

**North Dakota Public Service Commission
AML Division
Status Report**

June 6, 2006

The mission of the Abandoned Mine Lands (AML) Division is to reclaim abandoned coal mine lands that pose a hazard to the health, safety and general welfare of the public. Sites eligible for reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977(SMCRA) include areas mined for coal that were disturbed prior to the existence of any state or federal law. These sites are prioritized on the basis of perceived hazard and reclaimed based on priority and availability of funds. Public input, competitive sealed bidding, and state-of-the-art reclamation techniques are cornerstones upon which the North Dakota AML Program is based.

Projects

The Commission authorized reclamation of the following sites in 2005: Leith (highwall reduction and sinkhole filling), Beulah/Zap (pressure grouting beneath County Rd. 13 south of Zap), and Garrison (pressure grouting in a subdivision southwest of town as well as within the city proper). A public bid opening was held on April 19, 2005, and the Commission authorized Intent to Award letters April 20, 2005 to all bidders. Contract awards were made at the Commission's regular meeting on May 3, 2005. All of these projects were completed. A fire broke in October, 2005 along the western edge of Hazen-West that ignited coal. This was treated as an emergency and the site excavated.

Maintenance was undertaken at the Haynes and New Leipzig mine sites to address recurring sinkholes. A second Haynes project entailed burying coal refuse and highwall elimination. Surface backfilling of about 55 dangerous sinkholes on 7 properties near Beulah, Baldwin, Dickinson and Wilton was begun in the fall of 2005. Work was halted due to inclement weather. Work commenced the beginning of May, 2006. Trees and shrubs are being planted by the Grant County Soil Conservation District.

The Commission authorized the following sites for reclamation in 2006: Beulah/Zap (a continuation of work along County Road 13 south of Zap in Mercer County), Williams County Road 9 (grouting beneath County Road 9 east of Williston) and Columbus Phase 7 (highwall reduction south of Columbus in Bowbells County). A public meeting was held in Williston December 13, 2005 regarding the Williams County Road 9 project. A public bid opening was conducted April 18, 2006. Bid results are posted on the Internet at <http://www.psc.state.nd.us/jurisdiction/aml/bid-info/bid-results-2005.html>. The Commission approved the issuance of Intent to Award letters to bidders during their regularly scheduled meeting of April 26, 2006. The Commission approved award of contract for all of the projects on May 10, 2006. Contracts have been awarded.

We received approximately \$993,773 from the federal government for construction work in 2006. Maintenance projects will be undertaken as needed.

Documentation to support our request for Authorization To Proceed (ATP) from the Office of Surface Mining Reclamation and Enforcement OSMRE – Casper was mailed January 3, 2006. Authorization to Proceed on all three projects was issued by OSMRE – Casper on January 23, 2006. Procurement of construction and ancillary services was approved by the Commission February 22, 2006. Ads were placed in newspapers in the State as well as in “The Construction Bulletin”, which is a national publication.

Grants and Contracts

The 2005-2008 grant was approved by the Office of Surface Mining Reclamation and Enforcement (OSMRE) early in 2005 which allowed the Commission to undertake procurement in a timely fashion. The 2006 – 2009 grant was submitted to OSMRE in December, 2005 to again allow plenty of time to review the grant content. Congress has authorized Minimum Program States 1.5 million dollars again; we will receive an additional \$100,000 for emergencies. State set-aside was approximately \$118,000. Our grant was signed by the Commission February 22, 2006.

All of my staff and I have completed three courses on procurement given by the Office of Management and Budget (OMB). These courses were designed to teach the standardized procurement techniques that are now in place. After completion of Level 3 training, staff and I as well as Gloria are authorized to procure goods and services up to \$250,000 without OMB approval.

The contract boilerplate language has been expanded to reflect OMB policy and procedures. Bill Binek was consulted on this matter. Since most major construction projects exceed the \$250,000 ceiling for those even with Level III procurement certification, review of these projects needs to be made by an assistant attorney general. Hence, Bill Binek was asked to review the content of our Information for Bidders (IFB's) before procurement officially begins. That review is complete.

Internet/Intranet Sites

Lori and I continue to share the webmaster duties to keep the Commission web site up-to-date. I handle agenda, minutes, hearing and new case postings; Lori handles the rest. I update the AML and Reclamation pages as needed. We had all of our specifications and plans posted there for the 2005 procurement. I also list bid tabulations from completed projects, and there are links to many of the articles authored by myself and staff. Links to 2006 Information for Bidders (IFB's) packages have been created. Results of the bid opening are also posted.

The intranet site has been converted from our server to ITD. This site is for Commission staff only and is periodically updated.

Program Longevity

The federal act which authorized the AML Program expired September 30, 2004. Congress, through a continuing resolution, extended the program unchanged until the end of June, 2005. An amendment to a bill passed by Congress extended the program again until June 30, 2006. Hearings have been held on a couple of bills that would extend the program for a number of years and potentially raise the minimum level of funding. The Department of Interior fy2007 budget provides for extension of the AML

program until September 30, 2007. That may allow Congress enough time to pass a permanent reauthorization bill. Senate bill S.2616 is the latest version to address AML extension. This bill would increase the Minimum Program State allocation to three million dollars a year and extend the program until 2021.

Program extension has also been the subject of numerous conference calls, run by Greg Conrad, Executive Director of the Interstate Mining Compact Commission (IMCC). I have attempted to keep the Commission fully informed about this subject.

Living Disaster Recovery Planning System (LDRPS)

I completed a week of training late in 2003 and a refresher course the summer of 2004. Considerable time has been used to input a variety of data into the State's computer program to handle disasters. There is some additional input of data that may be required, but once the Commission program passes muster with the Division of Emergency Management, the amount of maintenance time required should be minimal. Gloria and I completed courses October 18-19, 2005 that deal with additional programs purchased by the State for emergency response.

Risk Management

I continue to serve as the Risk Management Coordinator. This requires an annual attendance at a risk management seminar, which I completed April 27-28, 2005, assisting staff if they have claims, and the annual review of the Commission's risk management plan. The 2005 plan review was a self-review of a PowerPoint presentation I have developed and updated. A new committee of directors and Illona Jeffcoat-Sacco constitute the "Loss Control Committee" which meets quarterly to discuss risk management issues. The latest meeting was held April 13, 2006.

Training/Conferences

I have completed in-house courses in Visual Basic and ArcGIS SDE. The Visual Basic should allow us to write database programs to store information through the Internet. The ArcGIS is a graphics program that can visually display active mine status. I have worked with Steve to install this latter program on the Reclamation and AML staff computers.

I attended a defensive driving course on March 20, 2006. This course is presented by the Highway Patrol.

Strategic Plan for the AML Division

Mission

The mission of the Abandoned Mine Lands (AML) Division is to eliminate potential or existing hazards associated with abandoned coal mines in North Dakota for which there is no continuing liability under state or federal law. The nature of this mission is not regulatory but rather service-oriented.

The Public Service Commission administers the Abandoned Mine Lands (AML) Program on behalf of the State of North Dakota. The State AML Program was authorized by action of the Department of Interior in 1981 under authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87, Title IV). Program funding comes from a ten cent per ton production tax on lignite coal mined within the State. Currently State lignite production is about thirty million tons per year. Thus, approximately three million dollars is paid annually into the AML Fund, administered by the Office of Surface Mining Reclamation and Enforcement (OSMRE), Department of Interior. A portion of this money is returned to the State of North Dakota to eliminate existing and potential public hazards resulting from abandoned surface and underground coal mines.

Since the inception of the North Dakota State AML Program over 100,000 linear feet of dangerous highwall, 155 vertical openings, 1,893 acres of subsidence (caused by underground mine collapse) and other hazardous features caused by abandoned mines have been eliminated. Under-funding of our program below federal statutory levels has resulted in reclamation delays and additional risk to the public.

The AML Division is administered by Dr. Louis A. Ogaard, who is the Division Director. Dr. Ogaard holds a Doctor of Philosophy degree in botany from North Dakota State University and has served as Director since 1985. There are four full time equivalent (FTE) positions in this division, including three full-time professionals and the director. Additional administrative and construction inspection services are provided by support staff.

Strategy

Initially, a mathematical matrix was used to rank potential hazards of known abandoned mine lands and develop a prioritized list. The original list had eighty-six sites from a list of over 600 that were identified. These eighty-seven met the legal criteria of either Priority 1 (extreme hazard to the public health, safety or general welfare) or Priority 2 (potential hazard to the public health, safety or general welfare). Since 1981 when the AML State Program was approved and the list of eighty-seven dangerous sites determined, reclamation of the highest priority sites has occurred. Also, during the tenure of the program, many additional sites have been identified and added to the original list. Recommendations to the Commission for sites to be reclaimed have been made based on the perceived potential hazard associated with abandoned mine lands.

The federal government has conducted annual reviews of work undertaken by the AML Division on behalf of the ND Public Service Commission (PSC). These reports have been consistently been laudatory. Many of the surface mine sites reclaimed early in the program can no longer be detected because of successful reclamation plans developed by staff.

Our strategy is to continue to recommend sites for reclamation which pose the greatest risk to the public and private landowners. Design and management of construction projects is handled totally in-house. This is contrary to the way many AML programs across the country are run. Typically, engineering and inspection services are procured from the private sector at substantial costs, with the State left with the administration of the program.

Goals

Staff continues to aggressively seek additional AML sites which would constitute either Priority 1 or Priority 2 status.

The financial limitation of being a Minimum Program State requires extreme care with our budget. Design of projects must continue to keep these financial limitations in mind. Large projects will continue to be prosecuted in annual phases, which allows for continuing reclamation of high priority sites in several areas of the state on a concurrent basis.

We should continue reclamation of hazardous AML problems in order of priority and maintain a record of all hazardous AML sites that have been reclaimed and those still needing reclamation.

On a national level, continue to support efforts to extend the AML program past June 30, 2006 and restore an adequate level of funding to eliminate abandoned mine hazards in a timely fashion.

Reorganization Recommendations

The AML program is one-hundred percent federally funded. This means that every dollar we spend to staff the division benefits the Commission through indirect costs. Elimination of any positions in this division will mean a net loss of revenue to the Commission.

Title IV and Title V of the Surface Mining Control and Reclamation Act of 1977 are like apples and oranges. Title IV of SMCRA lays out a non-regulatory program for the reclamation and restoration of lands affected by past mining (lands affected by mining prior to any reclamation law). Abandoned Mine Land staff design and manage construction projects and services are procured from the private sector.

Title V is a regulatory program for active mining that is partially funded by the federal government and the remainder from the State. Reclamation staff reviews permit applications containing detailed mining and reclamation plans that are prepared by coal companies for compliance with federal and State statutes, rules and regulations. Inspections are conducted to ensure approved mining and reclamation plans are being followed on the ground and that specific reclamation standards are being met. These are periodic while management of AML work is generally conducted on a daily basis.

I suggest that what works does so for a reason. Intermingling divisions with such different missions runs the risk of breaking something that is not broken.

None of my staff are near retirement. I am. I would recommend that when I do retire, my position be opened to internal competition. There is very little opportunity for upward mobility within the Commission so my retirement would offer such a chance.

Members of my own staff have cross-trained with me and have represented the Division at national symposia. They have authored numerous papers germane to the subject of abandoned mine land reclamation, and the success the Division has enjoyed over the years is a testimony to their excellent field work.