

OFF-SITE IMPACT OVERSIGHT REPORT
NEW MEXICO REGULATORY PROGRAM

Evaluation Year 2003

Prepared by

The Office of Surface Mining Reclamation and Enforcement

Albuquerque Field Office

I. Introduction

The Albuquerque Field Office (AFO) evaluated the effectiveness of the New Mexico Regulatory Program in protecting the environment and public from off-site impacts (prohibited by the New Mexico Program) resulting from surface coal mining and reclamation operations. Specific information on off-site impacts was collected and evaluated during the evaluation year.

The off-site resources that may be affected during mining and reclamation operations include the land, water, people, and structures. Water resources include surface and ground water quality and quantity. Fish and wildlife resources that may be impacted are included as part of water and land resources.

The types of impacts that may affect these resources include, but are not limited to, blasting, land stability, and hydrologic impacts; unauthorized encroachments on to protected or non-permitted areas; and other impacts. An off-site impact is normally one that occurs outside the permit area. However, off-site impacts also may occur within a permit area but outside the approved disturbance area, such as an encroachment into a buffer zone or area prohibited from mining.

The off-site information that was collected evaluated and reported was the number of observations made to evaluate off-site impacts, the number of impacts found, and the degree of impact. Additional information on each impact included the type of impact, the resource affected, the number of permits or mine sites with observed off-site impacts, the number of permits or mine sites with observed off-site impacts, and the number of permits or mines evaluated. Each impact may affect more than one resource, i.e., a blasting impact may affect both land and people.

Sources of information for this report include State inspection reports, notices of violation (NOV), and civil penalty assessment data, OSM's ten-day-notices and inspection reports, citizen complaints, and special studies. All complete inspections, both State and Federal, and any partial inspection that specifically included and assessment of off-site areas was specifically considered as an observation. Citizen complaints were used as a source of information; however, such complaints were considered observations only if impacts were identified by the State or OSM.

An off-site impact is any occurrence that has been identified and verified. An occurrence should have been noted in an NOV; however, off-site impacts that have not been the subject of an NOV can also be noted.

The degree and type of impact was obtained from the civil penalty assessment data. If an impact was identified that was not subject to a civil penalty assessment, the reviewer assessed the degree and type of impact. The data indicates if the impact was minor, moderate, or major.

This report is independent from the annual report and is used as supporting documentation for the annual report. It includes detailed information on the data collection, verification and analysis and draws conclusions on the effectiveness of the New Mexico Regulatory Program in preventing off-site impacts.

II. Resources Affected

One Citizen Complaint was received by OSM during the EY. The complaint alleged that a permittee was in violation of federal and state law because it had not demonstrated a valid right to enter lands over which the complainant held senior leasehold rights and, that MMD acted improperly when it issued the permit without the required proof of the right to enter. The complainant requested that OSM review the decision to issue the permit while the permittee's right to enter was in dispute. OSM responded to the complaint by issuing a TDN to MMD charging that the permittee had failed to demonstrate a valid right to enter the lands described in the permit.

MMD responded within the required time period by showing, through competent presentation of fact, that the Permit, as approved, prohibits mining by the permittee on the lands in question unless and until all necessary federal approvals have first been obtained. In the response, MMD explained that the permittee had not yet commenced mining in the areas in question and, in fact was prohibited from doing so under the permit because the permittee had not obtained federal approval of the Resource Recovery and Protection Plan by the BLM. In fact, MMD explained, the BLM had specified that the dispute between the permittee and the complainant within the Permit must be resolved prior to the commencement of any coal mining. Because the complaint was filed over a right-of-entry issue and no lands had yet been affected, there was no effects on people, land, water or structures outside the permit area.

Additionally, MMD took no enforcement actions against any of the other mining operations under its jurisdiction during the evaluation period.

1. People

There were no documented effects on people outside the permit areas of mines under the jurisdiction of MMD during EY-2003.

2. Land

There were no documented effects on lands outside the permit areas of mines under the jurisdiction of MMD during EY-2003.

3. Water

There were no documented effects on water resources outside the permit areas of mines under the jurisdiction of MMD during EY-2003.

4. Structures

There were no documented effects on structures outside the permit areas of mines under the jurisdiction of MMD during EY-2003.

III. Reclamation Success

MMD approved 149.3 acres for phase III bond release during the evaluation period. This information is recorded in Tables 5 and 6 of the 2003 Oversight Evaluation Report.