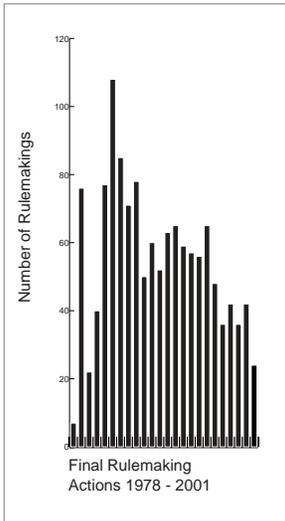


# IV. Regulation of Active Coal Mines

Under the Surface Mining Law ([www.osmre.gov/smcra.htm](http://www.osmre.gov/smcra.htm)), the Office of Surface Mining is responsible for publishing the rules and regulations ([www.osmre.gov/regindex.htm](http://www.osmre.gov/regindex.htm)) necessary to carry out the Law. The permanent regulatory program and related rules provide the fundamental mechanism for ensuring that the goals of the Surface Mining Law are achieved. A major objective is to maintain a stable regulatory program by improving the regulation development process and obtaining a broad spectrum of viewpoints on rulemaking activities.

## Rulemaking and State Program Amendments



The 2001 rulemaking process included discussions with coal industry representatives, citizen groups, and state regulators to obtain their input and suggestions.

During the year, the Office of Surface Mining published two permanent program final rules in the *Federal Register* (Table 7): Abandoned Mine Land Fee Collection on the OSM-1 Form (RIN 1029-AB94), and the Ownership and Control Rule (RIN 1029-AB94). Subject to Office of Surface Mining approval, states have the right to amend their programs at any time for appropriate reasons. Whenever the Surface Mining Law or its implementing regulations are revised, the Office of Surface Mining is required to notify the states of the changes needed to make sure that the state programs continue to meet federal requirements. As a result, the states have submitted a large number of complex amendments. The Office of Surface Mining has taken several steps to process states submissions more efficiently. For example, the amendment review process within the Office of Surface Mining has been decentralized, and standard format and content guidelines for state program submissions have been issued to the states. In 2001, the Office of Surface Mining published 24 proposed and 22 final state program amendments in the *Federal Register*. A complete list and summary of all Office of Surface Mining *Federal Register* notices can be seen at [www.osmre.gov/ocfeder.htm](http://www.osmre.gov/ocfeder.htm).

**Table 7: Final Rules Published During 2001**

<b>Abandoned Mine Land Fee Collection on the OSM-1 Form</b>	30 CFR 870	5/23/01
This rule revises our regulations governing Abandoned Mine Land (AML) reclamation fee reporting to allow for the electronic filing of the information required on the OSM-1 Form.		
<b>Ownership and Control Rule</b>	30 CFR 761	12/19/01
This rule fulfills our commitment to undertake new rulemaking on ownership and control and related regulatory issues in the wake of the January 31, 1997 decision of the United States Court of Appeal for the District of Columbia Circuit. The rule amends application, permit information, and eligibility criteria requirements.		

## Significant Court Decisions

During 2001 there were three significant court decisions that influenced the implementation of the Surface Mining Law: Takings, Mountaintop Mining and Valley Fills, and Ownership and Control (Table 8). Additionally, on November 19, 2001 (Fiscal Year 2002), the U.S. Court of Appeals for the Federal Circuit reversed the U.S. Court of Federal Claims' finding of a Fifth Amendment taking in *Eastern Minerals Int'l, Inc. v. United States*. As a result, the 2001 financial statement amounts were adjusted to reflect the change in estimate resulting from this decision (see financial statement Note 14 for additional information).

## Table 8: Significant Court decisions

### TAKINGS LITIGATION

**Rith Energy, Inc. v. United States**, No. 99-5153 (Fed. Cir.)

On November 5, 2001, the U.S. Court of Appeals for the Federal Circuit denied the appellant's petitions for panel rehearing and rehearing *en banc* in the court's first significant takings decision after the U.S. Supreme Court's decision in *Palazzolo v. Rhode Island*, 121 S. Ct. 2448, - U.S. - (2001). This ruling leaves the initial panel decision, issued on May 2, 2001, undisturbed. That decision affirmed the Court of Federal Claims' grant of summary judgment in favor of the government. *Rith Energy, Inc. v. United States*, 247 F.3d 1355 (Fed. Cir. 2001). Plaintiff filed this action in August 1992, claiming that the Office of Surface Mining had effected a compensable taking of plaintiff's leasehold when it suspended the company's mining permit because the company did not have a toxic materials handling plan adequate to prevent acid mine drainage. The trial court held that there had not been a taking because Office of Surface Mining's actions "represented an exercise of regulatory authority indistinguishable in purpose and result from that to which plaintiff was always subject under Tennessee nuisance law." *Rith Energy, Inc. v. United States*, 44 Fed. Cl.108 (1999). In affirming the lower court, the Federal Circuit did not reach the nuisance issue, but instead held that "the government's conduct at issue in this case did not result in a categorical taking of Rith's property" and "Rith did not have reasonable investment-backed expectations that it would be permitted to mine in a way that would create a high risk of acid mine drainage." 247 F.3d at 1358. Of particular significance to the court was the fact that Rith acquired the subject leases long after the enactment of the Surface Mining Law, which includes provisions directly addressing acid mine drainage and its consequences in the permitting process. In light of this statutory backdrop, the court reasoned that Rith "could not reasonably have expected that it would be free from regulatory oversight with regard to the potential for acid mine drainage..." *Id.* at 1364.

### MOUNTAINTOP MINING AND VALLEY FILLS

**Bragg v. Robertson**, No. 99-2683 (4th Cir.)

On April 24, 2001, the U.S. Court of Appeals for the Fourth Circuit ruled that the doctrine of sovereign immunity and the Eleventh Amendment bar the citizen plaintiffs from bringing their claims against an official of West Virginia in federal court. *Bragg v. Robertson*, 248 F.3d 275. It vacated the October 20, 1999, decision of the United States District Court for the Southern District of West Virginia, *Bragg v. Robertson*, 72 F. Supp.2d 642, which had enjoined the West Virginia Department of Environmental Protection from approving surface coal mining permits that allow the disposal of rock and dirt generated from mining activities into intermittent and perennial streams.

### OWNERSHIP AND CONTROL

**National Mining Ass'n v. Department of Interior**, No. 96-5274 (D.C. Cir.) (AVS Procedures Rules)

On June 8, 2001, the D.C. Circuit issued its opinion in the National Mining Association's challenge to the Office of Surface Mining's and Office of Hearings and Appeals's 1994 Applicant/Violator System Procedures rules. 251 F.3d 1007 (D.C. Cir. 2001). As the Office of Surface Mining had requested in a supplemental briefing, the court determined that many of the issues presented in the case are moot in light of the Office of Surface Mining's promulgation of a new ownership and control rule on December 19, 2000, which replaced virtually all of the regulatory provisions at issue in this case. As to the two issues the court did reach – permit application information requirements and the burden of proof in ownership and control challenges – it determined that National Mining Association's challenges were meritless. The challenged rules were promulgated by the Office of Surface Mining and the Interior Department's Office of Hearings and Appeals on October 28, 1994. The rules implement the Surface Mining Law and the Office of Surface Mining's ownership and control rules by providing standards for evaluating potential ownership or control links and procedures for review of the Office of Surface Mining's decisions regarding ownership and control determinations. 59 Fed. Reg. 54306 (Office of Surface Mining's Applicant/Violator System Procedures Rules); 59 Fed. Reg. 54356 (Office of Hearings and Appeals's Applicant/Violator System Procedures Rules).

## State Programs

Since May 3, 1978, all surface coal mines have been required to have permits and to comply with either Office of Surface Mining regulations or corresponding approved state program provisions (in states that have primacy). Currently, there are 24 primacy states that administer and enforce approved programs for regulating surface coal mining and reclamation under the Surface Mining Law. An effective relationship between the Office of Surface Mining and the states is fundamental to the successful implementation of the Surface Mining Law. This shared federal-state commitment to carry out the requirements of the Surface Mining Law is based on common goals and principles that form the basis for the relationship.

## Oversight of State Programs

Section 517(a) of the Surface Mining Law requires the Office of Surface Mining to make inspections as necessary to evaluate the administration of approved state programs. Most state programs were approved in the early 1980's, and



Permanent impoundments included in the reclamation provide recreational opportunities and encourage greater biological diversity.

the Office of Surface Mining’s oversight of the programs focused on the implementation of the many procedural and process requirements such as permitting, inspection, enforcement, and penalties, each with numerous mandated requirements. These are prescribed to achieve the environmental protection performance standards and the overall purposes of the Surface Mining Law.

The Office of Surface Mining, in consultation with the states, devised a new results-oriented oversight strategy that emphasized cooperative problem-solving, tailored evaluations to state-specific conditions, and developed performance agreements between each state and its Office of Surface Mining Field Office. The primary focus of this strategy is on measuring whether state programs are successfully achieving the purposes of the Surface Mining Law with respect to public participation, environmental protection, and reclamation of mined lands. This focus is consistent with the Government Performance and Results Act, which requires that federal agencies develop ways to objectively measure how a program is accomplishing its mission through delivery of products or services. The strategy also allows the Office of Surface Mining to focus its limited resources on those program aspects that present the best opportunity for environmental improvement and the best means of preventing adverse impacts on society and the environment.

Specifically, to further reporting of end results and on-the-ground success, the Office of Surface Mining now evaluates and reports state-specific and national findings for offsite impacts and reclamation success. The purpose of measuring offsite impacts is to protect citizens, public and private property, and the environment outside of areas authorized for mining and reclamation activities. This measurement is intended to identify the number and severity of offsite impacts; determine causes of the impacts; and identify where improvements may be made to lessen the number and degree of these impacts. Success is determined on the numbers expressed as a percent of inspectable units that achieve the goal of having no offsite impacts and on the number of acres that meet the bond release requirements for the various phases of reclamation. (An inspectable unit is a coal mining or exploration operation where an inspection obligation exists under the Surface Mining Law. One unit may consist of an individual permit; a consolidation of several permits issued to the same permittee, which,

**Table 9: Federal Oversight of State Programs**

State	Site Visits	Violations Cited by the Office of Surface Mining <sup>1</sup>		
		Notice of Violations	Failure-To-Abate Cessation Orders	Imminent Harm Cessation Orders
Alabama	118	0	0	0
Alaska	0	0	0	0
Arkansas	9	0	0	0
Colorado	11	0	0	0
Illinois	99	0	0	0
Indiana	69	0	0	0
Iowa	21	0	0	0
Kansas	17	0	0	0
Kentucky	419	7	2	0
Louisiana	2	0	0	0
Maryland	37	0	0	0
Mississippi	2	0	0	0
Missouri	35	0	0	0
Montana	14	0	0	0
New Mexico	5	0	0	0
North Dakota	15	0	0	0
Ohio	229	0	0	0
Oklahoma	30	0	0	0
Pennsylvania	488	3	1	0
Texas	11	0	0	0
Utah	4	0	0	0
Virginia	159	0	0	0
West Virginia	406	6	1	0
Wyoming	11	0	0	0
<b>Total</b>	<b>2,211</b>	<b>16</b>	<b>4</b>	<b>0</b>

1. Excludes any NOV's or CO's that have been vacated.

**Table 10: Regulatory Program Statistics**

State	Regulatory Staffing	AML Staffing	New Permits	New Acreage Permitted	Total Acreage Permitted	Disturbed Acreage	Inspectable Units	Complete Inspections	Partial Inspections	Notice of Violations	Failure-To-Abate Cessation Orders	Inminent Harm Cessation Orders	Bond Forfeitures	Acreage of Phase I Bond Release	Acreage of Phase II Bond Release	Acreage of Phase III Bond Release
Alabama <sup>1</sup>	25.00	17.75	8	2,038	86,804	NA	238	2,773	350	76	22	4	13	2,779	2,848	4,109
Alaska	3.68	5.13	0	0	8,262	1,345	10	17	39	5	0	0	0	0	0	0
Arkansas	4.00	6.65	0	0	1,144	527	14	117	56	1	0	0	0	57	0	61
Colorado	25.00	14.00	0	0	163,510	22,113	56	274	216	24	0	0	0	1,203	3,547	1,205
Crow Tribe	1.45	4.55	0	0	4,747	419	1	4	8	0	0	0	0	0	0	0
Georgia	NA	NA	0	0	0	141	6	6	5	0	0	0	0	0	0	0
Hopi Tribe	2.50	6.10	0	0	6,137	151	1	6	4	0	0	0	0	0	0	0
Illinois <sup>1</sup>	52.00	36.00	1	138	73,400	79,138	93	628	1,679	30	3	1	0	15,662	15,128	13,050
Indiana	51.00	21.80	14	15,814	282,360	97,742	184	942	1,859	82	1	1	7	7,316	14,386	11,268
Iowa	3.65	4.95	0	0	5,977	5,977	24	96	192	6	0	0	1	0	0	0
Kansas	3.25	8.00	0	0	4,612	4,612	12	56	108	0	0	0	0	1,022	296	317
Kentucky	309.00	82.00	97	52,890	1,687,800	251,363	2,136	9,547	15,481	775	72	24	25	10,987	9,247	19,022
Louisiana	3.25	0.25	0	0	45,200	18,302	2	8	16	3	0	0	0	0	0	0
Maryland	11.85	8.15	5	170	5,943	5,943	62	318	551	6	0	0	0	24	191	225
Mississippi	2.28	NA	0	0	1,908	866	1	4	8	0	0	0	0	0	0	0
Missouri <sup>1</sup>	14.70	11.20	0	0	12,400	11,772	53	184	116	38	9	0	0	2,077	805	1,097
Montana	16.20	8.68	0	0	49,934	25,769	17	88	111	12	0	0	0	422	422	0
Navajo Tribe	5.00	29.80	0	0	81,178	30,686	7	54	68	8	0	0	0	673	0	0
New Mexico	10.50	9.75	0	0	97,500	22,593	15	60	120	4	0	0	0	0	1,243	237
North Dakota	8.75	4.88	0	878	76,092	46,465	36	146	486	1	0	0	0	1,647	80	189
Ohio	33.40	31.70	41	7,911	108,518	64,735	392	1,544	2,189	118	6	5	0	6,899	7,710	8,155
Oklahoma	27.60	6.00	1	410	31,840	31,840	100	393	543	15	0	0	0	2,642	2,756	2,058
Pennsylvania <sup>1</sup>	223.10	128.00	68	1,927	416,000	NA	2,160	7,741	11,073	940	30	0	10	7,057	8,330	9,128
Tennessee	51.00	NA	5	1,714	25,139	15,113	338	964	1,031	17	4	0	7	625	1,327	1,719
Texas	40.00	8.00	0	0	239,500	453,839	19	84	201	5	0	0	0	2,309	958	613
Utah	23.00	9.00	0	48	163,775	2,341	27	113	185	5	0	0	0	30	0	10
Ute Tribe	0.00	0.00	0	0	175	120	2	8	4	0	0	0	0	0	0	0
Virginia	80.00	16.00	34	8,329	73,477	45,529	637	3,026	3,491	232	0	7	9	203	5,465	2,505
Washington	2.60	NA	1	58	14,930	5,216	2	8	18	5	0	0	0	0	0	0
West Virginia	286.70	60.00	50	11,103	288,463	185,764	2,429	7,845	11,301	1,079	63	33	36	11,535	5,826	6,885
Wyoming	28.98	15.05	0	5,287	335,177	93,842	36	123	214	15	0	0	0	3	1,545	0
<b>TOTAL</b>	<b>1,349.44</b>	<b>553.39</b>	<b>325</b>	<b>108,715</b>	<b>4,391,902</b>	<b>1,524,263</b>	<b>9,110</b>	<b>37,177</b>	<b>51,723</b>	<b>3,497</b>	<b>210</b>	<b>75</b>	<b>108</b>	<b>75,172</b>	<b>82,110</b>	<b>81,853</b>

1. Disturbed acreage is not available for these states.

for all practical purposes, constitutes the same mining operation; or in the case of large mines, smaller, logical units of a single permit that are more amenable to inspection.) During 2001, 93.9 percent of the inspectable units were free of offsite impacts.

Since 1996, the Office of Surface Mining has completed four reviews of the implementation of the oversight policy. Although there are a few exceptions, the four reviews showed that the cooperative approach provides a better atmosphere for resolving problems with states. Also, the oversight strategy has resulted in improvements to state program implementation and in resolution of some long-standing issues. (See [www.osmre.gov/report01.htm](http://www.osmre.gov/report01.htm) for copies of Annual State Oversight Reports.)

Table 9 provides the Office of Surface Mining's oversight inspection and enforcement activities during 2001 (monthly reports are available at [www.osmre.gov/i&eindex.htm](http://www.osmre.gov/i&eindex.htm)).

### Federal Programs

Section 504(a) of the Surface Mining Law requires the Office of Surface Mining to regulate surface coal mining and reclamation activities on non-federal and non-Indian lands in any state if:

- the state's proposal for a permanent program has not been approved by the Secretary of the Interior;
- the state does not submit its own permanent regulatory program; or
- the state does not implement, enforce, or maintain its approved state program.

Although the Office of Surface Mining encourages and supports state primacy in the regulation of coal mining and reclamation operations, some states with coal reserves have elected not to submit or maintain regulatory programs. Those states are called federal program states, and their coal mining and reclamation operations are regulated by the Office of Surface Mining. Federal programs are in effect in 12 states: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington.

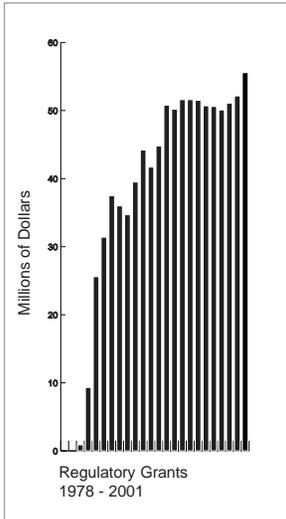
**Table 11: Regulatory Grant Obligations**

State/Tribe	2001 Federal Funding	2000 Federal Funding	Cumulative Through 2001 Federal Funding <sup>1</sup>
Alabama	\$987,837	\$913,745	\$24,238,523
Alaska	178,665	177,495	5,355,444
Arkansas	130,329	142,713	3,276,304
Colorado	1,846,452	1,640,906	25,739,375
Illinois	2,682,741	2,326,864	49,074,639
Indiana	1,863,869	1,968,483	29,056,953
Iowa	145,981	120,502	2,523,456
Kansas	137,040	107,164	2,715,384
Kentucky	12,895,953	12,771,209	246,207,505
Louisiana	189,484	192,433	3,401,680
Maryland	486,693	477,333	10,668,176
Michigan	0	0	135,458
Mississippi	115,965	109,628	1,033,243
Missouri	491,100	426,138	7,978,594
Montana	961,707	906,905	15,516,141
New Mexico	689,035	610,627	11,518,091
North Dakota	486,822	466,725	10,618,188
Ohio	1,600,123	1,438,580	54,911,384
Oklahoma	1,087,936	899,245	16,481,268
Pennsylvania	11,222,798	10,603,971	196,091,751
Rhode Island	0	0	158,453
Tennessee	0	0	5,340,085
Texas	1,497,816	1,441,853	20,325,991
Utah	1,764,267	1,533,595	25,658,834
Virginia	3,336,526	3,143,371	62,086,659
Washington	0	0	4,893
West Virginia	8,143,010	7,517,645	107,298,179
Wyoming	1,952,811	1,607,101	30,157,668
Crow Tribe	63,522	82,291	989,496
Hopi Tribe	167,460	130,230	1,405,813
Navajo Tribe	433,263	373,263	3,375,183
N. Cheyenne Tribe	15,260	25,985	77,351
Total	\$55,574,465	\$52,156,000	\$973,420,162

1. Includes obligations for Applicant/Violator System, Technical Information Processing System, Kentucky Settlement, and other Title V cooperative agreements. Figures for 2001 do not include downward adjustments of prior-year awards. However, cumulative figures are net of all prior-year downward adjustments.

Of the federal program states, only Tennessee and Washington had active coal mining in 2001. Table 10 includes the regulatory actions in those two states during 2001.

**Grants to States and Tribes**



Section 201 of the Surface Mining Law authorizes the Office of Surface Mining to help state regulatory authorities develop or revise surface mining regulatory programs. In 2001, the Office of Surface Mining awarded \$679,505 for program development grants to the Crow, Northern Cheyenne, Hopi, and Navajo Tribes.

Section 705 of the Surface Mining Law authorizes the Office of Surface Mining to provide grants to states with approved regulatory programs in amounts not exceeding 50 percent of annual state program costs, matching state regulatory costs dollar for dollar. In addition, when a state elects to administer an approved program on federal land through a cooperative agreement with the Office of Surface Mining, the state becomes eligible for financial assistance of up to 100 percent of the amount the federal government would have spent to regulate coal mining on those lands. Table 11 shows grant amounts provided to states during 2001 to administer and enforce regulatory programs.

During 2001, the Office of Surface Mining awarded 97 percent of the regulatory grants to the states within 60 days of receiving the grant application.

**Regulation of Surface Mining on Federal and Indian Lands**

Section 523(a) of the Surface Mining Law requires the Secretary of the Interior to establish and implement a federal regulatory program that applies to all surface coal mining operations that take place on federal land. The Office of Surface Mining enacted the current Federal Lands Program on February 16, 1983. The federal lands program is important because the federal government owns significant coal reserves, primarily in the West. Of the 234 billion tons of identified coal reserves in the western United States, 60 percent is federally owned. The development of federal coal reserves is governed by the Federal Coal Management Program of the Department of the Interior's Bureau of Land Management.

Through cooperative agreements, the administration of most surface coal mining requirements of the Federal Lands Program may be delegated by the Secretary of the Interior to states with approved regulatory programs. By the end of 2001, the Secretary had entered into such cooperative agreements with Alabama, Colorado, Illinois, Indiana, Kentucky, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West



At this reclaimed mine site, tree and shrub seedlings are being planted with a tractor-drawn tree-planting machine. The shelter belts being established will provide field windbreaks and tree and shrub block plantings for wildlife. This woody vegetation creates habitat diversity in the largely open agricultural setting of the North Dakota plains. With over 150,000 trees and shrubs planted at this mine there is more acreage planted after mining and reclamation than existed before. This successful reclamation practice has resulted in an enhanced, long-term agricultural land use.

Virginia, and Wyoming (see [www.osmre.gov/coop.htm](http://www.osmre.gov/coop.htm)). Under the Surface Mining Law, once the Secretary and a state have signed a cooperative agreement, the state regulatory authority assumes permitting, inspection, and enforcement responsibilities for surface coal mining activities on federal lands in that state. The Office of Surface Mining maintains an oversight function to ensure that the regulatory authority fully exercises its delegated responsibility under the cooperative agreement. In states without cooperative agreements, the required permitting, inspection, and enforcement activities under the Surface Mining Law are carried out by the Office of Surface Mining. During 2001, the Office of Surface Mining did not issue any new permits on federal lands.

For states with leased federal coal, the Office of Surface Mining prepares the Mining Plan Decision Documents required by the Mineral Leasing Act, and documentation for other nondelegable authorities, for approval by the Secretary of the Interior. During 2001, 10 mining plan actions were prepared and approved for coal mines on federal land (Colorado 3, Montana 1, New Mexico 1, North Dakota 1, Oklahoma 1, Utah 1, and Wyoming 2).

Pursuant to Section 710 of the Surface Mining Law, the Office of Surface Mining regulates coal mining and reclamation on Indian lands. There are three mines on the Navajo Reservation, one mine on the Hopi Reservation, a portion of an underground mine and a haul road on the Ute Mountain Ute Reservation, and one mine on the Crow Reservation permitted under the permanent Indian Lands Program. One mine on the Navajo and Hopi Reservation is operating under the interim program. Also, on the Navajo



When a final pit was being reclaimed as a pond, engineers designed a 30-acre two-tier flood plain that provides both flood storage and a forested wetland. The upper tier, 18 acres in size, has a slight slope that drains into the pond. Its water source is overland flow from precipitation that drains from adjacent land. The lower tier is 12 acres in size and is flat. It provides storage for the periodic flooding of the pond and is a wetland habitat similar to bottomland found throughout this part of Texas.

Machine planting of containerized seedlings resulted in a 77 percent survival rate and a dense stand of trees and shrubs. Today, established wetland oaks, pecan, sweetgum, blackgum, persimmon, and red maple cover the upper tier, and bald cypress, water tupelo, and water hickory cover the depressions and wet areas. This innovative reclamation practice has resulted in a site that looks as natural as the native wetlands.

reservation, a permit application was submitted for a coal preparation plant, in accordance with the permanent Indian Lands Program, and is operating under administrative delay. In addition, the Office of Surface Mining, in cooperation with the Bureau of Indian Affairs and the Navajo Nation, is overseeing the final reclamation of three mines on the Navajo Reservation that are still under the interim regulatory program.

Section 2514 of the Energy Policy Act of 1992 (Public Law 102-486) gives authority to provide grants to the Crow, Hopi, Navajo, and Northern Cheyenne Tribes to assist them in developing programs for regulating surface coal mining and reclamation operations on Indian lands. The development of these programs includes: creating tribal mining regulations and policies; working with the Office of Surface Mining in the inspection and enforcement of coal mining activities on Indian lands (including permitting, mine plan review, and bond release); and education in the area of mining and mineral resources. Development grant funding for 2001 was \$679,505. This development grant funding will continue in 2002. Table 10 includes statistics on regulatory activities on Indian lands during 2001.

On February 19, 1999, the Office of Surface Mining proposed a rule in the *Federal Register*

to amend the regulatory definition of "Indian lands." The proposed rule clarifies that the definition includes individual Indian trust allotments located within an approved tribal land consolidation area. The Office of Surface Mining agreed to propose the rule change under the terms of a 1995 settlement agreement between the Department of the Interior, and the Navajo Nation and Hopi Tribe. The Office of Surface Mining is also proposing changes to the Federal and Indian Lands Programs in conjunction with the proposed change in the definition of Indian lands. The primary effect of the proposal would be to transfer surface mining regulatory jurisdiction from the state to the Office of Surface Mining for individual Navajo trust allotments located within the Navajo land consolidation area in New Mexico. The Office of Surface Mining held a public hearing on the proposed rule and the comment period closed June 21, 1999. The Office of Surface Mining has reviewed the public comments received on the proposed rule and expects to issue a final rule in 2002.

### Electronic Permitting

The Office of Surface Mining's electronic permitting outreach started in Wyoming in 1993, became a national initiative in 1996, and will continue as a priority into the next year. Electronic permitting is a long-term initiative that will result in significant monetary and time savings, and provide more complete and up-to-date records for all those involved in the permitting process. The Office of Surface Mining is currently assisting the states in developing and implementing electronic permitting. When implemented, electronic permitting provides permit reviewers with computer based tools to access documents, maps and data, and to perform necessary environmental analyses. Additional benefits include the ability to share computer based data with managers, field personnel, other agencies, and the public.

The seven western states are in various stages of implementing electronic permitting. Following on the success of 2000, North Dakota's partnership with its coal industry produced the nation's first paperless coal mine permit. Another will be converted to electronic format in 2002. These fully paperless coal mine permits will be in CD-ROM format on file at the Public Service Commission and at the County Assessor's Office (the other public access site), and will contain all of the information normally kept in three-inch binders and fold-out maps. The New Mexico regulatory staff use their established electronic desktop for modeling capabilities in order to review and issue permits. Utah is maintaining and making enhancements to its coal fields water quality database, and continuing its accessibility on the Web. For the fifth consecutive year, Wyoming mining companies are submitting annual reports and major permit revisions electronically on CD-ROMs to the state regulatory authority and to court houses of record in the mining communities. Montana has permit review capabili-



Performance-based oversight begun in 1995 established a policy that focused on outcomes and results, rather than the process. The Office of Surface Mining bases its evaluation of state programs on specific measurements of Surface Mining Law performance standards. Using this method of evaluation, the states' on-the-ground effectiveness can be determined.

Here an Office of Surface Mining reclamation specialist talks with a mining company vegetation scientist about on-the-ground success. At this reclaimed Wyoming mine site more than twenty years of applied research have resulted in successful methods of establishing a diverse community of native vegetation on the reclaimed land. This includes creating physiographic landscape diversity on the regraded land, using four different seed mixtures, two planting methods, and both Spring and Fall planting. The result is well established native vegetation and an abundance of wildlife on the reclaimed mine land.

ties and has developed a permit information database that is used with the existing electronic groundwater quality data. Alaska has an approved electronic permit application and is now focusing its efforts on digital imaging and storage of data. Colorado has developed systems that track permitting and create reports and allows permit reviewers to calculate reclamation bond amounts. In the East permits are now electronically processed on a routine basis in Kentucky and Virginia. All permit applications are electronically routed and reviewed from submittal to approval. Electronic permitting is developing in West Virginia where a centralized, internet-based system to receive, route, and review coal mining and other land use permits is planned for operation by January 2003.

### **Pennsylvania Anthracite Program**

Section 529 of Surface Mining Law provides an exemption from federal performance standards for anthracite coal mining operations, provided the state law governing these operations was in effect on August 3, 1977.

Pennsylvania is the only state with an established regulatory program qualifying for the exemption, and thus regulates anthracite mining independent of the Surface Mining Law permanent program standards.

The Pennsylvania anthracite coal region is located in the northeast quarter of the state and covers approximately 3,300 square miles. 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 with dips steeper than 60 degrees. Such strata require highly specialized mining techniques and present unique challenges to ensure that highwalls are eliminated and the area is restored to a productive postmining land use. The long history of mining in the anthracite region has produced a legacy of abandoned mine land problems. However, because most active mining operations affect previously disturbed land, a large percentage of abandoned mine land is eventually restored to productive land use in connection with active mine reclamation.

In 2000<sup>3</sup> the anthracite mining industry produced approximately 3.9<sup>4</sup> million net tons, a decrease of 1.7 million tons from 1999. Anthracite operators mined approximately 1.35 million tons from culm and bank material, 2.33 million tons from surface mines, and 0.22 million tons from underground mines. The reprocessing of anthracite culm banks accounts for almost one third of the anthracite coal production and helps to fuel several cogeneration plants. The Pennsylvania



Coal preparation facilities are used to prepare coal for market. Coal is brought from the pit to the preparation plant where it is separated from rock or overburden, washed, and sized for shipment. Under the Surface Mining Law preparation facilities are permitted and regulated just as the mining operations. And, when the operation is completed, the preparation facilities must be removed and the land reclaimed.

This Kentucky facility cleans and loads approximately 500,000 tons of coal per year. All water runoff drains through a sedimentation pond where solid material settles out before the clear water is allowed to flow from the site. In addition, at this facility all roads around the plant have been paved to control dust and erosion, and all conveyor belts have hooded covers and water sprays to further control dust.

3. Calendar Year 2000

4. Pennsylvania Department of Environmental Protection, Harrisburg, 2000, "Annual report On Mining Activities"

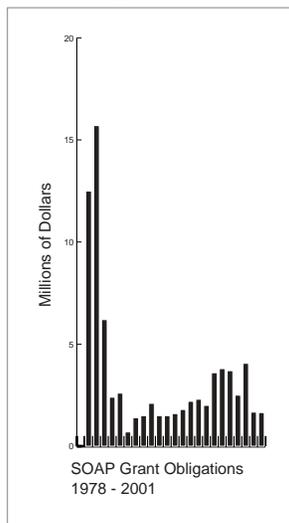
anthracite program currently includes 370 inspectable units (68 underground mines, 29 preparation plants, 7 refuse disposal sites, 132 reprocessing operations, and 134 surface mines). Pennsylvania's Department of Environmental Protection conducted 3,867 inspections (compared to 4,436 in 1999) and issued 217 violations (compared to 235 in 1999) in the Anthracite region. Pennsylvania's Department of Environmental protection continues to successfully carry out the provisions of the anthracite regulatory program. State mine inspectors achieve about 97.5<sup>5</sup> percent of the required complete inspections and 96<sup>5</sup> percent of the required partial inspections.

Pennsylvania has initiated numerous environmental restoration projects in the Anthracite Region that deal with land restoration and water quality improvement of land and waters affected by past mining activities.

The Pennsylvania Department of Environmental Protection's, Pottsville District Office, in cooperation with other bureaus, agencies, groups, companies, and individuals continues to promote and oversee water quality improvement projects. One important watershed is the Swatara Creek. Early water quality projects within the watershed date back to the 1970's; however, with the interest of environmental partners in the mid and late 1990's, numerous water quality improvement projects have been initiated. These projects include the installation of such enhancements as diversion wells, anoxic drains, limestone lining of stream channels, stream relocation and channel reconstructions, aerobic passive wetlands treatment systems as well as the reclamation of abandoned silt dams, stripping pits and mine openings within the headwaters areas of the watershed.

Pennsylvania's Bureau of Abandon Mine Land Reclamation, Wilkes-Barre District Office, oversees the restoration of lands and improving the quality of water affected by past mining. This environmental restoration effort is mainly achieved with projects that involve backfilling of abandoned stripping pits, mine openings, constructing aerobic passive wetlands treatment systems, installing diversions wells, and reconstructing stream channels. The office incorporates various types of wildlife enhancements in addition to the construction and installation of bird and bat boxes during reclamation. The Office also has conducted several land restoration and water quality improvement projects in the headwater area of Swatara Creek.

**Small Operator Assistance Program (SOAP)**



Section 401 (c)(11) of the Surface Mining Law authorizes up to \$10 million annually of the fees collected for the Abandoned Mine Reclamation Fund to be used to help qualified small mine operators obtain technical data needed for permit applications. Beginning with 1992, the Abandoned Mine Reclamation Act of 1990 increased the qualifying production limit from 100,000 to 300,000 tons.

Table 12: Small Operator Assistance Program

State	Grant Amount <sup>1</sup>		Operators	Projects Started
	2001	2000		
Alabama	\$55,107	\$70,000	5	3
Kentucky	1,031,677	541,343	37	47
Maryland	35,000	35,000	1	1
Ohio	80,000	97,717	4	6
Pennsylvania	225,616	781,092	30	30
West Virginia	224,916	152,670	2	1
<b>Total</b>	<b>\$1,652,316</b>	<b>\$1,677,822</b>	<b>79</b>	<b>88</b>

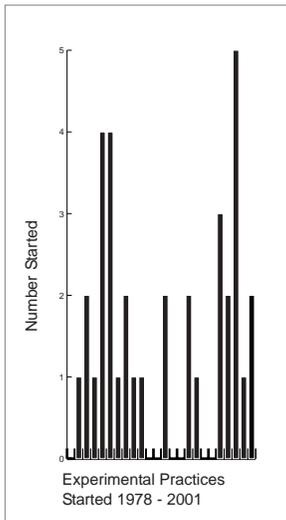
1. These figures do not include downward adjustments of prior-year awards.

5. Pottsville District Office 01/01/01 thru 06/30/01

The Energy Policy Act of 1992 (Public Law 102-486) added additional technical permitting services to the list of items eligible for funding under the Small Operator Assistance Program. The new services include engineering analyses and design necessary for hydrologic impact determination, cross-section maps and plans, geologic drilling, archaeological and historical information, plans required for the protection of fish and wildlife habitat and other environmental values, and pre-blast surveys. During 2001, guidance was issued for these new services. The program has always funded the hydrologic and geologic data collection and analyses required as part of the probable hydrologic consequences determination and statement of overburden analysis under Section 507(c) of the Surface Mining Law.

Small Operator Assistance Program regulations (30 CFR 795) place program responsibility with the states that have Office of Surface Mining approved permanent surface mining programs. In states with federal programs, the Office of Surface Mining operates the Small Operator Assistance Program. In 2001, 79 small mine operators received assistance, compared to the 108 operators who received assistance in 2000, and 121 in 1999. Table 12 provides a summary of the Small Operator Assistance Program by state during 2001.

### Experimental Practices



Section 711 of the Surface Mining Law allows variances from Sections 515 and 516 of the performance standards as alternative, or experimental, mining and reclamation practices to encourage advances in mining technology or to allow innovative industrial, commercial, residential, or public postmining land uses. However, the experimental practices must be potentially more, or at least as, environmentally protective as the environmental protection performance standards established by the Surface Mining Law. Approval and monitoring of a permit containing an experimental practice requires a close working relationship between the mine operator, the State, and the Office of Surface Mining.

During 2001, two new experimental practices were approved. Both provide a source of spoil material to backfill and reclaim highwalls on abandoned mine land and reclaim sparsely vegetated areas that have been sources of

sediment degrading water quality. The projects will reclaim abandoned mine lands, reduce sediment loading in the watershed, improve hydrologic conditions, return degraded land to unmanaged forest, and improve the aesthetics of the community. Since the inception of the program, 35 experimental practices have been approved. In addition to the 13 currently underway, 14 have resulted in successful reclamation, three unsuccessful, one was terminated due to a regulation change, and four have been completed; but, a final report has not been submitted.

### Reclamation Awards

To recognize and transfer the lessons learned from completing the Nation's most outstanding reclamation, the Office of Surface Mining presents awards to coal



Closure of this underground mine opening included reclamation of the face-up area (the highwall at the entrance to the mine), mine facility area, and approximately 300 feet of creek that ran through a culvert under the mine entrance. Native vegetation was planted and encouraged to invade the reclaimed area. Today, this reclaimed site contains a riparian habitat and vegetation that is quickly becoming integrated with the surrounding West Virginia landscape.

mine operators who have completed mining and reclamation operations that result in outstanding on-the-ground performance. For a description of the active mining award program and 2002 rules, see [www.osmre.gov/activerules01.htm](http://www.osmre.gov/activerules01.htm). Awards for 2001 were presented November 6, 2001, at a luncheon hosted by the National Mining Association, as follows:

***Director's Award:***

Each year, one coal mining operation in the country is selected to receive the Director's Award for outstanding achievement in a specific area of reclamation. This year, the award was presented for exemplary reclamation that resulted in an agricultural postmining land use. The 2001 Director's Award was presented to the Black Beauty Coal Company for reclamation on their Indiana and Illinois surface mining operations. With about 60 percent of the acreage containing prime farm land, special soil handling methods were needed to meet productivity standards.

Excavators and trucks were used to remove all soil. The spoil was regraded and the subsoil and topsoil replaced. This method of soil handling decreases the potential for compaction, since minimal equipment is driven

on the land. After one growing season, the soil is tilled to a depth of 24 to 30 inches with a chisel tool that further reduces compaction. The results of this special care can easily be seen in the crop yields. Corn and beans continually produce higher yields than on the non-mined standard.

***National Awards:***

■ RAG, Twentymile Coal Company, Mine #1 and Eckman Park, Oak Creek Colorado. Located high in the Rocky Mountains the Twentymile Coal Company has used innovative techniques in mining and reclamation. In the aspen/mountain shrub environment, topsoil was salvaged and immediately placed on the regraded site. This provided a native seed source for future vegetation. Large shrubs such as Big Sage, Woods Rose, Snowberry, and Serviceberry were planted on the reclaimed land to quickly reestablish the native environment. On the postmining grazing land the topographic diversity has increased productivity and provides a natural setting. Numerous ponds were created for use by both cattle and wildlife. Today with the vegetation established the new wetland habitats bring added diversity.

■ McCoy Elkhorn Coal Corp., Burke Prep Plant and Loadout Facility, Kimper, Kentucky. The Burke Prep Plant, located in eastern Kentucky cleans and loads approximately 500,000 tons of coal per year, and there's a commitment to the environment that is second to none. The management prides itself on the aesthetics and efficiency of the operation. The overall appearance of the site is outstanding. Buildings and structures are painted, repaired and maintained to the highest level of safety. The entire site is landscaped with shrubs and trees. Grass is always cut and its completely litter-free. As trucks are loaded and unloaded the site is swept clean and washed. The company's pride and commitment is evident. They are an asset to the community and a fine example for others in the industry.



Topsoil is important in reestablishing native vegetation and in crop, forage, and timber production. Removal and replacement of all topsoil is required by the Surface Mining Law unless it is demonstrated that selected subsoil or spoil is better suited to grow plants. At this reclaimed Indiana mine site the success of topsoil handling can be measured by the land's high crop productivity after reclamation.

■ **Bellaire Corporation, Indian Head Mine, Beulah, North Dakota.** Beginning production in 1922, Indian Head was one of the oldest surface mines in the country. Today it's been completely reclaimed as cropland and native grassland for cattle grazing. The sloping topography, marginal soils, and semiarid climate made reclamation difficult and thus even more outstanding. Land productivity now exceeds required standards — crops by about 20 percent, hay and pasture land by about 45 percent, and native grassland by about 35 percent. The postmining topography at the mine is gentler and smoother, making the area more attractive to agriculture uses. Today, the land is being returned to the landowners better than it was before mining began.

■ **Kindill Mining, Inc., Mine #2, Alford Field, Petersburg, Indiana.** Reclamation of this Southern Indiana mine site has resulted in the development of “Lake Woods Wildlife Management Area,” a planned landscape, managed to promote fish, wildlife, and related environmental values.

Today more than 1,200 acres have been reclaimed, and are being managed around a “multi-species” concept, from crickets to deer. Major elements of this wildlife area are the water impoundments. They range in size from a little more than an acre to over 45 acres. Their sizes and shapes provide a wide range of habitats and support a large variety of fish species. In addition, the water provides a rich diverse environment for plants and animals.

■ **Glenrock Coal Company, Dave Johnston Mine, Glenrock, Wyoming.** Located at the southern edge of the Powder River Basin coal field, the Dave Johnston Mine has been achieving successful reclamation for 35 years. With an annual precipitation of only eleven inches, and the harsh Wyoming climate, reestablishing native conditions has required dedication and ingenuity. The reclamation has resulted in topographic diversity, a wide range of plant species, and active efforts to reintroduce animals. To achieve their continued success, vegetation specialists at the mine have developed and used four different seed mixtures, employed both broadcast and drill planting methods, and planted during different seasons. The result is a landscape that is already integrated into the surrounding community. It's a fine example of how short-term the mining impact is on the land.



In the agricultural and prairie landscape of North Dakota, wetlands provide a critical waterfowl habitat and add diversity important for other wildlife. At this reclaimed mine site the wetlands range in size from less than one acre to more than 30 acres, and replace more wetland acreage than existed on the pre-mining land. Although not required under the Surface Mining Law, this mine operator segregated the prairie, wetland, and cropland topsoil during removal and spread it separately on the reclaimed prairies, wetlands, and croplands. This helped to quickly reestablish the plant and soil organisms on the new wetlands and enhance their diverse development. The carefully designed wetland areas at this site maximize wildlife habitat value with undulating wetland edges, diverse vegetation, and creation of both shallow and deep water zones. Straight crop field lines were maintained around the wetland area perimeter to better accommodate the large farm equipment used in this area.

■ Penn Coal Corporation, Bluewater Deep Mine No. 1, Wilsondale, West Virginia. This West Virginia mine site received an award for reclamation of an underground mine entrance and the supporting surface facilities. Closure included backfilling the mine entrance and associated highwall. A stream that ran through a culvert under the support facilities was reconstructed to natural conditions, and the entire area revegetated with native plants. Today, with reclamation complete, the native plants provide a riparian habitat that prevents stream erosion and enriches the wildlife and aesthetics of the area.

■ TXU Mining Company, Monitcello Mine, Mt. Pleasant, Texas. The pond and forested wetland reclamation at this east Texas mine is an aesthetic and recreational setting that will benefit the community for many years. When a final pit was being reclaimed as a pond, engineers designed a 30-acre two-tier flood plain that provides both flood storage and a forested wetland. Machine planting of containerized seedlings resulted in a 77 percent survival rate and a dense stand of trees and shrubs. Today, established wetland oaks, pecan, sweetgum, blackgum, persimmon, and red maple cover the upper tier, and bald cypress, water tupelo, and water hickory cover the depressions and wet areas. In the years to come, the vegetation will continue to grow and enhance this Texas landscape.

■ The Coteau Properties Company, Freedom Mine, Beulah, North Dakota. The Coteau Properties Company, a wholly owned subsidiary of the North American Coal Corporation, produces more than 16 million tons of lignite coal per year. Reclamation has returned the land to an agricultural use — wheat production and livestock grazing. Shrub patches, and shelter belts are also included in the reclamation. Over 150,000 trees and shrubs have been planted to establish windbreaks and wildlife plantings. An increase in wetland acreage provides waterfowl habitat, and critical diversity for wildlife in this agricultural setting.

■ Triad Mining, Inc., Switz City Mine, Switz City, Indiana. When it began operation in 1991, the Switz City Mine site contained about 300 acres of abandoned spoil piles. Today, the company has eliminated the abandoned mine problems, and productivity has been restored. Wetlands were created to provide a diverse wildlife habitat. In addition to the productive agricultural land, much of the area was reclaimed with trees and shrubs. This mining operation recovered the coal resource, eliminated abandoned mine problems, and reclaimed the land to productive use.

■ P & N Coal Company, Urey Mine, Urey, Pennsylvania. The P & N Coal Company in central Pennsylvania is a small mine operator that reclaimed over 50 acres of abandoned mine land as part of its Urey operation. The topsoil was carefully removed and saved from areas that were not previously mined. When regrading was completed, the stored topsoil was spread to a depth that would ensure long-term productivity of the entire site. With reclamation nearing completion the area has been transformed from a hazardous condition to productive farmland and wildlife habitat.

#### ***Best-of-the-Best Award***

Since 1996, when the Office of Surface Mining began presenting annual awards for the best reclamation, it was evident that in most cases there were one or two individuals responsible for achieving the success. It was sometimes the mine manager, the reclamation specialist, or in one case a reclamation specialist and a state inspector working together. But in all cases, these people were the linchpin that held the project together and the ones who made the extra effort to ensure achievement of the outstanding reclamation. The Office of Surface Mining recognizes these special individuals to give them credit for their work and to highlight their efforts as a model for others in the mining and reclamation field.

The 2001 award was presented to an individual responsible for reclamation that has not been easy and required continued testing and use of many new reclamation techniques. In each case the success can be attributed to personal foresight, initiative, and creative implementation--attributes that make this person a model in both the coal industry and government regulatory environment.

Accomplishing outstanding reclamation is always a balance between production schedules, costs, and desire for the best possible reclamation. The ability to make it all work while achieving award-winning reclamation was exemplified by the 2001 Best-of-the Best winner, Chet Skilbred, Vegetation Scientist at the Glenrock Coal Company in Glenrock Wyoming.

Photos of these and other award winning reclamation can be seen at [www.osmre.gov/ocphoto.htm](http://www.osmre.gov/ocphoto.htm).