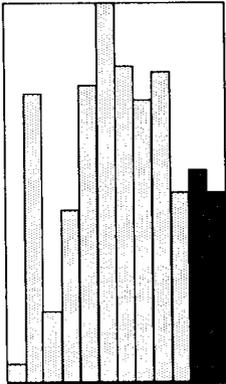


# 4. REGULATORY ENFORCEMENT

## REGULATORY DEVELOPMENT



Final Rulemaking  
Actions 1978-89

SMCRA charges OSM with responsibility for publishing rules and regulations as necessary to carry out the purposes of the Act. OSM's permanent regulatory program and related rules provide the fundamental mechanism for assuring that the purposes of SMCRA are achieved. A major objective of OSM is to establish a stable regulatory program by improving its regulatory development process and by obtaining a broad spectrum of viewpoints on rule-making activities.

Although the 1988-89 period cannot be identified as a period of extensive rule-making, several complex and controversial rules were finalized. Throughout this period, the rule-making process included discussions with representatives of the coal mining industry, environmental groups, and State regulatory authorities to obtain their input and suggestions.

Table 3 describes the final regulations published in the Federal Register during 1988 and 1989. Each regulation is identified with the Federal Register citation by volume and page number, Code of Federal Regulations (CFR) number, and effective date.

**Table 3**  
**FINAL RULES PUBLISHED DURING 1988-1989**

### **Mountaintop Removal Mining**

52 FR 39182 11/19/87 (30 CFR Part 785)

Regulations were amended that affect mountaintop removal mining. The action was taken in compliance with the District Court for the District of Columbia's July 15, 1985, ruling "In re: Permanent Surface Mining Regulation Litigation II No. 79-1144 (D.D.C. 1985)." The revised regulation corrects an inadvertent error made during previous rule making which omitted certain statutorily required provisions concerning mountaintop removal mining. The omitted provisions included a requirement that the applicant present specific plans for the proposed postmining land use and assurances that such use will meet certain conditions for a variance prior to a regulatory authority's granting a permit to mine.

### **Public Notice, Comment and Hearing Procedures**

52 FR 39404 11/20/87 (30 CFR Parts 700 and 736)

Rules were amended governing the promulgation and revision of a federal program for a State, for coal exploration and surface coal mining operations on non-federal and non-Indian lands. The rule revises the existing public notice, comment, and hearing procedures.

### **Cooperative Agreement with Illinois**

52 FR 45323 12/28/87 (30 CFR Part 913)

OSM adopted a cooperative agreement between the Department of the Interior and the State of Illinois for the regulation of surface coal mining and reclamation operations on federal lands in the State. Such a cooperative agreement is provided for in Section 523(c) of the Surface Mining Control and Reclamation Act.

### **Hydrologic Balance, Protection of Recharge Capacity**

52 FR 45920 1/4/88 (30 CFR Parts 784 and 817)

Regulations were amended with respect to restoration of recharge capacity for underground mines. The modification removes the requirement for underground mine operators to handle earth materials and runoff in a manner which will restore approximate premining ground water recharge capacity when reclaiming the mine faceup area at the conclusion of mining. The rule also removes a similar requirement from the performance standards.

### **Lands Unsuitable for Surface Coal Mining Operations**

52 FR 49322 1/29/88 (30 CFR Parts 764 and 769)

OSM amended its permanent program rules that govern the processing of petitions to designate specified areas of land as unsuitable for surface coal mining operations. The amendments eliminate provisions providing for the suspension of petition processing and make the State and federal processes consistent in the completeness review. These changes were made in response to a decision by the U.S. District Court for the District of Columbia.

## Table 3 Continued

### FINAL RULES PUBLISHED DURING 1988-1989

#### **Bond Release Application**

53 FR 994            2/16/88    (30 CFR Part 800)

These rules govern the information required in an application to release a performance bond to include the name of the permittee and amending the bonding rules to allow third parties to guarantee a self-bond. These revisions are in response to the National Wildlife Federation's challenge to the omission of the permittee's name in the published notice of bond release and in response to a June 16, 1986, petition for rule making from the National Coal Association/American Mining Congress Joint Committee on Surface Mining Regulations requesting that OSM amend its rules to allow third parties to guarantee a self-bond.

#### **Individual Civil Penalties**

53 FR 3664            3/9/88    (30 CFR Parts 723, 724, 845, and 846)

This rule provides criteria and procedures to assess individual civil penalties in accordance with section 518(f) against officers, directors, and agents of corporate permittees who knowingly and willfully authorize, order, or carry out violations.

#### **Requirements for Permits and Permit Processing**

53 FR 11606            5/9/88    (30 CFR Part 773)

This rule revises the regulatory prohibition on mining without a permit more than eight months after approval of the State or federal regulatory program. The grace period will be available only to persons conducting surface coal mining operations under a permit from the State regulatory authority, issued in accordance with the initial regulatory program. This change responds to a decision rendered in federal district court. The effect of this change is that any existing mining operation that has no permanent program permit and does not qualify for the exception will have to cease operations and remain shut down until a permanent program permit is issued. This change is not intended to affect coal preparation plants separately authorized under SMCRA.

#### **Excess Moisture Content Allowance; Reclamation Fees**

53 FR 19718            5/27/88    (30 CFR Part 870)

Regulations that govern how the weight of each ton of coal produced is determined for reclamation fee purposes were amended. This action will make the weight determination consistent with the method used for certain other tax purposes. The intended effect is to permit a deduction for moisture over and above the inherent moisture content.

#### **Abandoned Sites**

53 FR 24872            8/1/88    (30 CFR Parts 840, 842, and 843)

This regulation defines an abandoned site as an incompletely reclaimed surface coal mining and reclamation operation where mining and reclamation activities have ceased and which has been abandoned. The rule requires regulatory authorities to inspect abandoned sites as necessary to monitor for changes in environmental conditions or operational status. The rule will enable regulatory authorities to reduce the number of unproductive inspections, as well as duplicate notices and orders, and thus concentrate resources on inspection and enforcement activities that are more likely to secure compliance with the Act. However, inspections can only be reduced where certain actions, such as bond forfeiture and alternative enforcement, have occurred.

#### **California Federal Program**

53 FR 26570            8/12/88    (30 CFR Part 905)

OSM promulgated a federal program to regulate surface coal mining and reclamation and coal exploration operations on non-federal and non-Indian lands in California, in the absence of a State program.

#### **Legal and Financial Commitments**

53 FR 26582            8/12/88    (30 CFR Part 762)

SMCRA provides that the regulatory authority shall establish a planning process to enable it to make an objective decision as to which, if any, lands are unsuitable for all or certain types of surface coal mining operations. This process does not apply to lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to Jan. 4, 1977. The definition of "substantial legal and financial commitments" is revised to clarify that the presence of an existing mine is not necessary to demonstrate the occurrence of a claim.

## Table 3 Continued

### FINAL RULES PUBLISHED DURING 1988-1989

#### **Evaluation of State Responses to Ten-Day Notices**

53 FR 26728      8/15/88    (30 CFR Parts 842 and 843)

This rule establishes a uniform standard by which OSM will evaluate State responses to federal notices of possible violations of a State's program. Under the rule, OSM will accept a State regulatory authority's response to such a notice, called a ten-day notice, as constituting appropriate action to cause a possible violation to be corrected or showing good cause for failure to act unless OSM makes a written determination that the State's response was arbitrary, capricious, or an abuse of discretion under the State program. The rule also provides a process by which a State regulatory authority can request informal review of OSM's written determination that the State response did not constitute appropriate action or show good cause.

#### **Surface and Underground Mining Permit Applications**

53 FR 36394      10/19/88    (30 CFR Parts 780 and 784)

New regulations were devised to define the content and scope of probable hydrologic consequence determinations for surface and underground coal mining permit applications. This action was taken in response to a district court decision in litigation on OSM's permanent regularity program. This rule established the permit and adjacent areas as the scope of the probable hydrologic consequences determination.

#### **Revegetation Performance Standards**

53 FR 34636      10/7/88    (30 CFR Parts 816 and 817)

OSM adopted rules to amend its revegetation regulations for the planting of trees, the time period for measuring revegetation success, and the approval of normal husbandry practices and minimum stocking and planting arrangements.

#### **Prime Farmland**

53 FR 40828      10/18/88    (30 CFR Parts 785 and 823)

Certain portions of OSM's rules that are applicable to prime farmland were amended. This action was taken, in part, to implement a decision of the U.S. District Court for the District of Columbia. The amended rules: (1) provide guidance in implementing an exclusion from SMCRA's prime farmland provisions for coal mine waste storage areas associated with underground mines; (2) provide special consideration for the removal and replacement of B and C soil horizons, where removal is unnecessary and would not normally be required; and (3) eliminate the water body exemption in consideration of the district and appeals courts' decisions. The rule also provides clarification that water bodies continue to be allowed on post-mining non-prime farmland portions of permit areas, provided that the aggregate total prime farmland acreage is not decreased from that which existed prior to mining and that certain other conditions are met.

#### **Permanent and Temporary Impoundments**

53 FR 43584      10/27/88    (30 CFR Parts 780, 784, 816, and 817)

Portions of the regulations governing permanent and temporary impoundments at surface and underground mining operation were amended. Most of the revisions are in response to a court decisions; revisions were also made in response to a 1986 amendment to SMCRA. The rule, which concerns the design, construction, and inspection requirements that apply to impoundments, would (1) establish size criteria for the distinction between large and small impoundments; (2) require a minimum static safety factor for small impoundments; (3) provide for stable foundations and abutments during all phases of construction for small impoundments; (4) establish new spillway requirements for impoundments; and (5) authorize qualified registered professional land surveyors to inspect small impoundments and to certify the construction of siltation structures.

#### **Ownership and Control**

53 FR 38868      11/2/88    (30 CFR Part 773)

The rule tightens the criteria for approval of a permit for surface coal mining operations. This rule adds definitions of the terms "owns or controls" and "owned or controlled" as these concepts are used in section 510(c) of SMCRA. It also revises the scope of review of a permit applicant's environmental compliance record as well as that of its owners or controllers prior to the issuance of a new permit. These revisions will greatly reduce the possibility of violators obtaining permits in violation of the permit approval provisions of the Act.

#### **Termination of Jurisdiction**

53 FR 44356      12/2/88    (30 CFR Part 700)

This rule clarifies the circumstances whereby a regulatory authority may terminate regulatory jurisdiction over reclaimed sites of completed surface coal mining and reclamation operations and coal exploration operations. The rule requires the regulatory authority either to make a written determination that the permittee has met all reclamation requirements, or to decide to release fully a permanent program performance bond, before regulatory jurisdiction over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, or of a coal exploration site, can be terminated.

## Table 3 Continued

### FINAL RULES PUBLISHED DURING 1988-1989

#### **Roads Performance Standards**

53 FR 45190      12/8/88    (30 CFR Parts 701, 780, 784, 815, 816, and 817)

OSM amended its rules governing roads at surface coal mining and reclamation and coal exploration operations. The rules replace those previously suspended. The rules define a road, establish a road classification system, and establish performance standards that allow a regulatory authority to approve designs tailored to local needs.

#### **Support Facilities**

53 FR 47378      12/22/88    (30 CFR Part 701)

The definition of "support facilities" is removed from OSM regulations because a definition is not needed in order to ensure that such facilities are regulated under SMCRA. OSM has determined that the identification of facilities that support surface coal mining operations has been conducted in a manner consistent with the intent of SMCRA during those periods when there has been no definition in Federal regulations (prior to the 1983 introduction of a definition and since the 1988 suspension of the definition).

#### **Coal Preparation Plants Not Located Within the Permit Area of a Mine**

53 FR 47384      12/22/88    (30 CFR Parts 785 and 827)

OSM has amended its regulations to clarify the circumstances under which coal preparation plants located outside the permit area of a mine are subject to the performance standards and permitting requirements of SMCRA. By tracking closely the language of SMCRA, OSM ensures that coal preparation activities carried out "in connection with" a coal mine are appropriately regulated.

#### **Fish and Wildlife Resources Information**

52 FR 47352      1/11/88    (30 CFR Parts 779, 780, 783, 784, 816, and 817)

The rules were amended regarding fish and wildlife resource information and planning requirements, and standards were applied to the protection of fish and wildlife values. The amendments were made to comply with recent court decisions and to revise and clarify the rules. The revised rules amend reinstated fish and wildlife permitting requirements and provide added protection to endangered or threatened species.

#### **Mining Operations Within Tennessee**

53 FR 49104      1/4/89    (30 CFR Part 942)

Federal regulations govern the surface mining program in Tennessee. The amendment is in response to a petition for rule making. The effect of this action is to codify criteria for determining whether a proposed revision to an existing coal mining permit is significant. A significant revision to a permit involves public notice and hearing requirements.

#### **Coal Exploration**

53 FR 52942      1/30/89    (30 CFR Parts 772, 815, and 942)

These rule amendments require a notice of intent to explore for all operations removing 250 tons or less of coal, and clarify limitations on commercial use or sale of coal removed during exploration.

#### **Ownership and Control Information**

54 FR 8982      4/3/89    (30 CFR Parts 773, 778, and 843)

This rule was developed in conjunction with the ownership and control rule and requires permit applicants to submit more detailed information on persons who own or control them. The rule also revises the requirements for reporting violations and requires a regulatory authority to make its decision to approve or disapprove a permit application on the basis of up-to-date information concerning the compliance record of the applicant and related persons. The revisions were needed to conform the permit application requirements with changes in the permitting process and to ensure that permits are issued based on current compliance review information.

#### **Permit Requirements, Permit to Reclaim**

54 FR 13814      5/5/89    (30 CFR Parts 701, 740, 750, 773, 774, 800, and 843)

OSM amended its rules to provide for specific situations where a coal mine operator may not be required to renew a permit to conduct reclamation activities on a location where no mining is taking place. The rule amendment removes the requirement to renew a permit for which the permit term has expired when no activities remain to be performed except reclamation.

## Table 3 Continued

### FINAL RULES PUBLISHED DURING 1988-1989

#### **Improviently Issued Permits**

54 FR 18438      5/30/89    (30 CFR Parts 773 and 843)

This rule adds to the existing regulations governing surface coal mining and reclamation permits and enforcement procedures for improviently issued federal and State permits. An improviently issued permit is a permit which should not have been issued because the applicant at the time was directly or indirectly responsible for a violation, civil penalty, or abandoned mine land fee. It includes general procedures for determining whether a permit was improviently issued, and for applying appropriate remedial measures to bring permits into compliance. It also includes procedures for the suspension and rescission of improviently issued permits, and for action by OSM on improviently issued State permits.

#### **Indian Lands: Federal Regulatory Program**

54 FR 22182      6/21/89    (30 CFR Parts 750; 25 CFR Part 200)

The rule clarifies and revises regulatory and leasing requirements for surface coal mining operations on Indian lands. It clarifies jurisdictional status under SMCRA of Indian allotments and tribal fee lands outside Indian reservations.

## **STATE PROGRAM AMENDMENTS**

Following their initial promulgation in 1979, the federal regulations governing permanent regulatory programs were completely revised in 1981-83 to allow States and operators greater flexibility in the means by which they achieve compliance with SMCRA. In response to extensive litigation and agency policy, these rules have been further revised, beginning in 1985 and continuing to the present.

Under 30 CFR 732.17(e), the Director must notify States whenever, as a result of changes in SMCRA or the federal regulations, State programs are no longer consistent with SMCRA or the federal regulations. In compliance with this provision, OSM has issued four such "732" letters to all States on the following dates and topics:

- One in 1985-86, covering all regulatory changes through September 30, 1983;
- One on June 9, 1987, covering the revised rules published on February 10, 1987, concerning the protection and treatment of historic properties;
- One in October-December 1988, covering all regulatory changes from October 1, 1984, through June 8, 1988.
- One on May 11, 1989, covering three rules relating to the interpretation and implementation of Section 510(c) of SMCRA concerning compliance reviews for permit applicants and permittees.

In addition, a fifth letter is currently being sent to States which covers all regulatory changes between June 9, 1988, and July 30, 1989.

These letters have resulted in the submission of a large number of frequently complex amendments from the States. To process these submissions more efficiently, on January 18, 1989, OSM streamlined its amendment review procedures and decentralized approval and signature authority to the Assistant Directors for Eastern and Western Field Operations.

## **STATE REGULATORY PROGRAMS**

Since May 3, 1978, all surface coal mining operations were required to be permitted by the States and to comply with OSM regulations. Currently there are 24 States with primacy which administer and enforce programs for regulating surface coal mining and reclamation under SMCRA. In addition, during 1988-89, three States had federal programs where OSM regulated the surface coal mining and reclamation. Tables 4 and 5 summarize State program statistics during the period July 1, 1987, through June 30, 1989. (OSM's annual statistics on State and federal regulatory programs are compiled on a July-June cycle.)

**Table 4**  
**State Program Statistics**  
**1988 (July 1, 1987-June 30, 1988)**

	Alabama	Alaska	Arkansas	Colorado	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maryland	Missouri
<b>State Staffing (FTE's 6/30/88)</b>												
Regulatory Program	44	4.91	8.75	23	90	70	5.30	8.25	463.56	3.5	14.2	14.23
AML Program	34	.25	4	9	36	24	5.75	5.75	55.6	2	2.8	15.1
<b>Permits</b>												
New Permits Issued	25	1	1	2	16	16	2	1	448	0	2	8
Permits Suspended	0	0	0	0	0	0	0	0	0	0	0	0
Permits Revoked	4	0	0	0	1	17	0	0	33	0	1	13
<b>Inspections</b>												
Inspectable Units (6/30/88)	308	9	46	54	128	530	26	33	4,900	1	110	101
Complete Inspections	2,686	3	161	229	467	2,172	100	138	17,967	4	617	483
Partial Inspections	1,019	7	256	343	1,085	3,583	235	258	25,068	8	1,110	960
<b>Citations Issued</b>												
Notices of Violations	324	1	32	47	132	279	37	2	2,799	5	36	77
Failure-to-abate Cessation Orders	113	0	2	3	2	25	0	0	652	0	8	4
Imminent Harm Cessation Orders	2	0	0	3	0	0	0	0	57	0	0	1
<b>Civil Penalties</b>												
Collected (\$)	83,790	300	1,500	24,000	34,760	39,200	4,250	0	634,860	400	13,975	16,524
<b>Bonds*</b>												
Final Bond Releases	66	0	4	0	29	72	0	0	740	0	17	56
Forfeitures Initiated	8	0	0	0	1	25	0	0	153	0	1	16
Bonds Collected	105	0	6	0	1	11	0	0	116	0	1	19
Default Sites Reclaimed**	24	0	1	0	1	3	0	14	2	0	0	0
<b>Abandoned Mine Lands</b>												
Projects Approved	20	5	9	19	30	29	2	2	6	0	28	4
Projects Started	17	2	11	15	21	25	2	1	26	0	6	8
Projects Completed	17	5	11	15	20	18	6	3	25	0	4	4

\*Initial and permanent program sites  
\*\*By State or surety

**Table 4 Continued**  
**State Program Statistics**  
**1988 (July 1, 1987-June 30, 1988)**

	Montana	New Mexico	North Dakota	Ohio	Oklahoma	Pennsylvania	Texas	Utah	Virginia	West Virginia	Wyoming
<b>State Staffing (FTE's 6/30/88)</b>											
Regulatory Program	14.5	14	13.45	133.1	41	380	46	24.5	93	106.75	31.47
AML Program	6	10	6	45.4	6	172	8	7	24	61	11.97
Permits											
New Permits Issued	0	0	2	170	12	241	3	0	64	245	0
Permits Suspended	0	0	0	4	0	0	0	0	1	16	0
Permits Revoked	0	0	0	4	0	1	0	0	24	50	0
Inspections											
Inspectable Units (6/30/88)	20	14	48	939	196	3,644	28	32	1,161	3,720	47
Complete Inspections	172	59	216	3,961	781	14,849	142	129	4,722	18,920	191
Partial Inspections	92	138	943	6,708	1,187	23,787	200	212	5,126	11,676	380
Citations Issued											
Notices of Violations	15	26	5	1,086	107	910	17	63	620	1,675	16
Failure-to-abate Cessation Orders	0	1	0	149	36	188	0	2	27	162	0
Imminent Harm Cessation Orders	0	0	0	0	0	0	0	0	10	32	0
Civil Penalties Collected (\$)	1,340	5,880	2,550	296,904	26,677	518,742	0	10,880	118,368	314,598	2,312
Bonds*											
Final Bond Releases	0	0	3	74	30	385***	1	0	68	171	1
Forfeitures Initiated	0	0	0	9	15	NA	0	0	14	56	0
Bonds Collected	0	0	0	11	5	150	0	0	15	33	0
Default Sites Reclaimed**	0	0	0	14	6	25	0	0	13	51	0
Abandoned Mine Lands											
Projects Approved	16	15	4	35	5	55	0	5	12	34	8
Projects Started	5	5	4	47	5	109	1	1	13	30	8
Projects Completed	12	3	2	26	8	87	0	1	19	51	6

\*Initial and permanent program sites

\*\*By State or surety

\*\*\* Permanent program sites only

NA Not available

**Table 5**  
**State Program Statistics**  
**1989 (July 1, 1988-June 30, 1989)**

	Alabama	Alaska	Arkansas	Colorado	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maryland	Missouri
<b>State Staffing (FTE's 6/30/89)</b>												
Regulatory Program	42	4.26	8.75	26	89	65	5.3	8.25	554*	4	13.9	13.23
AML Program	34	1.25	3.9	13	31	22	5.75	8.75	45.6	2	2.15	12.1
Permits												
New Permits Issued	25	0	5	0	15	12	1	1	259	1	2	2
Inspections												
Inspectable Units (6/30/89)	368	11	39	79	153	511	27	33	4,756	2	110	86
Complete Inspections	3,879	9	155	180	480	2,107	107	137	23,496	8	551	371
Partial Inspections	1,084	16	214	233	1,018	3,582	224	275	27,505	16	1,056	759
Citations Issued												
Notices of Violations	292	2	15	23	96	199	33	8	3,658	2	56	27
Failure-to-abate Cessation Orders	71	0	2	2	8	58	0	0	578	0	1	0
Imminent Harm Cessation Orders	4	0	0	3	0	1	0	0	82	0	0	0
Bonds												
Forfeitures Initiated	10	0	3	4	1	2	0	0	53	0	2	0
Abandoned Mine Lands												
Acreage reclaimed	503.9	0	138	19	468	552.4	162	76	766	0	24	329

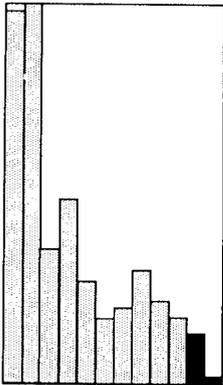
\* Includes 88.5 from Settlement Agreement

**Table 5 Continued**  
**State Program Statistics**  
**1989 (July 1, 1988-June 30, 1989)**

	Montana	New Mexico	North Dakota	Ohio	Oklahoma	Pennsylvania	Texas	Utah	Virginia	West Virginia	Wyoming
State Staffing (FTE's 6/30/89)											
Regulatory Program	14.9	14.5	10.95	116.05	41.3	367	54	25.5	99	112	31.54
AML Program	5	9.25	6.5	41.3	6	150	20.7	7	18	57	11.10
Permits											
New Permits Issued	1	0	1	116	6	156	4	2	85	278	0
Inspections											
Inspectable Units (6/30/89)	59	14	57	877	168	3,613	84	44	1,106	4,094	94
Complete Inspections	171	56	212	3,802	734	14,061	146	135	5,070	18,088	174
Partial Inspections	116	97	797	6,781	963	22,715	302	222	4,601	10,291	335
Citations issued											
Notices of Violations	22	17	6	1,247	97	867	12	57	472	1,466	6
Failure-to-abate Cessation Orders	1	0	0	210	38	86	0	8	21	96	1
Imminent Harm Cessation Orders	0	0	0	3	0	3	0	2	14	36	0
Bonds											
Forfeitures Initiated	0	0	0	11	28	7	0	2	18	84	0
Abandoned Mine Lands											
Acreage reclaimed	301	47	234	266.5	137	1,956.04	108	116	152.7	146	3,960

## GRANTS TO STATES

### PROGRAM DEVELOPMENT GRANTS



Program Development Grants 1978-89

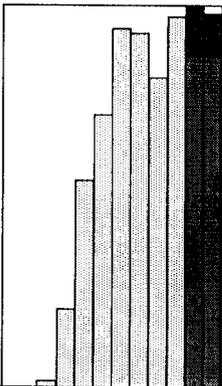
Section 201 of SMCRA authorizes OSM to assist State regulatory agencies in developing or revising surface mining regulatory programs. During 1988, three Indian tribes (the Crow, Navajo, and Hopi) were awarded \$490,933 in program development grants. In 1989, OSM reduced funding to Indian tribes to an amount adequate to allow tribal participation by the Hopi and Navajo in the preparation of the environmental impact statement (EIS) for the Black Mesa-Kayenta mine in

Arizona. All regulatory program development funding for the Tribes has been suspended in view of the unlikelihood of Congressional action, in the foreseeable future, on legislation to allow for tribal primacy under SMCRA Section 710. Table 6 summarizes the program development grants in 1988 and 1989.

**Table 6**  
**Program Development Grants 1988-1989**  
Obligations

Indian Tribe	FY 1988	FY 1989
Crow	\$20,989	\$0
Hopi	98,000	73,000
Navajo	371,944	83,234
<b>Total</b>	<b>\$490,933</b>	<b>\$156,234</b>

### REGULATORY GRANTS



Permanent Program Regulatory Grants 1978-89

Section 705 of SMCRA authorizes OSM to provide grants to States with approved regulatory programs in amounts not exceeding 50 percent of their program costs.

In addition, when a State elects to administer an approved program on federal lands through a cooperative agreement, it becomes eligible to receive financial assistance for up to 100 percent of the amount the Federal Government would have expended in regulating coal mining on those lands. Tables 7 and 8 show the grant amounts provided

to States during 1988 and 1989 to administer and enforce the regulatory programs.

**Table 7**  
**Regulatory Grant Funding**  
**1988 Obligations**

State	Federal Lands	Non-Federal Lands (Federal Share)	Total Federal Funding*
Alabama	\$0	\$1,012,620	\$1,019,170
Alaska	0	303,592	305,657
Arkansas	0	210,610	213,010
Colorado	874,699	225,301	1,104,755
Illinois	105,782	2,351,661	2,440,921
Indiana	0	1,324,206	1,577,306
Iowa	0	160,619	164,413
Kansas	0	191,682	194,202
Kentucky	0	7,934,099	11,512,238
Louisiana	0	193,090	196,537
Maryland	0	494,448	497,630
Mississippi	0	46,076	46,076
Missouri	0	491,112	494,728
Montana	596,904	194,864	792,683
New Mexico	216,536	333,464	582,180
North Dakota	260,836	253,164	515,790
Ohio	0	2,879,552	2,882,612
Oklahoma	0	816,000	818,350
Pennsylvania	0	9,656,400	9,661,141
Texas	0	925,000	926,258
Utah	1,012,871	239,823	1,255,093
Virginia	75,818	2,623,396	3,226,304
West Virginia	0	2,643,832	2,646,932
Wyoming	1,022,727	197,273	1,221,500
<b>Total</b>	<b>\$4,166,173</b>	<b>\$35,701,884</b>	<b>\$44,295,486</b>

\* Includes obligations for AVS, TIPS, Kentucky Settlement Agreement, and other Title V cooperative agreements.

**Table 8  
Regulatory Grant Funding  
1989 Obligations**

State	Federal Lands	Non-Federal Lands (Federal Share)	Total Federal Funding*
Alabama	\$4,000	\$1,221,403	\$1,225,403
Alaska	0	216,800	216,800
Arkansas	0	168,312	168,312
Colorado	894,418	230,380	1,124,798
Illinois	73,498	1,831,501	1,904,999
Indiana	0	1,338,401	1,338,401
Iowa	0	165,248	165,248
Kansas	0	276,649	276,649
Kentucky	0	8,807,872	8,807,872
Louisiana	0	191,665	191,665
Maryland	0	495,633	495,633
Mississippi	0	50,684	50,684
Missouri	0	329,420	329,420
Montana	350,103	119,897	470,000
New Mexico	334,488	238,113	572,601
North Dakota	184,701	190,299	375,000
Ohio	0	2,868,394	2,868,394
Oklahoma	0	883,990	883,990
Pennsylvania	0	10,600,000	10,600,000
Texas	0	744,298	744,298
Utah	1,091,107	262,494	1,353,601
Virginia	40,086	3,269,914**	3,310,000
West Virginia	0	3,196,151	3,196,151
Wyoming	907,787	176,056	1,083,843
<b>Total</b>	<b>\$3,880,188</b>	<b>\$37,873,574</b>	<b>\$41,753,762</b>

\* Includes obligations for AVS, TIPS, Kentucky Settlement Agreement, and other Title V cooperative agreements.

\*\* Includes \$215,122.72 for Technical Data Management Grant

## FEDERAL PROGRAMS FOR STATES

Section 504(a) of SMCRA requires OSM 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 is not approved by the Secretary;
- The State does not submit its own permanent regulatory program; or
- The State does not 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, certain States with coal reserves elected not to submit or maintain regulatory programs. These States thus became federal program States, with surface coal mining and reclamation operations regulated by OSM. On July 13, 1988 (53 FR 26570), OSM promulgated a federal program for California, bringing the total of federal program States to eleven. Full federal programs were previously in effect in Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. Of the federal programs, only Tennessee, Washington, and California have active coal mining.

Table 9 summarizes OSM's regulatory actions in Tennessee, Washington, and California for 1988-1989.

**Table 9**  
**Federal Regulatory Programs For States With Active Programs**  
**1988-1989 (July 1, 1987-June 30, 1989)**

	Tennessee		Washington		California	
	1988	1989	1988	1989	1988	1989
<b>Permits</b>						
New Permits Issued	22	26	0	1	0	0
Permits Suspended	1	1	0	0	0	0
Permits Revoked	0	0	0	0	0	0
<b>Inspections</b>						
Inspectable Units	934	766	4	4	3	3
Complete Inspections	3,948	3,347	52	46	3	5
Partial Inspections	4,338	3,563	0	0	3	24
<b>Citations Issued</b>						
Notices of Violation	501	486	1	0	2	0
Failure-to-abate Cessation Orders	175	132	1	0	2	0
Imminent Harm Cessation Orders	8	11	0	0	0	0
<b>Bonds*</b>						
Final Bonds Released	30	3	0	0	0	0
Forfeitures Initiated	19	11	0	0	0	0
Bonds Collected	3	7	0	0	0	0
Default Sites Reclaimed	0	1	0	0	0	0
<b>Designation of Lands Unsuitable for Mining</b>						
Petitions Received	1	1	0	0	0	0
Acres Designated Unsuitable	0	0	0	0	0	0

\*Permanent Program Sites only

## FEDERAL OVERSIGHT OF STATE REGULATORY PROGRAMS

SMCRA Section 517(a) states that OSM shall make such inspections as are necessary to evaluate the administration of approved State programs. In meeting this requirement, OSM reviews permits, conducts oversight inspections of mine sites, and undertakes special studies on topics of concern in the 24 States with approved primacy programs. Oversight inspections are conducted on a random sample basis. If OSM has reason to believe a violation of the State program exists, OSM must notify the State (except in the case of imminent danger to the public or the environment, in which case OSM can immediately inspect and issue a cessation order). OSM notifies the State of a possible violation with a "10-Day Notice." Once notified of a possible violation, the State then has 10 days in which to take appropriate action to cause the violation to be corrected, or to show good cause for not doing so. During evaluation years 1988-1989, States responded appropriately to alleged violations cited in 10-day notices by taking appropriate action or showing good cause nearly 95 percent of the time. In the relatively few instances where OSM determines that a State has not taken appropriate action or shown good

cause, a federal inspection is then conducted and, if a violation is found to exist, a federal notice of violation or cessation order is then issued. On July 14, 1988, OSM amended regulation Sections 842 and 843 (53 FR 26728-26744) establishing a uniform standard to evaluate State responses to federal notices of possible violations. This rule also established an informal review process for a State to request a review of a Field Office Director's determination that a State's response to a 10-day notice did not constitute either appropriate action or good cause. During 1988-89, significant changes began to be implemented. These changes included reduced requirements for the Field Office Director's report on each State program, an emphasis on oversight tailored to specific areas under each State program based on perceived need or follow-up to prior problems, and the use of action plans developed jointly between Field Office Directors and States to resolve problems when they occur.

Tables 10 and 11 summarize OSM's oversight inspection and enforcement activities during 1988 and 1989.

**Table 10**  
**Federal Oversight of State Programs**  
**1988 (July 1, 1987-June 30, 1988)**

State	Number of OSM Inspections		Possible Violations Contained In 10-Day Notices			Violations Cited In OSM Enforcement Actions		
	Random	Other	Total*	State Actions Pertaining Appropriate	To Alleged Violations Inappropriate	Pending	NOV's**	CO's***
Alabama	169	91	8	8	0	0	0	0
Alaska	1	5	1	1	0	0	0	0
Arkansas	22	9	1	1	0	0	0	0
Colorado	38	17	30	28	2	0	1	0
Illinois	57	61	17	13	4	0	0	0
Indiana	175	70	54	54	0	0	0	0
Iowa	14	13	13	11	2	0	0	0
Kansas	18	4	0	0	0	0	0	0
Kentucky	435	581	218	188	15	15	10	5
Louisiana	1	1	0	0	0	0	0	0
Maryland	62	3	0	0	0	0	0	0
Missouri	52	17	10	7	1	2	0	0
Montana	24	3	1	0	1	0	0	0
New Mexico	10	2	10	9	1	0	0	0
North Dakota	39	4	0	0	0	0	0	0
Ohio	246	49	17	15	2	0	1	0
Oklahoma	109	91	13	12	1	0	1	1
Pennsylvania	415	405	46	38	7	1	0	0
Texas	12	13	4	4	0	0	0	0
Utah	24	3	81	69	12	0	3	0
Virginia	288	107	1	1	0	0	0	0
West Virginia	353	319	29	28	0	1	0	0
Wyoming	28	16	1	0	1	0	1	0

\* Totals reflect data only from 10-day Notices resulting from random sample inspections

\*\* Notices of Violation

\*\*\* Imminent Harm or Failure-to-Abate Cessation Orders

**Table 11**  
**Federal Oversight of State Programs**  
**1989 (July 1, 1988-June 30, 1989)**

State	Number of OSM Inspections		Possible Violations Contained in 10-Day Notices				Violations Cited in OSM Enforcement Actions	
	Random	Other	Total	State Actions Pertaining to Alleged Violations			NOV's*	CO's**
				Appropriate	Inappropriate	Pending		
Alabama	163	63	10	10	0	0	0	0
Alaska	1	0	0	0	0	0	0	0
Arkansas	5	6	3	2	0	0	0	0
Colorado	19	2	3	3	0	0	0	0
Illinois	58	42	48	48	0	0	0	0
Indiana	196	81	73	68	0	5	0	0
Iowa	13	1	7	7	0	0	0	0
Kansas	17	2	4	4	0	0	0	0
Kentucky	432	482	180	159	11	10	11	5
Louisiana	1	1	0	0	0	0	0	0
Maryland	60	12	5	5	0	0	0	0
Missouri	43	7	10	10	0	0	0	0
Montana	7	0	4	4	0	0	1	0
New Mexico	7	0	3	3	0	0	0	0
North Dakota	17	0	0	0	0	0	0	0
Ohio	283	68	73	68	5	0	2	0
Oklahoma	82	71	23	22	0	1	0	0
Pennsylvania	350	422	30	20	1	9	1	1
Texas	12	3	2	2	0	0	0	0
Utah	16	3	19	18	1	0	1	0
Virginia	298	65	11	9	1	1	1	1
West Virginia	344	467	168	125	17	26	5	3
Wyoming	17	2	1	1	0	0	0	0

\*Notices of Violation  
\*\* Imminent Harm or Failure-to-Abate Cessation Orders

# REGULATION OF SURFACE MINING ON FEDERAL AND INDIAN LANDS

## FEDERAL LANDS PROGRAM

Section 523(a) of SMCRA requires the Secretary of the Interior to establish and implement a federal regulatory program applicable to all surface coal mining and reclamation operations taking place on federal lands. On February 16, 1983, OSM promulgated the current federal lands program.

The federal lands program is critical because the Federal Government owns significant coal reserves, primarily in the West, whose development is governed by the Federal Coal Management program of the U.S. Department of the Interior's Bureau of Land Management. Of the 234 billion tons of identified coal reserves in the western region, 60 percent is federally owned.

Administration of most surface coal mining requirements for the Federal lands program may be delegated by the Secretary of the Interior to States with approved regulatory programs through cooperative agreements. By the end of 1988, the Secretary had entered into cooperative agreements with Alabama, Colorado, Illinois, Montana, New Mexico, North Dakota, Ohio, Utah, Virginia, West Virginia, and Wyoming. In 1989, a cooperative agreement was signed with Oklahoma.

Once the Secretary and the State have a signed cooperative agreement, the State regulatory authority assumes responsibility under SMCRA for permitting, inspection, and enforcement for surface coal mining activities

on federal lands in that State. OSM then maintains an oversight 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 permitting, inspection, and enforcement activities under SMCRA are carried out by OSM. During 1988, 18 new permits were issued for mining and reclamation on federal lands; 21 were issued in 1989.

## INDIAN LANDS

Section 710 of SMCRA requires Congressional enactment of enabling legislation before Indian tribes can seek to assume primacy for regulation of mining operations on Indian lands. Until such legislation is enacted and the Indian tribes obtain primacy, OSM regulates coal mining operations on Indian lands pursuant to Section 710 of SMCRA. Mines on the Navajo and Hopi Reservation are within the responsibility of OSM's Field Office in Albuquerque, New Mexico.

For the Crow Ceded Area in Montana, OSM and the Montana Department of State Lands have developed a Memorandum of Understanding under which the State and OSM cooperatively administer the applicable surface mining requirements, including the permitting and inspection functions. The mine on the Crow Ceded Area is within the responsibility of OSM's Field Office in Casper, Wyoming. Table 12 provides statistics on regulatory activities on Indian lands during 1988 and 1989.

**Table 12**  
**Regulatory Activities On Indian Lands**  
**1988-1989**

	1988	1989
<b>Indian lands in Arizona and New Mexico</b>		
Total permits	5	6
Inspectable Units (All lands)	8	9
Total Inspections (Partial and Complete)	72	72
Enforcement Actions (Notices of Violations issued)	16	8
<b>Indian lands in Montana</b>		
Total Permits	1	1
Inspectable Units (All lands)	1	1
Total Inspections (Partial and Complete) *	14	12
Enforcement Actions (Notices of Violations issued)	0	0

\* All inspections (Partial and Complete) are conducted jointly by the Montana Department of State Lands and the OSM Casper Field Office

## HEARINGS AND APPEALS

The Secretary of the Interior has the obligation under SMCRA to provide administrative review of OSM's actions, including the opportunity for hearings governed by the Administrative Procedure Act. The administrative review function of the Secretary has been delegated to the Department's Office of Hearing and Appeals (OHA).

OHA consists of a Hearings Division -- staffed by administrative law judges who hold hearings under the Administrative Procedure Act -- and several appeals boards established to review appeals arising from initial decisions of administrative law judges or from decisions of certain program bureaus within the Department of the Interior. OHA is not part of OSM.

The headquarters for OHA is in Arlington, Va., where the chief administrative law judge and an administrative law judge charged with OSM matters maintain their offices. Two Hearings Division field offices, each staffed by an administrative law judge, currently handle OSM matters expeditiously in the eastern and midwestern United States. Those offices are located in Pittsburgh, Pa., and Knoxville, Tenn. A field office in Salt Lake City, Utah, provides administrative law judges to conduct hearings in the western states.

The Interior Board of Land Appeals is composed of Administrative Judges and is also located in Arlington, Va. The Board performs the appellate functions of the Secretary under SMCRA.

Any person adversely affected by a written decision of the Director of OSM, or by a delegate of the Director, may appeal to the Board directly where the decision specifically grants such right to appeal. Administrative review under SMCRA has presented the administrative law judges and the Board with a variety of issues for resolution. The Board handled disputes and clarified questions that have arisen over SMCRA implementation and its regulations, resulting in the resolution of 57 cases in 1988 and 45 cases in 1989.

## KENTUCKY SETTLEMENT AGREEMENT

In September 1987, a Settlement Agreement was reached between the National Wildlife Federation et al. and the Commonwealth of Kentucky.

The Department of the Interior, the Commonwealth of Kentucky, and environmental and industry groups participated in negotiations on the Settlement Agreement. At the same time, a Supplemental Memorandum of Understanding was entered into between OSM and Kentucky. Congressional authorization for funding was approved in December 1987 for \$12,900,000 and OSM and Ken-

tucky signed a three-year Cooperative Agreement covering funding on February 23, 1988. This cooperative agreement provides \$10,540,000 for the accomplishment of tasks and additional duties enumerated in the Settlement Agreement and the Supplemental Memorandum of Understanding. The remaining funds are being used by OSM for background studies of hydrology and acidity problems and for the development of bond release training.

An important requirement of the Settlement Agreement is the aerial overflight program. This requires that all permanent program surface coal mining operations without a Phase II bond release be overflowed and videotaped. Kentucky is reviewing all videotapes and conducting follow-up inspections to determine if violations exist on the ground. Where it is determined that an inspector is not fulfilling the requirements of his or her position, training or other appropriate personnel action is being taken.

Other provisions within the Settlement Agreement and Supplemental Memorandum of Understanding include: upgrading of computer systems; one-time inspection and photographing of all interim program permits and on-site construction exemptions; continuing the issuance of Failure-To-Abate Cessation Orders; assessment of \$750.00/day penalties; development of computer tracking for unabated Cessation Orders, with alternative enforcement follow-up; development of an inventory of exploration notices/permits, and taking enforcement action where abuses have occurred; denying or suspending permits in accordance with the Applicant Violator System; conducting a special study on sites thought to have prematurely or improperly released bonds; and developing an overall approach for combating illegal mining.

Kentucky has made significant progress in implementing the requirements of the three agreements. The added support has led to innovative methods of mine inspection and data processing and has placed Kentucky in a position of technical sophistication. A spirit of cooperation has grown, resulting in improvement of the Kentucky regulatory program and an increase in voluntary compliance throughout the Kentucky coal industry.

## PENNSYLVANIA ANTHRACITE REGULATORY PROGRAM

Section 529 of SMCRA provides an exception from federal performance standards for anthracite coal mining operations provided State law governing these operations was in effect on August 3, 1977. Pennsylvania is the only State with an established regulatory program qualified for exception, and which thus regulates anthracite mining independent of permanent program standards.

The Pennsylvania anthracite coal region is located in the northeast quarter of the State and covers approximately 3,300 square miles, where more than 20 different coal beds vary in thickness from a few inches to 50 or 60 feet. The anthracite region is characterized by steeply pitching seams, some dipping more than 60 degrees. Such seams require highly specialized mining techniques, and present unique challenges for solving such problems as mine subsidence associated with abandoned anthracite mines.

Anthracite mining produces about 5.5 million tons per year, about 7.5 percent of Pennsylvania's annual coal production. The Pennsylvania anthracite program covers 486 inspectable units permitting over 95,000 acres, including 122 underground mines, 185 surface mines, 161 reprocessing operations, and 18 permitted preparation plants.

Pennsylvania has fully addressed conditionally approved provisions of the anthracite program through subsequent program revisions. The one remaining condition, relating to prime farmlands, is the subject of present rule making scheduled to be completed early in FY 1990. Anthracite program permitting, inspection, and enforcement has experienced continued improvement. The anthracite program maintains inspection frequency at required levels, conducted through well-documented inspections. The inspection program continues to identify non-compliance at mine sites in accordance with violation categories based on seriousness. Enforcement response to non-compliance has been successful in causing violation abatement. Citizen complaint response is timely and fully responsive to stated concerns.

Anthracite program permitting efforts have concentrated on two areas, small underground operations and preparation plants. Pennsylvania has successfully applied program permitting and performance standards to a class of small underground operations which historically have operated without regard to regulatory requirements. As a result of a comprehensive effort to locate, review, and systematically apply enforcement provisions, including permanent cessation orders, all such operations have been permitted or the mine openings sealed. Anthracite preparation plants are under review for appropriate enforcement on permitting action in response to a program amendment approved during July 1989.

## RECLAMATION AWARD PROGRAM

To give well-earned public recognition to the people responsible for the Nation's most outstanding achievements in environmentally sound surface mining and land reclamation, OSM initiated the annual Excellence in Surface Coal Mining and Reclamation Awards in 1986. That year

nine companies received awards for exemplary performance under SMCRA. In 1987, seven national reclamation awards were presented. For 1988, eight awards were presented to the winning coal mine operators by Secretary of the Interior Manuel Lujan, Jr., at the National Coal Association's annual meeting in White Sulphur Springs, West Virginia.

National public acknowledgement of these outstanding operators:

- Promotes their exemplary performance using standard reclamation practices;
- Recognizes the development and implementation of new reclamation technologies;
- Encourages wider use of the best reclamation technology through information exchange and technology transfer;
- Provides the public with a better understanding of mined-land reclamation achievement under SMCRA; and
- Encourages voluntary action by coal mine operators that goes beyond minimum compliance with regulatory requirements to protect the environment and manage coal resource recovery.

During 1988, in addition to presenting the Excellence in Surface Coal Mining and Reclamation Awards, OSM initiated the Director's Award, a special award given annually at the discretion of the Director to one mining company in recognition of exemplary corporate commitment to the environment.

The 1988 winners were:

### The Director's Award

Texas Utilities Mining Company, Big Brown Mine, Fairfield, Texas.

### Excellence in Surface Coal Mining and Reclamation Awards

Kerr-McGee Coal Corp., Jacobs Ranch Mine, Gillette, Wyoming.

The Sabine Mining Company, Longview, Texas.

Fuel Fabricators, Inc., preparation plant, Bigler, Pennsylvania.

Drummond Coal Company, Mill Creek Mine, Jasper, Alabama.

B & N Coal Company, Dexter City, Ohio.

The Rogers Group and Black Beauty Coal Company, Arlen #1 Mine, Epsom, Indiana.

The Carter Mining Company, Caballo and Rawhide Mines, Gillette, Wyoming.

Aloe Coal Company, Neville Island, Pennsylvania.

Selection of the 1989 winners will be made in the spring of 1990. The announcement and presentation of awards to companies with the winning operations will be made at a national meeting immediately following the selection.

In July 1989, OSM received a Take Pride In America award for its successful implementation of this reclamation award program. This Take Pride award recognized the motivation and incentive the program provides in encouraging the mining industry's commitment to stewardship of the land.

## ADDITIONAL INFORMATION

- Kentucky Natural Resources & Environmental Protection Cabinet, and the Office of Surface Mining, 1988. *Kentucky Cooperative Agreement: Progress Report - February 23, 1988-September 30, 1988*: Office of Surface Mining, Lexington Field Office, Lexington, Kentucky, 50 pp.
- Kentucky Natural Resources & Environmental Protection Cabinet, and the Office of Surface Mining, 1989. *Kentucky Cooperative Agreement: Progress Report #2 - October 1, 1988-March 31, 1989*: Office of Surface Mining, Lexington Field Office, Lexington, Kentucky, 33 pp.
- Kentucky Natural Resources & Environmental Protection Cabinet, and the Office of Surface Mining, 1989. *Kentucky Cooperative Agreement: Progress Report #2 Appendices - October 1, 1988-March 31, 1989*: Office of Surface Mining, Lexington Field Office, Lexington, Kentucky, 86 pp.
- U.S. Dept. of the Interior, 1989. *United States Department of the Interior Take Pride in America Departmental Awards Ceremony*: U.S. Dept. of the Interior, Washington, D.C., 14 pp.
- U.S. Dept. of the Interior, 1989. *1988 Excellence in Surface Coal Mining and Reclamation Awards: A report on the award winning surface mining and reclamation operations under Title V of the Surface Mining Control and Reclamation Act of 1977*: Office of Surface Mining, Washington, D.C., 25 pp.
- U.S. Dept. of the Interior, 1989. *1988 Excellence in Surface Coal Mining and Reclamation Awards Video* -- A VHS video tape describing the 1988 winning reclamation operations: Office of Surface Mining, Washington, D.C.