

Preliminary Performance Review

Office of Explosives and Blasting

**Although the OEB has Made Progress in
Achieving Mandates, There is Still a Backlog of
Claims to be Resolved**



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John Sylvia
Director

November 16, 2003

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable J.D. Beane
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the Office of Explosives and Blasting, which will be presented to the Joint Committee on Government Operations on Sunday, November 16, 2003. The issue covered herein is "Although the OEB has Made Progress in Achieving Mandates, There is Still a Backlog of Claims to be Resolved."

We transmitted a draft copy of the report to the Office of Explosives and Blasting on October 31, 2003. We held an exit conference with the OEB on November 6, 2003. We received the agency response on November 12, 2003.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

Although the OEB has Made Progress in Achieving Mandates, there is Still a Backlog of Claims to be Resolved.

In December 2002, the Legislative Auditor's Office issued a Preliminary Performance Review on the Office of Explosives and Blasting (OEB). It was identified in that report, that the OEB was generally satisfying three of its required mandates. The report also indicated that the OEB was not satisfying four required mandates. Since the last report, the OEB has not experienced any staff turnover and has retained an additional 6 inspectors to accomplish its mandates.

Given the current number of outstanding claims to be sent to the administrator, the current rate of claims resolution, and the rate of receiving new claims, it does not appear that the OEB will be able to overcome the current claims backlog and become timely in resolving claims in the near future.

Currently, the OEB is now enforcing blasting regulations on surface mine activities in conjunction with the DMR. The OEB is conducting training for individuals performing pre-blast surveys. The OEB has established a system for receiving complaints. However, the OEB still has a backlog of claims waiting to be resolved. **Given the current number of outstanding claims to be sent to the administrator, the current rate of claims resolution, and the rate of receiving new claims, it does not appear that the OEB will be able to overcome the current claims backlog and become timely in resolving claims in the near future.**

Recommendation

1. *The Legislative Auditor's Office recommends that the OEB should analyze the claims investigation process to determine where delays are occurring and should devote greater resources to reducing the claims backlog.*

Review Objective, Scope and Methodology

This Preliminary Performance Review of the Office of Explosives and Blasting (OEB) is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 5 of the West Virginia *Code* as amended. The Office is the designated agency for this Preliminary Performance Review.

Objective

The objective of this review is to determine the extent to which the OEB is satisfying all of its legislative mandates. Specifically, whether or not the OEB is now satisfying previously unsatisfied mandates.

Scope

The scope of this review covers the period from the previous report in December 2002, to October 2003.

Methodology

The methodology of this review includes interviews and correspondence with OEB staff, review of OEB claim files and tracking spreadsheet, as well as additional data relating pre-blast survey training provided by the OEB.

Issue 1

Although the OEB has Made Progress in Achieving Mandates, there is Still a Backlog of Claims to be Resolved.

In December 2002, the Legislative Auditor's Office issued a Preliminary Performance Review on the Office of Explosives and Blasting (OEB). It was identified in that report, that the OEB was generally satisfying three of its required mandates: 1) implementation of pre-blast survey process; 2) education, training, examination and certification of blasters; and 3) proposal of legislative rules. The report also indicated that the OEB was not satisfying four required mandates: 1) regulation of blasting on surface mine operations; 2) setting qualifications for individuals performing pre-blast surveys; 3) maintaining and operating a system to receive complaints; and 4) establishing a system for the investigation of claims.

Since the last report, the OEB has not experienced any staff turnover and has retained an additional 6 inspectors to accomplish its mandates.

One of the main reasons cited in the previous report for this lack of meeting mandates was an insufficient number of employees due to a high employee turnover rate. Since the last report, the OEB has not experienced any staff turnover and has retained an additional 6 inspectors to accomplish its mandates.

OEB is Enforcing Blasting Regulations on Surface Mine Activity

Although the OEB was reviewing blast plans and receiving pre-blast surveys at the time of the December 2002 report, the OEB was not enforcing blasting regulations on surface mining activities as required by *Code*. This function was still being performed by the DMR. On July 16, 2003, the OEB entered into a Memorandum of Understanding (MOU) with the Division of Mining and Reclamation. According to the MOU,

A clear and definable overlap of the statutory mandates of DMR and OEB exists. However, this overlap is necessary for the efficient operation of both offices and the general protection of the public environment.

A clear and definable overlap of the statutory mandates of DMR and OEB exists. However, this overlap is necessary for the efficient operation of both offices and the general protection of the public and environment. ...DMR is mandated to enforce the surface mine laws, W. Va. Code §22-3, including blasting rules, as identified in W. Va. Legislative Rule, Title 38, Series 2, Section 6....OEB is mandated to enforce all blasting laws pursuant to surface coal mining operations as specified in W. Va. Code §22-3, 22-3A, and W. Va. Legislative Rule, Title 199, Series 1. (The MOU is included as Appendix C).

In accordance with the MOU, the OEB has conducted 127 inspections of surface mine operations from January to October 2003. The OEB has issued 14 violations, issued \$10,476 in fines and suspended 2 blasting licenses. Table 1 summarizes OEB oversight activity.

Table 1 OEB Oversight Activity of Blasting Procedures on Surface Mine Activity January 2003 to October 2003	
Total Number of Inspections Performed by the OEB on Surface Mine Activities	127
Total Number of Blasting Violations Issued	14
Total Fines Assessed	\$10,476
Total Number of Licenses Suspended	2

OEB Is Conducting Training for Individuals Performing Pre-Blast Surveys

The qualifications for those performing pre-blast surveys are contained in Legislative Rule Title 199, Series 1. These rules indicate that the OEB shall require any person conducting pre-blast surveys to first receive training from the OEB. However, at the time of the December 2002 report, the OEB had not yet initiated training. Therefore, according to Legislative Rule, no one was qualified to submit pre-blast surveys. Additionally, the rules indicate that the OEB shall maintain a list of individuals qualified to conduct pre-blast surveys. As indicated in the December report, the OEB had no list on file. During the time that the OEB was not conducting training for individuals conducting pre-blast surveys, pre-blast surveys were being done by whomever was hired by the coal company to perform them.

The OEB held its first pre-blast survey training course on February 20, 2003.

The OEB held its first pre-blast survey training course on February 20, 2003. Two additional training courses have been held since February. The list of approved pre-blast surveyors currently contains 55 individuals. Table 2 shows the dates of the pre-blast survey training courses, as well as the number of individuals attending.

Table 2 Dates of Pre-Blast Survey Training and Number in Attendance	
Training Dates	Number Attending
February 20 ,2003	22
May 29, 2003	24
August 25, 2003	9

OEB Has Established A System for Receiving Complaints

According to West Virginia Code §22-3A-3, the OEB is responsible for “Maintaining and operating a system to receive and address questions, concerns and complaints relating to mining operations.” The OEB actually finished this system at the time of the last report but it was still being tested. The OEB initiated use of this system on July 25, 2002 and it is currently being utilized in all of the Mining and Reclamation field offices as well. Appendix D shows an example of screens utilized in the complaint system.

The OEB initiated use of this system on July 25, 2002 and it is currently being utilized in all of the Mining and Reclamation field offices as well.

OEB Still Has a Backlog Of Claims

According to the Director of the OEB,

To date, the OEB has 52 open claims presently under investigation. The OEB is waiting for responses from 94 claimants in order to proceed with either the informal meeting or referral to the claims administrator. Claim investigation time varies and is directly related to the complexity of the claim and/or the size and number of mining operations near the claimant. Normally, the OEB averages 40 to 60 hours to investigate a claim. To date, 30 claims have been sent to the claims administrator and determination of merit have been made on 25 claims. The OEB has no unassigned claims.

As was mentioned in the previous report, the OEB uses an Excel spreadsheet to track claims. At the time of the last report, the Legislative Auditor’s Office had some concern with the tracking spreadsheet because it contained incomplete and inaccurate information. The spreadsheet provided to the Legislative Auditor’s Office still contains incomplete information. So it

is difficult to verify the information provided by the OEB. For example, although every case on the spreadsheet indicates the name of an assigned inspector, many do not indicate when the inspector was assigned, or if investigation of the cases has been initiated.

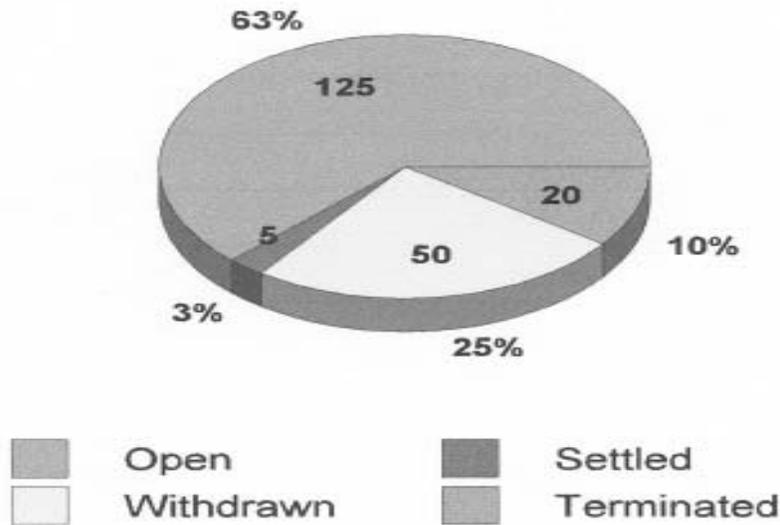
Status of Open Claims

As with the previous report, the Legislative Auditor's Office is able to determine some information from the tracking spreadsheet. The spreadsheet currently contains a list of all claims received by the OEB. This spreadsheet contains a total of 295 claims. Of the 295 claims, 125 claims are open and 170 claims are closed (settled, withdrawn, or terminated)¹. Open claims are claims which have been received by the OEB and are in some stage of the claim resolution process. Figure 1 shows the breakdown of claims by disposition.

Of the 295 claims, 125 claims are open and 170 claims are closed.

Figure 1

Claims Resolved Without Administrator



¹Claims may be terminated based on lack of jurisdiction, failure by the claimant to respond to contact attempts or failure by the claimant to sign necessary forms for continuing the process. Settled claims are those settled without the necessity of the claims administrator.

Of the 125 open claims, 17 (14%) are over 2 years old. This compares to 8 claims (5% of open claims) which were older than 2 years in the December 2002 report. There are 44 claims (35%) which are from 1 year to 2 years old. This compares to 58 claims (39% of open claims) in the previous report. There are currently 62 (50%) claims which are less than a year old. This compares to 77 (52% of open claims) in the previous report. Table 3 shows the age of open claims compared to the age of open claims in the December 2002 report.

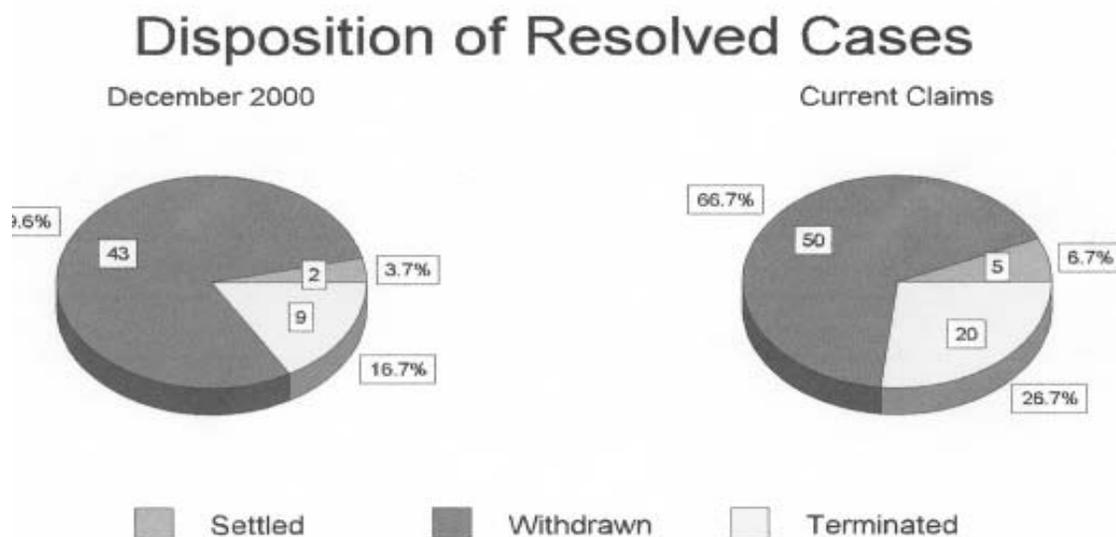
Table 3 Age of Current Open Claims vs. Age of Open Claims from December 2002		
Age	Current*	December 2002
Less Than 1 Year Old	62 (50%) claims	77 (52%) claims
From 1 to 2 Years Old	44 (35%) claims	58 (39%) claims
Older than 2 Years	17 (14%) claims	8 (5%) claims
No Date Entered	2	8
<i>*Current as of October 21, 2003</i>		

Untimely Resolution of Claims Will Continue for the Near Future

Based on the information provided by the OEB, the agency receives an average of 96 claims per year.² The percentage of cases which are resolved without the efforts of the claims administrator are similar for the current claims as that of the previous report. Figure 2 shows the percentage of claims settled, withdrawn, and terminated for the previous report and for the current claims (current as of October 21, 2003).

²Average claims received is based on the most recent 3 years of data.

Figure 2



Based on the above percentages, 30% to 35% of the claims are resolved without the use of the claims administrator (because they were settled, withdrawn, or terminated). This does not imply that the claims require no effort of the OEB staff but rather that they will be resolved before being sent to the claims administrator. It is very likely that they reach resolution through the efforts of the OEB staff. This means that in any given year, an estimated 62 new claims will need to be investigated and sent to the claims administrator.

Although the OEB tracking spreadsheet is incomplete, a survey of cases by the Legislative Auditor's Office showed that the information that is contained on the spreadsheet is accurate.

As was previously stated, the only system which contains information on claims is the tracking spreadsheet. The spreadsheet contains many fields which do not have dates which should be contained in the spreadsheet. For example, 35 cases show no date for an initial phone contact. Despite the fact that some cases show a completed investigation, 84 cases indicate no date that an inspector was assigned to the case. Although some cases have been sent to the claims administrator, 87 cases show no date that an inspection was completed. So in some cases, this action may have not been performed, while in other cases this data was omitted.

Although the spreadsheet is incomplete, a survey of cases by the Legislative Auditor's Office showed that the information that is contained on the spreadsheet is accurate. Therefore for cases which have been sent to the claims administrator (34 cases) it is possible to determine the length of time from receipt of the claim to forwarding the claim to the claims administrator for

It took an average of 17 months from the time that the claim was received to the time that the claim was sent to the administrator.

a determination of merit. For these 34 cases, it took an average of 17 months from the time that the claim was received to the time that the claim was sent to the administrator. Of the 34 cases sent to the claims administrator, the administrator has rendered a determination on 27 cases. The average time for the administrator to render a determination is 2 months. Therefore, from receipt of the claim by the OEB to the determination of merit by the claims administrator is an average of 19 months. Although there is no available benchmark or time frame contained in *Code*, this length of time to resolve a claim seems excessive.

There are currently 112 cases which are still open and have not been sent to the claims administrator. On average, the 112 cases have been under investigation and waiting to be sent to the claims administrator for 12 months. This means that it will likely be an additional 5 months before these cases are sent to the claims administrator.

As was previously mentioned, the OEB did experience an employee shortage due to frequent turnover in the office. Many cases were assigned to an investigator who either left the office or was reassigned to other duties. Additionally, there could be administrative deficiencies which have exaggerated the time to resolve claims. Given the current number of outstanding claims to be sent to the administrator, the current rate of claim resolution, and the rate of receiving new claims, **it does not appear that in the near future the OEB will be able to overcome the current claims backlog and become timely in resolving claims.**

It does not appear that in the near future the OEB will be able to overcome the current claims backlog and become timely in resolving claims.

Conclusion

The Legislative Auditor's Office issued a Preliminary Performance Review on the OEB in December 2002 which indicated that the OEB was not satisfying all of its legislative mandates. The OEB has made progress in achieving those mandates. **However, unless the OEB devotes greater resources to resolving claims or changes the way that claims are currently resolved, claims will continue to be resolved untimely for the near future.** While these cases remain unresolved, individuals who have claims will continue to wait until their claim can be processed.

Recommendation

1. *The Legislative Auditor's Office recommends that the OEB should analyze the claims investigation process to determine where delays are occurring and should devote greater resources to reducing the claims backlog.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
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Charleston, West Virginia 25305-0610
(304) 347-4890
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John Sylvia
Director

October 31, 2003

Ms. Stephanie Timmermeyer, Secretary
Department of Environmental Protection
1356 Hansford Street
Charleston, WV 25301

Dear Ms. Timmermeyer:

This is to transmit a draft copy of the Preliminary Performance Review of the Office of Explosives and Blasting. This report is scheduled to be presented during the November 16 - 18, 2003 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report between November 3, 2003 and November 6, 2003, please notify us. We need your written response by noon on November 12, 2003, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, November 14, 2003 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

John Sylvia
John Sylvia

- c: Mike Mace, Chief
Office of Explosives and Blasting
- c: Joe Parker, Acting Director
Division of Mining and Reclamation

Joint Committee on Government and Finance

Appendix B: Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING



West Virginia Department of Environmental Protection
Division of Mining and Reclamation & Office of Explosives and Blasting

This Memorandum of Understanding is executed by and between the West Virginia Department of Environmental Protection, Division of Mining and Reclamation, hereinafter referred to as "DMR" and the West Virginia Department of Environmental Protection, Office of Explosives and Blasting, hereinafter referred to as "OEB."

PURPOSE:

The purpose of this Memorandum of Understanding is to outline the responsibilities of DMR and those of OEB pertaining to the enforcement of surface coal mine blasting rules and explain the coordination between DMR and OEB for the purpose of surface mine blasting permit review, blasting training, mine inspections, enforcement activities, and the processing of blasting complaints and blasting damage claims. A clear and definable overlap of the statutory mandates of DMR and OEB exists. However, this overlap is necessary for the efficient operation of both offices and the general protection of the public and the environment.

DMR is mandated to enforce the surface mining laws, W.Va. Code § 22-3, including blasting rules, as identified in W.Va. Legislative Rule, Title 38, Series 2, Section 6. DMR inspectors possess a unique knowledge of mining techniques, environmental compliance standards, specific location of the mining activity, and general knowledge of the extent of the mining operations in the surrounding area. DMR is also mandated to inspect surface mining operations on a regular and prescribed schedule. DMR inspectors conduct regular inspections of mining operations and investigate all citizens' complaints with the exception of blasting.

OEB is mandated to enforce all blasting laws pursuant to surface coal mining operations as specified in W.Va. Code §§ 22-3, 22-3A and W.Va. Legislative Rule, Title 199, Series 1. OEB blasting specialists have specific knowledge of pre-blast survey requirements; training, education, and examination of blasters; blasting plans and site specific blast designs; investigation and prevention of adverse effects of blasting; and safe use and handling of explosives. OEB personnel, through training and experience, possess a specialized knowledge of structural responses to blasting vibrations, seismic monitoring, blasting compliance standards, and investigative procedures for processing blasting complaints and claims of damage. OEB conducts specific and detailed inspections of surface mine blasting operations and investigates all blasting complaints and claims of blasting damage.

OEB recognizes that the legislature did not extend any regulatory authority over quarry operations and OEB does not solicit or exert authority over quarry operations. However, OEB is available to assist DMR, if requested, with specific expertise in blasting related issues.

Permit Review Procedures:

Section T (Blasting Plans)

Although the legislature intended OEB to be responsible for the review of surface coal mine blasting plans, DMR provides certain assets necessary to maintain a timely and structured permit review process. Therefore, the established surface mine permitting procedures require mining applications be submitted to DMR. Upon completion of an administrative review by DMR permitting personnel of any coal mining application proposing blasting, DMR will notify OEB that the permit has been submitted and the scheduled date the pre-inspection tour will be conducted.

Upon DMR notification of a permitting package containing blasting information, OEB will assign a blasting specialist to review the permit application and attend the pre-inspection tour. The OEB blasting specialist shall perform a complete technical review of Section T and provide all corrections to the permit review supervisor or team leader within the time frame prescribed by DMR and in compliance with the January 7, 2002 directive requiring all corrections be delivered to the company within 30 days of receipt. DMR will make the corrections a part of the permanent tracking record. After a complete and correct Section T is submitted, the OEB blasting specialist will provide the DMR permit supervisor or team leader with a written narrative discussing the review and approval of the blasting plan before the issuance of a permit.

The DMR inspector should also review the blasting map and report discrepancies between the blast plan and any field observations to OEB. During the pre-inspection, the OEB blasting specialist will visit the proposed mine site with other members of the review team. The OEB blasting specialist will discuss any relative findings as well as findings or comments by other members of the review team made during the pre-inspection. OEB may also send a representative to DMR informal hearings, but it will be DMR's responsibility to determine if OEB's presence is required and notify OEB of such meetings.

Any revisions to an existing blasting plan will be submitted to DMR and processed per DMR permit revision procedures. Upon notification by DMR, OEB will review and process the blasting sections of the application in the appropriate manner.

OEB is available, upon request by DMR, to assist in the review of blasting plans associated with land disturbance as defined by the West Virginia Quarry Reclamation Act.

Site-specific Blast Designs (SBDs)

Site-specific blast designs (SBDs) describe the proposed operational blasting plan for blasting within 1,000 feet of a protected structure or within 500 feet of an active or abandoned underground mine. SBDs are dependant on site conditions and shall be based on the nearest possible structure and/or "worst case scenario." OEB recognizes that critical field conditions may not be identified until after mining begins. It is in the best interest of the public to incorporate these factors as part of the SBD. Therefore, it may be necessary for the mining operation to submit additional SBDs after mining begins and specific geological information and other factors become known. These designs are not considered changes to the approved permit package. SBDs should be considered as proof that all factors have been evaluated and the plan represents the best method of blasting for these sites, similar to "as-built" drainage certifications.

All SBDs must be submitted before blasting within 1,000 feet of a protected structure or within 500 feet of an active or abandoned underground mine and may be submitted separately, as mining progresses, or as part of the SMA package. Regardless of when the SBD is submitted, OEB is responsible for the review, approval, and distribution (except when SBDs are approved as part of the SMA). When approved as part of the SMA, DMR will distribute the SBD with the approved permit package. Upon approval of SBDs submitted directly to OEB, the appropriate number of copies, including the OEB approval letter, will be distributed to the regional DMR office and headquarters.

Pre-blast Surveys, Waivers, and Affidavits:

OEB is responsible for the review, acceptance, distribution, and final disposition of all pre-blast surveys, waivers of pre-blast surveys, and all affidavits documenting the reasons that a pre-blast survey was not completed. Surveys, waivers, and affidavits are submitted directly to OEB. Upon acceptance, OEB will notify the appropriate DMR regional office of the names, corresponding structure numbers, and type of document submitted for all structures within the pre-blast notification area. OEB will distribute a copy of the pre-blast survey to the structure owner or occupant and maintain a copy of all surveys, waivers, and affidavits, in a confidential file. OEB will notify the DMR inspector when surveys, waivers, and/or affidavits have been submitted for all structures identified in the permit application. Blasting shall not begin until the DMR inspector receives notification from OEB.

OEB is available, upon request by DMR, for the review, acceptance, distribution, and final disposition of any pre-blast survey associated with land disturbance as defined by the West Virginia Quarry Reclamation Act.

Training, Examination and Disciplinary Actions:

OEB shall be responsible for the training of all pre-blast surveyors and the training, testing, and certification of any person conducting blasting on surface coal mine operations. Lists of all persons approved as pre-blast surveyors and certified as blasters are maintained by OEB and are available to DMR. OEB shall also be responsible for conducting blasting training for DMR inspectors.

OEB shall be responsible for administering disciplinary action to any surveyor or blaster conducting themselves in a manner contrary to the standards set forth by the legislature and the blasting rules.

There is no current requirement for individuals blasting on quarry operations to obtain or possess a certification of blasting competence issued by OEB.

Regulation of Blasting:

It was the legislature's intent for OEB to be the regulating authority of all blasting operations involving surface coal mining and to enforce all related blasting regulations. However, the efficient use of personnel requires cooperation between the two offices to avoid duplication of efforts and provide adequate protection to the public. In many situations, DMR inspectors are capable of making evaluations of normal blasting compliance. OEB blasting specialists are available to assist, if technical expertise is needed.

DMR is required by statute to determine compliance with environmental law and conduct regular inspections on all mining operations, including blasting activities. Inspection of blasting conditions may include, but are not limited to, a review of blast

logs, determining if blasting notifications are current, proper placement of blasting warning signs, determining if a blasting plan is approved and current, company compliance with 1,000-foot blast design requirements, and evidence of flyrock or other departures of blasting standards. During the course of these inspections, the DMR inspector should document any observation of blasting infractions or unusual blasting activities and issue appropriate violations or cessation orders.

OEB blasting specialists will conduct detailed inspections or investigations of blasting operations, generally in response to citizens' complaints and/or claims of blasting damage and in response to requests from DMR for assistance. These inspections may include a comprehensive examination of all aspects of the blasting operation and may include unannounced seismic monitoring to determine if blasting vibration activity is within prescribed limits. Discovery of any condition warranting a violation or cessation order will be coordinated with the DMR inspector to maintain adequate tracking records, but OEB blasting specialists will be responsible for issuance and termination of any violation issued by OEB. OEB blasting specialists are also available to assist DMR inspectors to determine necessary remedial measures on violations issued by the DMR inspector, as necessary.

It is OEB's goal to issue all blasting related violations. However, OEB recognizes that circumstances may necessitate the DMR inspector issue violations discovered during the normal course of an inspection. Direct communication between the DMR inspector and an OEB blasting specialist will be established as soon as possible to promote efficient operation between the offices and copies of all subsequent documentation will be shared with the other office. Certainly, it is in the best interest of the public that OEB blasting specialists review and investigate any special or unusual blasting circumstances indicating blasting irregularities.

The DMR inspector will be responsible for keeping a violation tracking system in order to determine if violation history indicates a pattern of violations. If a pattern of blasting violations exists, the DMR inspector will initiate a show cause order and notify OEB so that the office may be involved in any subsequent proceedings.

DMR is responsible to investigate all quarry related complaints including complaints of blasting irregularities or claims of blasting damage. The OEB does not inspect nor enforce regulations relating to quarry operations. However, upon request, OEB may assist DMR in evaluating blasting problems at quarry operations.

Blasting Complaints:

In order to comply with the statutory requirements of both DMR and OEB, and for the greater service to the public, cooperation and coordination in responding to blasting complaints is necessary. DMR inspectors conduct regular inspections of mining operations and OEB blasting specialists possess comprehensive knowledge of blasting techniques and effects of ground and air vibration due to blasting. Coordination of resources increases the efficiency of both offices, prevents duplication of efforts, and provides reliable service to the citizens.

All complaints, including blasting, will be recorded on the "Citizen Services" system developed by OEB. This system provides electronic processing and tracking of all citizen questions, concerns, and complaints made to any individual within DMR and OEB offices. The system does not replace present procedures for distribution of complaints deemed emergencies.

All blasting related questions, concerns, and complaints from citizens will be forwarded to OEB for processing, investigation, and final disposition. OEB will contact

all individuals claiming blasting damage within one business day. Upon request by OEB, DMR inspectors may be asked to verify blast logs and collect other pertinent information as needed for the timely processing of a citizen complaint. If requested, the DMR inspector will submit written documentation of the steps taken to determine operator compliance and forward the report with any supporting evidence to OEB. DMR inspector's involvement ends when the initial information is forwarded to OEB unless additional assistance is requested.

Any blasting complaint claiming flyrock, broken exterior glass or a condition that poses an immediate hazard to the citizen or their property will be considered an emergency and both DMR and OEB will immediately dispatch employees. OEB will be responsible for the investigation but it is reasonable to expect that a DMR inspector may arrive at the scene first. In any case, the scene and related evidence need to be secured immediately upon arrival of any DMR or OEB personnel so that OEB can complete a thorough investigation of the event. As soon as practical, the scene will be fully documented by photographs and written statements.

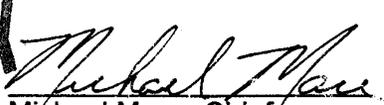
Claims of Blasting Damage:

The OEB administers a "third party" damage claims process that allows citizens to receive an unbiased determination of their claims of blasting damage caused by coal mining operations by a licensed adjuster familiar with blasting damage criteria. The process is intended to bring resolution to alleged claims of blasting damage as a speedy and low cost alternative to formal civil proceedings.

During the course of an alleged blasting damage investigation, an OEB blasting specialist will document all information relevant to the claim of damage. The OEB blasting specialist will visit the homeowner to provide information on the expected effects of blasting, explain the damage claims process, compare the pre-blast survey to the alleged damage claim, and document the alleged damage. The investigation also includes contacting the mining operation involved to obtain any records necessary to determine compliance with blasting regulations. Before proceeding to the formal claims process, OEB will offer any opportunity for the citizen and the company to meet and resolve the dispute. Upon the citizen's request if a resolution is not possible, OEB will forward all evidence to the claims administrator for a determination of the claim.

OEB investigations of water well damage will be limited to alleged structural damage of the well casing and other components of the water delivery system. Claims of adverse changes in water quality or quantity will be coordinated with DMR personnel capable of making hydrologic evaluations.


Matthew B. Crum, Director
Division of Mining and Reclamation
West Virginia Department of
Environmental Protection

COPY

Michael Mace, Chief
Office of Explosives and Blasting
West Virginia Department of
Environmental Protection

Appendix C: Screen in the Complaint System

Initial Notification Date and Time		Complaint Status:	
Date:	10/9/2003	Time:	13 : 48 : 05
First Contact Information			
Taken By:		Office:	Explosives and Blasting
Receipt Method:		Region:	Nitro
Telephone:			
Citizen Information			
Any and all information provided by the citizen in this record is subject to be revealed through the Freedom of Information Act (FOIA). If you desire not to have your name, address, and/or phone number listed as part of the citizen record, then you may request to remain anonymous. If you choose to remain anonymous, the nature of the complaint will be investigated, however, no investigative follow-up information will be made available to you, the complainant.			
<input type="checkbox"/> Check here to mark anonymous			
<input checked="" type="checkbox"/> Search for Citizen			
Last Name:		First Name:	
		Middle:	
Address:			
Line 2:			
City:		State:	West Virginia
Zip Code:			
Home Phone:	304	Work Phone:	304
Email:			
Other Citizen: Changes must be saved before another citizen can be added.			
Nature of Inquiry / Complaint			
Occurrence Date: 10/9/2003 Time: : :			
Primary Complaint / Inquiry Type:			
Location Information			
County:		Company/Owner:	
Directions (Highway/Route/Hollow/Ridge):		ID Number:	
		Operation:	
Stream:			
Person Contacted			
Emergency?:	No		
Date:	10/9/2003	Time:	13 : 48 : 05
Contacted:		Office Phone:	304
How Contacted?:			
Comment:			
Additional Forwarding email addresses - DEP Employees Only (Optional)			
Email 1:			

Appendix D: Agency Response



Division of Mining and Reclamation
#10 McJunkin Road
Nitro, West Virginia 25143
Telephone Number (304) 759-0510
Fax Number (304) 759-0526

West Virginia Department of Environmental Protection

Bob Wise
Governor

Stephanie Timmermyer
Cabinet Secretary

November 12, 2003

R E C E I V E D
NOV 12 2003

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

John Sylvia, Director
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

RE: Preliminary Performance Review of the
Office of Explosives and Blasting

Dear Mr. Sylvia:

Thank you for the opportunity to respond to the Preliminary Performance Review of the Office of Explosives and Blasting. In addition to the enclosed written response, a representative of this agency will be present at the next interim meeting of the Joint Committee on Government Operations.

As you have indicated, the Office of Explosives and Blasting is now complying with the mandates required by the legislature. The employees of this office have worked diligently to make the office operational and we look forward to reporting on the progress to the committee.

Sincerely,

Joe Parker
Acting Director

Enclosure

copy: Stephanie Timmermyer, Cabinet Secretary
Mike Mace, Chief, Office of Explosives and Blasting



West Virginia Department
of Environmental Protection

"Promoting a healthy environment."

**West Virginia Department of Environmental Protection
Division of Mining and Reclamation
Office of Explosives and Blasting**

Legislative Audit Response

As stated in last year's legislative audit response;

OEB's effectiveness is directly dependent on managing the conflict between satisfying program requirements and providing adequate training that develops blasting experts within DEP.

The Office of Explosives and Blasting (OEB) is managing this conflict. During the past few years, the office assembled and trained a group of uniquely qualified individuals to enforce the state's blasting rules and investigate citizen's claims of blasting damage. A continuous training program will expose these individuals to the latest blasting technology and maintains this high level of blasting expertise.

Personnel Issues Resolved

The Office of Explosives and Blasting (OEB) experienced personnel problems that limited the effectiveness of the office. Some personnel problems persisted in early 2003, but in April, the OEB reached full staff with the addition of four specialists in January and two in April. After a basic blasting training period, the new inspectors assumed field responsibilities in June 2003.

The present OEB staff represents 100 years of regulatory experience, 148 years of mining experience, of which 55 years are direct blasting experience, and includes 4 mining engineers. This knowledge greatly enhances OEB's ability to understand blasting operations and carry out the mandates of the office.

Blasting Damage Claims Being Resolved

The West Virginia Legislature developed a first of its kind program to address blasting damage claims that will produce a fair and speedy resolution. The OEB is very close to implementing the system as the Legislature envisioned.

When the new inspectors were sufficiently trained to investigate claims, the office made every effort to reduce the backlog of claims. Since January 2003, OEB completed investigations on 201 claims, compared to 80 from previous years. Fourteen claims remain under investigation, ten from 2003, and four from previous years. The four claims from previous years are awaiting a response from the claimant or a legal opinion.

Before June 2003, the OEB could only dedicate two inspectors to investigate claims because of adverse personnel issues experienced by the

office. However, the number of uninvestigated claims decreased dramatically after the new inspectors assumed field responsibilities. The amount of time to process a claim continues to decrease.

The OEB agrees with the Legislative Auditor's Office that 125 claims remain open. However, seventy-seven of those claims have moved to the informal conference, claims administrator or arbitration stage and out of the direct control of the OEB. OEB facilitates the informal conferences and only tracks the claims and arbitration process. Thirty-four claims are in consistency and quality review before processing to the informal conference phase. These claims will move into the claims process this month.

**Status of Open Claims per Legislative Auditor's Report
as of October 16, 2003**

Open Claims	OEB Investigations Complete	Quality and Consistency Review	Informal Conference, Claims Administrator, or Arbitration Stage	Under Investigation
125	111	34	77	14

**Status of All Claims Investigated
November 1, 2003**

Total Number of Claims	Settled, Terminated, or Withdrawn	Claims Presently Being Investigated
301	180	14

**Disposition of Claims after OEB Investigation Completed
November 1, 2003**

Informal Meetings Held	Forwarded to the Claims Administrator	Claims in Arbitration
31	39	2

The claims system is working. Claimants receive a thorough investigation by the OEB, educational information about blasting, and an explanation of the

claims and arbitration process. If the claimants chose to continue to the claims process, they receive an independent adjuster's investigation and supporting documentation indicating the cause of the damage reported by the claimant. The investigative decisions and determinations of blasting damage are based on accepted blasting science.

Claims Tracking System

The Legislative Auditor's Office identified some problems with the claims spreadsheet. However, this tracking mechanism has always been a "work in progress" and data fields created as needed. There was no template available, nor could the OEB initially identify all the parameters needed in the future. As the OEB identified the need to track new items, fields were added. Some fields were created as late as the summer of 2003. The OEB felt it was counter-productive to search files in order to fill in blanks.

The end result: claims are being investigated and properly processed regardless of omissions in the tracking system.

OEB's Progress in Meeting the Legislative Mandates

During the time the OEB was investigating the backlog of damage claims, the office was also investigating new damage claims, conducting inspections of blasting operations, investigating blasting violations, and continued to review all permit application blasting plans and site-specific blast designs. Since January 1, 2003, the OEB reviewed and accepted 3,072 pre-blast surveys and reviewed 177 blasting plans as part of the mine permitting process.

As stated by the Legislative Auditor's Office, a Memorandum of Understanding (MOU) established operating procedures between the OEB and the Division of Mining and Reclamation (DMR). This agreement outlines how the offices operate to promote efficiency and service to the public. Personnel from both offices are working together to meet inspection frequency requirements while providing blasting expertise as needed.

With the addition of the Oak Hill DMR Office to the Citizen Services system, the OEB also began accepting responsibility for all blasting complaints in addition to all claims of blasting damage. This action now allows DMR inspectors more time for other non-blasting mine inspection requirements. The OEB has assumed its role as the primary regulatory authority on surface coalmine blasting operations. As of July 2002, Citizen Services has logged 759 complaints with 374 of those being blasting related.

As identified by the Legislative Auditor's Office, the OEB is providing training for pre-blast surveyors on a quarterly basis. The office continues to conduct blaster training and examinations. Since January 1, 2003, 29 individuals received blaster training and 67 tested for blaster certification.

The OEB began a research project during the past year. The first stage of this statewide blast-monitoring project is complete. As required by rule, the OEB is prepared to present this research project at the next meeting of the Committee.

Conclusion

The Legislative Auditor's Office concludes that the OEB needs to devote greater resources to resolving claims. Presently, the OEB has 15 employees, of which, 10 routinely conduct field investigations and inspections. The OEB would not rule out the need for additional employees. However, the office reserves an opinion until staff performance can be evaluated in a normal operating climate.

The OEB's investigations of backlog claims are complete, except for four claims identified earlier. Additionally, an electronic data transfer system may be available in the near future. Inspectors will be able to automatically transfer forms, correspondence, etc. from their laptop computers into the main DEP computer system, ERIS.

OEB is meeting its obligation, including elimination of the claims backlog. By January 2004, the only remaining backlog of claims will be in the informal conference or claims administrator stage and should be resolved in the first few months of 2004.

The OEB welcomes the recommendations of the Legislative Auditor's Office and believes that the suggestions offered will assist OEB with making the necessary changes in the tracking spreadsheet.

The OEB also appreciates the Legislative Auditor's Office's recognition of OEB's progress. This confirms that the OEB is on track to provide the type of service expected by the Legislature. With the exception of the claims process, the Legislative Auditor's Office appears satisfied with the OEB's compliance with the mandates required by the Legislature. The OEB expects to become progressively more efficient in the months to come.