

BUSINESS LINE: ENVIRONMENTAL PROTECTION

| | | FY 2001 Enacted | Uncontrollable Costs | Program Change | FY 2002 Request | Difference from FY01 |
|----------------------------|--------|--------------------|-------------------------|-------------------|--------------------|-------------------------|
| Regulation & Technology | \$\$\$ | 76,274 | 641 | (174) | 76,741 | 467 |
| | FTE | 225 | 0 | 0 | 225 | 0 |
| Abandoned Mine Land | \$\$\$ | 0 | 0 | 0 | 0 | 0 |
| | FTE | 0 | 0 | 0 | 0 | 0 |
| TOTAL | \$\$\$ | 76,274 | 641 | (174) | 76,741 | 467 |
| | FTE | 225 | 0 | 0 | 225 | 0 |

Operational Processes (Program Activities): Program activities within this business line ensure that the environment is protected during surface coal mining operations and that coal operators adequately reclaim

disturbed land after mining is completed. This business line also provides for OSM's costs to ensure that States' programs are current with all Federal regulatory requirements. The State and Tribal Funding program activity includes grants to States to regulate coal operations on their lands. When a cooperative agreement exists, this activity also includes grants to States to regulate coal operations on Federal lands. Finally, this activity includes grants to Tribes to develop regulatory programs and to assist OSM in the regulation of surface coal mining and reclamation operations on Tribal lands. State Program Evaluation funds OSM's oversight of State programs. The Federal Program funds OSM activities to ensure SMCRA compliance for non-primacy States (States without an approved regulatory program). The Federal Lands program activity funds OSM's activities in preparing Mining Plan Decision Documents for leased Federal coal as well as any regulatory activities on Federal Lands not covered by a cooperative agreement. The Indian Lands

GOAL #2: IMPROVE OSM'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 STATES' PROGRAMS, AND IN CARRYING OUT OSM'S REGULATORY RESPONSIBILITIES - IN ORDER TO SAFEGUARD PEOPLE AND THE ENVIRONMENT.

program activity funds OSM's regulatory responsibilities on Indian Lands.

Strategic Outcome: The protection of the environment and public from off-site impacts resulting from current surface coal mining operations and successful reclamation of lands affected by surface coal mining operations.

Indicator Measure(s): *The protection of the environment and public from off-site impacts resulting from surface coal mining operations and successful reclamation on lands affected by surface coal mining operations. These goals are accomplished through the cooperative efforts of the Office of Surface Mining and State regulatory offices. The following measures are used by OSM as an indicator of annual performance.*

| Table 5: Strategic Measures and FY 2002 Measures | 2000 Actual | 2001 Enacted | 2002 Estimate | Annual Perf Goals |
|---|------------------------|-------------------------|--------------------------|----------------------------------|
| <p><i>By 2005, the Surface Mining Program (SMP) will protect the environment better as indicated by the percentage of mine sites that are free of off-site impacts.</i></p> <p>C In FY 2002, SMP will free 94% of sites from off-site impacts.</p> | 94.1% | 94% | 94% | 2.2 |
| <p><i>By 2005, the SMP will protect the environment better as indicated by the number of acres released from Phase I & II performance Bonds.</i></p> <p>C In FY 2002, the SMP will increase the acres released from Performance Bonding Phases I & II to 112,000.</p> | 101,803 acres | 105,000 acres | 112,000 acres | 2.3 |
| <p><i>By 2005, the SMP will better protect the environment as indicated by the number of acres released from Phase III Performance Bonds.</i></p> <p>C In FY 2002, the SMP will increase the acres released from Phase III Performance Bonds to 75,000.</p> | 63,071 acres | 70,000 acres | 75,000 acres | 2.4 |
| <p><i>By 2005, OSM will award regulatory grants funds within 60 days of receipt of a complete application in accordance with its customer service standards.</i></p> <p>C In FY 2002, OSM will provide 96% of regulatory grants and award funds within 60 days.</p> | 96% | 96% | 96% | 2.1 |

Data Verification and Validation for Measures: The overall goal of the regulatory program is to minimize off-site impacts, including problems that may affect persons or property beyond the permit area. Examples of off-site impacts include hydrological problems that affect a nearby property owner's water

supply, damage to property from blasting on the mine site, creation of off-site landslides or other instabilities, occurrence of off-site sedimentation, Acid Mine Drainage (AMD) and mining off of the permit area. All off-site impacts observed are evaluated in terms of severity and included in State program and other evaluation reports. The indicator and measure will be the number of incidents involving off-site impacts that are investigated, documented and verified. Progress under this goal will be measured by comparisons over time of the number and severity of off-site impacts.

The overall status of reclamation of mined lands will be determined by reporting the number of acres that receive Phase I and II bond release, and the number of acres of mined land with Phase III bond release. Data collected will be derived from agency program systems and the performance agreement elements negotiated with the States. Data collection methods are established in accordance with an agency policy directive, which was developed in cooperation with the States.

Actions Required to Achieve Annual Goals: OSM continues its outreach to address concerns related to mountaintop removal operations, acid mine drainage, and impoundments, to evaluate its rules, to advance remaining efforts and to ensure that contemporaneous reclamation is occurring.

Resources, Skills, and Technology Needed: Program analysts, grant specialists and other support personnel are needed to implement the State regulatory grants program and to conduct program evaluations. OSM and the primacy States will continue to need a diverse and multi-disciplinary cadre of personnel skilled in scientific and engineering areas to review mine permits, determine whether performance bond coverage and amounts are sufficient to ensure reclamation, conduct mine site inspections and implement enforcement actions when necessary. Computer systems personnel are needed to help maintain various data systems, such as the National Mine Site Evaluation and Inspection Reporting System, which contains data from OSM's oversight and regulatory program inspections.

The FY 2002 President's Budget requests \$55.6 million to fund twenty-four State regulatory programs at the maximum 50 percent Federal match level. Additionally, this amount will provide full funding for fourteen Federal lands cooperative agreements with States and full funding of four Tribal regulatory program development grants.

In FY 2002, the budget request includes \$7.9 million to continue its State program oversight activities; \$5.2 million to fund regulatory programs in non-primacy States like Arizona, Tennessee and Washington. Also included in the FY 2002 budget request is \$1.4 million for OSM to regulate Federal Lands. OSM also requests \$2.3 million for regulatory programs on Indian Lands and \$4.4 million for program development and maintenance to ensure that regulatory standards adequately reflect changes in technologies and program needs.

The following section details, by program activity, the funding and FTE resources required to meet the

annual performance measures. It also includes examples of cooperative work between OSM, States and Tribes to regulate coal mining activities.

Table 6 - Justification of Program and Performance

Environmental Protection

Summary Increases/Decreases for FY 2002

(Dollars in Thousands)

| Program Activity | | Regulation & Technology | | Abandoned Mine Lands | | Total | | Inc/Dec |
|--------------------------|--------|-------------------------|--------|----------------------|------|--------|--------|---------|
| | | 2001 | 2002 | 2001 | 2002 | 2001 | 2002 | |
| State and Tribal Funding | \$\$\$ | 55,575 | 55,575 | 0 | 0 | 55,575 | 55,575 | 0 |
| | FTE | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| State Program Evaluation | \$\$\$ | 7,617 | 7,851 | 0 | 0 | 7,617 | 7,851 | 234 |
| | FTE | 84 | 84 | 0 | 0 | 84 | 84 | 0 |
| Federal Programs | \$\$\$ | 5,004 | 5,157 | 0 | 0 | 5,004 | 5,157 | 153 |
| | FTE | 53 | 53 | 0 | 0 | 53 | 53 | 0 |
| Federal Lands | \$\$\$ | 1,394 | 1,437 | 0 | 0 | 1,394 | 1,437 | 43 |
| | FTE | 15 | 15 | 0 | 0 | 15 | 15 | 0 |
| Indian Lands | \$\$\$ | 2,234 | 2,294 | 0 | 0 | 2,234 | 2,294 | 60 |
| | FTE | 21 | 21 | 0 | 0 | 21 | 21 | 0 |
| Program Dev/Maint | \$\$\$ | 4,450 | 4,427 | 0 | 0 | 4,450 | 4,427 | -23 |
| | FTE | 52 | 52 | 0 | 0 | 52 | 52 | 0 |
| TOTAL | \$\$\$ | 76,274 | 76,741 | 0 | 0 | 76,274 | 76,741 | 467 |
| | FTE | 225 | 225 | 0 | 0 | 225 | 225 | 0 |

ONGOING PROGRAM

1. State and Tribal Funding

a. State Grants

Twenty-four States have approved permanent regulatory programs (primacy) for the regulation of coal mining activities. Primacy States have the most direct and critical responsibilities for conducting regulatory operations. The States have the unique capabilities and knowledge to regulate the lands within their borders. Providing a 50 percent match of Federal funds to primacy States in the form of Administration and Enforcement (A&E) Grants results in the highest benefit and the lowest cost to the Federal Government. If any State relinquished primacy, OSM would have to hire sufficient numbers and types of Federal employees to implement the program. The cost to the Federal Government would be significantly higher.

b. State Regulatory Activities

Activities of State regulatory authorities include: permit review and issuance, (with reliance on the Applicant Violator System (AVS) to ensure that permits will not be issued to operators with outstanding violations); inspection and enforcement; designation of lands unsuitable for mining; and administration of bonding and bond release programs for reclamation of lands after mining. In addition, special activities are conducted by individual States to address specific needs. These activities may include expanding permitting programs, computerizing systems to improve review of pending permits and drafting regulations that respond to changes in Federal rules.

All active and inactive sites, facilities and areas in support of coal mining and reclamation within a State are inspected by the State regulatory authority (SRA) for compliance with all program requirements. SMCRA requires all active inspectable units under the permanent program to have four complete and eight partial inspections per year. Four complete inspections are required annually for all inactive units.

c. Cooperative Agreement Funding

States which have cooperative agreements with OSM review and issue permits and conduct the required inspections of regulated facilities on Federal lands. Cooperative agreements provide for uniform enforcement of State program requirements at all facilities within the State and reduce both direct Federal program costs and Federal staff requirements. SMCRA section 705(c) sets the amount that a State may receive through a cooperative agreement as up to 100 percent of the amount that the Federal Government would have to spend to do the same work.

Currently, the following fourteen States have entered into cooperative agreements with OSM to administer most surface coal mining requirements on Federal lands: Alabama, Colorado, Illinois, Indiana, Kentucky, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West Virginia, and Wyoming.

d. Tribal Regulatory Development Program Grants

As allowed by the Energy Policy Act of 1992 and Section 710(i) of SMCRA, OSM has provided grants to the Crow, Hopi, Navajo and Northern Cheyenne tribes to assist them in developing regulations and programs for regulating surface coal mining and reclamation operations on Indian lands. The grant amounts are based on each Tribe's anticipated workload to develop Tribal regulations and SMCRA program policies, to assist OSM with surface coal mine inspections and enforcement (including permitting activities, mine plan review and bond release) and to sponsor employment training and education in the area of mining and mineral resources. These grants fund 100 percent of the Tribal primacy development activities.

Office of Surface Mining Reclamation and Enforcement

Table 7 - Fiscal Year 2002 State & Tribal Regulatory Funding Estimates (Federal dollars only)

The figures below are based on the adjusted FY 2001 grant allocations. These amounts represent 50% of the costs to regulate surface coal mining on non-federal lands (the Federal share) and 100% of the costs on Federal lands. Actual grant awards will be based on historical expenditures, justifications by the States, and OSM evaluations.

| State/Tribe | Non-Federal Lands | Federal Lands | Total |
|---------------|-------------------|---------------|--------------|
| Alabama | \$973,942 | \$13,895 | \$987,837 |
| Alaska | \$178,665 | -0- | \$178,665 |
| Arkansas | \$146,588 | -0- | \$146,588 |
| Colorado | \$479,664 | \$1,366,788 | \$1,846,452 |
| Illinois | \$2,401,530 | \$100,631 | \$2,502,161 |
| Indiana | \$2,021,317 | -0- (TBA) | \$2,021,317 |
| Iowa | \$150,336 | -0- | \$150,336 |
| Kansas | \$137,040 | -0- | \$137,040 |
| Kentucky | \$12,429,716 | \$395,863 | \$12,825,579 |
| Louisiana | \$189,484 | -0- | \$189,484 |
| Maryland | \$486,693 | -0- | \$486,693 |
| Mississippi | \$115,965 | -0- | \$115,965 |
| Missouri | \$445,378 | -0- | \$445,378 |
| Montana | \$225,027 | \$736,680 | \$961,707 |
| New Mexico | \$270,171 | \$386,381 | \$656,552 |
| North Dakota | \$218,263 | \$280,624 | \$498,887 |
| Ohio | \$1,600,123 | -0- (TBA) | \$1,600,123 |
| Oklahoma | \$697,321 | \$390,615 | \$1,087,936 |
| Pennsylvania | \$11,753,521 | -0- | \$11,753,521 |
| Texas | \$1,497,816 | -0- | \$1,497,816 |
| Utah | \$233,741 | \$1,330,526 | \$1,564,267 |
| Virginia | \$3,357,609 | \$3,917 | \$3,361,526 |
| W. Virginia | \$7,897,051 | -0- | \$7,897,151 |
| Wyoming | \$206,191 | \$1,746,620 | \$1,952,811 |
| Crow Tribe | -0- | \$81,989 | \$81,989 |
| Hopi Tribe | -0- | \$167,460 | \$167,460 |
| Navajo Nation | -0- | \$433,263 | \$433,263 |
| N. Cheyenne | -0- | \$26,496 | \$26,496 |
| Totals | \$48,113,152 | \$7,461,748 | \$55,574,900 |

2. State Program Evaluation

a. Oversight Strategy

OSM's current oversight strategy focuses on whether the public protection requirements and environmental protection standards of SMCRA are being met with primary focus on end results and the on-the-ground success of States in meeting SMCRA's environmental protection goals. These include prompt and effective reclamation of coal mine land and public participation in the regulatory program.

OSM and the States have experienced a more positive attitude and spirit of cooperation with the current strategy. In FY 2000, OSM used information obtained from outreach to make minor changes to its oversight policies. The revised policies, which were implemented in FY 2000 and continue through FY 2001, clarify OSM's responsibilities and objectives in conducting oversight.

b. OSM-State Performance Agreements

OSM's oversight directive outlines the performance agreement as a framework for OSM and the State to agree on a plan to conduct oversight activities. Joint efforts to prepare workable performance agreements also maintain and improve the relationship between OSM and the State fostering shared responsibilities and a more open discussion of difficult issues.

Inspections are identified in performance agreements and are planned and conducted to collect data relative to the oversight directive and the annual evaluation report. Many reviews are designed to investigate some previously-identified areas of concern. Inspections often are the means to collect the data. Joint inspections provide the opportunity for OSM's field offices to work cooperatively with the States and industry to resolve problems.

c. Public Participation

OSM's oversight directive provides great flexibility to conduct oversight activities in a manner consistent with the needs of individual State programs. Central to identifying potential needs and oversight topics are the views of the public. Periodic meetings are held by our Field Offices to identify public concerns regarding coal mining regulatory programs.

d. Oversight Inspections

SMCRA requires the Secretary to conduct mine inspections to evaluate the administration of State programs. Inspections are conducted on a range of sites from those actively producing coal to forfeited

bond sites awaiting reclamation. OSM's policy is to allow its regional and field managers discretion and flexibility to stratify and selectively target their inspections to focus on those topics and activities that present the best opportunity for environmental improvement or the best means of evaluating the impact of program implementation on society and the environment. For example, inspections may focus on high-priority problems such as acid mine drainage, impoundments and other problem areas, as well as current coal mining operations and abandoned mine sites awaiting reclamation. This policy provides the most effective use of available resources.

Consistent with the intent of SMCRA that States take the lead in regulatory programs, the vast majority of inspections were performed by the States: about 95,000 in 2000. In contrast, OSM conducted just over 2,100 inspections in primacy States.

The projected FY 2002 oversight inspection workload includes an estimated 2,500 program evaluation inspections. The actual number will be adjusted depending on the program areas, the presence or absence of problems, input from the public, and the terms of the performance agreements in each State.

e. Ten Day Notices

The primary emphasis of inspections is to identify and resolve problems and to evaluate whether SMCRA's environmental protection and reclamation goals are being achieved. When an inspection reveals violations of State programs (other than imminent danger of significant environmental harm or danger to the public which requires immediate issuance of a cessation order), a Ten-Day Notice (TDN) is issued to the State. All such notices require written responses from the State regarding the actions taken to resolve the alleged violations or a statement of good cause for not taking such action. A Federal inspection, which may include a field inspection, is conducted following a TDN where the State does not act or show good cause for not doing so. If the inspection shows that a violation exists, and the State fails to take appropriate action, a Federal enforcement action may be taken. While OSM does not second-guess States on judgment calls, the agency's ability to take enforcement actions to address isolated State program violations is far less drastic, disruptive, and costly than a Federal takeover.

The inspection component also includes the process for addressing citizen requests for Federal inspection. Citizen requests received by OSM in primacy States are referred directly to the state regulatory authority using the TDN process, unless there is evidence that imminent danger of significant environmental harm or immediate danger to the public exists. In such cases, OSM will immediately conduct a Federal inspection. The State official and citizen requestor will be notified prior to the inspection and given the opportunity to accompany the inspector when a Federal inspection is conducted.

In FY 2000, OSM issued 171 TDNs to States. In almost every case, the State took appropriate action to cause the violation to be corrected.

Table 8 provides FY 2000 data on the number of State and OSM oversight inspections conducted in Primacy States.

| Table 8 - FY 2000 Primacy State and OSM Inspections | | | | |
|--|----------------|-----------------|--------------|--------------|
| | <i>STATE</i> | | | <i>OSM</i> |
| | PARTIAL | COMPLETE | TOTAL | TOTAL |
| Alabama | 352 | 3,174 | 3,526 | 109 |
| Alaska | 45 | 21 | 66 | 3 |
| Arkansas | 118 | 66 | 184 | 9 |
| Colorado | 408 | 217 | 625 | 23 |
| Illinois | 3,218 | 1,147 | 4,365 | 94 |
| Indiana | 2,115 | 1,008 | 3,123 | 106 |
| Iowa | 224 | 112 | 336 | 28 |
| Kansas | 106 | 55 | 161 | 20 |
| Kentucky | 15,818 | 10,118 | 25,936 | 470 |
| Louisiana | 16 | 8 | 24 | 2 |
| Maryland | 523 | 316 | 839 | 24 |
| Mississippi | 4 | 8 | 12 | 3 |
| Missouri | 223 | 120 | 343 | 38 |
| Montana | 91 | 79 | 170 | 15 |
| New Mexico | 120 | 60 | 180 | 0 |
| North Dakota | 574 | 158 | 732 | 11 |
| Ohio | 2,315 | 1,702 | 4,017 | 196 |
| Oklahoma | 566 | 363 | 929 | 19 |
| Pennsylvania | 12,178 | 8,172 | 20,350 | 473 |
| Texas | 210 | 128 | 338 | 17 |
| Utah | 200 | 115 | 315 | 6 |
| Virginia | 3,841 | 3,237 | 7,078 | 211 |
| West Virginia | 11,503 | 9,211 | 20,714 | 217 |
| Wyoming | 371 | 157 | 528 | 14 |
| Total | 55,139 | 39,752 | 94,891 | 2,108 |

3. Federal Programs

This program activity regulates coal mining activities in non-primacy States (those with a Federally-administered regulatory program). Within this program activity, OSM implements a full regulatory program. Significant components of this program activity include review of a considerable number of permit applications (including preparation of any necessary NEPA compliance documents), determining performance bond amounts, inspection and enforcement (including civil penalty assessment and collection), release of performance bonds, reclamation of bond forfeiture sites and processing petitions to designate lands as unsuitable for mining.

The permit review process in federally-administered programs consists of review of the permit application package for administrative completeness, technical review, preparation of findings and supporting documentation, and environmental analysis. Review times varies depending on the complexity of a permit application, the size of the mine, and the response times from applicants in submitting additional information required to process the permit application.

Tennessee is the largest Federal program in terms of the number of permits. Other Federal programs with current or projected regulatory activity include Arizona, Georgia, and Washington, with the bulk of that activity in Washington. Programs also are in place for California, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, and South Dakota. The following bullets highlight key characteristics of two of the largest Federal programs, Tennessee and Washington:

C Tennessee: In Tennessee there are 144 active minesites, 27 inactive sites, and 179 abandoned sites.

OSM has discussed the possible return of primacy to Tennessee with State officials on numerous occasions over the years. The primary barrier is cost. Given the relatively low level of coal production, Tennessee believes that operation of an effective regulatory program would be too expensive. The Tennessee coal industry determined that a tax of \$0.30 per ton of coal mined (assuming an annual production of 3.5 million tons) would be necessary to generate the revenues needed to provide the matching funds required for Federal regulatory program grants to primacy States.

C Washington: The Centralia Mine in Washington produces about five million tons of coal annually and will affect some 8,100 acres of land within a 14,200-acre permit area during the 41-year life of the mine.

Table 9 provides inspection and enforcement data for Federal program States during 2000.

| Table 9 - FY 2000 Federal Program States Inspection / Violation Data | | | | | | | |
|---|--------------------|----------------|--------------|----------------|-------------------|-----------------|-------------------|
| STATE | INSPECTIONS | | | NOV's | | FTA CO's | |
| | COMPLETE | PARTIAL | TOTAL | ACTIONS | VIOLATIONS | ACTIONS | VIOLATIONS |
| Georgia | 6 | 1 | 7 | 0 | 0 | 0 | 0 |
| Tennessee | 999 | 1,030 | 2,029 | 38 | 39 | 0 | 0 |
| Washington | 8 | 17 | 25 | 1 | 1 | 0 | 0 |
| TOTALS | 1,013 | 1,047 | 2,054 | 39 | 40 | 0 | 0 |

4. Federal Lands Program

This program activity includes direct OSM regulatory activities on Federal lands in States without cooperative agreements, implementation of cooperative agreements with primacy States to regulate coal mining on Federal lands within their borders, preparation of Mining Plan Decision Documents under the Mineral Leasing Act and processing valid existing rights claims that involve certain Federal Lands. As part of this program activity, OSM consults and coordinates with State Historic Preservation Offices, the U.S. Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), U.S. Forest Service (USFS) and National Park Service (NPS). The processing of Mining Plan Decision Documents constitutes the largest part of the workload under this program activity.

Table 10 provides Projected Mining Plan Decision Document workload data.

| Table 10 - Projected Mining Plan Decision Document Workload on Leased Federal Coal, by Fiscal Year | | |
|---|----------------|----------------|
| Mining Plans and Modifications | | |
| Activity | FY 2001 | FY 2002 |
| In progress prior FY | 5 | 6 |
| Anticipated current FY | 13 | 12 |
| Total FY Workload | 18 | 18 |
| Completed in FY | 12 | 11 |
| Balance, end of FY | 6 | 7 |

This program activity also provides support to BLM and USFS in leasing activities that involve Federal coal resources. OSM participation in NEPA compliance analyses prepared at the leasing stage ensures the consideration of OSM permitting or mine plan approval concerns. This cooperative effort saves mining companies valuable time in the leasing and mine plan approval process; it also may result in improved resource recovery. In addition, satisfactory evaluation of the environmental impacts of coal mining in the proposed lease area at the time of leasing can reduce the likelihood of a need for a subsequent Environmental Assessment (EA) or Environmental Impact Statement (EIS) for mining plan approval under SMCRA.

5. Indian Lands Program

OSM is responsible for coal mining and reclamation activities on Indian lands. The Indian lands program includes permit application review, determination of performance bond amounts, inspection and enforcement, bond release, and maintaining a staff to coordinate with the individual Tribes and other Federal agencies, as necessary.

The Crow, Hopi, Ute Mountain Ute Tribes and Navajo Nation have coal mining activities on their lands. The Black Mesa/Kayenta mining complex involves Navajo coal beneath Navajo surface, and coal jointly owned by the Navajo Nation and the Hopi Tribe, most of which is beneath Navajo surface. There is one

Office of Surface Mining Reclamation and Enforcement

mine in Montana, mining coal owned by the Crow Tribe, and one in Colorado with two permits on lands owned by the Ute Mountain Ute Tribe. Both the Crow and Northern Cheyenne Tribes are evaluating coal properties for future development. The Indian lands mines are among the Nation's largest in the country, with a total of about 100,000 acres under permit.

OSM coordinates closely with Indian Tribes. The Federal trust responsibility is a legal obligation under which the United States has charged itself with moral obligations of the highest responsibility and trust toward Indian Tribes. OSM ensures that the lands and trust resources of Federally-recognized Tribes and their members are identified, conserved and protected. In fulfilling these responsibilities, OSM operates within a government-to-government relationship with Indian Tribes. To aid in meeting trust responsibilities, OSM, BIA, BLM and MMS sponsor a continuing Indian Trust and Obligation training program.

| Table 11 - FY 2000 Indian Lands Inspection Data | | | | | |
|--|-------------|---------|-------|---------|------------|
| TRIBE | INSPECTIONS | | | NOV's | |
| | COMPLETE | PARTIAL | TOTAL | ACTIONS | VIOLATIONS |
| Crow Tribe | 4 | 8 | 12 | 0 | 0 |
| Hopi Tribe | 3 | 0 | 3 | 0 | 0 |
| Navajo Nation | 60 | 70 | 130 | 7 | 8 |
| Ute Tribe | 8 | 7 | 15 | 1 | 1 |
| TOTALS | 75 | 85 | 160 | 8 | 9 |

**Table 12 - Projected Permit and Permit Revision Workload
where OSM is the Regulatory Authority, by Fiscal Year**

| Activity | Federal Programs (Non-Primacy States) | | Indian Lands | |
|-------------------------|--|---------|--------------|---------|
| | FY 2001 | FY 2002 | FY 2001 | FY 2002 |
| In progress previous FY | 46 | 32 | 73 | 68 |
| Anticipated current FY | 83 | 98 | 75 | 75 |
| Total FY workload | 129 | 130 | 148 | 143 |
| Completed in FY | 97 | 99 | 80 | 75 |
| Balance, end of FY | 32 | 31 | 68 | 68 |

6. Program Development and Maintenance

Work elements under this program activity are primarily policy actions, such as rulemaking, grants management and special studies.

a. *Rulemaking*

OSM issues rules and associated information collection clearance packages required by the Office of Management and Budget. Functions under this program activity include: coordinating clearance and publication of rules and preparing environmental assessments, environmental impact statements, records of compliance, and economic analyses for all rules prepared by OSM. OSM also maintains the administrative record for rules and coordinates with the Office of the Federal Register.

Rulemaking Associated with State Programs: OSM assists States to develop, administer, implement and maintain their approved regulatory programs. Decisions affecting State programs

Office of Surface Mining Reclamation and Enforcement

are Federal rulemaking actions. OSM evaluates State-initiated changes (statutory, regulatory, or changes in the program’s provisions, scope, or objectives), as well as OSM modifications, that are a result of legal interpretations or required changes to SMCRA and Federal Regulations. In its evaluation, OSM solicits public comments through proposed rules published in the *Federal Register*, holds public meetings, maintains the administrative record, approves or disapproves proposed State program amendments, and publishes the decisions as final rules in the *Federal Register*. During FY 2000, OSM published 27 proposed rules and 39 final rules.

States are required to amend their programs as a result of changes to SMCRA and Federal regulations. Under the authority of section 521(b) of SMCRA, OSM recommends withdrawal, in whole or in part, of an approved State program if it finds a State is failing to enforce the approved program after conducting hearings, establishing remedial actions, monitoring compliance, evaluating performance, and implementing the rulemakings associated with such withdrawal. OSM also responds to requests under section 521(b) to evaluate a State program.

This activity represents a significant workload for OSM staff. During FY 2000, the State Amendment activity was less formally identified as follows:

| Table 13 - State Amendment Activity FY 99- FY 00 | | | | |
|---|---------------------------|-------------------------|--------------------------|------------------------------|
| Number of Amendments | | | | |
| Amendment Type | Pending Oct.1,1999 | Received FY 2000 | Completed FY 2000 | Pending Sep. 30, 2000 |
| Informal | 9 | 11 | 11 | 9 |
| Formal | 30 | 29 | 33 | 26 |
| Total | 39 | 40 | 44 | 35 |

OSM Rulemaking Initiatives: Before development of a formal proposed rule, OSM involves interested parties. Stakeholder participation results in improved regulatory proposals. Key rulemaking initiatives for which we anticipate activity in FY 2002 are described below.

- C *Mountaintop Mining/Valley Fills:* As part of a settlement agreement arising from litigation in West Virginia, OSM is participating in the preparation of an environmental impact statement (EIS) to assess the impacts of various regulatory alternatives concerning mountaintop mining and the associated placement of excess spoil in valley fills and streams. Should OSM decide to pursue rulemaking on this topic, that activity would begin

after completion of the EIS.

- C *Subsidence:* On April 27, 1999, the U.S. Court of Appeals for the Federal Circuit remanded certain provisions of OSM's regulations concerning subsidence control plans and the requirement to repair or compensate for subsidence-related material damage to certain structures. After suspending those provisions on December 22, 1999, OSM anticipates rulemaking during FY 2002 to address this topic and other issues relating to subsidence from underground mining. That rulemaking effort would extend into FY 2003.

- C *Contemporaneous Reclamation:* We anticipate initiating rulemaking in FY 2002 to clarify the statutory requirement that coal mine operators conduct mining and reclamation activities in a contemporaneous manner.

- C *Remining:* During FY 2001 and FY 2002, OSM will continue to explore rulemaking options to facilitate the removal and reclamation of abandoned coal mine refuse piles, as directed by the Energy Policy Act of 1992.

- C *Other Regulatory Initiatives:* OSM will continue to work with States, other Federal agencies, and public stakeholders to identify areas requiring regulatory changes. There are several areas of possible rulemaking in FY 2001 and FY 2002. For instance, in the area of (1) financial liability for long-term pollution discharges (e.g., acid mine drainage); (2) emergency action plan in response to the National Dam Safety Act passed in 1996 and an internal review of the Department of the Interior's Dam Safety Program.

b. Grants Management

OSM periodically holds meetings/workshops with the State/Tribal grantees to provide training for grantees and to keep them abreast of policies and procedures. In addition, Grantees provide input to the Grants Management Program by participating on *ad hoc* teams and by reviewing and commenting on proposed changes in the program. This cooperative working relationship contributes to streamlined application and awards processes, faster obligation of Federal funds, innovative program monitoring and less paperwork-intensive reporting and close-out of grants.

c. Special Projects

Special projects include interpretation of SMCRA, reports to Congress, legislative analyses, and assistance in responses to litigation. OSM conducts studies and analyses in response to Departmental initiatives and coordinates with other Bureaus and Federal agencies, including the Fish and Wildlife Service (Endangered Species Act), Advisory Council on Historic Preservation (National Historic

Preservation Act), and EPA (Clean Water Act), whose activities affect the surface coal mining regulatory program.

e. *Tribal Primacy Initiative*

In FY 2001, OSM will continue to work with Tribes to enhance their ability to assume primacy under SMCRA. OSM will work closely with the Tribes to:

1. Ensure that the proposed legislation meets their needs.
2. Develop a legislative package that would allow Tribes to enhance their ability to assume primacy under SMCRA.
3. Develop Tribal regulations and expertise.
4. Promote Tribal assistance in current regulation of Indian lands mines.

Justification of Program Changes:

| Environmental Protection | FY 2002 Budget Request | Program Changes (+/-) |
|--------------------------|------------------------|-----------------------|
| \$(000) | 76,741 | -174 |
| FTE | 225 | 0 |

Program Changes:

Program efficiency savings will result in a \$174,000 reduction as a result of less inspection activity required in the State of Oklahoma.

