Regulatory Activities

Regulatory Development

Under SMCRA, OSMRE is charged with the responsibility of publishing regulations needed to accomplish the Act's purposes. These regulations provide the fundamental mechanism for assuring that SMCRA's basic purposes are achieved in a timely and orderly manner. OSMRE is seeking to establish a stable regulatory program by (1) improving its regulatory development process and (2) obtaining a broad spectrum of viewpoints on its rule-making activities from major constituent groups.

During fiscal year 1987, meetings were held with representatives of the coal mining industry, environmental groups, and State regulatory authorities to obtain their input and assistance in establishing a viable procedure and time schedule for its rule-making activities. In addition, OSMRE continued its previously established process for obtaining pre-rule-making review and recommendations on various regulatory issues from constituent groups. OSMRE also held periodic meetings to evaluate ongoing rule-making activities and establish rule-making priorities.

The following table is a listing of the regulations published in final form during fiscal year 1987 in the Federal Register, with the Code of Federal Regulations (CFR) number, Federal Register citation by volume and page number, and effective date for each regulation. In addition, a brief overview describing each rule's basic purpose and effect is provided.

Sedimentation ponds are constructed prior to mining to prevent off-site stream damage.

Table 1
Final Rules Published During Fiscal Year 1987

Subject (CFR Number)	Federal Register Citation	Effective Date
Restrictions on Financial Interests of State Employees (30 CFR Part 705)	51 FR 37118	11/17/86

This rule requires that all members of advisory boards and commissions established under State law or SMCRA, who are involved in surface mining decisions and related actions, shall (1) file a statement delineating their financial interests and (2) not participate in any proceedings which might affect their direct or indirect financial interests.

Remining Standards and Definition of Adverse Physical Impact (30 CFR Parts 701, 816, and 817)	51 FR 41734	12/18/86

Under this rule, the definition of adverse physical impact and certain performance standards pertaining to remining operations are removed from OSMRE's regulations. The effect of these changes is to require all remining operations to use all reasonably available spoil in the vicinity of the operation to restore, to the extent practical, the area's land surface to pre-mining conditions.

Protection of Historic Properties (30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784)	52 FR 4244	03/12/87

This rule amends OSMRE's regulations with respect to the definition of a cemetery, collection of information on historic properties, preparation of reclamation plans by applicants for coal mining permits, and consideration of historic properties by State regulatory authorities. Specifically, this rule clarifies the responsibilities of OSMRE, State regulatory authorities, and permit applicants to facilitate and ensure appropriate consideration of important historic properties under SMCRA and other pertinent legislation and/or court decisions.

Subsidence Control (30 CFR Parts 784 and 817)	52 FR 4860	03/19/87

This regulation clarifies the responsibilities of underground coal mine operators when subsidence, i. e., mine related shifting of surface land areas, affects dwellings and other structures on these land areas. This regulation provides that the extent to which owners of surface structures affected by subsidence have a protected property right is a matter of State property law and is to be governed by State law and court rulings, rather than Federal law. In addition, the regulation specifies that whenever ground monitoring is part of the mine operator's subsidence control plan, this monitoring must be noted and described in the operator's permit application.

Table 1 continued
Final Rules Published During Fiscal Year 1987

Subject (CFR Number)	Federal Register Citation	Effective Date
Federal Program Update in Selected States (30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, and 947)	52 FR 13802	05/26/87

This regulation updates all Federal programs, except Tennessee's, promulgated under SMCRA to reflect section numbering changes and rule content revisions resulting from regulatory reform. Tennessee's Federal program was established after regulatory reform and already includes the foregoing changes.

Reclamation of "Previously Mined Areas" (30 CFR Parts 701 and 773)	52 FR 17526	06/08/87

The regulation defines previously mined areas for the purposes of highwall elimination requirements as mined land on which previous mining operations were not subject to SMCRA's standards.

Application of Reclamation Rules to Coal Preparation Plants (30 CFR Parts 700, 701, 785, and 827)	52 FR 17724	06/10/87

The purpose of this regulation is to clarify how SMCRA's permit and inspection requirements apply to all facilities, both on and off the mine site, that prepare coal for use. More specifically, the regulation (1) extends SMCRA jurisdiction to most coal preparation plants; (2) allows a set period of time for coal preparation plants to acquire the necessary operating permits; and (3) establishes environmental performance standards to which the plants must adhere.

Land Areas Deemed Unsuitable for Mining (30 CFR Part 762)	52 FR 18792	06/18/87

This regulation amends OSMRE's definitions of "fragile lands" and "historic lands," both of which may be found unsuitable for certain types of surface coal mining, by eliminating the need to identify "irreparable" damage as a basis for declaring a proposed mining site to be unsuitable for mining. In addition, the regulation deletes all references to "buffer zones" or land areas located adjacent to areas where mining is prohibited. These land areas have been deleted from the definition because buffer zones which do not contain fragile land resources themselves do not meet the definition of the term fragile lands and those containing fragile land resources would be included as part of the land area in which mining is prohibited.

State Regulatory Programs

SMCRA specifies that because of the diversity in terrain, climate, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for surface mining and reclamation operations should rest with the States. To achieve primary regulatory authority, often referred to as "primacy," a State must submit a program that demonstrates the State's capability to carry out the provisions of SMCRA.

There are currently 24 States with primary regulatory authority. Those States have the authority to implement, administer, and enforce programs for regulating surface coal mining and reclamation, as well as coal exploration activities, consistent with the State surface mining laws and regulations and other program provisions approved under SMCRA.

Once the Secretary approves a State's program, the State becomes the regulatory authority over coal mining on non-Federal and non-Indian lands within its borders. The Federal government then assumes a monitoring role. Also, once a State has achieved primacy, the Secretary may approve an AML program for the reclamation of lands disturbed by mining activities which occurred before the enactment date of SMCRA (August 3, 1977) and which were left in an unreclaimed condition. Approval of the State reclamation plan entitles the State to receive funds allocated to it from the AML fund.

Any State with an approved regulatory program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State. This is discussed further under the section on Federal regulatory programs.

The following States had approved regulatory programs during fiscal year 1987: Alabama, Alaska, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wyoming.

Table 2 is a listing of summary statistics on State program activities for the period July 1, 1986 through June 30, 1987, the review period for OSMRE annual evaluations of State regulatory and AML programs.

Table 2

State Program Statistics (July 1, 1986 - June 30, 1987)

	Alabama	Alaska	Arkansas	Colorado	Illinois	Indiana	Iowa	Kansas
State Staffing (FTE's)(6/30/87)								
Regulatory Program	49	5.35	8.20	26.0	73	68	5.35	8.75
AML Program	35	1.60	2.95	10.5	34	24	3.75	5.25
Permits								
New Permits Issued	24	1*3	2	0	16	21	3	2
Permits Suspended	3	0	0	1	2	0	0	0
Permits Revoked	10	0	0	2	0	63	0	23
Inspections								
Inspectable Units (6/30/87)	341	1	44	54	115	584	24	34
Complete Inspections	2,810	4	197	233	470	2,275	105	189
Partial Inspections	1,303	8	276	317	1,126	4,254	208	334
Citations								
Notices of Violations Issued	344	4	30	32	169	297	54	9
Failure-to-Abate Cessation Orders Issued	61	0	3	4	7	71	1	0
Imminent Harm Cessation Orders Issued	10	0	0	1	1	0	0	0
Civil Penalties								
Collected ($)	140,691	300	13,050	17,300	62,235	23,500	5,000	3,320
Bonds*1								
Final Bonds Released	95	0	2	0	21	88	9	8
Forfeitures Initiated	16	0	3	2	0	66	0	12
Bonds Collected	52	0	2	0	0	7	0	11
Default Sites Reclaimed*2	44	0	0	0	1	0	0	11
Abandoned Mine Lands								
Projects Approved	8	5	0	22	23	1	0	1
Projects Started	20	2	12	9	25	63	0	1
Projects Completed	22	5	7	11	32	66	3	2

*1 Initial and Permanent Program

*2 By State or Surety

*3 Partial Approval

Table 2 continued

State Program Statistics (July 1, 1986 - June 30, 1987)

	Kentucky	Louisiana	Maryland	Missouri	Montana	New Mexico	North Dakota	Ohio
State Staffing (FTE's)(6/30/87)								
Regulatory Program	449.27	5	15.4	12.90	14.5	13	13.45	120.50
AML Program	49.60	2	2.6	14.55	6.0	10	6.55	41.65
Permits								
New Permits Issued	589	0	8	9	0	1	4	230
Permits Suspended	NA	0	0	0	0	0	0	3
Permits Revoked	54	0	2	13	0	0	0	14
Inspections								
Inspectable Units (6/30/87)	5,106	1	120	100	20	14	47	934
Complete Inspections	19,894	4	595	487	202	53	206	3,665
Partial Inspections	25,231	8	1,136	786	81	113	849	6,189
Citations								
Notices of Violations Issued	2,874	1	61	130	11	27	4	1,602
Failure-to-Abate Cessation Orders Issued	626	0	6	109	4	1	0	191
Imminent Harm Cessation Orders Issued	74	0	0	0	0	0	0	0
Civil Penalties								
Collected ($)	1,696,795	400	500	30,550	3,620	2,800	650	157,051
Bonds[*1]								
Final Bonds Released	1,001	0	13	13	0	2	5	133
Forfeitures Initiated	202	0	0	5	0	0	0	17
Bonds Collected	203	0	0	5	0	0	0	7
Default Sites Reclaimed[*2]	2	0	0	0	0	1	0	2
Abandoned Mine Lands								
Projects Approved	0	0	5	0	10	NA	1	12
Projects Started	41	0	3	5	7	9	10	35
Projects Completed	41	0	3	10	1	13	6	32

*1 Initial and Permanent Program

*2 By State or Surety

NA Not Available or Not Applicable

Note: No active surface mining operations occurred in Mississippi during fiscal year 1987.

Table 2 continued

State Program Statistics (July 1, 1986 - June 30, 1987)

	Oklahoma	Pennsylvania	Texas	Utah	Virginia	West Virginia	Wyoming
State Staffing (FTE's)(6/30/87)							
Regulatory Program	39	376	30	18.0	89	124	30.46
AML Program	6	172	3	7.5	21	51	11.43
Permits							
New Permits Issued	10	309	1	3	167	271	2
Permits Suspended	0	2	0	0	3	12	0
Permits Revoked	0	0	0	0	5	39	0
Inspections							
Inspectable Units (6/30/87)	207	3,763	22	32	1,063	3,333	45
Complete Inspections	703	14,926	165	127	1,349	2,104	183
Partial Inspections	1043	23,895	182	156	1,926	1,345	336
Citations							
Notices of Violations Issued	79	708	13	31	822	2,282	14
Failure-to-Abate Cessation Orders Issued	64	134	0	1	72	251	0
Imminent Harm Cessation Orders Issued	0	20	0	0	8	28	1
Civil Penalties							
Collected ($)	17,740	12,348	0	16,550	152,312	392,551	313
Bonds[*1]							
Final Bonds Released	18	9	0	0	45	123	0
Forfeitures Initiated	22	67	0	1	20	39	0
Bonds Collected	21	61	0	0	25	49	0
Default Sites Reclaimed[*2]	1	3[*4]	0	0	24	35	0
Abandoned Mine Lands							
Projects Approved	3	73	1	0	14	28	4
Projects Started	8	69	1	3	13	52	98
Projects Completed	8	44	1	5	9	36	28

*1 Initial and Permanent Program

*2 By State or Surety

*4 Permanent Program Sites Only

Grants to States

Program Development Grants

Under Section 201 of the Act, OSMRE assists State regulatory agencies in developing or revising surface mining regulatory programs. During fiscal year 1987, three Indian Tribes (the Crow, Navajo, and Hopi) were awarded $562,627 in program development grants. These grants are used to assist in the development of permanent programs by the States and Indian Tribes, and cover such activities as drafting laws and regulations, formulating organizational structures, and developing a database and system to act on petitions for designating lands unsuitable for surface mining. Table 3 shows OSMRE funding to Indian Tribes during fiscal year 1987 for program development.

Table 3
Indian Tribal Funding for Regulatory Program Development
(100 Percent Federal Funding)

Crow Tribe	47,325
Hopi Tribe	110,038
Navajo Tribe	405,264
	$562,627

Regulatory Grants

Section 705 of the Act authorizes OSMRE to provide grants to States with approved regulatory programs in amounts not exceeding 50 percent of the cost of the program.

In addition, when a State elects to administer an approved program on Federal lands through a cooperative agreement, it becomes eligible to receive financial assistance for up to 100 percent of the amount the Federal government would have expended in regulating coal mining on those lands. Table 4 shows the grant dollars provided to States during fiscal year 1987 to administer and enforce regulatory programs within their borders.

Table 4

Fiscal Year 1987 Regulatory Grant Funding

STATE	FEDERAL LANDS	NON-FEDERAL LANDS (FEDERAL SHARE)*[1]	TOTAL FEDERAL FUNDING
Alabama	$6,240	$1,006,380	$1,012,620
Alaska	0	220,000	220,000
Arkansas	0	223,000	223,000
Colorado	870,484	224,214	1,094,698
Illinois	96,243	2,359,162	2,455,405
Indiana	0	1,303,741	1,303,741
Iowa	0	136,012	136,012
Kansas	0	189,436	189,436
Kentucky	0	11,048,893	11,048,893
Louisiana	0	193,089	193,089
Maryland	0	494,448	494,448
Mississippi*[2]	0	0	0
Missouri	0	452,552	452,552
Montana	536,500	162,500	699,000
New Mexico	201,843	298,157	500,000
North Dakota	202,008	240,992	443,000
Ohio	0	3,177,977	3,177,977
Oklahoma	0	815,944	815,944
Pennsylvania	0	9,266,500	9,266,500
Texas	0	926,910	926,910
Utah	1,020,096	234,635	1,254,731
Virginia	75,818	2,535,417	2,611,235
West Virginia	0	3,919,500	3,919,500
Wyoming	924,144	170,346	1,094,490
TOTAL	$3,933,376	$39,599,805	$43,533,181

*[1] Presently all regulatory grants are Administration and Enforcement Grants, and are cost shared at the ratio of 50 percent Federal and 50 percent State.

*[2] No active mining occurred in Mississippi during fiscal year 1987.

Federal Regulatory Programs

Federal Programs for States

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

-the State's proposal for a permanent program is not approved by the Secretary;
-the State does not submit its own permanent regulatory program; or
-the State fails to implement, enforce, or maintain its approved State program.

Although OSMRE encourages and supports State primacy in the regulation of surface coal mining and reclamation operations, certain States with coal reserves elected not to submit, or maintain, regulatory programs. These States, therefore, became Federal program States, with surface coal mining and reclamation operations regulated by OSMRE. At the end of fiscal year 1987, full Federal programs were in effect in Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. Of these, only Tennessee and Washington have active coal mining. (OSMRE promulgated a Federal program for California published in the Federal Register July 13, 1988, 53 FR 26570.)

Table 5 summarizes OSMRE's regulatory actions in Tennessee and Washington for the period July 1, 1986 through June 30, 1987. OSMRE compiles statistics annually on both State and Federal regulatory programs on a July-June cycle.

Table 5

Federal Regulatory Programs for States with Active Mining

Program Statistics - July 1, 1986 - June 30, 1987

	Tennessee	Washington
Permits		
New Permits Issued	56	0
Permits Suspended	1	0
Permits Revoked	1	0
Inspections		
Inspectable Units (6/30/87)	934	5
Complete Inspections	3798	47
Partial Inspections	6547	12
Citations		
Notices of Violations Issued	591	3
Failure-to-Abate Cessation Orders Issued	235	0
Imminent Harm Cessation Orders Issued	16	0
Bonds*[1]		
Final Bonds Released	0	0
Forfeitures Initiated	11	0
Bonds Collected	3	0
Default Sites Reclaimed	0	0
Designation of Lands Unsuitable for Mining		
Petitions Received	0	0
Acres Designated Unsuitable	2330	0

*[1] Permanent program sites only.

Opposite: Archeological investigations are conducted prior to mining to salvage artifacts which may be destroyed by mining.

Bonding Handbook

A major goal of SMCRA is to ensure the adequate reclamation of all areas disturbed by surface coal mining operations. The primary mechanism for accomplishing this is a permitting process that allows mining to proceed only after the permit applicant files a performance bond sufficient to ensure completion of an approved reclamation plan. The performance bond serves as a guarantee that reclamation will be completed and, in the event of bond forfeiture, performance bond monies are used by the regulatory authority to contract for the necessary reclamation work. In cases where surety bonds are used and approval is obtained from the regulatory authority, the surety has the option of completing the reclamation rather than forfeiting the bond. OSMRE regulations specify that the bond amount is to be determined by the regulatory authority.

In 1987, OSMRE published the Handbook for Calculation of Reclamation Bond Amounts for use in Federal program States where OSMRE is the regulatory authority. The bond calculation method presented in the handbook uses standard engineering cost-estimating procedures to develop site-specific costs for each reclamation activity. Bonds calculated in this fashion account for differences in mining site conditions and in post-mining land uses. The costs of structure removal, earthmoving, and revegetation of the disturbed area are the most significant elements of the reclamation estimate. For most surface mining situations, earthmoving costs represent the major portion of the direct cost of reclamation.

Individuals with an interest in surface coal mining operations and activities may find the handbook useful in understanding how OSMRE determines performance bond levels. Persons interested in obtaining a copy of the handbook should contact the Chief, OSMRE Division of Technical Services, 1951 Constitution Avenue, NW, Room 5111-L, Washington, DC 20240.

Reclaimed cropland.

Federal Oversight of State Regulatory Programs

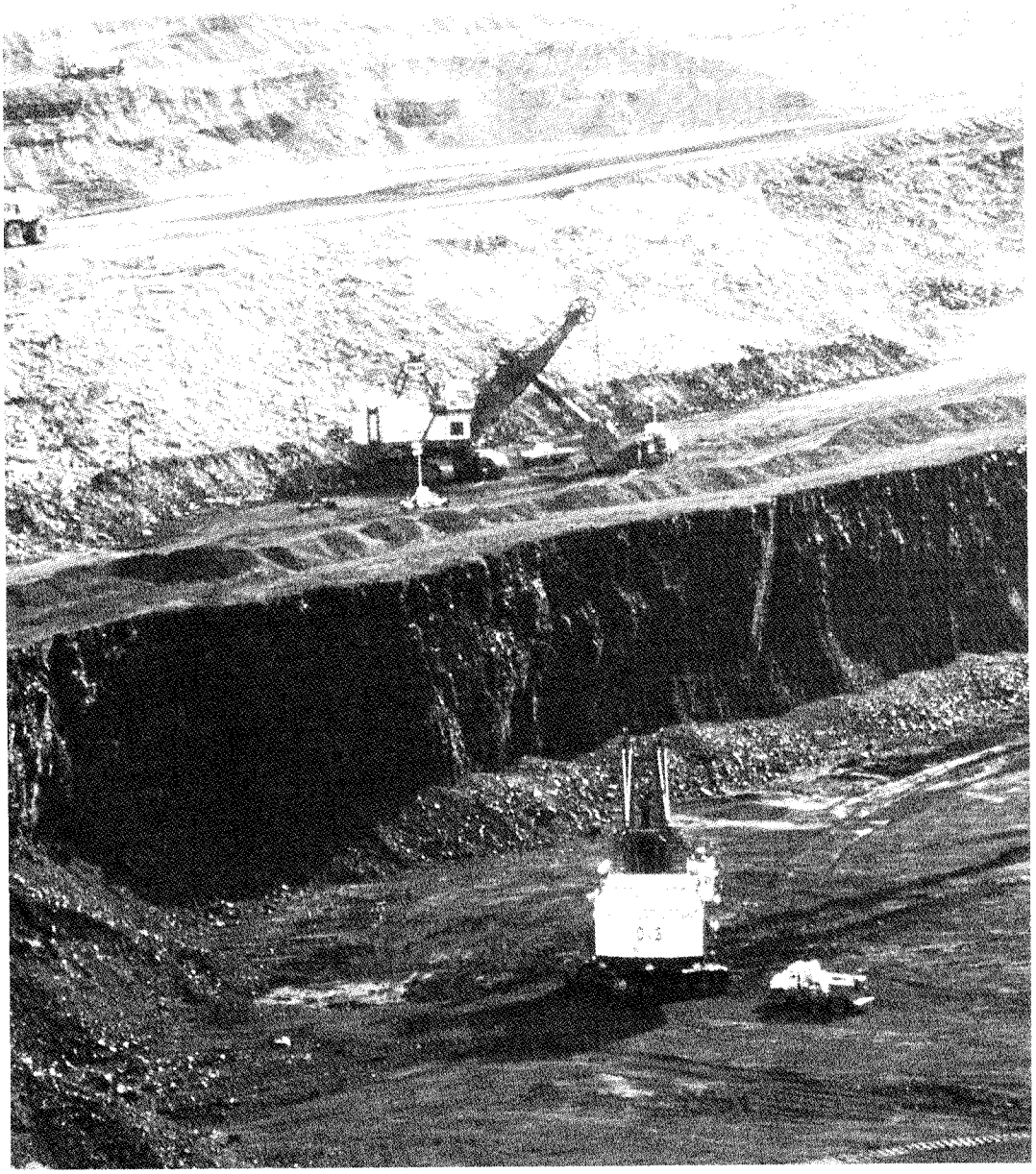
Once a State obtains approval of its permanent regulatory program, OSMRE's role is to assist the State and verify that the requirements of the surface mining law are being met. This process is commonly termed "oversight." OSMRE's responsibilities in its oversight role are to:

- assist the State in implementing its approved program;
- make necessary investigations to ensure compliance with SMCRA;
- monitor the State's AML program;
- inspect any mining operations as may be necessary to evaluate the State's performance on inspections;
- issue cessation orders for violations observed on OSMRE inspections which create an imminent danger to the health or safety of the public, or which cause or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources; and
- enforce any part of the State program not being enforced by the State, or implement a Federal program where necessary.

OSMRE conducts an annual evaluation of each State's performance in carrying out its approved program requirements. As part of that evaluation, OSMRE reviews permits issued by the State, performs oversight inspections of mine sites in the State, and conducts special studies on topics of interest. Oversight inspections are conducted on a "random sample" basis in each primacy State. OSMRE also conducts inspections in response to citizen complaints and to follow up on sites where violations have been observed during a previous OSMRE inspection.

If OSMRE has reason to believe a violation of the State program or of the Act exists, it must notify the State (except in the case of imminent danger to the public or the environment, in which case OSMRE can immediately inspect and issue a cessation order when a State has failed to take appropriate action). The vehicle by which OSMRE notifies the State of a violation is commonly referred to as the "10-Day Notice". Once notified of a possible violation, the State then has 10 days in which to take appropriate action to cause the violation to be corrected, or to show good cause for its failure to take such action. OSMRE has authority in primacy States to issue Federal notices of violation if OSMRE determines that a State has failed to take appropriate action or to show good cause and a violation continues to exist. (On July 14, 1988, OSMRE amended Sections 842 and 843 of its regulations to establish a uniform standard by which OSMRE will evaluate State responses to Federal notices of possible violations of SMCRA or the State program. The final rule was published in the Federal Register, pages 26728-26744.)

As a result of OSMRE's oversight activities and meetings with the State, an action plan is cooperatively developed on the basic steps needed to resolve significant problems or deficiencies. The plan identifies specific actions to be taken by the State and OSMRE, as well as a schedule for those actions. Every attempt is made to reach a mutually agreed upon plan. To the extent that some issues are not fully resolved, the action plan sets forth actions that OSMRE will take to achieve resolution. Table 6 summarizes OSMRE's oversight inspection and enforcement activities during fiscal year 1987.



Because of the thickness of the coal seam, open pit mining techniques are used at this western mine.

Table 6
Federal Oversight of State Programs
July 1, 1986 - June 30, 1987

STATE	NUMBER OF OSMRE INSPECTIONS		10-DAY NOTICES*1				OSMRE ENFORCEMENT ACTIONS (Number of Violations)	
	Random Sample	Other	Number Issued	State Actions Pertaining to Alleged Violations			NOVs*2	COs*3
				Appropriate	Inappropriate	Pending		
Alabama	194	130	64	80	9	0	9	0
Alaska	1	1	1	4	0	0	0	0
Arkansas	42	1	1	1	0	0	0	0
Colorado	55	2	14	19	12	0	9*5	1
Illinois	88	40	38	53	4	0	0	0
Indiana	240	40	37	58	0	3	0	1
Iowa	25	6	9	20	0	1	0	0
Kansas	43	7	1	3	0	0	0	0
Kentucky	400	653	191	244	17	19	14	3*6
Louisiana	1	1	1	1	0	0	0	0
Maryland	95	8	1	1	0	0	0	0
Missouri	82	27	11	9	1	2	2	1
Montana	21	24	8	9	0	0	0	0
New Mexico	13	2	3	3	1	0	0	0
North Dakota	46	2	0	0	0	0	0	0
Ohio	297	86	65	73	8	4	0	3
Oklahoma	80	0	2	2	0	0	0	0
Pennsylvania	349	439	50	57	28	0	4*7	1
Texas	21	5	5	10	0	0	0	0
Utah	29	2	6	7	0	1	0	0
Virginia	282	178	16	30	1	0	18*8	0
West Virginia*4	347	333	300	288	9	3	1	2
Wyoming	44	0	7	3	4	0	0	0

*1 A 10-Day Notice may include one or more violation(s).
*2 Notices of Violation
*3 Imminent Harm or Failure-to-Abate Cessation Orders
*4 West Virginia issues a separate 10-Day Notice for each separate violation.
*5 Seven of the nine violations were vacated following the close of the FY 1987 period.
*6 One violation was vacated after the close of the fiscal year.
*7 One violation was vacated after the close of the fiscal year.
*8 On 17 violations Federal enforcement actions were taken because Virginia had no authority to cite the violators.
Note: No active surface mining operations occurred in Mississippi during fiscal year 1987.

National Objectives

Certain program aspects are selected annually by OSMRE for special study as "national objectives" during the evaluation of State programs. These study topics focus on issues of concern to all surface mining states and on program areas that have been subject to modification as a result of regulatory initiatives or the development of new procedures.

The national objective evaluation topics for fiscal year 1987 were as follows:

- adequacy of bond determinations for permanent program permits established by the States;
- State adherence to program requirements concerning midterm permit reviews;
- State adherence to program requirements concerning coal exploration.

In order to evaluate State performance in these special study areas OSMRE reviewed samples from State permit files and conducted field investigations. Samples selected for review for national objective studies are larger than those used for routine oversight studies. In States with a small number of surface coal mining operations, OSMRE examined the entire universe of permit documents.

The results of the study on the first national oversight objective, bonding, revealed that approximately two-thirds of the primacy States had no difficulties with bonding. For the remaining States, the problems ranged from minor deficiencies, such as the form of some bonds, to under calculation of the bond amount on some of the permits. The reports also noted that significant improvements had been made by the States in improving methods for bond determination.

The special study on midterm permit review confirmed that the States are conducting complete and accurate midterm reviews. Many States, in fact, are enforcing requirements that are more stringent than Federal requirements. The few problems that were noted related for the most part to timeliness.

The third special focus area related to State procedures for regulating coal exploration. State requirements for coal exploration vary widely among the 24 primacy States, but the written procedures reviewed by OSMRE were as stringent as Federal regulations. Several States impose measures more stringent than the Federal requirements, such as requiring a permit rather than a notice of intent for small exploration sites and requiring bonds to be posted. The isolated instances of program deficiencies involved inadequate State inspection and monitoring of exploration sites or inadequate enforcement of the tonnage limitations for exploration sites.

Overall OSMRE determined that the States were effectively implementing their programs in the areas given special focus as national objectives during fiscal year 1987.

Regulation of Surface Mining on Federal and Indian Lands

Federal Lands

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

The Federal lands program is critical because the Federal government owns significant coal reserves, primarily in the West, that must be developed under the Federal Coal Management program of the Bureau of Land Management, US Department of the Interior. Of the 234 billion tons of identified coal reserves in the western region, 60 percent is Federally owned.

Administration of most surface coal mining requirements for the Federal lands program may be delegated by the Secretary to States with approved regulatory programs through cooperative agreements. By the end of fiscal year 1987, the Secretary had entered into cooperative agreements with the States of Alabama, Colorado, Montana, New Mexico, North Dakota, Ohio, Utah, Virginia, West Virginia, and Wyoming. (A cooperative agreement with Illinois was signed in October 1987.)

Once the Secretary and the State have reached a cooperative agreement, the State regulatory authority assumes responsibility under SMCRA for permitting, inspection, and enforcement of surface coal mining activities on Federal lands in the State. OSMRE, however, maintains responsibility for reviewing mining plans to determine whether the mine operators are complying with the Mineral Leasing Act of 1920, as amended. OSMRE also maintains an oversight function to ensure that the regulatory authority fully exercises its delegated responsibility under the cooperative agreement. In States not having a cooperative agreement, the required permitting, inspection, and enforcement activities under SMCRA are carried out by OSMRE. During fiscal year 1987, OSMRE issued seven new permits, approved 22 mining plans for coal mining on Federal lands, and approved nine permit revisions.

Contemporaneous reclamation.

Indian Lands

SMCRA requires Congressional enactment of enabling legislation before Indian Tribes can seek to assume primacy for regulation of mining operations on Indian lands. Until such legislation is enacted and the Indian Tribes obtain primacy, the Federal government regulates coal mining operations on Indian lands pursuant to Section 710 of SMCRA. Mines on the Navajo and Hopi Reservations are within the responsibility of OSMRE's Albuquerque, New Mexico Field Office, while the mine on the Crow Ceded Area in Montana is within the responsibility of OSMRE's Casper, Wyoming Field Office. Both areas come under the responsibility of OSMRE's Western Field Operations, in Denver, Colorado.

For the Crow Ceded Area in Montana, OSMRE and the Montana Department of State Lands have developed a memorandum of understanding under which the State and OSMRE cooperatively administer the applicable surface mining requirements including the permitting and inspection functions. OSMRE has also entered into cooperative funding agreements with the Crow, Navajo, and Hopi Tribes in order that they may prepare to assume primacy when enabling legislation is enacted. Table 7 provides statistics on regulatory activities on Indian lands during fiscal year 1987.

Table 7

Fiscal Year 1987 Regulatory Activities on Indian Lands

Indian Lands in Arizona and New Mexico	
Total Permits	5
Inspectable Units (All Lands)	6
Total Inspections (Partial and Complete)	71
Enforcement Actions (Notices Of Violations Issued)	17
Indian Lands in Montana	
Total Permits	1
Inspectable Units (All Lands)	1
Total Inspections (Partial and Complete)*[1]	28
Enforcement Actions (Notices Of Violations Issued)	0

*[1] 15 conducted by the Montana Department of State Lands and 13 conducted by the OSMRE Casper Field Office

Assessments and Collections

The Act provides State and Federal regulatory authorities with a number of enforcement tools to ensure compliance with environmental standards. One such tool is the assessment of civil penalties for violations of mining standards. OSMRE is responsible for debt collection efforts for Federal civil penalties. Table 8 provides data on OSMRE's assessments and collections for fiscal year 1987.

During fiscal year 1987 OSMRE sought to improve the collection rate for current debt and to resolve a backlog of civil penalties. The penalty backlog is a legacy from the early years of the program when OSMRE and the States shared responsibility for implementing the initial regulatory program established by the Act. A high percentage of the old debt can never be collected because it is owed by companies or individuals who are no longer in business, are bankrupt, or are deceased. OSMRE is closing out this old debt as rapidly as possible. Starting in fiscal year 1986, OSMRE began a process of reclassifying the old debt caseload. Essentially, when cases are reclassified, further collection activity is suspended, but only after efforts have been exhausted to determine the availability of assets to pay the debt. Although the cases are removed from the books for collection purposes, a record of the debt is maintained to ensure that violators are not granted new mining permits. Through the review and analysis of 2,797 cases and the research of the financial condition of over 1,600 companies and individuals, OSMRE reclassified $82 million in backlogged, delinquent civil penalty debts during fiscal year 1987. A record of these reclassified debts has been included in the Applicant Violator System (AVS). AVS, further discussed on page 43 of this report, is used by OSMRE and the States to determine whether or not new coal mining permits should be issued or denied.

In addition to the reclassification of old debt, OSMRE pursued a number of other initiatives during fiscal year 1987 to improve its civil penalty debt collection process. These are discussed below.

Sedimentation ponds constructed in sequence.

Table 8

OSMRE Civil Penalty Accounts Receivable

($ in millions)

	Fiscal Year(s) 1987	1978-1987
Accounts Receivable Matured*[1]		
Dollar Value	$23.75	$167.01
Number	1370	13465
Collections		
Dollar Value	$1.00	$10.39
Number	295	5340
Reclassifications*[2]		
Dollar Value	$81.58	$95.01
Number	4539	5207
Compromises*[3]		
Dollar Value	$2.30	$5.00
Number	79	172
Accounts Receivable (September 30, 1987)		
Dollar Value	*[4]$56.61	$56.61
Number	2746	2746

*[1] Accounts Receivable Matured - final penalty amounts that have been assessed against the violators after any requested reviews have been completed.

*[2] Reclassifications - debt considered uncollectible. Record of debt is maintained in OSMRE's Applicant Violator System to ensure that the violator is denied new permit until penalties are paid.

*[3] Compromises - amount of debt compromised by solicitors.

*[4] For penalties assessed 1978 - 1987.

Renovation of the Collection Management Information System

OSMRE completed a major enhancement of its Collection Management Information System (CMIS). CMIS includes data on citations for mining violations identified by OSMRE inspectors as well as related assessment, collection, and litigation data. The enhanced system allows greater flexibility to generate reports and provides additional data elements for monitoring the processing and collection of civil penalties.

Obtaining Net Worth Determinations

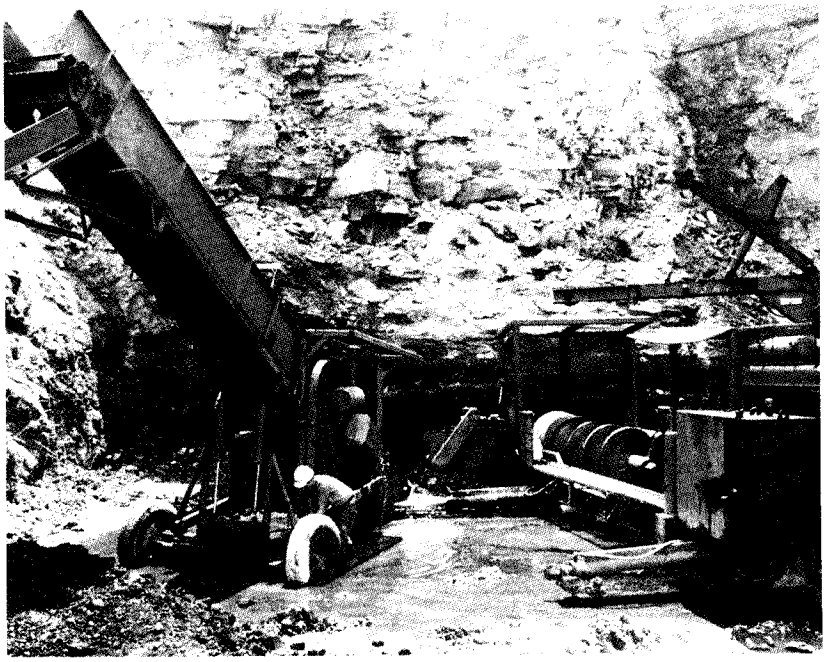
To determine whether a company has assets to pay the debt, OSMRE is obtaining net worth determinations as a basis for referring cases to the Office of the Solicitor for its further action in seeking judgments and, as appropriate, for its concurrence in reclassifying cases as inactive. Obtaining net worth determinations before the Solicitor's Office takes legal action helps reduce the load of unproductive cases and helps focus the efforts of the Solicitor's Office only on those situations where assets exist.

Legal Action Against Debtors

The Solicitor's Office provides legal support of collection activities to OSMRE primarily by seeking judgments against delinquent debtors. OSMRE referred 392 cases showing a delinquent debt of approximately $8.4 million to the Solicitor's Office for legal action during fiscal year 1987.

Other Collection Initiatives

Other initiatives pursued by OSMRE included using private sector debt collection agents, offsetting civil penalties against AML fee overpayments, and blocking coal purchase contracts between the Tennessee Valley Authority and operators with unpaid civil penalty debts.



Many eastern mines utilize auger mining to maximize coal recovery.

Technical Assistance, Training and Research

Small Operator Assistance Program (SOAP)

Section 401(b)(1) of the Act authorizes a specified amount of the fees collected for the Abandoned Mine Reclamation Fund to be used to support the Small Operator Assistance Program (SOAP). The program is designed to assist small coal mine operators (those producing fewer than 100,000 tons per year at all sites) in meeting certain technical permit application requirements. The regulatory authority assumes the cost of preparing an analysis of probable hydrologic consequences and characterizing the geology and overburden materials at a proposed mining site.

These analyses are performed by qualified public or private laboratories under contract to the regulatory authority. SOAP is administered by State regulatory authorities in those States that have gained primacy, or by OSMRE in Federal program States.

During fiscal year 1987, OSMRE provided $2.1 million in operational grants to the States for small mine operator assistance. Table 9 provides a breakdown by State or Indian Tribe of SOAP awards during fiscal years 1985, 1986, and 1987.

Protection from deer grazing is provided for trees planted at this former mining site.

Table 9
Small Operator Assistance Program
Fiscal Years 1985 - 1987 Awards

State or Indian Tribe	FY 1985 Awards($)	FY 1986 Awards($)	FY 1987 Awards($)
Alabama	0	0	0
Alaska	0	0	0
Arkansas	0	0	0
Colorado	50,000	50,000	0
Georgia	0	0	0
Illinois	100,000	75,000	*[1]70,000
Indiana	125,000	*[1]100,000	35,000
Iowa	109,950	0	0
Kansas	0	0	0
Kentucky	0	0	0
Louisiana	0	0	0
Maryland	140,000	0	40,000
Missouri	0	0	0
Montana	0	0	0
New Mexico	15,000	0	0
North Dakota	0	0	0
Ohio	0	0	467,500
Oklahoma	0	0	0
Pennsylvania	825,000	1,184,000	*[1]1,453,000
Tennessee	0	0	0
Texas	0	0	0
Utah	0	0	10,000
Virginia	0	0	0
Washington	0	0	0
West Virginia	50,000	132,500	76,000
Wyoming	0	0	0
Other States	0	0	0
Crow Tribe	0	0	0
Hopi Tribe	0	0	0
Navajo Tribe	0	0	0
TOTAL	$1,414,950	$1,541,500	$2,151,500

*[1] Original award amounts shown. Deobligations from original awards subsequently occurred.
Note: No active surface mining operations occurred in Mississippi during fiscal year 1987.

Research and Experimental Practices

During fiscal year 1987, OSMRE conducted research under Title V of SMCRA relative to technical and regulatory issues, especially those associated with mining and reclamation. Research activities were divided into two basic groups: one dealing with "applied research and technical studies" of interest to regulatory authorities and mine operators and the other dealing with "experimental practices" authorized under Section 711 of SMCRA. In both instances, these research programs are modest in terms of funding, and short term (less than three years in most cases). OSMRE personnel oversee the technical aspects of all research projects to assure compliance with contractual obligations and to identify areas requiring further research or study.

In fiscal year 1987, 18 applied research and technical studies projects were initiated or completed with a total obligated funding of $885,302. In addition, two projects that had been started in previous years were completed. These projects originated from a variety of sources including OSMRE, other Federal agencies, universities, and private contractors.

A total of five experimental practices projects were initiated or completed during fiscal year 1987 with a total obligated funding of $23,500. These practices represent cooperative efforts among mine operators, State regulatory authorities, and OSMRE to investigate and develop innovative measures to accomplish mine operation and land reclamation in accordance with SMCRA-approved performance standards. If an experimental practice proves to be equivalent to the performance standards delineated in the regulations, it may be incorporated into the regulations via the rule-making procedures. Typical experimental practices deal with overburden back-filling and grading, excess spoil disposal, sedimentation ponds, and slurry pond revegetation.

Presented in the following table is a summary of the fiscal year 1987 research projects indicating the project title and contractor, level of obligated fiscal year 1987 funding, and estimated completion date for each project.

The construction phase of this experimental practice, to create a wetland wildlife habitat, involved direct planting of a slurry pond without covering it with four feet of clean material.

Table 10
Research Projects Funded During Fiscal Year 1987

Project Title (Contractor)	Obligated Funding	Completion Date (Actual or Estimated)
Experimental Practices - Monitoring by Graduate Students		
Amos Ridge (Carl Zipper) *1	$ 5,000	October 1988
Central Pennsylvania Coal Company, Inc. - Browncrest No. 3 Mine (Pennsylvania StateUniversity)	$ 5,000	December 1989
Illinois and Indiana (Southern Illinois University) *1	$ 7,500	September 1988 and September 1987
Bancock, Ohio (Belmont Technical College)	$ 6,000	December 1991
Applied Research and Technical Studies		
Handbook for Calculation of Reclamation Bond Amounts (OSMRE Bonding Committee) *1		July 1987
Sedimot II Workshop (University of Kentucky)	$ 10,000	December 1988
Effects of Controlled Overburden Placement on Topsoil Substitute and Phase III Bond Release (Virginia Polytechnic Institute)	$ 61,308	December 1989
Development of Quality Seed Plant Materials Study for Use in Coal Mine Reclamation (Soil Conservation Service) *1	$ 40,000	May 1988
Tenth Annual Institute on Western Energy and Minerals Opportunities (Colorado School of Mines) *1	$ 15,000	March 1987
Interagency Agreement - Comparison Methods for Aquifer Properties and Ground-Water Chemistry	$ 42,500	September 1989

*1 These projects were completed as of the date indicated.

Table 10 continued
Research Projects Funded During Fiscal Year 1987

Project Title (Contractor)	Obligated Funding	Completion Date (Actual or Estimated)
Evaluation of Rock Durability Testing (Corps of Engineers and OSMRE)	$ 85,000	July 1989
Evaluation of Excess Spoil Disposal Practices in Kentucky and West Virginia (R&R International, State Regulatory Authorities, and OSMRE)	$105,925	September 1989
Back-fill Settlement Study in Kentucky, Tennessee, Virginia, and West Virginia (OSMRE & Summer Students)	$ 20,000	July 1989
Kentucky Subsidence Crack Study (OSMRE and Summer Students)	$ 20,000	January 1989
Water Resources of the Tug Fork and Guyandotte Rivers in West Virginia (U.S. Geological Survey) *1	$ 50,000	September 1988
Evaluation of Measurements for Hay/Pasture Yields on Surface Mined Lands in Pennsylvania (Grove City College)	$ 5,000	August 1989
Evaluation of Measurements for Hay/Pasture Yields on Surface Mined Lands in West Virginia (West Virginia University)	$ 18,663	February 1989
Hydrologic Impacts of Surface Mining in a Small Watershed in Fayette County, Pennsylvania (U.S. Geological Survey)	$154,300	September 1990
Water Quality Assessment of a Small Watershed in the Coal fields of Pennsylvania (U.S. Geological Survey)	$120,000	March 1989
Evaluation of Post-Mining Hydrologic Impacts of Underground Mining in Eastern Kentucky (U.S. Geological Survey) *1	$ 26,500	September 1988

*1 These projects were completed as of the date indicated.

Technical Training

OSMRE has completed the fourth year of a nationwide technical training program, stressing solutions to practical field situations faced by surface coal mine regulatory and abandoned mine land personnel. Courses are taught jointly to participants from Federal, Indian, and State offices to increase communication among the parties and to teach basic technical skills to State, Indian, and Federal personnel. During fiscal year 1987, OSMRE conducted 60 sessions of the 12 separate courses in the training portfolio, in which 1,159 State, Federal, and Indian personnel participated. Table 11 summarizes courses and participants.

Table 11

Fiscal Year 1987 OSMRE Training Courses

Course	Participants				
	State	Tribes	OSMRE	Other	Total
Basic Inspection	0	0	43	0	43
Soils and Revegetation	63	2	45	14	124
Surface and Groundwater Hydrology	78	0	28	16	122
Engineering Principles Applied to Surface Coal Mining	131	0	68	6	205
Enforcement Procedures	120	0	62	15	197
Advanced Air-Photo Interpretation Workshop	6	2	0	0	8
Management, Operational Development and Evaluation Seminar	39	0	34	0	73
Underground Mining Technology	34	0	36	2	72
Applied Hydrology	101	1	29	10	141
Surface Mining Remote Sensing	35	0	17	0	52
Instructor Training Course	7	0	23	0	30
Technical Writing	24	0	68	0	92
TOTAL	638	5	453	63	1159

Excellence in Surface Mining Awards

Surface coal mining operations in Colorado, Illinois, Kentucky, Maryland and Ohio were winners in OSMRE's 1987 "Excellence in Surface Coal Mining Reclamation" competition. Mines in Alabama, Indiana and West Virginia received honorable mention. The competition is held each year as part of the Department of the Interior's Take Pride in America campaign, which encourages Americans to conserve and protect the land and water resources nationwide. The winners are selected from nominations submitted by State regulatory authorities from active, producing coal mines. The specific reclamation accomplishments of the 1987 winners are briefly described below.

Winners

R & F Coal Company
Harrison County Home Mine
Harrison County, Ohio

R & F Coal Company was nominated by the Ohio Department of Natural Resources Reclamation Division for improving the mined land's utility and value, for providing direct economic benefits to the county government, for staging public tours to increase public awareness and understanding of the mining industry, and for demonstrating the results achievable under the surface mining law. During the life of the mine (7 1/2 years), the company paid $2.5 million in royalties to the county. The company produced more than two million tons of coal from 550 acres under permit. It eliminated and reclaimed nearly three miles of old highwalls. More than 3,000 people toured the mine in a two-year period.

Western Fuels-Utah Inc., Deserado Mine, CO. Overpass crossing constructed for migratory animals.

Western Fuels-Utah Incorporated
Deserado Mine
Rio Blanco County, Colorado

The Colorado Mined Land Reclamation Division nominated Western Fuels-Utah, Incorporated for demonstrating that mining and transportation operations can be conducted compatibly with wildlife and other resource values. Six big game overpasses were installed along a 3.5-mile stretch of the mine's conveyor coal transportation corridor. Elk, deer and antelope have been observed using the animal crossings, enabling the wildlife to continue migratory routes unimpeded. Also, the company was successful in providing artificial nests for the Ferruginous Hawks along a railroad corridor and for the American Kestrel (Falcon) at the mine site.

Arch of Illinois
Captain Mine
Perry County, Illinois

The Illinois Department of Mines and Minerals nominated Arch of Illinois for its vast and pioneering research in soil reconstruction. The company was the first in the history of the coal industry to win first place State and national awards for the excellent quality of honey produced on reclaimed mine land. More than 7 1/2 tons of grapes per acre were grown last year on reclaimed land, with the harvest used to make both red and white wine. Prime farmland crop yields have been achieved for forage, wheat, soybeans, trees and corn, as well as grapes.

R&F Coal Co., Harrison County Home Mine, OH.

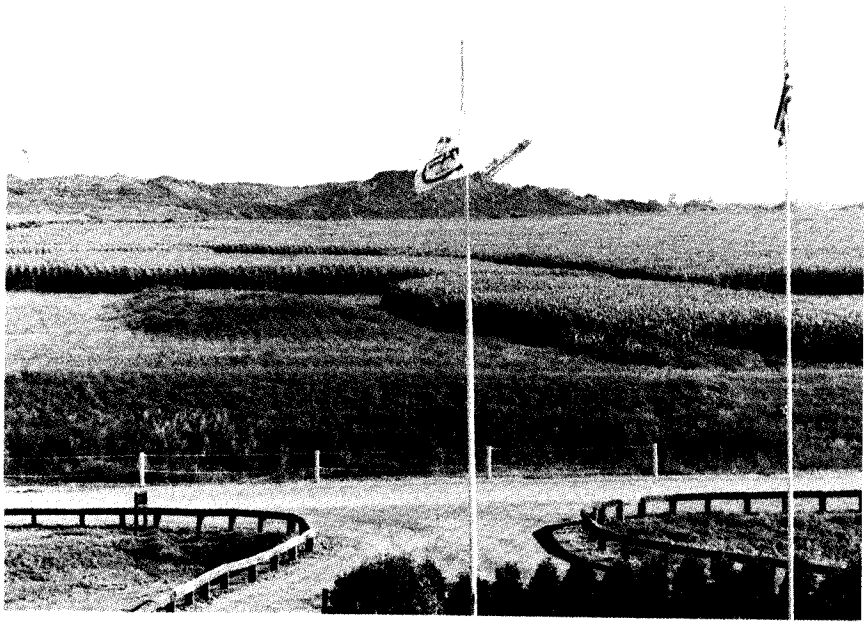
Peabody Coal Company
Sinclair and Homestead Mines
Ohio County, Kentucky

The Kentucky Department for Surface Mining Reclamation and Enforcement nominated Peabody Coal Company for establishing waterfowl refuges on reclaimed mine land to reintroduce the Canada goose in western Kentucky. Small flocks of this big bird were rediscovered in 1962 after the species was thought to be extinct. The company established a 340-acre waterfowl refuge at Sinclair Mine and a 750-acre waterfowl refuge at Homestead Mine. Food plots are planted annually and systems were installed in both refuges to maintain open water year-round to provide safe habitat for the geese.

John Duckworth Coal Company
Mines in Allegany and Garret Counties
Maryland

The Bureau of Mines, Maryland Department of Natural Resources nominated the John Duckworth Coal Company. The company operates under a "good neighbor" policy, refusing to use explosives close enough to homes that noise or vibration could upset the residents. The company also built a new loading and processing facility in an isolated area, responding to complaints about dust at a leased loading facility. Once Duckworth backfills and replaces topsoil on an area, all rocks are removed by hand and the area is seeded. Top-dressing of the area continues until bond release, and occasionally after bond release, if revegetation drops below company standards because of overuse by the landowner.

Arch of Illinois, Inc.,
Captain Mine, IL.



Honorable Mention

Drummond Company Incorporated
Segco No. 1 Mine
Walker County, Alabama

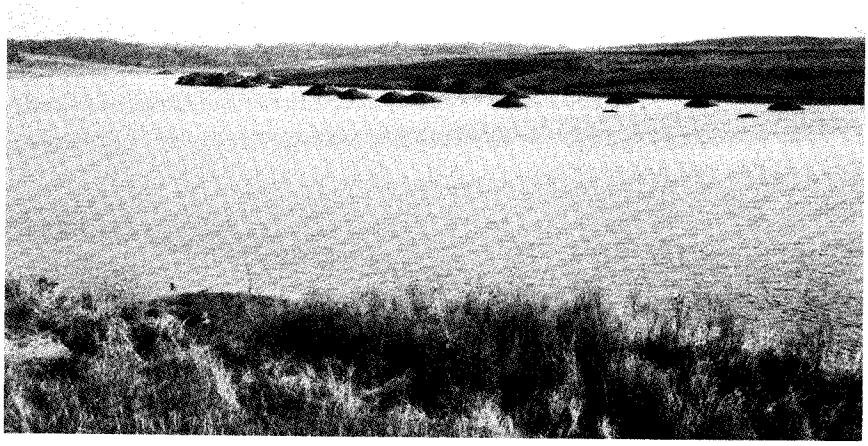
The Alabama Surface Mining Commission nominated Drummond Company Incorporated for reclamation in connection with mine closure due to depletion of coal reserves. The mined land was reclaimed to enhance timber production, as well as for viable alternative use as grazing land. Drummond also won honorable mention in the 1986 competition.

P-V Mining Company
Dubois County Operations, Indiana

The Indiana Department of Natural Resources nominated P-V Mining Company for exceeding reclamation standards, using 30 inches of soil depth for land restoration rather than the required 12 inches for forests, pasture and hay-land, and 18 inches for cropland.

Island Creek Coal Company
Gauley Division Operations
Nicholas County, West Virginia

The West Virginia Department of Energy nominated the Island Creek Coal Company for its voluntary reclamation of 200 acres of abandoned coal refuse piles, along with remining and reclaiming 130 acres of surface and underground mined land. The reclamation resulted in the elimination of nearly two miles of highwalls and two impoundments.



Peabody Coal Co., Sinclair Mine, KY. Nesting islands constructed to isolate the habitat of the Canada goose from predators.

Fire being extinguished in abandoned coal mine refuse.