

STATE OF WEST VIRGINIA
UPDATE OF THE
DIVISION OF ENVIRONMENTAL PROTECTION
PERFORMANCE AUDIT

**AMLR Does Not Follow its Priority System
When Selecting Reclamation Projects; OMR
Obtains Performance Bonds from Permit
Holders; OMR Collects 75% of Outstanding
Civil Penalties; and Orphan Gas and Oil Wells
are a Threat to the Health, Safety, and Economic
Development to the State of West Virginia and
its Citizens.**

OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation & Research Division
Building 5, Room 751
State Capitol Complex
CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890

PE 96-26-67

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David Ellis, Research Manager
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February, 1997

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 5, Room 751A
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Antonio E. Jones, Ph.D.
Director

February 9, 1997

The Honorable Edwin J. Bowman
State Senate
Building 1, Room 231-WW
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

The Honorable Joe Martin
House of Delegates
Building 1, Room 213E
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Gentlemen:

Pursuant to the West Virginia Sunset Law, we are transmitting an Update of the Division of Environmental Protection, which will be reported to the Joint Committee on Government Operations on Sunday, February 9, 1997. The issues covered herein are "AMLR Does Not Follow its Priority System When Selecting Reclamation Projects: OMR Obtains Performance Bonds from Permit Holders; and OMR Collects 75 % of Outstanding Civil Penalties."

Sincerely,

A handwritten signature in cursive script, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/wsc

Enclosure

Joint Committee on Government and Finance

The Office of Abandoned Mine Lands and Reclamation (AMLR) was created to restore land and water resources impacted by past coal mining practices and left unabated or unreclaimed. The Office of Mining and Reclamation (OMR) was created to assure prompt, effective and high quality reclamation of all current surface mining sites. In January 1996 the Performance Evaluation and Research Division issued a report on the AMLR and OMR as part of the performance audit of the Division of Environmental Protection (DEP). Two recommendations were made to address the following three issue areas:

1. AMLR does not follow its priority system when selecting reclamation projects.
2. OMR obtains performance bonds from permit holders.
3. OMR collects 75% of outstanding civil penalties.
4. Orphan gas and oil wells are a threat to the health, safety, and economic development to the state of West Virginia and its citizens.

This update utilizes the following definitions to evaluate the level of compliance with recommendations:

Levels of Compliance
In Compliance - The Division has corrected the problems identified in the final draft of the audit report.
Partial Compliance - The Division has partially corrected the problems identified in the final draft of the audit report.
Planned Compliance - The Division has not corrected the problem but has provided sufficient documentary evidence to find that the agency will do so in the future.
In Dispute - The Division does not agree with either the problem identified or the proposed solution.
Non-Compliance - The Division has not corrected the problem identified in the final draft of the audit report.

DEP is in dispute with the first recommendation and plans to be in compliance with the remaining recommendation from the original review.

ISSUE AREA 1: AMLR Does Not Follow its Priority System When Selecting Reclamation Projects.

Recommendation 1

Due to the existence of 248 pending Priority 1 projects, the large number of Priority 1 projects completed as Emergencies, and the large proportion of complaints added to the inventory as Priority 1 projects the Office of Abandoned Mine Lands and Reclamation should reassess the decision making process that has resulted in a large number of Priority 2 projects being funded. The reassessment should conclude with the establishment of a goal that defines the proportion of Priority 1 projects that will receive funding under the Regular grant in a given year. As Emergency Grant funds are diminished by the Federal government, the proportion of Regular Grant dollars should increase so that most of the dangerous projects receive attention first.

Level of Compliance: **In Dispute**

AMLR disagreed with the findings and the recommendation in the original report. AMLR did, however, reexamine their inventory of abandoned mine land sites. Their response for the update stated that they believe that the citizens of this state are being adequately protected from problems caused by past mining. AMLR provided a copy of a annual federal evaluation conducted by the Office of Surface Mining and Enforcement, AMLR's federal oversight agency. AMLR received a positive review from the federal agency regarding reclamation of abandoned mine lands.

ISSUE AREA 2: OMR Obtains Performance Bonds from Permit Holders.

No Recommendation

Level of Compliance: **In Compliance**

A survey was conducted on a sample of mining permits to determine if performance bonds were in place prior to the issuance of the permit. It was found that all permits required to have performance bonds in place had them. Therefore, OMR was already in compliance when the original report was released, eliminating the need for any recommendations pertaining to the issue.

ISSUE AREA 3: OMR Collects 75% of Outstanding Civil Penalties.

Recommendation 2

OMR should establish an internal goal that defines what is an acceptable collection rate for civil penalties.

Level of Compliance: **Planned Compliance**

Since the 1995 audit OMR has not developed an acceptable collection rate for civil penalties. The primary reason is that OMR has not yet determined those delinquent civil penalties deemed legally "uncollectible." OMR will have a mechanism implemented by April 1997 to categorize debts as uncollectible or collectable. The agency has enhanced the monitoring of the civil penalty process by immediately entering companies with delinquent civil penalties into a permit block computer system. In addition, an aggressive bond collection program will soon be utilized for the collection of civil penalties. The Office of Legal Services within the Division has increased its legal staff and has committed resources for the collection of civil penalties. The agency has also solicited advice from other government agencies experienced with collections.

ISSUE AREA 4: Orphan Gas and Oil Wells are a Threat to the Health, Safety, and Economic Development to the State of West Virginia and its Citizens.

Recommendation 3

The Legislature should consider any funding requests by the Office of Oil and Gas in dealing with the problem of orphan gas and oil wells.

Level of Compliance: **Requires Legislative Action**

A bill was drafted during the 1996 legislative session that would have provided funding for the plugging and reclamation of abandoned wells. Due to uncertainty to the severity of the problem of abandoned oil and gas wells, the bill was never introduced, thus no additional funding requests have been received. Approximately \$110,000 was expended from state resources during 1996 to plug and reclaim 4 wells, and through field inspections another 78 abandoned wells were identified, 11 of which were Class 1 wells which pose the most danger to the environment.

APPENDIX A



CECIL H. UNDERWOOD
GOVERNOR

DIVISION OF ENVIRONMENTAL PROTECTION
10 McJunkin Road
Nitro, WV 25143-2506

LAIDLEY ELI MCCOY, PH.D.
DIRECTOR

January 15, 1997

Antonio E. Jones, Ph.D.
Director
Performance Evaluation and Research Division
West Virginia Legislature
Building 5, Room 751-A
State Capitol Complex
Charleston, West Virginia 25305

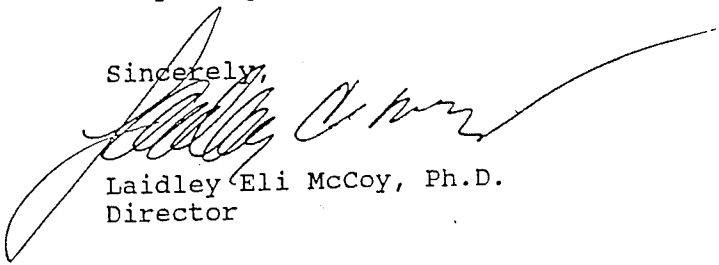
RECEIVED
JAN 15 1997
RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Dear Dr. Jones:

In response to your letter of January 9, 1997 regarding an update of the performance evaluation of the Office of Abandoned Mine Lands and Reclamation, I am happy to tell you that we have reexamined our inventory of sites. We have a total of 553 sites that are designated Priority One. Of these, 289 sites are subsidence problems that have affected single dwelling residences. Subsidence insurance claims have been paid to most of the impacted families. The majority of the remaining Priority Ones sites are being addressed on a priority basis.

As you state in your letter requesting this information, this agency believes that the citizens are being adequately protected from problems caused by past mining. A hundred years of mining-related problems cannot be expected to be corrected in the seventeen years we have been operating this program. As you know, we receive our funding for that program for the U. S. Office of Surface Mining. That agency is actively involved in the oversight of our program accomplishments. I have taken the liberty of attaching a copy for your information. As you can, see they have not taken exception to the manner in which we have selected our priorities. Should you require further information, please call.

Sincerely,


Laidley Eli McCoy, Ph.D.
Director

LEM:jrb

cc: Pete Pitsenbarger, Chief, OAML&R

APPENDIX B



DIVISION OF ENVIRONMENTAL PROTECTION

10 McJunkin Road
Nitro, WV 25143-2506

LAIDLEY ELI MCCOY, Ph.D.
DIRECTOR

GASTON CAPERTON
GOVERNOR

December 19, 1996

RECEIVED

DEC 20 1996

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Mr. Antonia E. Jones
West Virginia Legislature
Performance and Evaluation and Research Division
Building 5, Room 751A
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0592

Dear Mr. Jones:

This is in response to your November 22, 1996, request for information regarding the establishment of an internal goal that defines what is an acceptable collection rate for civil penalties.

The Division of Environmental Protection "DEP" has not developed an acceptable collection rate for civil penalties. The primary reason is that DEP has not yet determined those delinquent civil penalties deemed legally "uncollectable". DEP will have a mechanism implemented no later than April 1997 to categorize which debts are uncollectable versus collectable. Any necessary statutory authority will be proposed during the upcoming legislative session.

DEP has enhanced the monitoring of civil penalty process by immediately entering companies with delinquent civil penalties into a national permit block computer system. In addition, DEP has initiated an aggressive bond collection program that will soon be utilized for the collection of civil penalties. DEP has also increased its legal staff (*Office of Legal Services*) and has committed resources for the collection of civil penalties.

The DEP will continue to explore improvement efforts and solicit advice from other agencies experienced with collections.

If you have any other questions, please contact me.

Sincerely,

Laidley Eli McCoy, Ph.D.
Director

APPENDIX C



DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H. UNDERWOOD
GOVERNOR

10 McJunkin Road
Nitro, WV 25143-2506
(304) 759-0514

LAIDLEY ELI MCCOY, PH.D.
DIRECTOR

January 29, 1997

Mr. David Ellis
Research Manager
Performance Evaluation and
Research Division
Building 5, Rm. 751A
1900 Kanawha Boulevard, East
Charleston, WV 25305-0592

Re: DEP Performance Audit Concerning "Orphan" Wells

Dear Mr. Ellis:

Pursuant to our phone conversation of January 27th, I will provide you with an update on the Abandoned Well Program. As you know, a bill was drafted last year that would have, among others things, provided funding for the plugging and reclamation of abandoned wells. Unfortunately, due to lack of support, the bill was never introduced.

Over the past year, the Office of Oil and Gas has continued to use the limited resources available for the plugging and reclamation of Class I abandoned wells. Approximately \$110,000 was expended from state resources during 1996 to plug and reclaim 4 wells. These wells were polluting the environment with natural gas and fluid. Currently, our plugging account balance is approximately \$20,000. Additionally, plugging expenditures for 9 wells were reimbursed by the federal government because they were threatening navigable waterways. For your information I have enclosed a state/federal expenditure list for each of the last four calendar years. As you will notice, some of the plugging costs were not disclosed to our office by the EPA.

This past year, the Office of Oil and Gas has engaged in field work to further define the magnitude of the abandoned well problem. In contrast to field inspecting a random sample of abandoned wells, as was done last year, our efforts have been geographically concentrated. Field inspections of 95 wells identified by the WVGES project were made in the McKown Creek area of Roane and Wirt Counties. The results of these inspections are as follows:

3 wells not found (3%)

11 wells plugged (12%)
3 wells producing (3%)
78 wells abandoned (82%).

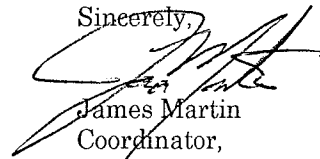
Modification of the abandoned well risk scoring and ranking system has taken place this past year. A copy is enclosed for your information. This effort was undertaken to achieve a more accurate representation of the risk associated with these wells and their rank relative to each other. The new system was used to score and rank the 78 wells above with the following results:

11 Class I wells (14%)
66 Class II wells (85%)
1 Class III well (1%).

A public outreach effort was undertaken during 1996 as a means of both assisting us in locating abandoned wells and increasing public awareness of the problem. Through "The Hunt For Abandoned Wells", the Office has been contacted by approximately 180 citizens. Follow-up inspections to these contacts will be occurring over the next few months.

The Office of Oil and Gas remains committed to further defining the magnitude and severity of the problem associated with abandoned wells and to addressing it as best we can with the available resources. However, at current funding levels, our results are grossly inadequate. If you need additional information regarding the abandoned well program, please contact me.

Sincerely,



James Martin
Coordinator,
Abandoned Well Program

enclosures

cc: Eli McCoy, Ted Streit

Abandoned Well Evaluation

API Number
Operator
Well Name/Number

Parameter	Condition		Factor	Subclass	Points
	Multiplier = 1	Multiplier = 2			
Safety or health threat	Potential risk *	Immediate threat **	25	7	
Surface pollution	Minor existing pollution restricted to well location *	Significant existing pollution or minor pollution that continues to increase **	20	7	
Well casing	Either no production or surface casing *	No production and surface casing, severely deteriorated single casing string and/or evidence of groundwater contamination **	20	7	
Mineral resource development	Planned or active mineral resc. dev. w/in 2000' of well *	Planned or active mineral resc dev. w/in 1000' of well**	15	7	
Drinking water supply	Well < 500' and >100' from supply	Well < 100' from supply	10	7	
Population	> 10 and < 20 people within 1000' of well	> 20 people within 1000' of w	10	7	
Surface waters	Well < 500' and >100' from lake, river or stream	Well < 100' from lake, river o stream	10	7	
Age of well	> 25 and < 50 years old	> 50 years old	5	7	
Abandonment time	> 25 and < 50 years	> 50 years	5	7	
Subclass				7	
Total					0

**Class I Well
*Class II Well

As of 12/1/96

DEP/ EPA EXPENDITURES

API #	Farm Name	Well #	Date	Vendor	\$ Amount	Comments
9501528	R. Wise	#1	2/13/93	Hydrocarbon	\$ 12,859.30	
9501494	L. Lough	#1	2/17/93	Hydrocarbon	\$ 3,819.20	
9501555	Livingston	#1	9/24/93	Gassearch	\$ 9,975.88	sw flowing to surf.
10701561	G. Hicks	Hicks	2/4/94	Gassearch	\$ 70,758.79	Boaz emergency
10501314	R. Edward	Carpenter	6/6/94	Gassearch/C.J.	\$ 17,887.63	oil contaminating stream
10501313	R. Edward	Carpenter	6/13/94	Gassearch/C.J.	\$ 18,154.63	tank removal
1502525	North Bend St. Pl.	B.V. Samples	6/14/94	Chisler Bros.	\$ 1,082.00	oil contaminating gw
1300636	S. Cantrell	McCumber	10/18/94	Hydrocarbon	\$ 76,983.74	oil flowing to surface
10501315	W. Nichols	#1	10/20/94	Gassearch	\$ 38,755.75	combined w/1502525,oil flowing to surf.
8701504	C. Epling	Caldwell	11/2/94	Hydrocarbon		combined w/1502525; sw flowing to surf.
8502065	D. Paxton	#1	11/14/94	Hydrocarbon		combined w/1502525;gas flowing to surf.
8502065	D. Iams	#1	12/5/94	Hydrocarbon		gas contaminating gw
1704198	W. Underwood	Kenney #1	4/27/95	Hydrocarbon/Richard	\$ 15,654.30	T.D. abandoned well
	V. King		5/5/95	Chisler Bros.	\$ 300.00	
			5/5/95	Chisler Bros.	\$ 250.00	
6100120	H. Varner	Hall & Johnson	5/16/95	Hydrocarbon	\$ 10,978.50	gas flowing to surf.
	Wood Co.		6/6/95	Gassearch	\$ 455.00	oil spill clean-up in yard
7900446	F. Gibson	#1	9/21/95	C.J.Services/Sherve's	\$ 101,556.45	EPA job
4901050	D. Moran	Thomas #1	1/4/96	Hydrocarbon	\$ 35,385.75	gas flowing to surf.
3501233	J. Lawless	Paxton #1	3/3/96	Gassearch	\$ 17,136.50	gas flowing to surf.
6900044	S. Golden	#1	3/20/96	Hydrocarbon	\$ 28,651.50	not rec fund expenditure
6900043	S. Hollow	#1	4/26/96	Hydrocarbon	\$ 32,000.00	state access
6900045	B. Beil	#1	9/5/96	Hydrocarbon	\$ 6,336.37	jt. venture w/Carnegie; fluid flowing to surf.
3304122	P. Williams	F.E.Hall	10/8/96	B.J.Services/Halliburton		EPA job
10701576	G. Kirk	Parsons #2	10/18/96	Hydrocarbon	\$ 51,584.50	gas flowing to surf.
8508429	Glendale	Lowther	10/22/96	Gassearch		EPA job
10701577	G. Kirk	Parsons #4	10/26/96	Hydrocarbon		EPA job
10701578	G. Kirk	Parsons #5	11/4/96	Hydrocarbon		EPA job
10700258	G. Kirk	Parsons #1	11/7/96	Hydrocarbon		oil tank/spill in creek
	Doddridge Co.		11/10/96	Gassearch	\$ 1,695.00	EPA job
10700259	G. Kirk	Parsons #3	11/12/96	Hydrocarbon		EPA job
10701581	G. Kirk	Parsons #6	12/23/96	Hydrocarbon		EPA job

Total \$ 549,565.79