



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

# **ENFORCEMENT OF APPROXIMATE ORIGINAL CONTOUR IN OKLAHOMA BY THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT**



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**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

**AUG 05 2013**

Memorandum

To: Joseph Pizarchik  
Director, Office of Surface Mining Reclamation and Enforcement

From: Donald W. Cairns *Donald W. Cairns*  
Deputy Assistant Inspector General for Audits, Inspections, and Evaluations

Subject: Final Inspection Report – Enforcement of Approximate Original Contour in Oklahoma by the Office of Surface Mining Reclamation and Enforcement Report No. IU-IS-OSM-0002-2013

We recently completed an inspection of the Office of Surface Mining Reclamation and Enforcement (OSM). Our objective was to determine whether OSM is ensuring that the Oklahoma Department of Mines (ODM), the State agency responsible for ensuring the reclamation of land disturbed by mining operations, is properly enforcing Federal regulations requiring coal-mining operators to return mined lands to their preexisting topography, or approximate original contour (AOC). We make three recommendations to address serious compliance and enforcement problems in Oklahoma, which are adversely affecting the implementation of the Surface Mining Control and Reclamation Act of 1977's (SMCRA) AOC requirements.

### **Scope and Methodology**

To accomplish our objective, we—

- obtained a general understanding of Federal laws and regulations applying to permitted surface coal mining;
- determined what inspection, enforcement, and oversight activities apply to surface coal mining in Oklahoma;
- visited OSM's Tulsa Field Office and eight surface mining sites in Oklahoma;
- reviewed relevant documentation and internal OSM reports; and
- reviewed actions and steps that OSM and ODM have taken to address the recommendations described in OSM's 2010 National Priority Review report on AOC.

We conducted our inspection in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

## Background

Title V of SMCRA, “Control of the Environmental Impacts of Surface Coal Mining,” is the Federal law that applies to reclamation plan requirements and AOC standards. SMCRA is implemented and enforced by OSM, which acts as the primary regulator of coal mining in States or tribes unless a State or tribe demonstrates that it has developed a regulatory program that meets all of SMCRA’s requirements and implements OSM’s regulations.

Oklahoma received conditional approval of its permanent regulatory program under SMCRA in 1981. OSM monitors ODM’s success at regulating mining operators’ restoration of mine sites to AOC. In this role, OSM’s oversight does not duplicate ODM’s responsibilities; instead, OSM focuses on whether the program has achieved the purposes of SMCRA. OSM provides technical and other assistance to Oklahoma to strengthen its program. This includes conducting inspections and other evaluations of how well Oklahoma’s program ensures environmental protection, reclamation success, and prevention of offsite impacts. OSM also provides ODM approximately \$1 million per year through a grant to fund the program, enabling ODM to conduct inspection, enforcement, and regulatory work.

The money provided to ODM fully funds Oklahoma’s program on Federal lands, including four fulltime inspectors. OSM’s Tulsa Field Office currently has two senior inspectors (down from six fulltime in the mid-1990s) performing oversight and enforcement. Tulsa Field Office inspectors cover four States, including Oklahoma, and are also responsible for oversight of Title IV of SMCRA (“Abandoned Mine Reclamation”) and related programmatic work.

Under 30 U.S.C. 1265(b)(3), “Environmental Protection Performance Standards,” mining operators are required to return mined land to AOC after mining operations at a site have ceased—that is, the operator must restore the mined land’s topography to its general surface configuration before mining began. Returning mined lands to AOC helps ensure the safety, conservation, and stewardship of the lands and their resources for the public and the Government.

In 1983, OSM found that ODM was not adequately implementing certain aspects of Oklahoma’s program and, in accordance with 30 C.F.R. § 733, OSM took over the enforcement of the portions of the program that had not been adequately implemented. OSM returned enforcement authority to ODM in 1987. In 1993, OSM initiated another action, but ultimately did not take over enforcement because ODM made good-faith efforts to correct deficiencies. This action was terminated in 1999 after ODM satisfied the terms of a 1-year probationary period established by OSM. OSM records indicate that it has consistently funded the Federal grant that funds ODM’s program.

In 2010, OSM issued its National Priority Review report on AOC. This report identified Oklahoma as the primary surface mining State with ongoing, unresolved AOC problems. Two of the five Oklahoma mines reviewed for the report were cited as having AOC deficiencies that needed to be corrected to conform to SMCRA. At one other mine reviewed, OSM reported that it was not possible to determine whether AOC provisions had been followed because the State-approved reclamation plan was not detailed enough. All three of these mines are operated by

Farrell-Cooper Mining Company, and two, known as Liberty 5 and Liberty 6, are now in litigation with the U.S. Department of the Interior. ODM is siding with Farrell-Cooper in these lawsuits.

### **Results of Inspection**

Accompanied by OSM inspectors, we visited 8 of the approximately 60 “inspectable” mining units in Oklahoma. Six of the mines we visited, including Liberty 5 and 6, are operated by Farrell-Cooper, which is the largest surface mining company in Oklahoma. We observed mines in various states of reclamation, restoration, and abandonment (see Figures 1 and 2).



Figure 1. View of unreclaimed land on the Liberty 5 site, one of the Farrell-Cooper mines we visited that is in litigation. Source: OIG.



Figure 2. View of reclaimed land at Liberty 1, a Farrell-Cooper mining site that has been returned to AOC. Source: OIG.

We found that AOC enforcement in Oklahoma is not working as intended. OSM’s efforts at local and national levels to address AOC problems—including new directives to clarify its oversight role and policy—have been met with strong resistance from the mining industry, ODM, and certain members of Congress. On the other hand, affected Oklahoma residents have complained bitterly and vocally about mining companies’ noncompliance with AOC, which can affect the residents’ livelihoods and personal safety.

*OSM Has Not Been Successful in Getting ODM To Ensure That Operators Return Land to AOC*

OSM’s 2010 National Priority Review report found that ODM has not ensured that mining operators are returning the land to AOC as required. The Tulsa Field Office’s annual reviews in 2011 and 2012 also state that the same reported issues are still not resolved at Farrell-Cooper’s Liberty 5, Liberty 6, and Rock Island Mines. We confirmed with the Tulsa Field Office director and through our site visits that this is still the case:

- Farrell-Cooper submitted revisions to its Liberty 5 and Rock Island Mine operation permit plans to ODM to match the conditions *after* mining and reclamation had largely been completed—in essence, the land was reclaimed to the current conditions, not to AOC. Unfortunately, ODM approved the revised plans for Liberty 5; the agency was reviewing the Rock Island Mine revisions at the time of the evaluation.
- At Liberty 6, it was not possible to determine whether Farrell-Cooper had followed AOC provisions because the State-approved reclamation plan was not detailed enough.

- OSM has stated that Oklahoma needs to reassess both its permitting and implementation of AOC determinations to ensure that mining operators comply with all AOC requirements. ODM, however, has refused to sign the action plan OSM created to bring ODM into compliance.

With Tulsa Field Office inspectors, we attended a meeting for local citizens and homeowners at Rock Island Mine. At the meeting, we heard that ODM has not been forthright in its dealings with the homeowners who live near the mine. For example, homeowners complained about a high berm with a steep slope that the company had left behind after the site was reclaimed. When the homeowners told ODM the berm blocked their view of the mountains, ODM informed them that the landowner wanted the berm to remain and ODM could do nothing about it. The landowner, a farmer and cattle rancher, denied accepting the berm as satisfactory AOC because the new grade renders a portion of his land unsuitable for cattle grazing (see Figure 3).



Figure 3. View of poorly reclaimed land on Rock Island mine site. The berm shown to the right of the road does not conform to AOC. This berm blocks several homeowners' view of the mountains and has affected the landowner's ability to use the land. Source: OIG.

In addition to poor reclamation practices, the Tulsa Field Office told us about numerous instances of surface mining operators in Oklahoma halting active mining at sites while claiming that they intend to return to mining at a future date. Because these mines are technically still open, they do not have to be reclaimed immediately, in effect allowing the operators to circumvent AOC requirements. Some of these mines have been dormant or abandoned for years (see Figure 4). The law and regulations addressing “temporary cessation” of mining activity are vague. An operator can simply declare its intention to temporarily cease mining; there is no

current requirement for a State or OSM to approve this action. The permitting processes do not specify time limits on halting and restarting mining activity.



Figure 4. View of unreclaimed land on Cavenal West site with spoil pile (the dirt, rocks, and other materials dug out of the mine) in the foreground. The mine is in temporary cessation. (A reclaimed area is visible in the background.) Source: OIG.

OSM is already addressing the problems associated with temporary cessation (and the related AOC issue) through the rulemaking process. While Federal regulations concerning temporary cessation are sparse, some States have their own regulations, which OSM officials told us they are currently studying for use as best practices. We understand that OSM plans to have a draft rule ready soon.

While OSM is working on the temporary cessation issue, the underlying problem—ODM’s poor enforcement of AOC and SMCRA regulations—still exists. In the past, OSM has temporarily taken over ODM’s program while working with Oklahoma to bring the program back into compliance with SMCRA. We found, however, that OSM has never reduced or terminated the grant that funds ODM’s program. Under 30 C.F.R. § 735.21, “Grant Reduction and Termination,” if an entity fails to implement, enforce, or maintain an approved program, the Federal agency must terminate the administration and enforcement grant.

#### *The Ten-Day Notice (TDN) Process Is Not Functioning As Intended in Oklahoma*

Under SMCRA, TDNs are key tools for notifying regulatory agencies about violations such as AOC issues and requiring corrective action within specified timeframes. TDNs can be issued at any point during the mining process, even if the mine is closed. In general, OSM must

issue a TDN to State or tribal regulatory authorities when it has reason to believe a violation exists or when it determines, based on a Federal inspection, that a violation exists. Citizens may also request a Federal inspection. When the authorized OSM representative has notified the State regulatory authority of the possible violation, the State has 10 days to take appropriate corrective action or to show good cause for failure to respond within the specified timeframes. If the State fails within 10 days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, the authorized representative is required to reinspect and, if the violation continues to exist, issue a notice of violation or cessation order, as appropriate.

OSM senior officials have acknowledged that AOC enforcement in Oklahoma has been problematic and that implementation of the TDN process has been part of the reason. The Tulsa Field Office issued or closed 15 TDNs with 39 violations between October 2010 and July 2012; of these, 13 percent were AOC related. Tulsa Field Office officials told us that they have been criticized by senior management for issuing too many TDNs in Oklahoma. Although the Tulsa Field Office performed only 14 oversight inspections in Oklahoma, it issued 7 TDNs as a result—11 percent of the 65 TDNs that OSM issued Nationwide in 2012.

Another issue that makes AOC enforcement difficult is the TDN challenge process. A State agency or tribal representative may challenge, or appeal, a TDN to the applicable OSM regional manager. The OSM regional manager is required to affirm, reverse, or modify the TDN determination within 15 days after receipt of any request for informal review. Some TDNs issued by OSM for AOC violations in 2010 still have not been resolved. For example, OSM noted violations at Rock Island Mine. After attempting to work with ODM to compel Farrell-Cooper to resolve the violations, OSM eventually issued a TDN to the company in July 2012 for (1) failure to file a permit renewal application at least 120 days before the expiration of the permit term and (2) failure to achieve AOC. ODM accepted the first part of the TDN and issued a notice of violation to the company, but the agency disputed the second part. Three years have now passed since this AOC issue was first reported.

TDNs can be powerful tools for correcting violations, but only when they are acted on in a timely manner. Allowing TDNs to stall in the challenge process means that violations can remain uncorrected for longer than SMCRA intended.

## **Recommendations**

We recommend that OSM:

1. Suspend the Federal grant funding that addresses the AOC portion of Oklahoma's enforcement program until Oklahoma complies with SMCRA;
2. Revise the TDN process to improve its effectiveness; and
3. Correct TDN implementation by bringing it into compliance with SMCRA timeframes so that it functions as intended in Oklahoma.



Please provide a written response to this report within 30 days. The response should provide information on actions planned or taken to address the recommendations, as well as target dates and title(s) of the official(s) responsible for implementation. Please send your response to:

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The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued, actions taken to implement our recommendations, and recommendations that have not been implemented.

If you have any questions regarding this report, please contact me at 202-208-1454 or Inspections Unit Director Suzanna Park at 703-487-5351.

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