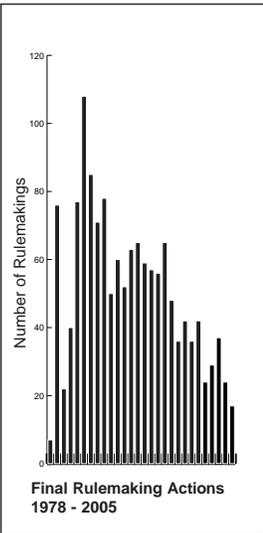


# REGULATION OF ACTIVE COAL MINES

## SHARED ENVIRONMENTAL PROTECTION

Under the Surface Mining Law (www.osmre.gov/ smcra.htm), the Office of Surface Mining is responsible for publishing the regulations (www.osmre.gov/regindex.htm) necessary to carry out the Law. The permanent regulatory program and approved state programs 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 by obtaining a broad spectrum of viewpoints on rulemaking activities.

### Rulemaking and State Program



The 2005 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 proposed permanent program rules<sup>6</sup> in the Federal Register: Transfer, Assignment, or Sale of Permit Rights (RIN 1029-AC49) and Topsoil

Replacement and Revegetation Success Standards (RIN 1029-AC02), (see Table 7).

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 any 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 2005, the Office of Surface Mining published 11 proposed and 17 final state program amendments in the *Federal Register*.

### Significant Court Decisions

During 2005, there were four significant court decisions that influenced the implementation of the Surface Mining Law. The cases involved issues on takings and permit approval (see Table 8).

**Table 7  
Proposed Rules Published**

<b>Transfer, Assignment, or Sale of Permit Rights</b> 30 CFR 701 and 774	1/26/05
The proposed rule would revise regulations for, and related to, the transfer, assignment, or sale of permit rights. The rule would: 1. revise the regulatory definitions of transfer, assignment, or sale of permit rights and successor in interest; 2. revise the regulatory provisions relating to transfer, assignment, or sale of permit rights; and 3. create separate rules for successors in interest.	
<b>Topsoil Replacement and Revegetation Success Standards</b> 30 CFR 816 and 817	3/17/05
The proposed rule would make minor revisions to existing regulations to: encourage species diversity on reclaimed land; provide states more flexibility in using additional success standards and sampling techniques; provide success standards for undeveloped land <sup>7</sup> remove what the Office of Surface Mining believes to be and impediment to the reforestation of mined lands and provide a practical means of measuring woody shrubs commonly planted in the West; and make the timing of revegetation success measurements in areas receiving 26 inches of annual precipitation or less consistent with those in areas receiving more than 26 inches of annual precipitation.	

### 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 a relationship that includes common goals and principles.

On June 19, 2003, the Missouri Regulatory Authority notified the Office of Surface Mining that the Missouri

6. There were not any final permanent program rules published in the 2005.

Table 8  
Significant Court Decisions

**Consolidation Coal Co. v. United States; Rapoca Energy Co. v. United States**, No. 03-5019 (Fed. Cir.)

On April 4, 2005, the Court of Federal Claims ruled that the Abandoned Mine Land Fee collected pursuant to the Surface Mining Law § 402, 30 U.S.C. § 1232, violates the "Export Clause" of the United States Constitution to the extent it is imposed upon coal exports. 64 Fed. Cl. 718. However, since significant issues (particularly those related to damages) remain unresolved in this case and four other pending related cases, final judgment has not been entered. The parties filed a joint status report on June 2, 2005, proposing that the parties litigate the damages issues with regard to a representative class of five (out of approximately 64) plaintiffs. After the issue of damages is resolved as to the five test-case plaintiffs, the government could appeal the liability ruling and any damages issues arising out of the test case.

**Appollo Fuels, Inc. v. United States**, No. 03-5088 (Fed. Cir.)

On February 28, 2005, the Supreme Court denied plaintiff's petition for a writ of certiorari in this regulatory takings case. Plaintiff alleged permanent and temporary takings of its coal leases based on the Office of Surface Mining's designation of certain lands as unsuitable for surface coal mining, as well as the Office of Surface Mining's alleged delay in deciding the petition that requested the designation. The designated area includes portions of a lake that provides the sole drinking water supply for the city of Middlesboro, Kentucky. Plaintiff had sought Supreme Court review of an August 30, 2004, decision of the U.S. Court of Appeals for the Federal Circuit, in which the appeals court affirmed the U.S. Court of Federal Claims' grant of summary judgment in favor of the United States and ruled that there had not been a taking of plaintiff's interests.

**Stearns Co. v. United States**, No. 04-5031 (Fed. Cir.)

On January 28, 2005, the U.S. Court of Appeals for the Federal Circuit unanimously reversed the Court of Federal Claims' finding of a taking in this case. On April 25, 2005, the Federal Circuit denied Plaintiff-Appellee's combined petition for panel rehearing and rehearing *en banc*. Stearns claims that the Office of Surface Mining's application of section 522(e)(2) of the Surface Mining Law effected a physical or regulatory taking of its subsurface mineral rights. In a 1980 letter, the Office of Surface Mining advised Ramex—one of Stearns' lessees—that its proposed underground mining operation was subject to the requirements of section 522(e), and thus, mining could not commence until Ramex received a favorable Valid Existing Rights or compatibility finding. The next day, Ramex orally requested a compatibility finding, but then, at Stearns' insistence, withdrew its request. The Office of Surface Mining, acting expeditiously, had been prepared to render a favorable compatibility finding. Stearns has steadfastly refused to seek a compatibility determination itself and has continued to prevent its lessees from seeking such a determination. Compatibility has never been denied in the Daniel Boone National Forest. The Federal Circuit held that there was not a physical taking because plaintiff was not "required to suffer the physical occupation of either the government or a third party" on its property. The court also held that a regulatory takings claim is not ripe because plaintiff "may still obtain permission" to mine its coal by seeking a "compatibility determination" from the Office of Surface Mining. On or about July 25, 2005, plaintiff filed a petition for Supreme Court review.

**Save Our Cumberland Mountains, Inc. (SOCM) v. Norton**, No. 03-462 (E.D. Tenn.)

On February 23, 2005, the Court entered a decision dismissing all of the plaintiffs' claims with prejudice. Plaintiffs allege numerous violations of the National Environmental Policy Act in connection with Office of Surface Mining's approval of a permit application submitted in July 2002 by the Robert Clear Coal Corporation. Plaintiffs have appealed to the Sixth Circuit.

Legislature failed to provide adequate funding for the Missouri program, including the inspection, enforcement, permitting, and bonding portions of the program. The Office of Surface Mining substituted federal enforcement on August 22, 2003, for those portions of the Missouri program that the Missouri Legislature did not fund for 2004. On April 15, 2004, the Office of Surface Mining clarified that its substitution of direct federal enforcement included those portions of the Missouri program concerning training, examination, and certification of blasters; areas unsuitable for mining; and small operator assistance.

In May 2004, the Director of the Missouri Regulatory Authority notified the Office of Surface Mining that the Missouri Legislature did not fund the Missouri program for 2005. Missouri submitted a financial and organizational plan for the state to reassume authority

to implement its regulatory program in 2006. In response to that plan, the Office of Surface Mining notified the Missouri Regulatory Authority on May 25, 2004, that the current federal substitution plan would continue for

another year (July 1, 2004 – June 30, 2005).

In a letter dated May 27, 2005, the Governor of Missouri petitioned the Office of Surface Mining for the return

This reclaimed mine site contains 110 acres of open water, islands, wetlands, uplands, and forest habitat. Wetland islands were constructed in the shallow areas to maximize transition zones for wildlife. The islands were heavily vegetated and quickly became a connection to the surrounding habitat for birds and mammals. This reclaimed mine located in southern Indiana is now a regional wetland attraction.



of the regulatory program and made a commitment to provide funding. On June 28, 2005, the Missouri Regulatory Authority submitted information on the funding and staffing plans that would be used to assume full enforcement authority for the Missouri program. Missouri also provided the Missouri Attorney General's written opinion on the legality of the funding proposal.

The Office of Surface Mining awarded Missouri funding, through a cooperative agreement, effective July 1, 2005, for the period July 1 to December 31, 2005, to resume its regulatory program. The purpose of this funding was to help the Missouri Regulatory Authority hire, train, and retain a sufficient number of qualified personnel to comply with all requirements of the approved Missouri regulatory program before the Office of Surface Mining returns full authority to the state.

In August 2005, the Office of Surface Mining published a proposed rule in the *Federal Register* to announce that the Governor of Missouri petitioned the Office of Surface Mining to consider returning to Missouri the authority to enforce those parts of the Missouri program for which federal enforcement was substituted. A public hearing was held on September 22, 2005, to provide an opportunity for interested persons to comment on the Missouri Governor's petition to resume enforcement authority of those parts of the Missouri program currently being enforced by the Office of Surface Mining. If the Office of Surface Mining approves Missouri's petition, it will terminate federal enforcement and return full enforcement authority to the state.

### 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 1980s, and the Office of Surface Mining's oversight of these programs focused on the implementation of the

many procedural and process requirements such as permitting, inspection, enforcement, and penalties, each with numerous mandated requirements prescribed to achieve the environmental protection performance standards and the purposes of the Surface Mining Law.

The Office of Surface Mining employs a results-oriented oversight strategy devised in consultation with the states that emphasizes cooperative problem-solving, tailoring evaluations to state-specific conditions and performance agreements between each state and its Office of Surface Mining field office.

As part of this strategy, the Office of Surface Mining evaluates and reports state-specific and national findings for offsite impacts and reclamation success. The purpose of measuring offsite impacts is to gauge how the Surface Mining Law is protecting citizens, public and private property, and the environment outside 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 expressed as a percentage of inspectable units<sup>7</sup> that achieve the goal of having no offsite impacts and as the number of acres that meet the bond release requirements for the various

**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	69	0	0	0
Alaska	4	0	0	0
Arkansas	6	0	0	0
Colorado	11	0	0	0
Illinois	103	0	0	0
Indiana	58	0	0	0
Iowa	0	0	0	0
Kansas	4	0	0	0
Kentucky	407	9	3	0
Louisiana	3	0	0	0
Maryland	27	0	0	0
Mississippi	1	0	0	0
Missouri	26 <sup>2</sup>	0	0	0
Montana	5	0	0	0
New Mexico	2	0	0	0
North Dakota	9	0	0	0
Ohio	119	0	0	0
Oklahoma	29	0	0	0
Pennsylvania	340	1	1	0
Texas	9	0	0	0
Utah	6	0	0	0
Virginia	111	0	0	0
West Virginia	198	0	0	0
Wyoming	7	0	0	0
<b>Total</b>	<b>1,555<sup>5</sup></b>	<b>10<sup>3</sup></b>	<b>4<sup>3</sup></b>	<b>0</b>

1. Excludes any Notice of Violations or Cessation Orders that have been vacated.  
 2. Includes only Office of Surface Mining oversight inspections, see Table 10 for regulatory inspections.  
 3. Of the 10 Notice of Violations, all were for Abandoned Mine Land Fee related problems (Kentucky 9, and Pennsylvania 1) and of the 4 Cessation Orders, all were for Abandoned Mine Land Fee related problems (Kentucky 3, and Pennsylvania 1).  
 5. Includes 12 inspections related to Abandoned Mine Land Fee collection (Kentucky 9, and Pennsylvania 2 and Tennessee 1).

phases of reclamation. During 2005, 89 percent of the inspectable units were free of offsite impacts (compared to 93 percent in 2004) which is within five percent of the 93 percent goal of sites free from offsite impacts.

On May 4<sup>th</sup>, in a letter to the Director of the Ohio Department of Natural Resources, the Office of Surface Mining gave the state 90 days to submit a program amendment to address deficiencies in the state's bonding program to avoid direct federal

7. 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 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 inspections.

# Office of Surface Mining

## Table 10 Regulatory Program Statistics

State/Indian Lands	Regulatory Staffing <sup>1</sup>	New Permits <sup>2</sup>	New Acreage Permitted <sup>2</sup>	Total Acreage Permitted <sup>2</sup>	Inspectable Units	Complete Inspections <sup>2</sup>	Partial Inspections <sup>2</sup>	Notice of Violations <sup>2</sup>	Failure-To-Abate Cessation Orders <sup>2</sup>	Imminent Harm Cessation Orders <sup>2</sup>	Bond Forfeitures <sup>2</sup>	Acreage of Phase I Bond Release <sup>2</sup>	Acreage of Phase II Bond Release <sup>2</sup>	Acreage of Phase III Bond Release <sup>2</sup>
Alabama	25.00	11	3,621	84,641	219	2,374	373	122	23	1	8	1,104	484	3,485
Alaska	4.13	0	0	9,099	11	28	63	3	0	0	0	0	0	0
Arkansas	3.95	1	481	1,670	12	49	102	5	1	0	0	0	20	20
Colorado	24.00	0	0	163,300	51	182	318	11	0	0	0	187	65	235
Crow <sup>4</sup>	1.00	0	0	5,496	1	3	7	0	0	0	0	377	557	0
Georgia <sup>4</sup>	0.00	0	0	0	6	3	0	0	0	0	0	0	0	0
Hopi <sup>4</sup>	2.00	0	0	6,137	2	8	4	0	0	0	0	0	0	0
Illinois	33.90	4	2,204	63,100	90	395	862	42	3	0	1	2,882	2,580	3,391
Indiana	48.00	10	5,714	257,360	116	596	1,292	54	0	0	0	4,389	5,085	8,070
Iowa	3.00	0	0	386	18	20	8	0	0	0	2	200	200	0
Kansas	3.05	0	0	4,424	12	49	95	3	0	0	0	301	0	59
Kentucky	334.10	82	36,965	1,716,800	1,934	7,621	14,213	598	45	13	5	12,717	5,964	13,862
Louisiana	2.65	0	0	42,910	2	8	16	0	0	0	0	5	5	28
Maryland	11.25	2	87	6,525	66	343	596	20	0	2	1	85	172	85
Mississippi	2.75	0	0	5,809	1	4	9	0	0	0	0	0	0	0
Missouri	2.40	0	0	16,340	38	79 <sup>3</sup>	223	0	0	0	3	622	2,569	1,749
Montana	16.90	0	0	62,269	15	89	80	3	0	0	0	277	557	18
Navajo <sup>4</sup>	5.00	0	0	95,822	25	62	46	13	0	0	0	0	0	0
New Mexico	12.50	0	0	77,462	9	32	85	1	0	0	0	3162	54	54
North Dakota	8.70	1	5,710	98,148	34	136	522	0	0	0	0	842	429	828
Northern Cheyenne														
Ohio	23.87	14	3,078	102,351	338	1,323	2,014	195	46	14	11	3,735	2,586	2,801
Oklahoma	19.85	3	839	25,156	69	270	395	20	0	0	0	52	422	3,131
Pennsylvania	241.00	69	9,202	426,592	1,928	6,818	9,782	684	22	0	3	2,850 <sup>5</sup>	3,387 <sup>5</sup>	4,456 <sup>5</sup>
Tennessee <sup>4</sup>	37.00	4	520	30,574	353	810	937	47	2	1	0	520	1,357	1,614
Texas	33.00	0	0	270,700	31	124	248	17	0	0	0	1,530	1,058	1,890
Utah	32.50	0	0	2,716	33	117	224	6	0	0	0	152	62	14
Ute Mt. Ute <sup>4</sup>	0.00	0	0	0	1	4	8	0	0	0	0	0	0	0
Virginia	79.00	16	2,565	79,397	519	2,633	3,214	274	2	9	0	415	107	1,300
Washington <sup>4</sup>	N/A	0	104	15,004	2	8	20	8	0	0	0	0	0	0
West Virginia	281.95	41	6,374	298,964	1,918	7,249	11,864	1,019	75	26	14	2,848	3,386	5,389
Wyoming	28.05	0	0	348,248	35	143	239	5	0	0	0	16,131	306	0
<b>Total</b>	<b>1,320.50</b>	<b>258</b>	<b>80,569</b>	<b>4,317,421</b>	<b>7,889</b>	<b>31,588</b>	<b>47,850</b>	<b>3,145</b>	<b>219</b>	<b>66</b>	<b>48</b>	<b>55,383</b>	<b>31,412</b>	<b>52,479</b>

1. Number of regulatory program staff as of June 30, 2005.

2. State program statistics for the one year period, July 1, 2004 - June 30, 2005, except where noted (federal statistics for Crow, Georgia, Hopi, Navajo, Tennessee, and Washington, see footnote 5).

3. As a result of the substitution of federal enforcement in Missouri on August 22, 2003, 66 of the 79 complete inspections and 139 of the 223 partial inspections were conducted by the Office of Surface Mining during the period July 1, 2004 - June 30, 2005, and the remainder (13 complete and 84 partial inspections) conducted by the state of Missouri Regulatory Authority during the period July 1, 2004 - June 30, 2005.

4. Federal statistics for the one year period, October 1, 2004 - September 30, 2005.

5. Pennsylvania transitioned to a new bonding system and the statistics for Phase 1, 2, and 3 acreage released are for the period 10/1/04 - 6/30/05, not the July 1, 2004 - June 30, 2005 one year period.

NA. Statistics not available.

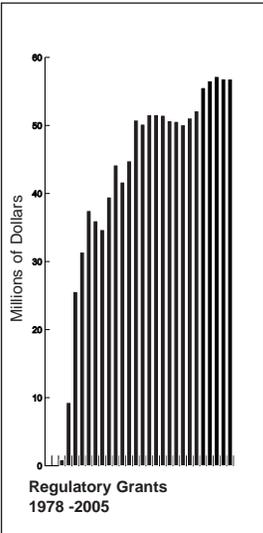


When reclamation is successfully completed, the land closely resembles the landscape before mining. This Oswego, Kansas mining operation disrupted the landowners's agricultural operation for only a short time and today it is back into agricultural production.

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.

Of the federal program states, only Tennessee and Washington had active coal mining in 2005. Table 10 includes the regulatory activities in those two states during 2005.

**Grants to States and Tribes**



Section 705 of the Surface Mining Law authorizes the Office of Surface Mining to provide grants to states with approved regulatory programs to administer and enforce the programs.

Annual grants provide federal funding not exceeding 50 percent of total state program costs, matching state regulatory funding dollar for dollar. In addition, when a primacy state elects to administer its 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 2005 to administer and enforce regulatory programs.

enforcement of the bonding requirements. On August 2<sup>nd</sup>, Ohio requested, and the Office of Surface Mining granted, an additional 90 days for the state to address the program deficiencies pending the outcome of discussions with the Ohio Coal Association on restructuring the state's bonding program. Since then, Ohio Department of Natural Resources informed the Office of Surface Mining that it has reached a tentative agreement with the Coal Association and anticipates submitting an amendment to address the bonding program deficiencies before the extension expires on November 4<sup>th</sup>. (See [www.osmre.gov/report05.htm](http://www.osmre.gov/report05.htm) for copies of 2005 Annual State Oversight Reports.)

Table 9 provides a summary of the oversight inspection and enforcement activities during 2005. Detailed monthly reports are available monthly at [www.osmre.gov/icindex.htm](http://www.osmre.gov/icindex.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

**Regulation of 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 and reclamation operations on federal land. The Office of Surface Mining promulgated the current Federal Lands Program on February 16, 1983. The federal government owns significant amounts of land and coal reserves, primarily in the West. Of the 147 billion tons of recoverable 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 Secretary of the Interior may delegate most regulatory responsibilities for surface coal mining and reclamation operations on federal lands to states with approved regulatory programs. Through 2005, the Secretary had entered into cooperative agreements with 14 states: Alabama, Colorado, Illinois, Indiana, Kentucky, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West 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 coal mining and reclamation activities on federal lands in that state. The Office of Surface Mining maintains an oversight function to ensure that the state regulatory authority fully exercises its delegated responsibility under the cooperative agreement.

In states without cooperative agreements, the required permitting, inspection, and enforcement activities are carried out by the Office of Surface Mining. In 2005, the Office of Surface Mining did not issue any new permits on federal lands.

**Table 11  
Regulatory Grant Funding (Obligations)**

State/Tribe	2005 Federal Funding	2004 Federal Funding	Cumulative Through 2005 Federal Funding <sup>1</sup>
Alabama	\$987,979	\$987,979	\$28,050,993
Alaska	188,518	188,518	\$6,097,486
Arkansas	149,352	149,352	\$3,849,270
Colorado	1,954,760	1,954,760	\$33,465,203
Illinois	2,439,511	2,439,511	\$58,641,507
Indiana	1,920,252	1,992,281	\$36,610,345
Iowa	128,736	128,736	\$2,950,946
Kansas	112,578	112,578	\$3,115,736
Kentucky	12,313,367	12,313,367	\$297,060,812
Louisiana	167,384	167,384	\$3,901,459
Maryland	590,933	667,922	\$13,043,838
Michigan	0	0	\$135,458
Mississippi	113,729	113,729	\$1,427,981
Missouri	162,675	84,633	\$8,709,693
Montana	1,050,741	1,030,822	\$19,435,963
New Mexico	737,526	737,526	\$14,373,789
North Dakota	501,284	501,824	\$12,514,300
Ohio	2,020,039	2,020,039	\$62,887,500
Oklahoma	1,018,398	940,477	\$20,392,521
Pennsylvania	10,665,756	10,665,756	\$237,693,857
Rhode Island	0	0	\$158,453
Tennessee	0	0	\$5,340,085
Texas	1,317,376	1,350,638	\$25,758,662
Utah	1,743,698	1,730,419	\$32,605,369
Virginia	3,259,433	3,259,433	\$74,823,293
Washington	0	0	\$4,893
West Virginia	10,520,169	10,520,169	\$146,066,548
Wyoming	2,120,036	2,120,036	\$38,459,577
Crow Tribe	30,174	62,832	\$1,180,698
Hopi Tribe	173,977	173,977	\$2,059,297
Navajo Tribe	448,675	448,675	\$4,698,036
N. Cheyenne Tribe	0	0	\$86,888
<b>Total</b>	<b>\$56,837,056</b>	<b>\$56,863,373</b>	<b>\$1,195,600,456</b>

1. Includes obligations for AVS, TIPS, Kentucky Settlement, and other Title V cooperative agreements. Figures for FY 2005 do not include downward adjustments of prior-year awards. However, cumulative figures are net of all prior-year downward adjustments.

For states with leased federal coal, the Office of Surface Mining prepares the documents required by the Mineral Leasing Act for approval by the Secretary of the Interior. During 2005, eight mining plan actions were prepared and approved for coal operations mining leased federal coal (Alabama 1, Colorado 1, North Dakota 1, Utah 3, Oklahoma 1 and Wyoming 1).

Pursuant to Section 701 of the Surface Mining Law, the Office of Surface Mining regulates coal mining and reclamation operations on Indian lands. On September 30, 2005, there were nine surface coal mining operations permitted on Indian reservations or Indian-owned lands.

There were two active permanent program operations on the Navajo reservation (McKinley and Navajo Mines).

Two active operations occur on both the Navajo and Hopi reservations—one permanent and one initial program permit (Kayenta and Black Mesa Mines). An active preparation plant on the Navajo Reservation (Black Mesa Preparation Plant) has had a separate permit application submitted in accordance with the permanent Indian Lands Program, and is operating under administrative delay.

Two Initial Program operations on the Navajo reservation are being reclaimed (Amcoal and Burnham Mines); the Office of Surface Mining, in cooperation with the Bureau of Indian Affairs and the Navajo Nation, is overseeing the final reclamation at these sites.

One active mine is producing coal owned by the Crow tribe on the Crow Ceded Strip (Absaloka Mine).

One permitted haul road is located on the Ute Mountain Ute reservation (La Plata Haul Road).

The Office of Surface Mining awards 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 2005 was \$652,826. Table 10 includes statistics on regulatory activities on Indian lands during 2005.

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This permanent impoundment on a reclaimed mine site provides a valuable source of water for the agricultural postmining land use. At this Ohio site the water provides an outstanding wildlife habitat for geese, ducks, herons, and a host of fish, while ensuring a dependable source of water for grazing.

### Mountaintop Mining

As part of a 1998 settlement agreement in *Bragg v. Robertson, No. 98-0636 (S.D.W.Va.)*, the Office of Surface Mining continued to work with the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the West Virginia Department of Environmental Protection to prepare an environmental impact statement on mountaintop mining and valley fills in the steep slope regions of Appalachia. In May 2003, the agencies released the draft environmental impact statement to the public for review and comment. The comment period closed in January 2004, and agencies received more than 83 thousand comments. The agencies are analyzing comments to determine what subsequent steps are needed in the NEPA process.

As provided in the *Bragg* settlement agreement, the Office of Surface Mining agreed to cooperate with the West Virginia Department of Environmental Protection in the review of permit applications proposing to construct large

fills as part of the mining operation. In the fall of 2004, the West Virginia Department of Environmental Protection and the Office of Surface Mining agreed to conclude these joint application reviews. The decision was based on several factors, including the West Virginia Department of Environmental Protection program changes, other Office of Surface Mining programmatic and technical assistance to the West Virginia Department of Environmental Protection, and a July 8, 2004, decision by Southern Federal District Judge Joseph Goodwin requiring nearly all mines with valley fills (within the Southern District of West Virginia) to obtain individual Clean Water Act permits.

A complete listing of mountaintop mining information is available at [www.osmre.gov/mtindex.htm](http://www.osmre.gov/mtindex.htm).

On February 10<sup>th</sup> the Office of Surface Mining signed a memorandum of understanding with the Army Corps of Engineers, the Environmental Protection





Following reclamation at this wise County, Virginia mine site, the landowner established an apple orchard. Reclamation of this mine provided a broad valley with soil and drainage conditions that are more productive for apples than before mining.

In 2005, the anthracite mining industry produced approximately 1.8 million tons, an increase of 0.1 million from 2004. Approximately 1.6 million tons were produced from surface mines and 0.2 million tons from underground mines. In addition, the reprocessing of anthracite coal waste banks continued throughout the Anthracite region in 2005 and produced 2.3 million tons used to fuel approved cogeneration (waste burning) electric plants.

The Pennsylvania anthracite program currently includes 313<sup>8</sup> inspectable units ( 44 underground, 15 preparation plants, 4 refuse disposal sites, 122 reprocessing operations, and 124 surface mines). Pennsylvania's Department of Environmental Protection conducted 3,525<sup>8</sup> inspections (compared to 3,090 last year) and issued 123<sup>8</sup> violations (compared to 165 last year) in the anthracite region. Pennsylvania's Department of Environmental Protection continues to successfully enforce the provisions of the anthracite regulatory program.

Agency, and the Fish and Wildlife Service to improve permit application procedures for surface coal mining operations that place dredged or fill material in waters of the United States. The memorandum is designed to reduce the time it takes to process permit applications and to eliminate, where possible, redundant agency reviews while preserving the statutory and regulatory authorities and responsibilities of each agency.

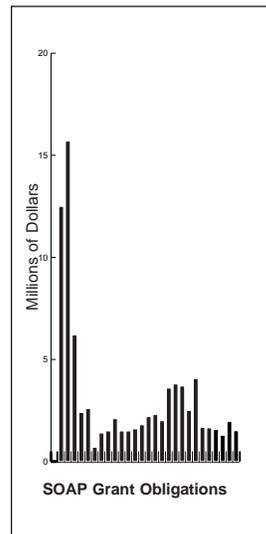
The Office of Surface Mining also began the scoping process for an environmental impact study of its proposed excess spoil disposal and stream buffer zone regulations. In light of recent court decisions, the Office of Surface Mining proposed the regulatory changes on January 7, 2004 to clarify the interpretation of federal stream buffer zone and excess spoil disposal requirements under the Surface Mining Law.

### Pennsylvania Anthracite Program

For more than a century, coal has played a major role in the economic and industrial development of Pennsylvania, particularly the steel making industry, and has historically employed thousands of workers. Pennsylvania continues to be a leading coal producing state, due to its estimated bituminous reserves that total 23 billion tons, or 5.3 percent of U.S. reserves, and anthracite reserves that total 7.1 billion tons, or 97 percent of U.S. anthracite reserves.

Section 529 of the Surface Mining Law provides for an exemption from the Federal Performance Standards for anthracite coal mining operations, provided the state law governing those 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 standards.

### Small Operator Assistance Program



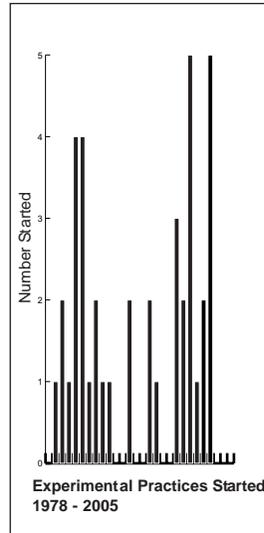
Section 401 (c)(11) of the Surface Mining Law authorizes up to \$10 million annually of the fees collected for the Abandoned Mine Reclamation Fund to be used to help qualified small mine

8. For the 12-month period, July 1, 2004 - June 30, 2005

operators obtain technical data needed for permit applications. Qualifying operators produce no more than 300,000 tons of coal per year. In 1992, Public Law 102-486 expanded the technical permitting services eligible for funding under the Small Operator Assistance Program to 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, pre-blast surveys, hydrologic and geologic data collection and analyses required as part of the probable hydrologic consequences determination, and the statement of overburden analysis required.

The Small Operator Assistance Program is operated by states that have Office of Surface Mining approved surface mining programs. In states where the Office of

## Section 711 of the Surface Mining Law



allows variances from the performance standards of Sections 515 and 516 of the Surface Mining Law on an experimental basis.

These variances are intended 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.

Since the program began, 49 projects have been undertaken and 26 completed. Of the completed projects, 21 were determined to be successful and five unsuccessful. Two were terminated due to a regulation change. Currently there are 21 projects underway. There were no new projects started in 2005.

## Reclamation Awards

The Office of Surface Mining began recognizing outstanding mine reclamation in 1986. Since then, more than 180 mines have received awards. These operations inspire the entire industry, and help establish the high standards of on-the-ground mine reclamation that exists today. For a description of the active mining award program and 2006 rules, see [www.osmre.gov/activerules01.htm](http://www.osmre.gov/activerules01.htm).

**Table 12  
Small Operator  
Assistance Program**

State	Grant Amount 2005	Grant Amount 2004	Projects Operators Started	Projects Operators Started
Alabama	\$60,000	\$39,049	2	1
Kentucky	606,000	883,844	27	23
Maryland	35,000	35,000	2	1
Ohio	50,000	0	6	9
Pennsylvania	669,000	966,617	48	32
West Virginia	96,000	49,584	2	1
<b>Total</b>	<b>\$1,516,994</b>	<b>\$1,974,094</b>	<b>87</b>	<b>67</b>

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

Surface Mining is the regulatory authority, it operates the Small Operator Assistance Program. In 2005, 87 small mine operators received assistance (compared to 59 last year). Table 12 provides a summary of the Small Operator Assistance Program by state during 2005.

## Experimental Practices

The success of topsoil handling is measured by the land's crop productivity after reclamation. Although mining at this Amish farm in southern Indiana went right up to the barnyard, agricultural production was interrupted for only one growing season.



The final reclaimed slope at this Laurel County, Kentucky mine closely approximates the original contour of the land, leaving no trace of the highwall. Such outstanding reclamation is what the architects of the Surface Mining Law envisioned when they sent it to the President for his signature.

The 2005 awards were presented September 20, 2005, at a banquet hosted by the National Mining Association. The award winners were as follows:

### **National Awards**

#### *Peabody Western Coal Company*

Kayenta/Black Mesa Mines

Navajo County, Arizona

In 1998, the Peabody Western Coal Company began developing a grazing management program on reclaimed lands. They met with native American stakeholders, and evaluated data that would help establish management guidelines for livestock grazing. By 2004, 18 families were grazing livestock on 3,700 acres of pasture. This exemplary program returns reclaimed land to its traditional use, long term grazing, a use that's vitally important to the local population.

#### *Red River Coal Company*

Humphries Enterprises, Inc. Job 1 and 2  
Norton, Virginia

The Red River Coal Company's innovative techniques helped eliminate more than 4,800 feet of dangerous, abandoned highwalls during mining. Red River also worked with Virginia Tech, testing reforestation techniques for reclaimed land. Different mixtures of trees and soil preparation were tested, as well as methods of applying herbicides to control competing vegetation around tree seedlings. We now know more about restoring mine lands to native hardwood forests. And, the lessons learned here are already being employed in the reforestation of Virginia coal fields.

#### *Foundation Coal Holdings, Inc.*

Delta Mine

Harrisburg, Illinois

Innovative reclamation at the Delta Mine resulted in a variety of topography, as well as land uses. The 3,800 acre area integrates cropland with forests, lakes and wildlife habitats, providing viable,



long-term land use for this rural Illinois community.

#### *Western Energy Company*

Rosebud, Mine

Colstrip, Montana

The reclamation plan at the Rosebud Mine was modified to preserve the valuable habitat provided by pre-mine topographic features. By leaving a large area above the final cut untouched, regrading the reclaimed land minimized disturbance and reduced the area of the final highwall. More than 5,000 mature ponderosa pine trees and associated plant and animal species were saved. Although still in the final stages of reclamation, the preservation of native slopes, sandstone cliffs, and established forest has created a reclaimed mine site that is already characteristic of the surrounding Montana landscape.

#### *United Coals, Inc.*

Stenger/Bond Surface Mine

Clarksburg, West Virginia

This 90-acre coal mining and reclamation operation had been previously mined, and contained more than a mile of

unreclaimed highwalls. Today, the abandoned mine hazards are eliminated and the landowner is harvesting hay from the site. Permanent ponds were constructed, fences were built, and farm roads now interconnect the fields. By working closely with the landowner, the mine has been returned to productive long-term agricultural use. The attention to detail represents special dedication, and has resulted in reclamation at the highest levels.

#### *Peabody Coal Company*

Universal Mine Slurry Wetland Area  
Universal, Illinois

This wetland area, more than 80 acres, was once a coal wash slurry deposit. Today it includes 20 acres of permanently impounded water and surrounding wildlife habitat. The reclamation was a cooperative effort by the mining company and the International Union of Operating Engineers. Buildings used during the mining now house a union apprenticeship and training program. Both the wetlands and adjacent training

center are valuable assets to the community, excellent examples of a reclaimed site offering more than before it was mined.

*Kennecott Energy, Spring Creek Coal Co.*  
Spring Creek Mine  
Decker, Montana

The Spring Creek Mine is located near the Wyoming/Montana border where rainfall is only 10 inches. This makes both mining and reclamation more difficult. Today, following reclamation native vegetation has been reestablished by a unique combination of grading and seed mixtures. It took a thorough understanding of local topography to sculpt features that would support the diverse vegetation, providing both a wildlife habitat and livestock grazing. This project is a great example for other operations throughout the west.

### **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 to Arch of Wyoming for dedication and commitment that resulted in developing an innovative reclamation technique that creates a more efficient way of doing the work and improves final reclamation

*Arch of Wyoming*  
Seminole I Mine  
Hanna, Wyoming

The 2005 Director's Award honors innovation, leading to greater efficiency and superior reclamation. The Seminole I Mine's shrub success greatly exceeds regulatory goals and standards. The new methods employed at this mine established shrubs, grasses and forbs, and specific habitat features were constructed. The results were, outstanding livestock grazing and wildlife habitat in arid Wyoming conditions.

### **Good Neighbor Awards**

Each year three awards are presented for achievement of exemplary interaction, communication, and involvement with

the surrounding land owners and local community. Establishment of good working relations and interaction with mine neighbors is an important element of the Surface Mining Law that mine operators are achieving in many different ways. The objective of these awards is to recognize this achievement and communicate the good neighbor concepts so others can use them. This may include successful interaction with landowners throughout the mining and reclamation process, working with local organizations to better inform citizens, or including the community in on-the-ground reclamation activities.

### *Gold Award*

*Powder River Coal Company*  
North Antelope Rochelle Mine  
Gillette, Wyoming

The North Antelope Rochelle Mine, the world's largest coal mine, produced nearly 82.5 million tons of subbituminous coal in 2004. It's also a good neighbor to the surrounding community. Frequent demonstrations at the mine site, and educational school tours have taught hundreds of children about modern Powder River Basin mining and reclamation. The company has been the major contributor to the Thunder Basin Grasslands Prairie Ecosystem Association and actively works to increase awareness about stewardship of Wyoming's natural resources.

### *Silver Award*

*Peabody Western Coal Company*  
Kayenta and Black Mesa Mines  
Navajo County, Arizona  
Native American's have a special relationship with the land. Post-mining livestock grazing at the Kayenta/Black Mesa Complex supports a traditional way of life—with cultural ties going back hundreds of years. Peabody worked with local residents, establishing



The Surface Mining Law requires establishment of a healthy, permanent vegetation cover on all land affected by coal mining. At this reclaimed Texas mine site native trees and shrubs were planted and the site is an integral part of the surrounding landscape that now provides recreational opportunities to the local community.

## Office of Surface Mining

educational and grazing management programs. Together, they proved that land reclaimed for grazing is both achievable, and sustainable.

### *Bronze Award*

Peabody Energy Black Beauty Coal Co.  
Farmersburg Mine  
Vigo and Sullivan Counties, Indiana  
At Black Beauty, being a good neighbor means involvement with surrounding communities and governmental agencies, including schools. The company runs educational mine site activities, and has provided needed improvements at a local

high school. It's installed lights at local baseball fields, and constructed an entrance road for a new town park. It has also built a cemetery monument, and donated land to construct a treatment plant for the town of Farmersburg. Black Beauty proves that coal mining, combined with "good neighbor" spirit, results in valuable benefits for everyone involved.

The good neighbor policies at these three mine operations are beginning to be accepted as "the way" for mine

operations to do business. They're shining examples of this growing trend.

Permanent impoundments are frequently constructed on reclamation sites. Although they may not be specifically designed to enhance wildlife habitats, most of them provide excellent cover and a water environment that together increase the potential for wildlife to quickly become established on these sites. Many impoundments create an aquatic habitat where none existed before mining. Careful planning of this impoundment on a southern Indiana reclaimed mine site has significantly enhance the wildlife value.

