



**OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT**

Annual Evaluation Summary Report

For The

**MONTANA
Regulatory Program**

Administered by the Department of Environmental Quality

Evaluation Year 2006

(July 1, 2005 to June 30, 2006)

September, 2006

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(Cover photo: final reclamation blending into native area at Big Sky 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 Montana program and the effectiveness of the Montana program in meeting the applicable purposes of SMCRA as specified in Section 102. This report covers the period of July 1, 2005 to June 30, 2006. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Casper OSM Office.

The following list of acronyms are used in this report:

AOC	Approximate Original Contour
CFO	Casper OSM Office
MT-DEQ	Montana Department of Environmental Quality
OSM	Office of Surface Mining Reclamation and
Enforcement	
OTT	Office of Technology Transfer
PMT	Post Mining Topography
SMCRA	Surface Mining Control and Reclamation Act of
1977	
TDN	Ten-Day Notice
WR	Western Region
WRTT	Western Regional Technical Team

II. Overview of the Montana Coal Mining Industry

Of the 15 major coal-producing states, Montana ranks first in coal resources and reserves and sixth based on overall production. Montana's demonstrated coal reserve base is approximately 120 billion tons, or about 24.6 percent of the total U. S. reserve base. Coalfields are found throughout the State, but most are located east of the Continental Divide and in the south central part of the State. Of the 17 coalfields in the State, two (Fort Union and Powder River) currently have producing mines. Montana coal ranges in rank from lignite to high volatile A bituminous, with most of the coal currently mined being sub-bituminous. At the present rate of mining (approximately 40 million tons per year), Montana can sustain over 35 years of mining from the current mineable reserves.

Coal mining began in Montana over 100 years ago. Early coal production was almost entirely from underground mines and was largely used by smelters, railroads, and for domestic purposes by early settlers of the State. Early underground production ranged from a few hundred thousand tons to peaks of as high as five million tons during World Wars I and II. Larger surface mining techniques after WWII boosted production to a record of nearly 43 million tons in 1998.

Montana is currently ranked sixth among the U. S. coal producing states, with an annual production for 2005 of approximately 40.29 million tons. Of this, 162,000 tons were mined by underground methods. An average price per ton of Montana coal for calendar year 2005 was \$6.99 per ton (Montana Coal Council statistics), making the value of the production for 2005 at approximately \$281.6million. The coal industry also generates approximately \$31 million in severance taxes annually and has cumulatively produced approximately \$1.088 billion in Federal, State, Indian and private royalties from Montana coal to date.

Nearly all of Montana's coal production is used in coal-fired electrical generation facilities to produce electrical power; however, small amounts continue to be used for heating and other domestic uses on a limited regional basis.

There are currently twelve surface and one underground active mining permits in Montana with a total direct industry employment of approximately 850 people and an annual payroll of approximately \$56.6 million. Montana's surface mining industry furnishes some of the highest paying and most sought after jobs in the State.

Mine size within the State ranges from 10 acres to nearly 25,500 acres. A total of approximately 62,490 acres are currently permitted in the State. Approximately 33,690 acres of the 62,490 acres permitted have been disturbed by mining and 14,422 of these disturbed acres have been backfilled, graded, topsoiled, and permanently seeded to final reclamation standards (see Table 6).

III. Overview of the Public Participation Opportunities in the Oversight Process and the State Program

The Office of Surface Mining (OSM) has reviewed the Montana coal program with respect to opportunities for and participation in, the public review and permitting activities done by the Montana Department of Environmental Quality (MT-DEQ). This review found that opportunities for public involvement in mine permitting under the Montana program exist at the following levels of their permanent program: 1) all mine permit applications, major revisions, amendments and test pits, 2) mine permit renewals, 3) mine permit transfers, 4) applications for extensions of time to commence mining, 5) mine permit bond release applications, 6) public road relocations and whenever mining is proposed within 100 feet of a public road, 7) prospecting permits and transfers

and 8) prospecting permit bond release applications.

Public notice requirements for most of the program actions listed above consist, at a minimum, of having the applicant place an advertisement in a newspaper of general circulation in the locality of the proposed activity for at least once per week for four consecutive weeks, followed by a 30 day allowance for comment. Any comments received or requests for an informal conference must be formally addressed on the record. Once the mine permitting actions (except for permit transfers) are deemed “acceptable”, the MT-DEQ also publishes a notice of acceptability once per week for 2 consecutive weeks, followed by a 10 day comment period, which again allows the public to participate in the State’s permitting process.

OSM’s review indicates that all the required publications are documented and of sufficient content to meet the requirements of the Montana program. The MT-DEQ also has an open door policy of making all permit applications and approved permits available for review. Since Montana is a large state, these documents are available in two office locations within Montana; at Helena and Billings.

IV. Major Accomplishments/Issues/Innovations in the Montana Program

A good minor revision tracking system has been created using MS Access. This should aid in the administration and processing of minor revisions.

Work on a tracking system for bond release applications has been initiated and will result in a similar MS Access tracking system.

A tracking system using MS Excel has been underway for some time to track and administer review of mine company annual reports and was fully implemented during this reporting period.

MT-DEQ received and OSM “Applied Science Grant” to evaluate and define vegetation, landscape and root zone relationships to enhance the quality and efficiency of permitting and reclamation work. The project was implemented in this reporting year and significant work progress has been made.

Montana staff participated throughout the report year as instructors in several national OSM training courses and as an active member of the organizational committee for the Billings Land Reclamation Symposium in June 2006. Montana also provided technical and regulatory assistance and information to various special interest groups regarding Program and mining company issues and responsibilities.

V. **Success in Achieving the Purposes of SMCRA as Determined by Measuring and Reporting End Results**

To further the concept of reporting end results, the findings from performance standard and public participation evaluations are being collected for a national perspective in terms of the number and extent of observed off-site impacts, the number of acres that have been mined and reclaimed, and which meet the bond release requirements for the various phases of reclamation, and number of acres that have been mined and reclaimed and the effectiveness of customer service provided by the State. Individual topic reports are available in the Casper Field Office which provide additional details on how the following evaluations and measurements were conducted.

A. **Off-Site Impacts:**

For the purpose of oversight, an 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. As a part of this oversight MT-DEQ and CFO developed an oversight work plan to evaluate and document the effectiveness of the Montana program in protecting the environment and the public from negative off site impacts resulting from surface and underground mining operations in Montana.

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 both MT-DEQ and CFO. As a result of our review, OSM determined that no off-site impacts occurred during the report period (see Table 4).

B. **Reclamation Success:**

OSM evaluates the effectiveness of the State program based on the number of acres that have received bond release (Table 5). While the CFO believes this measure does not capture the total effectiveness of the State program in part due to the type of mining operations, the large size

of western mining operations and company policies (not to apply for release until large management units are eligible for final bond release), this measure does not preclude effective reclamation. The CFO believes that the State program is only partially effective in its goal of having all disturbed lands reclaimed to the approved post-mining land use as contemporaneously as possible. As a result the number of acres released from bond is relatively small compared to the number of mined acres regarded, soiled and seeded. Reclamation activity has and is occurring in Montana (see Table 6). Tables 5 catalogues the acreage of land released from bond for Phase I, II and III.



(Montana staff evaluating reclamation for bond release)

C. Customer Service:

As part of the oversight review of Montana’s program this year, OSM and the MT-DEQ decided to evaluate the public’s involvement in the State’s bond release process. Those portions of the Montana program addressing the bond release and notification process can be found at ARM 17.24.1111 through ARM 17.24.1115.

During the evaluation period the MT-DEQ received seven bond release applications. From this pool, three applications were randomly selected for review (Bond Release Application #56 Rosebud Mine, Bond Release #60 Big Sky Mine Area A and Bond Release #61 Big Sky Mine Area B).

Montana's program requires that a bond release applicant publish a notice of the proposed bond release and opportunity for comment or to request a hearing in a local newspaper for four consecutive weeks. This notice allows objectors to comment on the bond release or to request an informal conference or formal hearing on the proposed release. All three applications reviewed had the documentation regarding this publication in the package.

In addition to the newspaper notification, the applicant is required to separately notify adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area. Two of the applications reviewed had discrepancies regarding these notifications. In one case the MT-DEQ noted that there was no verification that these letters had been sent, but no response (follow up) was found in the files. In the other application, the applicant appears to have sent the notices out on the wrong mailing list. This resulted in adjacent landowners not being notified and parties not adjacent to the permit receiving a notice in error.

The MT-DEQ is also required to inspect the proposed bond release area within 30 days of receipt of the bond release application. The MT-DEQ is required to notify the surface owner and all other affected parties of this inspection so that they may participate in the inspection. There is some evidence that occasionally, these parties are not being notified of the inspection date in a timely manner with enough lead time to make the inspection schedule.

Based on this review, it appears that Montana should be more diligent in assuring that all the proper parties involved in the bond release process be notified of their opportunities to participate in the process. Possibly a check list and verified mailing list would assist the bond release application reviewers in addressing these responsibilities.

VI. OSM Assistance

Montana Department of Environmental Quality's Industrial and Energy Minerals Bureau continues to participate in the Western Regional Technical Team (WRTT) by sharing its technological advances, developing a GIS for bond release, and exchanging electronic information with their industries for the final goal of developing electronic permitting activities. Montana staff made significant contributions to the new technologies workshops conducted by OTT in 2006. Four Montana staff attended the Sheridan WRTT New Technologies Workshop. A member of the Montana staff also led the mine field

trip to the Decker Mine at the Sheridan workshop. Three Montana staff attended the Bismarck New Technologies Workshop and field trip. Another Montana staff member served as a WRTT contact for the FY2005 Applied Science project and for the FY06 Applied Science proposal which was submitted from the State of Montana. Montana staff members also served as reviewers of the Mine Blasting Modules that OTT sponsored.

OTT supported Montana's technological development by providing contract technical assistance in the GIS Support area, as provided by Entrada/San Juan, Inc. including groundwater Excel spreadsheet and database information management and data import into GIS; and Subsurface 3D display, query, and data management, especially related to water quality. OTT provided support for Montana's Database Analyst/GIS Specialist, MT DEQ, to attend the 2005 NW ESRI User Conference at Sunriver, Oregon Pre-Conference Training in *Introduction to Geoprocessing Scripts using Python*, September 26-27, 2005.

OTT also provided Montana with technical software and equipment to support their mobile computing and electronic permitting efforts including: Geographic Transformer v5.1; Geographic Calculator 6.2; and Blue Marble Software to assist in image projection and coordinate transformation activities; one Teletype GPS-16 Channel Bluetooth GPS PDA; one HP IPAQ HX4705 Pocket PC; three Canon PowerShot A610 Digital Cameras, one SanDisk ImageMate 8-in-1 USB Reader and three SanDisk B Secure Digital Cards. TIPS supported the state of Montana by providing software upgrades, and submitting requests for hardware and equipment. TIPS provided the state of Montana one Trimble GeoXT Ruggedized Hand Held GPS device and TerraSync Professional Software to support Mobile Computing efforts.

OTT is proceeding with pricing a survey grade RTK GPS unit and technician training to respond to Montana's request for assistance in geo-referencing the mining coordinate systems at four mines.

OSM's Technical Librarian filled one reference request and provided five journal article reprints to the Montana SRA staff members. In addition Montana received over 41 technical publications, CD's and informational references. In addition, OTT provided notification that a copy of public domain software, HC-GRAM (Hydro-Chemical Graphic Representation Analysis Methods) version 3.1.1 (running in windows environment with a help tutorial) was placed on its web site www.ott.wrcc.osmre.gov, under the heading of Guidelines, Handbooks, Manuals, and Public Domain Software.

VII. General Oversight Topic Reviews

A. State Program Amendments

The state program amendment process in Montana has been ongoing and constant since the Montana program was originally approved by OSM in April 1980.

Since that date, in response to rule challenges, court decisions and new rulemaking, the Federal reclamation regulations have also changed and evolved. In most cases, this Federal evolution required corresponding adjustments to the Montana and other state programs. Montana has submitted twenty-three formal amendment packages to OSM for review and approval since its original program was approved.

Overall, Montana's program is consistent with SMCRA and the Federal regulations. However, several critical delays in submission of program amendments to OSM for review and approval have prevented the program from being in complete compliance with SMCRA. When the MT-DEQ finishes and approves rule changes through their internal process, there have been delays in submission of these new rules to OSM for review. If these changes are not as effective as the requirements of SMCRA, OSM must disapprove the new rules and the process may have to start over again. These delays in submittal have the potential to create some confusion as to which rules are in effect as this approval process plays out. OSM has also experienced delays in our review of the State submittals. OSM must get concurrence on our review of the State programs from the Office of the Solicitor. That concurrence has been affected by personnel availability and workload priorities, making timeliness difficult. Both OSM and the MT-DEQ are trying to streamline and improve the amendment approval process through better cooperation and communication on both the Federal and State levels.

During this evaluation period, Montana had two active amendments in OSM's formal review process. These packages address rule changes (adopted by the state in October 2004) made necessary by statutory changes from the 2003 legislative session (submitted to OSM 8/29/05) and statutory changes made during the 2005 legislative session (submitted 1/18/06). These packages should be approved by OSM during the next evaluation period.

Based on statutory changes made in the 2005 legislative session, enforcement rule revisions were adopted in early 2006. It is anticipated that submittal of these revisions as an amendment package to OSM will occur in September 2006.

Based on other statutory changes made in the 2005 legislative session, including bond release application procedures, and the need for various other rule changes identified by the Montana program, it is projected that submittal of another rule amendment package to OSM will occur in the third quarter of 2007.

B. Financial Administration

During the evaluation year, the grant and all other financial functions located in the Casper Field Office were transferred to the Western Region office in Denver. During this transition, it was decided to skip any financial evaluation of the

Montana coal regulatory program during EY 2006. CFO and WR are considering selecting only a few topics in future years to spot check the program.

C. Inspection and Enforcement

The MT-DEQ continues to conduct frequent and thorough inspections. MT-DEQ conducted 69 complete inspections and 118 partial inspections for the active permits and 10 complete inspections for the inactive permit. Table 2 provides and identifies the number of active and inactive permits. Fifty-two complete inspections were required for the active permits and four complete inspections for the inactive permit. One hundred and four partial inspections were required for the active permits. MT-DEQ reported 118 partial inspections. MT-DEQ has not only met, but exceeded the minimum inspection frequency requirements of Federal regulations (30 CFR 840.11) and the Cooperative Agreement (30 CFR 926.30).

The Casper Field Office conducted two complete random sample inspections and five partial / focused inspections of coal mining operations in Montana.

MT-DEQ inspection reports are complete, accurately document site conditions and mine activity, and give the status of any violations. The inspection reports have continuity with previous reports. All performance standards were reviewed and documented during complete inspections and the reports contain a discussion of the current mine status. Each partial inspection report documents performance standards reviewed and permit requirements reviewed as well as the portions of the mine site inspected.

MT-DEQ maintains an inspectable units list and an inspection data base sufficient to meet its program requirements.

MT-DEQ issued 4 Notices of Violation and no Imminent Harm or Failure to Abate Cessation Orders during this evaluation period. No pattern of violation exists or show cause hearings / alternative enforcement action (bond forfeiture) were initiated during this evaluation period.

The CFO did issue two Ten-Day-Notices (TDNs) during this review period. The first TDN was issued on October 28, 2005 and the second was issued November 1, 2005.

The first TDN was issued regarding the retention of a highwall remnant at the Big Sky mine.

The State has clarified the use of both the alternative post-mining land use and approximate original contour (AOC) provisions of their program through their use of AOC and Post-Mine Topography (PMT) guidelines. The State will continue to use alternative post-mining land use provisions for changes in post-mining land use, but will employ the AOC provisions of their program to recreate the diverse

and unique topographic features that existed in the pre-mine topography and landscape.

Several years ago, MT-DEQ developed AOC and PMT guidelines for determining backfilling and grading compliance with the Montana program and SMCRA. During this evaluation period, the CFO conducted inspections to evaluate the implementation and use of these guidelines in the field and determined that MT-DEQ may have implemented these policies and guidelines to allow highwalls (see photos below) to remain in conjunction with a final pit impoundment (alternative land use). Montana has indicated that they are awaiting a permit revision by the operator before they continue further evaluation of these features. The CFO is awaiting MT-DEQ's final action on this revision before deciding if any enforcement action is required, but feels that the issue needs to be addressed in a more timely manner. The CFO will monitor and continue to evaluate Montana's position on this issue during the next evaluation period.

Final Pit Impoundment #1 with Highwall



Final Pit Impoundment #2 with Highwall



The second TDN was issued regarding erosional features observed at the Western Energy mine (see photos below). Rills and gullies have been allowed to develop without any attempt to repair them as required in both the Federal and State regulations. Discussions and technical inputs are currently ongoing. The CFO is monitoring this issue and is hopeful that it can be resolved without any further enforcement action.

Erosional Features
(both photos of the same feature)



Rills and Gullies at the Western Energy Mine



D. Bond Release

Montana and OSM began to develop Performance Agreements during this report period. The intent of this effort was to establish a process by which MT-DEQ and OSM could review the completed reclamation at the Absaloka Mine and document compliance with the performance standards for bond release. This process will involve a review of the reclamation plan, annual reports, site inspections and all applicable rules and regulations. The CFO and MT-DEQ agreed to evaluate and document the status of reclamation at the Absaloka Mine through the routine monthly, quarterly and annual inspections and annual report reviews, to document a determination as to its acceptability / availability for bond release. This review identified areas that are available for release, as well as, those that are not and any additional work that is required.

The MT-DEQ with OSM oversight also began implementation of this process at all Montana mines during this reporting period.

This approach streamlines the bond release process by annually identifying for the operator areas available for bond release and areas needing further work prior to release as the evaluations have been completed and findings are documented.

APPENDIX A

Tabular Summaries of Data Pertaining to Mining, Reclamation and Program Administration

These tables represent data pertinent to mining operations, State and Federal regulatory activities within Montana. They also summarize funds provided by OSM and the Montana staffing. Unless otherwise specified, the reporting period for the data contained in all tables is the 2006 evaluation year (July 1, 2005– June 30, 2006). Additional data used by OSM in its evaluation of Montana’s performance is available for review in the evaluation files maintained by the Casper Field Office

APPENDIX B

Casper Field Office Response to Montana's Comments

Many of the comments and suggested corrections made to the report by Montana were editorial in nature and were accepted, but are not listed here. The more substantive comments and suggestions from the State are addressed as follows:

MT Comment: In the last paragraph of Section V, B. Reclamation Success, “*(With all due respect, the statement above ‘...however, it is impossible to ignore the miles of open pit and highwalls where reclamation has and is continuing to be deferred by Montana’ is highly misleading and inaccurate and implies that Montana is just letting pits and highwalls remain as is.... If OSM really wants to evaluate the legitimacy of the existence of various open pits and highwalls, it needs to review approvals by the state for mine plan and reclamation schedules that allow for the pits and highwalls that OSM is concerned about. Then, OSM would have a basis for determining whether the state is making decisions about these matters in accordance with its rules.)*”

CFO Response: The Casper Field Office agrees with Montana's suggestion and has removed this language from the report. The CFO further agrees with the State's proposal for review of this subject and propose to include this topic in next years evaluation.

MT Comment: Also regarding Section V, B., Montana states: “*(Table 5 does not recognize that the state did a full release of bond on WECO Pit 6 (approximately 500 acres) on June 19, 2006; although Pit 6 is “pre-SMCRA” and thus doesn't officially exist in the eyes of OSM, the state spent considerable time and effort in achieving this bond release.)*”.

CFO Response: The Casper Field Office recognizes the Pit 6 area of the WECO mine as a workload for the MT-DEQ, but as mentioned in their comment, this area consists of pre-SMCRA mine disturbance and thus does not fall under the scope of this report and will not be addressed here.

MT Comment: In Section V, C. regarding bond release participation by affected parties, Montana suggests that would read “While a majority of the time this requirement (to notify affected parties of a bond release inspection) is met, occasionally these parties are not being notified...in time for them to make the inspection schedule.”

CFO Response: The CFO review of Montana's documentation regarding notification requirements for bond release inspections indicated that MT-DEQ did not properly notify affected parties in at least 2 of the applications reviewed. The report will remain as written.

MT Comment: Section VII, C. Inspection and Enforcement. Regarding whether or not Montana had met the required number and frequency of inspections. The correct number

of complete inspections is 69 and 118 partial inspections for the active permits. Montana also asked “*Is there a difference between the above use of the terms “active” or “inactive mines” and “active” or “inactive permits”?*”.

CFO Response: The new numbers provided by the State will be included in the text and tables of the EY06 report and the report will be changed to indicate that Montana has met its frequency requirements. Regarding the difference between the terms “mine” and “permit” used in this paragraph. The terms are not necessarily synonymous, but are often used interchangeably when discussing “multiple permit” mining operations in Montana. The report will be changed to reflect that permit is the correct term to be used in this case.

MT Comment: Section VII, C. Inspection and Enforcement, Montana objected to the use of “alternate reclamation” as the descriptive word for “alternative post-mining land use change”, in the discussion regarding their TDN for highwall retention.

CFO Response: The Casper Field Office agrees with Montana’s suggestion and has changed the wording in the report accordingly.

MT Comment: Section VII, C. Inspection and Enforcement, Montana would like to see the language in the report indicating that the MT-DEQ had expanded the implementation of it’s program guidelines and policies to include approval of highwalls in conjunction with final pit impoundments removed. The MT-DEQ is still evaluating a revision package submitted regarding this issue and that their review would be done using their programs existing rules and guidelines.

CFO Response: The Casper Field Office has taken Montana’s comments into consideration and has rewritten this section of the report to be more specific and to clarify the Agencies concerns.

In addition to the above comments regarding the content of the annual oversight report, Montana wished to include the following addendum regarding the condition of their budget and staffing concerns for the next evaluation year:

For the fiscal year starting July 1, 2006, the Montana program received \$135,650 less than was requested for its coal program grant from OSM. As a result, Montana has taken or is planning to take the following steps to reduce its expenditures.

The work hours of four staff (two hydrologists, our soil scientist, and one of our engineers) have been reduced to 36 hours/week. Additionally, one of these staff members worked only 32 hours/week during July and August. These work hour reductions were totally voluntary on their parts.

The vacant surface water hydrologist position will remain open for the entire fiscal year.

Operational expenditures, including spending for travel, supplies, education and training, and other items are planned to be reduced by approximately \$23,000.

One of our more recent staff additions resigned from his position in August to take a job with the federal government, due in part to his perceived uncertainty with the funding of the Montana coal program.

Some of the above restrictions in expenditures will no longer be needed, because of recent staff turnover that will provide vacancy savings. Two of these, a retirement in July and the above-described resignation in August, were known about in the year, but an additional resignation in August and another occurring at the end of September were not. In any case, the long-term issue of adequate federal funding of the program still exists. The Montana Department of Environmental Quality has undergone an extensive period of salary increases, and many coal program staff have been recipients of these increases. A few additional increases will occur or are expected in the near future. In addition, all state employees received an across-the-board raise last year and will receive another one this October. Also, operating costs, such as travel, are increasing. In summary, Montana will need significant more funding than it received this fiscal year, if it is to have a fully functional staff and operating program.