



OSMRE

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Office of Surface Mining Reclamation and Enforcement

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FOREWORD

This report reflects a new approach for the agency's annual report to Congress. In it, we have tried to give the reader a clearer picture of the state of mine reclamation in the country today. We have also tried to place our findings in context and to give background on the natural conditions, such as geology and climate, that can affect coal mine reclamation.

Coal mine operators in each state face unique conditions that influence how they reclaim the land and affect the extent to which they are successful. State efforts to regulate those operations necessarily vary as well. Because of that diversity, this report presents data on the regulation of reclamation in individual state chapters, rather than solely on a nationwide basis as in the past.

In those chapters, we have tried to present a balanced picture of the state regulatory programs, describing not only the elements that need improvement, but also the elements that are working successfully and that are leading to effective reclamation of coal mined lands.

All too often, in the controversy over specific issues, one fact is overlooked—the Surface Mining Control and Reclamation Act is working. By and large, the thousands of coal mine operators across the country are effectively and efficiently reclaiming the lands affected by coal mining, while at the same time producing the coal that America needs.

The surface mining law is working, in large part, because of cooperation and communication between OSMRE, the state regulatory authorities, public interest groups, and the industry. States are doing a better job than ever before in enforcing their individual programs, and, as a result, OSMRE now has less need to play a dominant role in many states. When OSMRE does detect a problem with implementation of a state program, the state and OSMRE cooperatively develop an action plan, detailing steps to be taken to resolve the issue. In addition, the industry has now incorporated reclamation into its mining cycle, making reclamation more routine. At the same time, OSMRE has addressed several of the lingering problems that have followed the agency since its inception, including debt collection and computerization. As a result, the agency has finally turned the corner toward providing a stable regulatory environment in which industry and the states can operate.

We hope you find our 1986 report useful.



Director

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INTRODUCTION

The Office of Surface Mining Reclamation and Enforcement (OSMRE) was established in 1977 with passage of the Surface Mining Control and Reclamation Act (Public Law 95-87). In that law, Congress sought to establish a nationwide program to protect people and the environment from the adverse effects of surface coal mining operations. At the same time, it sought to "strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

The law requires OSMRE to establish uniform nationwide standards for the reclamation of lands following coal mining. The states, if they choose to do so, then develop their own regulatory programs, to be consistent with Public Law 95-87 and the Federal regulations, while taking into account the diversity among states in climate, topography, and geology.

Following approval by OSMRE, the state program becomes the basis for "primacy," in which the state assumes primary responsibility for enforcing reclamation requirements and environmental protection standards. In the primacy states, OSMRE's function is one of support and oversight, monitoring the effectiveness of the states in enforcing the law and providing program grants and technical assistance when needed. OSMRE also retains responsibility for enforcing the surface mining law on Indian lands, in states that choose not to develop a regulatory program, and on Federal lands. Any state with an approved program, however, may elect to enter a cooperative agreement with the Secretary of the Interior to regulate coal mine reclamation on Federal lands within the state.

Under the provisions of the surface mining law, OSMRE also is charged with collecting a fee of 35 cents for every ton of coal mined by surface methods and 15 cents for every ton of coal mined underground or 10 percent of the value of the coal, whichever is less, and 10 cents for every ton of lignite mined, or 2 percent of the value of the lignite, whichever is less. The fees are deposited into the Abandoned Mine Reclamation Fund for use in reclaiming lands and water adversely affected by mining that occurred before passage of the surface mining law.

This report details the activities of the Office of Surface Mining Reclamation and Enforcement in carrying out its responsibilities during fiscal year 1986.

HIGHLIGHTS — FISCAL YEAR 1986

During fiscal year 1986, the Office of Surface Mining Reclamation and Enforcement conducted oversight activities in the 24 states with approved state programs. In nine states that have chosen not to develop or maintain regulatory programs, OSMRE conducted Federal programs. Those Federal program states are Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington. In addition, Tennessee relinquished its regulatory program, so OSMRE now conducts a Federal Program in that state as well. Of the states with Federal Programs, only Tennessee and Washington had active coal mining operations during the year.

Also during fiscal year 1986, OSMRE allocated \$109.5 million to states for use in reclaiming abandoned mine sites. The Interior Department itself used \$13 million for emergency and high-priority mined land reclamation projects, and provided \$6 million to the Department of Agriculture to administer and fund projects under the Rural Abandoned Mine Program. In addition, \$1.5 million was used in the Small Operator Assistance Program. During fiscal year 1986, OSMRE collected more than \$219 million in reclamation fees from coal producers.

OSMRE made substantial progress in the area of debt management during the year, and has now upgraded computerization of its records on civil penalties. As a result, for the first time since the agency was established, an accurate picture of the civil penalty case load and the amount owed now exists. OSMRE is also now using professional debt collection agents in an effort to collect or close out the older cases on the books.

In the area of training, OSMRE has completed the first year of a nationwide technical training program, stressing solutions to practical field situations faced by surface coal mine regulatory personnel. Courses are taught jointly to participants from Federal, Indian, and state offices to increase communication between the parties and to reduce conflicts in how the surface mining law is implemented at the local level. During fiscal year 1986, OSMRE conducted 10 courses, in which 225 state, Federal, and Indian personnel participated.

Also during the year, OSMRE worked hard to improve agency responsiveness to interested parties. In particular, the agency made a concerted effort to open its regulatory development efforts to participation by outside groups, actively seeking comments and recommendations from various interest groups and encouraging an open exchange of ideas and opinions early in the regulatory development process.

By the end of the fiscal year, four permanent program rules had been published as final in the **Federal Register**. In addition, 11 rules were being prepared for publication as final, nine were under development as proposed rulemakings, and 33 rules had been scheduled for future development.

Also as part of its effort to understand the viewpoints of outside groups, OSMRE held three conferences during the year, addressing bonding problems, remining initiatives, and issues related to state program oversight. In addition, the agency established a task force to evaluate OSMRE's oversight of state regulatory programs.

Bonding Workshop: A workshop on bonding, held September 11, 1986, was attended by more than 100 participants from the coal and surety industries and from state regulatory authorities. Bonds, which are financial guarantees that reclamation will be completed even if the mine operator fails to do so, have become increasingly difficult for mine operators to obtain. The workshop was designed to provide a forum for identifying problems and potential solutions associated with bonding for coal mine operations. Three panels of experts discussed bond availability, regulatory flexibility, and surety industry concerns, in an effort to increase coal and surety industry understanding of each other's problems and to explore possible steps for government, coal operators, and surety companies to take.

Remining Meeting: On September 23, OSMRE sponsored a conference on land reclamation through remining — the mining of coal and reclamation of land in previously mined areas. Remining presents one possible way of arranging for reclamation of abandoned mines, without use of the Abandoned Mine Reclamation Fund. Approximately 50 persons attended the conference, representing environmental groups, trade associations, industry, state regulatory authorities, concerned citizens, and the General Accounting Office. The conference focused on the draft report, "Encouraging Abandoned Mine Land Reclamation; A Federal, State, and Industry Initiative," which discussed possible remining initiatives in three broad categories: data management, regulatory flexibility, and financial incentives. Comments from conference participants are now being reviewed, and plans are being developed for implementing specific initiatives. As part of the review effort, OSMRE will examine its regulations and possibly propose new rules or amendments to existing regulations to encourage reclamation through remining activities.

Oversight Conference: OSMRE's oversight of state programs has continued to be one of the most controversial aspects of the surface mining law. To encourage identification, discussion, and resolution of the problems, and to explore possible refinement of the process, OSMRE held a conference on oversight

on August 13 and 14. Attendees were asked to discuss OSMRE's policies for giving 10-day notices to the states and its procedures for reviewing state regulatory programs under the "733" process.

The "733" process, which takes its name from a section of the Code of Federal Regulations where the process is spelled out, is an open, public review of the state program. The process, which is initiated when the Secretary of the Interior has concerns that a state is not effectively implementing its program or a portion of the program, provides a forum for demonstrating how the state is fulfilling the conditions of its approved regulatory program or adjusting to new circumstances that could affect the program's operation. Unfortunately, the perception exists that the process is tantamount to direct Federal intervention, and has thus generated hard feelings in some states.

At the OSMRE conference, attendees had specific suggestions for revising the process, suggesting more informal meetings between the states and OSMRE before the formal process begins. State representatives indicated that more effort was needed to resolve differences over interpretation of program requirements, and requested additional meetings for that purpose as well.

The "10-day notice," which was also discussed at the conference, is the means by which OSMRE notifies a state of specific violations of program requirements that are found at a site during an inspection. If the state fails within 10 days after notification to take appropriate action, or to show good cause for such failure, an OSMRE inspector shall reinspect and, if the violation continues to exist, will issue a Federal Notice of Violation or Cessation Order, as appropriate, on the site.

Conference attendees in general agreed that OSMRE has a statutory mandate to issue 10-day notices to the states. Some expressed the opinion, however, that the statute does not provide OSMRE with the authority to issue a notice of violation on a site if a state responded inappropriately to the 10-day notice. Some stated that an inappropriate state response indicates a disagreement between the state and OSMRE on the proper implementation of the state's program and that the "733" process should therefore be instituted in such cases.

OSMRE is incorporating the comments from the conference in its review of the oversight process.

Task Force on Oversight: As fiscal year 1986 drew to a close, OSMRE completed plans for establishing a task group, composed of representatives from states, industry, the environmental community, and OSMRE, to evaluate the oversight process. In particular, the task force will explore options for motivating compliance with SMCRA, and will examine alternatives to the current oversight procedures. From the task force, OSMRE hopes to obtain specific recommendations that can be implemented during fiscal years 1987 and 1988.

Through those actions, OSMRE is aggressively seeking full implementation of the Surface Mining Control and Reclamation Act. Work on those issues is continuing, with the goal of ensuring effective, even-handed enforcement of the surface mining law, protecting people and the environment while assuring access to the Nation's coal reserves.