

**OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT**

**Annual Evaluation Summary Report
For the
Regulatory Program
Administered by the State
Of
Utah**

**For
Evaluation Year 2008
(July 1, 2007, through June 30, 2008)**

(September 2008)



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I. Introduction

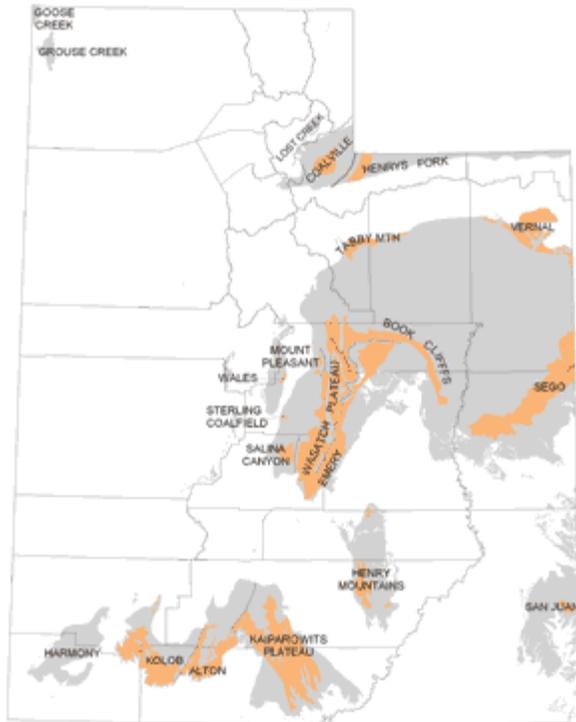
The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for the State regulatory programs that have been approved by OSM as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Utah Program and the effectiveness of the Utah Program in meeting the applicable purposes of SMCRA as specified in section 102. This report covers the period of July 1, 2007, through June 30, 2008. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the Denver OSM Office.

The following list of acronyms is used in this report:

AML	Abandoned Mine Land
BLM	Bureau of Land Management
BOGM	Utah Board of Oil, Gas, and Mining
CFR	Code of Federal Regulations
DFD	Denver Field Division
DOGM	Division of Oil, Gas and Mining
DWRi	Utah Division of Water Rights
DWQ	Utah Division of Water Quality
EY	Evaluation Year
MOU	Memorandum of Understanding
MRP	Mining and Reclamation Plan
MSHA	Mine Safety and Health Administration
NEPA	National Environmental Policy Act
NTTP	National Technical Training Program
OSM	Office of Surface Mining
SMCRA	Surface Mining Control and Reclamation Act of 1977
SUWA	Southern Utah Wilderness Alliance
TIPS	Technical Innovation and Professional Services Program
UMA	Utah Mining Association
UMLRA	Utah Mined Land Reclamation Act
UPDES	Utah Pollution Discharge Elimination System
USFS	United States Forest Service
WR	Western Region
WRTT	Western Region Technology Transfer

II. Overview of the Utah Coal Mining Industry

Coal is found beneath approximately 18 percent of the state of Utah, but only 4 percent is considered mineable at this time. The demonstrated coal reserve base ranges from 5.4 to 14 billion tons. The Federal government holds most of Utah's coal resources. Utah coal fields are shown on the figure below (Utah Geological Survey web site, Coal & Coalbed Methane at <http://geology.utah.gov>, August 2006). In 2008, the Wasatch Plateau, Book Cliffs, and Emery Coal Fields were being actively mined.



Most of the coal is bituminous and is of Cretaceous age. The Btu value is high compared to most other western States. Sulfur content ranges from medium to low in the more important coal fields.

Coal production steadily increased from the early 1970's and peaked in 1996 at 28.9 million tons. Production in 2007 was 24.2 million tons (Table 1). The majority of the coal production is produced by underground mining operations. In addition, Utah removed and reprocessed 388,295 tons of no value material in 2007 (OSM no value determinations for coal waste tonnage exempts permittees from the required SMCRA (abandoned mine lands) severance tax per ton of coal (waste) mined).

As of June 30, 2008, Utah had 23 active or temporarily inactive operations, four inactive operations, and six abandoned sites that have disturbed a total of 2,911 acres. Each of these 33 sites is an inspectable unit (Table 2). Of the 27 non-abandoned operations, 11 were underground mines that use the longwall mining method, 10 were underground mines that use the room-and-pillar mining method, two were surface mining operations that extract coal from an underground mine refuse pile, and four were coal preparation plants/loadout facilities. As of June 30, 2008, Utah had also reclaimed 467 acres of disturbance for the six abandoned sites. Utah's coal mining industry has a direct, significant impact on the local economies where mining occurs. Coal mining currently occurs in Carbon, Emery, and Sevier Counties. The Utah Department of Workforce Services reports that in 2007 mining companies, including coal mining companies, respectively, employed on average 866, 765, and 507 persons in Carbon, Emery, and Sevier Counties. In Carbon County, coal mining companies represented three of the fifteen largest employers and one was the second largest employer. In Emery County, two out of the five largest employers were coal companies and coal mining companies represented four of the ten largest employers. In Sevier County, a coal mining company

was the second largest employer. Coal mining employment remained stable in 2007 for all three counties. See <http://jobs.utah.gov/wi/regions/county.asp> for more information on coal related employment in Utah.

The climate of the Wasatch Plateau and Book Cliffs Coal Fields is characterized by hot, dry summers, the late-summer (so-called *monsoon*) rains, and cold, relatively moist winters. Normal precipitation varies from six inches in the lower valleys to more than 40 inches on some high plateaus. The growing season ranges from five months in some valleys to only 2 ½ months in mountainous regions.

III. Overview of Public Participation in the Utah Program

Evaluation Process

OSM's WR-DFD and the Utah Department of Natural Resources' DOGM formed an Evaluation Team (the Team) to conduct annual evaluations of Utah's Coal Regulatory Program to determine how effective DOGM is in ensuring that coal mine reclamation is successful in preventing offsite impacts and providing service to its customers, and make recommendations for improving the administration, implementation, and maintenance of the Program. The Team structure is comprised of three to four core members each from the WR and DOGM. The Team cooperatively solicits public participation, selects and conducts joint inspections and evaluation topics, and reports, discusses, and tracks off-site impacts. This evaluation method fosters a shared commitment to the implementation of SMCRA. However, due to staffing constraints at DOGM some of these joint evaluation methods were reduced in EY 2008.

Each year, the Team solicits comments or suggestions from persons and groups who may have an interest in coal mining and, specifically, an interest in the oversight process. On November 2, 2007 the Team mailed outreach letters to coal mining stakeholders (State, Federal, and local governmental agencies, coal mine permittees, environmental groups, consulting firms, and coal mining trade groups), soliciting input for topics to evaluate, as well as any questions or comments on previous oversight reports or the OSM/DOGM oversight process. In addition, DOGM posted a notice on its web page requesting suggestions for oversight topics from the public, industry, and environmental groups. One comment was received from the Emery County Public Lands Office that suggested topics for next year's evaluation period. The Team has responded to these comments and will provide additional information as needed.

The Team has made a copy of the 2008 Annual Evaluation Summary Report available on both the OSM internet site at www.osmre.gov and the DOGM site at <http://www.ogm.utah.gov/>. Additional data used by OSM in its evaluation of Utah's Program is available for review in the evaluation files maintained at the OSM-DFD. Contact James Fulton, Chief, DFD, at jfulton@osmre.gov or to (303) 293-5015.

Utah Program

The approved SMCRA program for the State of Utah is administered by DOGM. The BOGM is the policy making body for DOGM. The BOGM consists of seven members knowledgeable in oil, gas, mining, environmental, geology, and royalty matters. The BOGM convened eleven monthly meetings during this evaluation year. The meetings were all held in Salt Lake City, except for one held in Roosevelt, Duchesne County, Utah.

The mission of the Utah Coal Regulatory Program at the Division of Oil, Gas, and Mining is to regulate exploration for, and development of, coal in the State of Utah which:

- Supports the existence of a viable coal mining industry to meet the nation's energy needs; and
- Implements standards that safeguard the environment and protect public health and safety, and achieves the successful reclamation of land affected by coal mining activities.

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

Accomplishments

DOGM performed outreach to the public, operators, agencies, and stakeholders by providing opportunities to discuss issues.

- Quarterly throughout the evaluation year, DOGM representatives meet with Emery County water user associations, Emery County Coal Operators, DWRi, USFS, BLM, Emery County Commission and other interested parties to discuss water issues relating to coal mining in the Emery County area. The group discusses cumulative hydrologic impacts, DOGM's water monitoring database, potential water related impacts from coal mining and general issues related to coal mining. The water users provide updates on water availability and systems. This past year presentations were given on the results of mining adjacent to the Grassy Trail Dam and Reservoir and Water Rights for Beneficial Uses of Water in Underground Mining.

DOGM performed outreach to citizens and communities by participating in programs that help to educate the public about mining.

- The BOGM sponsors an Earth Day Awards Program to recognize operators or individuals for going beyond what is required by regulation to protect the environment while providing society with essential natural resources. The BOGM recognized Canyon Fuel Company's Skyline and SUFCO Mines for their Wildlife Habitat Improvement Projects.

- The Division maintains information on their web site at <http://www.ogm.utah.gov/>. Information includes: Water Quality Database, announcements of pending rules, mine information, contact information, links, technical information, and an FTP site.

DOGM provides leadership and outreach in the coordination with other State and Federal agencies involved in coal.

- In April the Division hosted a meeting on the Upper Colorado River Endangered Fish Recovery Program. The United States Fish and Wildlife Service presented facts about the fish, the recovery program, and program compliance. The meeting was well attended by federal and state agencies as well as consultants and mine operators. In the afternoon, the Division facilitated a discussion on the water balance calculations for the coal mining industry, a part of the fish recovery program.

DOGM participates in monthly interagency conference calls to coordinate permitting issues. Agencies who participate in these calls include the BLM, State Trust Lands, OSM, United States Fish and Wildlife Service, and the USFS. Utah's cooperative agreement is somewhat unique in that it requires the state to obtain federal agency concurrence rather than OSM performing this coordination effort as in other federal lands states.

The DOGM and the Utah Department of Environmental Quality meet semiannually to review their MOU. The discussions include UPDES and other water related compliance issues concerning coal mines.

DOGM maintains a database and data processing for electronic permitting. Elements of the database include permit review tracking, automated inspection reports, document indexing, and annotation of digital photographs.

- Files and mining plans are being converted from paper to electronic PDF files. Electronic documents on DOGM's network are in an electronic filing system that makes documents electronically available to DOGM staff. This year the Division opened a secure access portal to view mine files for other agencies, companies or individuals who work with DOGM (<https://fs.ogm.utah.gov/COALFILES.html>). Access is also available to the general public but is more restricted.
- Inspections and compliance information are tracked in the database;
- Staff permitting tasks are assigned, scheduled and tracked; and
- A relational database of people and companies that associates them with each other, permits, projects and other activities has been created and used for notifications, mailing lists, inspection reports, fees and other DOGM related work.

Issues

The following is a description of significant regulatory issues DOGM has addressed on mining operations during EY 2008. Some of the issues may be ongoing and DOGM continues to monitor them.

Crandall Canyon Tragedy

On August 6, 2007 a mine bump occurred at the Crandall Canyon Mine. The force of the bump was so intense that it blew the ventilation stoppings out through cross-cut 95 – more than a mile from the area where the miners were working. After the event six miners were missing. The subsequent rescue attempt within the mine moved slowly, because safety dictated the installation of rib supports consisting of 40-ton rock props, chain-link fence and steel cables to protect the rescue workers from further mine bumps. The safety precautions proved not strong enough to prevent a second burst from fatally injuring three rescue workers. At that point, MSHA halted the rescue attempts inside the mine, while continuing the rescue work from the surface.¹

On August 7, 2007, in an emergency attempt to rescue the men borehole drilling began from the surface of East Mountain down to the underground workings. Due to the nature of this rescue operation all drill pads and access roads were constructed under emergency provisions. On August 30th, MSHA officially called off the rescue effort. Permitting and reclamation of the seven drill pads and access roads began shortly thereafter. DOGM, along with other state and federal agencies, continues to work with the mine to coordinate reclamation activities.

Horse Canyon Mine – Lila Canyon Extension

An application for this permit extension was received by DOGM in September of 1998. After six rounds of deficiencies, a permit was issued in May of 2001 and the Assistant Secretary of Land and Minerals Management approved the Mining Plan on November 5, 2001. SUWA filed an objection to the permit, and a subsequent hearing before the Utah BOGM on December 14, 2001 resulted in issuance of an order that reversed the Division's decision and remanded the permit back to DOGM for further review and processing due to insufficient hydrological, geological and other environmental resources information. After numerous rounds of technical reviews, DOGM issued the permit on May 18, 2007. On June 1, 2007, SUWA appealed the May 18, 2007, issuance of the permit to the BOGM. On December 10, 2007, the BOGM issued an Order of Dismissal of SUWA's appeal with prejudice. In a May 16, 2007 letter to the BLM and OSM-WR, SUWA asserted that the permit approved by DOGM is an entirely new document that postdates and replaces earlier versions of the permit, and that WR needs to thoroughly review and analyze the new permit before making any recommendations regarding the mining plan. OSM-WR's review of the revised permit determined that only certain parts of the original 1998 permit were revised to incorporate additional information for

¹ Extracted from Utah Mine Safety Commission Report and Recommendations to Governor Jon M. Huntsman, JR. January 2008.

hydrological, geological and environmental resources, and proposed mining and reclamation operations have not changed from the 1998 permit. By letter dated June 26, 2007, OSM-WR informed SUWA of the above determination, and stated that the permit issued by DOGM on May 18, 2007 does not meet any of the criteria of 30 CFR §746.18(d) for a mining plan modification. OSM-WR further stated that the November 5, 2001, mining plan approval is still in effect since it has not been modified, cancelled or withdrawn as provided under 30 CFR §746.17(b).

On September 11, 2007, SUWA filed with the U.S. District Court, District of Utah, Central Division a Complaint against the OSM and the BLM alleging that OSM-WR should have prepared a new mining plan for the mine and that BLM violated NEPA. The complaint also requested a Preliminary Injunction to stop the operator from conducting surface disturbances associated with the permit. On December 5, 2007, the Federal District Court issued an Order Denying SUWA's Motion for a Preliminary Injunction to stop the operator from conducting surface disturbances associated with the permit. Oral arguments were heard on August 19, 2008, in Salt Lake City, Utah.

Coal Hollow Mine (Alton Coal Development, LLC)

A new permit application for fee surface/fee coal (636 acres) was submitted to the Division on June 14, 2007. This proposed surface mine is located in the Alton Coal Field which currently has no coal mining activity. The application was determined to be administratively complete on March 14, 2008. An informal conference was conducted June 16, 2008 after receiving 43 individual comments and four from interested organizations; in addition to three requests for an informal conference. The Division and applicant continue the review process and are working toward achieving a technically complete mining and reclamation plan. The BLM is commencing the Environmental Impact Statement process for future federal leases.

Kinney #2 Mine

A new permit application for the Kinney #2 Mine, Carbon Resources, LLC, was received February 29, 2008. The application is for an underground coal mine on 38 acres of fee surface and 453 acres of fee coal. The application was determined administratively complete on June 25, 2008 with public comment open until August 29, 2008.

Legislative Coal Audit

The Utah Office of the Legislative Auditor General completed "A Performance Audit of Utah's Coal Regulatory Program" in late 2007. This audit identified process improvements for the Division's Coal Program that, when implemented, will more effectively and efficiently serve the interests of the citizen's of Utah. Some of the recommendations were: adhering to mandated review deadlines; creating a policy for emergency approvals; developing policies to guide staff on timely reviews and documenting decisions; making changes to the coal tracking system to assist management in managing coal workload; adopting OSM's definition of permit area or clarifying

current use of the term; changing the federal funding approach; and developing a fee structure for permitting coal operators.

The Division held seven meetings with the coal operators between January and May of 2008 and one Stakeholders meeting to discuss program improvements. The Division has now made the necessary changes or has processes in place to make the recommended changes, including:

- Initial Review – the Division now conducts an initial review of each permit amendment within 15 calendar days of receipt. This review assures that enough information to conduct a meaningful technical review is included with the application. If not, the entire application is returned to the operator, and they are asked to resubmit, with additional information. This avoids wasted time reviewing incomplete applications, and speeds up the time frame for alerting the operator to deficiencies and allowing them to resubmit.
- Denial of amendments – if permit amendments are deficient, the Division now denies the application, returns all material to the operator, and asks for a complete resubmittal with the additional information. This clears up confusion as to which version of a certain section is the newest, saving time for the operators and the Division.
- Consistency/staff guidance – the Division is continuing to work on policy guidance to ensure consistency in permit reviews among diverse professionals. Review teams have been meeting more often on large projects to discuss their reviews, share information and perspective among the team, and ensure that the final review is cohesive.
- Workload analysis – the Division is currently working to develop a more project-management based approach to assign workloads and task due dates.
- Coal tracking system – several changes have been made to the CTS, allowing management to track assignments and due dates more closely. More improvements are underway.
- Permit area – the Division allows for the operators to define their permit areas in any reasonable manner, including just the disturbed area. None of the existing operations has proposed to change the way they define permit area in their MRP to date.
- Coal fees – the Division proposed a fee schedule to the legislative analysts on August 14, 2008. They will carry the proposal forward to the legislature when it is in session. Most operators did not like the idea, but would support the flat yearly fees proposed.

UMA – Proposed Rule Changes

The UMA submitted a letter on November 27, 2006 outlining five potential rule changes in the Utah Coal Regulatory Program: (1) should the area above the underground workings be included in the permit area; (2) the coal mine operator should not be responsible for a third party disturbance within the disturbed area; (3) clarify the requirements for sealing of wells and drill holes; (4) requests for information from the

Division based on rules with verbiage “as required” will include a written finding by the Division as to why the additional information is required; and (5) remove the one square mile criteria from the intermittent stream to clarify that this does not include ephemeral streams. The BOGM requested the Division to work with UMA on the five potential rule changes.

The Division met with the UMA and other interested parties three times in EY07 and five times in EY08. The Division briefed the BOGM regularly during these meetings. OSM provided comments three times to the Division during the informal process. The Division filed a formal petition for rulemaking to the BOGM on rule items #3, #4, and #5 on January 10, 2008. Formal hearings were conducted on the rulemaking by the BOGM and the BOGM approved the proposed rules on March 26, 2008. DOGM submitted a formal program amendment to OSM on May 28, 2008. OSM published the program amendment on the three rule changes in a Federal Register dated June 24, 2008 (73 FR 35607).

Innovations

This has been a year of change at the Division. The coal staff has lost a collective 75 years of experience due to retirements and reassignments. This, together with work on the proposed UMA coal rules, the performance audit of the coal program, and permitting of two new coal mines has resulted in everyone carrying a heavier workload. In spite of these challenges, the Division’s timeliness has actually improved since the audit started. The Division has acted on many of the recommendations identified by the legislative audit and has implemented a number of processes that have improved performance (see legislative Coal Audit section above).

V. Success in Achieving the Purposes of SMCRA

The Team evaluates the number and extent of observed off-site impacts, the number and percentage of inspectable units free of off-site impacts, the number of acres that have been mined and reclaimed and which meet the bond release requirements and have been released for the various phases of reclamation, and the effectiveness of customer service provided by the State. Individual topic reports are available in the WR-DFD Office and provide additional details on how the following evaluations and measurements were conducted.

Off-site Impacts

An “off-site impact” is anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on resources (people, land, water, structures) outside the area authorized by the permit for conducting mining and reclamation activities.

Table 4 shows the number and type of off-site impacts that were observed and documented as having occurred during EY 2008, both for permitted sites and bond forfeiture sites.

Sites Where Reclamation Performance Bonds Have Not Been Forfeited

The Team assessed whether off-site impacts had occurred on each of the 27 non-forfeited mine sites that existed at some time during the evaluation period. The Team did so through the following 297 on-the-ground observations: 110 DOGM complete inspections including eight OSM and DOGM joint, complete inspections; 181 DOGM partial inspections (Table 9); and six special focus/topic evaluation observations discussed in section VII below. Based on the above, and DFD's monthly review of all DOGM inspection reports and enforcement actions, the Team finds that DOGM has met or exceeded the required inspection frequency on all inspectable units with the exception of one complete inspection that was missed at the abandoned Sunnyside Coal Mine and one complete inspection that was missed at the reclaimed Gordon Creek #2, 7, & 8 mine because the site was inaccessible during part of the year.

One of the EY 2008 joint, complete, oversight inspections documented UPDES water quality noncompliance. This mine has a permitted UPDES bypass discharge. A bypass discharge is water intercepted underground by coal mining that is normally settled and/or treated underground if necessary; then pumped to the surface and discharged off the permit area without additional settlement time or treatment through a sedimentation pond or treatment pond. There are several permitted UPDES bypass discharges at Utah coal mining operations, in Carbon, Emery, and Sevier Counties.

This mine water bypass discharge exceeded total iron effluent limitations for ten months in 2007 and two months in 2008 as of May 20, 2008. (The total iron effluent limitations are approved in the UPDES permit. The discharge is grab sampled at least monthly as required in the UPDES permit for reporting to the Utah Division of Water Quality (DWQ)). The permittee was assessed a fine of \$28,000.00 by the DWQ as a result of these noncompliant discharges for total iron. This fine was assessed using the Environmental Protection Agency's economic benefit model. There have been no (observable or documented) off-site impacts associated with these discharges (noncompliant for total iron) flowing off the permit area. It is approximately ten miles from the permit area to a perennial stream (Grassy Trail Creek). The permittee continues to improve and adjust underground water treatment methodology to reduce total iron.

This mine is also participating in the Colorado River Basin Salinity Control Forum's Salinity Offset Program by entering into a five year agreement through the DWQ. The Colorado River Salinity Offset Program is one tool to help implement the Colorado River Basin Salinity Control Forum Policies required under the Clean Water Act. The Colorado River Salinity Offset Program provides an opportunity for industrial sources of salinity to finance salinity reduction projects in the Colorado River Basin. Salinity credits are purchased by the permittee as offsets against discharges made by the company under UPDES permits issued by the DWQ (<http://www.coloradoriversalinity.org/>).

There have been no observable or documented off-site impacts associated with the total dissolved solids concentrations reported for the bypass discharges discussed above.

For EY 2008, the Team documented one moderate (land stability) off-site impact to a land resource and one minor (hydrology) off-site impact to a water resource resulting from active coal mining operations at the same mine site (Table 4). Ninety-six percent of Utah mines were free of off-site impacts. In comparison, the Team found 96, 100, 96, and 93 percent of the mines free of off-site impacts in EY's 2004, 2005, 2006, and 2007, respectively.

Sites Where Reclamation Performance Bonds Have Been Forfeited

Since 1981 when OSM approved the Utah permanent regulatory program, DOGM has forfeited reclamation performance bonds for six mines. (The White Oak Mines #1 and #2 are counted with the bond forfeiture sites because the Division issued the determination to forfeit; however, bond forfeiture monies were never received. Monies were obtained from the Loadstar Bankruptcy Trustee, Frontier Insurance, and a "General Settlement Fund" outside of the Lodestar bankruptcy estate.)

During EY 2008, DOGM conducted 11 complete and six partial inspections on the six forfeited mines (see Table 9). One minor (land stability) off-site impact to a land resource was observed. Table 4 (bottom half) shows that 83 percent of the bond forfeiture sites were free of off-site impacts. The Team has previously found 100 percent of these mines to be free of off-site impacts in EY's 2004, 2005, 2006, and 2007, respectively.

Reclamation Success

Sites Where Reclamation Performance Bonds Have Not Been Forfeited

For operations where reclamation performance bonds have not been forfeited, the Team used as the measure of reclamation success the disturbed acreage that had received bond release. Historically, the amount of bond release acreage in Utah is very low due to the following two factors:

- Most of the permitted operations are underground mines (Table 2). Underground mining operations are long-lived and remain active during the entire life of the operation because of their continued use as surface facilities. Although the surface disturbances for underground mines are relatively small (2,372 acres for EY 2008), there are 172,787 permitted acres (including the area of land over the underground mine workings) for the 27 non-forfeited mines, or an average of 6,400 permitted acres per mine in Utah. While the legislative coal audit pointed out that the permit area may be defined as just the disturbed area, by rule the operator has the option to include what they would like, within reason, in their permit area. To date, no one has changed their permit area, nor has anyone asked for a new area to be added to the mine plan without adding it into the permit area.

- The bond liability period is a minimum of 10 years.

Table 5 shows the permit acreage where DOGM partially released (Phases I and II) or totally released (Phase III) bonds during the evaluation year. For the 2,325 acres of total disturbance that had not yet received final (Phase III) bond release at the beginning of the evaluation year, DOGM granted a Phase I, Phase II, and Phase III bond release of 2.34 acres at the Willow Creek mine, which had an industrial/commercial post-mining land use (Table 12). All three phases occurred in EY 2008 because the 2.34 acres were bonded and approved but never disturbed. An additional 49.12 acres were bonded and disturbed during the evaluation year at the Crandall Canyon, Dugout, and Skyline Mines and the Wildcat Loadout thus increasing the total number of disturbed acres to 2,372 as of June 30, 2008.

Customer Service

As previously explained in this report, some of the joint evaluation methods were reduced in EY 2008 due to staffing constraints at DOGM. Consequently, the Team was unable to complete the customer service topic evaluation for EY 2008.

VI. OSM Assistance

For the one-year grant period starting July 1, 2007, DOGM requested \$2.4 million in assistance. The lack of any meaningful increase in the appropriation for regulatory grants over the past several years has made it impossible for OSM to fully fund most State regulatory programs, resulting in Utah receiving \$1,698,219 (Table 8) or 71 percent of its request. Through a Federal lands cooperative agreement, OSM reimburses DOGM for permitting, inspection and other activities that it performs for coal mines on Federal lands (Table 7). Because most of the mines in Utah occur on Federal lands, Utah uses the option under the Federal Assistance Manual for Area-Weighted Average Option, which would call for OSM to provide funding at an 87.5 percent level of DOGM's total program costs. As described above the Federal appropriation has not allowed full funding. OSM also provided the Utah program with \$2,049,219 in abandoned mine land reclamation funding. This amount represents 100 percent of required OSM funding for the Utah AML program (Table 8).

Through NTTP and TIPS, OSM offers free-of-charge technical training courses to State and Tribal employees. During EY 2008, 12 DOGM employees (students) participated in 10 NTTP training opportunities, and four employees participated in two TIPS training opportunities. DOGM, in kind, provided one NTTP instructor.

OSM's Technical Librarian filled four reference requests, and provided 33 article reprints to Utah Staff.

DOGM continues to be one of the major contributors to the advances in western electronic permitting, GIS, and hydrology database application. Utah Staff made

significant contributions to the annual WRTT meeting this year held in Santa Fe, New Mexico. DOGM's WRTT representative attended the meeting.

TIPS also loaned the GPS-Enabled Ricoh Digital Camera to the state of Utah during this oversight period. One service manager visit was conducted at the Price, Utah Field Office. Staff was briefed on the mission and goals of TIPS, available software, hardware, training, and program activities were discussed.

VII. General Evaluation Topic Reviews

Each year OSM and DOGM evaluate topics to determine whether DOGM is effective in ensuring reclamation success, preventing off-site impacts, and ensuring effective customer service. Results of all evaluation topic reviews are available at the WR-DFD Office. For EY 2008, the Team conducted two evaluation topic reviews.

Reclamation Success – Approval of Permanent Water Impoundments Re: Coordination with the Utah State Engineer's Office/Division of Water Rights

This evaluation was based on OSM Directive REG-8 for determining whether the DOGM is effective in ensuring reclamation success. The joint DOGM/OSM Topic Evaluation Team reviewed DOGM's approval process for proposed permanent water impoundments to ensure that all related requirements are being met with regard to coordination with the Utah State Engineer's Office/ DWRi. For example, as part of its approval process DOGM must make a finding on water rights. This is accomplished by verifying water rights information with the State Engineer's Office directly, by checking the DWRi's website for water rights postings, or by operator's who provide DOGM with proof of the water right. The Team also reviewed permits for mines that have approved existing permanent water impoundments to ensure that they contained updated and accurate documentation of landowner consultation concerning the retention of each approved permanent impoundment as it relates to the approved postmining land use or changes thereto. With the preservation of this information, successful reclamation and future bond release can proceed in a timely fashion in accordance with the landowner's request(s).

On May 12, 2008, OSM met with the Regional Engineer from the Utah DWRi. DWRi's requirements for approval of permanent water impoundments and water rights were outlined during this meeting. The State has the following laws and procedures currently in place regarding water impoundments:

1. Impoundments greater than 20-acre feet must be submitted to the State Engineer's Office of Dam Safety for approval with a full set of plans stamped by a professional engineer, Form R-69 is not required.
2. Impoundments less than 20-acre feet must be submitted to the State Engineer's Office of Dam Safety through Form R-69, including sketches and maps.

3. If the impounded water has a beneficial use, water rights may need to be if not already established.
4. DWRi policy on small ponds is fairly disjointed; however, they do count evaporation as a beneficial use if the impoundment is full the entire year.
5. Impoundments that are incised with no storage above the ground do not need approval.
6. Impoundments that simply collect water for sediment control but then quickly evaporate do not require approval.
7. Large impoundments lasting more than 30 days must have approval.
8. Wildlife is considered a beneficial use, and water rights must be established through the Utah Division of Wildlife.

On May 13, 2008, the Team reviewed the MRP's and bond release applications for the Willow Creek, Gordon Creek 2/7/8, and Skyline Mines at DOGM's Price Field Office. On-site evaluations of the three sites were conducted following the permit reviews.

During the field evaluation of the Willow Creek Mine, Pond 1A was observed to be without water, was less than 20-acre feet in size, and was reported to be primarily dry over the past 8 years. Due to the lack of water, the pond was observed to have no beneficial use and therefore does not require approval or establishment of water rights from the State Engineer's Office. Pond 1A is currently owned by the Western Energy Training Center, but is still under bond through Plateau Mining Corporation (PMC). A Phase I bond release has occurred and PMC is preparing to apply for Phase II bond release in the spring of 2009 following upcoming vegetation studies. However, the pond was excluded from the prior bond release process due to an engineering oversight which omitted Pond 1A from submitted mapping. A postmining land use change occurred in 2002 from wildlife to industrial. A review of the revised November 1999 MRP for the Willow Creek Mine did not find any supporting documentation pertaining to the retention of Pond 1A, post-reclamation, or evidence of a transfer of ownership or land use change. The existence of Pond 1A was initially conveyed through field office personnel and was documented on permit mapping.

During the field evaluation of the Gordon Creek 2/7/8 Mines, the Sweet's Canyon Pond was observed to contain water and was less than 20-acre feet in size. Due to landowner requests that this pond be left "as a water source," this pond has a beneficial use and requires approval from the State Engineer's Office. A review of the January 1995 MRP for the Gordon Creek 2/7/8 Mines found documentation pertaining to the retention of the Sweet's Canyon Pond. Specifically, the MRP contained landowner request letters to leave the impoundment in place, as well as Water Rights Lease and Sale Agreement. The Jacob's Pond (7A) was also observed to contain water and was less than 20-acre feet in size. Due to a landowner request that this pond will be left as a "small watering basin," this pond also has a beneficial use and therefore requires approval and establishment of water rights from the State Engineer's Office. The MRP contained no documentation regarding retention of this pond, however, it was referenced by one landowner letter dated January 21, 1993.

During the field evaluation of the Skyline Mine, the Scofield Waste Disposal Site Sedimentation Pond was observed to contain a small amount of water and was less than 20-acre feet in size. Due to landowner requests that the pond be left for “livestock and wildlife use,” the pond has a beneficial use and requires approval and establishment of water rights from the State Engineer’s Office. A review of the March 1999 MRP for the Skyline Mine found documentation regarding retention of the Scofield Waste Disposal Site Sedimentation Pond in the postmining land use section of the Plan. The pond was also referenced by one landowner letter dated August 25, 1998.

Based on the above findings, the Evaluation Team recommends that DOGM verify that required information is contained in the MRP’s concerning landowner requests for the retention of each approved permanent impoundment, including documentation of water rights; ensure maintenance of accurate/updated postmining land use records in the MRP’s; require operators to obtain approval for permanent impoundments from the DWRi if necessary; and include documentation of DWRi’s approval as part of DOGM’s permitting process.

Prevention of Off-site Impacts – Coal Waste Processing Operations

This evaluation was based on OSM Directive REG-8 for determining whether the DOGM is effective in preventing off-site impacts. Utah’s rich coal mining history, primarily in Carbon and Emery Counties, resulted in coal processing wastes deposited in both coal waste piles and coal slurry impoundments as found in most coal mining States. Some of these coal waste deposits have been reprocessed by various carbon recovery operations both pre SMCRA and post SMCRA. Most of these coal waste deposits are found on or contiguous to post SMCRA/DOGM permitted underground coal mines. Economical carbon recovery mining (coal waste processing) has occurred, and continues to occur on DOGM coal mine permits.

OSM has approved three separate “no value determinations” for coal waste/carbon recovery operations on DOGM permit areas where the tonnage recovered is sold to a coal burning, co-generation electrical power plant. The OSM no value determinations for this coal waste tonnage exempts the permittees from the required SMCRA (abandoned mine lands) severance tax per ton of coal (waste) mined. This exemption is based on the coal waste tonnage being utilized by a coal burning, co-generation electrical power plant.

These coal waste/carbon recovery operations are utilizing coal resources that might otherwise degrade over time due to normal weathering processes; and ultimately these operations will provide additional productive post mining land use acreage in both Carbon and Emery County.

In early 1997 a processing facility opened in Carbon County and produced coal briquettes from coal slurry trucked to the site from an active DOGM underground mine. This facility qualified for a United States IRS tax credit as a Synfuel

producer. During March 1997 DOGM and OSM determined that this facility was not operating “in connection with” a coal mining operation, and therefore did not require a DOGM coal processing permit (See the OSM EY1996 Utah Annual Evaluation Summary Report for further details).

During EY 2007 DOGM determined this facility (under different ownership and control than that in 1997) had changed coal waste processing techniques, and that the IRS Synfuel tax credit was expiring on December 31, 2007. Prior to officially permitting the site, DOGM entered into a settlement agreement with the operator requiring an appropriate reclamation surety bond, and a reclamation closure plan that included all disturbed acreage, buildings, and other structures at the facility. On April 2, 2008, DOGM conducted a final closeout inspection of this site as provided for in the Settlement Agreement and Release dated October 30, 2007. Subsequent to a May 13, 2008 follow-up inspection, the Division’s Director executed a full Phase III bond release of 18.39 acres in the amount of \$101,000 on June 3, 2008. The approved post-mining land use for this site is industrial.

The DOGM and OSM Evaluation Team agreed to conduct site evaluations of this facility, and another coal waste processing facility located in this same industrial park south of Price, Utah, during EY 2008. The primary focus of this evaluation topic was to minimize and prevent offsite impacts from these two coal waste processing facilities.

The Team conducted on-site evaluations of the two coal processing operations during January 16 and 17, 2008. The surety bond had been posted as required on the first facility. The operation was active, and planned to cease operations by the end of January 2008. The operator notified the Team that there were plans for another operator to utilize this site as a coal and/or coal waste processing facility. One administrative provision of the settlement agreement had not been satisfied, but was satisfied the week of our evaluation. Surface water runoff diversions and the sedimentation pond were operational. No offsite impacts were documented during the evaluation. Ground conditions were partially snow covered and frozen making accurate observations difficult.

The operator of the second coal waste processing facility had submitted their DOGM permit application on January 15, 2008. The Team reviewed the permit application at DOGM’s Price Field Office prior to the evaluation, and briefly during the evaluation. This facility disturbance is limited and well organized, and there was a minimum of coal and/or coal waste stockpiles on site. The Team discussed enhancing some of the disturbed area performance standards such as surface water runoff diversions, topsoil stockpile locations and protection, surface and ground water monitoring, and appropriate signage for the proposed permit area. The Team also discussed proposed offsite disposal locations for the coal waste remaining after the carbon recovery process. Coal waste disposal is not proposed for the facility location. No offsite impacts were identified during the evaluation.

The Evaluation Team finds that DOGM has implemented the appropriate permitting and bonding procedures; and conducted inspections to minimize and prevent offsite impacts at these two coal processing facilities. DOGM has also notified the DFD that they are investigating a proposed coal coking facility that will begin operations in the Price area at the Western Energy Training Center. DOGM has initially determined that at this research and development plant there will be no crushing, screening, or waste products from this operation and they are not operating in connection with a coal mining operation. However, DOGM will inspect the facility upon start up.

Lastly, MSHA has been inspecting both coal waste processing facilities monthly, and the Team corresponded with MSHA concerning these evaluations. MSHA did not express any safety concerns regarding these coal processing facilities.

EY 2008 UTAH EVALUATION TEAM MEMBERS

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Appendix 1

Tabular Summary of Core Data to Characterize the Utah Program

These tables present data pertinent to mining operations and State and Federal regulatory activities within Utah. They also summarize funding provided by OSM and Utah 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 OSM in its evaluation of Utah's performance is available for review in the evaluation files maintained by the Denver OSM Office.

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.

EY 2008 REG-8 Tabular Data Information and Suggested Changes for Utah

The following suggestion provides additional information to explain why the tables should be modified to more fully represent mining operations in Utah:

Table 5 –

The "Instructions for Completion of Specific Tables in Directive REG-8" for Table 5 requires the entry of "the number of acres upon which the State has approved Phase I bond release and determined that all applicable standards are met including AOC and replacement of topsoil or approved alternative. *(If State does not require resoiling at Phase I the table should be modified to move the soil replacement row to the Phase II section of the table).*" Utah does not require topsoil replacement until Phase II, so the table will need to be modified accordingly for EY 2009.