

**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 2010
(July 1, 2009 to June 30, 2010)**



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(Cover photo: Tongue River Reservoir, Decker Coal Co., Decker Mine)

I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSMRE) in the Department of the Interior. SMCRA provides authority to OSMRE to oversee the implementation of and provide Federal funding for State regulatory programs that have been approved by OSMRE 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, 2009 to June 30, 2010. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Casper Field Office (CFO).

The following is list of acronyms used in this report:

AOC	Approximate Original Contour
ARM	Administrative Rules of Montana
CFO	Casper Field Office
CO	Cessation Order
IEMB	Industrial and Energy Minerals Bureau
MPDES	Montana Pollutant Discharge Elimination System
MSUMRA	Montana Strip and Underground Mine Reclamation Act
MT-DEQ	Montana Department of Environmental Quality
NOV	Notice of Violation
NRCS	Natural Resources Conservation Service (USDA)
OSMRE	Office of Surface Mining Reclamation and Enforcement
PMT	Post-Mining Topography
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten-Day Notice
TIPS	Technical Innovation and Professional Services
WR	Western Region

II. Overview of the Montana Coal Mining Industry

Of the 15 major coal-producing states, Montana ranks first in coal resources and reserves and fifth based on overall production. Montana's demonstrated coal reserve base is approximately 119 billion tons, or about 25.2 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 bituminous, with most of the coal currently mined being sub-bituminous. At the present rate of mining (approximately 33-45 million tons per year), Montana can sustain over 30 years of mining from the coal that is mineable from current operating mines.

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 45 million tons in 2008, according to reports from the State of Montana.

Total coal production in calendar year 2009 was 39.6 million tons, with 867 thousand tons coming from underground sources, as reported by the Montana Department of Labor & Industry, Safety Bureau. According to OSMRE figures (Appendix A, Table 1), total coal production in calendar year 2009 was 33.1 million tons, with 683 thousand tons coming from underground sources. That is a decrease of 4.4 million tons from calendar year 2008, when total coal production equaled 37.5 million tons. This difference between OSMRE and Montana Department of Labor & Industry figures is likely due to varying methods used by OSM and the State of Montana for determining and reporting coal production. These variations may be due to 1) the inclusion of Absaloka Mine production data (5.9 million tons) in the Montana Department of Labor & Industry figures and 2) the fact that not all production is assessed AML fees.

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 nine active surface permits and one active underground mining permit in Montana with a total direct industry employment of approximately 1,147 people and an annual payroll of approximately \$85.3 million. Montana's surface mining industry furnishes some of the highest paying and most sought after jobs in the State.

The average size mine is 4,422 acres (Appendix A, Table 2) with a range from 7 acres to 25,636 acres. A total of approximately 66,336 acres are currently permitted and bonded in Montana (Appendix A, Tables 2 & 5). Approximately 37,484 acres of the 66,336 acres permitted have been disturbed by mining (Chart 1 & Appendix A, Table 5) and 17,820 of these disturbed acres have been backfilled, graded, topsoiled, and permanently seeded to final reclamation standards (Chart 1).

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

OSMRE 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 (the public notice for permit transfer is one publication with a 15-day comment period). 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, which require a one-time publication by MT-DEQ) 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.

OSMRE’s review indicates that all of 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. Montana is currently taking steps to make at least some of this information available electronically; public notices, environmental assessments, and information on how to obtain a copy of a permit application are made available on the state website.

OSMRE and MT-DEQ hosted a joint outreach meeting to stakeholders in Billings, Montana. OSMRE provided information to interested citizens and the coal mining industry pertaining to OSMRE oversight of MT-DEQ’s administration of its approved permanent regulatory program under the provisions of SMCRA. The meeting focused on MT-DEQ’s methods of calculating performance bonds and determining approximate original contour (AOC). Discussions pertaining to performance bond calculations and reclamation practices for achieving AOC and post- mining topography (PMT) followed presentations presented by the Montana mining industry. The information provided was informative and provided OSMRE WR review teams with background information to assist in their national priority oversight evaluations of State implementation of AOC and bonding requirements.

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

A. Electronic Permitting

MT-DEQ’s Data Management Committee continues to develop protocols for submittal of electronic data, including permit applications. Major accomplishments of this committee during the evaluation year include:

With assistance from the Colorado Division of Reclamation Mining and Safety (DRMS), the Committee implemented DRMS’ Permit System Application user interface as a database solution. The DRMS Permit System Application offered the greatest functionality for the lowest price in the shortest amount of time. The Application integrates the Access database, an electronic document management system (FileNet), and a GIS system. Montana successfully launched their own Montana version of the Application February 26, 2010, on-time and under budget (61% of anticipated cost). Throughout the Application design and development process, Colorado and Montana worked together to ensure a solution that would work well for both states. Montana could not have pulled off this kind of successful project without the collaborative efforts of the DRMS. Montana returned the favor, in small part, by developing a new Annual Reports tab and delivering that component to Colorado for free.

In a technology transfer sharing agreement between Colorado and Montana, the additional data attributes developed for the MT-DEQ including environmental resources definitions, mining and reclamation requirements, and mining and reclamation plan annual reporting will be used to enhance the Colorado DRMS Permit System Application.

MT-DEQ and Colorado DRMS hosted a joint presentation of their success at a Colorado/Montana summit at DRMS facilities in Denver to discuss the potential for sharing their successes with other States. Common solutions for their shared Application were identified, for which development costs and benefits can be shared. Montana spent \$61,000 to implement a solution that cost Colorado more than half a million dollars to develop.

B. Other Efforts

Montana has taken several steps to enhance outreach to interested citizens and organizations. Examples include: 1) having a public meeting prior to OSM's oversight evaluation of AOC/PMT and bonding – this was done to exchange information and to make the public better aware of the ongoing oversight evaluation; 2) increased discussions, including field visits with landowners and concerned citizens regarding subsidence issues; 3) increasing the number of special interest groups that are notified of permitting actions; and 4) making additional items available electronically on the state website.

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

OSMRE Directive REG-8 (REG-8) dictates that OSMRE 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 OSMRE field 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. In addition to this required information, the CFO and MT-DEQ agreed to further evaluate reclamation success with specific evaluations, as allowed in REG-8 and as addressed in the Regulatory Performance Agreement in effect for the evaluation year. Specific evaluations were conducted to compare and evaluate the number of acres reclaimed (seeded) to the number of acres mined (disturbed).

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. 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 OSMRE inspection reports, enforcement actions, civil penalty assessments, citizens' complaints, special studies and information from other environmental agencies. If an off-site impact is identified, the sources of information and the basis used to identify and report these impacts will be clearly recorded. Field evaluations for off-site impacts were conducted during routine inspections by MT-DEQ. CFO conducted three complete and six partial oversight inspections. Off-site impacts were not identified during the reporting period (see Appendix A, Table 4).

B. Reclamation Success:

OSMRE evaluates the effectiveness of the State program in achieving reclamation success based on the number of acres that meet the bond release standards and have been released (reported in Appendix A, Table 5). During this evaluation year, information was collected to measure program performance in the area of contemporaneous reclamation. According to REG-8, although not an on-the-ground measure of reclamation success reported in Table 5, contemporaneous reclamation is an important purpose of SMCRA "..... to assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations." Contemporaneous reclamation data provides an overall perspective of how successfully reclamation is staying current with mining in the State.

According to REG-8, the measurement for contemporaneous reclamation may be measured by evaluating the timeliness of Phase I, Phase II and Phase III bond releases. The intent of this measurement is to provide an overall general picture of how successfully reclamation is staying current with mining in the State.

Reclamation activity has and is occurring in Montana. The number of acres receiving 100% final release (OSMRE Phase III / MT DEQ Phase IV) is small compared to the number of mined acres actually regraded, soiled and seeded. For Phase IV bond release to occur in Montana, all disturbed lands within an entire drainage basin must be reclaimed to the final reclamation criteria before any acres receive final bond release. Table 5 of Appendix A catalogues the acreage of land released from bond for OSMRE Phase I, II and III. As Montana has a four phase bond release and in order to report Montana's bond release actions Montana's Phase III and Phase IV bond release will be utilized in the evaluation of reclamation success. Please note Montana Phase III bond release is reported as a footnote on Table 5 to clarify the distinction between Montana Phase III and Phase IV bond release.

Montana reclamation phase III is deemed to have been completed when:

(i) the applicable responsibility period (which commences with the completion of any reclamation treatments as defined in ARM 17.24.725) has expired and the revegetation

- criteria in ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, 17.24.731, and 17.24.815, as applicable to and consistent with the approved postmining land use are met;
- (ii) a stable landscape has been established consistent with the approved postmining land use;
 - (iii) the lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of ARM 17.24.633 or the permit; and
 - (iv) as applicable, the provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department; or
 - (v) the lands meet the special conditions provided in 82-4-235(3)(a), MCA;

Montana reclamation phase IV is deemed to have been completed when:

- (i) all disturbed lands within any designated drainage basin have been reclaimed in accordance with the phase I, II, and III requirements;
- (ii) fish and wildlife habitats and related environmental values have been restored, reclaimed, or protected in accordance with the Act, the rules, and the approved permit;
- (iii) with respect to the hydrologic balance, disturbance has been minimized and offsite material damage has been prevented in accordance with the Act, the rules, and the approved permit;
- (iv) alternative water sources to replace water supplies that have been adversely affected by mining and reclamation operations have been developed and are functional in accordance with the Act, the rules, and the approved permit;
- (v) the reestablishment of essential hydrologic functions and agricultural productivity on alluvial valley floors has been achieved;
- (vi) implementation of any alternative land use plan approved pursuant to ARM 17.24.821 and 17.24.823 has been successfully achieved; and
- (vii) all other reclamation requirements of the Act, rules, and the permit have been met.

As part of the evaluation of reclamation success, OSMRE will adhere to the guidelines as contained in REG 8 for each of the four areas:

a. Land form/approximate original contour (AOC)

MEASUREMENT: AOC achievement will be measured by the acres of Phase I bond released. Acreage disturbed by mining activities that has been released under Phase I bond liability will be documented as having achieved AOC. To date 37,484 acres have been disturbed and of that 15,218 acres (41%) have received Phase I bond release in Montana.

b. Land Capability

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

MEASUREMENT: Proper replacement of soil resources will be measured by acres of Phase II bond release. Where soil replacement is a Phase II reclamation activity this measurement will be Phase II bond release. To date 37,484 acres have been disturbed and of that 11,175 acres (30%) have received Phase II bond release in Montana.

MEASUREMENT: Vegetation stability will be measured by acres of Phase II bond release. Acreage released from Phase II bond liability can be documented as having achieved erosion stability. To date 37,484 acres have been disturbed and of that 11,175 acres (30%) have received Phase II bond release in Montana.

MEASUREMENT: Achievement of postmining land uses will be measured by acres of Montana Phase III bond release. Land capability is demonstrated by the acres for which the approved post mining land uses have been achieved. The acreage released from Montana Phase III bond liability can be documented as having achieved the approved post mining land uses. To date 37,484 acres have been disturbed and of that 3,181 acres (8%) have received Montana Phase III bond release.

MEASUREMENT: Successful revegetation will be measured by the acres of Montana Phase III bond release. Land capability is demonstrated by the acres for which revegetation success has been successfully demonstrated for the land use at the time of Montana Phase III bond release. To date 37,484 acres have been disturbed and of that 3,181 acres (8%) have received Montana Phase III bond release.

c. Hydrologic Reclamation

There are several measurements that may be conducted to demonstrate the reestablishment of the hydrologic balance and successful hydrologic reclamation on mined areas. Phase IV bond release in Montana ensures hydrologic reclamation has occurred. It should be noted that for Phase IV bond release to occur in Montana, an entire drainage must be reclaimed to the Phase IV criteria before any final bond release can take place. For this reason, few acres of Phase IV bond release have occurred.

MEASUREMENT: Achievement of surface water quality and quantity restoration can be measured by acres of Montana Phase IV bond release. Surface water quality and quantity restoration may be measured in terms of acres released from bond liability. Montana Phase IV bond release will document that water quality meets surface water quality standards and water quantity is adequate for its intended use. To date 37,484 acres have been disturbed and of that 50 acres (.1%) have received Montana Phase IV bond release.

MEASUREMENT: Achievement of groundwater recharge capacity and ground water quantity and quality restoration can be measured by acres of Montana Phase IV bond release. Groundwater recharge, quality and quantity will be measured in terms of acreage released from Montana Phase IV bond liability. To date 37,484 acres have been disturbed and of that 50 acres (.1%) have received Montana Phase IV bond release.

MEASUREMENT: Achievement of surface water quality and quantity restoration can be measured by acres of Montana Phase IV bond release. Bond release will document that the water quality and quantity leaving the mine site meets the applicable standards. Montana Phase IV bond liability can be considered as having achieved restoration of this aspect of surface water quality and quantity. To date 37,484 acres have been disturbed and of that 50 acres (.1%) have received Montana Phase IV bond release.

d. Contemporaneous Reclamation

According to the measurements used in REG-8 and reviews of current reclamation plans, our 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. Both State and Federal regulations do not require that an operator file for bond release at any prescribed time. Therefore, operators typically do not file for Phase III bond release until completion of the entire mining operation. As a result, the number of acres released from Phase III bond is small compared to the number of acres actually regraded, soiled and seeded. It should also be noted that these REG-8 measurements are not the only measurements that can be used to determine reclamation success.

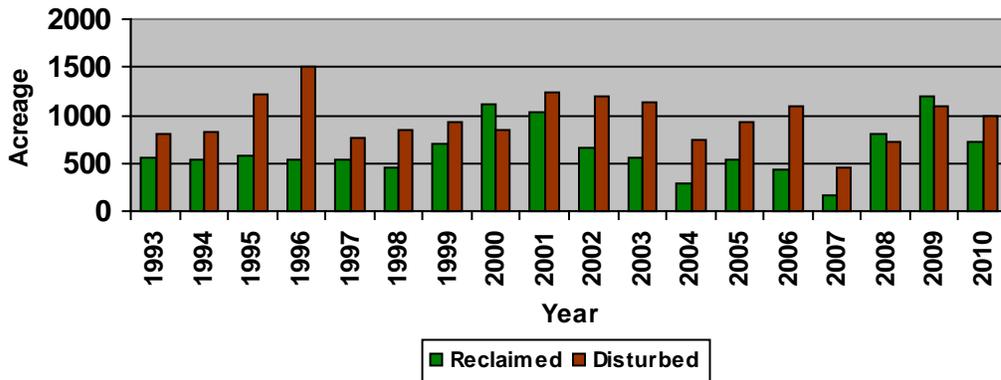
CFO believes another general measurement for contemporaneous reclamation is a comparison of the rate at which lands are being permanently reclaimed (seeded) to the rate of disturbance. This evaluation year mining companies in Montana disturbed more land than they have reclaimed. However, this fact when coupled with the REG-8 measurements support the CFOs conclusion that Montana is reclaiming land as contemporaneously as possible during this evaluation year.

Montana's regulations on contemporaneous reclamation found at the Administrative Rules of Montana (ARM) 17.24.501 require that, "...Backfilling and grading must be kept current with mining operations. To be considered current, backfilling and grading must meet the following requirements, unless otherwise approved by the department upon adequate written justification and documentation provided by the operator; on lands affected by area strip mining, there must not be more than four consecutive spoil ridges present in any location. Backfilling and grading must be completed within two years after coal removal from each pit has been concluded...."

The following graphs and chart 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 Montana, or there could be delays in backfilling & grading or permanent seeding operations due to the mines' operational emphasis on coal production over reclamation. Lands in these charts are considered permanently reclaimed (seeded) 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 been sought. These permanently reclaimed (seeded) lands may also include permanently reclaimed (seeded) lands that have obtained phase I bond release status and permanently reclaimed (seeded) lands for which phase I bond release has not been sought.

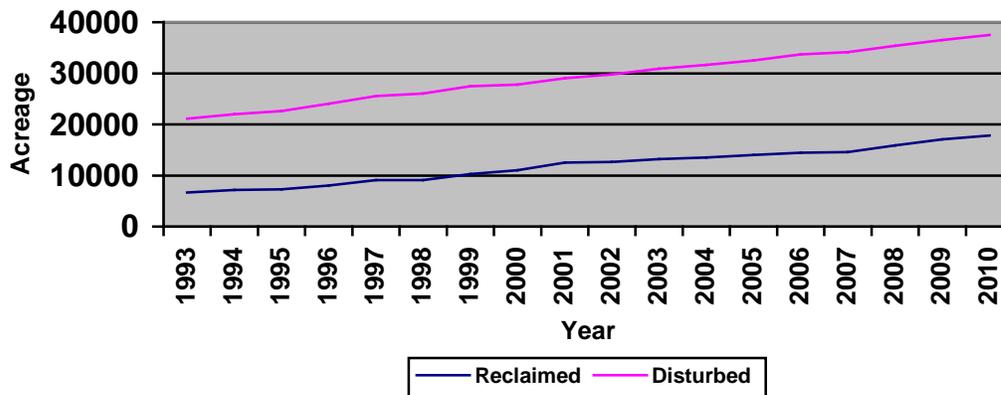
Figures 1 and 2 illustrate the overall mining and reclamation activities for the Montana coal mines since evaluation year 1993.

Figure 1. Annual Disturbance vs. Reclamation



Source of data: Government Performance Reporting Act (GPRA) data collected from MT-DEQ; evaluation year data represents data for the calendar year preceding each evaluation year

Figure 2. Cumulative Disturbance vs. Reclamation



Source of data: Government Performance Reporting Act (GPRA) data collected from MT-DEQ; evaluation year data represents data for the calendar year preceding each evaluation year

Chart 1 provides the actual acres disturbed and reclaimed annually for all mines. When considering the overall decrease in acres reclaimed in Montana during evaluation year 2010, the progression of reclamation in Montana is still good, as indicated by the 0.73 ratio of reclaimed acres to disturbed acres in Chart 1. The number of acres reclaimed during the evaluation year represents 73% of the number of acres disturbed during the evaluation year. Currently the cumulative reclamation to disturbance ratio is 0.48 as indicated on the chart. The cumulative number of acres reclaimed represents 48% of the cumulative number of acres disturbed. This ratio indicates that the rate of reclamation is increasing in Montana.

Chart 1
MONTANA RECLAMATION SUMMARY

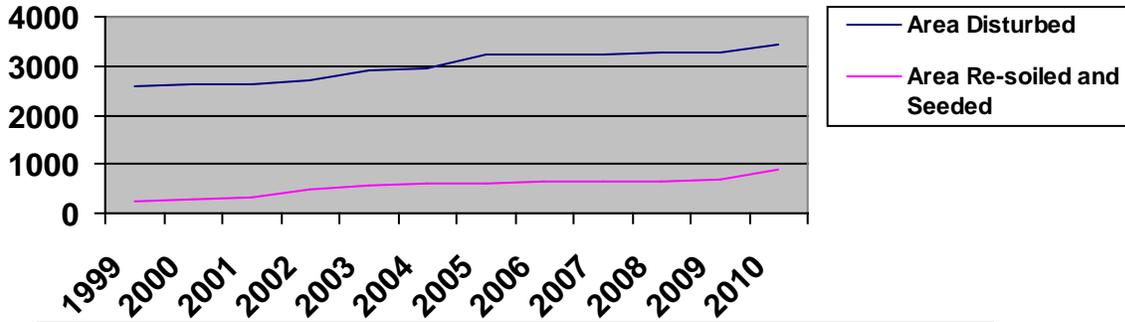
EVALUATION YEAR	ACRES DISTURBED	Cumulative Acres Dist.	ACRES RECLAIMED	Cumulative Acres Recl.	RATIO OF RECLAM VS DISTURB	Cumulative RATIO OF RECLAM VS DISTURB
1993	807	21,103	550	6,695	0.68	0.37
1994	816	21,966	536	7,141	0.66	0.33
1995	1,213	22,610	579	7,313	0.48	0.32
1996	1,507	24,075	541	8,022	0.36	0.33
1997	773	25,545	527	9,101	0.68	0.35
1998	842	26,061	462	9,084	0.55	0.35
1999	928	27,457	708	10,286	0.75	0.37
2000	853	27,759	1,121	11,038	1.31	0.40
2001	1,241	29,017	1,026	12,511	0.83	0.43
2002	1,205	29,763	666	12,670	0.55	0.43
2003	1,144	30,910	550	13,218	0.48	0.43
2004	738	31,646	288	13,498	0.39	0.43
2005	920	32,502	545	14,006	0.59	0.43
2006	1,103	33,694	426	14,442	0.39	0.43
2007	444	34,138	162	14,584	0.36	0.43
2008	721	35,402	801	15,904	1.11	0.45
2009	1083	36,485	1,198	17,102	1.11	0.47
2010	999	37,484	727	17,829	0.73	0.48

Source: Government Performance Reporting Act (GPRA) data collected from MT-DEQ; evaluation year data represents data for the calendar year preceding each evaluation year

Approximately 17.1 percent of the cumulative disturbed lands on Montana coal mines consist of facilities, such as buildings, ponds, haul roads, soil and overburden stockpiles and other long-term disturbances. These disturbances are necessary in the operation of the mine until mining operations are completed. The total current size of all Montana coal facilities is reported as 6,398 acres. When subtracting the acreage of the facilities from the cumulative disturbance, the ratio of reclamation to net disturbance is 0.57.

The following graphs of Spring Creek Coal Co. Permit 79012R, Western Energy Area “C” Permit 65003C, Western Energy Area “A” Permit 86003A, and Westmoreland Savage Permit 84002 depict the status or reclamation vs. disturbance at four active coal mines in Montana. Reviews of the permits were conducted to determine if the mines were in compliance with their approved reclamation plan. Following each graph, a brief summary of reclamation status is provided.

Contemporaneous Reclamation at Spring Creek Mine

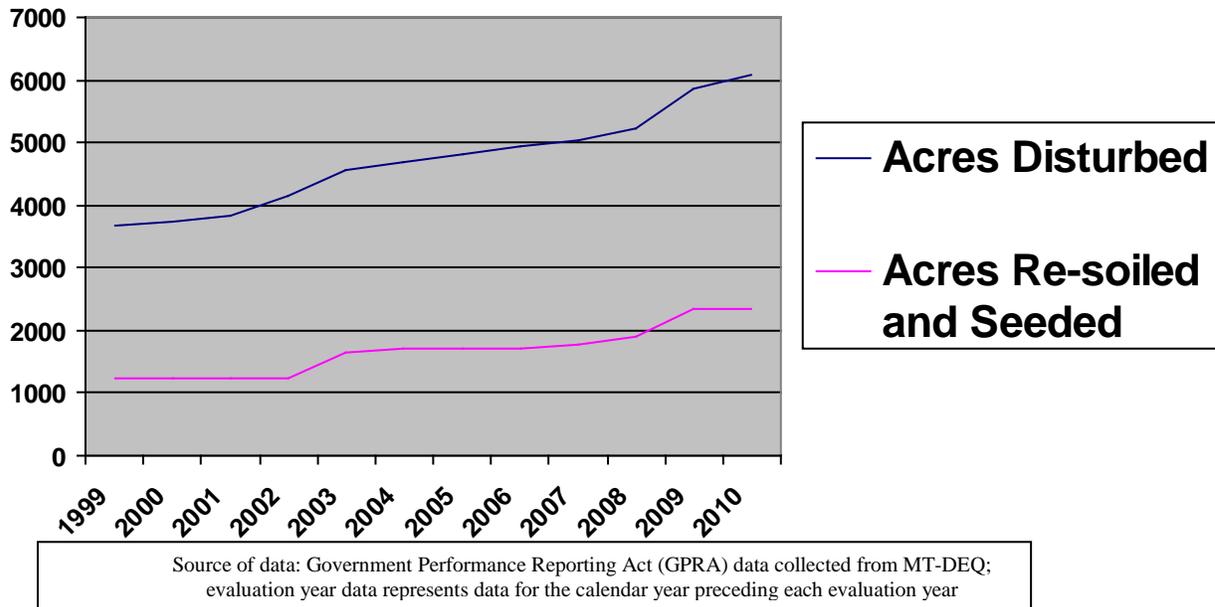


Source of data: Government Performance Reporting Act (GPRA) data collected from MT-DEQ; evaluation year data represents data for the calendar year preceding each evaluation year

Contemporaneous Reclamation at Spring Creek Mine

A review of the approved mining and reclamation plan along with an onsite inspection documented that the company is in compliance with its approved plan. The data collected shows that this mine has 3,449 acres of disturbed land with 872 acres of reclaimed land. The ratio of reclaimed acres to disturbed acres is 0.25. Low ratios of reclamation to disturbance may indicate that reclamation is not progressing at the same rate as mining, resulting in an increasing acreage of disturbed lands. Montana has reviewed the Spring Creek Mine permit and determined that it does contain measureable, inspectable and enforceable reclamation goals / commitments to assure contemporaneous reclamation. As of this report, the Spring Creek Mine has 485 acres of Phase I bond release, 485 acres of Phase II bond release, and no final bond release.

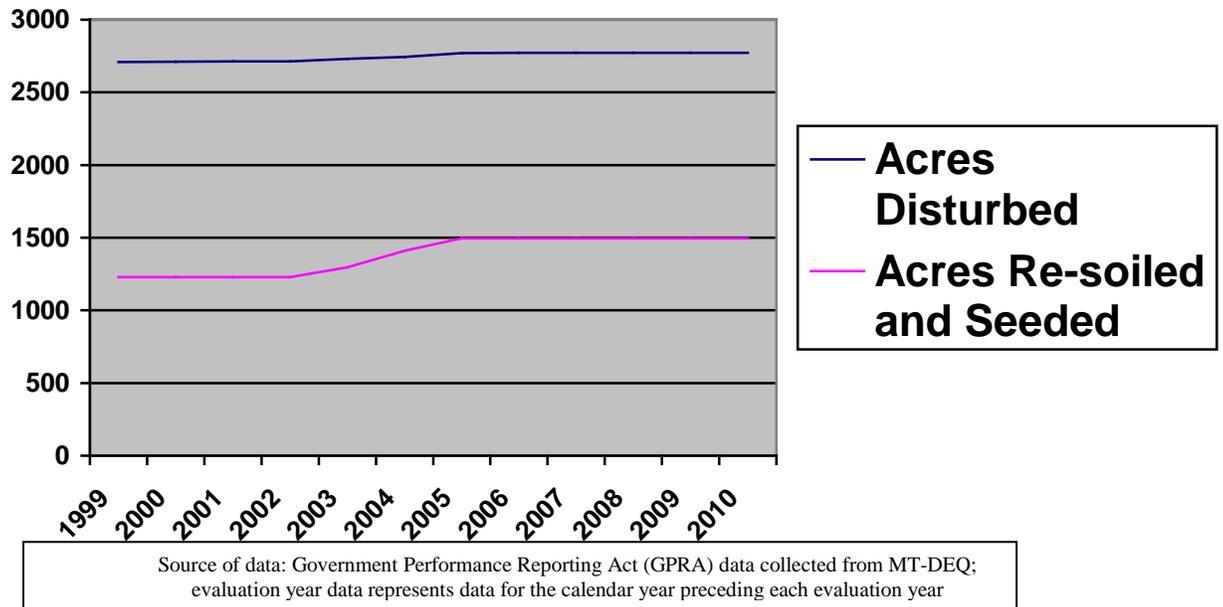
Contemporaneous Reclamation at Western Energy Area C



Contemporaneous Reclamation at Western Energy Area C

A review of the approved mining and reclamation plan along with an onsite inspection documented that the company is in compliance with its approved plan. The data collected shows that this mine has 6,072 acres of disturbed land with 2,338 acres of reclaimed land. The ratio of reclaimed acres to disturbed acres is 0.39. Low ratios of reclamation to disturbance may indicate that reclamation is not progressing at the same rate as mining, resulting in an increasing acreage of disturbed lands. Montana has reviewed the Western Energy Area “C” Mine permit and determined that it does contain measureable, inspectable and enforceable reclamation goals / commitments to assure contemporaneous reclamation. As of this report the Western Energy Area “C” Mine has 2,232 acres of Phase I bond release, 1,502 acres of Phase II bond release, and no final bond release.

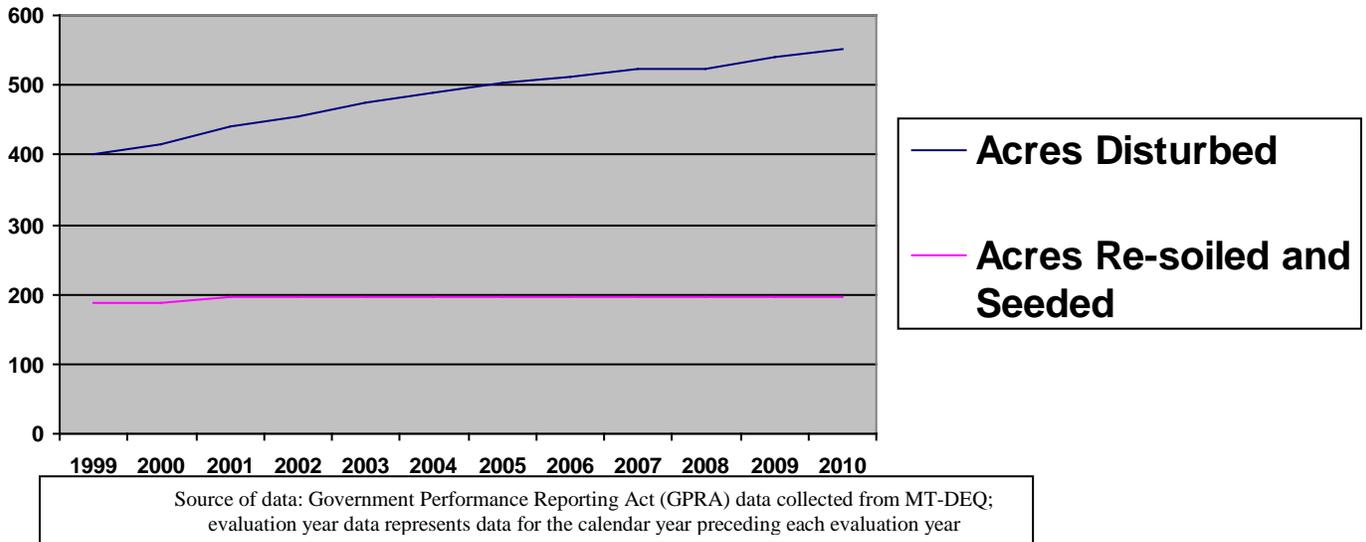
Contemporaneous Reclamation at Western Energy Area A



Contemporaneous Reclamation at Western Energy Area A

A review of the approved mining and reclamation plan along with an onsite inspection documented that the company is in compliance with its approved plan. The data collected shows that this mine has 2,772 acres of disturbed land with 1,495 acres of reclaimed land. The ratio of reclaimed acres to disturbed acres is 0.54. Low ratios of reclamation to disturbance may indicate that reclamation is not progressing at the same rate as mining, resulting in an increasing acreage of disturbed lands. It should be noted that the permit has been in temporary cessation status for a number of years, with no acres of disturbed land and no acres of reclaimed land occurring, as represented by the two flat lines in the graph. Montana has reviewed the Western Energy Area “A” Mine permit and determined that it does contain measureable, inspectable and enforceable reclamation goals / commitments to assure contemporaneous reclamation. As of this report the Western Energy Area “A” Mine has 1,596 acres of Phase I bond release, 1,248 acres of Phase II bond release, and no final bond release.

Contemporaneous Reclamation at Westmoreland Savage Mine



Contemporaneous Reclamation at Westmoreland Savage Mine

A review of the approved mining and reclamation plan along with an onsite inspection documented that the company is in compliance with its approved plan. The data collected shows that this mine has 552 acres of disturbed land with 196 acres of reclaimed land. The ratio of reclaimed acres to disturbed acres is 0.36. Low ratios of reclamation to disturbance may indicate that reclamation is not progressing at the same rate as mining, resulting in an increasing acreage of disturbed lands. It should be noted that the permit has been in temporary cessation status. Montana has reviewed the Savage Mine permit and determined that it does contain measureable, inspectable and enforceable reclamation goals / commitments to assure contemporaneous reclamation. As a result of this review, MT-DEQ has withdrawn temporary cessation status and is working with Savage Mine to formulate a revised reclamation schedule requiring completion of reclamation within two years. As of this report the Savage Mine has 131 acres of Phase I bond release, 131 acres of Phase II bond release, and no final bond release.”

C. Customer Service:

The coal program in Montana is administered by the Industrial and Energy Minerals Bureau (IEMB), a bureau under the MT-DEQ. IEMB 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 Montana coal program or related regulatory, reclamation, or government activities.

In addition to the services provided to the general public, the coal 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. OSMRE Assistance

A. National Technical Training Program (NTTP)

During the evaluation period, 4 Montana IEMB staff and 6 Montana AML staff attended a total of 8 NTTP (National Technical Training Program) training courses. No Montana personnel participated as NTTP instructors during this reporting period.

B. Technical Innovation and Professional Services (TIPS)

TIPS Technology Transfer facilitated travel for MT-DEQ staff traveling to Denver to meet with the Colorado DRMS staff as part of DRMS' cooperative effort in assisting MT-DEQ with adoption of the Colorado Permit System Application.

OSMRE's Technical Librarian filled three reference requests and provided seven article reprints to the Montana SRA staff members.

During the evaluation year four staff members attended TIPS training courses, and one staff member participated as a TIPS instructor.

Chart 2
TIPS Training Attended by Montana IEMB Staff for EY 2010

TIPS-CAD101: AutoCAD for Permitting and Reclamation	11/17/09
TIPS-ARCGIS Spatial Analyst: For Mining & Reclamation	12/01/09
TIPS-Introduction to ArcGIS for Mining and Reclamation	02/23/10
TIPS-ARCGIS Spatial Analyst: For Mining & Reclamation	04/13/10

VII. National Priority Oversight Evaluation

A. State Implementation of Approximate Original Contour Requirements

OSMRE selected implementation by States of AOC and backfilling and grading provisions as a national priority oversight topic. OSMRE Western Region (WR) evaluated 20 percent of the mines up to a maximum of five mines in each State. The evaluation included active and reclaimed mines that were determined to be representative of typical conditions in the State. The evaluations were based on the State's regulations. The evaluations focused on: 1) State AOC interpretation and permitting documentation; 2) State processes for on-the-ground verification of backfilling and grading; and 3) OSMRE field verification that backfilling and grading are following the approved mine/operations plan.

The OSMRE WR Team reviewed MT-DEQ Industrial and Energy Minerals Bureau program for implementation of AOC at three mine sites. The permits reviewed included: 1) Spring Creek – Active surface mine; 2) West Decker –Active surface mine; and 3) Western Energy Rosebud Area D – Active surface mine. A representative of OSMRE conducted field verification of AOC at the West Decker Mine.

AOC Findings

Montana uses guidelines, including, “Approximate Original Contour Guideline” and “Guideline for Determining Compliance with the Approved Postmine Topography Plan” as part of their permitting process. The guidelines were submitted to OSMRE in 1999 for review; OSMRE did not object to the guidelines. The State has not received any comments or citizen complaints relating to AOC or post-mining land use directed to the State program or OSMRE. There are no outstanding required amendments or 30 CFR 732 letters in Montana related to AOC or post mining land uses associated with AOC waivers.

The State has a systematic process for applying its interpretation of AOC as defined in their “Guideline for Determining Compliance with the Approved Postmine Topography Plan.” The State has a clear process for reviewing permit revisions and updates, and there was a clear history of review of reclamation progress in each mine’s annual report. Montana requests its operators to submit an as-built post-mining terrain configuration prior to the operator performing any replacement of topsoil and subsoil or seeding of reclaimed lands.



The permits reviewed by the Team were very well organized and language within each permit’s reclamation plan appeared to meet the State’s definition and interpretation of AOC. The permit documents all contained clear, concise verbiage that followed State regulatory language and indexing system. The mine permits reviewed by the OSMRE Team all presented data and figures that showed comparisons of pre and post-mining terrain, channel reconstructions, and watershed characteristics and presented data that quantified differences between pre and post-mine watershed characteristics. Additionally, the permits showed detailed slope aspect analyses that compared pre to post-mine slope aspects. Backfill and grading sections of permit reclamation plans demonstrated soil swell factors resulting from various types of mining operations. Typically, swell factors are used to make a determination if there would be a need for variance from AOC. There were no variances from AOC in any of the permits reviewed by the Team.

The State regularly conducts on-site inspections of backfill and grading operations at the mines that it regulates, and the State uses backfill and grading data as part of its conditions for Phase 1 bond release. The State requires operators to regrade as-built terrain configurations that do not meet its interpretation of AOC and are not in agreement with the approved post-mine terrain presented in the mine permit reclamation plan. OSMRE and the State have conducted cooperative inspections of operators’ backfill and grading construction to verify lands are returned to AOC.

After conducting a detailed review, OSMRE found that the State of Montana's process for evaluation of mining permits is adequate to ensure that backfilled and graded areas will be reclaimed to AOC. Further follow-up action is not needed.

Field Verification Findings

The OSMRE WR Team conducted a field verification of lands reclaimed to AOC at the West Decker Mine, in Decker, Montana on February 18th 2010. The team conducted two point-to-point traverses from the south to the north of the reclaimed area at the Decker Mine. Field conditions included clear skies and generally open ground without significant snow cover. The traverse covered both recent and mature reclaimed areas; and the site appeared to be reclaimed to AOC. The reclaimed site had greater drainage density based on comparison of pre and post-mining topography and hydrology. The drainages and topography of the reclaimed land effectively blended with undisturbed land. Topsoil depths tended to be thinner on the slopes and thicker near the drainages. The slopes of the reclaimed topography were generally graded to a lesser angle than the pre-mining topography. The Team did not note significant variation between the as-built and approved post-mining terrain. The reclaimed lands had approximately the same percentages of slope angle categories when comparing pre and post-mining conditions. The reclaimed lands had several wildlife habitat enhancement features constructed throughout. There did not appear to be a systematic problem with Montana's field verification program for AOC.

B. State Implementation of Bonding Requirements

OSMRE selected State implementation of bond adequacy as a national priority oversight evaluation topic. This was to review the effectiveness of State regulatory authorities in implementing and enforcing their State rules, regulations, and policy and guidance documents related to bonding and to determine the adequacy of the States' bond amount calculations, which set the amount of the bond held by the State. OSMRE's National Priority Work Plan for conducting the evaluation recommended that OSMRE WR evaluate 20 percent of all coal mines, up to a maximum of five (5) mines per State regulatory program and include reviewing bond adequacy for new and renewed permits, revisions to permits, phased bond releases and bond forfeitures.

The bond adequacy work plan entailed three aspects for evaluating bond adequacy. The first aspect was to determine how each State calculated bond amounts for non-forfeited bonds associated with specific permits. The second aspect was to review permit revisions to determine whether the States are properly evaluating bond adequacy as part of the permit revision application process required by 30 CFR 800.15(d). The third aspect was to evaluate recently-forfeited sites if the State has experienced any bond forfeitures since OSMRE last conducted an in-depth study of bond forfeitures or the adequacy of bond calculations in each State.

Bond Adequacy Findings

The OSMRE bonding oversight review team reviewed Montana's bond calculations, and the operation and reclamation plans for the Rosebud Mine - Area D; Decker West Mine, and the Spring Creek Mine. The State of Montana uses the same estimating procedures as those specified in the OSMRE Bonding Handbook. Reclamation cost estimates submitted by each permittee are reviewed by state personnel and evaluated for adequacy

at renewal, mid-term, and when there are significant revisions or cost variances throughout the permit term. Montana issues a permit for a 5-year term so all bonds are reviewed at a minimum of every 2.5 years.

The demolition costs, equipment productivity and hourly equipment and labor rates were reviewed, with the bond calculation amount reflecting the worst-case scenario of each operation. For each of these mines, the current disturbance is in years 4 and 5, thereby nearing the final mining and reclamation for each mine. Generally, there are no post-mine structures to be left, including ponds.

No inflation factor was included in the reclamation cost estimates, but bonds are evaluated when revisions or amendments are approved, and when economic factors such as significant changes in fuel costs occur in a short period of time.

The operation and reclamation plans spell out what roads and ponds will be left and what structures will be downsized if they are to be left. All estimates include costs similar to those specified in the OSMRE Bonding Handbook for determining Indirect costs. The revegetation costs are based on the requirements of the reclamation plan.

The reclamation cost estimates for the permits reviewed and the basis of the State's bond amount for each permit were in different formats, but the dollar amounts were similar to the independent OSMRE cost estimate which took into account the costs at the time of the original review.

In addition to the calculation of direct costs, the State adds an Indirect cost for post-mine monitoring, mobilization/demobilization, profit & overhead, project management fees, engineering redesign fees, and contingencies. Montana also adds long-term monitoring and maintenance costs.

There are no outstanding, required program amendments or 30 CFR 732 notifications related to bonding, nor are there any postmining pollutional discharges in Montana. Any instances of pollutional discharges during mining would require a mandatory permit revision. There have been no public inquiries regarding bond adequacy in Montana. Montana has not had a bond forfeiture in approximately 15 years. Montana has not changed its reclamation bond costs estimation methodology since the last comprehensive OSMRE review. Montana is in compliance with their bond adequacy regulations.

VIII. 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 OSMRE 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.

Overall, Montana's program is consistent with SMCRA and the Federal regulations. State Program Amendment SATS # MT-029-FOR, which addresses normal husbandry practices, is currently under review by OSMRE. State Program Amendment SATS #

MT-030-FOR, which addresses legislative changes regarding the determination of successful revegetation for final bond release, is currently under review by OSMRE.

On April 5, 2010, the Montana Board of Environmental Review certified to the Secretary of State a revision to the rule regarding acceptance of letters of credit for bonding purposes. Montana revised the rule language to eliminate the need for rating criteria for the offering bank. OSMRE received the rule revision package from Montana July 14, 2010 (during evaluation year 2011) and assigned State Program Amendment SATS # MT-031-FOR.

In response to OSMRE's 30 CFR Part 732 letter concerning ownership and control dated October 2, 2009, Montana initiated preparation of a rule revision package. Montana's target date for adoption of ownership and control rule revisions is October 2010.

At this time, there are no other outstanding programmatic issues unresolved in the Montana program. Both OSMRE 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.

B. Inspection and Enforcement

The MT-DEQ continues to conduct frequent and thorough inspections. MT-DEQ conducted 59 complete inspections and 74 partial inspections for the 10 active permits; and 19 complete inspections and 12 partial inspections for the five inactive permits. Forty complete inspections were required for the active permits and 20 complete inspections for the inactive permits, for a total of 60 complete inspections. Eighty partial inspections were required for the active permits. Although MT-DEQ only reported 74 partial inspections for the active permits, they have exceeded total inspection frequency with the additional complete inspections. Even though MT-DEQ only reported 19 complete inspections for the inactive permits, they conducted 12 partial inspections that are not required for inactive permits. MT-DEQ has exceeded the minimum inspection frequency requirements of Federal regulations (30 CFR 840.11) and the Cooperative Agreement (30 CFR 926.30).

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 (See Table 2).

MT-DEQ issued three Notices of Violation (NOV's) and no Imminent Harm or Failure to Abate Cessation Orders (CO's) during this evaluation period (See Table 10). No patterns of violation exist or show cause hearings or alternative enforcement action (bond forfeiture) were initiated during this evaluation period.

As part of OSM's oversight improvement efforts, OSM announced in November 2009 that it would immediately increase the number of oversight inspections in EY 2010. The Casper Field Office conducted three complete inspections and six partial inspections of coal mining operations in Montana during this evaluation year, including one unannounced independent inspection. This was a 200 percent increase in the number of inspections conducted by CFO over the previous evaluation year. An additional partial oversight inspection to verify AOC at the West Decker Mine was conducted by the OSMRE WR Team as part of OSM's national priority oversight evaluation of State implementation of AOC requirements. The increase in inspection frequency had no effect on the number of enforcement actions taken by either the State or CFO. During EY 2009, MT-DEQ issued nine NOV's and no CO's, while CFO did not issue any enforcement actions, or TDN's. During EY2010, the number of enforcement actions issued by MT-DEQ dropped to three NOV's and no CO's, while CFO, again, did not issue any enforcement actions. Despite an increase in the frequency of Federal oversight inspections, the number of Federal enforcement actions has remained constant and the number of State enforcement actions has actually decreased. This helps to illustrate the effectiveness of Montana's Regulatory Program.

C. Sage Grouse Study

Sage grouse mitigation in CFO's jurisdiction is only a concern in Montana and Wyoming. The Bureau of Land Management (BLM) in both States was contacted to see how they address sage grouse during the pre-coal leasing and stipulation and condition to the coal leases.

BLM in both states prepare Environmental Impact Statements (EIS's) and Environmental Assessments (EA's) for their coal leasing program. OSMRE is a participating agency. Sage grouse and associated habitats identified within the lease boundaries are discussed in the EIS's and EA's. The BLM relies on OSMRE and the State Regulatory Authorities, and their consultation with the U.S. Fish and Wildlife Service and State wildlife agencies, to develop any required mitigation for all wildlife species including sage grouse.

CFO has reviewed the Montana permit applications and Annual reports. Three mines were identified as having sage grouse habitat in or near the permit area. Those mines, the East and West Decker, and Spring Creek mines identified either sage grouse habitat in or near the permit areas. CFO reviewed the information and the monitoring and mitigation measures implemented by the mining companies. Both permits specifically addressed reclamation efforts to replace and create new habitat for sage grouse. The success of the reclamation mitigation measures is difficult to determine due to other factors such as the drought effect on habitat, the West Nile virus found in the area, impacts of coal bed methane development, habitat fragmentation, etc. Despite these factors, only one sage grouse lek has been destroyed by mining, which occurred in 1984. The mine operators are conducting annual sage grouse counts and there doesn't seem to be much of a change in the population – the populations remain at low levels.

The mine operators in Montana are including monitoring sage grouse populations and conducting reclamation that either replaces habitat or establishes new habitat. Spring Creek Coal is currently working with Bureau of Land Management, Montana Fish, Wildlife and Parks, U.S. Fish and Wildlife Service, National Resource Conservation

Service, and Montana Department of Environmental Quality to develop and implement a sage grouse reclamation/enhancement project at the Spring Creek Mine.

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

NOTE:

These tables present data pertinent to mining operations and State and Federal regulatory activities within Montana. They also summarize funding provided by OSMRE and Montana staffing. Unless otherwise specified, the reporting period for the data contained in all tables is the same as the evaluation year. Additional data used by OSMRE in its evaluation of Montana's performance is available for review in the evaluation files maintained by the Casper OSMRE Office.

When OSMRE's Directive REG-8, Oversight of State Programs, was revised in December 2006, the reporting period for coal production on Table 1 was changed from a calendar year basis to an evaluation year basis. The change was effective for the 2007 evaluation year. However, with Change Notice REG-8-1, effective July 1, 2008, the calendar year reporting period in Table 1 for coal produced for sale, transfer or use was reestablished and is effective for the 2008 evaluation year. In addition, for the 2008 evaluation report, coal production for the two prior years reported on Table 1 was recalculated on a calendar year basis so that all three years of production reported in the table are directly comparable. This difference in reporting periods should be noted when attempting to compare coal production figures from annual evaluation reports originating both before and after the December 2006 revision to the reporting period.

TABLE 1			
Coal Produced for Sale, Transfer, or Use			
(Millions of Short Tons)			
Period	Surface Mines	Underground Mines	Total
Coal production^A for entire State:			
Calendar Year			
CY 2007	35.600	0.137	35.737
CY 2008	37.314	0.164	37.478
CY 2009	32.411	0.683	33.094
<p>^A Coal production as reported in this table is the gross tonnage which includes coal that is sold, used, or transferred as reported to OSM by each mining company on form OSM-1 line 8(a). 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 States or other sources due to varying methods of determining and reporting coal production.</p> <p>Provide production information for the latest three full evaluation years to include the last full evaluation year for which data is available.</p>			

NOTE:

When OSM's Directive REG-8, Oversight of State Programs, was revised in December 2006, the reporting period for coal production on Table 1 was changed from a calendar year basis to an evaluation year basis. The change was effective for the 2007 evaluation year. However, with Change Notice REG-8-1, effective July 1, 2008, the calendar year reporting period in Table 1 for coal produced for sale, transfer or use was reestablished and is effective for the 2008 evaluation year. In addition, for the 2008 evaluation report, coal production for the two prior years reported on Table 1 was recalculated on a calendar year basis so that all three years of production reported in the table are directly comparable. This difference in reporting periods should be noted when attempting to compare coal production figures from annual evaluation reports originating both before and after the December 2006 revision to the reporting period.

TABLE 2

**Inspectable
Units**
As of June 30, 2010

Coal mines and related facilities	Number and Status of Permits																		
	Active or temporarily inactive				Inactive Phase II bond release				Abandoned		Totals		Nbr. of Insp. Units ^A	Permitted Acreage ^B (100's of acres)					
	IP		PP		IP		PP		IP		PP			Federal Lands		State/Private Lands		All Lands	
	IP	PP	IP	PP	IP	PP	IP	PP	IP	PP	IP	PP	IP	PP	IP	PP	Total		
LANDS FOR WHICH THE STATE IS THE REGULATORY AUTHORITY																			
Surface mines	0	9	1	4	0	0	1	13	14	0	392.8	0.1	206.3			599.2			
Underground mines	0	1	0	0	0	0	0	1	1	0	0	0.0	64.1			64.1			
Other facilities	0	0	0	0	0	0	0	0	0	0	0	0.0	0.0			0.0			
Total	0	10	1	4	0	0	1	14	15	0	392.8	0.1	270.4			663.3			
Total number of permits:											15								
Average number of permits per inspectable unit (excluding exploration sites):											1.00								
Average number of acres per inspectable unit (excluding exploration sites):											4,422								
Number of exploration permits on State and private lands:											4		On Federallands ^C :		1				
Number of exploration notices on State and private lands:											1		On Federallands ^C :		0				
<p>IP: Initial regulatory program sites</p> <p>PP: Permanent regulatory program sites</p> <p>A Inspectable units include multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.</p> <p>B When a single inspectable unit contains both Federal lands and State/Private lands, enter the permitted acreage for each land type in the appropriate category.</p> <p>C Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management.</p>																			

TABLE 3

State Permitting Activity

As of June 30, 2010

Type of Application	Surface mines			Underground mines			Other facilities			Totals		
	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres ^A	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres
New Permits	0	0	0	0	0	0	0	0	0	0	0	0
Renewals	1	1		0	0		0	0		1	1	
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										1	1	
Exploration notices ^B											0	
Revisions (exclusive of incidental boundary revisions)		39			11			0			50	
Revisions (adding acreage but are not incidental boundary revisions)	2	1	0	0	0	0	0	0	0	2	1	0
Incidental boundary revisions	0	0	0	0	0	0	0	0	0	0	0	0
Totals	3	41	0	0	11	0	0	0	0	4	53	0

OPTIONAL - Number of midterm permit reviews completed that are not reported as revisions: 0

^A Includes only the number of acres of proposed surface disturbance.

^B State approval not required. Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining.

TABLE 4

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 AND TOTAL	Blasting	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
	Hydrology	0	0	0	0	0	0	0	0	0	0	0	0
NUMBER OF EACH TYPE	Encroachment	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
	Total	0	0	0	0	0	0	0	0	0	0	0	0
Total number of inspectable units (excluding bond forfeiture sites):							15						
Inspectable units free of off-site impacts:							15						
Inspectable units with off-site impacts:							0						
OFF-SITE IMPACTS ON 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 AND TOTAL	Blasting	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
	Hydrology	0	0	0	0	0	0	0	0	0	0	0	0
NUMBER OF EACH TYPE	Encroachment	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
	Total	0	0	0	0	0	0	0	0	0	0	0	0
Total number of inspectable units (only bond forfeiture sites):							0						
Inspectable units free of off-site impacts:							0						
Inspectable units with off-site impacts:							0						

TABLE 5

Annual State Mining and Reclamation Results

Bond Release phase	Applicable performance standard	During this Evaluation Year		
		Total acreage released	Acreage also released under Phase I	Acreage also released under Phase II
A	B	C	D	E
Phase I	- Approximate original contour restored - Topsoil or approved alternative replaced	738.0		
Phase II	- Surface stability - Establishment of vegetation	559.0	N/A	
Phase III ^C	- Post-mining land use/productivity restored - Successful permanent vegetation - Groundwater recharge, quality and quantity restored - Surface water quality and quantity restored	0.0	N/A	N/A
Bonded Acreage^A		Acres during this evaluation year		
Total number of new acres bonded during this evaluation year		0		
Number of acres bonded during this evaluation year that are considered remining, if available		0		
Number of acres where bond was forfeited during this evaluation year		0		
Bonded Acreage Status		Cumulative Acres		
Total number of acres bonded as of the end of last review period (June 30, 2009) ^B		66,335.9		
Total number of acres bonded as of the end of this review period (June 30, 2010) ^B		66,329.21		
Sum of acres bonded that are between Phase I bond release and Phase II bond release as of June 30, 2010 ^B		4,043.13		
Sum of acres bonded that are between Phase II bond release and Phase III bond release as of June 30, 2010 ^B		11,125.5		
Disturbed Acreage		Acres		
Number of Acres Disturbed during this evaluation year		999.1		
Number of Acres Disturbed at the end of the evaluation year (cumulative)		37,483.9		
^A Bonded acreage is considered to approximate and represent the number of acres disturbed by surface coal mining and reclamation operations. ^B Bonded acres in this category are those that have not received a Phase III or other final bond release (State maintains jurisdiction). ^C Montana Phase III bond release for EY2010 was 1082.3 acres. See Chapter 5, Section B. for further explanation.				

Brief explanation of columns D & E. The States will enter the total acreage under each of the three phases (column C). The additional columns (D & E) will "break-out" the acreage among Phase II and/or Phase III. Bond release under Phase II can be a combination of Phase I and II acreage, and Phase III acreage can be a combination of Phase I, II, and III. See "Instructions for Completion of Specific Tables," Table 5 for example.

TABLE 6

State Bond Forfeiture Activity
(Permanent Program Permits)

Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Dollars	Acres
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2009 (end of previous evaluation year) ^A	0		0
Sites with bonds forfeited and collected during Evaluation Year 2010 (current evaluation year)	0	\$0	0
Sites with bonds forfeited and collected that were re-permitted during Evaluation Year 2010 (current evaluation year)	0		0
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2010 (current evaluation year)	0		0
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2010 (end of current evaluation year) ^A	0		0
Sites with bonds forfeited but uncollected as of June 30, 2010 (end of current evaluation year)	0		0
Surety/Other Reclamation (In Lieu of Forfeiture)			
Sites being reclaimed by surety/other party as of June 30, 2009 (end of previous evaluation year) ^B	0		0
Sites where surety/other party agreed to do reclamation during Evaluation Year 2010 (current evaluation year)	0		0
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2010 (current evaluation year)	0		0
Sites with reclamation completed by surety/other party during Evaluation Year 2010 (current evaluation year) ^C	0		0
Sites being reclaimed by surety/other party as of June 30, 2010 (current evaluation year) ^B	0		0

^A Includes data only for those forfeiture sites not fully reclaimed as of this date

^B Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date

^C This number also is reported in Table 5 as Phase III bond release has been granted on these sites

TABLE 7	
State Staffing	
(Full-time equivalents at end of evaluation year)	
Function	EY 2010
Regulatory Program	
Permit Review	8.1697
Inspection	5.1989
Other (administrative, fiscal, personnel, etc.)	1.4854
Regulatory Program Total	14.854
AML Program Total	11.7
Total	26.554

TABLE 8		
Funds Granted To Montana		
BY OSM		
(During the Current Evaluation Year)		
(Actual Dollars, Rounded to the Nearest Dollar)		
Type of Funding	Federal Funds Awarded During Current Evaluation Year	Federal Funding as a Percentage of Total Program Costs
Regulatory Funding		
Administration and Enforcement Grant	\$ 1,440,101	86.75 %
Other Regulatory Funding, if applicable	\$ 0	0.00 %
Subtotal	\$ 1,440,101	
Small Operator Assistance Program	\$ 0	100 %
Abandoned Mine Land Reclamation Funding [^]	\$ 10,705,147	100 %
Totals	\$ 12,145,248	
[^] Includes funding for AML Grants, the Clean Streams Initiative and the Watershed Cooperative Agreement Program.		

TABLE 9		
State Inspection Activity		
During Current Evaluation Year		
Inspectable Unit	Number of Inspections Conducted	
Status	Complete	Partial
Active ^A	59	74
Inactive ^A	19	12
Abandoned ^A	0	0
Total	78	86
Exploration	0	0
^A Use terms as defined by the approved State program.		

TABLE 10		
State Enforcement Activity		
During Current Evaluation Year		
Type of Enforcement Action	Number of Actions^A	Number of Violations^A
Notice of Violation	3	3
Failure-to-Abate Cessation Order	0	0
Imminent Harm Cessation Order	0	0
^A Do not include those violations that were vacated.		

TABLE 11		
Lands Unsuitable Activity		
During Current Evaluation Year		
	Number	Acreage
Number Petitions Received	0	0
Number Petitions Accepted	0	0
Number Petitions Rejected	0	0
Number Decisions Declaring Lands Unsuitable	0	0
Number Decisions Denying Lands Unsuitable	0	0

APPENDIX B: Montana's Comments and Casper Field Office Responses

Montana Department of Environmental Quality provided comments August 18, 2010 via e-mail on the "Draft Annual Evaluation Summary Report" dated August 4, 2010. Comments pertaining to typographical errors and minor editorial preferences are not reflected in this section but were corrected within the document. The substantial comments are listed below with CFO's responses.

MT-DEQ's Comments: MT-DEQ offered the following comment at the end of the first paragraph, Page 2, which continues the discussion of coal production from Page 1. The last three sentences of the paragraph and comment read, "Larger surface mining techniques after WWII boosted production to a record of nearly 45 million tons in 2008. According to OSMRE figures, total coal production in calendar year 2009 was 33.1 million tons, with 683 thousand tons coming from underground sources. That is a decrease of 4.4 million tons from calendar year 2008, when total coal production equaled 37.5 million tons. [As noted previously, annual coal production as reported by OSM is incorrect. The production numbers used by OSM are the production numbers that were assessed AML fees; however, not all production is assessed AML fees. OSM should report total production as reported by the states (45 million tons in 2008, 39.6 in 2009 – 866,772 from underground). The need to do this becomes even more evident when you use one figure for 2008 (45 million) and then use 37.5 in the next sentence. Standardization of coal production figures nation-wide is needed; it may be best to report both numbers.]"

MT-DEQ also offered the following comment at the end of the second paragraph, Page 2, which continues the discussion of coal production from the previous paragraph. The second paragraph and comment read, "Note that the Montana Department of Labor & Industry, Safety Bureau reports total coal production in calendar year 2009 was 39.6 million tons. That is a decrease of 5.3 million tons from calendar year 2008, when total coal production equaled 44.9 million tons. This difference between OSMRE and Montana Department of Labor & Industry figures is likely due to the fact that the Absaloka Mine production data may be included in the Montana Department of Labor & Industry figures. [Please see note above for the correct explanation; additionally, Absaloka Mine production – exclusive to the South Extension permit (OSM) – should be included.]"

CFO's Response: CFO agrees that production numbers are inconsistent, due to varying methods used by OSM and individual states for determining and reporting coal production. Since standardization of coal production figures nation-wide is not feasible, OSM agrees it is best to report both numbers in the text of the report. For clarification, OSMRE revised the end of the first paragraph, Page 2, which continues the discussion of coal production from Page 1, "Larger surface mining techniques after WWII boosted production to a record of nearly 45 million tons in 2008, according to reports from the State of Montana. According to OSMRE figures, total coal production in calendar year 2009 was 33.1 million tons, with 683 thousand tons coming from underground sources. That is a decrease of 4.4 million tons from calendar year 2008, when total coal production equaled 37.5 million tons. Note that the Montana Department of Labor & Industry, Safety Bureau reports total coal production in calendar year 2009 was 39.6 million tons."

For clarification, OSMRE revised the second paragraph, “Total coal production in calendar year 2009 was 39.6 million tons, with 867 thousand tons coming from underground sources, as reported by the Montana Department of Labor & Industry, Safety Bureau. According to OSMRE figures (Appendix A, Table 1), total coal production in calendar year 2009 was 33.1 million tons, with 683 thousand tons coming from underground sources. That is a decrease of 5.3 4.4 million tons from calendar year 2008, when total coal production equaled 44.9 37.5 million tons. This difference between OSMRE and Montana Department of Labor & Industry figures is likely due to the fact that the Absaloka Mine production data may be included in the Montana Department of Labor & Industry figures, varying methods used by OSM and the State of Montana for determining and reporting coal production. These variations may be due to 1) the inclusion of Absaloka Mine production data (5.9 million tons) in the Montana Department of Labor & Industry figures and 2) the fact that not all production is assessed AML fees.”

MT-DEQ’s Comment: MTDEQ suggested Page 3, first full paragraph, last sentence be revised to read as follows, “Montana is currently taking steps to make at least some of this information available electronically; public notices, environmental assessments, and information on how to obtain a copy of a permit application are made available on the state website.”

CFO’s Response: CFO made the suggested change.

MT-DEQ’s Comment: MT-DEQ suggested Page 4, **Section B. Other Efforts**, be revised to read as follows, “Montana has taken several steps to enhance outreach to interested citizens and organizations. Examples include: 1) having a public meeting prior to OSM’s oversight evaluation of AOC/PMT and bonding – this was done to exchange information and to make the public better aware of the ongoing oversight evaluation; increased discussions, including field visits with landowners and concerned citizens regarding subsidence issues, and increasing the number of special interest groups that are notified of permitting actions, and making additional items available electronically on the state website.”

CFO’s Response: For clarification, CFO made the suggested change and further revised the paragraph to read, “Montana has taken several steps to enhance outreach to interested citizens and organizations. Examples include: 1) having a public meeting prior to OSM’s oversight evaluation of AOC/PMT and bonding – this was done to exchange information and to make the public better aware of the ongoing oversight evaluation; 2) increased discussions, including field visits with landowners and concerned citizens regarding subsidence issues; 3) increasing the number of special interest groups that are notified of permitting actions; and 4) making additional items available electronically on the state website.”

MT-DEQ’s Comment: MT-DEQ offered the following comment at the end of the paragraph, Page 9. The paragraph and comment read, “Chart 1 provides the actual acres disturbed and reclaimed annually for all mines. When considering the overall decrease in acres reclaimed in Montana during evaluation year 2010, the progression of reclamation in Montana is still good, as indicated by the 0.73 ratio of reclaimed acres to disturbed acres in Chart 1. Currently the cumulative reclamation to disturbance ratio is 0.48 as indicated on the chart. This ratio indicates that the rate of reclamation is increasing in Montana. [It should be noted that the numbers in the table are for calendar year 2009 not the evaluation period.]”

CFO's Response: CFO agrees that the numbers shown for each evaluation year in Chart I represent data for the calendar year preceding the evaluation year. For clarification, CFO revised the footnote at the bottom of Chart 1, "Source: Government Performance Reporting Act (GPRA) data collected from MT-DEQ; evaluation year data represents data for the calendar year preceding each evaluation year." For consistency, CFO also revised the footnote at the bottom of Figure 1 and Figure 2, as noted above; and included the footnote at the bottom of the four graphs depicting contemporaneous reclamation at Spring Creek Mine, Western Energy Area C, Western Energy Area A and Westmoreland Savage Mine.

MT-DEQ's Comment: MT-DEQ offered the following comment at the end of the paragraph, Page 13. The paragraph and comment read, "A review of the approved mining and reclamation plan along with an onsite inspection documented that the company is in compliance with its approved plan. The data collected shows that this mine has 2,772 acres of disturbed land with 1,495 acres of reclaimed land. The ratio of reclaimed acres to disturbed acres is 0.54. Low ratios of reclamation to disturbance may indicate that reclamation is not progressing at the same rate as mining, resulting in an increasing acreage of disturbed lands. Montana has reviewed the Western Energy Area "A" Mine permit and determined that it does contain measureable, inspectable and enforceable reclamation goals / commitments to assure contemporaneous reclamation. As of this report the Western Energy Area "A" Mine has 1,596 acres of Phase I bond release, 1,248 acres of Phase II bond release, and no final bond release. [May want to include that Montana has issued a temporary cessation of mining in Area A and that reclamation has proceeded to the point where additional reclamation would impact the ability of the operator to resume mining in the future – the two flat lines.]"

CFO's Response: CFO agrees that temporary cessation status is the likely reason for the two flat lines represented in the graph depicting contemporaneous reclamation at Western Energy Area A. For clarification, CFO revised the paragraph, "A review of the approved mining and reclamation plan along with an onsite inspection documented that the company is in compliance with its approved plan. The data collected shows that this mine has 2,772 acres of disturbed land with 1,495 acres of reclaimed land. The ratio of reclaimed acres to disturbed acres is 0.54. Low ratios of reclamation to disturbance may indicate that reclamation is not progressing at the same rate as mining, resulting in an increasing acreage of disturbed lands. It should be noted that the permit has been in temporary cessation status for a number of years, with no acres of disturbed land and no acres of reclaimed land occurring, as represented by the two flat lines in the graph. Montana has reviewed the Western Energy Area "A" Mine permit and determined that it does contain measureable, inspectable and enforceable reclamation goals / commitments to assure contemporaneous reclamation. As of this report the Western Energy Area "A" Mine has 1,596 acres of Phase I bond release, 1,248 acres of Phase II bond release, and no final bond release."

MT-DEQ's Comment: MT-DEQ offered the following comment at the end of the first paragraph, Page 14. The paragraph and comment read, "A review of the approved mining and reclamation plan along with an onsite inspection documented that the company is not in compliance with its approved plan. The data collected shows that this mine has 552 acres of disturbed land with 196 acres of reclaimed land. The ratio of reclaimed acres to disturbed acres is 0.36. Low ratios of reclamation to disturbance may indicate that reclamation is not

progressing at the same rate as mining, resulting in an increasing acreage of disturbed lands. Montana has reviewed the Savage Mine permit and determined that it does contain measureable, inspectable and enforceable reclamation goals / commitments to assure contemporaneous reclamation. As a result of this review MT / DEQ has issued a Notice of Violation for failure to reclaim as per the approved reclamation plan. As of this report the Savage Mine has 131 acres of Phase I bond release, 131 acres of Phase II bond release, and no final bond release. [As noted in a recent conversation with Jeff F., when the current SMP for Savage was approved in 1991, Savage requested and the Department approved regrading variances for Pits 2, 3, and 4. The variances are necessary to allow for enough material to be available to be carried forward to fill the final pit. The area is a relatively flat bench and highwall reduction is a limited option. Due to the language in the permit, the Department has elected to not issue a Notice of Violation.]”

CFO’s Response: CFO agrees with the comments and revised the paragraph to read, “A review of the approved mining and reclamation plan along with an onsite inspection documented that the company is not in compliance with its approved plan. The data collected shows that this mine has 552 acres of disturbed land with 196 acres of reclaimed land. The ratio of reclaimed acres to disturbed acres is 0.36. Low ratios of reclamation to disturbance may indicate that reclamation is not progressing at the same rate as mining, resulting in an increasing acreage of disturbed lands. It should be noted that the permit has been in temporary cessation status. Montana has reviewed the Savage Mine permit and determined that it does contain measureable, inspectable and enforceable reclamation goals / commitments to assure contemporaneous reclamation. As a result of this review, MT-DEQ has issued a Notice of Violation for failure to reclaim as per the approved reclamation plan, withdrawn temporary cessation status and is working with Savage Mine to formulate a revised reclamation schedule requiring completion of reclamation within two years. As of this report the Savage Mine has 131 acres of Phase I bond release, 131 acres of Phase II bond release, and no final bond release.”

MT-DEQ’s Comment: MT-DEQ suggested the insertion of an additional paragraph, **Section A. State Program Amendments**, Page 19, as follows, “On April 5, 2010, the Montana Board of Environmental Review certified to the Secretary of State a revision to the rule regarding acceptance of letters of credit for bonding purposes. The language was revised to eliminate the need for rating criteria for the offering bank.”

CFO’s Response: CFO agrees with the suggested insertion and added additional revisions to the paragraph, “On April 5, 2010, the Montana Board of Environmental Review certified to the Secretary of State a revision to the rule regarding acceptance of letters of credit for bonding purposes. Montana revised the rule language was revised to eliminate the need for rating criteria for the offering bank. OSMRE received the rule revision package from Montana July 14, 2010 (during evaluation year 2011) and assigned State Program Amendment SATS # MT-031-FOR.”

MT-DEQ’s Comment: MT-DEQ offered the following comment to the “NOTE,” Table 1, Page A-2, as follows, “When OSM’s Directive REG-8, Oversight of State Programs, was revised in December 2006, the reporting period for coal production on Table 1 was changed from a calendar year basis to an evaluation year basis. The change was effective for the 2007 evaluation year. However, with Change Notice REG-8-1, effective July 1, 2008, the calendar

year reporting period in Table 1 for coal produced for sale, transfer or use was reestablished and is effective for the 2008 evaluation year. In addition, for the 2008 evaluation report, coal production for the two prior years reported on Table 1 was recalculated on a calendar year basis so that all three years of production reported in the table are directly comparable. This difference in reporting periods should be noted when attempting to compare coal production figures from annual evaluation reports originating both before and after the December 2006 revision to the reporting period. [Need to make a note that this does not reflect total coal production, but only that portion upon which the AML fee is collected. Total coal production, as reported by the states should also be included in this table]

CFO's Response: CFO agrees that total production numbers are inconsistent, due to varying methods used by OSM and individual states for determining and reporting coal production. Since standardization of coal production figures nation-wide is not feasible, CFO believes it is best to report both numbers in the text of the report (*see CFO Response to first MT-DEQ Comments above*), rather than in Table 1. CFO further believes footnote "A," included in Table 1, provides an adequate explanation of the variation between reported production data.