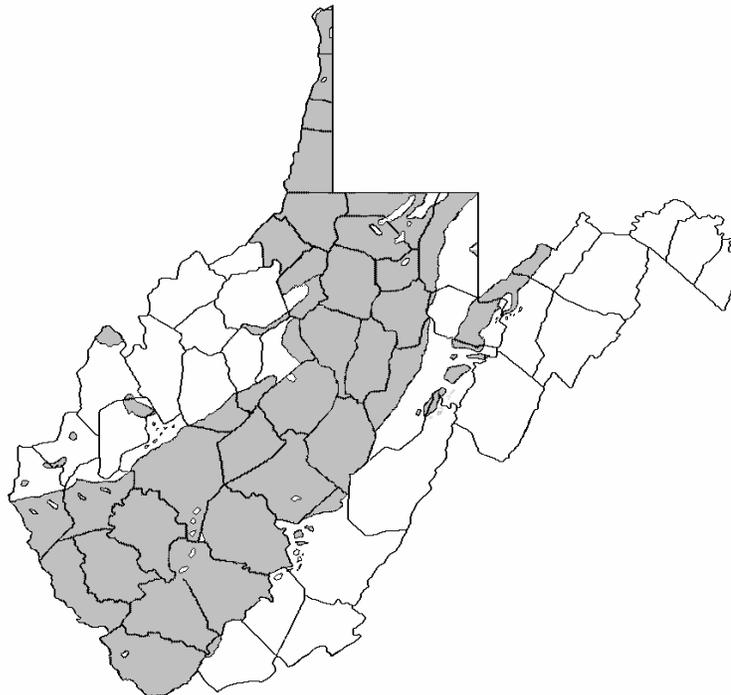


**2005
WEST VIRGINIA
ANNUAL EVALUATION REPORT**



PREPARED BY

***Charleston Field Office
Office of Surface Mining Reclamation and Enforcement
Charleston, West Virginia***

ANNUAL EVALUATION SUMMARY REPORT
FOR THE
REGULATORY AND ABANDONED MINE LAND
RECLAMATION PROGRAMS
ADMINISTERED BY THE STATE
OF
WEST VIRGINIA
FOR
EVALUATION YEAR 2005
JULY 1, 2004 TO JUNE 30, 2005

SEPTEMBER 2005

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I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that have been approved by OSM as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the West Virginia Program and the effectiveness of the West Virginia program in meeting the applicable purposes of SMCRA as specified in Section 102. This report covers the period of July 1, 2004, to June 30, 2005. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the OSM Charleston Field Office.

The following acronyms are used in this report:

ACSP	Appalachian Clean Streams Program
AR	Appalachian Region
AMD	Acid Mine Drainage
AML	Abandoned Mine Land
AMLR	Abandoned Mine Land Reclamation
AMLIS	Abandoned Mine Land Inventory System
AR	Appalachian Region
CHFO	Charleston Field Office
CHIA	Cumulative Hydrologic Impact Assessment
CIA	Cumulative Impact Area
Extension Service	West Virginia University Cooperative Extension Service
EY 2005	Evaluation Year 2005 (July 1, 2004 to June 30, 2005)
ICG	International Coal Group
LCC	Lexington Coal Company
NMLRC	National Mine Land Reclamation Center
NOV	Notice of Violation
OEB	Office of Explosives and Blasting
OSM	Office of Surface Mining Reclamation and Enforcement
PHC	Probable Hydrologic Consequences
SOAP	Small Operators Assistance Program
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten-Day Notice
WV	West Virginia
WVDEP	West Virginia Department of Environmental Protection
WVDMR	West Virginia Division of Mining and Reclamation
WVSCMRA	West Virginia Surface Coal Mining Reclamation Act

II. Overview of the West Virginia Coal Mining Industry

Coal has been mined in West Virginia using underground methods since the early 1700's. Underground mining increased throughout the 1800's and into the 1950's. Surface mining began around 1916, but significant production from surface mining did not occur until World War II.

Mining activities occurring before passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977 resulted in many unreclaimed or under reclaimed areas within the State. Currently, there are 4,075 sites listed in the Abandoned Mine

Land (AML) inventory for West Virginia. Two percent of the sites are undergoing reclamation, 61 percent are awaiting reclamation and 37 percent have been reclaimed through the State=s AML Program.

West Virginia=s demonstrated coal reserve base totals 33.5 billion tons and its estimated recoverable reserves total 18.2 billion tons. The State=s estimated recoverable coal reserves at producing mines totaled 1.5 billion tons in 2003. West Virginia ranks fourth in the country in demonstrated coal reserves and second in recoverable coal reserves at producing mines. Coal occurs in all but two of the State=s 55 counties. Mineable seams occur in 43 of the 55 counties. Of the 117 identified coal seams in the State, 65 seams are mineable using current technology.

West Virginia accounts for about 14 percent of the Nation=s total coal production. In 2004, West Virginia produced 153.6 million tons of coal, allowing it to retain its ranking as the second largest coal producing State (see Table 1, Appendix A for coal production based on sales). Coal was produced from 54 different seams. The Pittsburgh, Coalburg, Lower Kittanning, Eagle, Stockton-Lewiston, and Winifrede coal seams accounted for about 62 percent of the State=s total coal production. During 2004, coal was produced in twenty-six counties in West Virginia. The top six coal producing counties in 2004 by production were: Boone, Kanawha, Mingo, Logan, Marshall and Monongalia Counties. The State=s producing mines had an average coal recovery of 60 percent. The average price per ton of coal mined in West Virginia during 2003 increased to \$30.02. The average price per ton of coal nationwide decreased to \$17.85 in 2003.

West Virginia leads the Nation in underground coal production. Underground mines produce approximately 64 percent of the State=s total coal production. Longwall mining occurs in twelve States. West Virginia has more longwall mining operations than any other State. Longwall mining operations accounted for 43 percent of the State=s underground coal production and 28 percent of the State=s total coal production in 2004. Although longwall production continues to increase, continuous mining activities still account for most of the State=s underground coal production.

Contour, area, auger, mountaintop, and highwall mining operations are the most common methods of surface mining in the State. With advances in mining technology, surface mines are becoming larger and more complex. Thirty-six percent of the coal produced in West Virginia is by surface mining methods. Surface coal production increased by 3.3 percent, and underground production increased by 6.5 percent in 2004.

West Virginia has 2,325 inspectable units. The average number of acres per inspectable unit is 139 acres. Surface mines average 302 acres per unit, whereas underground mines average only 34 acres per unit. Approximately 77 percent of the State=s permits are active and require monthly inspections by the WVDEP. Underground mines account for about 40 percent of the total inspectable units and surface mines account for 35 percent. The remaining 25 percent consists of other facilities, including such things as preparation plants, coal refuse piles, loading facilities, and haulroads.

Approximately 91 percent of the coal produced in West Virginia is used domestically, with 28 percent of that coal being consumed within the State. Most coal produced in West Virginia is used to generate electricity. Sixty four percent of the State=s domestic coal production is used by electric utilities in 26 States, including West Virginia. Coal produces 98 percent of the electricity generated in State. Coke plants use approximately 10 percent of the State=s domestic coal production, and the

remaining 26 percent is for industrial, commercial, and residential use. Ohio, North Carolina, and Pennsylvania import 36 percent of West Virginia's domestic coal production. Fifty three percent of the State's domestic coal production is transported by railroad, 29 percent is transported by water, and the remainder by truck, conveyor, or is stockpiled.

West Virginia is the Nation's leading coal exporter with 35 percent of the country's foreign exports. Canada, Italy, France, and the Netherlands are the leading importers of West Virginia coal. Metallurgical coal comprises 91 percent of West Virginia's coal exports to foreign countries. Fifty two percent of the Nation's metallurgical coal exports come from West Virginia. The State's foreign coal exports increased slightly in 2004 while the Nation's total coal exports remained about the same.

About 300 companies produce coal in West Virginia. Total employment, including independent contractors, is about 38,500 employees. Seventy two percent of the miners in the State work in underground mines. Boone, Kanawha, Mingo, Logan, Monongalia, Marshall, and Wyoming Counties employ 64 percent of the miners in the State. West Virginia's miners are among the most productive in the Nation producing approximately 4.2 tons of coal per miner per hour. Estimates are that the State's coal industry generates approximately 80,000 additional coal-related jobs.

Coal accounts for nearly 13 percent of the Gross State Product, a measure of the total value of all goods and services produced in the State. West Virginia's coal industry pays more than \$230 million annually in business and severance taxes to State and local governments and another \$180 million in Federal taxes. The coal industry accounts for nearly 27 percent of the State's business tax, and approximately 10 percent of the statewide property tax collections. Overall, it is estimated that every \$1 billion worth of coal production generates \$3.5 billion throughout the economy.

III. Overview of the Public Participation Opportunities in the Oversight Process and the State Program

Throughout the 2005 Evaluation Year (EY), WVDEP and/or OSM officials met with the following representatives of various citizen, environmental, and/or industry groups such as:

- o West Virginia Highlands Conservancy,
- o West Virginia Coal Association,
- o Ohio Valley Environmental Coalition,
- o Contractor's Association of West Virginia,
- o River of Promise Steering Committee (Cheat River),
- o Friends of the Cheat,
- o Guardians of the West Fork,
- o West Virginia Watershed Network,
- o Plateau Action Network,
- o Shavers Fork Coalition,
- o Morris Creek Watershed Association,
- o Friends of the Blackwater River,
- o Friends of Deckers Creek,
- o Buckhannon River Watershed Association
- o Kellys Creek Communities Association,
- o Lower West Fork Watershed Association,
- o Paint Creek Watershed Association
- o American Society of Mining and Reclamation

- o McDowell County Economic Development Authority
- o Mingo County Redevelopment Authority, and
- o Canaan Valley Institute, and
- o Coal River Mountain Watch

Additionally, OSM attended public meetings associated with the following activities.

- o Surface Mine Drainage Task Force Symposium,
- o West Virginia Watershed Management Framework,
- o Friends of the Cheat Annual Festival,
- o Watershed Cooperative Agreement Grant Program,
- o Public Hearing for Stream Buffer Zone Rule, and
- o Watershed Celebration Day

To measure the State's success in meeting the environmental protection goals of SMCRA, OSM and WVDEP have cooperatively developed Regulatory and AML Performance Agreements. The Agreements focus on measuring the on-the-ground success of the approved program and identifying the need for financial, technical, and other program assistance. The Agreement contains the basic framework for oversight activities for a two-year period. In developing the Performance Agreement, OSM solicited input from the public and other state and federal agencies to identify program areas to evaluate during the upcoming evaluation years.

The Charleston Field Office (CHFO) maintains a mailing list of individuals and organizations that have been active in regulatory and AML issues in West Virginia. The office staff routinely interacts with individuals and groups throughout the year. OSM has maintained contact with many watershed groups throughout the State and provides assistance through a network of summer interns and Volunteers in Service to America (VISTA) workers funded through the OSM budget. These interns and VISTA workers interact with local watershed groups and provide additional feedback to the CHFO on citizen concerns.

West Virginia's approved regulatory program provides many additional opportunities for public participation. In the permitting process, the State must advertise each application for a new or revised permit and must provide interested citizens the opportunity to comment. Citizens may request that the WVDEP hold an informal conference to discuss the application before making a decision to issue or deny the permit. Filing written citizen complaints concerning specific issues also gives citizens the opportunity to participate in the inspection and enforcement process at particular mine sites. They may also seek administrative review of WVDEP decisions by the West Virginia Surface Mine Board or judicial review through the State court system.

During EY 2005, OSM published notices requesting public comment on several rulemaking activities. Notices were sent to various State and Federal agencies along with public interest groups. OSM also published requests for public comment in the Federal Register. As part of OSM's outreach efforts, its web page in Washington, D.C. has a link to a form for citizens to report suspected violations of mining and reclamation laws. There are also links to information packages that citizens can request about specific areas of the SMCRA. These include educational packets for schools and civic groups. The Appalachian Region (AR) has a link to the Charleston Field Office web page at http://arcc.osmre.gov/about_cfo.asp. The CHFO published its draft 2-year oversight plans as a method to solicit public input. It also has a form to fill out to report an abandoned mine land emergency. The two sites are www.osmre.gov/ and arcc.osmre.gov/.

The WVDEP has aided in the development of the watershed management framework and other initiatives to preserve, protect, and restore stream water quality. The WVDEP's Office of Environmental Advocate also offers a means for public participation. This office works on a variety of environmental issues within the State. They encourage participation on the regulatory process by individuals and groups. The approved Abandoned Mine Land Reclamation Plan provides opportunities for public participation. These include public interaction during the processing of citizen complaints concerning AML problems. WVDEP also publishes newspaper notices seeking comment on each proposed construction project before requesting funding approval from OSM.

IV. Major Accomplishments/Issues/Innovations in the West Virginia State Regulatory Program

A. Accomplishments/Innovation

1. Watershed Management Framework

During the EY 2005, both WVDEP and OSM participated with other State and Federal agencies in a partnership for statewide watershed management called the West Virginia Watershed Management Framework (the Framework). The Framework provides a way to coordinate the operations of existing water quality programs and activities in West Virginia to better achieve shared watershed management goals. The Framework identifies watersheds issues around the state and works to coordinate agency efforts to more effectively implement water quality improvement projects on a five-year cycle.

During the past year and under the Framework, WVDEP and OSM participated on project teams in priority watersheds to develop and fund remedial projects to improve water quality, habitat, and aquatic life in streams. In addition to government agencies already involved through the Framework, these efforts are being coordinated with watershed organizations, industry, academia, and other local interests. A primary focus of the Project Teams is the clean up of acid mine drainage from old and abandoned coal mines.

2. Bonding Program Improvements

On May 29, 2002, OSM fully approved the State's ABS that included an increase in the special reclamation tax rate from 3 cents per ton of clean coal mined to 14 cents (with 7 of the 14 cents expiring after 39 months); created a Special Reclamation Advisory Council (the Council) to monitor the progress of the ABS in meeting future bond forfeiture reclamation obligations; and removed the limitation on funding for treating polluttional discharges at bond forfeited sites.

The Council met several times during the year to evaluate the status of the Special Reclamation Fund and monitor the progress of land reclamation and water treatment at bond forfeited sites. During the previous evaluation year, the Council had initiated actions to contract an Actuarial study to evaluate the fiscal soundness of the Special Reclamation Fund. That study was initiated during this evaluation period, but the study was not completed before the end of period. However, the Actuary did, communicate to the Council key findings from its review that the Council used in a report to the legislature. These findings included:

- The expected cost of reclamation activities for known forfeitures, excluding the ongoing water treatment activities, is \$50.8 million. This exceeds the assets of the fund, which were approximately \$31.2 million as of July 1, 2004.
- The fund is supported by coal tax revenues, bond forfeitures, civil penalties, and interest income. Of these, by far the largest contribution is from the coal tax revenue, which includes a 7-cent per ton temporary tax, set to expire in March 2005. Future revenues are projected to be insufficient to meet projected expenses of reclamation activities.
- A recommendation that the expiration of the temporary tax be deferred until satisfactory funding levels have been achieved after addressing the costs of any backlog of reclamation projects.
- A recommendation that the Advisory Council consider directing a significant portion of the fund's assets to be invested in the West Virginia Investment Management Board's Fixed Income Pool.

The Council formed the basis for its recommendations to the 2005 Legislature on its analysis of financial data and cost projections. An edict imposed on the Council from its inception, required the submission of an annual report to Legislature reporting on the status of the Special Reclamation Fund with recommendations. Accordingly, the Council prepared a report to the 2005 West Virginia Legislature recommending the additional 7 cent tax be extended for 12 months and not be allowed to expire as planned. The Legislature acted on the Council's recommendation, but extended the additional coal tax for an additional 18 months to October 1, 2006.

Acting on other Council recommendations, the Legislature engaged the WVDEP to explore and determine the feasibility of different bonding systems or funding mechanisms and their impact on the overall fiscal stability of the Special Reclamation Fund. In that regard and on July 22, 2005, WVDEP contracted with Marshall University to assist with the evaluation of three alternative funding mechanisms to replace or supplement the current Special Reclamation Fund. The mechanisms to be evaluated are:

- Full-cost bonding to cover both surface reclamation and water treatment obligations;
- A public or privately managed water quality trust fund to provide long-term funding for water treatment at forfeited sites independent from the Special Reclamation Fund; and
- A funding system with funds for land reclamation collected under the current (or modified) system and a separate bonding requirement for water treatment activities.

WVDEP has developed a schedule through June 2008 to complete reclamation of its backlog of forfeited permits for both land and water. There are 93 permits scheduled for water treatment within that period. Additionally, the WVDEP is monitoring 102 permits to determine whether water treatment will be needed. These sites will be added to the schedule if it is determined that chemical treatment is required to meet technology based effluent limits at the site.

There are 169 permits included in WVDEP's schedule for land reclamation through 2008. During the evaluation period, WVDEP completed land reclamation for 73 permits. Five of the 73 permits still require water treatment.

3. Fill and Flooding Oversight and Technical Assistance Agreement

On December 2, 2002, OSM and WVDEP signed an agreement outlining actions to minimize the possibility of a mudslide similar to that occurring in the community of Lyburn in the summer of 2002. The agreement addressed a broad range of actions including approval and implementation of revised regulations to address flooding and fill construction, establishment of work groups to evaluate some of the broader issues identified at the Lyburn site, and development of additional guidance and training.

On October 27, 2004, WVDEP issued two policies outlined by the agreement. The policies related to controlling erosion during construction of end-dump fills and minimizing potential problems for inactive status. These two policies complete all of the actions outlined by WVDEP under the agreement.

Two oversight evaluations conceived by the agreement were also completed during the evaluation year. Evaluations were completed on the State's implementation of the probable hydrologic consequences (PHC) and cumulative hydrologic impact assessment (CHIA) updated policy issued during the previous evaluation year and the end-dump fill erosion policy issued this year by the WVDEP. The evaluation of the PHC and CHIA policy found that the implementation of the new excess spoil policy to minimize erosion was not being implemented consistently. WVDEP is considering how best to resolve the issue. The erosion policy was evaluated during routine oversight inspections beginning in December 2004. Initially, implementation of the policy varied on a permit by permit basis. However, as time progressed, implementation became more widespread. Currently, OSM believes that the policy is being satisfactorily implemented.

The only activity remaining under the Agreement is evaluation of the implementation of the inactive status policy issued relative to fills during this evaluation year. Yet, few approvals have been granted under this policy. As soon as a sufficient population exists from which to draw a sample, OSM will complete the evaluation of the policy.

4. Program Amendment Resolution

As discussed in detail in Section VII.D, during the evaluation period, WVDEP submitted a program amendment to OSM that satisfied one outstanding required amendment and five Part 732 issues, which were the result of Federal rule changes. OSM announced its approval of the program amendment that resulted in the removal of the required amendment and Part 732 issues in the *Federal Register* on February 5, 2005 (70 FR 6575-6592) (Administrative Record Number WV-1413). These efforts ensure that the State's permanent regulatory program is consistent with the Federal regulations and SMCRA.

Currently, the State has eleven outstanding required program amendments and six Part 732 issues that are not satisfied. At the end of the reporting period, the State submitted a formal program amendment and made subsequent revisions that are intended to resolve all but one of its outstanding required program amendments and all of the Part 732 issues. OSM will publish a *Federal Register* notice shortly announcing receipt of the proposed State program amendments.

5. Alternative Enforcement

During the past year using the jointly developed procedures discussed in section VI.G, the WVDEP issued two individual civil penalty assessments and is considering two additional individual civil penalty assessments. One of those issued resulted in compliance with the underlying cessation order and the other is now part of a bankruptcy proceeding.

6. Electronic Permitting

On June 2, 2005, the WVDEP processed, approved, and issued the first on-line surface mine permit application (SMA).

B. Issues

1. AMD Inventory of Active Permits

OSM reported last year that the WVDEP's AMD inventory for active mining permits had not been updated since 1998. That remained unchanged at the time this report was prepared.

In 2002, WVDEP and OSM had agreed that a one-time water sample every 2 years was not sufficient for cost estimations related to future financial assurance for water treatment. In that regard, the WVDEP prepared an action plan with a commitment to begin requiring operator's currently treating AMD to submit additional water quality and quantity information for future cost estimation. The new reporting requirement was to have been initiated more than three years ago, but the order has not been given to operators. WVDEP officials continue to consider the information important, but have not employed other options to collect it.

OSM remains concerned that WVDEP has not been more diligent in pursuing this action. The potential impacts of not having adequate water quality/quantity information for active mining operations that treat water include:

- Cost assumptions to judge future forfeiture costs and, hence, the adequacy of the Special Reclamation Fund (SRF) may be based on inaccurate information. The original approval of changes to the special reclamation fund was based on one-time water samples with the anticipation that actual costs would be refined and considered by the Special Reclamation Advisory Council. Getting good water data on all permits with the expectation that some may be forfeited is a critical part of that process.
- Actual reclamation and water treatment of newly forfeited permits may be delayed until the State pays for and collects its own water quality information for seasonal data. Furthermore, because the WVDEP is not requiring background water data of a seasonal nature before treatment begins, the SRF will incur additional monitoring and inflationary costs after forfeiture.
- Even if the operation never forfeits its bond, OSM questions how WVDEP can judge the adequacy of the active operator's hydrologic reclamation plan where it has never obtained seasonal water quality and quantity information on the water pollution after it was discovered.
- OSM notes that the lack of accurate pretreatment water data of a seasonal nature also hinders the State's ability to portray costs in its negotiations with companies

that are facing bankruptcy or reorganization. Bankruptcy proceedings and third party negotiations often occur rapidly leaving little time for data gathering for water treatment cost projections.

For the 2006 Evaluation Year, OSM plans to conduct an oversight study of this issue using the State's 1998 active mine drainage inventory as the baseline for any evaluation.

2. Mountaintop Mining Action Plan

Under the Mountaintop Mining Action Plan described in Section VII.F., below, WVDEP was to identify and take action to insure that all permits with Approximate Original Contour (AOC) variances contain postmining land uses allowable under the approved program. Of the 37 active permits identified as having inappropriate land uses to support the AOC variance, three have not been addressed. WVDEP has informed us that the AOC variance for these sites was not utilized and that permitting actions are pending to remove the variance approvals.

3. Cumulative Hydrologic Impact Assessment (CHIA) Litigation

On January 21, 2000, the Ohio River Valley Environmental Coalition, Inc. and the Hominy Creek Preservation Association filed a civil suit in the U.S. District Court for the Southern District of West Virginia [Ohio River Valley Environmental Coalition, Inc., et al., v. Michael Callaghan, et al., Civil Action No. 3:00-0058, (S.D. W.Va.)]. The suit asked the court to compel the WVDEP to perform certain functions that the plaintiffs allege are nondiscretionary legal obligations under SMCRA. Among other items, the suit alleged that the WVDEP had approved permits and significant amendments without doing adequate CHIAs, without requiring adequate baseline data and without requiring adequate hydrologic monitoring and reclamation plans. On June 14, 2001, the plaintiffs filed a motion to add the U.S. Department of the Interior as a defendant that the judge granted. The plaintiffs argued that the alleged WVDEP actions set out in the complaint are a failure to perform non-discretionary duties. Since this is a failure to carry out the approved program, the plaintiffs argue that the Secretary must promulgate and implement a Federal regulatory program for West Virginia within a specific, reasonable amount of time.

Plaintiffs and OSM reached a mutually acceptable consent order for this case that was entered by the Court on May 4, 2005. The plaintiffs have also signed a settlement agreement with the WVDEP. As part of a settlement agreement, a quality review panel was established to review cumulative hydrologic impact assessments. OSM agreed to provide a technical representative to this panel. During this evaluation year, the panel has reviewed and identified common concerns on six permits.

The panel will continue to meet through the remainder of calendar year 2005 and plan to review an additional six permits and to make recommendations to the Secretary.

4. Material Damage Litigation

Ohio Valley Environmental Coalition, Inc., et al., v. Secretary Norton, DOI, Civil Action No. 3:04-00084 (S.D. W.Va.)

On January 30, 2004, the Ohio Valley Environmental Coalition (OVEC) and others filed a complaint requesting that the U.S. District Court for the Southern District of West Virginia vacate OSM's December 1, 2003, *Federal Register* decision approving a State program amendment providing for a new definition of material damage and the

deletion of an existing definition of cumulative impact which are to ensure the protection of the hydrologic balance during surface coal mining activities (68 FR 67035-67045) (Administrative Record Number WV-1382).

In addition to vacating OSM's December 1, 2003, decision, OVEC wants the District Court to compel OSM to notify WVDEP that it must rescind its definition of material damage, implement its former definition of cumulative impact, and perform a new cumulative hydrologic impact assessment (CHIA) for each permit issued since OSM's decision.

Judge Robert C. Chambers was assigned the case. Several Motions by both sides were filed in 2004. A decision is expected soon.

5. Revisions to Probable Hydrologic Consequence Information

As part of several actions to minimize the potential for a mudslide similar to the one that occurred in the community of Lyburn in the summer of 2002, the WVDEP developed a new internal policy to ensure the probable hydrologic consequence information and the cumulative hydrologic impact assessments were updated on certain types of permit revisions. OSM's review found that the implementation of the new policy was not consistent among the State offices. WVDEP plans to conduct training on the new policy in October 2005.

6. Grant Funding Eligibility – Non-coal Permitting Activity

Non-coal (quarry) permit applications were being processed through the NPDES program and charged to the A&E grant. WVDEP was advised to stop funding quarry related activities and initiate measures to ensure that such actions do not occur in the future.

V. Success in Achieving the Purposes of SMCRA as Determined by Measuring and Reporting End Results

A. Off-Site Impacts

1. Bonded Sites

We conducted an evaluation of all West Virginia non-forfeited coal mining permits to determine the effectiveness of the State program in protecting the environment and the public from off-site impacts resulting from surface coal mining and reclamation operations. The evaluation revealed that 93 percent of the State's 1,918 permits were off-site impact free.

During this evaluation period, the State conducted 19,113 inspections and issued 1,182 enforcement actions. Of these enforcement actions, 141 off-site impacts were found on 127 permits. In comparison to last years 210 impacts on 155 permits, the number of impacts off-site has decreased by 33 percent, and the number of permits with off-site impacts has decreased by 18 percent. Most of the off-site impacts (98 percent) were categorized as minor. The figures representing resources affected, degree of impact, and type of impact can be found on Table 4.

Hydrology, representing 69 percent of the type of impact affected this year, remains the most common type of impact affected by the mining operations. This category has decreased 5 percent from last year's 74 percent.

2. Bond Forfeiture Sites

The State's Office of Special Reclamation (OSR) conducted an off-site impact evaluation of the forfeited permits. During this period of review, 12 permits were forfeited and these sites were added to the inventory. Two of these sites have off-site impacts relating to hydrology. The degree of impact for both of these new sites is moderate. The State completed land reclamation on 73 bond forfeiture sites during the review period. The State installed active or passive water treatment systems on 15 sites to abate the impacts to water quality.

The number of bond forfeited permits with off-site impacts has decreased by 9 to 127. Of the 127 off-site impacts, two are related to land problems and 125 are related to water quality problems.

In addition to the 73 sites where land reclamation was completed during the evaluation year, the OSR also issued reclamation contracts on 42 sites, and 13 more active or passive water treatment sites are currently under construction. The OSR continues to maintain the inventory of the State's forfeited permits and is responsible for the reclamation of these sites.

B. Reclamation Success

The success of the State program in ensuring reclamation of lands affected by surface coal mining operations is based on the number of acres meeting the bond release standards and subsequently released by the state. Phase I release indicates that the land contour has been returned to its approximate original configuration or an approved variation. The Phase II release verifies that the vegetative cover or other erosion control techniques have adequately stabilized the surface from erosion and the soil resources are adequate to support that cover. The Phase III, or final release, verifies that the mine site is fully reclaimed to achieve the approved postmining land use. Restoration of the vegetative cover and surface and ground water are reflected by this release.

During the evaluation year, WVDEP granted 5,389 acres in Phase III bond release based on the successful completion of all reclamation requirements. Phase I and Phase II bond releases during the year were 2,848 and 3,386 acres respectively. All information required by REG 8 can be found on the attached Table 5.

C. Customer Service – Blasting Follow-up

OSM chose to review the Office of Explosives and Blasting (OEB) as the customer service evaluation for EY 2005. The purpose of this review was to evaluate the effectiveness of customer service provided by the West Virginia Department of Environmental Protection (WVDEP) Office of Explosives and Blasting. The customers, landowners, and residents are entitled to be notified that blasting will be taking place near their homes and property. State blasting requirements are outlined under Title 38, Series 2, Section 6 of the West Virginia Surface Mining Reclamation Regulations, Chapter 22, Article 3, Section 13 and 13(a) of the West Virginia Surface Coal Mining Reclamation Act (WVSCMRA) and Title 199, Series 1 of OEB's Blasting Rule.

OSM found WVDEP was properly implementing its program by confirming that all permittees had notified all residents/landowners within the designated blast radius. Each resident/landowner must be given the opportunity to request a pre-blast survey. The permittee must receive a return receipt from every resident/landowner as proof of notification. If not, a waiver or affidavit must be signed and submitted to the OEB

office. The OEB was also properly reviewing Section T of the surface mining or underground mining permit. The OEB has a claims and arbitration system in place should the resident/landowner allege blasting damage to their property or structure.

The OEB has made significant improvements since OSM's 2002 review. They seem to have a good system in place to insure that each owner and occupant of a structure listed in section T-4 of the permit is afforded the right to have a pre-blast survey. Should the owner and occupant claim to have any damage due to blasting, the OEB has a claims and arbitration system in place to deal with these problems. Education of the public about blasting and training and certifying both pre-blast surveyors and blasters will continue to improve relations between the public and the companies who are blasting.

The OEB took OSM's recommendation that there were too many letters being sent to the companies and inspectors concerning the submittal of pre-blast survey forms. This was causing confusion on when to blast. This was remedied by sending out one letter confirming submittal of all pre-blast survey forms. Further review of the OEB is required due to programmatic issues. The OEB is not disclosing to the citizen a definite answer pertaining to the investigation of blasting claims. Rather, they are leaving the decision to the claims administrator.

VI. OSM ASSISTANCE – REGULATORY PROGRAM

A. Site Specific Technical Assistance

OSM provided site specific technical assistance to the WVDEP regulatory program for seven investigations during this evaluation year. Staff from the OSM Appalachian Regional Office in Pittsburgh and the Charleston Field Office provided assistance in evaluating water loss at three sites, including two that were carried over from the previous evaluation period. Two other sites involving potential subsidence impacts, one involving a landslide and one involving a potential blowout from a flooded mine were also reviewed. The blowout investigation, as well as two of the water loss investigations, is still under review.

B. Mountaintop interim Interagency Permit Evaluation

As provided for and developed under the Settlement Agreement in the Bragg v. Robinson litigation in 1999, OSM began providing technical assistance to WVDEP in the review of certain permit applications. The assistance was outlined in a Memorandum of Understanding and specifically identified in a work plan signed by OSM and WVDEP.

The assistance continued until the fall of 2004 when WVDEP and OSM agreed to conclude the joint reviews. The decision was based on several factors, including other assistance being provided to WVDEP and a July 8, 2004, decision by District Judge Joseph Goodwin of the Southern District of West Virginia requiring nearly all mines with valley fills in the Southern District of West Virginia to obtain an individual CWA permit.

C. OSM'S Technical Training

OSM conducts courses throughout the year in the latest technology related to active and abandoned mine reclamation. These courses are administered through OSM's National technical Training Program and Technical Information Processing System.

During EY 2005, WVDEP regulatory program staff attended latest technology classes related to active and abandoned mine reclamation. The WVDEP regulatory program staff attended 116 classes during EY 2005.

D. Underground Mine Hydrology/Mon Pool

OSM continued to conduct technical analyses regarding the flooding of underground mine voids. Decades of underground mining in the Pittsburgh coal seam have left more than 27,000 acres of abandoned mine voids. The mine voids are either flooded or currently flooding. In 1996, these mine voids filled to a near-land surface that would have generated a significant AMD discharge. Mounting concern that the pool would start discharging into the Monongahela River prompted various agencies to collaborate on the problem in 1998. These included OSM, Environmental Protection Agency (EPA), WVDEP, and the National Mine Land Reclamation Center (NMLRC), along with Consolidation Coal Company. These agencies are studying the effects of mine pool buildup and considering possible solutions to the problem. Currently, the Consolidation Coal Company is controlling the level of water in the mine pool by pumping and treating the water.

In EY 2005, OSM continued to monitor water levels at 12 locations in ten mines. The distribution of monitoring points is providing water level data in each major mine and at different parts of the mine pool flow system. Early in EY 2005, OSM surveyed monitoring locations for accuracy regarding their geographic location and their ability to provide greater elevation control on the pool flow system.

In EY 2005, the monitoring of the mine pool elevations continued at locations where readings were taken either manually on a monthly basis or continuously by pressure transducer. Data trends suggests that some isolated mine pools will rise to elevations where they will merge with the adjoining mine pools. Monitoring and analysis will continue in EY 2006.

E. Permitting Guidance

On February 3, 2005, OSM and WVDEP entered into a work plan providing for OSM assistance in the development of permitting guidance and training related to geology and subsidence. A geology guidance document was developed previously by OSM and WVDEP and made available for public comment. WVDEP is preparing the final version of the document for release. Preliminary discussion on the subsidence guidance has been held and OSM will continue to provide any level of assistance requested by WVDEP.

F. Vegetative Cover/Productivity Standards

A joint OSM and WVDEP team continued to evaluate a new method of measuring revegetation success known as the pasture plate method. The team also evaluated the use of total yield data as a means for determining productivity. Currently, the approved method for measuring ground cover is the Rennie-Farmer Method and the method for determining productivity is "cut and weigh".

During the previous evaluation year, the West Virginia University Cooperative Extension Service (Extension Service) evaluated the pasture plate method under a contract issued by WVDEP. The Extension Service, in conjunction with WVDEP bond release personnel, conducted field evaluations on 10 revegetated surface mine sites (5 Northern West Virginia sites and 5 Southern West Virginia sites) in 2003. In 2004, the Extension Service again conducted field evaluations on 10 revegetated surface

mine sites. WVDEP and OSM team members accompanied the Extension Service personnel on some of the site visits. On these evaluations, plots were clipped and the forage was oven-dried and weighed to determine productivity yield in tons per acre. Pasture plate measurements were then correlated to the yields on each site. The yield data collected on these sites can be used for productivity determinations to evaluate the sites for bond release.

The team concluded that the pasture plate method is viable for determining productivity, but the team also noted that certain parts of the study need further clarification prior to the implementation of the method. The Extension Service is currently working to provide that information to the team.

The WVDEP has submitted preliminary information regarding a state program amendment to implement the pasture plate method. The WVDEP plans to submit a formal program amendment to implement the pasture plate method after the Extension Service provides the requested information.

G. Alternative Enforcement

During EY 2005, the CHFO and Applicant Violator System Office concluded their assistance to the WVDEP's Division of Mining and Reclamation (WVDMR) and Office of Legal Services (OLS) for expanding the alternative enforcement options considered when primary enforcement action fails to achieve correction of a violation or complete reclamation of a permit. Processes and procedures have been identified within the existing systems that can be utilized with slight adjustments for tracking and monitoring. The WVDEP has not yet concluded the process with formal policy and procedures guidance.

H. Horizon Natural Resources Company Bankruptcy

The bankruptcy proceedings of one multi-state coal mining entity required considerable attention during the past year. The company, Horizon Natural Resources, had multiple affiliates and subsidiaries with coal mining operations in five states; Kentucky, Indiana, Illinois, Tennessee and West Virginia when it filed for Chapter 11 bankruptcy protection. The bankruptcy filings showed liabilities that included reclamation responsibilities that greatly exceeded the available assets.

OSM served as a facilitator for a "regulators" group consisting of regulatory authorities from these states. The group also worked with the surety companies that had bonded the mining permits of and would be liable should the company default on its reclamation responsibilities. The group served to keep all of the regulatory authorities informed of the bankruptcy proceedings and to coordinate the effort to represent the reclamation obligations as a priority in the bankruptcy proceeding.

The bankruptcy court approved a sales plan with a portion of the assets being formed into a new mining company known as International Coal Group (ICG), the sale of a portion of the assets to Massey Energy Company, and the remaining portion formed into a company, Lexington Coal Company (LCC). LCC was assigned to work in conjunction with the bonding companies and proceed with the reclamation of those permits not sold. The ICG and Massey Energy Permits have been transferred and the potential for defaulting on reclamation liabilities averted. Several of the LCC holdings have subsequently been sold to other viable mining operations. LCC is now focusing on reclamation activities to reclaim those remaining permits and also to develop plans for the treatment of any long term acid mine drainage that may be anticipated.

I. Underground Mine Hydrology/Impacts to Surface Water (Update)

A regional study was implemented to assess the impacts to streams from underground mining operations. The degree of impacts will be recorded and correlated to the overburden lithology, topography, the depth of cover, and possibly, to several other review parameters. Several streams in West Virginia that overlie high extraction mining operations were chosen for this review. A cooperative agreement for \$20,000 was awarded to West Virginia University to complete the analysis. The OSM anticipates that this analysis would be completed sometime later this year. The results of this review will be included in subsequent year evaluation reports.

VII. General Oversight Topic Evaluations – Regulatory Program

A. Oversight Inspections

During EY 2005, the Charleston Field Office conducted 200 inspections to evaluate West Virginia's program. In addition, as part of the oversight inspection process, we conducted a review of West Virginia's bond release activities, and an aerial review of selected sites. Our findings for these review activities follow. The following is a breakdown of the inspections by type.

Assistance – Experimental Practice	1
Citizen Complaint	1
Citizen Complaint Referral	13
Document Review – AMD Tech Assistance	25
Bond Release Review	34
Bond Release Review - AMD	2
Sample Inspection – Comprehensive	57
Sample Inspection – Partial	64
Other	2
Other Follow-Up	<u>1</u>
	200

Twenty-five of the inspections consisted only of review of documents pertaining to acid mine drainage (AMD). The reviews were conducted to verify information in the Acid Mine Drainage Inventory and to evaluate bond forfeiture sites to see if they should be added to the forfeited AMD inventory.

A total of 175 on-the-ground inspections were conducted. OSM observed 144 violations of the State Program on 58 of the 175 inspections. This shows that violations of the State Program were observed on 33.1 percent of the inspections.

Most of the alleged State program violations were properly handled by the State. Twenty-eight of the violations had been previously cited, 68 were cited at the time of the inspection, 48 violations resulted in the issuance of Ten-Day Notices (TDN). State responses have been determined to be appropriate on 36 of the TDN violations. Responses have been received on ten of the remaining violations and are currently being evaluated. The WVDEP has requested technical assistance on two of the violations and OSM's Appalachian Regional Office is providing that assistance.

We placed special emphasis on reviewing excess spoil fill certifications. The WVDEP had placed new certification requirements in effect on May 12, 2004. No violations of these requirements were observed.

Following is a breakdown of alleged violations by type.

Administrative

Mining With a Valid Permit	1
Mining Within Bonded Area	3
Terms and Conditions of Permit	19
Liability Insurance	1

Hydrologic Balance

Drainage Control	15
Inspections and Certifications	6
Siltation Structures	7
Discharge Structure	2
Diversions	2
Effluent Limits	6
Ground Water Monitoring	4
Stream Buffer Zones	7
Hydrologic Balance – Other	12

Topsoil & Subsoil

Removal	3
Redistribution	3

Backfilling and Grading

Contemporaneous Reclamation	3
Highwall Elimination	2
Steep Slopes (includes Downslope)	10
Stabilization (rills and gullies)	1

Excess Spoil Disposal

Placement	6
Drainage Control	12
Surface Stabilization	1

Use of Explosives

Blast Survey/Schedule	4
Warnings and Records	3
Control of Adverse Effects	1

Subsidence Control Plan	1
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Roads

Road Construction	2
Surfacing and Maintenance	1

Signs & Markers

Markers	2
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Revegetation

Vegetative Cover	3
Timing	1
Total	144

Bond Release

This review consisted of on-the-ground inspections as well as an aerial review of bond released sites. Our on-the-ground review consisted of sites that were in varying stages of release. In addition to randomly selecting sites for review, OSM conducts an inspection on any site listed on the AMD inventory where a release is requested. Site reviews included: 23 - Phase I, 13 - Phase II, and 5 sites where Phase III release had been granted.

Overall, the sites inspected demonstrated satisfactory reclamation and shows that West Virginia is conducting its bond release program in accordance with applicable law, regulations, and policies. The reported bond release activities can be used as indicators of standards of reclamation success.

Aerial Inspections

This evaluation focused on sites that received a Phase II or Phase III bond release since January 1, 2004. The review was conducted in counties that have been determined to have a high probability for AMD. The sites were reviewed to see if seeps not previously identified were present, and to see if the approved postmining land use had been achieved.

The sites to be reviewed were randomly selected from a list of sites that had received a Phase II or Phase III release between January 1, 2004, and December 31, 2004.

Thirty-three sites were reviewed. All of the approved postmining land uses appear to have been achieved.

Observations at one site raised some concern about the potential for AMD. An on-the-ground review will be conducted.

B. Slurry Impoundment Study

As discussed in previous reports, on December 6, 2000, OSM and WVDEP signed a detailed work plan to evaluate the potential for coal refuse impoundment breakthroughs into underground mine workings. Below is a discussion of the unresolved items as of the last annual evaluation report.

OSM completed the technical reviews of four additional impoundments during the evaluation year. Breakthrough potential was found to be adequately analyzed by WVDEP on three of the permits. The fourth was found to require additional subsurface data and subsidence analysis. WVDEP has requested the permittee of this impoundment to submit additional information to address this finding.

During the previous evaluation period, OSM recommended that revisions be made to the impoundment portion of the State application form and that training be provided to both WVDEP staff and industry representatives. Training has been provided by WVDEP on revisions made to the State's Dam Control Act during the 2003 legislative session, but OSM is not aware of any changes to the application form. Future oversight will determine if appropriate information is being received and evaluated by WVDEP.

The work plan for evaluating breakthrough potential is now complete. However, OSM will continue to review impoundments during the coming evaluation year. The extent of the upcoming review will be discussed with WVDEP in the near future.

C. Fill Quality Control Review

The Fill Quality Control Review Team evaluated fill forms and photos prepared by the State inspectors for 163 fills to see if drainage control was properly installed and to see if conditions would warrant an on-the-ground inspection. Aerial inspections were conducted to verify conditions of all but nine fills after the team could not make a positive determination from the photos and information submitted by inspectors. After the aerial reviews, sites were selected for on-the-ground inspections. OSM inspected 119 fills. This resulted in Ten-day Notices (TDNs) being issued on 11 of the fills. State violations were issued on ten additional fills. The remaining fills were found to be in compliance.

After several working sessions, OSM and WVDEP personnel reached the necessary agreements to assure compliance in the construction of the valley fills. Another result of this study is that WVDEP will conduct training in the importance of photographic documentation.

D. Program Amendment Status / Program Maintenance

Program Amendment Status

During the current evaluation period, the following proposed State program amendments were acted upon by OSM.

Committee Substitute for House Bill 4193:

On March 25, 2004, WVDEP submitted Committee Substitute for House Bill (HB) 4193, which authorizes amendments to the State's Surface Mining Reclamation Regulations. The amendment relates to new forestland and wildlife provisions to ensure that reclamation techniques and husbandry practices are conducive to productive forestlands and wildlife habitats; subsidence control plan maps; contemporaneous reclamation; bonding amounts for contemporaneous reclamation variances; inspection frequency of abandoned sites; controlled placement of coal refuse; the deletion of disapproved requirements pertaining to coal removal incidental to development; and an exemption for coal removal incidental to the extraction of other minerals.

In addition, WVDEP submitted Engrossed Committee Substitute for Senate Bill 616, which was adopted by the Legislature on March 21, 2004. The Bill contained statutory provisions, which would have increased the membership of the Environmental

Protection Advisory Council and established a new Quality Assurance Compliance Advisory Committee. Because the Bill was vetoed by the Governor on April 6, 2004, OSM did not include it in the rulemaking.

On May 12, 2004, OSM published a *Federal Register* notice announcing receipt and a public comment period on the amendment (69 FR 26340-26348). The comment period closed on June 11, 2004.

On February 8, 2005, OSM announced in the *Federal Register* its approval, with certain exceptions, of Committee Substitute for HB 4193 (70 FR 6575-6591). As a result of this approval, WVDEP satisfied one outstanding required amendment relating to special authorizations for coal removal incidental to development. In addition, WVDEP satisfied five outstanding 30 CFR Part 732 issues regarding stocking and planting arrangements; coal extraction incidental to mining other minerals; subsidence control maps; controlled placement of coal refuse; and inspection frequencies for revoked permits. The State's forestland and wildlife postmining land use requirements were approved, except for the word "excessive" at CSR 38-2-7.6.e.1 and 7.7.e.1.

Statutory/Regulatory Revisions and Policy Considerations:

On June 13, 2005, WVDEP submitted proposed revisions to its surface coal mining regulatory program (Administrative Record Numbers WV-1419, WV-1420, and WV-1421). The amendments consist of several statutory revisions passed during the 2005 legislative session, proposed regulatory revisions governing surface mining and blasting activities, and a draft policy concerning erosion protection zones associated with durable rock fills. In addition, WVDEP submitted a Memorandum of Agreement between WVDEP and the West Virginia Division of Natural Resources Wildlife Resources Section (Administrative Record Number WV-1405), the State's water rights and replacement policy that identifies the timing of water supply replacement (Administrative Record Number WV-1425), and the Permittee's Request for Release Form (Administrative Record Number WV-1424).

Enrolled HB 2333 amends the W. Va. Code by adding new Article 27 entitled the Environmental Good Samaritan Act (Administrative Record Number WV 1419). HB 2333 establishes a program to encourage voluntary reclamation of lands adversely affected by mining activities by limiting the liability that could arise as a result of the voluntary reclamation of abandoned lands or reduction abatement of water pollution.

Enrolled Committee Substitute for HB 3033 amends the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) at W. Va. Code Section 22-3-11 concerning the State's special reclamation tax. This bill was passed by the Legislature on April 1, 2005, and signed by the Governor on April 18, 2005, with an effective date of April 1, 2005. HB 3033 extends the temporary special reclamation tax that funds the State's alternative bonding system for an additional 18 months and provides additional duties for the WVDEP Secretary in managing the State's alternative bonding system at W. Va. Code 22-3-11(h)(2), (3), and (4). OSM maintains that the proposed extension of the special reclamation tax for an additional 18 months does not need OSM's specific approval, because the extension is in keeping with the intent of its original approvals.

Enrolled HB 3236 amends the WVSCMRA by adding new W. Va. Code Section 22-3-11a concerning the special reclamation tax, and adding new Section 22-3-32a concerning the special tax on coal. Enrolled HB 3236 provides that the special

reclamation tax and the special tax, which is used to administer the State's approved regulatory program, are applicable to thin seam coal, and the special reclamation tax is subject to the WV Tax Crimes and Penalties Act and the WV Tax Procedure and Administration Act.

Enrolled Committee Substitute for HB 2723 authorizes at paragraph g amendments to the West Virginia Surface Mining Reclamation Rules at CSR 38-2 and at paragraph i amendments to the Surface Mining Blasting Rule at CSR 199-1. The proposed rule changes pertain to the definitions of previously mined areas, community or institutional building, public building, and structure; incidental boundary revisions; requirements for impoundments meeting Class B or C criteria for dams in Earth Dams and Reservoirs, TR-60; standards applicable to mountaintop removal mining operations with a postmining land use of commercial forestry and forestry; standards applicable to mountaintop removal mining operations with a homestead postmining land use; standards for vegetative cover; water supply replacement; contemporaneous reclamation; procedures for assessing civil penalties; blasting signs and markers; blasting control for other structures; violations by a certified blaster; and penalties for certified blasters.

WVDEP submitted a draft policy concerning durable rock fills with erosion protection zones (Administrative Record Number WV-1421). In its June 13, 2005, submittal letter, WVDEP requested that OSM reconsider its earlier decision to disapprove certain language at CSR 38-2-14.14.g.2.A.6, thus requiring the removal of erosion protection zones. In addition, it submitted information, including the draft policy, in support of its request to leave erosion protection zones after mining under certain circumstances.

WVDEP submitted a policy dated August 1995 regarding water rights and replacement. Its purpose is to define the time periods for providing temporary and permanent water replacement. The policy, which was submitted in response to OSM 30 CFR Part 732 notification dated June 7, 1996, is intended to satisfy the Federal requirement by setting forth time periods within the State program for providing temporary and permanent water replacement (Administrative Record Number WV-1037(a)).

WVDEP also submitted the Permittee's Request for Release Form dated March 2005. The form was submitted in response to an OSM 30 CFR Part 732 notification dated July 22, 1997 (Administrative Record Number WV-1071). In that notification, OSM advised the State that the Federal regulations at 30 CFR 800.40(a)(3) were amended to require that each application for bond release include a written, notarized statement by the permittee affirming that all applicable reclamation requirements specified in the permit have been completed. The State revised its bond release form to include this requirement and submitted it for approval.

OSM will announce in the *Federal Register* in the near future the receipt and a public comment period on the proposed State program amendments.

Program Maintenance

Required Program Amendments:

During the evaluation period, WVDEP satisfied one required program amendment. At the end of the reporting period, the State had eleven outstanding required program

amendments. Most of the remaining required program amendments pertain to the State's commercial forestry and homestead postmining land use requirements.

As mentioned above, WVDEP submitted a proposed program amendment on June 13, 2005. This amendment and the subsequent revisions are intended to satisfy all but one of the remaining required program amendments. WVDEP advised OSM that it intends to submit information prior to the start of the public comment period that will satisfy the remaining required program amendment. As mentioned above, a *Federal Register* notice announcing receipt and a public comment period on the proposed program amendments will be published shortly.

30 CFR Part 732 Notifications:

Currently, the State has six program deficiencies resulting from the issuance by OSM of two 30 CFR Part 732 notifications. These Part 732 notifications were issued to the State as a result of changes in the Federal regulations.

Given ongoing litigation at the time, OSM agreed in 2003 that the State did not have to take any action with regard to the outstanding Part 732 notifications concerning ownership and control, subsidence, and valid existing rights. A formal announcement of that decision was published in the *Federal Register* on April 29, 2004 (69 FR 23474).

During this evaluation period, WVDEP satisfied five Part 732 issues. As mentioned above, WVDEP submitted statutory and regulatory revisions on June 13, 2005, and additional policies and forms were submitted subsequently that are intended to resolve all of the State's remaining Part 732 issues.

E. Staffing Analysis

The objective of this study was to analyze and compare the WVDNR workload to several other State or Federal mining programs to determine if their current staffing levels are consistent with those programs. In addition, particular emphasis was placed upon the National Pollutant Discharge Elimination System (NPDES) permitting resources related to SMCRA mining activities. The findings of other previously concluded staffing studies were further reviewed, analyzed, and considered. The most recently completed staffing analysis assessments are:

- The study shows that the WVDEP is meeting its commitment to maintain an adequate regulatory staff. The level of effort observed is similar to that of other States in the Appalachian Region.
- The costs associated with the NPDES effort on coal mine permitting actions are eligible Administration & Enforcement (A&E) Grant costs. However, these expenditures may be submitted to the Environmental Protection Agency (EPA) for consideration as eligible EPA grant costs. Acquiring EPA funding for NPDES work would provide WVDEP with another funding source should future OSM grant awards not provide the funding requested for the mining program.
- The study shows a reduced number of inspectors. Although the inspection frequency rate shows a significant improvement within the last year, WVDEP has not yet achieved its inspection frequency goal. However, the inability to meet this goal may be more related to the training of new inspectors rather than just the

overall number of inspectors. This relationship, between inspection frequency and inspectors, should be closely monitored.

- Non-coal (quarry) permit applications were being processed through the NPDES Program. These activities may not be funded under the A&E Grant. WVDEP must stop funding all quarry related activities performed as a part of the NPDES Program and initiate measures to ensure that such actions do not occur in the future.
- The study shows a reduced number of permit reviewers. Although this corresponds with the reduced permitting activity for the review period, any increase in demand for coal may increase the number of permitting actions and subsequently increase the need for additional permit reviewers. Therefore, the need for additional permit reviewers should be closely monitored.

F. Mountaintop Mining Action Plan

In 1999, OSM and WVDEP signed an Action Plan for Resolving Mountaintop Mining issues. Below is the status of the action plan components that remained outstanding as of the date of the 2004 Annual Evaluation Report.

- Item II.D. of the Action Plan provided that WVDEP would identify AOC variance permits justified by a postmining land use (PMLU) not authorized by the approved State program. The identified permittees were to submit a revision with an approvable PMLU use or revise the permit to remove the AOC variance.

Of the 37 active permits identified as having inappropriate land uses to support the AOC variance, twenty-nine were addressed as of the date of the previous annual report. During this evaluation year, one of the eight was found to have been incorrectly included in the list and four others were revised to remove the AOC variance. The remaining three have submitted revisions to remove the AOC variance and are in various stages of the permit review process.

In addition to the active operations with an inappropriate AOC variance PMLU, five not-started permits were also identified. These permittees were instructed by the Director of WVDEP to not begin any activity until the PMLU was revised or the AOC variance removed. Three of the permits were later activated without addressing the Director's instructions, but were then required by WVDEP to revise their permits to remove the AOC variance. All three of the revisions have now been approved. On further review, one of the five permits was found not to contain an AOC variance. The fifth permit remains not started.

- In separate reviews, OSM found that both are being documented by the use of a standard "Facts and Findings" form and an individual "Waiver and Variance Approval" form. OSM found inconsistencies in the preparation of the forms and suggested that WVDEP consider revising the Waiver form and/or provide additional guidance to permit reviewers. On October 14, 2004, WVDEP provided additional guidance to all permit reviewers informing them of the information needed in the Facts and Findings form to justify a contemporaneous reclamation variance. On October 29, 2004, WVDEP notified OSM that an attachment had been added to the waiver and variance form prepared by permit reviewers to justify PMLU changes for mountaintop removal AOC variances. The attachment addressed all of the standards applicable to a PMLU change.

G. AMD Prediction – Phase III

During EY 2005, OSM's Charleston Field Office and WVDMR jointly developed and modified a work plan to evaluate underground mining permits that have resulted in AMD formation. A hydrologist from the AR also participated in the permit review.

During the permit selection process, eleven permits were selected for review, which resulted in a population of nine AMD producing permits for evaluation. Three of the permits were geographically located in the northern coalfields while six of the permits were located in the southern coalfields.

The evaluation team is reviewing information contained in the permit files including the permit application, modifications, incidental boundary revisions, inspection and violation data as well as the CHIA document.

The final report is under development.

H. Bond Forfeiture Sites With Ongoing Liabilities

In last year's oversight report, OSM reported that a study to analyze data collected to assess and validate the completeness and accuracy of the Acid Mine Drainage Bond Forfeiture inventory was ongoing. Because this study includes multiple parts, it was not completed before the end of the evaluation period and will be reported on in next year's annual report.

I. Downslope Spoil

During EY 2005, the Charleston Field Office and the WVDEP jointly developed a work plan to review violations related to downslope placement of spoil. The purpose of the study is to determine (1) if WVDEP implemented recommendations from the 1999 Perimeter Protection Evaluation Report and (2) whether those actions reduced the frequency of downslope violations. The study is to further determine if there are adequate safeguards against downslope spoil that may present a threat to citizens living below mining operations.

Violations data has been gathered from the ERIS computer system maintained by WVDEP. A sample of permitted sites was selected for field review of downslope violations and a sample of permit files was reviewed to determine whether policy guidance related to constructed outcrop barriers had been implemented. The study is ongoing and will be concluded and a report prepared during EY 2006.

VIII. Abandoned Mine Land Reclamation Program (AMLR)

A. General

The mission of the AMLR is to reclaim abandoned mine sites by abating hazards, reducing or mitigating adverse effects of past mining, and restoring adversely affected lands and water to beneficial uses. WVDEP's Office of AML is successfully carrying out this mission. However, extensive work remains.

1. General program Information

The WVDEP conducts all AML reclamation in West Virginia. OSM has approved four primary AML components:

- The regular construction program abates high priority, non-emergency problems. OSM approved the regular construction component on February 21, 1981.
- The emergency program abates emergency problems caused by past coal mining practices. OSM approved the emergency program component on August 26, 1988.
- Water supply provisions allow the State to repair or replace water supplies when the damage from past mining practices occurred primarily before August 3, 1977. OSM approved this component on July 25, 1990.
- The AMD set-aside program allows the State to use up to 10 percent of its annual grant allocation to reclaim watersheds impacted by AMD. OSM approved this program component on March 26, 1993. The first AMD project was funded on August 23, 1995. To date, West Virginia has requested \$11,558,279 of \$27,674,997 available for set-aside program work.

2. Appalachian Clean Streams Program (ACSP)

From fiscal year 1997 through 2005, West Virginia received \$9,186,766 from the Appalachian Clean Streams Program (ACSP) for acid mine drainage (AMD) remediation projects at abandoned coal mining sites. The WVDEP Office of Abandoned Mine Lands and Reclamation (AML&R) earmarked these funds for AMD cleanup at 14 abandoned coal mine sites. At the end of March 2005, the AML&R had expended \$6,490,762, completing construction on 12 of the 14 projects. Also at that time, the two remaining projects were under construction. Water pollution from these abandoned mine sites adversely impacts 61 miles of streams.

The completed projects involved construction of wetlands, open limestone channels, successive alkalinity producing systems, and in-stream limestone sand treatment. Additionally, land reclamation accounted for a significant portion of water quality improvements as several of the sites involved regrading and revegetating exposed toxic refuse material. AML&R monitors downstream water quality for each of the completed ACSP project sites. Findings show that 9 miles of streams have been significantly improved. The AML&R is continuing its efforts to measure the success of these projects and the collection of data, overtime, will determine the overall success of the reclamation and water treatment efforts.

B. Noteworthy Accomplishments

1. Construction Activities/Authorizations to Proceed

During EY 2005, the CHFO issued notices to proceed for the following nonemergency AML construction projects:

Project Name	Date Approved
Wheatly Branch Drainage	December 2, 2004
Moundsville Water Treatment Plant	December 6, 2004
Town Run Waterline	January 11, 2005
Crown Structures	February 2, 2005
Mt Clare Landslide	February 2, 2005
Shinns Run Highwall	February 23, 2005
Crane Creek Refuse Piles	March 29, 2005
Helens Portals	April 18, 2005
Brownton Landslide	May 16, 2005
Grassy Run	May 23, 2005
Stollings Drainage	June 1, 2005
Apple Grove	June 6, 2005
Jimtown Tipple	June 17, 2005
Yoursco Portals	June 17, 2005
Austen Refuse	June 17, 2005
Osage Mining Complex	June 30, 2005
Mullins/Wyco Waterline	June 30, 2005

The number of notices to proceed issued during this evaluation period almost doubled when compared to the previous evaluation period. However, when compared to earlier periods, these notices to proceed represent about two thirds of the number of projects that would normally be processed. Changes to the WVDEP procurement procedures have had an impact. Since State procurement procedures have changed, each project design must be individually bid instead of issuing a work order to a firm previously evaluated and pre-qualified to do the work. Nonetheless, the pace of project submissions continues to accelerate. The pace of new submissions should continue to accelerate as the WVDEP becomes more proficient with this process.

2. Emergencies

During EY 2005, the WVDEP started 38 emergency projects with a total anticipated cost of \$3,214,360. The average project cost was \$84,588. These costs have increased somewhat from last year. However, heavy rains during the evaluation year created several large landslides and these projects cost more to abate than the routine projects. Four of these projects cost almost \$1.6 million to abate, which in turn, inflated the average project cost.

3. Acid Mine Drainage Abatement and Remediation Plans

In 1987, Congress amended Section 402 (g) (3) of the SMCRA to establish the first set-aside program, which authorized States to deposit up to ten percent of the funds granted annually into a special trust fund. Such funds and all interest earned on the funds could then be used by a State after August 3, 1992, to carry out the purposes of Title IV. The law was amended again in 1990 by adding subsection (g) (6) to section 402, authorizing two set-aside programs.

402 (g) (6): (A) a special trust fund established under State law pursuant to which such amounts are expended by the State solely to achieve the priorities stated in section 403 (a) after September 30, 1995; or

(B) an acid mine drainage abatement and treatment fund.

The latter requires the State, among other things and before expending such funds; to prepare an acid mine drainage abatement and treatment plan within a qualified hydrologic unit for review and approval by the Secretary of the U.S. Department of the Interior.

In 1992, the WVDEP began setting aside funds into an AMD abatement and treatment fund (set-aside fund). Although the WVDEP has not consistently set-aside ten percent of its funds annually, it has accumulated over the years nearly \$15 million in its set-aside fund. Prior to this review period, the WVDEP had submitted and received approval for three acid mine drainage abatement and treatment plans (Middle Fork of the Tygart River, Black Water River (Drum Station), and Deckers Creek). The WVDEP maintains treatment facilities in each of these watersheds and uses the set-aside program to fund continuous water treatment activities. The WVDEP spends approximately \$167,000/year from its set-aside fund for these projects.

The magnitude of AMD pollution from old and abandoned mines that adversely affects over 500 West Virginia streams and rivers and the cost to clean up these pollution sources exponentially exceeds the funds available from the set-aside fund. Further, the interest rate of return for the set-aside fund is very low due to investment limitations imposed by State government. Consequently, the WVDEP has been conservative regarding the expenditure of its set-aside funds to insure availability of funds for continued treatment at AMD sites already developed. Both the Black Water River drum station and the Middle Fork River projects require perpetual addition of alkaline materials to maintain a trout fishery for approximately 50 stream miles.

During the review period, the WVDEP made exceptional efforts to partner with and accommodate watershed organizations and other state and federal agencies in developing and constructing AMD remediation projects at abandoned coal-mining sites. The WVDEP is considering using some of its AMD abatement and treatment funds to assist with future operating and maintenance costs at project sites constructed with its partners. Therefore, the WVDEP made a concerted effort during this evaluation period to develop AMD abatement and treatment plans for qualified hydrologic units in areas where current and future AMD remediation projects are proposed. During this review period, the WVDEP submitted and received approval for eight AMD abatement and treatment plans (five hydrologic units in the Cheat River, one in the Paint Creek watershed, and one in the Tygart River watershed).

C. OSM TECHNICAL ASSISTANCE

1. Technical Training

OSM conducts courses throughout the year in the latest technology related to active and abandoned mine reclamation. These courses are administered through OSM's National Technical Training Program and the Technical Information Processing System. During EY 2005, WVDEP AML staff attended 22 classes.

2. Site Specific Assistance

During EY 2004, the OSM Appalachian Regional Office in Pittsburgh and the Charleston Field Office provided site specific assistance to WVDEP to evaluate potential per-law impacts at fourteen sites. Two of these included efforts that began during the last evaluation period related to potential gas problems with hydrogen sulfide and an eligibility determination for seepage at a combined pre-law/post-law refuse pile. Other assistance efforts included five slides, two subsidence incidents, a stream restoration project, open portals, a coal seam fire, a second site involving hydrogen sulfide and carbon monoxide, and the installation of bat gates in open portals. Ten assistance efforts were completed during the evaluation period, but the newer hydrogen sulfide/carbon monoxide, the seepage at the pre-law/post-law refuse site, one slide and the assistance with bat gates are still pending.

3. State Plan Informal Program Amendment

On March 22, 2005, WVDEP submitted proposed revisions to West Virginia's Abandoned Mine Lands Reclamation (AMLR) Plan. The revisions incorporated the AML enhancement rules at 30 CFR Parts 707 and 824 and made other minor organization and operational changes to the State's AMLR Plan.

The State submitted additional revisions on April 7, 2005. This submission was necessary to enable the reviewer to see all changes that the State was proposing to make to its AMLR Plan.

On June 8, 2005, OSM provided the State a list of informal comments on its AMLR Plan. The substantive comments pertained mainly to the State's proposed AML enhancement provisions, and the inconsistencies between the State AMLR Plan and its existing AMLR regulations at CSR 59-1.

A meeting was held on July 22, 2005, to discuss OSM's comments. State officials agreed to make additional changes in the State's AMLR Plan and its AMLR regulations. WVDEP will submit the revisions to OSM informally before making a formal submission later in the year. WVDEP officials acknowledged that any regulatory revisions would have to be acted upon by the Legislature before submitting them to OSM. This will require WVDEP to submit the State AMLR Plan revisions prior to any AMLR regulatory revisions.

D. Results of Enhancement and Performance Reviews

1. Abandoned Mine Land Emergency Oversight

For every potential emergency project the State submits, the CHFO reviews the documents submitted to ensure that they meet AML guidelines and established grant criteria. This process ensures that all of the emergency project submissions are processed in accordance with established procedures and grant requirements.

In addition, during the evaluation year, the OSM conducted site visits to several emergency reclamation projects. However, none of these visits uncovered any problems.

2. Drawdown analysis/Resolve Audit Issues

OSM's AR Grants Staff conducted Quarterly Drawdown Analyses during FY 2005. The drawdown analyses were conducted in accordance with the following requirements:

- Department of Treasury Fiscal Requirements Manual 6-2080.20, which requires that periodically, but not less than each calendar quarter, the Federal program agency shall review each recipient's use of funds advanced. To satisfy this requirement, OSM determined:
 - that there was no difference between the total amount of funds drawn via the Drawdown Express (DDX) and disbursements related to the Federal program; and
 - that cash was being withdrawn in accordance with program disbursement needs.
- Treasury Circular 1075 (31 CFR 205) requires that cash advances to a recipient organization shall be limited to the minimum amounts needed, and shall be timed to be in accord only with the actual, immediate cash requirement of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization. There were no discrepancies related to this requirement.

The WVDEP drawdown activities were found to comply with both of these requirements. There were no audit findings referred to OSM for disposition during this Evaluation Year.

3. Regular AML Construction Program

Table 12, Appendix A, lists the cumulative AML reclamation accomplishments in West Virginia. A comparison of this table with the EY 2004 West Virginia Evaluation Report shows that during EY 2005 West Virginia reclaimed:

- 2.6 miles of clogged streams;
- 10,163 lineal feet of dangerous highwalls;
- 29 dangerous impoundments;
- 81 acres of dangerous piles and embankments;
- 25.7 acres of dangerous slides;
- 19 hazardous equipment and facilities;
- 1 hazardous water body;
- 0.5 industrial/residential waste;
- 72 portals;
- 11 units of polluted water for agricultural and industrial use;
- 700 units of polluted water: human consumption;
- 57.8 acres of subsidence;
- 18 acres of surface burning;
- 5 vertical openings;
- 3 priority three equipment/facilities;
- 4 acres of priority three gob piles;
- 35 acres of priority three spoil areas;

- 2 acres of priority three slurry; and
- 1,885 lineal feet of priority three highwall.

For the most part, overall reclamation progress improved this year. Significant accomplishments involved eliminating dangerous highwalls, sealing portals, and abating subsidence concerns.

4. Waterline Study

The primary focus of this review was to assess the project monitoring and inspection practices for waterline extension type projects. For those projects that the WVDEP designed and bid, project monitoring reports were available for the most part on a daily basis. For the other projects that the PSD's designed and bid, project information and monitoring data was available when the project was essentially finished. To appropriately monitor these projects, the WVDEP, AML office needs to have detailed construction information available during the construction period rather than at the end of or near the end of the construction period. The WVDEP, AML office plans to amend their Memorandum of Agreement (MOA) to provide for more frequent construction project monitoring report submissions.

In addition to the project monitoring and inspection practices for waterline extension projects, the process to authorize partially funded AML waterline projects was reviewed. This segment was added because WVDEP advised us of the possibility that the process to authorize partially funded AML projects may be changed. Currently, when the Public Service District (PSD's) designs, bids, and develops these projects, an engineer's estimate is prepared for the AML eligible project area and becomes the basis for a State purchase order in the name of the PSD. As the work progresses, the PSD's invoice WVDEP and WVDEP reimburses the PSD's for the eligible AML costs. Another approach, currently being discussed, involves depositing AML funds with another State agency, having a different State agency review, process, and approve these invoices; and, once the final approval actually occurs, the initial State agency remits payment to the PSD. This proposed approach raises certain issues that need to be resolved before it may be implemented. These issues are (1) the WVDEP cannot transfer any Federal AML funds to another agency before the work is completed and (2) the WVDEP needs to review the invoices before any drawdowns may be made. To appropriately resolve these concerns, OSM needs to be involved in any proposed changes to the payment process for partially eligible AML waterline extension projects that are paid with AML funds.

5. No Cost Contracts Study

The study of AML no-cost reclamation contracts was initiated in September 2004. The purpose of the study is to determine if WVDEP's AML branch is following their approved program. The study will also determine if WVDEP has adequate control over the contractors doing the reclamation work. Further review of the no-cost reclamation contracts coupled with onsite visits to verify the completion of the projects and compliance with the construction specifications are needed before a final report can be issued.

The review team anticipates a report will be available in the fall of 2005 and findings from the study will be included in the 2006 annual report.

APPENDIX A: TABULAR SUMMARY

These tables present data pertinent to mining operations and State and Federal regulatory activities within West Virginia. They also summarize funding provided by OSM and West Virginia staffing. Unless otherwise specified, the reporting period for the data contained in all tables is the same as the evaluation. Additional data used by OSM in its evaluation of West Virginia's performance is available for review in the evaluation files maintained by the Charleston Field Office.

TABLE 1

COAL PRODUCTION (Millions of short tons) JULY 1, 2004 – JUNE 30, 2005			
Period	Surface Mines	Underground mines	Total
Coal Production ^A for entire State:			
<u>Annual Period</u>			
2002	61.2	89.4	150.6
2003	54.1	87.7	141.8
2004	55.9	90.3	146.2
Total	171.2	267.4	438.6
<p>^A Coal production as reported in this table is the gross tonnage which includes coal that is sold, used, or transferred as reported to OSM by each mining company on form OSM-1 line 8(a). Gross tonnage does not provide for a moisture reduction. OSM verifies tonnage reported through routine auditing of mining companies. This production may vary from that reported by States or other sources due to varying methods of determining and reporting coal production.</p>			

TABLE 2

INSPECTABLE UNITS As of June 30, 2005															
Coal mines and related facilities	Number and status of permits								Insp. Unit^D	Permitted acreage^A (hundreds of acres)					
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals								
	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	Total			
STATE and PRIVATE LANDS REGULATORY AUTHORITY: STATE															
Surface mines	0	552	3	60	11	189	14	801	815	9	2,450	2,459			
Underground mines	0	737	0	55	0	143	0	935	935	0	315	315			
Other facilities	0	492	1	18	2	61	3	571	574	0	447	447			
Subtotals	0	1,781	4	133	13	393	17	2,307	2,324	9	3,212	3,221			
FEDERAL LANDS REGULATORY AUTHORITY: STATE															
Surface mines	0	0	0	0	0	0	0	0	0	0	0	0			
Underground mines	0	0	0	0	0	1	0	1	1	0	0	0			
Other facilities	0	0	0	0	0	0	0	0	0	0	0	0			
Subtotals	0	0	0	0	0	1	0	1	1	0	0	0			
ALL LANDS ^B															
Surface mines	0	552	3	60	11	189	14	801	815	9	2,450	2,459			
Underground mines	0	737	0	55	0	144	0	936	936	0	315	315			
Other facilities	0	492	1	18	2	61	3	571	574	0	447	447			
Totals	0	1,781	4	133	13	394	17	2,308	2,325	9	3,212	3,221			
Average number of permits per inspectable unit (excluding exploration sites)										<u>1</u>					
Average number of acres per inspectable unit (excluding exploration sites)										<u>139</u>					
Number of exploration permits on State and private lands:										<u>0</u>			On Federal lands: <u>0</u> ^C		
Number of exploration notices on State and private lands:										<u>131</u>			On Federal lands: <u>0</u> ^C		
IP: Initial regulatory program sites. PP: Permanent regulatory program sites.															
^A When a unit is located on more than one type of land, include only the acreage located on the indicated type of land. ^B Numbers of units may not equal the sum of the three preceding categories because a single inspectable unit may include lands in more than one of the preceding categories. ^C Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management. ^D Inspectable Units include multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.															

TABLE 3

**STATE PERMITTING ACTIVITY
AS OF JUNE 30, 2005**

Type of application	Surface mines			Underground Mines			Other Facilities			Totals		
	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres ^A	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres
New permits	20	19	5,982	18	18	264	4	4	128	42	41	6,374
Renewals	43	27	14,422	73	71	2,053	49	46	5,075	165	144	21,550
Transfers, sales and assignments of permit rights	N/A	150		N/A	123		NA	56		N/A	329	
Small operator assistance	1	1		-0-	-0-		-0-	-0-		1	1	
Exploration permits	-0-	-0-		-0-	-0-		-0-	-0-		-0-	-0-	
Exploration notices ^B	N/A	N/A		N/A	N/A		N/A	N/A		146	146	
Revisions (exclusive of incidental boundary revisions)	319	331		150	131		125	92		594	554	
Incidental boundary revisions	119	134	296	140	125	236	47	60	285	306	319	817
Totals	502	662	20,700	381	468	2,553	225	258	5,488	1,254	1,534	28,741

^A Includes only the number of acres of proposed surface disturbance.

^B Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining. Information not available by type of mining operation.

Table 4

OFF-SITE IMPACTS ON BONDED SITES														
DEGREE OF IMPACT		RESOURCES AFFECTED												Total
		People			Land			Water			Structures			
		Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	
TYPE OF IMPACT	Blasting	7	0	0	0	0	0	0	0	0	0	0	0	7
	Land Stability	0	0	0	27	0	0	0	0	0	0	0	0	27
	Hydrology	0	0	0	0	0	0	94	3	0	0	0	0	97
	Encroachment	0	0	0	10	0	0	0	0	0	0	0	0	10
	Other	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	7	0	0	37	0	0	94	3	0	0	0	0	141
Total number of inspectable units: <u>1,918</u>														
Inspectable units free of off-site impacts: <u>1,791</u>														
OFF-SITE IMPACTS ON BOND FORFEITURE SITES														
DEGREE OF IMPACT		RESOURCES AFFECTED												Total
		People			Land			Water			Structures			
		Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	
TYPE OF IMPACT	Blasting	0	0	0	0	0	0	0	0	0	0	0	0	0
	Land Stability	0	0	0	1	0	0	0	0	0	0	0	0	1
	Hydrology	0	0	0	0	0	0	80	25	20	0	0	0	125
	Encroachment	0	0	0	1	0	0	0	0	0	0	0	0	1
	Other	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0	0	0	2	0	0	80	25	20				127
Total number of inspectable units: <u>407</u>														
Inspectable units free of off-site impacts: <u>280</u>														

TABLE 5

ANNUAL STATE MINING AND RECLAMATION RESULTS		
Bond release phase	Applicable performance standard	Acreage released during this evaluation period ^A
Phase I	<ul style="list-style-type: none"> • Approximate original contour restored • Topsoil or approved alternative replaced 	2,848
Phase II	<ul style="list-style-type: none"> • Surface stability • Establishment of vegetation 	3,386
Phase III	<ul style="list-style-type: none"> • Postmining land use/productivity restored • Successful permanent vegetation • Groundwater recharge, quality and quantity restored • Surface water quality and quantity restored 	5,389
Bonded Acreage Status ^B		
Total number of acres bonded at end of last review period (June 30, 2004) ^C		317,500
Total number of acres bonded during this evaluation year.		7,191
Number of acres bonded during this evaluation year that are considered remining, if available.		N/A
Number of acres where bond was forfeited during this evaluation year (this acreage also reported on Table 6).		557
<p>^A <i>The acreage is permitted and bonded acreage released. Some acreage may not have been disturbed and some may have been released due to being included in a new permit.</i></p> <p>^B <i>Bonded acreage is considered to be approximate and represent the number of acres disturbed by surface coal mining and reclamation operations.</i></p> <p>^C <i>Bonded acres in this category are those that have not received a Phase III or other final bond release (State maintains jurisdiction).</i></p>		

TABLE 6

STATE BOND FORFEITURE ACTIVITY (Permanent Program Permits)		
Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Permit Acres
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2004 (end of previous evaluation year) ^A	371	17,477
Sites with bonds forfeited and collected during Evaluation Year 2005 (current year).	14	1,477
Sites with bonds forfeited and collected that were repermited during Evaluation year 2005 (current year).	0	0
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2005 (current year).	55	1,343
Sites with bonds forfeited but uncollected that were reclaimed during Evaluation Year 2005 (current year)	5	502
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2005 (end of current year) ^A	330 ^B	17,581
Sites with bonds forfeited but uncollected as of June 30, 2005 (end of current year).	64 ^C	4,863
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of June 30, 2004 (end of previous evaluation year) ^D	1	367
Sites where surety/other party agreed to do reclamation during Evaluation Year 2005 (current year).	0	0
Sites being reclaimed by surety/other party that were repermited during Evaluation Year 2005 (current year).	0	0
Sites with reclamation completed by surety/other party during Evaluation Year 2005 (current year). ^E	0	0
Sites being reclaimed by surety/other party as of June 30, 2005 (current year). ^D	1	367
^A Includes data only for those forfeiture sites not fully reclaimed as of this date. ^B Includes 94 sites and 4,750 acres with land reclamation completed but AMD discharge remains to be treated. ^C Includes 3 sites and 109 acres with land reclamation completed but AMD discharge remains to be treated. ^D Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date. ^E This number is reported in Table 5 as Phase III bond release has been granted on these sites.		

TABLE 7

WEST VIRGINIA STAFFING (Full-time equivalents at end of evaluation year)	
Function	EY 2005
Abandoned Mine Land Program Total ^A	59.6
Regulatory Program	
Permit review ^B	56
Inspection ^C	73.8
Blasting	16
Other (administrative, fiscal, personnel, etc.) ^D	136.15
Total for Regulatory Program ^E	281.95
TOTAL ^F	341.55
^A Includes 3 vacant positions. ^B Includes 6 vacant positions. ^C Includes 6 vacant positions. ^D Includes 10 vacant positions. ^E Includes 22 vacant positions. ^F Includes 25 vacant positions.	

TABLE 8

FUNDS GRANTED TO WEST VIRGINIA BY OSM EY 2005		
Type of grant	Federal funds awarded	Federal funding as a percentage of total program costs
Abandoned Mine Lands	\$ 25,782,136	100%
Administration and Enforcement	\$ 10,520,169	50%
Small Operator Assistance	\$ 96,994	100%
Stream De-Watering Project Cooperative Agreement	\$ 20,000	100%
Totals	\$ 36,419,299	

TABLE 9

STATE OF WEST VIRGINIA INSPECTION ACTIVITY		
PERIOD: JULY 1, 2004 - June 30, 2005		
Inspectable Unit Status	Numbers of Inspections Conducted	
	Complete	Partial
Active *	4,765	10,887
Inactive *	2,484	977
Abandoned **	N/A	N/A
Total	7,249	11,864
Exploration	239	83
* As defined by the approved State program. ** Number of inspections conducted by the Office of Special Reclamation not available.		

TABLE 10

STATE OF WEST VIRGINIA ENFORCEMENT ACTIVITY		
PERIOD: JULY 1, 2004 - June 30, 2005		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	1,019	1,019
Failure-to-Abate Cessation Order	75	75
Imminent Harm Cessation Order	26	26
<i>* Does not include those violations that were vacated.</i>		

TABLE 11

STATE OF WEST VIRGINIA LANDS UNSUITABLE ACTIVITY PERIOD: JULY 1, 2004 - JUNE 30, 2005			
Number of Petitions Received	1		
Number of Petitions Accepted	0		
Number of Petitions Rejected	0		
Number of Decisions Declaring Lands Unsuitable	0	Acreage Declared as Being Unsuitable	-
Number of Decisions Denying Lands Unsuitable	0	Acreage Denied as Being Unsuitable	-

TABLE 12

ABANDONED MINE LAND RECLAMATION NEEDS AND ACCOMPLISHMENTS SINCE PROGRAM APPROVAL					
Problem Type	Units	Unfunded	Funded	Completed	Total
Priority 1 & 2 (Protection of public health, safety, and general welfare)					
Clogged Streams	Miles	286.7	0.6	52.8	340.1
Clogged Stream Lands	Acres	139.8	0.0	177.3	317.1
Dangerous Highwalls	Feet	1,439,167.0	1,600.0	244,305.0	1,685,072.0
Dangerous Impoundments	Count	724.0	43.0	632.0	1,399.0
Dangerous Piles & Embankments	Acres	1,405.5	120.0	5,524.2	7,049.7
Dangerous Slides	Acres	382.7	10.0	561.2	953.9
Gases: Hazardous/Explosive	Count	2.0	0.0	5.3	7.3
Hazardous Equip. & Facilities	Count	609.0	14.0	666.8	1,289.8
Hazardous Water Bodies	Count	16.0	0.0	12.0	28.0
Industrial/Residential Waste	Acres	7.7	0.0	37.3	45.0
Portals	Count	2,095.0	9.0	2,577.0	4,681.0
Polluted Water: Agri & Indus	Count	132.5	12.6	66.3	211.4
Polluted Water: Human Consumption	Count	3,832.0	566.0	10,991.0	15,389.0
Subsidence	Acres	804.3	8.1	376.8	1,189.2
Surface Burning	Acres	68.2	6.0	494.4	568.6
Underground Mine Fires	Acres	1,953.5	0.0	20.3	1,973.8
Vertical Openings	Count	146.0	0.0	153.3	299.3
Priority 3 (Environmental restoration)					
Benches	Acres	215.8	0.0	27.0	242.8
Ind/Res Waste	Acres	49.5	0.0	2.0	51.5
Equipment/facilities	Count	78.0	0.0	12.0	90.0
Gobs	Acres	1,663.0	0.0	517.0	2,180.0
Haulroads	Acres	13.0	0.0	0.0	13.0
Highwalls	Feet	3,617,224.0	1,000.0	78,763.0	3,696,987.0
Mine Openings	Count	34.0	0.0	9.0	43.0
Other		154.0	0.0	0.0	154.0
Pits	Acres	43.1	0.0	11.0	54.1
Slumps	Acres	37.3	0.0	0.0	37.3
Slurry	Acres	10.0	0.0	2.0	12.0
Spoil Areas	Acres	1,053.8	0.0	285.5	1,339.3
Water problems	Gal./min.	11,904.5	0.0	722.0	12,626.5
Note: All data in this table are taken from the Abandoned Mine Land Inventory System (AMLIS)					