

# Environmental Protection

**Shared federal-state-Indian active surface and underground coal mining and reclamation regulatory program**



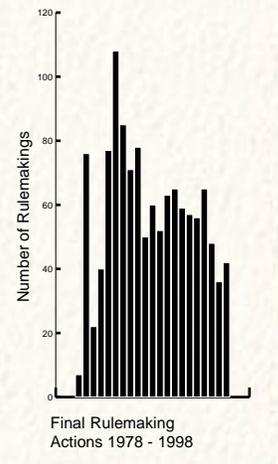
Signs and markers provide important identification for citizens and mine inspectors. Perimeter signs, such as the one shown here, are particularly valuable in preventing equipment operators from inadvertently entering areas not authorized for disturbance and help to eliminate disagreements over the location of the permitted mine site.

Under the Surface Mining Law, the Office of Surface Mining is responsible for publishing the rules and regulations necessary to carry out the Law. The permanent regulatory program and related rules provide the fundamental mechanism for ensuring that the Surface Mining Law's goals are achieved. A major objective is to maintain a stable regulatory program by improving the regulation development process and obtaining a broad spectrum of viewpoints on rulemaking activities.

## Rulemaking and State Program Amendments

The 1998 rule making process included discussions with coal industry representatives, citizen groups, and state regulators to obtain their input and suggestions.

During the year, the Office of Surface Mining published two proposed permanent program rules in the *Federal Register*: Enhancing AML Reclamation (1029-AB89), and the Removal of Section 870.17 (1029-AB93). In addition, three final permanent program rules were published: Implementation of the Debt Collection Improvement Act of 1996 (RIN 1029-AB90), the Removal of Section 870.17 (1029-AB93), and the Revisions to the Federal Lands Cooperative Agreement for the State of Montana (Part 926). Subject to Office of Surface Mining approval, states have the right to amend their programs at any time for appropriate reasons. Whenever the Surface Mining Law or its implementing regulations are revised, the Office of Surface Mining is required to notify the states of the changes needed to make sure that the state programs continue to meet federal requirements. As a result, the states have submitted a large number of complex amendments. The Office of Surface Mining has taken several steps to process states' submissions more efficiently. For example, the amendment review process within the Office of Surface Mining has been decentralized, and standard format and content guidelines for state program submissions have been issued to the states. Also, in response to current funding levels and resource constraints, an Office of Surface Mining team reevaluated the agency's amendment process, recommending a number of changes to streamline processing efficiency and responsiveness. In 1998, the Office of Surface Mining published 68 proposed and 39 final state program amendments in the *Federal Register*.



**TABLE 5  
FINAL RULES PUBLISHED DURING 1998**

<b>Implementation of the Debt Collection Improvement Act of 1996 (RIN 1029-AB90)</b> 62 FR 63274      30 CFR 723, 724, 845, and 846      11/28/97	This rule implements the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, by adjusting for inflation, certain civil money penalties authorized by the Surface Mining Control and Reclamation Act of 1977.
<b>Removal of Section 870.17 (RIN 1029-AB93)</b> 63 FR 10307      30 CFR 870      3/3/98	This rule removes 30 CFR 870.17 which dealt with the scope of audits conducted in connection with the Office of Surface Mining's abandoned mine land reclamation program.
<b>Revisions to the Federal Lands Cooperative Agreement for the State of Montana (Part 926)</b> 63 FR 40790      30 CFR 926      7/30/98	This rule amends the cooperative agreement between the Department of the Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on federal lands within Montana. These amendments clarify Montana's responsibility for the administration of its approved state program on lands subject to the federal lands program in Montana.

## State Programs

Since May 3, 1978, all surface coal mines have been required to have permits and to comply with either Office of Surface Mining regulations or corresponding approved state program provisions (in states that have primacy). Currently, there are 24 primacy states that administer and enforce approved programs for regulating surface coal mining and reclamation under the Surface Mining Law. An effective relationship between the

Office of Surface Mining and the states is fundamental to the successful implementation of the Surface Mining Law. This shared federal-state commitment to carry out the requirements of the Surface Mining Law is based on common goals and principles that form the basis for the relationship.

## TABLE 6 1998 SIGNIFICANT COURT DECISIONS

### TAKINGS

#### ***Kelly v. United States***, No. 93-128-L (Fed. Cl.)

On June 17, 1998, in a decision from the bench, Senior Judge Kenneth R. Harkins held that the Government's failure to determine that the plaintiff had valid existing rights under the Surface Mining Law was not a compensable taking of the plaintiffs' mineral interest. He ruled that a 1911 mineral severance through which plaintiffs' predecessors in interest held an undivided interest in coal did not convey the property right to strip mine, because at that time, that method was not practiced in the county where the tract is located. Although their interest did not include the right to strip mine, the Kellys' predecessors had worked out a business arrangement with the private party – who then held the surface rights and the remainder of the coal rights – that allowed strip mining. Judge Harkins held that any rights the Kellys might have had as a result of this arrangement were extinguished when the other owner sold its rights to the United States.

### RULE CHALLENGES

#### ***National Mining Ass'n v. Babbitt***, No. 95-0938-WBB (D.D.C.) (Subsidence)

On May 29, 1998, Judge Bryant upheld the Office of Surface Mining's regulations on coal mine subsidence at 60 Fed. Reg. 16722-51 (Mar. 31, 1995). These regulations implement section 2504 of the Energy Policy Act of 1992, which added section 720 to the Surface Mining Law. Section 720 requires underground mine operators to repair or to compensate for material damage to residential structures and noncommercial buildings, and to replace residential water supplies adversely affected by underground mining. On November 24, 1998, industry filed its appellate brief with the U.S. Court of appeals for the District of Columbia Circuit.

### OWNERSHIP AND CONTROL

#### ***National Mining Ass'n v. Department of Interior***, No. 97-1418-AER (D.D.C.)

In 1988 and 1989, the Office of Surface Mining promulgated three sets of regulations (the ownership and control, permit information, and permit rescission rules to implement Section 510(c) of the Surface Mining Law. That section provides that a permit shall not be issued when a surface coal mining operation "owned or controlled by the applicant" is currently in violation of the Surface Mining Law. On January 31, 1997, the U.S. Court of Appeals for the D.C. Circuit invalidated the ownership and control rule, which allowed the Office of Surface Mining to consider violations of persons who own or control the applicant in making permit eligibility determinations, reasoning that the rule went beyond the clear language of Section 510(c) of the Surface Mining Law, which allows the Office of Surface Mining to consider only violations of operations owned or controlled by the applicant. The court also declared the permit information and permit rescission rules unlawful because they were "centered on" the ownership and control rule.

On April 21, 1997, the Office of Surface Mining published an interim final rule on an emergency basis "to cure th[e] defect" identified by the Court of Appeals, to prevent a regulatory gap in effective implementation of the lawful portions of the invalidated rules, and to implement Section 510(c) and related sections of the Surface Mining Law in a manner consistent with the Court of Appeals' mandate. On November 7, 1997, the National Mining Association filed a motion for summary judgment, asking the court to void and enjoin enforcement of the interim final rule.

In a June 15, 1998, decision, Judge Robinson upheld the interim final rule in its entirety, finding that the Office of Surface Mining could properly invoke the Administrative Procedure Act's "good cause" exception to notice and comment rulemaking. The court then found that the Office of Surface Mining demonstrated the requisite good cause by showing that promulgation of the interim final rule was necessary to avoid a "temporal regulatory gap" in the effective implementation of the lawful portions of the ownership and control rules. The court was also persuaded by the fact that the interim program rule is interim in nature, preserves the *status quo*, and reinstates portions of the invalidated rules that were previously subject to notice and comment rulemaking. Finally, the court found that the National Mining Association was unlikely to prevail on the merits of its substantive claims, given the court's prior rulings against the National Mining Association on identical issues. Judge Robinson had previously denied the National Mining Association's application for a preliminary injunction on largely the same grounds.

On June 18, 1998, the National Mining Association filed an appeal of the District Court's June 15 ruling. A briefing schedule has been set and oral argument will be held on February 8, 1999.

### ATTORNEYS' FEES

#### ***Kentucky Resources Council, et al., ("KRC") v. Babbitt***, No. 97-9 (E.D. Ky.) (attorneys' fees)

On February 20, 1998, United States Magistrate Judge J. Gregory Wehrman issued a memorandum opinion which adopted the Government's interpretation of the Surface Mining Law's attorney fee provision but which awarded fees to plaintiffs based on the specific facts of the case. *Kentucky Resources Council, Inc. v. Babbitt*, 997 F. Supp. 814 (E.D. Ky.). In this action, Kentucky Resources Council sought judicial review of the IBLA's January 17, 1997, decision in *KRC v. OSM*, IBLA No. 94-161, which addressed the standard for awards of attorneys' fees in administrative cases under Section 525(e) of the Surface Mining Law and which denied plaintiffs' request for an award of \$31,180 in attorneys' fees and \$368.28 in costs.

In his February 20 decision, the magistrate ruled that only citizen complainants who are forced to file an appeal to the Board to obtain the requested relief are entitled to fees under Section 525(e): for plaintiffs to recover fees, there must be a causal nexus between the plaintiffs' actions in prosecuting the appeal to the Board and the corrective actions taken by the Office of Surface Mining. He also went on to hold, however, that a causal nexus did exist between the Kentucky Resources Council's appeal to OHA and a July 27, 1993, procedural directive that the Office of Surface Mining issued. He found "clearly erroneous" the IBLA's holding that, before issuance of the directive, the Office of Surface Mining had already granted Kentucky Resources Council full relief, and that the July 27 directive had merely been the fulfillment of an earlier commitment made by the Office of Surface Mining in the informal review decision.

This long-awaited decision clarified the scope of Section 525(e) of the Surface Mining Law and the implementing regulations, which authorize fees reasonably incurred in connection with participating in administrative proceedings. It is expected to minimize subsequent litigation over fee entitlement in administrative cases under the Surface Mining Law.

## Oversight of State Programs

Section 517(a) of the Surface Mining Law requires the Office of Surface Mining to make inspections as necessary to evaluate the administration of approved state programs. Most State programs were approved in the early 1980s, and the Office of Surface Mining's oversight of the programs focused on the implementation of the many procedural and process requirements. President Clinton's National Performance Review recommended that the Office of Surface Mining, in consultation with the States, (1) develop national standards of excellence for both regulatory and abandoned mine land reclamation programs and (2) establish goals, performance measures and a performance evaluation process for both types of programs. Office of Surface Mining interviews of its own employees and representatives of citizen and environmental groups, state regulatory authorities, and industry organizations also found a broad-based consensus that the oversight policy for state regulatory programs should be extensively revamped.

In the past, reclaimed coal mines in East Texas consisted of pasture land planted with coastal Bermuda grass. Today, native vegetation improves the wildlife habitat and provides a richly diverse plant community. At this reclaimed mine site thousands of tree and shrub seedlings were planted. Today, the quality of the diverse wildlife habitat is recognized worldwide.



In accordance with the National Performance Review recommendations, a team of Office of Surface Mining and state employees devised a new results-oriented oversight strategy that emphasized cooperative problem-solving, tailoring evaluations to state-specific conditions, and the development of performance agreements between each state and its Office of Surface Mining field office. Unlike the old system of evaluation, results-based oversight focuses on measuring whether state programs successfully achieve the purposes of the Surface Mining Law with respect to public participation, environmental protection and reclamation of mined lands. In addition, the new approach is consistent with the Government Performance and Results Act which requires federal agencies to develop ways to objectively measure how a program accomplishes its mission through delivery of products or services.

Specifically, to further reporting end results and on-the-ground success, the oversight now evaluates and reports state-specific and national findings for off-site impacts and reclamation success. The purpose of measuring off-site impacts is to protect the public, property and the environment outside of areas authorized for mining and reclamation activities. This measurement is intended to identify and report

the number and degree of off-site impacts; determine causes of the impacts; and identify where improvements may be made to lessen the number and degree of impacts. Success will be determined based on the number of acres that meet the bond release requirements for the various phases of reclamation.

The new oversight strategy has been received positively and the Office of Surface Mining and the states are experiencing a more positive attitude and spirit of cooperation. A recent study based on interviews with about 100 Office of Surface Mining inspectors and field staff involved in oversight reported the current oversight is beginning to take hold and many staff view it as a new opportunity to work cooperatively and improve state program implementation.

Table 7 provides the Office of Surface Mining's oversight inspection and enforcement activities during 1998.



During mining at this Indiana mine site, soil on nearly all of the 520 disturbed acres was removed and replaced on the reclaimed land to prime farmland depths (48 inches), even though nearly 250 acres were non-prime farmland where soil could have been replaced at the 12-inch depth. Today, this reclaimed mine site has been returned to productive farmland and is indistinguishable from the surrounding landscape.

## Federal Programs

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

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

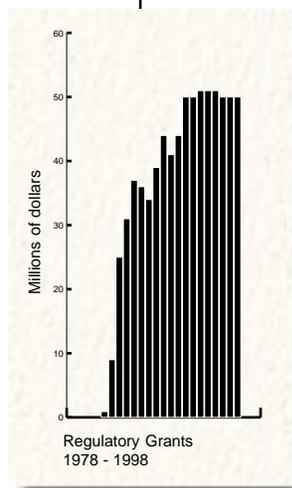
Although the Office of Surface Mining encourages and supports state primacy in the regulation of surface coal mining and reclamation operations, certain states with coal reserves have elected not to submit or maintain regulatory programs. Those states are called federal program states, and their surface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

Oregon, Rhode Island, South Dakota, Tennessee, and Washington.

Of the federal program states, only Tennessee and Washington had active coal mining in 1998. Table 8 includes the Office of Surface Mining's regulatory actions in those two states during 1998.

## Grants to States and Tribes

Section 201 of the Surface Mining Law authorizes the Office of Surface Mining to help state regulatory authorities develop or revise surface mining regulatory programs. In 1998, the Office of Surface Mining awarded \$600,000 for program development grants to the Crow, Northern Cheyenne, Hopi, and Navajo Tribes.



Section 705 of the Surface Mining Law authorizes the Office of Surface Mining to provide grants to states with approved regulatory programs in amounts not exceeding 50 percent of annual state program costs, matching state regulatory costs dollar for dollar. In addition, when a state elects to administer an approved program on federal land

**TABLE 7  
FEDERAL OVERSIGHT OF STATE PROGRAMS  
1998**

State	Inspections	Violations Cited by the Office of Surface Mining			
		Notice of Violations	Failure-To-Abate Cessation Orders	Imminent Harm Cessation Orders	
Alabama	130	0	0	0	0
Alaska	4	0	0	0	0
Arkansas	11	2	0	0	0
Colorado	11	0	0	0	0
Illinois	117	0	0	0	0
Indiana	141	0	0	0	0
Iowa	17	0	0	0	0
Kansas	10	0	0	0	0
Kentucky	712	21	8	0	0
Louisiana	2	0	0	0	0
Maryland	41	0	0	0	0
Mississippi	1	0	0	0	0
Missouri	42	0	0	0	0
Montana	28	0	0	0	0
New Mexico	10	0	0	0	0
North Dakota	13	0	0	0	0
Ohio	182	0	0	0	0
Oklahoma	70	0	0	0	0
Pennsylvania	445	5	0	0	0
Texas	19	0	0	0	0
Utah	6	0	0	0	0
Virginia	290	1	1	0	0
West Virginia	180	19	8	0	0
Wyoming	13	0	0	0	0
<b>Total</b>	<b>2,495</b>	<b>48*</b>	<b>17</b>	<b>0</b>	<b>0</b>

\* Of the 48 Notices of Violation and 17 Cessation Orders issued by the Office of Surface Mining, 43 NOV's and 17 CO's were related to Abandoned Mine Land fees.

**TABLE 8  
REGULATORY PROGRAM STATISTICS  
1998**

	Regulatory Program Staffing (FTE's 9/30/98)	Abandoned Mine Land Staffing (FTE's 9/30/98)	New Permits	New Acreage Permitted	Inspectable Units (9/30/98)	Complete Inspections	Partial Inspections	Notices of Violation	Failure-To-Abate Cessation Orders	Imminent Harm Cessation Orders	Bond Forfeitures
Alabama	28	19.8	10	2,613	278	3,212	530	173	33	6	7
Alaska	3.44	4.5	1	2,522	10	29	62	3	3	0	0
Arizona	NA	NA	0	0	0	0	0	0	0	0	0
Arkansas	5.95	6.2	0	0	18	78	148	13	0	0	1
Colorado	25	14	1	2,327	62	249	321	16	0	0	0
Crow Tribe**	1	7.5	0	0	1	4	9	0	0	0	0
Georgia*	NA	NA	0	0	6	7	0	0	0	0	0
Hopi Tribe**	NA	4.35	0	0	1	11	5	8	0	0	0
Illinois	49.95	36.14	12	4,469	110	478	944	11	0	0	0
Indiana	55	11.6	15	9,346	190	1,180	2,487	99	3	0	2
Iowa	4.65	5.45	0	0	28	128	256	14	5***	0	0
Kansas	3.6	11.4	2	336	17	72	111	0	0	0	1
Kentucky	416	88	93	18,778	2,538	13,724	19,088	1,465	75***	15***	13
Kentucky*	4.3	0	8	1,385	48	371	175	10	0	0	0
Louisiana	3.7	1.5	0	0	2	8	16	4	0	0	0
Maryland	13.5	7.6	1	66	64	392	586	14	0	0	1
Mississippi	3.75	0	1	1,908	1	1	0	0	0	0	0
Missouri	14	11.3	1	244	37	124	213	70	22	0	4
Montana	17.7	10	0	0	17	77	107	16	5	0	1
Navajo Tribe**	NA	24	0	0	7	27	60	7	0	0	0
New Mexico	10.75	11.5	0	0	15	60	120	6	0	0	0
North Dakota	8.9	5.7	0	0	42	179	692	0	0	0	0
Ohio	33.5	32	67	8,273	568	2,183	2,607	199	3	6	4
Oklahoma	30.4	6	5	3,228	94	394	591	50	0	0	0
Pennsylvania	299	145	102	17,827	2,379	9,921	14,242	1,019	54	3	10
Tennessee	52	0	6	673	428	1,138	1,236	51	11	2	2
Texas	45	10	0	0	21	88	228	18	0	0	0
Utah	24	9	1	30	28	130	209	24	0	3	0
Ute Tribe**	NA	NA	0	0	2	6	16	0	0	0	0
Virginia	83	18	16	1,199	688	3,745	3,862	239	8	3	1
Washington	NA	NA	0	0	2	3	19	1	0	0	0
West Virginia	249	70	78	11,370	2,987	10,466	13,136	1,286	116	12	27
West Virginia*	NA	NA	0	0	1	4	0	0	0	0	0
Wyoming	30	12.5	0	0	41	156	314	24	0	0	0
<b>Total</b>	<b>1,515.09</b>	<b>583.04</b>	<b>420</b>	<b>86,594</b>	<b>10,731</b>	<b>48,645</b>	<b>62,390</b>	<b>4,840</b>	<b>338</b>	<b>50</b>	<b>74</b>

\*Federal Lands Program, \*\*Indian Lands Program, \*\*\*Number of violations for Iowa and Kentucky is not available, the number of actions is shown, NA Information not available.

through a cooperative agreement with the Office of Surface Mining, the state becomes eligible for financial assistance of up to 100 percent of the amount the federal government would have spent to regulate coal mining on those lands. Table 9 shows grant amounts provided to states during 1998 to administer and enforce regulatory programs.

## Regulation of Surface Mining on Federal and Indian Lands

Section 523(a) of the Surface Mining Law requires the Secretary of the Interior to establish and implement a federal regulatory program that applies to all surface coal mining operations that take place on federal land. The Office of Surface Mining enacted the current federal lands program on February 16, 1983.

The federal lands program is important because the federal government owns significant coal reserves, primarily in the West. Of the 234 billion tons of identified coal reserves in the western United States, 60 percent is federally owned. The development of federal coal reserves is governed by the Federal Coal Management Program of the Department of the Interior's Bureau of Land Management.

Through cooperative agreements, the administration of most surface coal mining requirements of the federal lands program may be delegated by the Secretary of the Interior to states with approved regulatory programs. By the end of 1998, the Secretary had entered into such cooperative agreements with Alabama, Colorado, Illinois, Kentucky, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West Virginia, and Wyoming. The cooperative agreement with Kentucky was signed in September 1998, and will be implemented in early 1999.

Under the Surface Mining Law, once the Secretary and a state have signed a cooperative agreement, the state regulatory authority assumes permitting, inspection, and enforcement responsibilities for surface coal mining activities on federal lands in that state. The Office of Surface Mining maintains an oversight function to ensure that the regulatory authority fully exercises its delegated responsibility under the cooperative agreement. In states without

Wooded draws are a natural feature of the North Dakota landscape that provide critical habitat for wildlife. Traditionally, mining operations mine through these draws and then reclaim them. Although this has met with success, the operator of this mine took a new look at working with these unique natural features -- they left the wooded draws alone. Instead of mining through them, they mined around them.

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**TABLE 9  
REGULATORY GRANT FUNDING  
1998 OBLIGATIONS**

State	Federal Funding		Cumulative Through 1998*
	1998	1997	
Alabama	\$769,358	\$1,039,433	\$21,486,140
Alaska	173,580	171,753	4,895,544
Arkansas	162,454	156,222	2,851,121
Colorado	1,633,954	1,571,274	20,643,240
Illinois	2,003,768	2,287,009	42,075,768
Indiana	31,181	2,034,578	23,329,341
Iowa	147,671	149,411	2,138,789
Kansas	111,899	112,666	2,416,345
Kentucky	13,249,061	12,835,636	208,844,529
Louisiana	191,146	183,813	2,852,470
Maryland	438,519	499,503	9,267,937
Michigan	0	0	135,458
Mississippi	132,072	64,284	691,690
Missouri	436,015	424,176	6,643,416
Montana	895,318	860,973	12,776,691
New Mexico	637,699	673,287	9,764,133
North Dakota	500,207	487,783	9,363,722
Ohio	1,400,240	1,234,186	50,556,516
Oklahoma	900,512	839,041	13,612,881
Pennsylvania	10,810,597	10,395,890	163,882,079
Rhode Island	0	0	158,453
Tennessee	0	0	5,340,085
Texas	1,446,563	1,463,371	15,996,284
Utah	1,499,619	1,404,191	20,927,800
Virginia	3,055,125	2,955,119	52,604,706
Washington	0	0	4,893
West Virginia	7,934,579	7,217,537	84,264,498
Wyoming	1,494,863	1,494,863	25,096,332
Crow Tribe	22,848	15,877	771,484
Hopi Tribe	27,278	22,936	935,664
Navajo Tribe	63,295	75,205	2,278,961
N. Cheyenne	6,579	5,983	12,562
<b>Total</b>	<b>\$50,176,000</b>	<b>\$50,676,000</b>	<b>\$816,619,532</b>

\*Includes obligations for AVS, Kentucky Settlement, and other Title V cooperative agreements. Figures for 1997 do not include downward adjustments of prior-year awards. However, cumulative figures are net of all prior-year downward adjustments.



The undisturbed wooded draws contain one of the largest diversities of vegetation and wildlife in the mine area. The shrubby habitat provides ample shelter, food, and protection for many wildlife species.

cooperative agreements, the required permitting, inspection, and enforcement activities under the Surface Mining Law are carried out by the Office of Surface Mining. During 1998, six new permits were issued by the Office of Surface Mining on federal lands in Kentucky.

For states with leased federal coal, the Office of Surface Mining prepares the Mining Plan Decision Documents required by the Mineral Leasing Act, as amended, and documentation for other non-delegable authorities, for approval by the Secretary of the Interior. During 1998, one mining plan action was prepared and approved for coal mines on federal land.

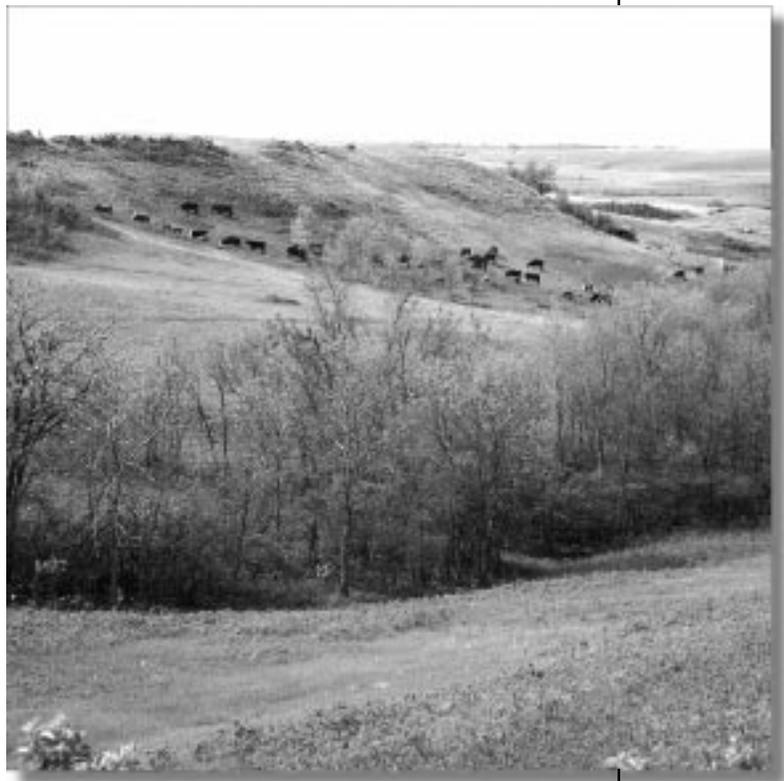
Pursuant to Section 710 of the Surface Mining Law, the Office of Surface Mining regulates coal mining and reclamation on Indian lands. In the Southwest, three mines on the Navajo and Hopi reservations, a portion of an underground mine, and a portion of a coal haul road on the Ute Mountain Ute Reservation are permitted under the permanent Indian Lands Program,

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

On the Crow Ceded Area in Montana, the Office of Surface Mining and the Montana Department of State Lands administer applicable surface mining requirements under a Memorandum of Understanding that includes both permitting and inspection functions.

Section 2514 of the Energy Policy Act of 1992 (Public Law 102-486) gives authority to provide grants to the Crow, Hopi, Navajo, and Northern Cheyenne Tribes to assist them in developing programs for regulating surface coal mining and reclamation operations on Indian lands. The development of these programs includes: creating tribal mining regulations and policies; working with the Office of Surface Mining in the inspection and enforcement of coal mining activities on Indian lands (including permitting, mine plan review, and bond release); and education in the area of mining and mineral resources. A series of separate, informal meetings began in 1995 to discuss issues and to determine how best to develop draft legislation that would allow tribal governments to assume primacy. All parties have agreed on making certain modifications to the draft legislation and have agreed to an action plan. Development grant funding for 1998 was \$600,000 from the Office of Surface Mining budget. This funding will continue in 1999. Table 8 includes statistics on regulatory activity on Indian lands during 1998.

With reclamation complete the wooded stands are now surrounded by native rangeland, presenting a more diverse habitat for birds and animals to utilize. Cattle grazing has begun on the reclaimed native rangeland encompassing these wooded draws. Now, in addition to the wildlife benefits they provide, draws offer the cattle protection from the hot summer sun.



## Electronic Permitting

Electronic permitting technology was first introduced to the states and tribes in 1989, when the Technical Information Processing System was implemented. Since that time, use of computer technology in the permitting and inspection process has dramatically increased. The ability to share digital information results in improved permitting efficiency, decreased permitting costs, enhanced regulatory effectiveness, and increased public access to the most complete and current permit documents. Throughout the country the Office of Surface Mining is working with states to improve their electronic permitting capabilities by providing computer hardware, software, and technical assistance. During 1998, this activity resulted in: cooperative development of standard electronic permitting forms, testing Internet and e-mail submission of files, using an electronic permit review process, converting traditional paper tracking systems to electronic permit tracking, and exchanging mine operator and state regulatory authority experience with each other.

## Pennsylvania Anthracite Program

Section 529 of the Surface Mining Law provides an exemption from federal performance standards for anthracite coal mining operations, provided the state law governing those operations was in effect on August 3, 1977. Pennsylvania is the only state with an established regulatory program qualifying for the exemption, and thus regulates anthracite mining independent of the Surface Mining Law program standards.

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

In 1997 the anthracite mining industry increased production to around 11.5 million net tons per year, approximately 14 percent of Pennsylvania's annual coal production. The reprocessing of anthracite culm banks accounts for almost three-quarters of the anthracite coal production. Some of this

reprocessed coal helps to fuel eight cogeneration plants. Anthracite operators mined approximately 8.4 million tons from culm banks, 2.7 million tons from surface mines, and 0.4 million tons from underground mines.

Pennsylvania's Department of Environmental Protection continues to successfully carry out the provisions of the anthracite regulatory program. State mine inspectors have achieved approximately 89 percent of the required complete and partial inspections. On 98 percent of the complete inspections conducted by state inspectors, the mine operations were in compliance with performance standards. The District Mining office in Pottsville continues to do outstanding work in the clean-up of the headwaters of Swatara Creek.



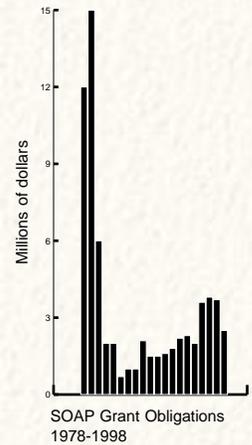
Wetland habitat has a particularly rich and diverse ecology. Creation or reestablishment of wetlands on reclaimed mined land is a high priority in areas of the country where this postmining use is suitable.

## Small Operator Assistance Program (SOAP)

Section 401(b)(1) of the Surface Mining Law authorizes up to 10 percent of the fees collected for the Abandoned Mine Reclamation Fund to be used to help qualified small mine operators obtain technical data needed for permit applications. Through 1991, operators producing fewer than 100,000 tons of coal per year were eligible for assistance. Beginning with 1992, the Abandoned Mine Reclamation Act of 1990 increased the production limit from 100,000 to 300,000 tons.

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

Small Operator Assistance Program regulations (30 CFR 795) place program responsibility with the states that have Office of Surface Mining approved permanent surface mining programs. In states with federal programs, the Office of Surface Mining operates the Small Operator Assistance Program. In 1998, 140 small mine operators received assistance, comparable to the 146 operators who received assistance in 1997. Table 10 provides a breakdown of the Small Operator Assistance Program grant awards by state during 1998.



State	1998	1997
Kentucky	\$1,000,000	\$1,215,475
Maryland	65,855	70,000
Ohio	70,000	225,000
Pennsylvania	771,145	1,200,000
West Virginia	650,000	1,000,000
Total	\$2,557,000	\$3,710,475

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

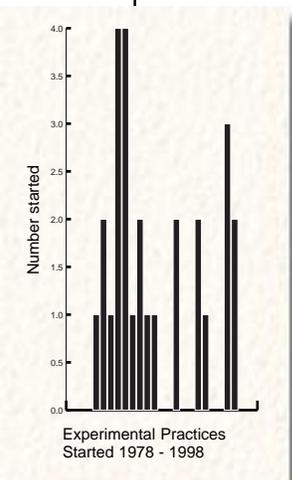
## Experimental Practices

Section 711 of the Surface Mining Law allows experimental mining and reclamation practices that do not comply with the performance standards as a way to encourage advances in mining technology or to allow innovative industrial, commercial, residential, or public postmining land uses. However, the experimental practices must be potentially more, or at least as, environmentally protective as the environmental protection performance standards established by the Surface Mining Law. Approval and monitoring of a permit containing an experimental practice requires a close working relation between the mine operator, the state, and the Office of Surface Mining.

Trees planted on reclaimed mine sites provide excellent wildlife habitat and a root structure that stabilizes the soil.



During 1998, four experimental practices were ongoing and two new practices were approved. The four ongoing experimental practices include direct seeding of a slurry pond, conversion of a refuse impoundment into a recreational fishing lake, direct seeding of a refuse impoundment and preparation plant area and elimination of a slurry impoundment, and creation of a 91-acre commercial-industrial site by retaining the paved roads, buildings, and utilities on a level site which is maximized by retaining highwalls and utilizing hollow fills. The two new experimental practices will result in the preservation of the portal and surrounding area of a historic mine which will be donated to the local county as a tourist attraction, and creation of a 150-lot residential subdivision with retention of the highwall to maximize the level area.



Remining at this site had many benefits. Fuel left over from the early days of mining was used to generate electricity. An abandoned mine hazard near a populated area was eliminated without cost to the Abandoned Mine Reclamation Fund. Environmental degradation was stopped. And a valuable property can now be returned to a beneficial and productive use.

Since the program began, 27 experimental practices have been approved, 12 were determined to be successful, three unsuccessful, one was terminated due to a regulation change, and five have been completed but reports have not yet been submitted.

## Reclamation Awards

To recognize and transfer the lessons learned from completing the nation's most outstanding reclamation, the Office of Surface Mining presents awards to coal mine operators who have completed mining and reclamation operations that resulted in outstanding on-the-ground performance. Awards for 1998 were presented October 13, 1998, at the National Mining Association's annual meeting, as follows:

### Director's Award

Each year, one coal mining operation in the country is selected to receive the Director's Award for outstanding achievement in a specific area of reclamation. This year the award was presented for the best reclamation in the country resulting in higher or better post-mining land use. The 1998 award was presented to the Jamieson



Construction Company, Miller Branch Mine located near Bimble, Kentucky. Exemplary reclamation by the Jamieson Construction Company resulted in high quality hay and pasture land. In addition, the flat land created during reclamation has greatly increased the property value for development of home sites. This outstanding reclamation is a credit to Larry Jamieson and his employees and a model that all mine operators throughout the country should strive to meet.

During the 1930's, 40's, and 50's this Pennsylvania site was an active underground mine that deposited 80- to 100-foot-high piles of anthracite coal waste. In 1994 the company erected a mobile coal processing facility to separate the remaining coal from the rock waste for use in the company's cogeneration electric plant. As the separation process progressed waste material was used to fill underground mine voids and blend into the slopes of the surrounding areas.

### National Awards

■ Peabody Western Coal Company, Black Mesa and Kayenta Mines, Navajo County, Arizona, for reclamation at mine sites on the Navajo and Hopi Indian reservations which resulted in planting vegetation that restores plants significant to the tribal cultures. The reclaimed land will provide long-term benefits to the

Navajo and Hopi people who retain traditional values.

■ Western Energy Company, Rosebud Mine, Colstrip, Montana, for using special mining and reclamation techniques to save a local landmark located in the middle of the mine site. Known as Eagle Rock, the landmark was a camp site for ancient native peoples. A plan was developed to mine around the large sandstone outcrop rather than mining through the area and destroying it.



- Northampton Fuel Supply Company, Inc., Kaminski Bank #14, Wilkes Barre, Pennsylvania, for reclaiming 80-100 foot high piles of anthracite coal waste at an underground mine site. This work ultimately provided fuel to generate electricity, eliminated an abandoned mine hazard near a populated area, and stopped environmental degradation, while providing a valuable property which can now be returned to beneficial and productive use.
- Texas Utilities Mining Company, Big Brown Mine, Fairfield, Texas, for reclaiming a two and one-half mile section of Prairie Creek. The creek which runs through the mine site, was transformed from an eroded, narrow, steep-sided channel, into a natural stream configuration integrated into the surrounding wildlife habitat of trees, grasses, and wetlands.
- Aluminum Company of America (ALCOA), Sandow Mine, Rockdale, Texas, for reclaiming a lignite coal mine site using native vegetation. The reclamation has improved the quality of a wildlife habitat and provided a richly diverse plant community which will continue to grow and enhance the reclaimed Texas landscape.
- Centralia Mining Company, Centralia Mine, Centralia, Washington, for reclamation of a large mine site which will eventually involve over 14,000 acres. Reclamation at the mine includes planting native Douglas fir, Red alder, and other native trees and has the special benefit of resulting in diverse wildlife habitats that range from upland forests to wetlands.

## **Government Performance and Results Act Report**

**Goal 2. Better Protection:** *Improve the Office of Surface Mining's regulatory program for protecting the environment, people, and property during current mining operations and subsequent reclamation through cooperative results-oriented oversight and evaluation of state programs, and in carrying out the Office of Surface Mining's regulatory responsibilities - in order to safeguard people and the environment.*

Performance Measure	1997 Actual	1998 Plan	1998 Actual
Percent of active mine sites that are free of offsite impacts.....	88 percent	90 percent	93 percent
The number of acres released from Phase 1 and 2 Performance Bonds.....	115,000 acres	115,000 acres	145,180 acres
The number of acres released from Phase 3 Performance Bonds.....	82,000 acres	90,000 acres	85,301 acres

Protecting the environment, people, and property is measured by the number of times incidents occur outside the boundaries of the permitted areas being mined. These are known as offsite impacts and the goal is to not have any incidents occur; but, it is inevitable that 100 percent is not realistic. In 1998, 93 percent of the mine sites were free of offsite impacts. In the future, the Office of Surface Mining will be working with states, Tribes, and the coal industry to strive for, and maintain, a minimum number of occurrences.

The Office of Surface Mining is also measuring protection of the environment and people by assuring that the land currently being mined is properly reclaimed. This performance measure is the acreage of land that is released every year by active coal mine operators. This is done through a series of bond releases. The bonds are required to assure that funds are available for reclamation in case the operator fails to reclaim the mined land. In 1998, the Office of Surface Mining and the states released 85,301 acres that met the requirements and standards for Phase III release (To receive Phase III bond release the land must be completely reclaimed for 5 years in the East and 10 years in the West). In addition the Office of Surface Mining also measures the acreage that is released in the first two phases of bond release. During 1998, 74,237 acres were released from Phase I and 70,943 from Phase II bonds.