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## STATE REGULATORY PROGRAMS

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The Act specifies that because of the diversity in terrain, climate, and other physical conditions in areas subject to mining operations, the primary government responsibility for surface mining and reclamation operations should rest with the States.

To achieve primary regulatory authority, often referred to as primacy, a State must submit a program which demonstrates the State's capability to carry out the provisions of the Act. Specifically, States are required to--

- establish laws which regulate surface coal mining and reclamation operations;
- provide sanctions for violations of State laws, regulations, or permit conditions;
- provide for the effective implementation, maintenance, and enforcement of a permit system;
- establish a process for the designation of areas as unsuitable for surface coal mining;
- establish a process for coordinating the review and issuance of surface coal mining permits with any other Federal or State permit process applicable to the proposed operations;
- provide rules and regulations consistent with regulations issued by the Secretary of the Interior; and
- provide a regulatory authority with sufficient administrative and technical personnel and sufficient funding to operate a program.

The Secretary, through OSM, reviews the State program to determine the

consistency of the State's program with the Act and with the regulatory program established by the Secretary. Each State program is also reviewed by the public, industry, and other Federal agencies. Notices providing a description of the program, stating where the program is available for public review, and inviting public comments, are published in local newspapers and in the Federal Register, and public hearings are held.

The Secretary, after soliciting and publicly disclosing the views of the Environmental Protection Agency, the Secretary of Agriculture, and heads of other Federal agencies, either fully approves, conditionally approves, or disapproves the State's program.

Once a State's program has been fully approved or conditionally approved by the Secretary, the State is granted primacy and becomes the regulatory authority over coal mining on non-Federal and non-Indian lands within its borders. The Federal Government then assumes a monitoring role.

Also, once a State has achieved primacy, the Secretary may approve a program for the reclamation of lands disturbed by previous mining activities and not adequately reclaimed. Approval of the State reclamation (AMLR) plan entitles the State to receive funds allocated to it from the Abandoned Mine Reclamation Fund. In addition, any State with an approved program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State.

Since 1980, 25 coal-producing States have received primacy. The States are Alabama, Alaska, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, 1/ Pennsylvania, Tennessee 2/, Texas, Utah, Virginia, West Virginia, and Wyoming.

In FY 1984, 81 conditions or minor deficiencies in the State program

approvals were removed to bring the total to 13 States with fully approved programs. OSM completed 72 final rulemaking actions, of which 31 were approval of State program amendment packages. Others included extension of due dates to facilitate State legislative actions, removal of conditions needed for approval, and disapproval of proposed State amendments.

1/ On April 12, 1984, OSM promulgated rules for direct Federal enforcement of the inspection and enforcement portions of the Oklahoma program.

2/ On October 1, 1984, OSM promulgated a Federal program for Tennessee after that State repealed its surface mining statute and regulations.

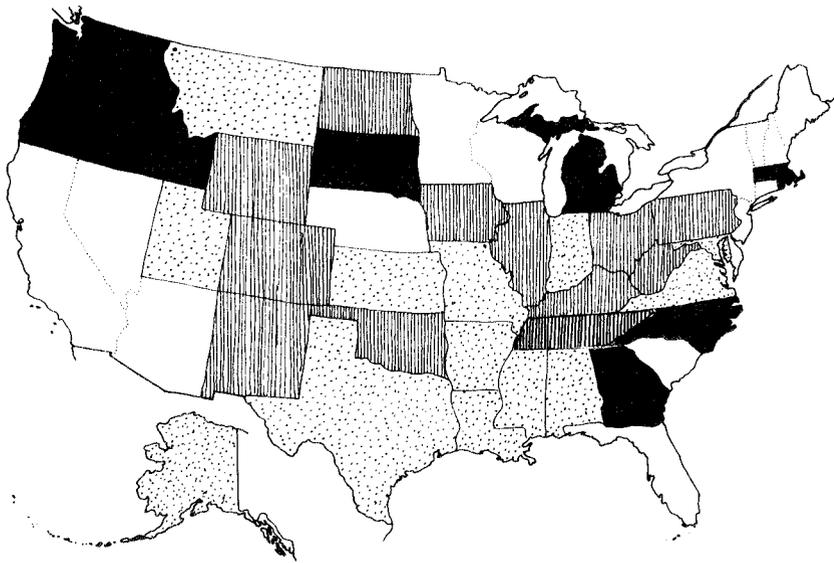
### Program Development Grants To States And Indian Tribes

Under Section 201 of the Act, OSM has assisted State regulatory agencies in developing or revising laws, regulations, or procedures. During FY 1984, three Indian Tribes (Crow, Navajo, Hopi) and one State (Tennessee) were awarded \$544,499 in program regulatory grants. These grants are used to assist in the development of permanent programs by the States and Indian Tribes.

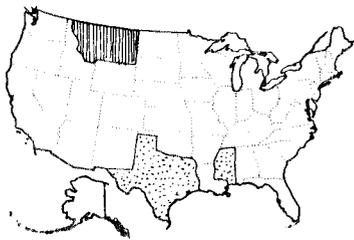
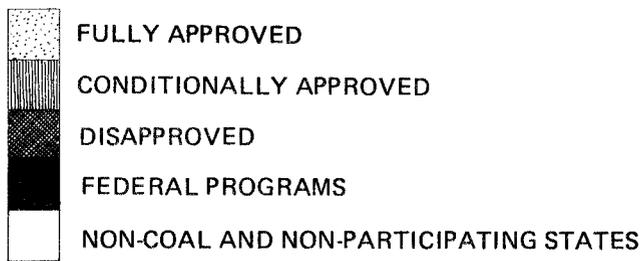
Such activities as drafting laws and regulations, formulating organizational structures, and developing a database and system to act on unsuitability petitions are covered under these grants. OSM did not provide any initial regulatory grants in FY 1984. In the past, these grants were used to administer and enforce the interim program prior to State primacy.

State or Indian Tribe	Initial regulatory grants		Program regulatory grants	
	FY 1983	FY 1984	FY 1983	FY 1984
Illinois .....	\$60,329	0	0	0
Michigan .....	0	0	\$165,467	0
Tennessee .....	5,000	0	0	\$131,850
Crow Tribe .....	0	0	117,914	137,510
Hopi Tribe .....	0	0	129,942	5,228
Navajo Tribe .....	0	0	0	269,911
Total .....	65,329	0	413,323	544,499

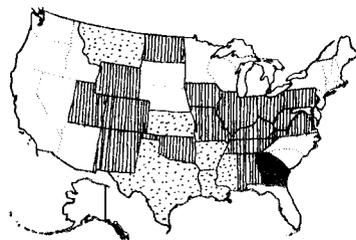
# State Program Status



FY 1984



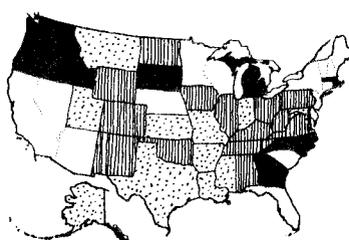
FY 1980



FY 1982



FY 1981



FY 1983

## Regulatory Grants To States Under Permanent Program

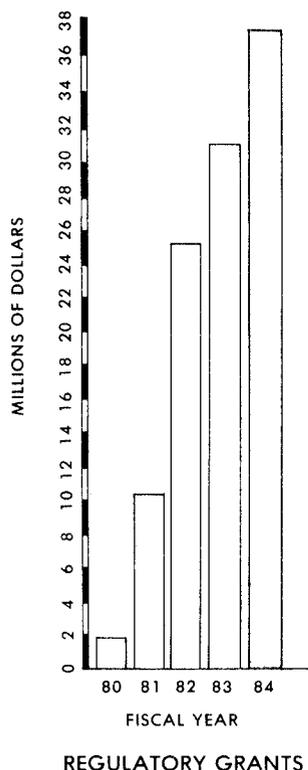
Section 705 of the Act authorizes OSM to provide grants to States with approved regulatory programs not to exceed 50 percent of the cost of the program.

In addition, when a State elects to administer an approved program on Federal lands, through a cooperative agreement, the amount of financial assistance can be increased to 100 percent to cover the cost of

regulating coal mining on Federal lands.

During FY 1984, \$37,594,818 in program grants was awarded to <sup>24</sup> coal-producing States with approved regulatory programs. <sup>3/</sup>

<sup>3/</sup> Mississippi did not receive an FY 1984 grant because funds remaining from the FY 1983 grant were carried over to operate the FY 1984 program.



State	FY 1983	FY 1984
Alabama .....	0	\$2,342,224
Alaska .....	\$345,921	304,459
Arkansas .....	155,215	186,334
Colorado .....	675,083	783,796
Illinois .....	1,571,226	2,170,000
Indiana .....	1,106,243	993,542
Iowa .....	49,384	102,503
Kansas .....	0	143,296
Kentucky .....	5,462,895	8,097,145
Louisiana .....	174,801	130,944
Maryland .....	311,363	366,738
Missouri .....	247,505	473,406
Montana .....	927,839	524,671
New Mexico ....	354,696	590,119
North Dakota ...	549,442	106,757
Ohio .....	2,557,957	2,787,146
Oklahoma .....	315,801	421,215
Pennsylvania ..	8,127,864	9,043,651
Tennessee .....	1,837,700	1,441,200
Texas .....	455,196	586,114
Utah .....	1,047,946	829,440
Virginia .....	2,016,875	2,234,551
West Virginia ...	2,391,345	1,915,336
Wyoming .....	789,051	1,020,231
Total .....	31,471,348	37,594,818

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# FEDERAL REGULATORY PROGRAMS

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## Federal Programs For States

OSM is required to regulate surface coal mining and reclamation activities on non-Federal and non-Indian lands in a State if--

- the State's proposal for a permanent program receives final disapproval from the Secretary of the Interior;
- the State does not submit its own permanent regulatory program; or
- the State fails to implement, enforce, or maintain its approved State program.

Although OSM encourages and supports State primacy in the regulation of surface coal mining and reclamation operations within their borders, two States with active mining, Georgia and Washington, did not submit regulatory programs. Full Federal programs are now in effect for those States and for Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, and South Dakota, which have coal reserves but no active mining.<sup>4/</sup> States with minor coal reserves and no mining are considered non-participating States.

One new Federal program was proposed in FY 1984 and promulgated on October 1, 1984, after the State of Tennessee repealed its surface mining statute and regulations.

## Federal Lands Program

Section 523(a) of the Act requires the Secretary to issue and implement a Federal lands program applicable to all surface coal mining and reclamation operations taking place on Federal lands. On March 13, 1979, OSM issued regulations implementing the permanent phase of the program. On February 16, 1983, OSM promulgated regulations to amend the permanent Federal lands program.<sup>5/</sup> This was

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<sup>4/</sup> See footnotes 1 and 2, p.6.

done to more clearly define Federal and State government roles in regulating surface coal mining and reclamation operations on Federal lands. The amended regulations enable States to assume more responsibility for regulating mining on Federal lands.

The Federal lands program is critical because the Federal Government owns significant coal reserves in both the West and East, and the reserves must be developed under the Federal Coal Management Program of the Bureau of Land Management, U.S. Department of the Interior. Of the 234 billion tons of identified coal reserves in the western region, 60 percent is federally owned.

Administration of most surface mining requirements for the Federal lands program under the Act may be delegated by OSM to States through cooperative agreements. However, certain responsibilities cannot be delegated and must be retained by the Secretary.

With the approval in FY 1984 of cooperative agreements with Ohio and West Virginia, seven cooperative agreements are in effect. The other States are Colorado, Montana, New Mexico, North Dakota, and Wyoming. Cooperative agreements with Alabama and Alaska are also being processed.

Inspection and enforcement activities on Federal lands are conducted under two separate procedures. In States having Federal/State cooperative agreements, inspection of surface coal mining activities on Federal lands is the responsibility of the designated State regulatory authority. OSM, however, maintains an oversight

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<sup>5/</sup> The U.S. Court for the District of Columbia ruled on July 6, 1984, that the Secretary had promulgated regulations with respect to the definition of "mining plan" and its applicability to the Federal lands program in a manner inconsistent with the Act.

function to ensure that the regulatory authority fully exercises its delegated responsibility under the cooperative agreement. In States not having a cooperative agreement, the required inspection and enforcement activities are carried out by OSM.

## Indian Lands Program

On September 28, 1984, OSM issued rules implementing a Federal program for Indian lands, as required by Section 710(d) of the Act. The rules make most of the permanent program requirements applicable to Indian lands.

## Designation Of Lands As Unsuitable For Mining

In FY 1984, OSM received three petitions to determine the unsuitability of land for surface coal mining and reclamation operations.

The first, the Black Diamond petition, was filed with OSM on April 6, 1984, by the Citizens Concerned About Strip Mining. The 800-acre petition area, located in King County, Washington, contains the John Henry No. 1 mine permit area proposed for mining by the Pacific Coast Coal Company. OSM rejected the part of the petition area that coincides with the proposed mine and is processing the petition as it relates to the remainder of the area.

The remaining two petitions were filed by an individual for 302 acres of family-owned land which overlies the Utah Power and Light Company Wilberg and Deer Creek underground mines in Emery County, Utah. OSM rejected the petitions and is considering the concerns raised in them as part of the review of the mine permit applications.

The Red Rim petition, which was filed by the National Wildlife Federation and the Wyoming Wildlife Federation on September 27, 1982, is still being processed by OSM and the State of Wyoming. Public controversy surrounding the petition has delayed a final decision until mid-1985.

Also during FY 1984, OSM continued to process the two unsuitability petitions received in FY 1983. One, the Red River petition, was filed by the National Wildlife Federation/Wyoming Wildlife Federation for approximately 19,500 acres of combined State and Federal land located southwest of Rawlins, Wyoming. The other petition, filed by the Board of County Commissioners, Adams County, Colorado, and the Front Range Airport Authority, involved 160 acres of Federal land about 16 miles east of Denver. On January 31, 1984, the Secretary designated the area as being unsuitable for mining because the mining and reclamation would conflict with local land use plans.

## Mining Plan Review

During FY 1984, OSM continued its review of mining plans/permit applications for coal mining on Federal lands, Federal program lands, and Indian lands. These reviews determine if the mine operators are complying with requirements of the Mineral Leasing Act of 1920, as amended, the environmental performance standards of the Surface Mining Control and Reclamation Act, and the requirements of the National Environmental Policy Act (NEPA). The operator must address the effects of mining before a mining plan permit application may be approved on Federal land.

# Federal Mining Plan/Permit Application Status

State or Indian Tribe	EIS's published	Mining plans approved	Permits issued by OSM
<b>FEDERAL PROGRAM</b>			
Georgia .....	0	0	1
Washington .....	1	0	0
<b>Total</b> .....	<b>1</b>	<b>0</b>	<b>1</b>
<b>FEDERAL LANDS PROGRAM</b>			
<b>Eastern States:</b>			
Illinois .....	0	0	1
Kentucky .....	0	0	14
Ohio .....	0	0	1
Virginia .....	0	1	3
West Virginia .....	0	0	6
<b>Subtotal</b> .....	<b>0</b>	<b>1</b>	<b>25</b>
<b>Western States:</b>			
Colorado .....	0	8	6
Montana .....	2	3	4
New Mexico .....	0	1	1
North Dakota .....	0	5	5
Oklahoma .....	0	2	2
Utah .....	0	5	5
Wyoming .....	1	4	4
<b>Subtotal</b> .....	<b>3</b>	<b>28</b>	<b>27</b>
<b>Total</b> .....	<b>3</b>	<b>29</b>	<b>52</b>
<b>INDIAN LANDS PROGRAM</b>			
Arizona .....	0	0	1
<b>Total</b> .....	<b>0</b>	<b>0</b>	<b>1</b>
<b>Grand total</b> .....	<b>4</b>	<b>29</b>	<b>54</b>

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## INSPECTION AND ENFORCEMENT

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With 69 full-time inspectors, OSM conducted 4,623 oversight inspections in FY 1984. These inspections resulted in the issuance of 754 10-day notices, 104 notices of violation, and 68 cessation orders.

During FY 1984, the Director of OSM determined that the State regulatory authorities of Tennessee and Oklahoma were not adequately conducting inspections or taking appropriate enforcement action under the provisions of their approved programs. In accordance with the Act, the Director instituted direct Federal enforcement in those States effective April 30, 1984.

In Tennessee, OSM conducted 1,613 complete and 2,587 partial inspections from May through September. Eleven citizen-complaint inspections were also conducted. These inspections resulted in the issuance of 577 notices of violation and 95 cessation orders. OSM used its resident inspectors, inspectors detailed from other OSM Field Offices, and 19 newly hired inspectors to conduct the inspections and take appropriate enforcement actions.

In Oklahoma, OSM conducted 119 complete and 488 partial inspections from May through September. Also, 31 citizen-complaint inspections were conducted. These inspections resulted in the issuance of 135 notices of violation and 38 cessation orders. OSM used inspectors from OSM's Tulsa Field Office, inspectors detailed from other OSM Field Offices, and six newly hired inspectors to conduct the inspections and take appropriate enforcement actions.

In addition to the inspectors and inspections noted above, OSM conducted 334 inspections for failure to abate cessation orders. Five inspectors and one supervisor conducted these inspections and engaged in other activities to have the violations abated and to take alternative enforcement against the violators.

### Assessments and Collections

During FY 1984, 1,153 citations for 2,216 coal mining violations were received from field inspectors for penalty assessment. OSM issued 1,056 notices of proposed assessment for 2,011 violations, in the amount of \$8,795,760. A total of \$111,480 in escrow payments was received for cases under review by the Office of Hearings and Appeals, and \$490,765 in final payment of outstanding assessments was collected. In addition, 710 Final Orders of the Secretary in the amount of \$22,604,320 were mailed to debtors, and 365 cases showing a delinquent debt of \$10,919,130 were referred to the Solicitor's Office for legal action.

At the end of FY 1984, the civil penalty program had a cumulative total of \$86,604,320 in accounts receivable of which \$82,096,186 represented delinquent debt.

OSM undertook a thorough reorganization of penalty assessment and collection operations during the fiscal year. This entailed the creation of a new organizational unit, the Branch of Assessments and Collections, and a concerted effort to strengthen program management and staffing that included a comprehensive enhancement and systematic implementation of existing ADP capabilities.

The Branch is divided into functional sections with carefully defined supervisory and staff responsibilities, both in terms of operational output and ADP database maintenance. The current staff is to be substantially augmented with the addition of 18 positions to be filled by highly qualified professional, technical, and support personnel. Announcements for all vacancies have been posted and the hiring process has begun.

In FY 1985, additional organizational changes were planned that resulted in

# Oversight Inspection Activities

State	Number of inspections	Citizen complaints	10-day notices issued	Notices of violation	Cessation orders
Alabama .....	385	7	49	3	6
Alaska .....	5	0	0	0	0
Arizona .....	0	0	0	0	0
Arkansas .....	42	0	19	1	2
Colorado .....	110	1	37	0	1
Illinois .....	120	6	24	0	2
Indiana .....	258	12	44	3	2
Iowa .....	53	0	10	2	0
Kansas .....	67	0	8	0	0
Kentucky .....	673	40	100	14	22
Louisiana .....	5	0	0	0	0
Maryland .....	107	0	8	0	0
Missouri .....	66	0	16	2	0
Montana .....	36	0	9	0	0
New Mexico .....	18	0	7	2	1
North Dakota .....	19	0	0	0	0
Ohio .....	314	4	73	4	0
Oklahoma .....	<sup>1</sup> 133	29	57	34	22
Pennsylvania .....	762	83	34	8	1
Tennessee .....	<sup>1</sup> 250	0	84	17	2
Texas .....	18	0	9	0	0
Utah .....	31	0	9	3	0
Virginia .....	332	4	35	11	6
West Virginia .....	546	10	119	0	1
Wyoming .....	77	0	3	0	0
<b>Total .....</b>	<b><sup>2</sup>4,427</b>	<b>196</b>	<b><sup>3</sup>754</b>	<b><sup>3</sup>104</b>	<b><sup>3</sup>68</b>

<sup>1</sup> For the period Oct. 1, 1983-Apr. 29, 1984 (before OSM assumed enforcement authority).

<sup>2</sup> Does not include citizen-complaint inspections.

<sup>3</sup> Does not include 10-day notices or enforcement actions issued administratively for reclamation fees, as a result of State document review, or for other reasons where an inspection was not conducted.

a new Assistant Director for Finance and Accounting with a Division of Assessments and Collections.

A prime objective in the program management improvement effort is to attain a gradual implementation of the Collection Management Information System (CMIS). Intensive training has been provided to all Branch staff. In addition, a complete inventory of all penalty cases in Branch records has been developed and put into CMIS, and a systematic plan is underway to load all historical data which are not currently in the system database.

The Department also obtained the assistance of a team of management systems experts from the Internal Revenue Service currently detailed to the Branch.

### Alternative Enforcement Actions

OSM continued work to comply with two Federal court orders involving the enforcement of the Act. The first order was issued in 1980 by Judge Oliver Gasch in Council of Southern Mountains, Inc., et al. v. Andrus (Civil Action No. 79-1521). Under the order, OSM was directed to make written determinations on the appropriateness of sanctions under Section 518(f) of the Act for all terminated and nonterminated failure-to-abate cessation orders issued to corporations after March 30, 1980. These sanctions include civil and criminal penalties for corporate officials who willfully and knowingly commit violations of the Act. In a later agreement, OSM consented to review all serious notices of violation issued since March 31, 1980, for the same sanctions.

On January 30, 1984, Judge Gasch issued a supplementary order requiring OSM to accelerate the implementation of the March 1980 order. By March 1, 1984, OSM had reviewed 1,287 failure-to-abate cessation orders for sanctions under Sections 518(f) and 518(e) of the Act. This review resulted in 216 recommendations for civil penalties and 108 recommendations for criminal actions. In addition, OSM review of 1,397

notices of violation resulted in 243 recommendations for civil penalties and 20 recommendations for criminal actions.

The second court order was issued in 1982 by Judge Barrington Parker in Save Our Cumberland Mountains, Inc., et al. v. James G. Watt, et al. (Civil Action No. 81-2134). This order directed OSM to assess and collect certain outstanding civil penalties and review nonterminated cessation orders for pursual of appropriate alternative enforcement actions as prescribed under the Act.

In addition to the two alternatives covered under Judge Gasch's court order (individual civil penalties and criminal sanctions), nonterminated failure-to-abate cessation orders were reviewed for permit denial under Section 510(c) of the Act, permit suspension or revocation under Section 521(a)(4), and injunctive relief under Section 521(c). By the end of FY 1984, OSM had completed its review of 1,783 nonterminated cessation orders stemming from the interim program and falling under Judge Parker's order. Of the 1,783 nonterminated failure-to-abate cessation orders reviewed, 93 were linked to applicants for permanent program permits and, therefore, the applicants were recommended for permit denial; 59 were referred to the Office of the Solicitor for criminal evaluation; 201 were recommended for individual civil penalties against one or more corporate officials; 277 were recommended for permit suspension or revocation if the permit was still valid; and 1,492 were referred to the Office of the Solicitor for injunctive relief. 6/

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6/ During the period October - December 1984, OSM reviewed 32 additional nonterminated cessation orders, bringing the total number of cessation orders reviewed to 1,815. Of the 32 additional cessation orders reviewed, 5 applicants were recommended for permit denial, 7 were recommended for permit suspension/revocation, and 30 were referred to the Office of the Solicitor for injunctive relief.

Although the review of past serious violations and terminated and nonterminated failure-to-abate cessation orders is nearly complete as required by both court orders, OSM needs to continue implementing the followup procedures on the alternative enforcement determinations it made.

In June 1984, OSM released to the States information linking applicants for permanent program permits with the violators associated with the 1,700 failure-to-abate cessation orders which were covered by Judge Parker's order. This information will help OSM and the States to implement the requirements of Section 510(c) of the Act which provides that no permit is to be issued to an applicant having outstanding violations unless an abatement schedule has been established with the regulatory authority. While this applicant/violator information will require expansion to better ensure

implementation of Section 510(c) of the Act, this initial listing was an important first step. After receipt of the violations list in June, the State regulatory authorities successfully utilized the list for denying permits to operators with unabated violations.

OSM stepped up its efforts to remain current in pursuing alternative enforcement actions. Rather than continuing to rely on ad hoc task forces which were needed in early 1984 in response to tight deadlines established by court orders, OSM established a new Branch of Compliance. The mission of that Branch will be to coordinate all of the followup work needed in response to both Judge Parker's and Judge Gasch's orders and to develop and implement new systems to ensure that current cases are reviewed for alternative enforcement action within the timeframes provided by the Act and permanent program regulations.