

**OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT**

**Annual Evaluation Summary Report
For the**

North Dakota Public Service Commission

Regulatory Program



Evaluation Year 2022

**Produced by the Denver Field Division
Casper Area Office**

EXECUTIVE SUMMARY

This report covers the period of July 1, 2021 to June 30, 2022. Over the past year, the Office of Surface Mining Reclamation and Enforcement (OSMRE) monitored North Dakota's performance in meeting the goals and objectives of the approved state program. Operators generally maintained both consistent rates of production and reclamation. Based on the topics evaluated this year, North Dakota has an effective program with no issues in need of corrective action.

Overview of Public Participation and Outreach Efforts

Both North Dakota and OSMRE continue to solicit public comment and input on individual applications and the regulatory program at large. North Dakota staff participated in several public hearings and meetings.

Major Accomplishments and Innovations

During EY2022, the updated Revegetation Success Guidelines document was approved and adopted by the Commission. ND Regulatory staff worked with Falkirk Mine and Rainbow Energy to replace performance bonds prior to sale of the Coal Creek Power Station.

Off-Site Impacts/Enforcement Actions

During EY2022, there were no off-site impacts, no cessation orders, and three Notices of Violation (NOV) were issued. NOV 2101 was issued to Westmoreland Beulah Mining LLC (WBM) for a water management violation at the Beulah Mine. NOV 2201 was issued to WBM for another water management violation at the Beulah Mine. NOV 2202 was issued to BNI Coal Ltd for violation of a special permit condition at the Center Mine.

Reclamation Success

Currently in North Dakota, a total of 132,584 acres have been permitted, with approximately 89,583 acres disturbed by mining activity to date. Of these disturbed acres, approximately 61,311 acres have been backfilled, graded, top-soiled and seeded; or 68% of the lands disturbed have been reclaimed to the point of establishing vegetation. Of the 61,311 acres that have been backfilled, graded, top-soiled and seeded, 17,360 acres (28%) have received final bond release.

Customer Service

The North Dakota Program responded to several landowner concerns and requests for information, including coordinated meetings with landowners and mine personnel, and at least five inspections conducted at the request of a landowner. No formal citizen complaints were submitted during EY2022, however, a citizen who filed a complaint in 2019 has requested a formal hearing to be conducted during EY2023.

Maintenance of the Approved Program

North Dakota is preparing and anticipates submittal of two State Program Amendments.

Oversight Inspections

NDPSC conducted 80 complete inspections and 306 partial inspections during EY2022, exceeding the required 80 complete inspections and 120 partial inspections. OSMRE completed 3 complete inspections and 4 partial inspections, exceeding the number of required inspections.

Special Study Oversight Topics

No special study oversight topic was selected for EY2022.

OSMRE Assistance

OSMRE awarded the program \$1,019,912, or 64% of the total budget in federal assistance to conduct operations for OSMRE's 2021 fiscal year (July 1, 2021 to June 30, 2022). At the time of this report, the North Dakota Regulatory Program has not yet submitted an application for federal funding for OSMRE's 2022 fiscal year (July 1, 2022 to June 30, 2023). The Fiscal Year 2022 Regulatory Grant Distribution has allocated \$990,417 in funds for the North Dakota Regulatory Program. During the evaluation year, a total of four NDPSC reclamation staff filled student slots at three NTTP classes, and one staff filled a slot for a TIPS course. OSMRE's library services received no requests for information. The ND AML Program requested the use of OSMRE's downhole camera, which was delivered to the state April 23rd, 2021 and was returned on Sept. 10, 2021.

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Cover Page Photograph: Truck and shovel fleet securing operations prior to a scheduled blast at the Center Mine on Sept. 9, 2021.

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 the OSMRE to oversee the implementation of, and provide federal funding for, the state regulatory programs and abandoned mine land programs that have been approved by the Secretary of the Interior as meeting the minimum standards specified by SMCRA.

In addition to conducting oversight of approved state programs, the OSMRE provides technical assistance, staff training, financial grants and assistance, as well as management assistance to each state program. This report contains summary information regarding the North Dakota Regulatory Program and the effectiveness of the North Dakota Regulatory Program in meeting the applicable purposes of SMCRA as specified in Section 102. This report covers the 2022 Evaluation Year (EY) July 1, 2021 to June 30, 2022.

Detailed background information and comprehensive reports for the program elements evaluated during the EY are available for review and copying at the OSMRE, Denver Field Division (DFD), Casper Area Office (CAO), 100 East B St., Room 4100, Casper, WY 82601. To arrange an appointment time, contact Jeff Fleischman via telephone (307) 261-6550 or email jfleischman@osmre.gov. The reports are also available on the OSMRE oversight documents website at <http://odocs.osmre.gov>. Adobe Acrobat Reader® is needed to view these documents. Acrobat Reader® is free and can be downloaded at <http://get.adobe.com/reader>.

Follow these steps to gain access to the document of interest:

1. Select North Dakota from the drop-down box labeled “State”. Also select 2022 as the “Evaluation Year”, and then click “Submit”. The search can be narrowed by choosing selections under the “Keyword” or “Category” headings.
2. The oversight documents and reports matching the selected state and evaluation year will appear at the bottom of the page.
3. Select “View” for the document that is of interest and the report will appear for viewing, saving, and/or printing.

The following acronyms are used in this report:

AOC	Approximate Original Contour
ASRS	American Society of Reclamation Sciences
AVF	Alluvial Valley Floor
AVS	Applicant Violator System
BLM	Bureau of Land Management
CAO	OSMRE’s Casper Area Office

CO	Cessation Order
DFD	OSMRE's Denver Field Division
DOJ	Department of Justice
DSU	Dickinson State University
EY	Evaluation Year
FAM	OSMRE's Federal Assistance Manual
GIS	Geographic Information System
GPS	Global Positioning System
IMCC	Interstate Mining Compact Commission
IT	Industrial Technology
LEC	Lignite Energy Council
NDCC	North Dakota Century Code (Law)
NDAC	North Dakota Administrative Code (Rules)
NDDH	North Dakota Department of Health
NDPSC	North Dakota Public Service Commission
NDSU	North Dakota State University
NOV	Notice of Violation
NTTP	National Technical Training Program
OMB	Office of Management and Budget
OSMRE	Office of Surface Mining Reclamation and Enforcement
PA	Performance Agreement
PSC	Public Service Commission
REG-8	OSMRE Directive REG-8
SMCRA	Surface Mining Control and Reclamation Act of 1977
SPGM	Suitable Plant Growth Material
TDN	Ten-Day Notice
TIPS	Technical Innovation and Professional Services
WR	OSMRE Western Region (Unified Regions 5, 7, 8, 9, 10 and 11)

II. OVERVIEW OF COAL MINING INDUSTRY IN NORTH DAKOTA

Coal is the most abundant fossil fuel in the world. The United States holds the world's largest estimated recoverable reserves of coal at approximately 27%. Based on current production levels, the United States has enough estimated recoverable reserves of coal to last more than 200 years. Coal is classified into four main types or ranks (anthracite, bituminous, subbituminous, and lignite), depending on the amounts and types of carbon it contains and on the amount of heat energy it can produce. North Dakota has approximately 25 billion tons of recoverable coal reserves consisting primarily of lignite.

The coalfields of North Dakota are located in the Williston Basin, which is part of the Great Plains Coal Province. They underlie approximately 40 percent of the State's surface area. Most of the coal is produced commercially from two mining districts located in the western part of the State: (1) Beulah-Zap and (2) Hagel. Recoverable coal reserves in North Dakota are generally classified as lignite, which is characterized by low heating value (6,500 BTU), average high moisture content (40 percent) and low sulfur content (less than one percent). The mineable beds in the Williston Basin vary in thickness from three to 30 feet. The relatively shallow beds allow for economic stripping ratios ranging from 1.5:1 to 11:1. The low sulfur content of North Dakota lignite contributes to the general lack of acidification problems experienced at current and historic coal mining operations within the State. All actively producing coal mines in North Dakota are currently large-scale surface operations and provide for mine-mouth or regional electrical generation facilities and a nearby coal gasification facility.

The first commercial mines in North Dakota opened in Morton County in 1873. As the railroad developed across the State, demand for coal increased and was supplied by underground mines. North Dakota was one of the first states to shift from underground to large-scale commercial surface mining. By 1927, 40 percent of the State's production was by surface mining methods, compared to two percent for the nation. By 1959, eighty six percent of North Dakota's coal production was from surface mines, and since 1966, the State's total production has been derived from this mining method. In 1884, North Dakota produced 35 thousand tons of lignite; in 2021, it produced approximately 26.7 million tons (Appendix 1, Table 1) using modern surface mining methods and equipment.

Coal mining in North Dakota is concentrated around the western half of the State. This area consists of approximately 28,000 square miles and has an estimated total resource of 350 billion tons of coal, or about two-thirds of the total lignite reserves of the United States. North Dakota has a demonstrated recoverable coal reserve base of 25 billion tons. North Dakota enacted its first reclamation law in 1969 and major revisions to that law followed in 1973 and 1975. A new law was enacted by North Dakota in 1979 that is consistent with SMCRA.

According to 2019 data from the Department of Agricultural Economics at North Dakota State University, the lignite industry is North Dakota's fifth largest industry, accounting for \$5.4 billion in gross business volume within the state. It is estimated that the lignite industry directly employs an estimated 3,623 people and indirectly employs another 9,500 people. The coal industry's substantial impact on the State's population and economy has secondary in-state multiplier effects. Most of the State's coal production also fuels electric power generation plants within North Dakota that supply most of the State's electrical needs.

North Dakota currently has six surface coal mining operations, with a total of 20 permits. Fifteen permits are actively mining while the remaining five are exclusively in reclamation. The

state began EY2022 with 24 active permits and reported another four exploration sites with permits. With the approval of Permit NACT-1801, at the Freedom Mine, Permits NACT-8102, NACT-8203, NACT-8401, NACT-8503 and NACT-8601 have all been consolidated into a single permit. Permit NACT-1801 was approved during EY2021, on Feb 17, 2021, however, the five permits it consolidated did not close until the first quarter of EY2022. Permit NACT-8503 officially closed on Aug. 4th, 2021, Permit NACT-8102 closed on Aug. 18, 2021, and Permits NACT-8203, NACT-8401, and NACT-8601 all closed on Sept. 22, 2021. From the time NACT-1801 was opened until the five consolidated permits were closed, 5,272 acres were double-permitted, meaning the same acreage was encompassed by two permits. In calculations of total permitted acreage, those 5,272 acres are only considered once in this report. A total of 132,584 acres are currently permitted and all those acres are bonded in North Dakota (Appendix 1, Tables 2 and 6).

Approximately 89,583 of permitted acres have been disturbed by mining operations, and 61,311 of those acres have been backfilled, graded, top-soiled and seeded to achieve the intended post-mining land use. Of the 61,311 acres that have been backfilled, graded, top-soiled and seeded, 17,360 acres have received final bond release. Of currently permitted acres, 2,681 have previously received Phase I bond release. No currently permitted acres have previously received Phase II bond release.

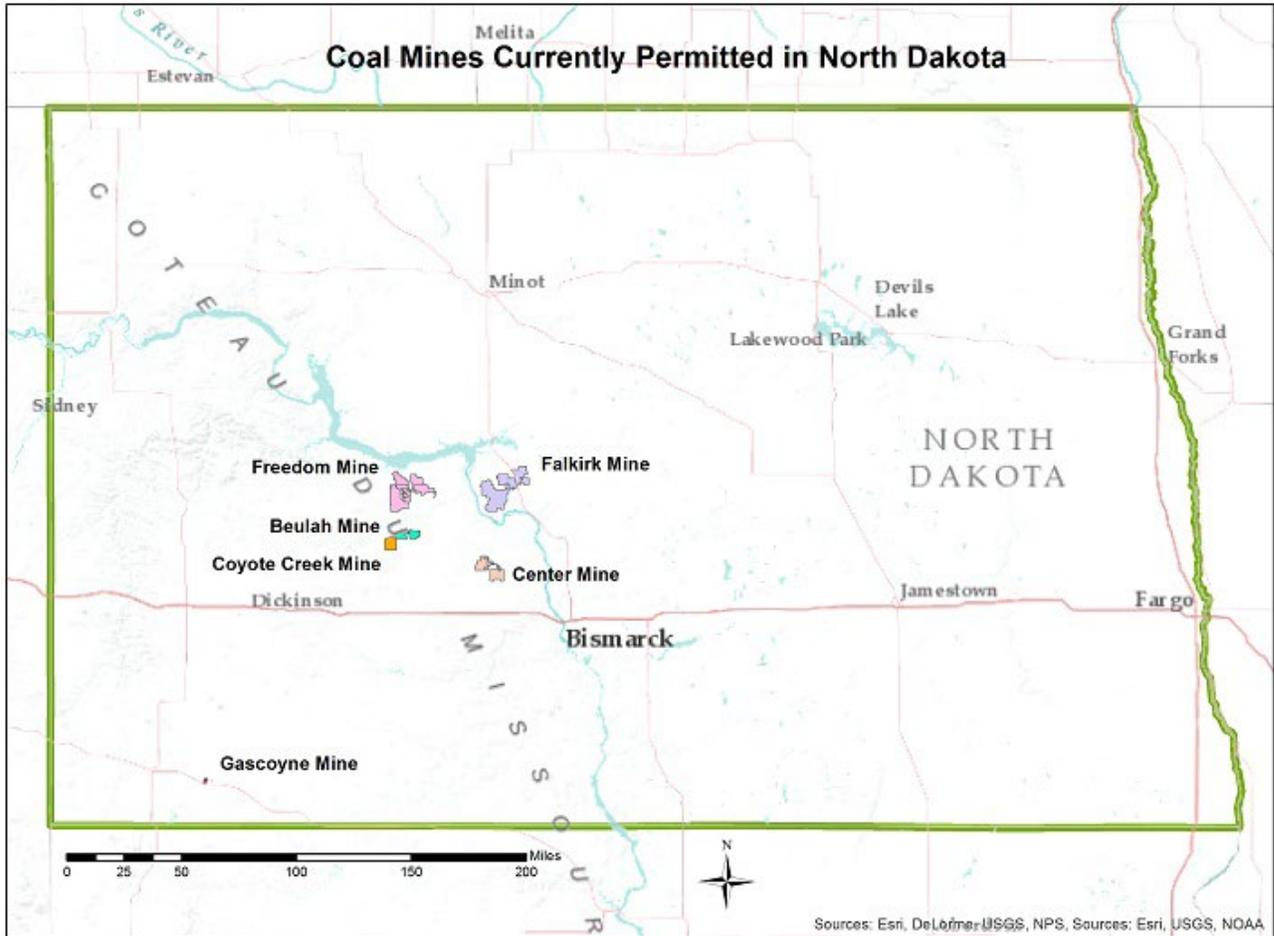


Figure 1: Map of Permitted Coal Mines in North Dakota

III. OVERVIEW OF THE PUBLIC PARTICIPATION AND OUTREACH EFFORTS

The term “public” includes all stakeholders (i.e., citizenry at large, industry, other federal, state, or local agencies, and environmental groups). Opportunities for public participation occur at significant points in the North Dakota Regulatory Program and involve the ability of the public to:

- Request that areas be designated as unsuitable for mining;
- Receive notification by advertisement of permit and significant revision application receipt;
- Review permit and revision applications;
- Contest the decision of the Commission on permit applications and revisions;
- Request an inspection of a mine site;
- Submit blasting, groundwater well, and/or general permit complaints if public believes a violation of regulations is taking place;
- Object to proposed bond releases;
- Initiate civil suits; and

- Petition to initiate rulemaking.

The public can also access the OSMRE Annual Oversight Reports and Performance Agreements via the internet at the OSMRE Oversight Documents website at <http://odocs.osmre.gov/>. The Introduction section of this report details how to access information using this website.

A. OSMRE

The OSMRE-DFD provides for transparency in the oversight process by conducting outreach to stakeholders and encouraging public participation throughout the OSMRE-DFD's annual oversight activities.

Each evaluation year, the OSMRE-DFD solicits input from the public and interested parties to comment on oversight and provide suggestions for potential oversight evaluation topics. Sharing of information with the public is highly encouraged by both the OSMRE and the State. The public may include a variety of stakeholders, including, but not limited to; citizenry at large, other federal, state, or local agencies, or environmental groups. OSMRE's public solicitation for comment on the 2022 evaluation year was distributed on March 2nd, 2021, and OSMRE's public solicitation for comment on the 2023 evaluation year was distributed on March 1st, 2022. To be included in future solicitations, please make the request by contacting the OSMRE, Denver Field Division (DFD), Casper Area Office (CAO), at 150 East B St., Room 1018, Casper, WY 82602.

B. North Dakota

The North Dakota Public Service Commission (NDPSC) is the State agency charged with the responsibility for the permitting and regulation of the coal mining industry in North Dakota. North Dakota continues to solicit public comment and input on individual projects and the regulatory program at large. North Dakota mining companies publish notices for proposed permit revisions in local and state newspapers and the NDPSC places notices on its website and solicits public comment and requests for public meeting participation.

The NDPSC encourages public participation through public meetings, press contacts, and by responding to public inquiries. The NDPSC commonly hosts, or participates in a variety of public meetings, conferences, and workshops.

For new or revised permits, NDCC 38-14.1-18 requires that applicants filing for a new permit or making significant changes to an existing permit advertise the ownership, location and boundaries of lands proposed to be affected by the permit or permit revision, and to identify where the application will be available for public inspection. The advertisements must be posted in applicable county newspapers and other daily newspapers of general circulation in the locality of the mining operation at least once a week for four consecutive weeks. A notice of the opportunity to submit comments or objections is also required to be sent to all owners of surface rights of lands within the permit area. Any person with an interest that may be adversely

affected has the right to file written comments or objections and may request an informal conference with the NDPSC. Further clarification of public notice requirements for new permits and permit renewals can be found at NDAC 69-05.2-10 and NDAC 69-05.2-11.

For bond release applications, NDCC 38-14.1-17 requires that applicants filing for release of all, or part of a performance bond advertise the location and number of acres affected, the permit and date approved, the amount of bond filed, and the amount sought for release, the types and approximate dates of reclamation performed, and the right to file written objections and to request a public hearing or informal conference with the NDPSC. The advertisements must be posted in applicable county newspapers and other daily newspapers of general circulation in the locality of the mining operation at least once a week for four consecutive weeks. Surface owners and county officials are also provided the opportunity to participate in bond release inspections. The requirements for bond release notification are further clarified by NDPSC Policy Memo 9.

During the 2022 evaluation year, the North Dakota Regulatory Program participated in the following public meetings, conferences, workshops or other events involving the press or public notification:

- Monthly interagency (OSMRE, BLM, USFWS, PSC) conference calls regarding federal coal leases and mine plan approvals for the Center, Freedom, Coyote Creek and Falkirk Mines.
- Interstate Mining Compact Commission (IMCC) Midyear meeting was virtual, and the Annual meeting was held in Lexington, KY.
- OSMRE/Western States Meeting (Virtual)
- Annual NDSU/DSU Reclamation Workshop
- Miscellaneous meetings with North Dakota Game & Fish and North Dakota Department of Water Resources.
- North Dakota staff responded to several Freedom of Information Act (FOIA) requests for information.
- Lignite Energy Council (LEC) Quarterly & Midyear Virtual Meetings
- Lignite Energy Council (LEC) Annual Meeting was in person
- American Society of Reclamation Sciences (ASRS) Annual Meeting
- North Dakota Industrial Commission Hearing on Carbon Sequestration
- Staff participated in several professional related meetings (Rangeland, Geological Society)

The NDPSC maintains a web site at: <http://www.psc.nd.gov> that includes links to information on state laws and rules, interpretive documents, formal notices, consumer information, and a list of mine operators.

OSMRE's programmatic reviews of the North Dakota program indicate that the NDPSC is adhering to the State's policies and procedures regarding opportunities for public participation in all phases of their reclamation program.

IV. MAJOR ACCOMPLISHMENTS AND INNOVATIONS

Over the past year, the OSMRE monitored North Dakota's performance in meeting the goals and objectives of the approved state program. North Dakota's regulatory program is handled by a relatively small number of staff (Appendix 1, Table 8) considering the amount of land mined and reclaimed each year. The NDPSC Reclamation Division staff members that review permit and revision applications also carry out the compliance inspections and evaluate bond release applications. This allows staff to remain very familiar with the ongoing field operations and approved mining and reclamation plans. The NDPSC has a very good working relationship with their customers that include industry, landowners, citizen groups, and other governmental agencies, including the OSMRE. The Reclamation Division carries out its duties using the appropriate technical expertise and with a high level of professionalism. OSMRE has determined that, for EY2022 North Dakota has been successful in implementing its regulatory mine land program. The OSMRE looks forward to working cooperatively with North Dakota during the next year.

The Reclamation Division continues to work closely with mining companies and encourages the submittal of permit related applications in an electronic format. All active permits for the Coyote Creek, Falkirk and Freedom Mines, and three of the six permits at the Center Mine are all in an electronic format. The only permits that remain in a paper format are: BNCR-8202, BNCR-8602, BNCR-8106 at the Center Mine, KRGC-8101 at the Gascoyne Mine and KRSB-8802 at the Beulah Mine. Much of the monitoring data submitted by the mining companies is now submitted in an electronic format. Most incoming correspondence is also scanned and filed electronically using a structure that is very similar to the paper filing system.

The following accomplishments by the North Dakota Regulatory Program during the 2022 evaluation year are worthy of note:

- The updated Revegetation Success Guidelines document was approved and adopted by the Commission.
- All staff has transitioned back to working in the office since the Covid-19 pandemic.
- Staff worked with the Falkirk Mine and Rainbow Energy to replace Falkirk's performance bonds prior to the sale of the Coal Creek Station from Great River Energy to Rainbow Energy. Falkirk's collateral, surety, and self-bonds were replaced with collateral bonds backed by Irrevocable Letters of Credit.

- The Reclamation Division lost over 100 years of experience during the evaluation year due to retirements. The division became fully staffed again on February 1, 2022 and is in the process of training new hires.

The NDPSC staff continues to implement the program in a professional, cooperative, and fair manner. The Reclamation Division uses new technology to become more efficient and make information more readily available to the public. The NDPSC has the necessary technical expertise for carrying out its functions to ensure that all the requirements of SMCRA are met.

V. SUCCESS IN ACHIEVING THE PURPOSES OF SMCRA

To further the concept of reporting end-results and on-the-ground success, the findings from performance reviews and public participation evaluations are collected by the OSMRE for a national perspective on the number and extent of observed off-site impacts, the number of acres that have been mined and reclaimed to meet bond release requirements for the various phases of reclamation, and the effectiveness of customer service provided by the state. Individual topic-specific reports that provide additional details on how the following evaluations and measurements were conducted are available online at <http://odocs.osmre.gov> or at the Casper Area Office.

A. Off-site Impacts

For the purpose of oversight, a negative off-site impact is defined as anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on people, land, water, or structures outside the permit area. The State program must regulate or control either the mining or reclamation activity, or the resulting off-site impact. In addition, the impact on the resource must be substantiated and be related to mining and reclamation activity. It must be outside the area authorized by the permit for conducting mining and reclamation activities.

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 the NDPSC and the DFD. During EY2022, North Dakota reported that twenty-nine out of twenty-nine (100%) inspectable units were free of off-site impacts. (Appendix 1, Table 5). At the beginning of EY 2022, the total number of inspectable units included twenty active mine permits, five inactive permits, and four exploration sites with permits. Five of the active mine permits closed during the first quarter of EY2022.

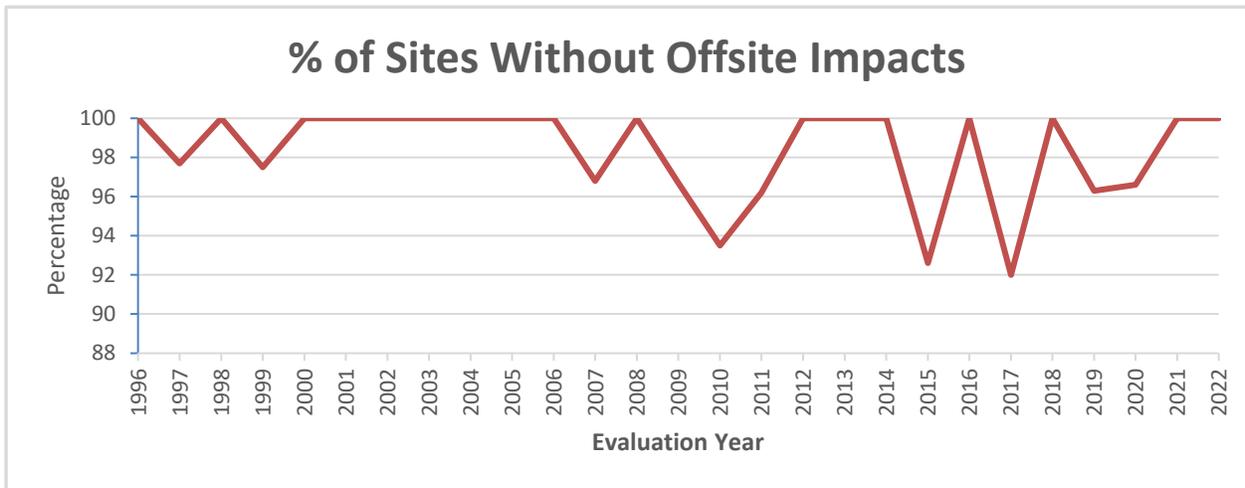


Figure 2: Percentage of sites free of off-site impacts.

Typically, a detailed evaluation of this topic is included as a stand-alone document to accompany this report, however, since no off-site impacts were reported, no such report is available for EY2022.

B. Reclamation Success

The OSMRE Directive REG-8 states that the OSMRE will evaluate and report on the effectiveness of state programs in ensuring successful reclamation on lands affected by surface coal mining operations. Success will be determined based on the number of acres that meet bond release standards and have been released by the state. The approved schedule for release of performance bonds is specified in Section 519 (c) of the Surface Mining Control and Reclamation Act (SMCRA). Further details can be found in CFR30§800.40. OSMRE recognizes three phases of incremental bond release.

As the approved regulatory authority in the state of North Dakota, the Reclamation Division of the North Dakota Public Service Commission (PSC) has chosen to implement a more stringent schedule for the release of performance bonds. This schedule is consistent with SMCRA and is defined in North Dakota Century Code (NDCC) 38-14.1-17. The North Dakota Program allows for incremental bond release in four stages:

ND Phase I – When the permittee completes the backfilling, re-grading, and drainage control in a bonded area, 40% of the bond for an area may be released. *This also meets the requirements for OSMRE Phase I release.*

ND Phase II – After spreading suitable plant growth material or other suitable strata on the re-graded land, 20% of the bond for the area may be released.

ND Phase III – After vegetation is established on the re-graded land, additional bond may be released. *This also meets the requirements for OSMRE Phase II release.*

ND Phase IV – When the permittee has successfully completed all surface coal mining and reclamation operations, and after the 10-year responsibility period for maintaining successful re-vegetation has expired, the remaining bond may be released. *This also meets the requirements for OSMRE Phase III (final) release.*

To maintain consistency in the reporting of bond release statistics from multiple States and Tribes, OSMRE collects and reports bond release information using the three phased schedule defined in CFR30§800.40. When this report refers to Phase I, II and III bond release, it should be assumed that the intended meaning is OSMRE’s 3-Phase schedule for bond release.

Phases of Bond Release of Disturbed Lands (acres) 2011-2022			
YEAR	PHASE I	PHASE II	PHASE III
prior	15,251	10,791	10,778
2011	1113	1136	1136
2012	1407	1698	1698
2013	1219	1219	1219
2014	323	333	333
2015	68	537	537
2016	9	9	9
2017	0	0	0
2018	191	295	295
2019	65	196	196
2020	83	147	147
2021	255	255	255
2022	756	756	756
TOTAL	20,740	17,373	17,360

Figure 3: Phases of Bond Release of Disturbed Lands (acres) from 2011 to 2022.

Data collected after 2010 has undergone additional review utilizing geospatial analysis of the source data. Source: Annual End-of-Year Mine Maps submitted to NDPSC by mine operators.

During EY2022, three bond release packages were approved, allowing for Phase III (final) release of a total of 947.72 acres. Approximately 756.25 of those bond released acres were previously disturbed by mining operations. No active mining or mining support activities took place on the remaining 191.47 undisturbed acres. Bond Release Package No. 5 for Permit BNCR-9401 at the Center Mine, became effective Sept. 17, 2021, releasing all Phases of bond for 43.6 acres. Approximately 34.9 of those 43.6 acres had been disturbed by mining activities. Bond Release Package No. 3 for Permit NAFK-8405 at the Falkirk Mine, became effective May 13, 2022, releasing all Phases of bond for 92.3 acres. Only 22.3 of those acres had been disturbed by mining. Bond Release Package No. 1 for Permit NACT-9001 at the Freedom Mine,

became effective April 11, 2022, releasing all Phases of bond for 811.82 acres. Approximately 699.1 of those acres had been disturbed by mining.

REG-8 further requires that bond release information is collected to measure program performance in the following areas: a. Landform/Approximate Original Contour, b. Land Capability, and c. Hydrologic Reclamation.

Landform/approximate original contour (AOC)

- 1.) AOC achievement is 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. Approximately 23% (20,740 acres) of the disturbed lands (89,583 acres) in North Dakota have received Phase I Bond Release.

Land Capability

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

- 1.) Proper replacement of soil resources is measured by acres of Phase II bond release. Approximately 19% (17,373 acres) of the disturbed lands (89,583 acres) in North Dakota have received Phase II Bond Release.
- 2.) Vegetation stability is measured by acres of Phase II bond release. Acreage released from Phase II bond liability can be documented as having achieved erosion stability. Approximately 19% (17,373 acres) of the disturbed lands (89,583 acres) in North Dakota have received Phase II Bond Release.
- 3.) Achievement of post mining land uses is measured by acres of Phase III (final) bond release. Land capability is demonstrated by the acres for which the approved post mining land uses have been achieved. The acreage released from Phase III (final) bond liability can be documented as having achieved the approved post mining land uses. Approximately 19% (17,360 acres) of the disturbed lands (89,583 acres) in North Dakota have received Phase III (final) Bond Release. Approximately 48% of the reclaimed lands that have been seeded for 10 or more years (42,571 acres) have received final bond release.
- 4.) Successful revegetation is measured by the acres of Phase III (final) 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 Phase III (final) bond release. Approximately 19% (17,360 acres) of the disturbed lands (89,583 acres) in North Dakota have received Phase III (final) Bond Release.

Hydrologic Reclamation

- 1.) Achievement of surface water quality and quantity restoration can be measured by acres of Phase III (final) bond release. Surface water quality and quantity restoration may be measured in terms of acres released from bond liability. Phase III (final) bond release will document that water quality meets surface water quality standards and water quantity is adequate for its intended use. Approximately 19% (17,360 acres) of the disturbed lands (89,583 acres) have received Phase III Bond Release.
- 2.) Achievement of groundwater recharge capacity and ground water quantity and quality restoration can be measured by acres of Phase III (final) bond release. Approximately 19% (17,360 acres) of the disturbed lands (89,583 acres) have received Phase III Bond Release.
- 3.) Achievement of surface water quality and quantity restoration can be measured by acres of Phase III bond release. Bond release will document that the water quality and quantity leaving the mine site meets the applicable standards. Release of Phase III bond liability can be considered to have achieved restoration of this aspect of surface water quality and quantity. To date approximately 19% (17,360 acres) of the disturbed lands (89,583 acres) have received Phase III Bond Release.

It should be noted that neither state nor federal regulations require that a permittee file for bond release at any prescribed time. Therefore, using only bond release statistics to evaluate reclamation success can be misleading. Typically, permittees do not file for Phase II or Phase III bond release until completion of the entire mining operation. As a result, the number of acres actually released from final bond in North Dakota tends to be significantly less than the number of acres that may be eligible for bond release.

Typically, more land is permitted and bonded than is mined. It is common for land that has been permitted and bonded and has not been disturbed by mining activities, to be removed from a permit. This removal of undisturbed land may take place as part of a bond release, or by administrative means, such as a permit revision. Only land disturbed by mining activities should require reclamation activities. The calculation and reporting of which lands have been disturbed by mining activities is largely an interpretation of conditions in the field at the conclusion of any respective evaluation year. These numbers are reported to the ND PSC by mine operators and evaluated using end-of-year mine maps. Over the life of the North Dakota Program, 30,521 acres have received final bond release, but only 17,360 of those acres (57%) were reported as having been disturbed by mining activities.

The OSMRE – Denver Field Division (DFD) also reviewed general trends in the release of bond in North Dakota. Bond release in North Dakota tends to occur in a cyclical nature, with periods of increased bond release interspersed with periods of little to no bond release. The period of 2009 through 2013 saw higher than expected amounts of final bond release, with an average rate

of 2,170 acres released per year. This was followed by a period of less than expected final bond release from 2014 through 2017, which only averaged 261 acres of bond released per year. Final bond release spiked in EY2018 at 813 acres and has leveled out since, with 338 acres in EY2019, 309 acres in EY2020 and 319 acres in EY2021. EY2022 showed an uptake in final bond release with 947.72 acres released. North Dakota has averaged 576 acres of bond release since inception of the state program.

Contemporaneous Reclamation

Neither the Surface Mining Control and Reclamation Act (SMCRA) or federal regulations define the term “contemporaneous”. OSMRE’s REG-8 states that “contemporaneous reclamation should be periodically evaluated by determining if on-the-ground reclamation is following the reclamation plan approved in the permits, specifically focusing on applicable performance standards of the state or tribal program, the detailed timetable for the major steps in the reclamation plan (i.e., backfilling and grading, topsoil redistribution, planting and seeding), and the map showing the sequence of reclamation.” Generally, contemporaneous reclamation refers to the timeliness in which reclamation is occurring.

A total of 132,584 acres are currently permitted and bonded in North Dakota. Over the life of the North Dakota program, approximately 89,583 acres have been disturbed by mining. Of those disturbed acres, approximately 61,311 acres have been backfilled, graded, soiled, and seeded; or 68% of the lands disturbed have been reclaimed to the point of establishing vegetation. The cumulative ratio of lands reclaimed to vegetation (graded/soiled/seeded) vs. disturbed lands has steadily risen from 57% in EY 1999 to 69% in EY 2018. The ratio dropped to 68% in EY2020 and remained steady at 68% through EY2021 and EY2022. This is an indication that reclamation efforts remain steady and are generally consistent with rates of disturbance. The DFD’s 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.

As stated above, the standard for determining if mines are meeting their contemporaneous reclamation obligations is determined by compliance with permit commitments. This evaluation is conducted annually, and all coal mines evaluated were found to be complying this evaluation year.

As allowed for in REG-8, Field Offices may conduct specific evaluations and report on individual performance standards. Thus, a measurement for contemporaneous reclamation would be a comparison of the rate at which lands are reclaimed to the point of establishing vegetation (re-graded, soiled, and seeded) to the rate of disturbance. Re-grading spoil, re-application of top-soil and establishment of vegetation are precursors for eligibility for Phase II bond release. By comparing the rate at which disturbed lands are reclaimed to vegetation (re-

graded, soiled, and seeded) to the rate of disturbance, OSMRE can evaluate contemporaneous reclamation by tracking the conditions required to be eligible for Phase II bond release.

EVAL. YEAR	ACRES DISTURBED	Cumulative Acres Disturbed	DISTURBED ACRES RECLAIMED to VEGETATION (graded/soiled/seeded)	Cumulative Disturbed Acres Reclaimed to Vegetation	Annual RATIO OF RECLAIM VS DISTURB	Cumulative RATIO OF RECLAIM VS DISTURB
1999	1,725	43,484	2,270	24,759	1.32	0.57
2000	1,913	45,397	1,518	26,277	0.79	0.58
2001	1,738	47,135	1,998	28,275	1.15	0.60
2002	2,036	49,171	1,610	29,885	0.79	0.61
2003	2,242	51,413	1,678	31,563	0.75	0.61
2004	1,772	53,185	1,775	33,338	1.00	0.63
2005	1,796	54,981	1,458	34,796	0.81	0.63
2006	2,004	56,985	1,463	36,259	0.73	0.64
2007	2,085	59,070	1,787	38,046	0.86	0.64
2008	2,045	61,115	1,934	39,980	0.95	0.65
2009	1,873	62,988	2,322	42,302	1.24	0.67
2010	2,429	65,417	851	43,153	0.35	0.66
2011	1,654	67,071	1,153	44,306	0.70	0.66
2012	2,530	69,601	1,208	45,514	0.48	0.65
2013	2,413	72,014	1,692	47,206	0.70	0.66
2014	1,561	73,575	2,005	49,211	1.28	0.67
2015	1,908	75,483	1,902	51,113	1.00	0.68
2016	2,530	78,013	1,468	52,581	0.58	0.67
2017	2,009	80,022	1,990	54,571	0.99	0.68
2018	1,685	81,707	1,584	56,155	0.94	0.69
2019	1,778	83,485	1,371	57,526	0.77	0.69
2020	2,091	85,576	963	58,489	0.46	0.68
2021	2,299	87,875	1,094	59,583	0.48	0.68
2022	1,708	89,583	1,728	61,311	1.01	0.68

Figure 4: North Dakota Reclamation Summary

Source of data: ND-PSC

Figure 4 (above) provides the actual acres disturbed and reclaimed to vegetation (graded/re-soiled/seeded) annually for all mines in North Dakota. The cumulative reclamation to disturbance ratio has remained relatively steady and is currently 0.68, as indicated on the chart. This ratio indicates that 68 percent of the cumulative acres disturbed in North Dakota have been reclaimed to the point of being backfilled, graded, and seeded. The cumulative ratio of lands reclaimed to the point of establishing vegetation to lands disturbed by mining has steadily increased over the past 24 years from 0.57 to its current ratio of 0.68. This reflects favorably on the contemporaneous nature of reclamation efforts in North Dakota.

Figure 5 shows that the rate of disturbance (slope of the dark blue line) at mines in North Dakota has remained very consistent since 1999. The rate of acres being graded/soiled/seeded (slope of the red line) has remained very consistent with the rate of disturbance, indicated by the fact that

the red and blue lines are nearly parallel. Rates for the three phases of bond release of disturbed lands are included for reference. The period of 2013 until the present has experienced a slowdown in the rate at which all phases of final bond release are achieved, as indicated by the slope (flat) of the green, purple, and orange lines in Figure 5. However, the rate at which lands are graded, soiled, and seeded continues to parallel the rate that lands are disturbed, demonstrating that even though there has been a significant reduction in the amount of bond released in recent years, reclamation is occurring at a contemporaneous rate. Therefore, the amount of land that is potentially eligible for bond release is growing at a rate that is consistent with the rate of mine disturbance.

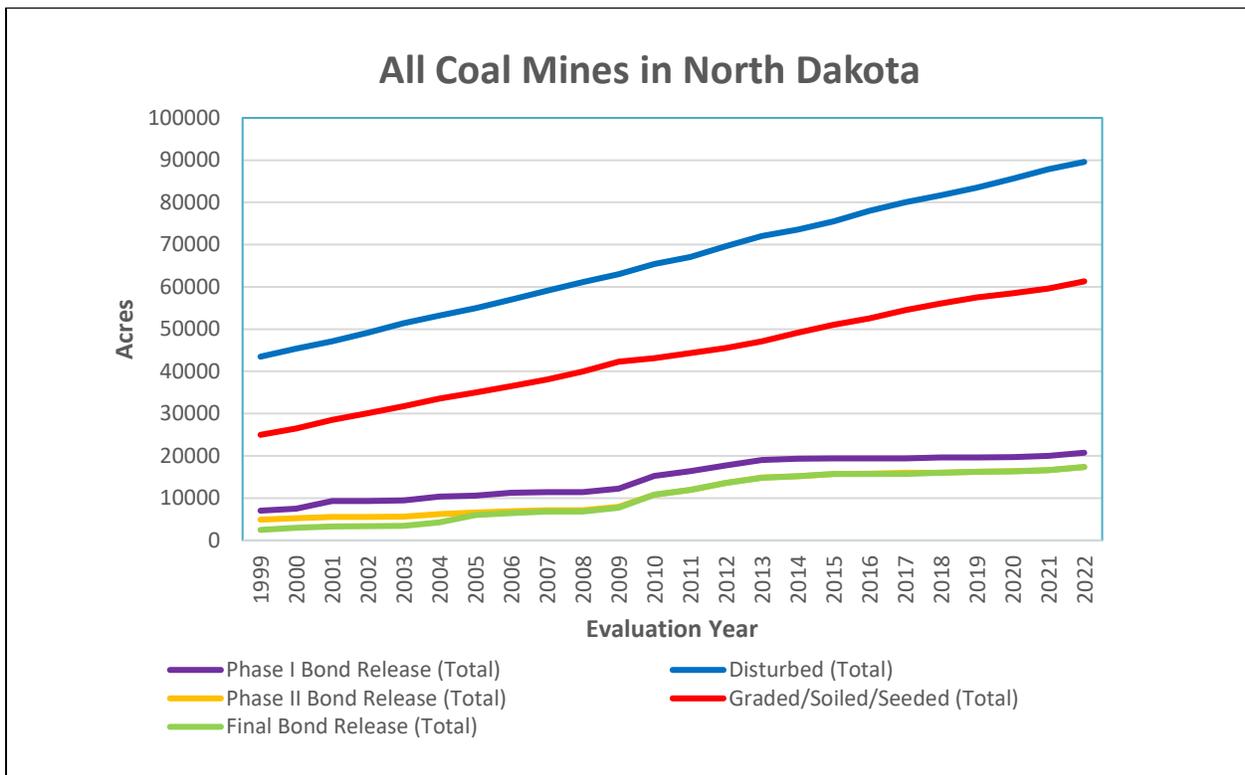


Figure 5: Disturbance, Reclamation and Bond Release at Coal Mines in North Dakota

Source of data: ND-PSC

Figure 5 (above) plots the number of acres disturbed, acres graded/soiled/seeded and Final Bond Release of disturbed acreage. Acres of Phase I and Phase II bond release of disturbed acreage are included for reference. The rate (change over time) of disturbance or reclamation is indicated by the slope (rise over run) of each line. Ideally, the line showing the rate of reclamation should parallel the line showing the rate of disturbance.

Note how the purple, orange, and green lines, representing Phase I, II and III bond release respectively, parallel each other closely. There is slightly more Phase I bond (2,681 more acres) released than Phase II or III, primarily due to the greater financial incentive (release of 40% of

bond) and the relatively short time required for such bond release. Phase I bond release requires the completion of backfilling and grading to the approximate original contour and can be completed in a relatively short time period, when compared to requirements for Phase II and III bond release. Depending on the established post mining land use, Phase II release may require collection of multiple years of crop production data to verify successful revegetation, and Phase III release requires completion of all reclamation activities, including all Phase II requirements and completion of a ten-year liability period for establishment of vegetation. Note how the orange and green lines merge around 2005, with almost all Phase II and Phase III bond being released concurrently.

Mechanisms are in place to ensure that land disturbed by surface coal mining operations will be reclaimed. SMCRA requires that every disturbed acre in a surface coal mine be bonded to ensure that sufficient funds will be available to reclaim that land if an operator fails to fulfill their responsibilities. The DFD's 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.

A detailed evaluation of this topic is included as a stand-alone document to accompany this report entitled, *Reclamation Success in North Dakota Evaluation Year (EY) 2022*. This document can be found on OSMRE's ODOCs website: <https://www.odocs.osmre.gov/>.

C. Customer Service

One of the requirements of a regulatory authority for reclamation programs implemented under SMCRA is to develop and encourage open communication with not only the industry being regulated, but also the citizenry and communities in the coalfields around the mines. To accomplish this requirement, SMCRA programs must involve the public in all phases of coal mine permitting. North Dakota's program provides for public involvement of permitting actions when a new application is received, when a permit is renewed, when any significant permit revision is proposed and when a phase of reclamation is completed to the point of requesting bond release from a tract of reclaimed land. The provisions of the North Dakota program that extensively describe these procedures can be found at sections NDCC 38-14.1-18 (North Dakota Century Code) and NDAC 69-05.2-10 and 69-05.2-12 (North Dakota Administrative Code).

The Reclamation Division provided the required notices to landowners and other interested parties for significant revision applications, renewals, and bond release applications. Staff encourages participation in bond release inspections by the landowners and county officials.

The NDPSC 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 North Dakota regulatory program, reclamation, or government activities.

In addition to the services provided to the general public, the regulatory program staff and management also contribute to task forces and ad-hoc committees in relation to inter-agency 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.

The North Dakota Program addressed the following landowner concerns or customer service-related issues during EY2022:

- 7/28/21: The PSC conducted an inspection in conjunction with landowners to discuss concerns related to Pond P-2-1 and Diversion 2-1 in Section 2 of Permit BNCR-8602 at the Center Mine. The landowners own the adjacent land to the east and south and intend to buy the land from the mine once it is bond released since they have the first right of refusal. The landowners would like the diversion reclaimed and keep the pond as a permanent structure.
- 9/21/21: The PSC met with the landowner regarding land in the SW1/4 of Section 7 in Permit KRSB-8802 at the Beulah Mine. The meeting was in response to a letter from the landowner expressing concerns regarding the reclamation of his land in the SW1/4 of Section 7, T143N, R87W.
- 10/6/21: The PSC conducted an inspection and met with two landowners to discuss concerns regarding the Falkirk Mine. The first landowner owns land in the N1/2 N1/2 of Section 1, T144N, R84W in Permit NAFK-9503. The landowner is currently in negotiations with the mine regarding the sale of his land and is concerned about the mine starting SPGM removal to build a sediment pond prior to concluding those negotiations. The second landowner owns land in the SW1/4 of Section 30, T145N, R82W in Permit NAFK-9503. The landowner was concerned about the SPGM respread depths, lack of rock picking, compaction, and unevenness on his land.
- 4/11/22: The PSC conducted an inspection in the N1/2 of Section 12 in KRSB-8802 at the Beulah Mine at request of the landowner. Questions and concerns were expressed about erosion and settling on the land, and property access issues in the N1/2 of Section 21 and the SW1/4 of Section 16 in KRSB-8603.
- 5/25/22: The PSC met with the mine and landowners to look at property access in the N1/2 of Section 21 and the SW1/4 of Section 16 in KRSB-8603.

- 6/8/22: The PSC conducted an off-site inspection at the request of a landowner in the NW1/4 of Section 34, T146N, R88W. The property is adjacent to Permit NAFK-9501 at the Freedom Mine. The landowner alleged that erosion occurred on his property from mining related activities adjacent to his land.
- 6/28/22: The PSC conducted an off-site inspection with the landowner in the NW1/4 of Section 34, T146N, R88W. The property is adjacent to Permit NAFK-9501 at the Freedom Mine. The landowner alleged that erosion occurred on his property from mining related activities adjacent to his land. The landowner had filed a complaint in 2019, but did not want to proceed to a formal hearing.

The PSC will continue to provide the opportunity for public participation in permitting (including revisions) and bond release processes.

VI. NATIONAL PRIORITY AND GENERAL OVERSIGHT TOPIC REVIEWS

National priority reviews and general oversight topic reviews can be located and reviewed at the OSMRE’s website as listed at the Introduction (page 4) of this report. Individual reports prepared by the OSMRE are part of the oversight process of each state and contains findings and details regarding the evaluation of specific elements of the state program.

A. National Priority Reviews

National Priority Reviews are oversight topic reviews selected by the OSMRE to review nationwide. There were no National Priority Reviews this evaluation year.

B. General Oversight Topic Reviews

General Oversight Topic Reviews are conducted as specified in the North Dakota Performance Agreement. For EY2022, CAO has elected to evaluate the following topics:

Maintenance of the Approved Program

North Dakota is in the process of drafting two proposed program amendments and expects to submit them soon.

The first proposed amendment will include updating the surface mining regulations to:

- Increase the time in which an informal hearing must be held from thirty to forty-five days of receipt of a request.
- Increase the time to submit permit renewal applications from 120 days to 180 days before the expiration of the permit.

- Change the name of ND Department of Health to ND Department of Environmental Quality.
- Replace all references to the State Engineer with Department of Water Resources.

The second proposed amendment will be a rule change to the surface mining regulations to allow for real property collateral bonding.

State Inspection Frequency

Using federal programs as a guide, North Dakota is required to conduct an average of at least one partial inspection per month and one complete inspection per calendar quarter for all active, permanent program permits. Inactive, permanent program permits also require an average of at least one complete inspection per calendar quarter, but only as many partial inspections as are necessary to ensure effective enforcement of the regulatory program. Initial program sites require at least one complete inspection every 6 months. At the beginning of EY2022, North Dakota reported a total of 25 permanent program permits, consisting of 20 active and 5 inactive permits. North Dakota no longer has any initial program sites. The State also reported four exploration inspectable units. There is no required number of inspections for exploration sites. Since five of the active permits were consolidated into one larger permit, during EY2021, inspections were only required for 15 active and 5 inactive permits, during EY2022. The total number of State inspections required for EY2022 is 80 complete inspections and 120 partial inspections.

The NDPSC continues to conduct frequent and thorough inspections. North Dakota conducted 60 complete inspections and 267 partial inspections on all active mine sites during this evaluation year. North Dakota also conducted 20 complete inspections and 36 partial inspections on all inactive mine sites during this evaluation year. An additional three complete inspections were conducted on exploration sites. In total, the state conducted 80 complete inspections and 306 partial inspections during EY2022. This exceeds the number of inspections required and helps to demonstrate the State program's commitment to effective and thorough oversight of coal mining activities within the State of North Dakota.

The NDPSC achieved all required inspections despite travel restrictions resulting from the COVID-19 pandemic. In conjunction with individual operators, NDPSC inspectors adhered to State and Federal safety guidelines, including social distancing, the use of face coverings and elevated hygiene, and limiting vehicle occupancy to one person during inspections.

State Enforcement Actions

During EY2022, North Dakota inspectors issued no cessation orders, but did issue the following NOVs:

NOV 2101 was issued to Westmoreland Beulah Mining (WBM) LLC on August 18, 2021 for a water management violation on Permit KRSB-8603 at the Beulah Mine. While reviewing flyover photos taken in June of 2021, PSC personnel discovered approximately 1.3 acres of respread and revegetated suitable plant growth material (SPGM) impacted by water transported soil. A ground inspection of the area was conducted on July 27, 2021. WBM was cited for: failure to protect reclaimed area to effectively prevent sediment deposition, failure to install and maintain sediment control measures, failure to control or prevent erosion from a dragline walkway corridor, and failure to install and maintain sediment control measures. A civil penalty of \$1,750 was issued. Specified remedial actions were completed and WBM did not contest the NOV. NOV 2101 was terminated on Oct 11, 2021.

NOV 2201 was issued to Westmoreland Beulah Mining (WBM) LLC on May 25, 2022 for a water management violation on Permit KRSB-8603 at the Beulah Mine. Pumping water from the Gold Pit watershed into the watershed controlled by Pond 81 caused a breach of the Pond 81 embankment, resulting in an uncontrolled discharge into an undisturbed drainage in Section 15. The discharge also exceeded the maximum total suspended solids allowed by the NDPES permit. WBM was cited for: failure to prevent excessive suspended solids from streamflow, failure to provide adequate storage for sediment and surface water for the Gold Pit area, and failure to maintain sediment ponds. On July 22, 2022, WBM sent a request to modify the abatement time related to NOV 2201. The Reclamation Division approved the request on July 26, 2022. The NOV was modified again on August 23, 2022 to add two weeks to the construction time for the first pond.

NOV 2202 was issued to BNI Coal Ltd on May 25, 2022 for violation of a special permit condition on Permit BNCR-9702 at the Center Mine. A special condition added to Permit BNCR-9702 with Revision 42 prohibits overburden and coal removal until mine plan approval is received from OSMRE. BNI Coal Ltd violated this provision by removing approximately 275,000 cubic yards of overburden from the federal coal tract in the NE ¼ of Section 20. BNI completed the specified remedial actions and did not contest the NOV. A civil penalty of \$5,000 was issued on July 27, 2022. The civil penalty was paid on August 2, 2022, closing the violation.

OSMRE Oversight Inspection Activity

OSMRE conducted three complete oversight inspection and four partial oversight inspections during EY2022. The three complete inspections were conducted at the Center Mine for Permits BNCR-1101, BNCR-9702 and at the Coyote Creek Mine for Permit NACC-1302.

Partial inspections were also conducted at the Center Mine for Permits BNCR-9702, BNCR-8602, BNCR-8106, and BNCR-8202. The inspection of Permit BNCR-9702 was considered a short-notice inspection, with less than 24-hour advance notice given to the NDPSC. The partial

inspection at Permit BNCR-9702 was in response to PSC issuance of NOV 2202, which cited a special permit violation involving federal coal.

No Ten-Day Notices (TDNs) or Cessation Orders (COs) were issued by the OSMRE during EY2022. NDPSC personnel chose to accompany OSMRE during all inspections.

OSMRE Inspections

EY2020 Inspections Conducted	EY2020 Inspection Target	Percent Target Inspections Completed
7	6	100%

Inspection Types

Complete	Partial	Focused	Joint	Non-Joint	Short-Notice
3	4	0	7	0	1

C. Special Study Topics

In addition to National Priority Reviews and General Oversight Topic Reviews, OSMRE also conducts reviews of special study topics. These reviews address topics of special interest and are commonly the result of requests from the public that OSMRE review or investigate a particular issue regarding the state regulatory program.

OSMRE-DFD did not receive any comments or suggestions for potential oversight topics for the 2022 evaluation year. The global pandemic significantly restricted the ability of OSMRE personnel to travel, and in turn, to conduct field research. In joint discussions with the NDPSC, it was decided no additional special study topics will be evaluated for EY2022.

VII. PROGRAM PROBLEMS AND ISSUES

The OSMRE will initiate a corrective action process that applies when problems are identified with a state’s approved regulatory program, or a state’s actions under that program, that could, if left unaddressed, result in a failure by that state to effectively implement, administer, enforce, or maintain its approved regulatory program.

During the evaluation year, no regulatory program problems or issues were identified by CAO. No regulatory problems were identified that remain uncompleted at the end of the evaluation year.

VIII. OSMRE ASSISTANCE

The OSMRE provides technical assistance and technology support to state regulatory programs at the individual state level on project specific efforts, and at the national level in the form of national meetings, forums, and national initiatives. The OSMRE provides direct technical assistance in project and problem investigation, design, and analysis, permitting assistance, developing technical guidelines, training, and support. The OSMRE initiated a regional Technology Transfer Team in 2004 to support and enhance the technical skills needed to operate regulatory and reclamation programs which each state, including North Dakota, has a representative.

A. National Technical Training Program (NTTP)

During the evaluation year, NDPSC reclamation staff member attended the following NTTP courses:

- One reclamation staff completed the online NTTP class – Effective Writing.
- Two NDPSC reclamation staff attended the NTTP class – Blasting and Inspection (BLI20222).
- One NDPSC reclamation staff attended the NTTP class – Bonding: Administrative and Legal Aspects (BNA20221).

B. Technical Innovation and Professional Services (TIPS)

During the evaluation year, NDPSC reclamation staff member attended the following TIPS courses:

- One reclamation staff member completed the online TIPS course – Autocad Essentials.

The OSMRE's library services did not receive any requests from the NDPSC for references or article reprints.

The ND AML Program requested the use of OSMRE's TIPS downhole camera, which was delivered to the state April 23rd, 2021 and returned to OSMRE on Sept. 10, 2021.

C. Financial

The OSMRE contributed federal funds to help administer and enforce the provisions of SMCRA on federal and non-federal lands pursuant to North Dakota's approved permanent program (approved December 1980) and their cooperative agreement with the OSMRE. The NDPSC uses these funds to conduct permitting, inspection and enforcement actions, and administrative functions using federal and matching state funds. The NDPSC also uses these funds to provide state regulation on surface coal mining operations on both federal and non-federal lands within

the State. For the federal lands portion of the program, North Dakota was granted funding for federal land activities pursuant to the cooperative agreement with the OSMRE. For non-federal lands, the State shares one half the cost of the program with OSMRE. North Dakota elects to use the area-weighted average option to calculate the overall federal funding share for the North Dakota Regulatory Program.

For this past year, the North Dakota Regulatory Program conducted operations for OSMREs 2021 fiscal year (July 1, 2021 to June 30, 2022) with a budget of \$1,593,612. OSMRE awarded the program \$1,019,912, or 64% of the total budget, in federal assistance. At the time of this report, the North Dakota Regulatory Program has not yet submitted an application for federal funding for OSMREs 2022 fiscal year (July 1, 2022 to June 30, 2023). The Fiscal Year 2022 Regulatory Grant Distribution has allocated \$990,417 in funds for North Dakota Regulatory Program. Prior to submission of the grant application, the State requires review and approval from the Public Service Commission, which only convenes once a month. The Fiscal Year 2022 Regulatory Grant application will be reviewed at the next Commission meeting on Aug. 17, 2022. NDPSC maintains a cost-effective program with over 65% of the budget dedicated to salary and benefits for 9.5 Full Time Employees (FTEs).

IX. CONCLUSION

Based on the topics evaluated this year, North Dakota has an effective program with no issues that need corrective action. NDPSC actively pursues public participation and outreach efforts. NDPSC employees demonstrate an appropriate level of technical expertise and take advantage of OSMRE and other training opportunities. They also make use of the latest tools and technology. During EY2022, no off-site impacts occurred, and no violations or cessation orders were issued by either NDPSC or OSMRE. Reclamation is occurring at a contemporaneous rate. NDPSC does an appropriate job of collecting and tracking the data necessary to accurately track and assess reclamation success as well as the contemporaneous nature of that reclamation. Customer service efforts have been demonstrated to be appropriate and scientifically sound. The State conducts the appropriate number of inspections and those inspections are thorough and complete.

APPENDIX 1: Summary of Core Data to Characterize the Regulatory Program

North Dakota Annual Evaluation Report Evaluation Year 2022

The following tables present summary data pertinent to mining operations and regulatory activities under the North Dakota Regulatory Program. Unless otherwise specified, the reporting period for the data contained in the tables is the evaluation year. Other data and information used by OSMRE in its evaluation of North Dakota performance are available for review in the evaluation file maintained by the DFD-CAO.

Because of the enormous variations from state to state in the number, size, and type of coal mining operations and the differences between state programs, the summary data should not be used to compare one state to another.

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TABLE 1

COAL PRODUCED FOR SALE, TRANSFER, OR USE ^A (Millions of short tons)			
Calendar Year	Surface Mines	Underground Mines	Total
2018	29.837	0.000	29.837
2019	27.145	0.000	27.145
2020	26.023	0.000	26.023
2021	26.690	0.000	26.690

^A Coal production is the gross tonnage (short tons) and includes coal produced during the calendar year (CY) for sale, transfer or use. The coal produced in each CY quarter is reported by each mining company to OSM during the following quarter on line 8(a) of form OSM-1, "Coal Reclamation Fee Report." 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 other sources due to varying methods of determining and reporting coal production.

TABLE 2

PERMANENT PROGRAM PERMITS, INITIAL PROGRAM SITES, INSPECTABLE UNITS, AND EXPLORATION														
Mines and Other Facilities	Numbers of Permanent Program Permits and Initial Program Sites								Insp. Units ^{1, 2}	Area in Acres				Total Area
	Permanent Program Permits				Initial Program Sites					Permanent Program Permits (Permit Area)		Initial Program Sites		
	Active	Inactive	Abandoned	Total	Active	Inactive	Abandoned	Total		Federal Lands	State/Tribal and Private Lands	Federal Lands	State/Tribal and Private Lands	
Surface Mines	20	5	0	25	0	0	0	0	25	17,946	114,638	0	0	132,584
Underground Mines	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Facilities	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	20	5	0	25	0	0	0	0	29	17,946	114,638	0	0	132,584
Permanent Program Permits and Initial Program Sites (Number on Federal Lands: 25)				Total Number:		25		Average Acres per Site:				5,303.36		
Average Number of Permanent Program Permits and Initial Program Sites per Inspectable Unit (IU):				Total Number:		1.00		Average Acres per IU:				5,303.36		
Permanent Program Permits in Temporary				Total Number:		0		Number More than 3 Years:				0		
EXPLORATION SITES				Total Number of Sites				Sites on Federal Lands⁴				Exploration Inspectable Units		
Exploration Sites with Permits:				4				0				4		
Exploration Sites with Notices:				0				0				0		
¹ An Inspectable Unit may include multiple small and neighboring Permanent Program Permits or Initial Program Sites that have been grouped together as one Inspectable Unit, or conversely, an Inspectable Unit may be one of multiple Inspectable Units within a Permanent Program Permit. ² Total Inspectable Units calculation includes Exploration Sites Inspectable Units ³ When a Permanent Program Permit or Initial Program Site contains both Federal and State and Private lands, the acreage for each type of land is in the applicable column. ⁴ The number of Exploration Sites on Federal lands includes sites with exploration permits or notices any part of which is regulated by the state under a cooperative agreement or by OSM pursuant to the Federal Lands Program, but excludes exploration sites that are regulated by the Bureau of Land Management														

TABLE 3

PERMITS ALLOWING SPECIAL CATEGORIES OF MINING			
Special Category of Mining	30 CFR Citation Defining Permits Allowing Special Mining Practices	Numbers of Permits	
		Issued During EY	Total Active and Inactive Permits
Experimental Practice	785.13(d)	0	0
Mountaintop Removal Mining	785.14(c)(5)	0	0
Steep Slope Mining	785.15(c)	0	0
AOC Variances for Steep Slope Mining	785.16(b)(2)	0	0
Prime Farmlands Historically Used for Cropland	785.17(e)	0	21
Contemporaneous Reclamation Variances	785.18(c)(9)	0	0
Mining on or Adjacent to Alluvial Valley Floors	785.19(e)(2)	0	0
Auger Mining	785.20(c)	0	0
Coal Preparation Plants Not Located at a Mine Site	785.21(c)	0	0
In-Situ Processing	785.22(c)	0	0
Remining	773.15(m) and 785.25	0	0
Activities in or Within 100 Feet of a Perennial or Intermittent Stream	780.28(d) and/or (e) 784.28(d) and/or (e)	0	5

TABLE 4

PERMITTING ACTIVITY												
Type of Application	Surface Mines			Underground Mines			Other Facilities			Totals		
	App. Rec.	Issued/ Appvd	Acres	App. Rec.	Issued/ Appvd	Acres ¹	App. Rec.	Issued/ Appvd	Acres	App. Rec.	Issued/ Appvd	Acres
New Permits	0	0	0	0	0	0	0	0	0	0	0	0
Renewals	1	2		0	0		0	0		1	2	
Transfers, sales, and assignments of permit rights	0	2		0	0		0	0		0	2	
Small operator assistance	0	0		0	0		0	0		0	0	
Exploration permits										4	4	
Exploration notices ²											0	
Revisions that do not add acreage to the permit area	10	20		0	0		0	0		10	20	
Revisions that add acreage to the permit area but are not incidental boundary revisions	1	0	0	0	0	0	0	0	0	1	0	0
Incidental boundary revisions	0	1	2	0	0	0	0	0	0	0	1	2
Totals	12	25	2	0	0	0	0	0	0	16	29	2
Permits terminated for failure to initiate operations:									Number:	0	Acres:	0.0
Acres of Phase III bond releases (Areas no longer considered to be disturbed):											Acres:	948.0
Permits in temporary cessation									Notices received:	0	Terminations:	0
Midterm permit reviews completed									Number:	6		
¹ Includes only the number of acres of proposed surface disturbance												
² State approval not required. Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining.												

TABLE 5

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 EVENT	NUMBER OF EVENTS												
Blasting	0	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	0
Hydrology	0	0	0	0	0	0	0	0	0	0	0	0	0
Encroachment	0	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	0
Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Number of Inspectable Units ¹ :					29								
Inspectable Units with one or more off-site impacts:					0								
Exploration Inspectable Units with one or more off-site impacts ² :					0								
Inspectable Units free of off-site impacts:					29			% of Inspectable Units free of off-site impacts ⁴ :			100		
¹ Total number of Inspectable Units is (1) the number of active and inactive inspectable units at the end of the Evaluation Year and (2) the number of Inspectable Units that were final bond released or removed during the Evaluation Year													
² Exploration Inspectable Units with one or more off-site impacts is a subset of Inspectable Units with one or more off-site impacts													
OFF-SITE IMPACTS AT 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 EVENT	NUMBER OF EVENTS												
Blasting	0	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	0
Hydrology	0	0	0	0	0	0	0	0	0	0	0	0	0
Encroachment	0	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	0
Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Number of Inspectable Units ³ :					0								
Inspectable Units with one or more off-site impacts:					0								
Inspectable Units free of off-site impacts:					0			% of Inspectable Units free of off-site impacts ⁴ :			0		
³ Total number of Inspectable Units is (1) the number of bond forfeiture sites that were reclaimed during the Evaluation Year and (2) the number of bond forfeiture sites that were unreclaimed at the end of the Evaluation Year													

**TABLE 5
(Continued)**

TOTAL OFF-SITE IMPACTS INCLUDING 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 EVENT	NUMBER OF EVENTS													
Blasting	0	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	0	
Hydrology	0	0	0	0	0	0	0	0	0	0	0	0	0	
Encroachment	0	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	0	
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Number of Inspectable Units ⁵ :				29										
Inspectable Units with one or more off-site impacts:				0										
Exploration Inspectable Units with one or more off-site impacts:				0										
Inspectable Units free of off-site impacts:				29						% of Inspectable Units free of off-site impacts ⁴ :			100	
⁴ % of Inspectable Units free of off-site impacts is based on the number of Inspectable Units during the Evaluation Year. The number of Inspectable Units may vary during the Evaluation Year.														
⁵ Total number of Inspectable Units is (1) the number of active and inactive Inspectable Units at the end of the Evaluation Year and (2) the number of Inspectable Units that were final bond released or removed during the Evaluation Year and (3) the number bond forfeiture sites that were reclaimed during the Evaluation Year and (4) the number of bond forfeiture sites that were unreclaimed at the end of the Evaluation Year.														

TABLE 6

SURFACE COAL MINING AND RECLAMATION ACTIVITY							
Areas of Phase I, II, and III Bond Releases During the Evaluation Year (EY)							
Phase I Releases Total Acres Released in Approved Phase I Releases	Phase II Releases		Phase III Releases			Total Acres Released During the EY	
	Total Acres Released in Approved Phase II Releases	Acres not previously released under Phase I	Total Acres Released in Approved Phase III Releases	Acres not previously released under Phase II	Acres not previously released under Phase I or II		
0		0			948	Phase I	948
	0			948		Phase II	948
			948			Phase III	948
Number of Permanent Program Permits with Jurisdiction Terminated Under Phase III Bond Release During the Evaluation Year					0	Other Releases - Acres	
Initial Program Sites with Jurisdiction Terminated During the Evaluation Year					0	Administrative Adjustments	0
Number of Inspectable Units Removed					0	Bond Forfeiture	0
Areas of Permits Bonded for Disturbance by Surface Coal Mining and Reclamation Operations							

	Total Acres at Start of EY	Total Acres at End of EY	Change in Acres During EY
New Area Bonded for Disturbance			0
Total Area Bonded for Disturbance	133,531	132,583	(948)
Area Bonded for Disturbance without Phase I Bond Release	130,849	129,901	(948)
Area Bonded for Disturbance for which Phase I Bond Release Has Been Approved	2,681	2,681	0
Area Bonded for Disturbance for which Phase II Bond Release Has Been Approved	0	0	0
Area Bonded for Disturbance with Bonds Forfeited During Evaluation Year			0
Area Bonded for Remining	0	0	0
Areas of Permits Disturbed by Surface Coal Mining and Reclamation Operations			
Disturbed Area	87,875	89,583	1,708

TABLE 7

BOND FORFEITURE ACTIVITY (Permanent Program Permits)			
Bond Forfeiture and Reclamation Activity	Number of Sites	Dollars	Acres
Sites with bonds forfeited and collected that were un-reclaimed at the start of the current Evaluation Year (i.e. end of previous Evaluation Year) ¹	0		0
Sites with bonds forfeited and collected during the current Evaluation Year	0	0	0
Sites with bonds forfeited and collected that were re-permitted during the current Evaluation Year	0		0
Sites with bonds forfeited and collected that were reclaimed during the current Evaluation Year	0		0
Sites with bonds forfeited and collected that were un-reclaimed at the end of the current Evaluation Year ¹	0		0
Sites with bonds forfeited but un-collected at the end of the current Evaluation Year	0		0
Forfeiture Sites with Long-Term Water Pollution			
Bonds forfeited, lands reclaimed, but water pollution is still occurring	0		
Bonds forfeited, lands reclaimed, and water treatment is ongoing	0		
Surety/Other Reclamation Activity In Lieu of Forfeiture			
Sites being reclaimed by surety/other party at the start of the current Evaluation Year (i.e., the end of previous Evaluation Year) ²	0		0
Sites where surety/other party agreed during the current Evaluation Year to do reclamation	0		0
Sites being reclaimed by surety/other party that were re-permitted during the current Evaluation Year	0		0
Sites with reclamation completed by surety/other party during the current Evaluation Year ³	0		0
Sites being reclaimed by surety/other party at the end of the current Evaluation Year ²	0		0
¹ Includes data only for those forfeiture sites not fully reclaimed. ² Includes all sites where surety or other party has agreed to complete reclamation and the site is not fully reclaimed. ³ These sites are also reported in Table 6, Surface Coal Mining and Reclamation Activity, because Phase III bond release would be granted on these sites.			

TABLE 8

REGULATORY AND AML PROGRAMS STAFFING	
Function	Number of FTEs
Regulatory Program	
Permit Review and Maintenance	5.20
Inspection	2.10
Other (supervisory, clerical, administrative, fiscal, personnel, etc.)	2.20
Regulatory Program Total	9.50
AML Program Total	4.50
TOTAL	14.00

TABLE 9

FUNDS GRANTED TO STATE OR TRIBE BY OSM (Actual Dollars Rounded to the Nearest Dollar)			
Type of Funding	Federal Funds Awarded	Total Program Cost	Federal Funds Awarded as a Percentage of Total Program Costs
Regulatory Funding			
Administration and Enforcement Grant	1,019,912		
Other Regulatory Funding, if applicable	0		
Subtotal (Regulatory Funding)	1,019,912	1,593,612	64
Small Operator Assistance Program Grant Funding	0	0	
Abandoned Mine Land Reclamation Funding	2,829,000	0	
Watershed Cooperative Agreement Program	0	0	
TOTAL	3,848,912		

TABLE 10

STATE INSPECTION ACTIVITY INSPECTABLE UNITS FOR WHICH STATE MET REQUIRED INSPECTION FREQUENCY ON AN INSPECTABLE UNIT-BY-INSPECTABLE UNIT BASIS ¹												
Inspectable Units (IUs)	Total number of inspectable units ²	Number of inspections required annually		Number of inspections conducted		IUs Met Complete Inspection Frequency Requirement		IUs Met Partial Inspection Frequency Requirement		IUs Met Complete and Partial Inspection Frequency Requirements		
		Complete inspections	Partial inspections	Complete inspections	Partial inspections	Number	Percent	Number	Percent	Total number of IUs	Number that met inspection frequency	Percent
COAL MINES AND FACILITIES												
Active	15	60	120	60	267	15	100	15	100	15	15	100
Inactive	5	20	0	20	36	5	100	5	100	5	5	100
Abandoned	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS ³	20	80	120	80	303	20	100	20	100	20	20	100
Coal Exploration Activities ⁴		Complete Inspections						Partial Inspections				
Exploration sites with permits		0						3				
Exploration sites with notices		0						0				
¹ Calculated on a site-specific basis. ² Total number includes both permanent program permits and initial program sites. ³ OSM is assuming that all states have gone through the process described in 30 CFR 840.11(h) and 842.11(f) to reduce inspection frequency on abandoned/forfeited sites ⁴ Includes all valid notices and permits. No inspection frequency data are provided since SMCRA does not establish a minimum numerical inspection frequency for coal exploration activities. ⁵ NA - Not Available												

TABLE 11

STATE OR TRIBAL ENFORCEMENT ACTIVITY		
Type of Enforcement Action	Number of Actions ¹	Number of Violations ¹
Notice of Violation	3	3
Failure-to-Abate Cessation Order	0	0
Imminent Harm Cessation Order	0	0
¹ Does not include actions and violations that were vacated.		

TABLE 12

LANDS UNSUITABLE ACTIVITY		
Activity	Number	Acres
Petitions Received	0	
Petitions Rejected	0	
Petitions Accepted	0	
Decisions Denying Petition	0	
Decisions Declaring Lands Unsuitable	0	0
Decisions Terminating Unsuitable Designations	0	0

TABLE 13

OSM OVERSIGHT ACTIVITY					
Oversight Inspections and Site Visits					
	Complete		Partial		
	Joint	Non-Joint	Joint	Non-Joint	Total
Oversight Inspections	3	0	4	0	7
	Technical Assistance		Other		Total
Site Visits	0		0		0
Violations Observed by OSM and Citizen Requests for Inspection¹					
Type of Action					Total number of each action
How many violations were observed by OSM on oversight inspections?					0
Of the violations observed, how many did OSM defer to State action during inspections?					0
Of the violations observed, how many did OSM refer to the State through Ten-Day Notices? ²					0
How many Ten-Day Notices did OSM Issue for observed violations? ³					0
How many Ten-Day Notices did OSM issue to refer citizen requests for inspection?					0
How many Notices of Violation did OSM issue?					0
How many Failure-to-Abate Cessation Orders did OSM issue?					0
How many Imminent Harm Cessation Orders did OSM issue?					0
OSM Action for Delinquent Reporting or Non-Payment of Federal AML Reclamation Fees					
How many Ten-Day Notices for delinquent reporting or non-payment of Federal AML reclamation fees did OSM issue?					0
How many Notices of Violation for delinquent reporting or non-payment of Federal AML reclamation fees did OSM issue?					0
How many Federal Failure-to-Abate Cessation Orders for delinquent reporting or non-payment of Federal AML reclamation fees did OSM issue?					0
¹ This section does not include actions for delinquent reporting or non-payment of Federal AML fees that are reported in the last section of the table. ² Number of violations contained in Ten-Day Notices not including those issued to refer citizen requests for inspection. ³ Number of Ten-Day Notices issued not including those to refer citizen requests for inspection.					

TABLE 14

STATUS OF ACTION PLANS						
Action Plan ID	Problem Type ¹	Problem Title	Problem Description	Date Action Plan Initiated	Scheduled Completion Date	Actual Completion Date
None						
¹ Problem Type: "PA" indicates a required Program change under subchapter T or 732 "RP" indicates a Regulatory Program implementation or administrative problem						

**TABLE 15
 (Optional)**

POST-MINING LAND USE ACREAGE OF SITES FULLY RECLAIMED (Phase III bond release or termination of jurisdiction under the Initial Program)	
Land Use¹	Acres Released
Cropland	0.00
Pasture/Hayland	0.00
Grazingland	683.39
Forestry	0.00
Residential	0.00
Industrial/Commercial	45.35
Recreation	22.30
Fish & Wildlife Habitat	2.80
Developed Water Resources	2.70
Undeveloped land or no current use or land management	0.00
Other - Public Utilities	0.00
Other - undisturbed cropland	11.57
Other - undisturbed recreational land	70.00
Other - undisturbed industrial land	11.55
Other - undisturbed native rangeland	98.35
Other -	0.00
Other -	0.00
Other -	0.00
Sub-Total Other	191.47
Total	948.01
¹ Land uses as defined in 30 CFR 701.5 or "Other" as defined under the state or tribal program	

APPENDIX 2: Comments from State of North Dakota on the Report

North Dakota Annual Evaluation Report

Evaluation Year 2022

North Dakota had the following comments on the EY2022 Report:

NDPSC responded on Sept 2, 2022 with the following comments and suggestions. OSMRE replies are in italics.

Introduction page 1: In the acronyms at the bottom of the page, ASMR recently changed their name to American Society of Reclamation Sciences, so the acronym is now ASRS. The correct acronym ASRS was used in the narrative of the report.
Thank you, the list of acronyms has been updated.

On page 11, did you intend the table title dates to be 2011 – 2022?
Yes, the Table displays Phases of Bond Release of Disturbed Lands from 2011 until 2022. The correction has been made.

The bond release approval dates at the bottom of page 11 and top of page 12 need review. The PSR report you receive lists an approval date and effective date for bond releases. We have had some issues with our tracking app not reporting bond releases accurately, but I think we found the problem. I believe we report bond releases based on effective date, so if we approve a bond release the end of June, I do not report it until the following year. I would prefer using the effective date, but I will certainly follow your past protocol.

It appears you used one approval date, one effective date, and the last bond release date is a typo. The approval and effective dates for our bond releases are:
BR 5 to BNCR-9401: Approval date 8/18/2021, Effective date 9/17/2021
BR 3 to NAFK-8405: Approval date 4/13/2022, Effective date 5/13/2022
BR 1 to NACT-9001: Approval date 3/9/2022, Effective date 4/11/2022
The appropriate effective dates have been updated. In this case, all approved and effective dates fall within EY2022. I am fine with using the effective date in future reports.

Please change the NOV 2201 issue date for WBM from April 28, 2022, to May 25, 2022 in the second paragraph on page 21. (We issued NOV 2201 and NOV 2202 on the same

day and hand delivered both to the mines). Although this is outside the evaluation year, we noted that you included the July 22, 2022 request to modify the NOV and our July 26, 2022 approval. We wanted to let you know that we modified the NOV again on August 23, 2022 to add two weeks to construction time for the first pond.

This is also outside the evaluation year so informational only: The civil penalty was paid for NOV 2202 on 8/2/2022 and the violation was closed (if you wish to update NOV 2202 in paragraph 3 on page 21).

Thank you for the updates. If practical, I will include relevant information that may fall outside the dates of the evaluation year, if that information is available prior to publication of this report.

Tables:

Table 2 lists 0 Exploration Inspectable Units, but we had 4. This change would increase the Total Inspectable Units in the top of Table 2 to 29 and change the total inspectable units to 29 on Table 5 (two locations). The narrative on page 9 discusses 29 inspectable units so you included the exploration units in the narrative.

Table 2 has been corrected.

Table 4- It appears the 948 acres of Phase III bond released was accidentally entered in the Permits terminated for failure to initiate operations row. North Dakota had 0 acres of Permits terminated for failure to initiate operations.

Table 4 has been corrected.

The OSMRE Casper Area Office would like to thank the staff of the North Dakota Regulatory Program for their assistance and cooperation in gathering the information required to produce this report.