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OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

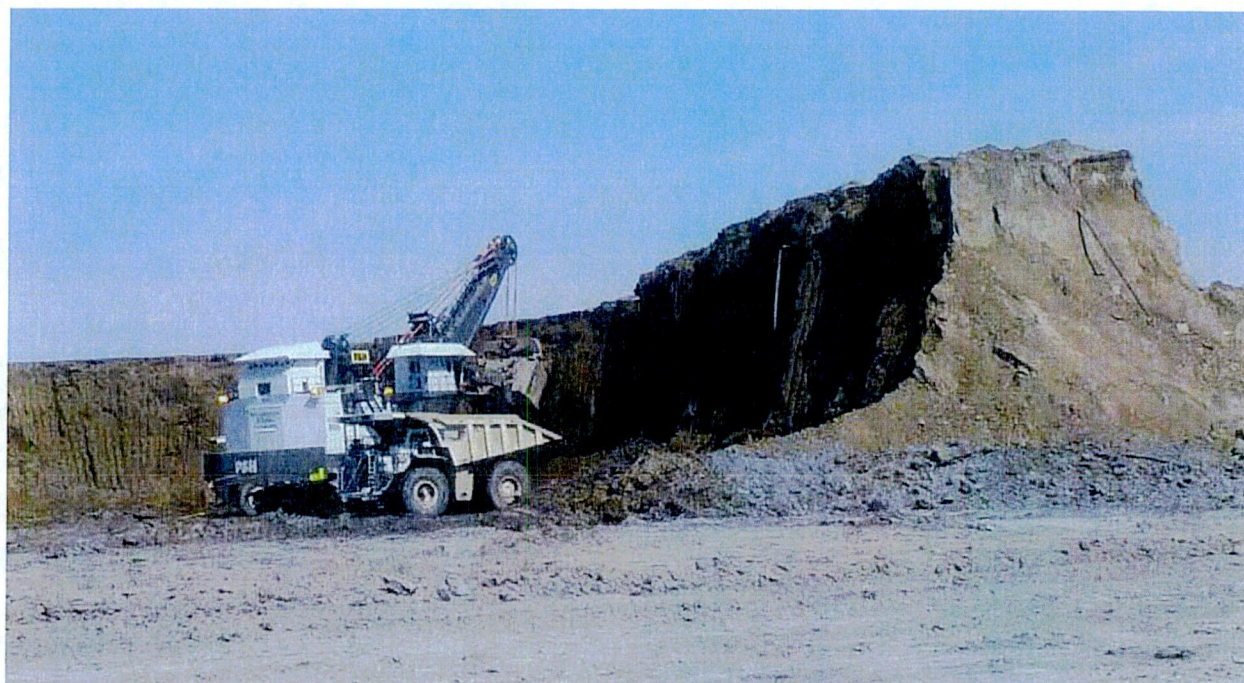
**Annual Evaluation Report
for the
Regulatory Program
Administered by the Public Service Commission
of**

NORTH DAKOTA

for

**Evaluation Year 2013
July 1, 2012 to June 30, 2013**

**Prepared by
Denver Field Division
October 2013**



EXECUTIVE SUMMARY

North Dakota's Regulatory Program

Evaluation Year 2013

The following is a summary of the EY 2013 Oversight Report for the North Dakota Regulatory Program. This report covers the period of July 1, 2012 to June 30, 2013.

Overview of Public Participation and Outreach Efforts

North Dakota continues to solicit public comment and input on individual projects and the program at large. North Dakota publishes notices for proposed permit revisions in local and state newspapers and on its website, and solicits public comment and requests for public meeting participation. Their website includes links to information on state laws and rules, interpretive documents, formal notices, consumer information, and a list of operators.

The NDPSC encourages public participation through public meetings, public service announcements, press contacts, project meetings, and by responding to public inquiries. NDPSC hosts, or participates in a variety of public meetings, conferences, and workshops. Reclamation staff also participated in the Lignite Energy Council's annual teacher's seminar on coal mining and reclamation for many years.

Major Accomplishments and Innovations

The Reclamation Division continues to encourage the submittal of permit related applications in an electronic format. All four active permits for the Falkirk Mine as well as two large active permits for the Freedom Mine, one active permit for the Center Mine, and one active permit for the Beulah Mine are now in an electronic format. Much of the monitoring data submitted by the mining companies is now submitted in an electronic format.

The Reclamation Division has begun moving from the use of tablet computers to iPads equipped with Global Positioning System (GPS) receivers to collect and upload GIS information when carrying out mine inspections. This allows for accurate tracking and recording of activities during those inspections.

Off-Site Impacts

One hundred percent of the twenty four inspectable units were free of negative off-site impacts during the evaluation year.

Reclamation Success

OSM's Directive Reg-8 uses acres of phased bond release as a measurement for successful reclamation. Specifically, how many acres have achieved return to land form/approximate original contour, land capability (post-mine land use) and hydrologic reclamation.

Phase I – When the permittee completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan.

Phase II – When the permittee has established vegetation on the regraded mined lands in accordance with the approved reclamation plan.

Phase III (final bond release) – The remaining portion of the bond may be released after the permittee has successfully completed all surface coal mining and reclamation activities, but not before the expiration of the period specified for operator responsibility.

In North Dakota, the following figures address the cumulative totals for bond release by phase:

Phase I – 18,989 ac. or 26% of total disturbance,
Phase II – 14,832 ac. or 21% of total disturbance,
Phase III – 14,832 ac. or 21% of total disturbance.

Contemporaneous Reclamation

Currently in North Dakota, a total of 116,766 acres have been permitted, with approximately 72,014 acres (62%), disturbed by mining activity to date. Of these disturbed acres, approximately 47,146 acres have been backfilled, graded, topsoiled and seeded; or 65% of the lands disturbed have been reclaimed to the point of establishing vegetation. This ratio of disturbed vs. reclaimed (graded/soiled/seeded) acres is a measure of how contemporaneous (timely) the State's mines are reclaiming acres to the point of establishing vegetation. Once the revegetated acres have fulfilled their 10 year liability period and met other requirements, they may be available for Phase III or final bond release.

Customer Service

OSM evaluated the Reclamation Division's customer service by reviewing public outreach associated with bond release rulemaking. The Reclamation Division provided the required notices to landowners and other interested parties for significant revision applications, renewals and bond release applications. Neither OSM nor NDSPC received any citizen complaints during EY 2013. The Reclamation Division responded to numerous requests for information from landowners, mining companies, government agencies and others. The NDPSC also held a public hearing during EY2013 on proposed rule changes that incorporates new provisions into its rules for using OSM's Applicant Violator System (AVS) prior to the approval of new permits, renewals and certain permit revisions. While the NDPSC has been appropriately using AVS pursuant to a Memorandum of Understanding with OSM, they were required to incorporate these procedures into the State program. The required notices for the rulemaking rule hearing were published in newspapers and interested parties also received a copy of proposed rule changes. No comments were received in this rule making case and the rule changes are pending OSM approval as a formal State Program Amendment.

Review of North Dakota Policy Memoranda

DFD conducted an evaluation of all policy memoranda developed for the North Dakota Regulatory Program. In part, this evaluation was initiated because of concerns expressed by the Dakota Resource Council that North Dakota's policy memoranda could potentially alter the approved State program. Each policy memo was thoroughly reviewed and compared to the approved state regulatory

program, and any applicable State laws and rules for compliance. Applicable federal law was also researched for comparison. In all cases, DFD found that the policy memos were consistent with the approved state program. None of the policy memos reviewed by DFD were interpreted as rendering the approved state program less effective than SMCRA requirements.

Summary of Regulatory Program Lawsuits

Dakota Resource Council and the Dacotah Chapter of the Sierra Club have filed a civil lawsuit against the Secretary of the Interior, alleging that certain campaign contributions given to Commissioners of the NDPSC violated SMCRA. The Dakota Resource Council also filed a lawsuit against the NDPSC, alleging that policy memoranda have improperly been used to alter the approved State regulatory program and have bypassed OSMs State program amendment process. Oral arguments for both Dacotah v. Jewell (SMCRA prohibited financial interest case) and Dakota v. NDPSC (policy memoranda case) were heard on August 16th in District court, in Bismarck.

OSM Assistance

The North Dakota Regulatory Program submitted a total budget for FY2013 of \$1,356,878. OSM awarded the program \$868,402, or 64% of the total budget, in federal assistance. Seven NDPSC staff attended NTTP classes and thirteen attended TIPs training courses. No staff members participated as TIPs instructors.

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(Cover photo: 204 truck/shovel fleet pre-benching at the Falkirk Mine.)

I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that have been approved by OSM as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the North Dakota program and the effectiveness of the North Dakota program in meeting the applicable purposes of SMCRA as specified in Section 102. This report covers the period of July 1, 2012 to June 30, 2013. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the OSM Denver Field Division (DFD), Casper Area Office (CAO), or on the following OSM website;

<http://www.wrcc.osmre.gov/programs/oversight/NorthDakota.shtm>

Contact person: Jeff Fleischman, Director
Email: jfleischman@osmre.gov
Phone: (307) 261-6550
Casper Area Office
150 East B St., Room 1018
Casper, WY 82602

The following is list of acronyms used in this report:

AOC	Approximate Original Contour
CAO	OSM's Casper Area Office
CO	Cessation Order
DFD	OSM's Denver Field Division
DOJ	Department of Justice
EY	Evaluation Year
FAM	OSM's Federal Assistance Manual
GIS	Geographic Information System
GPS	Global Positioning System
NDCC	North Dakota Century Code (Law)
NDAC	North Dakota Administrative Code (Rules)
NDPSC	North Dakota Public Service Commission
NOV	Notice of Violation
NTTP	National Technical Training Program
OSM	Office of Surface Mining Reclamation and Enforcement
REG-8	OSM Directive REG-8
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten-Day Notice
TIPS	Technical Innovation and Professional Services
WR	OSM Western Region

II. Overview of the Coal Mining Industry in North Dakota

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 1.0 percent). The mineable beds in the Williston Basin vary in thickness from three to 30 feet; economic stripping ratios range from 1.5:1 to 11:1. All active coal mines in North Dakota are currently large-scale surface mines that provide for mine-mouth or regional electrical generation facilities and a nearby coal gasification facility.

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 2 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 2012, it produced just under 28 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 a study published by the Department of Agribusiness and Applied Economics at North Dakota State University, preliminary estimates for 2012 show that Lignite Related activities provide direct employment for 4,097 people and indirect employment for an additional 13,347 people. The coal industry's substantial impact on the State's population and economy has secondary in-state multiplier effects. Most of the State's coal production also fuels electric power generation plants within North Dakota that supply most of the State's electrical needs. In 2012, tax revenues from coal mining in North Dakota were estimated at more than \$101 million.

A total of 116,766 acres are currently permitted and bonded in North Dakota (Appendix 1, Tables 2 and 6). Approximately 72,014 of those permitted acres have been disturbed by mining operations, and 47,146 of those acres have been

backfilled, graded, topsoiled and seeded to achieve the intended post-mining land use (Chart 1).

III. Overview of Public Participation and Outreach Efforts

A. OSM

The OSM (DFD) provides for transparency in the oversight process by conducting outreach to stakeholders and encouraging public participation throughout OSM-DFD's annual oversight activities. The public can find oversight guidance documents and North Dakota's Performance Agreement relating to OSM's oversight of North Dakota's program on the following OSM website: <http://www.wrcc.osmre.gov/programs/oversight/NorthDakota.shtm>

Each evaluation year, the OSM-DFD solicits input from the public and interested parties to comment on oversight and provide suggestions for potential oversight evaluation topics. Concerns have been expressed by the Dakota Resource Council and the Dacotah Chapter of the Sierra Club resulting from the ongoing legal case of Dakota Resource Council v. NDPSC (policy memoranda case). Partially in response to this, DFD has included in this report, a topic specific evaluation of policy memoranda developed by the North Dakota Regulatory Program. A summary of this report can be found on page 13 of this report.

Sharing of information with the public is highly encouraged by both OSM 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.

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 program at large. North Dakota publishes notices for proposed permit revisions in local and state newspapers and on its website, and solicits public comment and requests for public meeting participation.

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.

The NDPSC encourages public participation through public meetings, public service announcements, press contacts, project meetings, and by responding to public inquiries. NDPSC commonly hosts, or participates in a variety of public meetings, conferences, and workshops. Reclamation staff also participated in the

Lignite Energy Council's annual teacher's seminar on coal mining and reclamation for many years.

OSM'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

The NDPSC continues to administer an efficient and successful coal regulatory program as set forth in Section 102 of SMCRA. North Dakota's permanent regulatory program has been in-place since 1980.

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 OSM. The Reclamation Division carries out its duties using the appropriate technical expertise and with a high level of professionalism.

The Reclamation Division continues to work closely with mining companies and encourages the submittal of permit related applications in an electronic format. All four active permits for the Falkirk Mine as well as two large active permits for the Freedom Mine, one active permit for the Center Mine, and one active permit for the Beulah Mine are in an electronic format. 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 Reclamation Division has a Geographic Information System (GIS) to track mining and reclamation activities and conduct technical analysis of plans and data provided by the mining companies. Information entered into the GIS for several mines include recent high altitude air photos, permit boundaries, roads, stockpile locations, ponds and related features. Information for many final bond release tracts also has been entered. More information is being added as time allows. Much of this information is being loaded onto tablet computers and iPads equipped with Global Positioning System (GPS) receivers that inspectors use when carrying out mine inspections. This allows for accurate tracking and recording of activities during mine inspections.

Development of the North Dakota Regulatory Program GIS is an ongoing and dynamic project. OSM's Office of Technology Transfer in the Western Region

(WR) and Technical Innovation and Professional Services (TIPS) has provided very valuable assistance with the GIS and mobile computing initiatives. The Reclamation Division has been able to move forward with these initiatives while ensuring the necessary mine inspections are conducted and timely action is taken on applications.

During the course of this evaluation year, mines in North Dakota achieved final bond release for a total of 1,667 acres. This includes 448.6 acres from Bond Release # 4 and 1,000.95 acres from Bond Release # 5, both from permit NACT-9101 at the Freedom Mine; and 217.5 acres from Bond Release # 3 from Permit NAFK-8705 at the Falkirk Mine. (See Appendix 1, Table 6).

The North Dakota Public Service Commission continues to conduct frequent and thorough inspections. North Dakota conducted 72 complete inspections and 447 partial inspections on all active mine sites during this evaluation year. North Dakota also conducted 24 complete inspections and 96 partial inspections on all inactive mine sites during this evaluation year. They have exceeded the number of inspections required on all mine sites during this evaluation year. The required number of State inspections was calculated using 24 inspectable units.

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 of the requirements of SMCRA are met.

V. Success in Achieving the Purposes of SMCRA

OSM Directive REG-8 *Oversight of State Regulatory Programs* (REG-8) dictates that OSM oversight of State programs will focus on the on-the-ground/end-result success of the State programs in achieving the purposes of SMCRA. To further the concept of reporting end-results and on-the-ground success, each OSM field or area office is required by REG-8 to prepare findings from performance standard evaluations of 1) off-site impacts, 2) reclamation success and 3) customer service. These evaluations are required to report the number and degree of off-site impacts, the number and percentage of inspectable units free of off-site impacts; the number of acres that meet the bond release requirements and have been released by the State for the various phases of reclamation; and the effectiveness of customer service provided by the State.

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 OSM 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 NDPSC and DFD.

During EY 2013, North Dakota reported that twenty four out of twenty four (100.0%) inspectable units were free of off-site impacts. (Appendix 1, Table 5).

Since no off-site impacts were reported during EY2013, no topic specific oversight report was prepared regarding this topic.

B. Reclamation Success

OSM Directive REG-8 states that OSM 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 the bond release standards and have been released by the state. In addition to the nationwide information reported, Field or Area Offices and States may conduct specific evaluations. Table 6 of Appendix 1 catalogues the acreage of land released from bond for Phase I, II, and III.

Phase I bond may be released after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan. Phase II bond may be released after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. Phase III bond (final bond release) may be released after the operator has completed successfully all surface coal mining and reclamation activities, but not before the expiration of the period specified for operator responsibility.

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

- a. Land form/Approximate Original Contour (AOC)

MEASUREMENT: AOC achievement is measured by the acres of Phase I bond released. Approximately 26% (18,989 acres) of the disturbed lands (72,014 acres) have received Phase I Bond Release.

b. Land Capability

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

MEASUREMENT: Proper replacement of soil resources is measured by acres of Phase II bond release. Approximately 21% (14,832 acres) of the disturbed lands (72,014 acres) have received Phase II Bond Release.

MEASUREMENT: Vegetation stability is measured by acres of Phase II bond release. Approximately 21% (14,832 acres) of the disturbed lands (72,014 acres) have received Phase II Bond Release.

MEASUREMENT: Achievement of postmining land uses is measured by acres of Phase III bond release. Approximately 21% (14,832 acres) of the disturbed lands (72,014 acres) have received Phase III Bond Release.

MEASUREMENT: Successful revegetation is measured by acres of Phase III bond release. Approximately 21% (14,832 acres) of the disturbed lands (72,014 acres) have received Phase III Bond Release.

c. Hydrologic Reclamation

MEASUREMENT: Achievement of surface water quality and quantity restoration are measured by acres of Phase III bond release. Approximately 21% (14,832 acres) of the disturbed lands (72,014 acres) have received Phase III Bond Release.

MEASUREMENT: Achievement of groundwater recharge capacity and ground water quantity and quality restoration are measured by acres of Phase III bond release. Approximately 21% (14,832 acres) of the disturbed lands (72,014 acres) have received Phase III Bond Release.

It should be noted that both State and Federal regulations do not require that a permittee file for bond release at any prescribed time. Therefore, using bond release statistics only 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 released from Phase II and Phase III bond in North Dakota is relatively small compared to the number of acres actually regraded, soiled and seeded.

C. Contemporaneous Reclamation

Contemporaneous reclamation specifically refers to the timeliness that reclamation is occurring. Currently in North Dakota, a total of 116,766 acres have been permitted, with approximately 72,014 acres (62%), disturbed by mining activity to date. Of these disturbed acres, approximately 47,146 acres have been backfilled, graded, topsoiled and seeded; or 65% of the lands disturbed have been reclaimed to the point of establishing vegetation. This ratio of disturbed vs. reclaimed (graded/soiled/seeded) acres is a measure of how contemporaneous (timely) the State's mines are reclaiming acres to the point of establishing vegetation. Once the revegetated acres have fulfilled their 10 year liability period and met other requirements, they may be available for Phase III or final bond release. 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.

Another general measurement for contemporaneous reclamation is a comparison of the rate at which lands are being permanently reclaimed (seeded) to the rate of disturbance. The following Chart (1) and Graph (1) are used to show the rate at which lands are being permanently reclaimed (seeded) compared to the rate of disturbance. Differences in the ratios of disturbance vs. reclamation could be due to the nature of the mining operations in North Dakota, or there could be delays in backfilling and grading or permanent seeding operations due to the mines' operational emphasis on coal production over reclamation. Lands in these charts are considered permanently reclaimed when they are seeded with permanent vegetation consisting of species as prescribed in the reclamation plan of the approved permit. These permanently reclaimed (seeded) lands include lands that have obtained Phase II bond release status, lands that have obtained Phase III bond release status and permanently reclaimed (seeded) lands for which Phase II bond release has not yet been sought.

Low ratios of reclamation to disturbance indicate that reclamation is not progressing at the same rate as mining, resulting in an increasing acreage of disturbed lands. Conversely, high ratios of reclamation to disturbance indicate that reclamation is occurring faster than disturbance.

Chart 1 and Graph 1 illustrate the overall mining and reclamation activities for the North Dakota coal mines since 1999. Note that the lines indicating disturbed (blue line) and graded/soiled/seeded (red line) in Graph 1 are roughly parallel, indicating the rate of reclamation is roughly the same as the rate of disturbance.

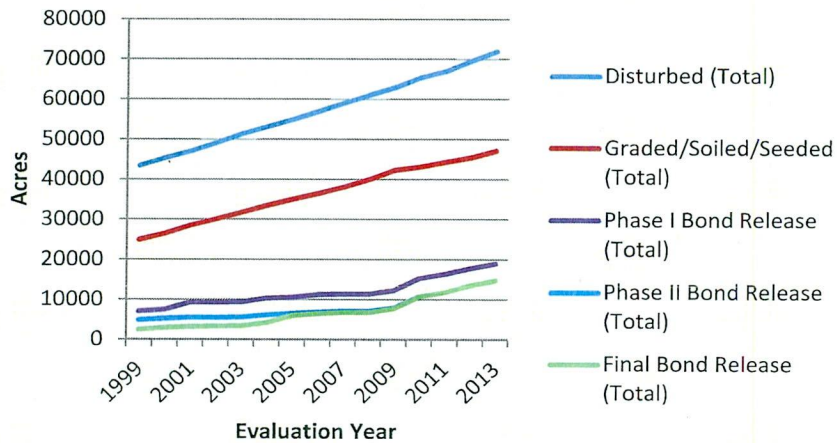
**Chart 1
North Dakota Reclamation Summary**

EVAL. YEAR	ACRES DISTURBED	Cumulative Acres Dist.	ACRES RECLAIMED (graded/soiled/seeded)	Cumulative Acres Recl.	Annual RATIO OF RECLAM VS DISTURB	Cumulative RATIO OF RECLAM VS DISTURB
1999	1,725	43,484	2,270	24,979	1.32	0.58
2000	1,913	45,397	1,518	26,497	0.79	0.58
2001	1,738	47,135	1,998	28,495	1.15	0.61
2002	2,036	49,171	1,610	30,105	0.79	0.61
2003	2,242	51,413	1,678	31,783	0.75	0.62
2004	1,772	53,185	1,775	33,558	1.00	0.63
2005	1,796	54,981	1,458	35,016	0.81	0.64
2006	2,004	56,985	1,463	36,479	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	47,146	0.70	0.65

Source of data: ND-PSC

Chart 1 (above) provides the actual acres disturbed and reclaimed (graded/re-soiled/seeded) annually for all mines. The cumulative reclamation to disturbance ratio has remained relatively steady and is currently 0.65, as indicated on the chart. This ratio indicates that 65 percent of the cumulative acres disturbed in North Dakota have been reclaimed to the point of being backfilled, graded and seeded. This reflects favorably on the contemporaneous nature of reclamation efforts in North Dakota.

All Coal Mines in North Dakota



Source of data: ND-PSC

Graph 1 (above) plots the number of acres disturbed, acres graded/soiled/seeded and acres of Final Bond Release. Acres of Phase I and Phase II bond release 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.

Graph 1 shows that the rate of disturbance (slope of the 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. Recent years have seen the opening of several new pits, resulting in a slight dip in the red line. The rate of final bond release (slope of the green line) has historically been less than the rate of disturbance, but recent years indicate an upturn.

Mechanisms are in place to ensure that land disturbed by surface coal mining operations will be reclaimed. SMCRA requires that every permitted acre in a surface coal mine is bonded to ensure that sufficient funds will be available to reclaim that land in the event that an operator fails to fulfill their responsibilities.

More detailed information concerning this topic is available in a topic specific oversight report available in the annual evaluation file. The evaluation file is available for review at the Casper Area Office or online at the following OSM website: <http://www.wrcc.osmre.gov/programs/oversight/NorthDakota.shtm>.

D. Customer Service

One of the requirements of a regulatory authority for reclamation programs implemented under SMCRA is to develop and encourage open communication not only with 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.

Neither OSM nor NDSPC received any citizen complaints during EY 2013.

The Reclamation Division responded to numerous requests for information from landowners, mining companies, government agencies and others. The NDPSC also held a public hearing during EY2013 on proposed rule changes that incorporates new provisions into its rules for using OSM's Applicant Violator System (AVS) prior to the approval of new permits, renewals and certain permit revisions. While the NDPSC has been appropriately using AVS pursuant to a Memorandum of Understanding with OSM, they were required to incorporate these procedures into the State program. The required notices for the rulemaking rule hearing were published in newspapers and interested parties also received a proposed rule changes. No comments were received in this rule making case and the rule changes are pending OSM approval as a formal State Program Amendment.

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- 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.

VI. National Priority and General Oversight Topic Reviews

No National Priority Topics were selected for this evaluation year.

General Oversight Topics include:

A. State Program Amendments

ND-053 (State Program Amendment XXXIX)

On February 2, 2012, OSM received a North Dakota program amendment relating to letter of credit provisions in the collateral bond rule. The amendment change involves the financial information and notices that banks issuing a letter of credit must provide to the North Dakota Public Service Commission. An option was added to allow a bank to provide a certified copy of financial reports that are already required by a federal agency instead of a balance sheet that is certified by a certified public accountant. Another change affects the provision requiring banks to give the Commission notice of actions alleging insolvency or bankruptcy. Requests for public comment have been sent and responses have been received. At the time of this report, a final rule notice has been drafted and is under review.

ND-052 (State Program Amendment XL)

Also, on October 2, 2009, OSM notified NDPSC that, under 30 CFR 732.17(d), certain North Dakota provisions pertaining to ownership and control and the use of OSM's Applicant Violator System need to be revised. NDPSC sent OSM draft AVS and other Ownership and Control rules for review in late 2011. Following receipt of OSM comments in early 2012, a revised draft rule change package was distributed for informal review. In May, 2012, NDPSC issued a Notice of Rulemaking for these and other rule changes. A public hearing regarding the rulemaking cases was held on July 12, 2012. The proposed rule changes were sent to the State Attorney General's office for legal opinion. OSM received the formal North Dakota Program Amendment (SATS No. ND-052-FOR) on November 14th, 2012. OSM announced receipt of the proposed amendment in the January 29, 2013 Federal Register (78 FR 6062), which also opened the public comment period and provided an opportunity for public hearing. No public hearing or meeting was requested. On May 10, 2013, NDPSC submitted a modification to North Dakota State Program Amendment XL in response to concerns raised by OSM technical reviews. The modification corrects a drafting error in NDAC 69-0.5-10-09 to coincide with similar language in federal regulations. At the time of this report, a final rule notice has been drafted and is under review.

At this time, there are no other outstanding programmatic issues unresolved in the North Dakota program. Both OSM and the NDPSC are trying to streamline and improve the amendment approval process through better cooperation and communication on both the Federal and State levels.

B. Oversight Inspections

DFD conducted two complete oversight inspections, five partial oversight inspections, and one federal land bond release inspections of coal mining operations in North Dakota during this evaluation year. One of the complete inspections was an unannounced independent inspection. No TDNs or COs were issued by OSM during EY2013.

However, the NDPSC issued two Notices of Violation (NOV's) during the evaluation period that were not associated with any of the OSM oversight inspections. On November 30, 2012, NOV 1201 was issued to Dakota Westmoreland's Beulah Mine for its failure to construct two sedimentation ponds prior to removing soil materials in a portion of a watershed that was to be mined. No environmental damage occurred as a result of this violation. The operator did not contest the NOV and the NDPSC assessed a \$2,000 civil penalty in the matter. On June 14, 2013, the NDPSC issued NOV 1301 to BNI Coal's Center Mine for its failure to construct and maintain a sump and silt fence to minimize sediment deposition on undisturbed areas. The sump and silt fence that had been installed failed to prevent the deposition of 2 to 4 inches of sediment on a small

undisturbed area above a sedimentation pond. This matter was pending at the close of the evaluation period and final resolution will occur in EY2014.

C. Review of North Dakota Policy Memoranda

For EY2013, DFD elected to conduct an evaluation of all Policy Memoranda developed for the North Dakota Regulatory Program. Policy Memoranda are guidance documents developed by the NDPSC to assist mine operators in complying with the requirements of the approved state regulatory program. In part, this evaluation was initiated because of concerns expressed by the Dakota Resource Council that North Dakota's Policy Memoranda could potentially alter the approved State program without the required process of a formal program amendment and the extensive federal review that accompanies that process.

Each Policy Memo was thoroughly reviewed. The purpose behind each memo was explored. State laws and rules including Chapter 38-14.1 of North Dakota Century Code (NDCC), and Chapter 69-05.2 of the North Dakota Administrative Code (NDAC) were then examined and compared to each policy memo. Digital versions of ND laws and rules were scanned for key words. Specifically, the question was asked; Does anything in the policy memo alter or contradict the approved state program?

For comparison, federal law including SMCRA and Section 30 of the Code of Federal Regulations (30 CFR) were also searched for relevant citations. These federal citations are used for reference when comparing the effectiveness of the approved state program. A side-by-side comparison of policy memoranda with relevant state and federal citations was also included. In all cases, DFD found that the policy memos were consistent with the approved state program. None of the policy memos reviewed by DFD were interpreted as rendering the approved state program less effective than SMCRA requirements.

Each of North Dakota's Policy Memos is available for download and review at: <http://www.psc.nd.gov/public/laws/othercoalmining.php>

More detailed information concerning this topic is available in a topic specific oversight report available in the annual evaluation file. The evaluation file is available for review at the Casper Area Office or online at the following OSM website: <http://www.wrcc.osmre.gov/programs/oversight/NorthDakota.shtm>.

VII. Regulatory Program Problems and Issues

While OSM did not identify any problems or issues with North Dakota's coal regulatory program, there are two pending lawsuits that may affect it. On March 26, 2012, the Dakota Resource Council and the Dacotah Chapter of the Sierra Club sent OSM and the State of North Dakota a Notice of Intent (NOI) to pursue a civil lawsuit against both entities, alleging that campaign contributions given to two Commissioners of the NDPSC violated SMCRA, and that OSM failed to

formally approve policy memoranda on the topic. On May 30, 2012, OSM obtained a copy of a civil lawsuit filed in US District Court naming the Secretary of Interior as the sole defendant in one of the lawsuits. In that lawsuit, the environmental groups claim that three Commissioners accepted campaign contributions from parties with coal related financial interests. Two of the Commissioners no longer serve on the Commission. SMCRA prohibits State employees from having direct or indirect financial interests in any underground or surface coal mining operation. DOJ was served with a summons in this case on June 22, 2012 and the NDPSC was granted intervention in this case.

Related to this case, the Dakota Resource Council filed a lawsuit in US District Court against North Dakota regarding policy memos and, although OSM was not named in this lawsuit, OSM/DOJ was granted intervention in this case. The Dakota Resource Council is alleging that State policy memoranda require a formal program amendment.

Litigation is pending in both cases. Briefing in both cases is complete and oral arguments before the US District Court for both *Dacotah v. Jewell* (SMCRA prohibited financial interest case) and *Dakota v. NDPSC* (policy memoranda case) were heard on August 16, 2013. Decisions by the District Court Judge in these cases are expected in the fall of 2013.

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

VIII. OSM Assistance

A. National Technical Training Program (NTTP)

NDPSC sent seven students to six NTTP classes during the evaluation year.

B. Technical Innovation and Professional Services (TIPs)

During the evaluation year, thirteen students from NDPSC attended TIPS training courses. A majority of Reclamation Division staff members attended an ArcGIS course in Bismarck in August 2012. No staff members participated as TIPs instructors.

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

C. Financial

OSM 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 OSM. NDPSC uses these funds to conduct permitting, inspection and enforcement actions, and administrative functions using Federal and matching State funds.

The NDPSC 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 OSM. For non-Federal lands, the State shares one half the cost of the program with OSM. For the FY2013 grant period, North Dakota elected to use the Area-Weighted Average Option to calculate the overall Federal funding share for the Regulatory Program.

The North Dakota Regulatory Program submitted a total budget for FY2013 (July 1, 2012 to June 30, 2013) of \$1,356,878. OSM awarded the program \$868,402, or 64% of the total budget, in federal assistance. ND PSC maintains a cost effective program with over 65% of the budget dedicated to salary and benefits for 9.4 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 OSM and other training opportunities. They also make use of the latest tools and technology. During EY2013, no off-site impacts occurred. NDPSC issued two Notices of Violation (NOV's 1201 and 1301) during the evaluation year. One was issued due to a company removing the soil in a watershed before two sedimentation ponds were constructed and the other was due to failure of the company to employ best management practices, resulting in sediment deposition that was confined to permitted lands. Reclamation is occurring as contemporaneously as possible. 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.

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APPENDIX 1:

Summary of Core Data to Characterize the Regulatory Program

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 OSM in its evaluation of North Dakota's performance is available for review in the evaluation file maintained by OSM-CAO.

Because of the enormous variations from state to state and tribe to tribe in the number, size, and type of coal mining operations and the differences between state and tribal programs, the summary data should not be used to compare one state or tribe 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
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- Table 14 Status of Action Plans
- Table 15 Post-Mining Land Use Acreage of Sites Fully Reclaimed

TABLE 1

COAL PRODUCED FOR SALE , TRANSFER, OR USE ^A
(Millions of short tons)

Calendar Year	Surface Mines	Underground Mines	Total
2010	28.9	0.0	28.9
2011	28.2	0.0	28.2
2012	27.8	0.0	27.8

^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									Area in Acres ³				
	Permanent Program Permits				Initial Program Sites					Permanent Program Permits (Permit Area)		Initial Program Sites		
	Active	Inactive	Abandoned	Total	Active	Inactive	Abandoned	Total	Insp. Units ^{1 2}	Federal Lands	State/Tribal and Private Lands	Federal Lands	State/Tribal and Private Lands	Total Area
Surface Mines	18	5	0	23	0	1	0	1	24	15,002	101,762	0	2	116,766
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	18	5	0	23	0	1	0	1	24	15,002	101,762	0	2	116,766
Permanent Program Permits and Initial Program Sites (Number on Federal Lands: 0)				Total Number:	24				Average Acres per Site:				4,865.25	
Average Number of Permanent Program Permits and Initial Program Sites per Inspectable Unit (IU):				Total Number:	1.00				Average Acres per IU:				4,865.25	
Permanent Program Permits in Temporary Cessation:				Total Number:	0				Number More than 3 Years:				0	
EXPLORATION SITES				Total Number of Sites					Sites on Federal Lands⁴			Exploration Inspectable Units		
Exploration Sites with Permits:				0					0			0		
Exploration Sites with Notices:				3					0			0		

¹An 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.

²Total Inspectable Units calculation includes Exploration Sites Inspectable Units

³When 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.

⁴The 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

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	18
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	2

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	1	0	0	0	0	0	0	0	0	1	0	0
Renewals	3	2		0	0		0	0		3	2	
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										0	0	
Exploration notices ²											0	
Revisions that do not add acreage to the permit area	20	22		0	0		0	0		0	0	
Revisions that add acreage to the permit area but are not incidental boundary revisions	0	0	0	0	0	0	0	0	0	0	0	0
Incidental boundary revisions	1	0	0	0	0	0	0	0	0	1	0	0
Totals	25	24	0	0	0	0	0	0	0	25	24	0

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: 1,667.0

Permits in temporary cessation

Notices received: 0 Terminations: 0

Midterm permit reviews completed

Number: 5

¹Includes only the number of acres of proposed surface disturbance²State 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 Units¹: 24

Inspectable Units with one or more off-site impacts: 0

Exploration Inspectable Units with one or more off-site impacts²: 0

Inspectable Units free of off-site impacts: 24

% of Inspectable Units free of off-site impacts⁴: 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 Units³: 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 impacts⁴: 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

**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 Units⁵:

24

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:

24

% of Inspectable Units free of off-site impacts⁴:

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			1,667	Phase I	1,667
	0			1,667		Phase II	1,667
			1,667			Phase III	1,667
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	0
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			4
Total Area Bonded for Disturbance	118,429	116,766	(1,663)
Area Bonded for Disturbance without Phase I Bond Release	114,863	113,200	(1,663)
Area Bonded for Disturbance for which Phase I Bond Release Has Been Approved	3,566	3,566	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	69,601	72,014	2,413
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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	5.17
Inspection	2.12
Other (supervisory, clerical, administrative, fiscal, personnel, etc.)	2.11
Regulatory Program Total	9.40
AML Program Total	4.55
TOTAL	13.95

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	868,402		
Other Regulatory Funding, if applicable	0		
Subtotal (Regulatory Funding)	868,402	1,356,878	64
Small Operator Assistance Program Grant Funding	0	0	
Abandoned Mine Land Reclamation Funding	3,521,731	3,521,731	100
Watershed Cooperative Agreement Program	0	0	
TOTAL	4,390,133		

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	18	72	144	72	447	18	100	18	100	18	18	100
Inactive	6	24	0	24	96	6	100	6	100	6	6	100
Abandoned	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS ³	24	96	144	96	543	24	100	24	100	24	24	100

Coal Exploration Activities ⁴

Complete Inspections

Partial Inspections

Exploration sites with permits

0

0

Exploration sites with notices

3

0

¹ Calculated on a site-specific basis.

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

³ DSM 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 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.

⁴ 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	2	2
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		Total
	Joint	Non-Joint	Joint	Non-Joint	
Oversight Inspections	2	0	5	0	7
Site Visits	Technical Assistance		Other		Total
	0		0		0

Violations Observed by OSM and Citizen Requests for Inspection¹

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
220	PA					

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 Use ¹	Acres Released
Cropland	529.10
Pasture/Hayland	313.20
Grazingland	244.20
Forestry	0.00
Residential	0.00
Industrial/Commercial	0.00
Recreation	0.00
Fish & Wildlife Habitat	11.80
Developed Water Resources	1.50
Undeveloped land or no current use or land management	0.00
Other - Public Utilities	0.00
Other - Roads	22.70
Other - Redisturbed Orphan Spoil	92.00
Other - Conservation Tree Planting	4.70
Other - Undisturbed	447.90
Other -	0.00
Other -	0.00
Other -	0.00
Sub-Total Other	567.30
Total	1,667.10

¹ Land uses as defined in 30 CFR 701.5 or "Other" as defined under the state or tribal program

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APPENDIX 2:

Comments of “State of North Dakota” on the Report

On August 29, 2013, NDPSC responded with a series of comments and suggested revisions to OSM’s EY2013 Oversight Evaluation Report for North Dakota. Most of North Dakota’s comments were in regard to minor grammar or spelling issues. It was also clarified that NDPSC issued two NOVs (not one) during EY2013. NDPSC supplied a narrative explanation of each event leading to the NOVs. Neither incident involved an OSM inspection, and OSM issued no violations.

OSM would like to thank NDPSC for their cooperation and input into this report. All suggestions for changes to this report were taken into consideration and the majority have been implemented.