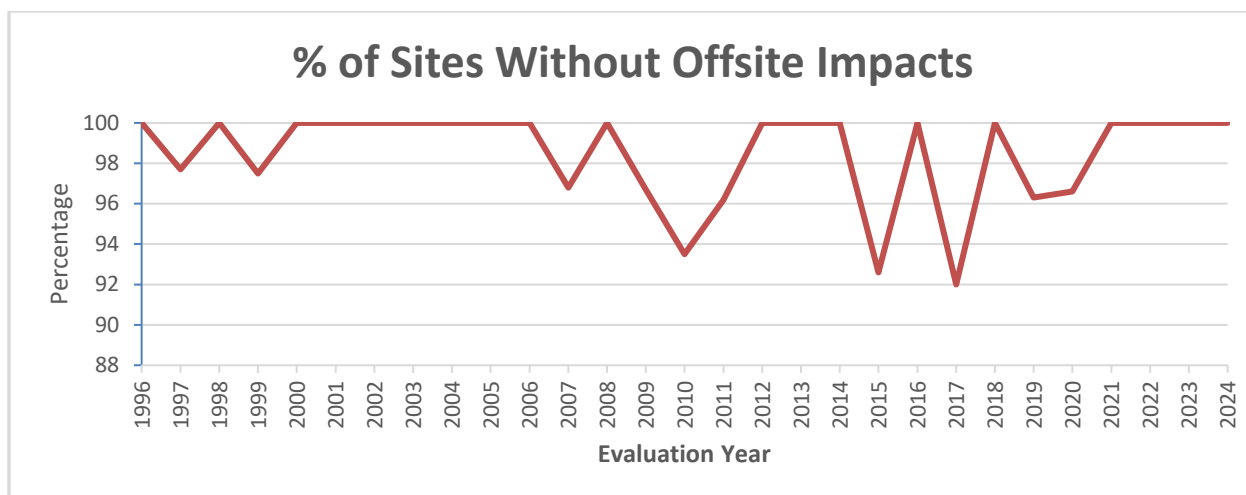


Figure 2: Percentage of sites free of off-site impacts.

Typically, a detailed evaluation of this topic is included as a stand-alone document to accompany this report, however, since no off-site impacts were reported, no such report is available for EY2024.

B. Reclamation Success

The OSMRE Directive REG-8 states that the OSMRE will evaluate and report on the effectiveness of state programs in ensuring successful reclamation on lands affected by surface coal mining operations. Success will be determined based on the number of acres that meet bond release standards and have been released by the state. The approved schedule for release of performance bonds is specified in Section 519 (c) of the Surface Mining Control and Reclamation Act (SMCRA). Further details can be found in CFR30§800.40. OSMRE recognizes three phases of incremental bond release.

As the approved regulatory authority in the state of North Dakota, the Reclamation Division of the North Dakota Public Service Commission (PSC) has chosen to implement a more stringent schedule for the release of performance bonds. This schedule is consistent with SMCRA and is defined in North Dakota Century Code (NDCC) 38-14.1-17. The North Dakota Program allows for incremental bond release in four stages:

ND Phase I – When the permittee completes the backfilling, re-grading, and drainage control in a bonded area, 40% of the bond for an area may be released. *This also meets the requirements for OSMRE Phase I release.*

ND Phase II – After spreading suitable plant growth material or other suitable strata on the re-graded land, 20% of the bond for the area may be released.

ND Phase III – After vegetation is established on the re-graded land, additional bond may be released. *This also meets the requirements for OSMRE Phase II release.*

ND Phase IV – When the permittee has successfully completed all surface coal mining and reclamation operations, and after the 10-year responsibility period for maintaining successful re-vegetation has expired, the remaining bond may be released. *This also meets the requirements for OSMRE Phase III (final) release.*

To maintain consistency in the reporting of bond release statistics from multiple States and Tribes, OSMRE collects and reports bond release information using the three phased schedule defined in CFR30§800.40. When this report refers to Phase I, II and III bond release, it should be assumed that the intended meaning is OSMRE’s 3-Phase schedule for bond release.

Phases of Bond Release of Disturbed Lands (acres) 2011-2024			
YEAR	PHASE I	PHASE II	PHASE III
prior	15,251	10,791	10,778
2011	1113	1136	1136
2012	1407	1698	1698
2013	1219	1219	1219
2014	323	333	333
2015	68	537	537
2016	9	9	9
2017	0	0	0
2018	191	295	295
2019	65	196	196
2020	83	147	147
2021	255	255	255
2022	756	756	756
2023	287	287	287
2024	778.1	778.1	778.1
TOTAL	21,806	18,439	18,426

Figure 3: Phases of Bond Release of Disturbed Lands (acres) from 2011 to 2024.

Data collected after 2010 has undergone additional review utilizing geospatial analysis of the source data. Source: Annual End-of-Year Mine Maps submitted to NDPSC by mine operators.

During EY2024, a two bond release packages were approved, totaling 985.23 acres, including 778.1 acres that were previously disturbed by mining. Bond Release Package No. 3 for Permit NACT-9501 at the Freedom Mine, became effective January 2, 2024, releasing all Phases of bond for 343.03 acres, including 184.4 acres had been disturbed by mining activities. Bond Release Package No. 6 for Permit NAFK-8705 at the Falkirk Mine, became effective January 15, 2024, releasing all Phases of bond for 642.2 acres, including 593.7 acres had been disturbed by mining activities.

REG-8 further requires that bond release information is collected to measure program performance in the following areas: a. Landform/Approximate Original Contour, b. Land Capability, and c. Hydrologic Reclamation.

Landform/approximate original contour (AOC)

- 1.) AOC achievement is measured by the acres of Phase I bond released. Acreage disturbed by mining activities that has been released under Phase I bond liability will be documented as having achieved AOC. Approximately 23% (21,806 acres) of the disturbed lands (92,716 acres) in North Dakota have received Phase I Bond Release.

Land Capability

There are several measurements that may be conducted to demonstrate the reestablishment of land capability on mined areas.

- 1.) Proper replacement of soil resources is measured by acres of Phase II bond release. Approximately 19% (18,439 acres) of the disturbed lands (92,716 acres) in North Dakota have received Phase II Bond Release.
- 2.) Vegetation stability is measured by acres of Phase II bond release. Acreage released from Phase II bond liability can be documented as having achieved erosion stability. Approximately 19% (18,439 acres) of the disturbed lands (92,716 acres) in North Dakota have received Phase II Bond Release.
- 3.) Achievement of post mining land uses is measured by acres of Phase III (final) bond release. Land capability is demonstrated by the acres for which the approved post mining land uses have been achieved. The acreage released from Phase III (final) bond liability can be documented as having achieved the approved post mining land uses. Approximately 19% (18,426 acres) of the disturbed lands (92,716 acres) in North Dakota have received Phase III (final) Bond Release. Approximately 40% of reclaimed lands that have been seeded for 10 or more years (46,621 acres) have received final bond release.
- 4.) Successful revegetation is measured by the acres of Phase III (final) bond release. Land capability is demonstrated by the acres for which revegetation success has been successfully demonstrated for the land use at the time of Phase III (final) bond release. Approximately 19% (18,426 acres) of the disturbed lands (92,716 acres) in North Dakota have received Phase III (final) Bond Release.

Hydrologic Reclamation

- 1.) Achievement of surface water quality and quantity restoration can be measured by acres of Phase III (final) bond release. Surface water quality and quantity restoration may be measured in terms of acres released from bond liability. Phase III (final) bond release will document that water quality meets surface water quality standards and water quantity

is adequate for its intended use. Approximately 19% (18,426 acres) of the disturbed lands (92,716 acres) have received Phase III Bond Release.

- 2.) Achievement of groundwater recharge capacity and ground water quantity and quality restoration can be measured by acres of Phase III (final) bond release. Approximately 19% (18,426 acres) of the disturbed lands (92,716 acres) have received Phase III Bond Release.
- 3.) Achievement of surface water quality and quantity restoration can be measured by acres of Phase III bond release. Bond release will document that the water quality and quantity leaving the mine site meets the applicable standards. Release of Phase III bond liability can be considered to have achieved restoration of this aspect of surface water quality and quantity. To date approximately 19% (18,426 acres) of the disturbed lands (92,716 acres) have received Phase III Bond Release.

It should be noted that neither state nor federal regulations require that a permittee file for bond release at any prescribed time. Therefore, using only bond release statistics to evaluate reclamation success can be misleading. Typically, permittees do not file for Phase II or Phase III bond release until completion of the entire mining operation. As a result, the number of acres actually released from final bond in North Dakota tends to be significantly less than the number of acres that may be eligible for bond release.

Typically, more land is permitted and bonded than is mined. It is common for land that has been permitted and bonded and has not been disturbed by mining activities, to be removed from a permit. This removal of undisturbed land may take place as part of a bond release, or by administrative means, such as a permit revision. Only land disturbed by mining activities should require reclamation activities. The calculation and reporting of which lands have been disturbed by mining activities is largely an interpretation of conditions in the field at the conclusion of any respective evaluation year. These numbers are reported to the ND PSC by mine operators and evaluated using end-of-year mine maps. Over the life of the North Dakota Program, 31,793 acres have received final bond release, but only 18,426 of those acres (58%) were reported as having been disturbed by mining activities.

The OSMRE – Denver Field Division (DFD) also reviewed general trends in the release of bond in North Dakota. Bond release in North Dakota tends to occur in a cyclical nature, with periods of increased bond release interspersed with periods of little to no bond release. The period of 2009 through 2013 saw higher than expected amounts of final bond release, with an average rate of 2,170 acres released per year. This was followed by a period of less than expected final bond release from 2014 through 2017, which only averaged 261 acres of bond released per year. Final bond release since 2018 has ranged from a low of 286.9 acres in 2023 to a high of 985.2 acres in 2024 with an average of 571.3 acres. For reference, North Dakota has averaged 578 acres of bond release per year since inception of the state program.

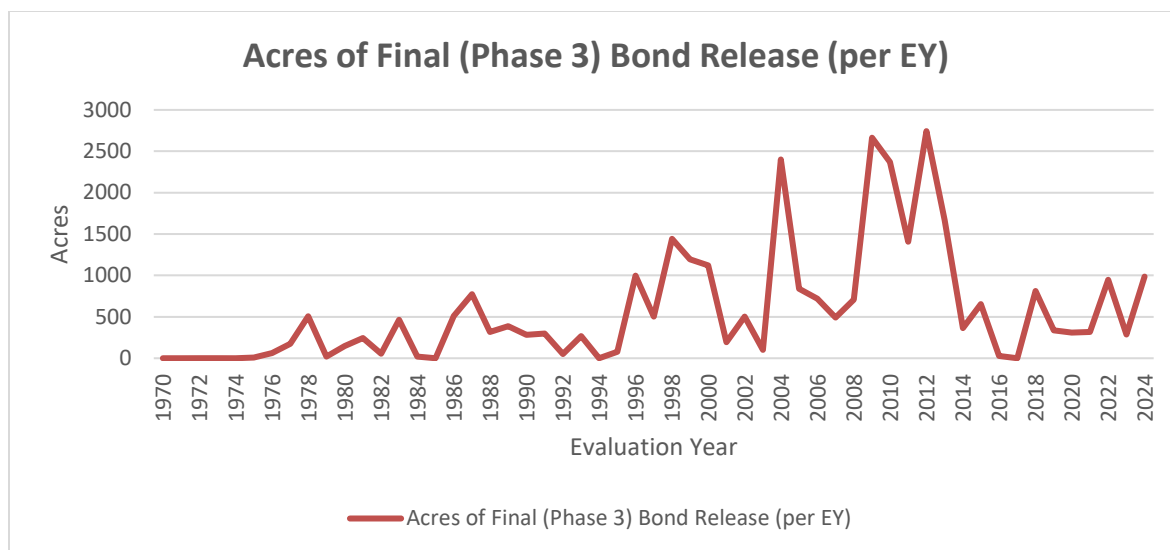


Figure 4: Acres of Final Bond Release in North Dakota by evaluation year.

Contemporaneous Reclamation

Neither the Surface Mining Control and Reclamation Act (SMCRA) or federal regulations define the term “contemporaneous”. OSMRE’s REG-8 states that “contemporaneous reclamation should be periodically evaluated by determining if on-the-ground reclamation is following the reclamation plan approved in the permits, specifically focusing on applicable performance standards of the state or tribal program, the detailed timetable for the major steps in the reclamation plan (i.e., backfilling and grading, topsoil redistribution, planting and seeding), and the map showing the sequence of reclamation.” Generally, contemporaneous reclamation refers to the timeliness in which reclamation is occurring.

A total of 137,164 acres are currently permitted and bonded in North Dakota. Over the life of the North Dakota program, approximately 92,716 acres have been disturbed by mining. Of those disturbed acres, approximately 63,659 acres have been backfilled, graded, soiled, and seeded; or 68% of the lands disturbed have been reclaimed to the point of establishing vegetation. The cumulative ratio of lands reclaimed to vegetation (graded/soiled/seeded) vs. disturbed lands has steadily risen from 57% in EY 1999 to 69% in EY 2018. The ratio dropped one percentage point to 68% from EY2020 through EY2023 and returned to 69% through EY2024. This is an indication that reclamation efforts remain steady and are generally consistent with rates of disturbance. The DFD’s analysis shows that the State program is effective in achieving its goal of having disturbed lands reclaimed to the approved post-mining land use as contemporaneously as possible.

As stated above, the standard for determining if mines are meeting their contemporaneous reclamation obligations is determined by compliance with permit commitments. This evaluation is conducted annually, and all mines were found to be in compliance this evaluation year.

As allowed for in REG-8, Field Offices may conduct specific evaluations and report on individual performance standards. Thus, a measurement for contemporaneous reclamation would be a comparison of the rate at which lands are reclaimed to the point of establishing vegetation (re-graded, soiled, and seeded) to the rate of disturbance. Re-grading spoil, re-application of topsoil and establishment of vegetation are precursors for eligibility for Phase II bond release. By comparing the rate at which disturbed lands are reclaimed to vegetation (re-graded, soiled, and seeded) to the rate of disturbance, OSMRE can evaluate contemporaneous reclamation by tracking the conditions required to be eligible for Phase II bond release.

EVAL. YEAR	ACRES DISTURBED	Cumulative Acres Disturbed	DISTURBED ACRES RECLAIMED to VEGETATION (graded/soiled/seeded)	Cumulative Disturbed Acres Reclaimed to Vegetation	Annual RATIO OF RECLAIM VS DISTURB	Cumulative RATIO OF RECLAIM VS DISTURB
1999	1,725	43,484	2,270	24,759	1.32	0.57
2000	1,913	45,397	1,518	26,277	0.79	0.58
2001	1,738	47,135	1,998	28,275	1.15	0.60
2002	2,036	49,171	1,610	29,885	0.79	0.61
2003	2,242	51,413	1,678	31,563	0.75	0.61
2004	1,772	53,185	1,775	33,338	1.00	0.63
2005	1,796	54,981	1,458	34,796	0.81	0.63
2006	2,004	56,985	1,463	36,259	0.73	0.64
2007	2,085	59,070	1,787	38,046	0.86	0.64
2008	2,045	61,115	1,934	39,980	0.95	0.65
2009	1,873	62,988	2,322	42,302	1.24	0.67
2010	2,429	65,417	851	43,153	0.35	0.66
2011	1,654	67,071	1,153	44,306	0.70	0.66
2012	2,530	69,601	1,208	45,514	0.48	0.65
2013	2,413	72,014	1,692	47,206	0.70	0.66
2014	1,561	73,575	2,005	49,211	1.28	0.67
2015	1,908	75,483	1,902	51,113	1.00	0.68
2016	2,530	78,013	1,468	52,581	0.58	0.67
2017	2,009	80,022	1,990	54,571	0.99	0.68
2018	1,685	81,707	1,584	56,155	0.94	0.69
2019	1,778	83,485	1,371	57,526	0.77	0.69
2020	2,091	85,576	963	58,489	0.46	0.68
2021	2,299	87,875	1,094	59,583	0.48	0.68
2022	1,708	89,583	1,728	61,311	1.01	0.68
2023	1,561	91,144	1,053	62,364	0.67	0.68
2024	1,572	92,716	1,295	63,659	0.82	0.69

Figure 5: North Dakota Reclamation Summary

Source of data: ND-PSC

Figure 5 (above) provides the actual acres disturbed and reclaimed to vegetation (graded/re-soiled/seeded) annually for all mines in North Dakota. The cumulative reclamation to disturbance ratio has remained relatively steady and is currently 0.69, as indicated on the chart. This ratio indicates that 69 percent of the cumulative acres disturbed in North Dakota have been

reclaimed to the point of being backfilled, graded, and seeded. The cumulative ratio of lands reclaimed to the point of establishing vegetation to lands disturbed by mining has steadily increased over the past 24 years from 0.57 to its current ratio of 0.69. This reflects favorably on the contemporaneous nature of reclamation efforts in North Dakota.

Figure 6 (below) shows that the rate of disturbance (slope of the dark blue line) at mines in North Dakota has remained very consistent since 1999. The rate of acres being graded/soiled/seeded (slope of the red line) has remained very consistent with the rate of disturbance, indicated by the fact that the red and blue lines are nearly parallel. Rates for the three phases of bond release of disturbed lands are included for reference. The period of 2013 until the present has experienced a slowdown in the rate at which all phases of final bond release are achieved, as indicated by the slope (flat) of the green, purple, and orange lines in Figure 6. However, the rate at which lands are graded, soiled, and seeded continues to parallel the rate that lands are disturbed, demonstrating that reclamation is occurring at a contemporaneous rate. Therefore, the amount of land that is potentially eligible for bond release is growing at a rate that is consistent with the rate of mining disturbance.

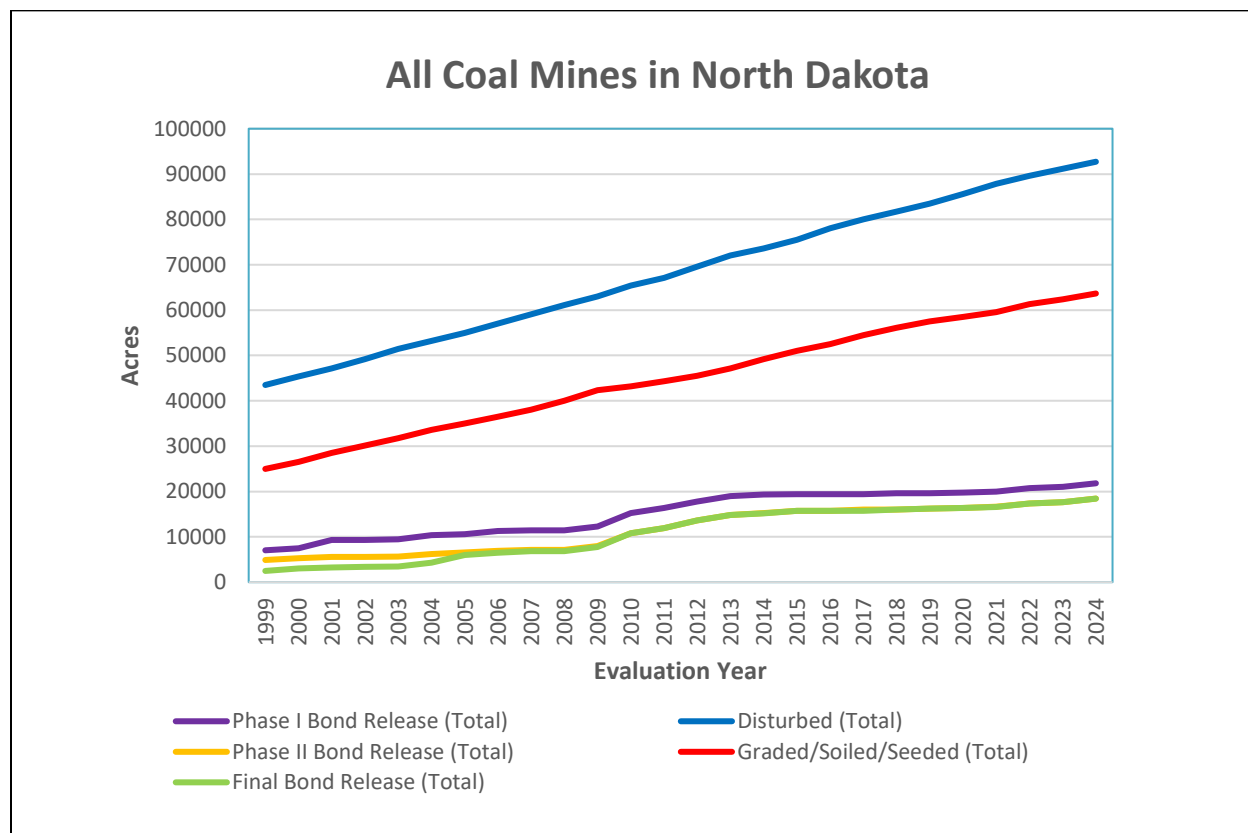


Figure 6: Disturbance, Reclamation and Bond Release at Coal Mines in North Dakota

Source of data: ND-PSC

Figure 6 (above) plots the number of acres disturbed, acres graded/soiled/seeded and Final Bond Release of disturbed acreage. Acres of Phase I and Phase II bond release of disturbed acreage are included for reference. The rate (change over time) of disturbance or reclamation is indicated by the slope (rise over run) of each line. Ideally, the line showing the rate of reclamation should parallel the line showing the rate of disturbance.

Note how the purple, orange, and green lines, representing Phase I, II and III bond release respectively, parallel each other closely. There is slightly more Phase I bond (2,681 more acres) released than Phase II or III, primarily due to the greater financial incentive (release of 40% of bond) and the relatively short time required for such bond release. Phase I bond release requires the completion of backfilling and grading to the approximate original contour and can be completed in a relatively short time period, when compared to requirements for Phase II and III bond release. Depending on the established post mining land use, Phase II release may require collection of multiple years of crop production data to verify successful revegetation, and Phase III release requires completion of all reclamation activities, including all Phase II requirements and completion of a ten-year liability period for establishment of vegetation. Note how the orange and green lines merge around 2005, with almost all Phase II and Phase III bond being released concurrently.

Mechanisms are in place to ensure that land disturbed by surface coal mining operations will be reclaimed. SMCRA requires that every disturbed acre in a surface coal mine be bonded to ensure that sufficient funds will be available to reclaim that land if an operator fails to fulfill their responsibilities. The DFD's analysis shows that the State program is effective in achieving its goal of having disturbed lands reclaimed to the approved post-mining land use as contemporaneously as possible.

A detailed evaluation of this topic is included as a stand-alone document to accompany this report entitled, *Reclamation Success in North Dakota Evaluation Year (EY) 2024*. This document can be found on OSMRE's ODOCs website: <https://www.odocs.osmre.gov/>.

C. Customer Service

One of the requirements of a regulatory authority for reclamation programs implemented under SMCRA is to develop and encourage open communication with not only the industry being regulated, but also the citizenry and communities in the coalfields around the mines. To accomplish this requirement, SMCRA programs must involve the public in all phases of coal mine permitting. North Dakota's program provides for public involvement of permitting actions when a new application is received, when a permit is renewed, when any significant permit revision is proposed and when a phase of reclamation is completed to the point of requesting bond release from a tract of reclaimed land. The provisions of the North Dakota program that

extensively describe these procedures can be found at sections NDCC 38-14.1-18 (North Dakota Century Code) and NDAC 69-05.2-10 and 69-05.2-12 (North Dakota Administrative Code).

The Reclamation Division provided the required notices to landowners and other interested parties for significant revision applications, renewals, and bond release applications. Staff encourages participation in bond release inspections by the landowners and county officials.

The NDPSC provides service to all parties requesting assistance, documents, or information, and regulates the coal mining industry within the State. Its services include but are not limited to attending or making presentations at public meetings, discussions with individuals or groups regarding the North Dakota regulatory program, reclamation, or government activities.

In addition to the services provided to the general public, the regulatory program staff and management also contribute to task forces and ad-hoc committees in relation to inter-agency and intra-agency problem solving committees and panels. Some coal program personnel also plan and/or participate in various symposia, seminars, and workshops in relation to technical and legal aspects of coal prospecting, mining, and reclamation.

The North Dakota Program addressed the following landowner concerns or customer service-related issues during EY2024:

- 8/17/23: The PSC held an informal conference requested by landowners related to Revision No. 8 to Permit BNCR-1101 at the Center Mine. The issues discussed were blasting, proposed haul roads, mining operations within 500 feet of residences, dust, noise, and lack of communication from the mine on past agreements and future mining plans.
- 9/14/23: The PSC issued an order from the informal conference held on 8/17/23.
- 12/22/23: The PSC held a formal hearing requested by a landowner at the Coyote Creek Mine. The issues discussed were projected suitable plant growth material (SPGM) respread depths, actual SPGM respread depths, annual soils handling plan, spoil properties, and graded spoil testing.
- 2/14/24: The PSC issued an order from the formal hearing held on 12/22/23.
- 3/13/24: The appellants to the formal hearing appealed the PSC's 12/22/23 order to district court.

The PSC will continue to provide the opportunity for public participation in permitting (including revisions) and bond release processes.

VI. NATIONAL PRIORITY AND GENERAL OVERSIGHT TOPIC REVIEWS

National priority reviews and general oversight topic reviews are available on the OSMRE oversight documents website at <http://odocs.osmre.gov>. Individual reports prepared by the OSMRE are part of the oversight process of each state and contains findings and details regarding the evaluation of specific elements of the state program.

A. National Priority Reviews

National Priority Reviews are oversight topic reviews selected by the OSMRE to review nationwide. There were no National Priority Reviews this evaluation year.

B. General Oversight Topic Reviews

General Oversight Topic Reviews are conducted as specified in the North Dakota Performance Agreement. For EY2024, CAO has elected to evaluate the following topics:

Maintenance of the Approved Program

North Dakota has submitted two program amendments, which are both currently being processed.

Formal submission of State Program Amendment XLII (42) was received by OSMRE on December 9th, 2022, and is being processed under SATS #: ND-056-FOR. ND-056-FOR was distributed to interested parties on 12/14/2022. The final PRN was signed 5/10/2023 and published in the federal register on 5/19/2023. Technical findings have been peer-reviewed and SOL assignment is pending. This proposed amendment includes updating the surface mining regulations to:

- Adds a perfected lien or security interest in real property to the definition of collateral bond.
- Adds the conditions that must be met for real property pledged as a collateral bond.

Formal submission of State Program Amendment XLIII (43) was received by OSMRE on December 6th, 2022, and is being processed under SATS #: ND-057-FOR. ND-057-FOR was distributed to interested parties on 12/14/2022. The final PRN was signed 5/10/2023 and published in the federal register on 5/19/2023. Technical findings have been peer-reviewed and SOL assignment is pending.

This proposed amendment includes updating the surface mining regulations to:

- Increase the time in which an informal hearing must be held from thirty to forty-five days of receipt of a request.

- Increase the time to submit permit renewal applications from 120 days to 180 days before the expiration of the permit.
- Shift environmental responsibilities from the Dept. Of Health to the Dept. Of Environmental Quality.
- Change the name of the State Water Commission to the Dept. Of Water Resources
- Move some duties of the state engineer to Dept. of Water Resources.

State Inspection Frequency

Using federal programs as a guide, North Dakota is required to conduct an average of at least one partial inspection per month and one complete inspection per calendar quarter for all active, permanent program permits. Inactive, permanent program permits also require an average of at least one complete inspection per calendar quarter, but only as many partial inspections as are necessary to ensure effective enforcement of the regulatory program. Initial program sites require at least one complete inspection every 6 months. At the beginning of EY2024, North Dakota reported a total of 20 permanent program permits, consisting of 15 active and 5 inactive permits. North Dakota no longer has any initial program sites. The State also reported three exploration inspectable units. There is no required number of inspections for exploration sites. The total number of State inspections required for EY2024 is 80 complete inspections and 120 partial inspections.

The NDPSC continues to conduct frequent and thorough inspections. North Dakota conducted 60 complete inspections and 300 partial inspections on all active mine sites during this evaluation year. North Dakota also conducted 20 complete inspections and 41 partial inspections on all inactive mine sites during this evaluation year. An additional two complete inspections and two partial inspections were conducted on exploration sites. In total, the state conducted 82 complete inspections and 343 partial inspections during EY2024. This exceeds the number of inspections required and helps to demonstrate the State program's commitment to effective and thorough oversight of coal mining activities within the State of North Dakota.

State Enforcement Actions

During EY2024, North Dakota inspectors issued no cessation orders, and one NOV.

Westmoreland Beulah Mining LLC was issued NOV-2301 on December 11, 2023, for failure to install appropriate measures to prevent and control water erosion in a reclaimed drainageway located Permit KRSB-8603, at the Beulah Mine. Westmoreland completed all required remedial actions, and the NOV was terminated on January 11, 2024. An informal conference was held with the ND Public Service Commission on Feb 8, 2024. The commission affirmed NOV-2301 (Case No. RC-23-355) and assessed a \$3,000 civil penalty.

OSMRE Oversight Inspection Activity

As described in the Performance Agreement for EY2024, OSMRE has committed to conduct a minimum of two complete oversight inspections and three partial oversight inspections, with at least one of those inspections being independent, with notice being given no more than 24 hours in advance.

OSMRE conducted four complete oversight inspection, one partial oversight inspection, and one federal bond release inspections during EY2024. One of the complete inspections and the partial inspection were both considered independent inspections. The four complete inspections were conducted at the Freedom Mine for Permits NACT-0201, NACT-0401, NACT-1801 and NACT-9101. The partial inspection was conducted at the Falkirk Mine for areas released from Permits NAFK-8405 and NAFK-9601 and donated to Coal Lake Wildlife Management Area. A federal bond release inspection was conducted at the Freedom Mine for federal bond releases No. 2 and No. 3 on Permit NACT-9501.

No Ten-Day Notices (TDNs) or Cessation Orders (COs) were issued by the OSMRE during EY2024. NDPSC personnel chose to accompany OSMRE during all inspections.

OSMRE Inspections

EY2024 Inspections Conducted	EY2024 Inspection Target	Percent Target Inspections Completed
6	5	100%

Inspection Types

Complete	Partial	Focused	Joint	Non-Joint	Short-Notice
4	1	1	6	0	2

C. Special Study Topics

In addition to National Priority Reviews and General Oversight Topic Reviews, OSMRE also conducts reviews of special study topics. These reviews address topics of special interest and are commonly the result of requests from the public that OSMRE review or investigate a particular issue regarding the state regulatory program.

On April 4, 2024, OSMRE-DFD received a request from the Western Organization of Resource Councils (WORC) to review the extent and number of permit amendments that have been approved without public notice. It is the responsibility of the North Dakota Public Service Commission (PSC) to review and then approve or deny applications for permit revision. The Commission also determines whether each revision is a significant alteration or addition to the approved operations and reclamation plan. Proposed revisions found to be significant by the Commission are subject to the notice, hearing, and procedural requirements of NDAC 69-05.2-10 and NDCC 38-14.1-19 and NDCC 38-14.1-20. Insignificant revisions are not subject to these notice, hearing, and procedural requirements [NDAC 69-05.2-11-02(5)(a)].

OSMRE and NDPSC have jointly reviewed state rules, laws and guidelines for review and approval of permit amendments. As the Regulatory Authority, the final decision of whether to classify a permit revision as significant lies with the Commission, which utilizes the experience and expertise of the many technical experts in the Reclamation Division of the PSC to examine and evaluate each proposed permit revision on a case-by-case basis. The only provision in PSC rules that requires a revision be classified as significant is found in NDAC 69-05.2-11-02(1)(c), which pertains to new coal removal subareas. This typically occurs during renewal of an existing permit, if not all coal is mined within the initial five-year permit term. No other specific laws, rules or guidance documents are available for determining whether a permit revision is significant or insignificant.

As part of this review, the PSC supplied a listing of revisions of select permits at the Falkirk Mine, including a short summary of each action and whether each action was classified as a significant or insignificant revision. No issues of concern were found. The PSC practice of reviewing and issuing a decision on each revision on a case-by-case basis is compliant with state and federal rules and laws.

A more detailed evaluation of this topic is included as a stand-alone document to accompany this report entitled, *An Evaluation of the Extent and Number of Permit Amendments Subject to Public Notice and Comment in North Dakota Evaluation Year (EY) 2024*. This document can be found on OSMRE's ODOCs website: <https://www.odocs.osmre.gov/>.

VII. PROGRAM PROBLEMS AND ISSUES

The OSMRE will initiate a corrective action process that applies when problems are identified with a state's approved regulatory program, or a state's actions under that program, that could, if left unaddressed, result in a failure by that state to effectively implement, administer, enforce, or maintain its approved regulatory program.

During the evaluation year, no regulatory program problems or issues were identified by CAO. No regulatory problems were identified that remain uncompleted at the end of the evaluation year.

VIII. OSMRE ASSISTANCE

The OSMRE provides technical assistance and technology support to state regulatory programs at the individual state level on project specific efforts, and at the national level in the form of national meetings, forums, and national initiatives. The OSMRE provides direct technical assistance in project and problem investigation, design, and analysis, permitting assistance, developing technical guidelines, training, and support. The OSMRE initiated a regional Technology Transfer Team in 2004 to support and enhance the technical skills needed to operate regulatory and reclamation programs which each state, including North Dakota, has a representative.

A. National Technical Training Program (NTTP)

During the evaluation year, NDPSC reclamation staff members attended the following NTTP courses:

- Two NDPSC reclamation staff attended the NTTP class - Surface and Groundwater Hydrology (SGW20231)
- Two NDPSC reclamation staff attended the NTTP class - Erosion and Sediment Control (ERS20241)
- One NDPSC reclamation staff attended the NTTP class - Bonding: Administrative & Legal Aspects (BNA20241)
- One NDPSC reclamation staff attended the NTTP class – SMCRA: Endangered Species Act (SMCRAESA-S-20241)
- One NDPSC reclamation staff attended the NTTP class – Permitting Hydrology (PHY20231)
- Two NDPSC reclamation staff attended the NTTP class – Evidence Prep and Testimony (EVI20231)
- Two NDPSC reclamation staff attended the NTTP class – Wetlands Awareness (WET20242)
- One NDPSC reclamation staff attended the NTTP class – Enforcement Procedures (ENF20241)

B. Technical Innovation and Professional Services (TIPS)

During the evaluation year, NDPSC reclamation staff member attended the following TIPS courses:

- One NDPSC reclamation staff attended the TIPS class – AutoCAD and LT 2022 Level I: Essentials

The OSMRE's library services did not receive any requests from the NDPSC for references or article reprints.

C. Financial

The OSMRE contributed federal funds to help administer and enforce the provisions of SMCRA on federal and non-federal lands pursuant to North Dakota's approved permanent program (approved December 1980) and their cooperative agreement with the OSMRE. The NDPSC uses these funds to conduct permitting, inspection and enforcement actions, and administrative functions using federal and matching state funds. The NDPSC also uses these funds to provide state regulation on surface coal mining operations on both federal and non-federal lands within the State. For the federal lands portion of the program, North Dakota was granted funding for federal land activities pursuant to the cooperative agreement with the OSMRE. For non-federal lands, the State shares one half the cost of the program with OSMRE. North Dakota elects to use the area-weighted average option to calculate the overall federal funding share for the North Dakota Regulatory Program.

For this past year, the North Dakota Regulatory Program conducted operations for OSMRE's 2023 fiscal year (July 1st, 2023, to June 30th, 2024) with an initial budget of \$1,550,924.00. OSMRE awarded the program \$992,591 in federal assistance. A supplemental request was awarded on June 12, 2024 with a federal share of \$58,499.31. A supplemental request for additional funding of \$35,624.04 was awarded on August 27, 2024. With the addition of the supplemental requests, the total budget was \$1,695,369.50 with 64% of the total budget in federal assistance (Grant No. S23AP00111).

To conduct operation during this coming year, The North Dakota Regulatory Program submitted a total budget for OSMRE's 2024 fiscal year (July 1, 2024 to June 30, 2025) of \$1,490,633. OSMRE awarded the program \$954,004, or 64% of the total budget, in federal assistance (Grant No. S24AP00090). NDPSC maintains a cost-effective program with over 65% of the budget dedicated to salary and benefits for 10.6 Full Time Employees (FTEs).

IX. CONCLUSION

Based on the topics evaluated this year, North Dakota has an effective program with no issues that need corrective action. NDPSC actively pursues public participation and outreach efforts. NDPSC employees demonstrate an appropriate level of technical expertise and take advantage of OSMRE and other training opportunities. They also make use of the latest tools and technology. During EY2024, no off-site impacts occurred. One NOV (NOV-2301) was issued by the NDPSC. No other violations or cessation orders were issued by either NDPSC or OSMRE.

Reclamation is occurring at a contemporaneous rate. NDPSC does an appropriate job of collecting and tracking the data necessary to accurately track and assess reclamation success as well as the contemporaneous nature of that reclamation. Customer service efforts have been demonstrated to be appropriate and scientifically sound. The State conducts the appropriate number of inspections, and those inspections are thorough and complete.

APPENDIX 1: Summary of Core Data to Characterize the Regulatory Program

North Dakota Annual Evaluation Report Evaluation Year 2024

The following tables present summary data pertinent to mining operations and regulatory activities under the North Dakota Regulatory Program. Unless otherwise specified, the reporting period for the data contained in the tables is the evaluation year. Other data and information used by OSMRE in its evaluation of North Dakota performance are available for review in the evaluation file maintained by the DFD-CAO.

Because of the enormous variations from state to state in the number, size, and type of coal mining operations and the differences between state programs, the summary data should not be used to compare one state to another.

List of Tables

Table 1	Coal Produced for Sale, Transfer, or Use
Table 2	Permanent Program Permits, Initial Program Sites, Inspectable Units, and Exploration
Table 3	Permits Allowing Special Categories of Mining
Table 4	Permitting Activity
Table 5	Off-site Impacts
Table 6	Surface Coal Mining and Reclamation Activity
Table 7	Bond Forfeiture Activity
Table 8	Regulatory and AML Programs Staffing
Table 9	Funds Granted to State by OSMRE
Table 10	State Inspection Activity
Table 11	State Enforcement Activity
Table 12	Lands Unsuitable Activity
Table 13	OSMRE Oversight Activity
Table 14	Status of Action Plans
Table 15	Land Use Acreage (Optional)

TABLE 1

COAL PRODUCED FOR SALE, TRANSFER, OR USE ^A (Millions of short tons)			
Calendar Year	Surface Mines	Underground Mines	Total
2020	26.023	0.000	26.023
2021	26.690	0.000	26.690
2022	26.595	0.000	26.595
2023	23.960	0.000	23.960
^A Coal production is the gross tonnage (short tons) and includes coal produced during the calendar year (CY) for sale, transfer or use. The coal produced in each CY quarter is reported by each mining company to OSM during the following quarter on line 8(a) of form OSM-1, "Coal Reclamation Fee Report." 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 other sources due to varying methods of determining and reporting coal production.			

TABLE 2

PERMANENT PROGRAM PERMITS, INITIAL PROGRAM SITES, INSPECTABLE UNITS, AND EXPLORATION														
Mines and Other Facilities	Numbers of Permanent Program Permits and Initial Program Sites								Insp. Units ^{1, 2}	Area in Acres ³				Total Area
	Permanent Program Permits				Initial Program Sites					Permanent Program Permits (Permit Area)		Initial Program Sites		
	Active	Inactive	Abandoned	Total	Active	Inactive	Abandoned	Total		Federal Lands	State/ Tribal and Private Lands	Federal Lands	State/ Tribal and Private Lands	
Surface Mines	15	5	0	20	0	0	0	0	20	18,112	119,051	0	0	137,163
Underground Mines	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Facilities	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	15	5	0	20	0	0	0	0	23	18,112	119,051	0	0	137,163
Permanent Program Permits and Initial Program Sites (Number on Federal Lands: 20)				Total Number:		20		Average Acres per Site:				6,858.15		
Average Number of Permanent Program Permits and Initial Program Sites per Inspectable Unit (IU):				Total Number:		1.00		Average Acres per IU:				6,858.15		
Permanent Program Permits in Temporary Cessation:				Total Number:		0		Number More than 3 Years:				0		
EXPLORATION SITES			Total Number of Sites			Sites on Federal Lands ⁴			Exploration Inspectable Units					
Exploration Sites with Permits:			2			0			3					
Exploration Sites with Notices:			0			0			0					
¹ An Inspectable Unit may include multiple small and neighboring Permanent Program Permits or Initial Program Sites that have been grouped together as one Inspectable Unit, or conversely, an Inspectable Unit may be one of multiple Inspectable Units within a Permanent Program Permit.														
² Total Inspectable Units calculation includes Exploration Sites Inspectable Units														
³ When a Permanent Program Permit or Initial Program Site contains both Federal and State and Private lands, the acreage for each type of land is in the applicable column.														
⁴ The number of Exploration Sites on Federal lands includes sites with exploration permits or notices any part of which is regulated by the state under a cooperative agreement or by OSM pursuant to the Federal Lands Program, but excludes exploration sites that are regulated by the Bureau of Land Management														

TABLE 3

PERMITS ALLOWING SPECIAL CATEGORIES OF MINING			
Special Category of Mining	30 CFR Citation Defining Permits Allowing Special Mining Practices	Numbers of Permits	
		Issued During EY	Total Active and Inactive Permits
Experimental Practice	785.13(d)	0	0
Mountaintop Removal Mining	785.14(c)(5)	0	0
Steep Slope Mining	785.15(c)	0	0
AOC Variances for Steep Slope Mining	785.16(b)(2)	0	0
Prime Farmlands Historically Used for Cropland	785.17(e)	0	15
Contemporaneous Reclamation Variances	785.18(c)(9)	0	0
Mining on or Adjacent to Alluvial Valley Floors	785.19(e)(2)	0	0
Auger Mining	785.20(c)	0	0
Coal Preparation Plants Not Located at a Mine Site	785.21(c)	0	0
In-Situ Processing	785.22(c)	0	0
Remining	773.15(m) and 785.25	0	0
Activities in or Within 100 Feet of a Perennial or Intermittent Stream	780.28(d) and/or (e) 784.28(d) and/or (e)	0	5

TABLE 4

PERMITTING ACTIVITY												
Type of Application	Surface Mines			Underground Mines			Other Facilities			Totals		
	App. Rec.	Issued/ Appvd	Acres	App. Rec.	Issued/ Appvd	Acres ¹	App. Rec.	Issued/ Appvd	Acres	App. Rec.	Issued/ Appvd	Acres
New Permits	0	0	0	0	0	0	0	0	0	0	0	0
Renewals	4	3		0	0		0	0		4	3	
Transfers, sales, and assignments of permit rights	0	0		0	0		0	0		0	0	
Small operator assistance	0	0		0	0		0	0		0	0	
Exploration permits										2	2	
Exploration notices ²											0	
Revisions that do not add acreage to the permit area	12	12		0	0		0	0		12	12	
Revisions that add acreage to the permit area but are not incidental boundary revisions	0	1	2,661	0	0	0	0	0	0	0	1	2,661
Incidental boundary revisions	0	1	(160)	0	0	0	0	0	0	0	1	(160)
Totals	16	17	2,501	0	0	0	0	0	0	18	19	2,501
Permits terminated for failure to initiate operations:									Number:	0	Acres:	0.0
Acres of Phase III bond releases (Areas no longer considered to be disturbed):											Acres:	985.0
Permits in temporary cessation							Notices received:	0	Terminations:	0		
Midterm permit reviews completed							Number:	4				
¹ Includes only the number of acres of proposed surface disturbance												
² State approval not required. Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining.												

TABLE 5

OFF-SITE IMPACTS EXCLUDING BOND FORFEITURE SITES													
RESOURCES AFFECTED		People			Land			Water			Structures		
DEGREE OF IMPACT		Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major
TYPE OF IMPACT EVENT	NUMBER OF EVENTS												
Blasting	0	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	0
Hydrology	0	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	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Number of Inspectable Units ¹ :				23									
Inspectable Units with one or more off-site impacts:				0									
Exploration Inspectable Units with one or more off-site impacts ² :				0									
Inspectable Units free of off-site impacts:				23				% of Inspectable Units free of off-site impacts ⁴ :				100	
¹ Total number of Inspectable Units is (1) the number of active and inactive inspectable units at the end of the Evaluation Year and (2) the number of Inspectable Units that were final bond released or removed during the Evaluation Year													
² Exploration Inspectable Units with one or more off-site impacts is a subset of Inspectable Units with one or more off-site impacts													
OFF-SITE IMPACTS AT BOND FORFEITURE SITES													
RESOURCES AFFECTED		People			Land			Water			Structures		
DEGREE OF IMPACT		Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major
TYPE OF IMPACT EVENT	NUMBER OF EVENTS												
Blasting	0	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	0
Hydrology	0	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	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Number of Inspectable Units ³ :				0									
Inspectable Units with one or more off-site impacts:				0									
Inspectable Units free of off-site impacts:				0				% of Inspectable Units free of off-site impacts ⁴ :				0	
³ Total number of Inspectable Units is (1) the number of bond forfeiture sites that were reclaimed during the Evaluation Year and (2) the number of bond forfeiture sites that were unreclaimed at the end of the Evaluation Year													

TABLE 5
(Continued)

TOTAL OFF-SITE IMPACTS INCLUDING BOND FORFEITURE SITES													
RESOURCES AFFECTED		People			Land			Water			Structures		
DEGREE OF IMPACT		Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major
TYPE OF IMPACT EVENT	NUMBER OF EVENTS												
Blasting	0	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	0
Hydrology	0	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	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Number of Inspectable Units ⁵ :				23									
Inspectable Units with one or more off-site impacts:				0									
Exploration Inspectable Units with one or more off-site impacts:				0									
Inspectable Units free of off-site impacts:				23				% of Inspectable Units free of off-site impacts ⁴ :				100	
⁴ % of Inspectable Units free of off-site impacts is based on the number of Inspectable Units during the Evaluation Year. The number of Inspectable Units may vary during the Evaluation Year.													
⁵ Total number of Inspectable Units is (1) the number of active and inactive Inspectable Units at the end of the Evaluation Year and (2) the number of Inspectable Units that were final bond released or removed during the Evaluation Year and (3) the number bond forfeiture sites that were reclaimed during the Evaluation Year and (4) the number of bond forfeiture sites that were unreclaimed at the end of the Evaluation Year.													

TABLE 6

SURFACE COAL MINING AND RECLAMATION ACTIVITY							
Areas of Phase I, II, and III Bond Releases During the Evaluation Year (EY)							
Phase I Releases	Phase II Releases		Phase III Releases			Total Acres Released During the EY	
Total Acres Released in Approved Phase I Releases	Total Acres Released in Approved Phase II Releases	Acres not previously released under Phase I	Total Acres Released in Approved Phase III Releases	Acres not previously released under Phase II	Acres not previously released under Phase I or II		
0		0			985	Phase I	985
	0			985		Phase II	985
			985			Phase III	985
Number of Permanent Program Permits with Jurisdiction Terminated Under Phase III Bond Release During the Evaluation Year					0	Other Releases - Acres	
Initial Program Sites with Jurisdiction Terminated During the Evaluation Year					0	Administrative Adjustments	160
Number of Inspectable Units Removed					0	Bond Forfeiture	0
Areas of Permits Bonded for Disturbance by Surface Coal Mining and Reclamation Operations							

	Total Acres at Start of EY	Total Acres at End of EY	Change in Acres During EY
New Area Bonded for Disturbance			2,661
Total Area Bonded for Disturbance	135,647	137,163	1,516
Area Bonded for Disturbance without Phase I Bond Release	132,966	134,482	1,516
Area Bonded for Disturbance for which Phase I Bond Release Has Been Approved	2,681	2,681	0
Area Bonded for Disturbance for which Phase II Bond Release Has Been Approved	0	0	0
Area Bonded for Disturbance with Bonds Forfeited During Evaluation Year			0
Area Bonded for Remining	0	0	0
Areas of Permits Disturbed by Surface Coal Mining and Reclamation Operations			
Disturbed Area	91,144	92,716	1,572

TABLE 7

BOND FORFEITURE ACTIVITY (Permanent Program Permits)			
Bond Forfeiture and Reclamation Activity	Number of Sites	Dollars	Acres
Sites with bonds forfeited and collected that were un-reclaimed at the start of the current Evaluation Year (i.e. end of previous Evaluation Year) ¹	0		0
Sites with bonds forfeited and collected during the current Evaluation Year	0	0	0
Sites with bonds forfeited and collected that were re-permitted during the current Evaluation Year	0		0
Sites with bonds forfeited and collected that were reclaimed during the current Evaluation Year	0		0
Sites with bonds forfeited and collected that were un-reclaimed at the end of the current Evaluation Year ¹	0		0
Sites with bonds forfeited but un-collected at the end of the current Evaluation Year	0		0
Forfeiture Sites with Long-Term Water Pollution			
Bonds forfeited, lands reclaimed, but water pollution is still occurring	0		
Bonds forfeited, lands reclaimed, and water treatment is ongoing	0		
Surety/Other Reclamation Activity In Lieu of Forfeiture			
Sites being reclaimed by surety/other party at the start of the current Evaluation Year (i.e., the end of previous Evaluation Year) ²	0		0
Sites where surety/other party agreed during the current Evaluation Year to do reclamation	0		0
Sites being reclaimed by surety/other party that were re-permitted during the current Evaluation Year	0		0
Sites with reclamation completed by surety/other party during the current Evaluation Year ³	0		0
Sites being reclaimed by surety/other party at the end of the current Evaluation Year ²	0		0
¹ Includes data only for those forfeiture sites not fully reclaimed. ² Includes all sites where surety or other party has agreed to complete reclamation and the site is not fully reclaimed. ³ These sites are also reported in Table 6, Surface Coal Mining and Reclamation Activity, because Phase III bond release would be granted on these sites.			

TABLE 8

REGULATORY AND AML PROGRAMS STAFFING	
Function	Number of FTEs
Regulatory Program	
Permit Review and Maintenance	5.20
Inspection	2.70
Other (supervisory, clerical, administrative, fiscal, personnel, etc.)	2.70
Regulatory Program Total	10.60
AML Program Total	4.50
TOTAL	15.10

TABLE 9

FUNDS GRANTED TO STATE OR TRIBE BY OSM (Actual Dollars Rounded to the Nearest Dollar)			
Type of Funding	Federal Funds Awarded	Total Program Cost	Federal Funds Awarded as a Percentage of Total Program Costs
Regulatory Funding			
Administration and Enforcement Grant	1,086,714		
Other Regulatory Funding, if applicable	0		
Subtotal (Regulatory Funding)	1,086,714	1,695,369	64
Small Operator Assistance Program Grant Funding	0	0	
Abandoned Mine Land Reclamation Funding	5,929,210	5,929,210	100
Watershed Cooperative Agreement Program	0	0	
TOTAL	7,015,924		

TABLE 10

STATE INSPECTION ACTIVITY INSPECTABLE UNITS FOR WHICH STATE MET REQUIRED INSPECTION FREQUENCY ON AN INSPECTABLE UNIT-BY-INSPECTABLE UNIT BASIS ¹												
Inspectable Units (IUs)	Total number of inspectable units ²	Number of inspections required annually		Number of inspections conducted		IUs Met Complete Inspection Frequency Requirement		IUs Met Partial Inspection Frequency Requirement		IUs Met Complete and Partial Inspection Frequency Requirements		
		Complete inspections	Partial inspections	Complete inspections	Partial inspections	Number	Percent	Number	Percent	Total number of IUs	Number that met inspection frequency	Percent
COAL MINES AND FACILITIES												
Active	15	60	120	60	300	15	100	15	100	15	15	100
Inactive	5	20	0	20	41	5	100	5	100	5	5	100
Abandoned	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS ³	20	80	120	80	341	20	100	20	100	20	20	100
Coal Exploration Activities ⁴		Complete Inspections							Partial Inspections			
Exploration sites with permits		2							2			
Exploration sites with notices		0							0			

¹ Calculated on a site-specific basis.

² Total number includes both permanent program permits and initial program sites.

³ OSM is assuming that all states have gone through the process described in 30 CFR 840.11(h) and 842.11(f) to reduce inspection frequency on abandoned/forfeited sites

⁴ Includes all valid notices and permits. No inspection frequency data are provided since SMCRA does not establish a minimum numerical inspection frequency for coal exploration activities.

⁵ NA - Not Available

TABLE 11

STATE OR TRIBAL ENFORCEMENT ACTIVITY		
Type of Enforcement Action	Number of Actions ¹	Number of Violations ¹
Notice of Violation	1	1
Failure-to-Abate Cessation Order	0	0
Imminent Harm Cessation Order	0	0
¹ Does not include actions and violations that were vacated.		

TABLE 12

LANDS UNSUITABLE ACTIVITY		
Activity	Number	Acres
Petitions Received	0	
Petitions Rejected	0	
Petitions Accepted	0	
Decisions Denying Petition	0	
Decisions Declaring Lands Unsuitable	0	0
Decisions Terminating Unsuitable Designations	0	0

TABLE 13

OSM OVERSIGHT ACTIVITY					
Oversight Inspections and Site Visits					
	Complete		Partial		
	Joint	Non-Joint	Joint	Non-Joint	Total
Oversight Inspections	4	0	2	0	6
	Technical Assistance		Other		Total
Site Visits	0		0		0
Violations Observed by OSM and Citizen Requests for Inspection ¹					
Type of Action					Total number of each action
How many violations were observed by OSM on oversight inspections?					0
Of the violations observed, how many did OSM defer to State action during inspections?					0
Of the violations observed, how many did OSM refer to the State through Ten-Day Notices? ²					0
How many Ten-Day Notices did OSM Issue for observed violations? ³					0
How many Ten-Day Notices did OSM issue to refer citizen requests for inspection?					0
How many Notices of Violation did OSM issue?					0
How many Failure-to-Abate Cessation Orders did OSM issue?					0
How many Imminent Harm Cessation Orders did OSM issue?					0
OSM Action for Delinquent Reporting or Non-Payment of Federal AML Reclamation Fees					
How many Ten-Day Notices for delinquent reporting or non-payment of Federal AML reclamation fees did OSM issue?					0
How many Notices of Violation for delinquent reporting or non-payment of Federal AML reclamation fees did OSM issue?					0
How many Federal Failure-to-Abate Cessation Orders for delinquent reporting or non-payment of Federal AML reclamation fees did OSM issue?					0
¹ This section does not include actions for delinquent reporting or non-payment of Federal AML fees that are reported in the last section of the table.					
² Number of violations contained in Ten-Day Notices not including those issued to refer citizen requests for inspection.					
³ Number of Ten-Day Notices issued not including those to refer citizen requests for inspection.					

TABLE 14

STATUS OF ACTION PLANS						
Action Plan ID	Problem Type ¹	Problem Title	Problem Description	Date Action Plan Initiated	Scheduled Completion Date	Actual Completion Date
None						
¹ Problem Type: "PA" indicates a required Program change under subchapter T or 732 "RP" indicates a Regulatory Program implementation or administrative problem						

TABLE 15
(Optional)

POST-MINING LAND USE ACREAGE OF SITES FULLY RECLAIMED (Phase III bond release or termination of jurisdiction under the Initial Program)	
Land Use¹	Acres Released
Cropland	0.00
Pasture/Hayland	0.00
Grazingland	763.70
Forestry	0.00
Residential	0.00
Industrial/Commercial	10.80
Recreation	0.00
Fish & Wildlife Habitat	2.40
Developed Water Resources	1.20
Undeveloped land or no current use or land management	0.00
Other - Public Utilities	0.00
Other - Undisturbed	207.13
Other -	0.00
Other -	0.00
Other -	0.00
Other -	0.00
Other -	0.00
Other -	0.00
Sub-Total Other	207.13
Total	985.23
¹ Land uses as defined in 30 CFR 701.5 or "Other" as defined under the state or tribal program	

APPENDIX 2: Comments from State of North Dakota on the Report

North Dakota Annual Evaluation Report

Evaluation Year 2024

North Dakota had the following comments on the EY2024 Report:

North Dakota responded via email on September 9, 2024 with several comments, including grammatical corrections. Grant amounts were updated to include supplemental requests for additional funding. It was noted that the Beulah Mine is no longer actively producing coal and is in reclamation status. Corrections were made to numbers reported in the annual Reclamation Status Table. Corrections were also made to DST Tables 4 and 9.