

TRANSLATING THE LAW: THE REGULATORY PROCESS

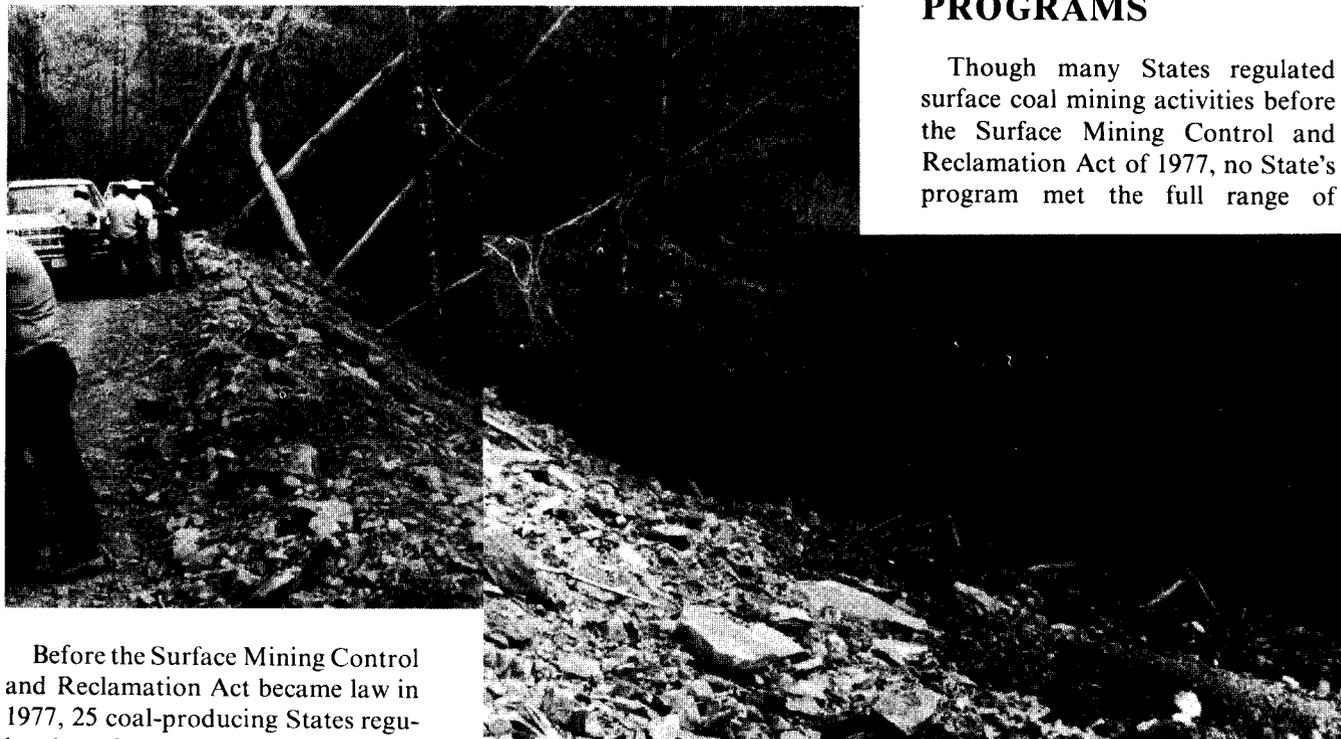
Surface coal mining was conducted for decades before it was regulated by State governments. Coal was extracted to fuel a burgeoning economy, and the results—denuded slopes, burning spoil piles, barren agricultural lands, and sterile streams—were passed on to other generations because reclamation of mined lands was not required.

want to continue to regulate surface coal mining, needed to pass laws allowing them to enforce the performance standards of the initial regulatory program. Then, under a timetable given by Congress, States could pass laws and prepare a State program to submit to the Secretary of the Interior that, when approved, would allow them to enforce perfor-

OSM must implement a Federal regulatory program in that State. If a State's permanent regulatory program is approved, the Federal agency makes periodic checks to see how well the State's program is working.

THE INITIAL REGULATORY PROGRAMS

Though many States regulated surface coal mining activities before the Surface Mining Control and Reclamation Act of 1977, no State's program met the full range of



Prior to strong Federal standards, a rocky, gutted hillside—devastated by the common practice of casting spoil on the downslope—was often the aftermath of mining operations.

Before the Surface Mining Control and Reclamation Act became law in 1977, 25 coal-producing States regulated surface coal mining to some extent. State regulations included issuing State mining permits and often a bond on lands to be mined, to assure these lands would be reclaimed. Most States had on-site mine inspections. But both the effectiveness and regulatory requirements of coal mining programs varied from State to State. Clearly there was a need for a nationwide program to protect society and the environment from the adverse surface effects of coal mining.

The question was, how to do it? In the Surface Mining Control and Reclamation Act of 1977, Congress came up with a practical method. The law sets nationwide performance standards for surface and underground coal mine operations. These performance standards come in two phases: the initial and the permanent regulatory programs. States, if they

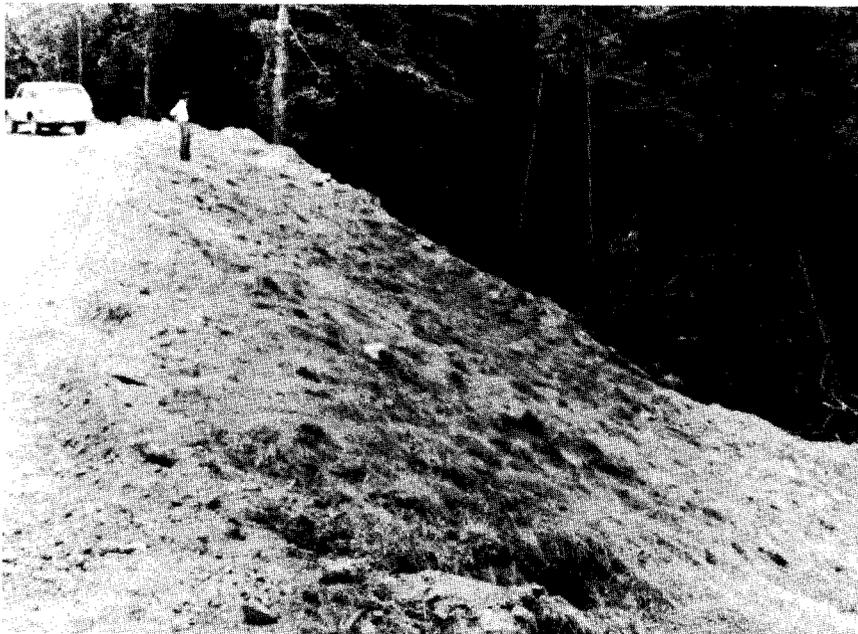
mance standards of the permanent regulatory program.

Congress created OSM to serve as both helping hand and overseer. The help comes in the form of monetary grants-in-aid to States, to foot the extra cost of enforcing the initial regulatory program, and also OSM-provided technical and administrative assistance to the States. Additional monetary help is available to finance the State's development of its own program for the permanent regulatory program. When a State has achieved primary regulatory authority, the Federal Government assumes an overseer role to insure a State's program is as rigorous as Federal law and regulations. If a State program is not approved, then

requirements in the new Federal law. Most coal-producing States have upgraded their existing regulatory programs since the law was passed.

Since May 3, 1978, all surface coal mining operations must have State mining permits and comply with the initial program regulations. These regulations set 12 performance standards covering topsoil, blasting, spoil and waste disposal, backfilling and grading, revegetation, post-mining land use planning, signs, dams, and hydrologic systems—and special areas of steep-slope mining, mining on prime farmlands, and mountain-top removal.

Since States needed to upgrade their programs to be able to enforce the initial regulatory program perfor-



August 1978 U.S. District Court decision. On June 11, 1979, OSM proposed changes to these special performance standards that included:

- limiting the definition of prime farmlands to land used in agricultural production for five of the previous 10 years—the “historical-use” clause;
- exempting surface coal mining and reclamation operations covered



Now through State and Federal cooperation, this same site can be reclaimed and reseeded to support vegetation again.

under the “grandfather” clause from both prime farmlands permit application and prime farmlands performance standards in the initial regulations.

Hearings were held on these proposed changes June 27, 1979, in Washington, D.C., Indianapolis, Ind., and Kansas City, Mo.

Final regulations had not been published at the end of 1979.

ENFORCEMENT PROCEDURE

On Aug. 20, 1979, OSM proposed changes to enforcement regulations that would clarify the way in which OSM notices and orders are served, explain the effect of refusing these documents, and spell out when and

mance standards, OSM reimbursed 21 States for their extra expenses during the initial program. In FY 1978 these States received \$6,096,928; this total rose to \$14,895,507 in FY 1979, as shown in Table III-1 on page 63. The grants allow State regulatory agencies to revise mining permits to incorporate the initial performance standards, respond to citizen complaints, purchase equipment, and increase the size of their staffs.

OSM has made numerous changes in the initial program regulations to make them more flexible and more workable. Changes were proposed, for example, in regulations covering spoil and waste disposal, prime farmlands, inspection and enforcement procedures, and returning land to approximate original contour (AOC).

SPOIL AND WASTE DISPOSAL

Revised initial regulations issued May 23, 1979, gave coal mine operators more flexibility in designing criteria for excess spoil disposal and for sedimentation ponds. The new rules allowed three construction alternatives for spoil disposal as long as the proposed method was approved by the regulatory authority. The degree of engineering design required would be determined by the

slope characteristics at the disposal site. The rules also provided an alternative method for constructing head-of-hollow or valley fills. Sedimentation ponds can either be used as one large individual pool or in a series of smaller ponds, as long as they are constructed before mining begins and are as close to the mining site as possible. All operators must include proof in their proposed mining plans that their intended sedimentation control plans will be adequate to meet environmental requirements.

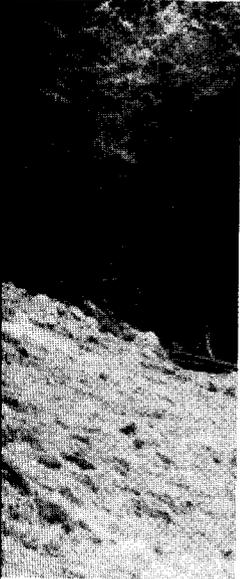
These regulations were part of a package of initial program rules remanded to the Secretary of the Interior by a U.S. District Court ruling on Aug. 24, 1978. As part of the reconsideration process, OSM again proposed rules on both areas and held a public hearing on them in Washington, D.C. The spoil disposal regulations went into effect in 30 days. However, the effective date for the sedimentation pond rules was postponed until Federal Judge Thomas A. Flannery had the opportunity to review them. At the time this report was prepared, this review had not been completed.

PRIME FARMLANDS

Parts of the prime farmlands standards also were enjoined in the

where informal public hearings would be held under the agency's initial regulatory program. OSM officials believed that adoption of these proposals would clear up any confusion about coal operators' responsibilities and rights when enforcement actions are taken.

A hearing on the proposals took place in Washington, D.C., Oct. 9, 1979. Final rules had not been published by the end of 1979.



APPROXIMATE ORIGINAL CONTOUR

On Oct. 24, 1979, OSM proposed regulations that would provide variances from requirements in the initial program regulations to return mined land in steep slope areas to its approximate original contour (AOC). This proposal was based on OSM's conclusion—drawn from comments from the coal industry, State and other Federal agencies, and public interest groups—that the initial rules did, in fact, impose tougher AOC standards than the permanent program rules, and as such, violated the Act's intent to provide a phasing-in of environmen-

tal standards. These proposed changes would allow for a variance from AOC to improve watershed control of lands within the permit area and on adjacent lands, and allow the land to be used for an industrial, commercial, residential or public use, including recreation facilities. Those granted variances, however, would have to meet certain requirements. OSM held a hearing in Washington, D.C., on the AOC proposals in November. Final regulations had not been published by the end of 1979.

JUDICIAL REVIEW: THE INITIAL PROGRAM

Suits challenging the initial program regulations were consolidated in *In Re: Surface Mining Regulation Litigation* heard by Judge Thomas A. Flannery in the U.S. District Court for the District of Columbia. In an Aug. 24, 1978 decision, Judge Flannery rejected most of the industry's challenges to the Act and the initial program regulations. Certain issues that were the subject of this ruling were appealed to the U.S. Court of Appeals for the District of Columbia Circuit. Legal briefs were filed, and oral arguments were heard in the summer of 1979. Issues on appeal include alleged inadequate basis and purpose statement for initial regulations, lack of a general variance provision, head-of-hollow fill construction standards, effluent limitations, prime farmlands exemptions, blasting standards and enforcement of regulations on Indian lands. At the time this report was prepared, there had been no decision by the Court of Appeals on these issues.

THE PERMANENT REGULATORY PROGRAM

On Mar. 13, 1979, OSM issued its permanent regulatory program. The regulations had been written in final

form after a comment period of more than 100 days, 25 days of public hearings in six cities, and analysis of thousands of pages of comment and testimony. The regulations set standards for development and implementation of State regulatory programs, Federal programs in lieu of State programs, and Federal lands programs. Requirements on mine operators take effect through State, Federal, and Federal lands programs after they are implemented.

The permanent regulations' performance standards—in addition to the standards of the initial program—cover conservation of resources, surface area stabilization, restoration of topsoil, prime farmlands, permanent water impoundments, augering operations, waste disposal, fire hazards, access roads, revegetation, spoil disposal, fish and wildlife protection, slide or erosion barriers, off-site area protection, lack of delay in reclamation work, and surface effects of underground mining.

PERMANENT REGULATIONS IN TRANSITION

Since most of the permanent regulations are not yet in force, fewer changes to their content were proposed in 1979. However, less than two months after their publication, OSM received an industry petition challenging certain provisions of its new bonding program. A more simplified hydrologic permitting system as well as possible changes in design standards for sediment control—triggered by recent findings of well-known engineering firms—seem imminent for 1980.

BONDING

Bonding regulations in the permanent program were first challenged in a petition jointly submitted by the Mining and Reclamation Council of America (MARC), the Green Mountain Company, and the Traveler's Indemnity Company. The petition contended that the regula-

tions must be amended to comply with the requirements of both the Act and with the intent of Congress. Specifically, the petition said that amendments were necessary to enable surety companies to continue providing reclamation bonds to coal operators so that they can obtain mining permits; that the amendments could ease the problems small operators have in obtaining bonds; and that rapid clarification was needed to prevent these small operators from going out of business because they cannot obtain bonding. OSM considered the petition of sufficient merit to hold a hearing on June 5, 1979, in Washington, D.C. On Sept. 6, 1979, after carefully studying the petition, OSM conceded that considering selected areas suggested by the MARC petition could improve the bonding aspects of the permanent program. Under consideration for amendment are: determination of bond amount; period of liability; adjustment of amount; form of the performance bond; criteria and schedule for release of performance bond; bonding requirements for underground mining and coal processing facilities. Revised bonding regulations had not been published by the end of 1979.

ONE-STOP HYDROLOGIC PERMITTING

On Sept. 25, 1979, OSM announced a proposed agreement with EPA that could lead to a one-stop hydrologic permit process for many of the Nation's coal mines. This "memorandum of understanding" calls for a single permit system in most situations for controlling pollutant discharges into the Nation's rivers and streams. By combining the resources of both agencies, this system could cut through much of the paperwork now involved in the dual permitting system.

Under the new system:

- EPA will issue special NPDES—National Pollution Discharge Elimination System—permits in States where EPA has NPDES

authority. This will be a special umbrella-type permit for coal mining operations.

- An operator then will apply to the mining regulatory authority for a permit in compliance with the Act, including all NPDES information, which is nearly identical to that required for permits issued under the Act.



- When the mining permit is issued following these steps, it will simultaneously bring the operator into compliance under both systems.

Once this agreement is signed by the Secretary of the Interior and the EPA Administrator, both agencies will begin rulemaking to implement this new system.

BLASTER CERTIFICATION

On June 29, 1979, OSM proposed new regulations that would eliminate the requirement that blasting crew members be certified. Blasters-in-charge, however, would have to pass a national test in order to conduct blasting in coal surface mining and reclamation operations. The regulations also would place a limit on the number of persons in a blasting crew,

and would require direct on-the-job training be provided by the coal operators. OSM held hearings on these revisions on July 31, 1979 in Washington, D.C., Charleston, W. Va., Knoxville, Tenn., Indianapolis, Ind., Kansas City, Mo., and Denver, Colo. Final regulations had not been issued by the end of 1979.

SEDIMENT CONTROL STANDARDS

On Dec. 31, 1979, OSM suspended portions of its sediment control standards in both initial and permanent regulations. The action stemmed from the findings of two OSM/EPA-commissioned studies that contended effluent limitations imposed on suspended solids cannot be met during substantial rainfalls if the operator uses a sediment pond designed according to OSM criteria. These studies prompted an industry-initiated petition requesting that OSM repeal and reconsider certain sections of its permanent program. OSM believed the petition raised valid questions, and, on Oct. 30, 1979, convened a hearing in Washington, D.C., for further discussion.

Comments received on the petition substantiated study findings and led to the suspension. Affected regulations were: rainfall conditions that result in exemption from EPA effluent limits; and design standards related to capacity and time which determine minimum pond size. Concurrent with the suspension, OSM initiated rulemaking procedures to amend the standards. Meanwhile, OSM will rely on EPA rainfall exemption elements. Surface coal mine operators will be required to pass all drainage through one or more ponds and meet effluent limits unless they prove entitlement to exemption. If the regulations are not amended before the deadline for State program submission, OSM will give States a later opportunity to amend their permanent program proposals.

STATE PROGRAM PROCEDURES

In October, OSM asked for public comment on a petition from Wyoming Governor Ed Herschler to allow OSM regional directors to approve certain State program amendments within 60 days. The proposal would apply to changes that would result in less stringent requirements. Following the public comment period, OSM determined in December that the principal thrust of Governor Herschler's petition should be accepted.

REDUCED PRINTING COSTS

An OSM decision not to publish thousands of pages of State surface mining statutes and regulations in the *Federal Register* will save approximately \$1.5 million in printing costs. The change amended a requirement of the permanent program regulations that OSM publish complete texts of each State's surface mining regulations and statutes in the *Federal Register*. Instead, OSM will make a single copy available, without charge, to any person requesting a State's surface mining statutes and regulations. Copies are also available for public review at OSM and State offices.

SUSPENDED RULES

On Nov. 27, 1979, OSM temporarily suspended a limited section of its own permanent regulations. The suspension was based on a determination—from internal review within OSM and current litigation over its permanent regulations—that the rules may not properly reflect the intent of the Act.

This suspension provided States with the opportunity to adopt regulatory provisions based on the language of the Act rather than on the rules which will be modified. States will be able to adjust their programs, if necessary, after the new rules are published.

The following rules were included in the suspension: operation on less than two acres; existing structure exemptions; definitions of public roads and valid existing rights; properties eligible for listing on the National Register of Historic Places; definition of irreparable harm to the environment; selected bonding requirements; and treatment of acid or toxic materials.

JUDICIAL REVIEW: THE PERMANENT PROGRAM

The Mar. 13, 1979, permanent program regulations were challenged in numerous suits by States, coal mining operating companies and environmental organizations. The suits were consolidated in *In Re: Permanent Surface Mining Regulation Litigation* in the U.S. District Court for the District of Columbia and assigned to Thomas A. Flannery, as was the initial program regulations litigation. To deal with this complex litigation, the Court adopted a three-step briefing schedule, the first involving requests for preliminary relief, followed by two rounds of briefs and oral arguments on challenges to the merits of the regulations.

On July 25, 1979, in response to the request of the State of Illinois and the

Commonwealth of Virginia, Judge Flannery extended from Aug. 3, 1979, until Mar. 3, 1980, the statutory deadline for submission of State plans for regulation of surface mining.

On August 22 Judge Flannery issued a decision upholding OSM's permanent program against challenges by several parties seeking preliminary injunctions. The Court said that OSM officials could continue meeting informally with State officials prior to submission of their regulatory programs. Such meetings were extremely useful in helping States develop their own programs. The ruling also concluded that the regulations provide adequately for public participation in the State program development process; that OSM's regulations are within the intent of the Act making it necessary for industry to comply with surface mining permit application regulations; and that contacts between the Council of Economic Advisors (CEA) and OSM following the close of the comment period on the final permanent program regulations were not illegal. However, CEA was to submit, for the administrative record, any documents relating to OSM's regulations not previously submitted, covering the period Sept. 18, 1978, and Mar. 13, 1979.

In accordance with the Court's schedule, a series of briefs were filed from September through December 1979 covering more than 100 issues on the merits of the permanent regulations. Oral arguments on the issues presented in the first round of briefs were heard by the Court on November 16.

STATES AND THE PERMANENT REGULATORY PROGRAM

The major question about the permanent regulatory program posed by States during 1979 was, "What's the deadline for submitting State program proposals to the Office of Surface Mining?"

It was all a matter of timing . . . Congress had given deadlines in the bill that became law in August 1977, but OSM was not funded until March 1978. This delay affected its capability to meet the law's requirements, and resulted in a delay in publishing permanent program regulations.

Under deadlines in the law, States were to have submitted their State program proposals to OSM by Feb. 3, 1979, or by Aug. 3, 1979, if new legislation was needed. On February 3, OSM had published no regulations for the permanent program. On Jan. 31, 1979, it had released the final programmatic Environmental Statement with a "preferred alternative" that essentially were regulations for the permanent program. Because of this delay and because all States would need legislative action to comply with the new requirements, Secretary of the Interior Cecil D. Andrus extended the February 3 deadline to Aug. 3, 1979, the maximum allowed under the Act.

EXTENDING THE DEADLINE

Because some States faced great difficulties in assembling their proposed program submissions by Aug. 3, 1979, Secretary Andrus asked Congress on June 19 to allow an additional seven months for submission and approval of State programs. His request would have moved the Aug. 3, 1979, deadline for State program submission to Mar. 3, 1980—and the June 3, 1980, deadline for Secretarial approval to Jan. 3, 1981. The extension would recover the seven months lost by late appropriations and the subsequent lag in completing permanent regulations.

Congress did not complete action on the Secretary's proposal, but Federal District Court Judge Thomas A. Flannery decided on July 23, 1979 to move the deadline for State program submission to Mar. 3, 1980, ruling on a suit brought by the State of Illinois and the Commonwealth of Virginia. But Judge Flannery did not advance the June 3, 1980, deadline for Secretarial approval. Then on Dec. 5, 1979, the Interior Solicitor issued an opinion that OSM could administratively move the June 3, 1980 deadline for approval back to Jan. 3, 1981 in order to retain the ten-month period for review of State programs originally provided in the Act.

To further complicate the issue, on September 11, the Senate passed S. 1403 which would extend the deadline for State program submissions and for Secretarial approval as well by 12 months. The bill also would eliminate OSM's regulations as the standard for State program submissions, change the effective date of the Federal lands program to the date for State program approval, and give States prime jurisdiction over surface coal mining and reclamation operations during the initial program and before submission or disapproval of State program proposals.

S. 1403 and H.R. 4728 providing this extension were introduced by request by Senator Henry Jackson and Representative Morris Udall, but the legislation was not enacted during 1979.

STATE PROGRAM SUBMISSIONS



A State program is the State's blueprint for action to enforce the performance standards of the permanent regulatory program. A program includes a State's laws and regulations. It also must provide an explanation of how the State plans to handle requirements ranging from mining permits to public participation. The State must demonstrate that it is capable of carrying out the requirements of Federal law and regulations at the State level.

On July 20, 1979, Texas became the first State in the Nation to officially submit a proposed State regulatory program. The proposal was submitted by the Texas State regulatory agency, the Texas Railroad Commission. The plan was received by the Office of Surface Mining's Region IV Office in Kansas City.

To get an idea of the administrative process a State program proposal goes through, let's look at the process used on the Texas proposal.

Immediately upon receipt, Region IV prepared a *Federal Register* notice to say the program had been received and was available for public review and comment. A public review meeting was held in Austin, Tex., on September 5 to discuss the

completeness of the program. Forty-four persons attended that meeting, with representatives from government, industry, and conservation groups. Meanwhile, OSM Region IV employees were reviewing every part of the 884-page program and were making recommendations to a task force that would eventually report to the regional director. In September, a letter was sent to Texas advising that the program was incomplete due to the absence of a section-by-section comparison of State and Federal laws and regulations. Texas was advised further that although other elements were considered to be complete, it did not mean they were substantively adequate. The State had until November 15 to make modifications to its proposed program. On November 13, an amended submission was received, after which another *Federal Register* notice was prepared and public hearing was held in Austin on December 19 and 20, 1979. Testimony was taken on the substance of the program. The hearing transcript accompanies the recommendation from OSM's Region IV to the OSM Director in Washington, D.C. His recommendation, in turn, goes through the Department of the Interior to Secre-

tary Cecil D. Andrus, who must approve or disapprove the Texas program within six months of submission. If the Secretary does not approve the plan, Texas would have 60 days to revise and resubmit its plan. Then, 60 days later, the Secretary would have to make his final decision. Approval by the Secretary gives the State primary jurisdiction over regulation of surface coal mining and reclamation operations within the State. The second or final disapproval would mean that these activities would be regulated by OSM instead of the State.

Mississippi submitted a plan on Aug. 2, 1979, followed by Montana on August 3, and Wyoming on August 15. Other coal-producing States, with the exception of Georgia and Washington, were developing State program proposals for submission to OSM at the end of 1979.

PROGRAM DEVELOPMENT AID

OSM assists States in the development of their permanent regulatory program with grants-in-aid. In FY 1978, \$3 million in OSM grants went to eight States; in FY 1979, 14 States shared \$3.15 million, as shown in Table III-1.

These grants reimburse State regulatory agencies for costs of developing or revising laws, regulations, and procedures. Texas, for example, received a grant of \$185,634, which covered 80 percent of the State's expenses in developing its program. Had Texas chosen to finance this with State funds, it would have received 80 percent of its costs during the first year of permanent program operations. Now it will receive 60 percent that year and 50 percent each year that follows. Several States have chosen to finance the development of their permanent program entirely with State funds so that they can get 80 percent reimbursement of their first year costs of operating the program.

BUILT-IN FLEXIBILITY

Considerable variations in State program proposals may occur due to differences in terrain, climate, biological, and other physical conditions. The regulations permit a substantial amount of flexibility so that States can adapt their programs to such differences. There are well over one hundred such provisions in the regulations. In addition, because it was not possible to cover every situation, OSM included a special provision in the regulations which allows States to propose other approaches. This provision is called the "State Window."

The State Window concept allows States to propose alternatives to both environmental performance standards and procedural and administrative provisions. Such alternatives, however, must be no less stringent than the corresponding Federal regulations and must achieve the requirements of the Act.

A potential State Window variation would be the requirement that all exposed coal seams and all acid-forming and non-combustible materials be covered with four feet of non-toxic and non-combustible materials. Less than four feet was rejected because it is generally inadequate to prevent acid mine drainage or prevent upward migration of salts. However, a State could propose a less-than-four-foot requirement if in a particular geographic area there was a particularly effective cover material that would meet both of these purposes. The State then would have to supply evidence supporting use of this different standard.

In addition to the flexibility given by the State Window, OSM's permanent regulations include provisions which provide built-in flexibility by expressly permitting more than one method to satisfy a particular requirement. In such cases, the States need not justify the choice of one approach over another. There are numerous such opportunities included in the regulations themselves for State selection of techniques or

procedures to be applicable in the State.

Other regulations allow a State to decide how to proceed on a site-specific basis for individual permits, with the variations suggested and justified to the State by the permit applicant. Once again, States may use this permit-by-permit variation without justifying it in a State program submission.

In addition to flexibility written into its regulations, OSM remains open to suggestions that its regulations be changed. The regulations specifically provide for any person to petition the Director to initiate rulemaking. Such petitions have resulted in proposed rulemaking actions on bonding requirements, the effective date of the Federal lands program, conflict-of-interest requirements, and procedures for amending approved State programs.

SMALL OPERATOR ASSISTANCE PROGRAM (SOAP)

Technical assistance for small coal operators arrived in the summer of 1979 with the implementation of the Small Operator Assistance Program (SOAP). Through SOAP, qualified mine operators—producing less than 100,000 tons, but more than 250 tons of coal per year—can get assistance in meeting certain environmental permit requirements of the permanent regulatory program. These permit requirements are the determination of probable hydrologic consequences of coal mining and reclamation operations, and a statement of the results of test borings or core samplings as required by the law. The “determination” is essentially an analysis of the cause-effect relationships of the proposed mining and reclamation operation on the quantity and quality of surface and ground water. The “statement” analyzes overburden, coal and affected aquifers and clay zones below the coal to provide information on the chemical and physical makeup of materials affected by mining, and especially acid and toxic producing materials.

Although SOAP technically takes effect during the permanent regulatory program, it was initiated early so that data collection and analysis could be conducted for an operator when he or she submitted a mine permit. Launching this program was a major initiative for OSM in 1979 because long-lead times are required to collect certain of this essential environmental data, particularly from small watersheds in the East where data is scarce. This assistance will be provided by qualified laboratories within a reasonable distance of the mining operations.

Regulations for SOAP first appeared in the *Federal Register*, Dec. 13, 1977, as part of the initial program package. These regulations place responsibility for the program with the State. States with approved permanent programs will administer SOAP with OSM and available State funds. Thus, OSM will run the program only where a State fails to present an approvable regulatory program as required by the Act.

Prior to permanent program approval, however, either OSM or a State can provide assistance. The regulations require States to send OSM a letter of intent regarding their administration of SOAP six months before submittal of the State's program to allow plenty of time to begin data collection. Funds were available for grants to States to pay the costs of assisting operators in 1979. Federal funds also are available to cover State administrative and staff costs for the program in order to get a head start on State administration, laboratory qualification, and contracting.

With the small operator's welfare in mind, the Congress built provisions into the Act, through the Abandoned Mine Reclamation Fund, to allow 10 percent—or no more than \$10 million—to be earmarked for SOAP annually. On hand at the end of the year were \$20 million accumulated from 1978 and 1979 AML appropriations and another \$5 million from 1979 general fund appropriations. To give further impetus to the program, an additional \$25 million was appropriated for 1980.

SOAP ACCOMPLISHMENTS

- Laboratory qualifications and small operator application forms and information packages were developed, approved by GAO, and distributed to the regions. These packages were sent to States for their optional use.
- Approximately 100 laboratories were found qualified to perform the required studies. Requests for proposals from them were being evaluated at the end of the year for potential contract awards for SOAP services.
- The States of Georgia, Indiana, Missouri, New Mexico, Pennsylvania, Utah, Washington and Wyoming declared their intent to have OSM run the SOAP on their behalf until the State is prepared to assume SOAP responsibilities or received approval of its permanent program, whichever came first. Program initiation was announced in those States, and operators were requested to submit application for assistance.
- Fourteen other States had or would (upon approval) receive grants to administer the program and issue laboratory contracts to assist small operators. Nine States already receiving SOAP grants were: Alabama, Illinois, Kansas, Kentucky, Maryland, Ohio, Oklahoma, Virginia, and West Virginia, for a total of \$12,592,564. Operators in those States were encouraged to apply to State agencies for assistance.

- Cooperative agreements were made with the U.S. Geological Survey and the Environmental Protection Agency for utilizing their water resources computer data systems.
- OSM field offices were sent copies of the first of four planned volumes cataloging the U.S. Geological Survey's computerized catalog of information on water data. The catalog tells the mine operator if the hydrologic data he or she needs is, in fact, available, and, if so, which agency to contact.
- SOAP personnel were placed in all five OSM regional offices as well as in the Washington, D.C., headquarters.
- Seminars and workshops for operators began—in some cases jointly sponsored by OSM and local community colleges. Future sessions by local colleges were encouraged to advise operators not only of the availability of SOAP, but also to further educate them on other aspects of OSM and the Act.
- A guidance document on the "determination of probable hydrologic consequences and the statement of test borings or corings" was in preparation at the end of 1979.
- The Water Resources Center of the University of Delaware was preparing a handbook for small operators on reclamation techniques that preserve and enhance water quality and quantity. This handbook—intended for layman's use—will cover the eastern part of the United States.
- A work group on "data needs for coal hydrology" was formed in cooperation with the U.S. Geological Survey and other Federal agencies to develop approaches which describe data acquisition, analysis, interpretation, and coordinating procedures.
- A SOAP contracting test case was initiated in November 1979 to test data collection guidelines and contract stipulations.

THE FEDERAL LANDS PROGRAM

While State regulatory agencies have jurisdiction over State and private lands within their boundaries, the Secretary of the Interior retains jurisdiction over Federally-owned lands and minerals. The Federal government owns significant coal resources in the West. Of the 240 billion tons of identified coal reserves there, 80 percent is either Federally-owned or dependent for its development upon issuance of Federal coal leases. Substantial Federal-owned coal reserves are located in Colorado, Montana, New Mexico, North Dakota, Utah, and Wyoming. Ten percent of national coal production, or about 50 million tons of coal, was mined from the 788,000 acres of Federal lands under coal leases in 1978. Figures for 1979 are expected to be similar.

The Act requires the Secretary of the Interior to develop a regulatory program for surface coal mining and reclamation activities on Federal lands. Regulations for the permanent program on Federal lands were published Mar. 13, 1979. Thirty days later, on April 21, the regulations took effect: new mining operations or additional permit area on present mining operations would need to comply with permanent regulatory program requirements. Existing mines had until Oct. 12, 1979, to comply.

Prompted in part by a petition from Montana, subsequently joined by other Western States, on Sept. 28, 1979, OSM proposed changes to the schedule for compliance with permanent program performance standards by existing operations on Federal lands. After a public hearing on October 18 and an analysis of all comments received, the Department decided to postpone operator compliance with the permanent program until after a State program has been approved or a Federal program for a State has been implemented. The amended schedule, which was announced in the Dec. 31, 1979 *Federal Register*, applies to all operations and to all States.

By the end of 1979, the Federal lands program was being operated under the initial regulatory program's performance standards.

COOPERATIVE AGREEMENTS

OSM administers the Federal Lands program, but is authorized to delegate much of the responsibility to States through cooperative agreements. Through such agreements, State regulatory agencies exercise their enforcement powers on Federal lands to meet requirements of the Act.

In March 1979, OSM offered for public comment modified cooperative agreements between the Department of the Interior and Montana, Utah, and Wyoming. On June 11, the modified agreements were published in the *Federal Register* to allow the three States enforcement powers on Federal lands under the initial regulatory program's performance standards. The State of North Dakota also entered into a cooperative agreement with Interior late in 1979.

Colorado and New Mexico enacted legislation to allow State participation in such cooperative agreements, and negotiations for cooperative agreements were underway in late 1979. All of the cooperative agreements under the initial regulatory program remain in effect until a State's program under the permanent regulatory program is approved or disapproved by the Secretary of the Interior. New cooperative agreements will be needed under the permanent regulatory program, and Wyoming had requested, but had not yet received, such a cooperative agreement at the end of 1979.

OSM expects that several Eastern and Midwestern States with Federal coal lands also will request cooperative agreements under the permanent program.

While many responsibilities can be handled by State regulatory agencies under cooperative agreements, others may not be delegated to States under these agreements. For example, a State might become involved in the review of a mine plan or a permit application on Federal lands, but the responsibility for approving or disapproving the plan would remain with Interior.

MINE PLAN REVIEW

Two months after approval of a State program or institution of a Federal program, all coal operators on Federal lands are to have filed a complete application for a mining permit under the permanent regulatory program. Eight months after approval of a State program or imposition of a Federal program, all coal operators on Federal lands are to have an approved permit under the permanent regulatory programs with a few exceptions where OSM has not acted on the application.

A heavy workload in mine plan review is anticipated by OSM since it is responsible for coordinating the Department's action on mining and reclamation plans for surface and underground mines on Federal lands.

At the beginning of 1979, OSM had 29 mine plans on hand for review. Thirty-one more were submitted during the calendar year. Ten of the 60 mine plans available for review were approved by the Secretary. The remaining 50 mine plans were in the OSM review process.

Most of the current mine plan review effort was concentrated in OSM's regional office in Denver, Colo. This region has authority for the Western States where most of the Federal and Indian lands are located. To expedite the review in the West, the Denver regional office engaged four private contractors to aid the technical staff. In addition, the U.S. Geological Survey (USGS) assisted the regional office until it had completed staffing technical positions. USGS helped review mine plans for completeness, and also provided environmental analyses of mine plans. Its services shortened the review process and made it more efficient. OSM also was developing a computer system to be used by all of its regions to facilitate rapid retrieval of the status of any active or proposed mine under OSM's jurisdiction. Computer programs entered into this system will generate a variety of reports, such as complete status, selected information on one or many mines, or information on a single coal region or State. This computer system, like the contracting services used by the Denver office, will expedite reporting on the mine plan process.

UNSUITABILITY PETITIONS

The Mar. 13, 1979, regulations allowed for filing petitions to designate Federal lands unsuitable for all or certain types of surface coal mining. This provision allows the State or Federal government to respond to conflicts that arise between coal mining and other land uses. April 12, 1979 was the first day on which OSM could accept such petitions. Only one petition was received in 1979—filed in Utah in April covering approximately 10,000 acres in the southern part of the State.

The petition was returned as incomplete, and was resubmitted to OSM on Nov. 28, 1979.

IMPOSED FEDERAL PROGRAMS

As mentioned earlier in this report, OSM is required to regulate surface coal mining and reclamation activities in a State under the performance standards of the permanent regulatory program under three conditions:

- *The State's proposal for the permanent regulatory program was disapproved after re-submission to the Secretary of the Interior, or*
- *The State does not apply for approval of its own permanent regulatory program, or*
- *OSM subsequently withdraws its approval of the State's program.*

OSM encouraged and supported the primacy of States in the regulation of surface coal mining and reclamation activities within their borders. Nevertheless, in 1979 two States, Georgia and Washington, indicated that they did not plan to submit regulatory programs by Mar. 3, 1980.

By the end of 1979 work had begun on a contingency Federal program for a State. This program was being designed so it could be adjusted to any State, using those portions of an existing or proposed State regulatory program which were acceptable.

REGULATORY PROGRAMS ON INDIAN LANDS

Surface coal mining and reclamation operations on Indian lands were regulated during 1979 under a combination of authorities of the Secretary with respect to his trust responsibilities. The Act requires compliance with the initial performance standards, excluding blasting, and the initial program inspection and enforcement procedures on Indian lands.

While Congress had recognized the desirability of having Indian tribes regulate their own lands in a manner similar to State regulatory programs, they deferred passage of tribal regulatory authority pending a study of the complex jurisdictional and other regulatory issues by the Secretary.

OSM contracted with the Council of Energy Resources Tribes (CERT) to study how tribes might best regulate themselves. The study report, received in November 1979, included several options for tribal self-regulation. The second phase is a study of jurisdictional questions. It was prepared by the Office of the Solicitor (Department of the Interior) in cooperation with OSM, and submitted to the tribes for their review and comments. Based on these two studies, OSM and the Solicitor's Office were examining alternative approaches to tribal regulation and preparing draft legislation which will be submitted as part of the Secretary's report to the Congress on Indian regulatory program.

OSM also is preparing regulations to apply the permanent program requirements to Indian lands. These regulations, originally due by Feb. 3, 1980, will be delayed approximately seven months, the amount of delay in other OSM permanent regulatory programs.

In 1979 OSM assumed administration of the more stringent environmental protection standards formerly handled by the U.S. Geological Survey (USGS). Work was nearly complete in late 1979 on an update of Indian coal regulations and an agreement between OSM, USGS, and the Bureau of Indian Affairs to define their agencies' changing roles.

OSM inspectors became a more frequent—and a more visible—presence in the Nation's coalfields as the Federal surface mining inspection force neared the end of its first full year of operations. In 1979, 204 men and women inspectors patrolled the coalfields of 27 States to insure that both surface and underground coal mines adhered to the environmental standards of the Act. An additional 17 inspector positions were vacant at the end of 1979.

TRAINING

Each inspector had undergone a rigorous two-week basic training course before he or she actually began inspection duties. This course included an introduction to the legal and technical aspects of their jobs. Additionally, regional offices made special advance training available on such topics as blasting, hydrology, revegetation, water quality, and evidence gathering. A continuous training cycle will be a vital part of each inspector's work experience. In FY 1979 approximately 200 OSM inspectors attended the basic training course at classes held during January, February, July, and September. Each succeeding class emphasized more and more "hands-on" field work with the September class actually conducting a "mock inspection." An advanced inspector training class was held in February.

AUTHORIZED REPRESENTATIVES

To write notices of violation (NOVs) and cessation orders (COs), an inspector first must become an "authorized representative of the Secretary of the Interior." Since some inspectors joined OSM with relatively little experience, they initially were accompanied by their veteran counterparts. Those with little prior experience received several months, and in some cases, up to a year of field training before they were authorized to inspect and to take enforcement actions.

THE INSPECTION

The Act requires each mine to be inspected twice a year, after two or more violations at the site are noted by State inspectors, and when a complaint is filed which creates reason to believe violations are occurring at the site. These inspections are conducted without prior notice to the mine operator.

Initially, OSM and State inspectors worked in close coordination, and many early inspections were conducted jointly. During that period, OSM enforcement was aimed also at only the more serious violations, due primarily to a very limited inspection force which needed to concentrate all its efforts on those violations threatening the health and safety of the public and maximum harm to the environment. By March 1979, however, the inspection cadre now numbered some 182 strong. OSM officially drew its transition period to a close since the inspection force was sufficient to concentrate on increasing the quantity and quality of inspections to the level mandated by law.

In 1979 inspection and enforcement activities on Federal lands were based on the initial program requirements and the approved State-Federal cooperative agreements. In States with cooperative agreements, coordination of inspection and enforcement work with the State regulatory authorities was given considerable attention to clearly define both State and Federal roles.

THE NUMBERS

In FY 1979 OSM conducted 13,932 inspections at 6,770 separate mines. These inspections resulted in 3,055 notices of violations covering some 6,859 separate violations, and 602 cessation orders, which contained 804 separate violations. Each of these violations was considered under the Act and OSM's regulations for the possible assessment of a civil penalty. The Act mandates a civil penalty for a cessation order and allows a civil penalty for a notice of violation. Each of the violations in a cessation order and two-thirds of the violations in notices of violation led to a proposed civil penalty. A total of \$7,759,000 in proposed assessments were issued and 1,538 informal conferences were requested in FY 1979. Conferences normally were held within 60 days of the request.

MOST SERIOUS VIOLATIONS

Most of the cessation orders covered only part of the mining operation at the site, and most of the violations on which they were based could be remedied within one week. The most frequent violations involved:

- FAILURE TO MEET EFFLUENT STANDARDS
- FAILURE TO PASS ALL SURFACE DRAINAGE THROUGH SEDIMENTATION PONDS
- IMPROPER HANDLING OF TOPSOIL
- HAUL ROADS
- IMPROPER IDENTIFICATION SIGNS AND MARKERS
- PLACING SPOIL ON THE DOWNSLOPE

CITIZEN INSPECTIONS

Anyone may request an inspection of a mine where a violation of the Act, regulations, or permit conditions exists, or if there is thought to be an imminent danger or harm. If the information supplied creates a reasonable belief that a violation or an imminent hazard exists, OSM will conduct the investigation and provide a written report to the complainant within 10 days. A person whose complaints lead to Federal inspections has the right to accompany OSM inspectors. In FY 1979 OSM received 554 citizen complaints nationwide, 98 percent of which actually resulted in inspections. Most of the complaints involved failure of the mine operator to conduct a pre-blast survey.

ENJOINED IN VIRGINIA

From Feb. 14, 1979 to Aug. 10, 1979, OSM inspectors were enjoined from inspecting in Virginia. The injunction was lifted by the Court of Appeals for the 4th Circuit, August 10. At the end of 1979, OSM inspection teams were averaging 50 inspections per week in the State's southwestern coalfields.

LEGAL ACTION

Council of Southern Mountains, Inc., filed suit June 12, 1979, in the U.S. District Court for the District of Columbia, to compel the Secretary to implement the mandatory enforcement provisions of the Act. The Department answered and a pre-trial conference was held Nov. 16, 1979. Settlement discussions were held on certain issues, and plaintiffs filed a motion for summary judgment on the remaining issues on Dec. 10, 1979.

AERIAL MONITORING

During 1979 OSM field offices made extensive use of aerial observation of coal mining areas. Within a single quarter, one regional office made 454 such aerial inspection flights. These flights were used primarily to spot gross violations of the Act, but they were also a valuable tool in helping acquaint a new inspector with the minesite before he or she actually conducted the inspection on the ground. The flights were useful also in preplanning inspections since the mines with more extensive "violations" were more easily spotted from the air, and in supervisory monitoring of OSM inspectors' success. Helicopters played an important role in revealing the nature of conditions in the coalfields, both for inspectors and for OSM officials from Washington. They provided inspectors with an overall picture that could seldom be seen on the actual mining site. Since each inspection must involve an actual visit to the mine, overflights alone were never counted as inspections.

SHOW-CAUSE ORDER

On May 25, 1979, OSM issued its first "show-cause" order to a Missouri mining firm for a pattern of violations, requiring the company to show cause to the Office of Hearings and Appeals why its permit to mine should not be suspended. In October an agreement between OSM, the company, and the State regulatory agency resulted in an order from an administrative law judge that contained the permit and tight schedule of reclamation work to be followed by the company.