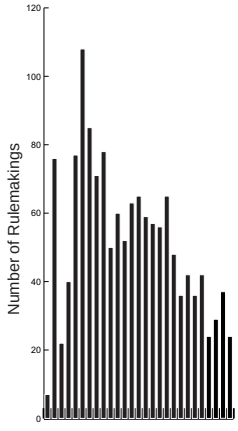
Regulation of active

The shared federal-state-Indian active surface and underground coal mining and reclamation program

Under the Surface Mining Law (www.osmre.gov/smcra.htm), the Office of Surface Mining is responsible for publishing the regulations (www.osmre.gov/regindex.htm) necessary to carry out the Law. The permanent regulatory program and approved state programs provide the fundamental mechanism for ensuring that the goals of the Surface Mining Law are achieved. A major objective is to maintain a stable regulatory program by improving the regulation development process and by obtaining a broad spectrum of viewpoints on rulemaking activities.

Rulemaking and State Program Amendments



Final Rulemaking Actions 1978 - 2004

The 2004 rulemaking 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 final permanent program rules in the *Federal Register,* Enhancing Abandoned Mine Land Reclamation (RIN 1029-AC07) and Coal Production Fee Allocations (RIN 1029-AC46), (see Table 7).

Photo to left: Many active mining operations have reclaimed abandoned mine hazards as part of their on-going coal extraction. Before reclamation, this 50-acre site, adjacent to an active Indiana surface mine, consisted of a large abandoned coal waste pile and a slurry pond. The site was the principal source of acid mine drainage that was polluting the local watershed. The site was graded and covered with approximately two feet of shale and unconsolidated subsoil materials, then revegetated to pasture and hay fields. Costs to complete this reclamation project were shared by the mining company and the landowner, saving the public over $200,000 in abandoned mine land reclamation funds. Since 1977 approximately 1,000 dangerous impoundments have been reclaimed.

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 any 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. In 2004, the Office of Surface Mining published 26 proposed and 24 final state program amendments in the *Federal Register.*

Significant Court Decisions

During 2004, there were four significant court decisions that influenced the implementation of the Surface Mining Law. The cases involved issues on valley fills, subsidence, abandoned mine land fees and takings (see Table 8).

Table 7: Final Rules Published

Enhancing Abandoned Mine Land Reclamation
30 CFR Part 707 — 11/20/03

This final rule was published in response to a decision by the United States Court of Appeals, District of Columbia Circuit, requiring further explanation as to the types of government expenses that will qualify as government financed construction under the Abandoned Mine Land Program.

Coal Production Fee Allocations
30 CFR Parts 870 and 872 — 9/17/04

This interim-final rule sets forth the criteria and methodology that will be used to establish fee rates for coal used, sold, or transferred after September 30, 2004, the date that the original rates established by the Surface Mining Law expire. Under the Law, fee rates for coal used, sold, or transferred after September 30, 2004, must be established at a rate that will continue to provide for transfers from the Abandoned Mine Reclamation Fund to the United Mine Workers of America Combined Benefit Fund to defray health care costs for certain beneficiaries for which no company is directly responsible.

coal mines

Table 8: Significant Court decisions

Ohio Valley Environmental Coalition, et al. v. Bulen, No. 3:03-2281 (S.D. W. Va.)
On July 8, 2004, a Federal district court ruled that Nationwide Permit 21 issued by the U.S. Army Corps of Engineers violates section 404(e) of the Clean Water Act. The court enjoined the Corps from issuing valley fill authorizations, often associated with the practice of mountaintop removal mining, pursuant to Nationwide Permit 21 in the Southern District of West Virginia and, with respect to the eleven specific mining sites challenged by the plaintiffs, ordered the Corps to suspend authorizations for valley fills and surface impoundments on which construction had not commenced as of the date of the decision. Although the Office of Surface Mining was not a party to this litigation, it is keenly interested in the ultimate outcome of the case because it relates to the permitting of valley fills associated with surface coal mining operations.

Citizens Coal Council v. Norton**,** No. 02-5136 (D.C. Cir.)
On February 23, 2004, the U.S. Supreme Court declined to review a June 3, 2003, decision of a Federal appeals court, which upheld the Secretary's rule interpreting subsidence from underground mining not to fall within the scope of the term "surface coal mining operations" as defined in section 701(28) of the Surface Mining Law. The rule provides that subsidence is not prohibited on lands protected by section 522(e) of Surface Mining Law. The appeals court decision concluded that Congress did not speak unambiguously on the issue in the Law, and, because the court found the Secretary's interpretation reasonable, the court deferred to the Secretary.

Consolidation Coal Co. v. United States; ***Rapoca Energy Co. v. United States*****,** No. 03-5019 (Fed. Cir.)
At issue in these two cases and four other pending cases is whether the Abandoned Mine Land fee collected pursuant to section 402 of the Surface Mining Law, 30 U.S.C. section 1232, and 30 C.F.R. section 870.12 violates either the Export Clause or the Fifth Amendment Takings Clause of the U.S. Constitution. On August 14, 2002, a Federal trial court held that it lacked jurisdiction to hear these cases. In a December 11, 2003, decision, however, a three-judge panel of a Federal appeals court reversed, concluding that the trial court did have jurisdiction to hear the case. The case was returned to the trial court, where the merits are being litigated.

Appolo Fuels, Inc. v. United States, No. 03-5088 (Fed. Cir.)
On August 30, 2004, a Federal appeals court affirmed a Federal trial court's decision in favor of the United States in this regulatory takings case. Plaintiff alleged permanent and temporary takings of its coal leases based on the Office of Surface Mining's designation of certain lands as unsuitable for surface coal mining, as well as OSM's alleged delay in deciding the petition that requested the designation. The designated area includes portions of a lake that provides the sole drinking water supply for the city of Middlesboro, Kentucky. In affirming the trial court's decision, the appellate court first held that there had not been a categorical taking because the designation did not deprive plaintiff of all economically viable use of its coal leases. Next, the court held that there had not been a partial taking because plaintiff lacked reasonable investment-backed expectations to mine in the designated area and because the Office of Surface Mining was exercising the police power to protect public health and safety. Finally, the court ruled that there was not a temporary taking because the Office of Surface Mining did not engage in "extraordinary delay" in deciding the lands unsuitable petition.

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 a relationship that includes common goals and principles.

On June 19, 2003, the Director of the Missouri Regulatory Authority notified the Office of Surface Mining that funding and staffing for the Missouri Program had been severely cut by the Missouri Legislature. The Legislature appropriated funds for bond forfeiture reclamation; but, failed to provide adequate funding for the inspection, enforcement, permitting, and bonding portions of the Missouri program. The Office of Surface Mining substituted federal enforcement on August 22, 2003, for those portions of the Missouri program that the Missouri Legislature did not fund for 2004.

On April 15, 2004, the Office of Surface Mining clarified that its August 22, 2003, substitution of direct federal enforcement included those portions of the Missouri program concerning training, examination, and certification of blasters; areas unsuitable for mining; and small operator assistance. The Office of Surface Mining also made findings on the status of the remedial actions that Missouri must complete in order to reassume full authority for the Missouri program. The Office of Surface Mining did not withdraw approval of Missouri's program based upon an indication by the state that it intends to resolve the funding and staffing deficiencies.

Signs are used by both the Office of Surface Mining and the states to identify abandoned mine land project sites and advise the public that the funds used for reclamation have been made available from fees paid by the coal industry.

On May 3, 2004, the Director of the Missouri Regulatory Authority notified the Office of Surface Mining that the Missouri Legislature did not fund the Missouri program for 2005. On May 6, 2004, Missouri submitted a financial and organizational plan for the state to reassume authority to implement its regulatory program in 2006. On May 25, 2004, the Office of Surface Mining notified the Missouri Regulatory Authority that, based on the proposed financial and organizational plan, the current federal substitution plan would continue for another year (July 1, 2004 – June 30, 2005).

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 these programs focused on the implementation of the many procedural and process requirements such as permitting, inspection, enforcement, and penalties, each with numerous mandated requirements prescribed to achieve the environmental protection performance standards and the purposes of the Surface Mining Law.

The Office of Surface Mining now employs a results-oriented oversight strategy that was devised in consultation with the states and emphasizes cooperative problem-solving, tailors evaluations to state-specific conditions, and develops performance agreements between each state and its Office of Surface Mining field office.

The Harrison County Road 51 project near Cadiz, Ohio, contained six separate abandoned mine land sites. Piles of highly acidic and erosive mine spoils were clogging streams and causing acid mine drainage. Existing impoundments were treated to raise the pH of the water from 2.4 to 7.5 before discharge. Following reclamation, offsite sedimentation and acid mine drainage has been eliminated, and the entire area has been revegetated. Today, the area has been returned to a natural wildlife habitat. On September 30, 2004, there were over 130 miles of clogged streams that needed reclamation in Ohio.

Table 9: Federal Oversight of State Programs

State	Site Visits	*Violations Cited by the Office of Surface Mining*[1] Notice of Violations	Failure-To-Abate Cessation Orders	Imminent Harm Cessation Orders
Alabama	84[4]	0	0	0
Alaska	4	0	0	0
Arkansas	7	0	0	0
Colorado	16	0	0	0
Illinois	105	2	1	0
Indiana	75	0	0	0
Iowa	0	0	0	0
Kansas	4	0	0	0
Kentucky	301	0	0	0
Louisiana	2	0	0	0
Maryland	25	0	0	0
Mississippi	3	0	0	0
Missouri	63[2]	0	0	0
Montana	4	0	0	0
New Mexico	4	0	0	0
North Dakota	9	0	0	0
Ohio	105[4]	0	0	0
Oklahoma	34	0	0	0
Pennsylvania	461	1	2	0
Texas	15	0	0	0
Utah	10	0	0	2
Virginia	132	1	0	0
West Virginia	186	4	1	0
Wyoming	20	0	0	0
Total	**1,669[5]**	**8[3]**	**4[3]**	**2**

1. Excludes any Notice of Violations or Cessation Orders that have been vacated.
2. Includes only Office of Surface Mining oversight inspections, see Table 10 for regulatory inspections.
3. Of the 8 Notice of Violations, 6 were for Abandoned Mine Land Fee related problems (Illinois 2, Pennsylvania 1, Virginia 1, and West Virginia 2) and of the 4 Cessation Orders, 4 were for Abandoned Mine Land Fee related problems (Illinois 1, Pennsylvania 2, and West Virginia 1)
4. Includes Notice of Intent inspections (Alabama 7, Ohio 1).
5. Includes 16 inspections related to Abandoned Mine Land Fee collection (Alabama 1, Illinois 3, Pennsylvania 3, Virginia 3, and West Virginia 6).

Specifically, to further reporting of end results and on-the-ground success, the Office of Surface Mining now evaluates and reports state-specific and national findings for offsite impacts and reclamation success. The purpose of measuring offsite impacts is to gauge how the Surface Mining Law is protecting citizens, public and private property, and the environment outside areas authorized for mining and reclamation activities. This measurement is intended to identify the number and severity of offsite impacts, determine causes of the impacts, and identify where improvements may be made to lessen the number and

Table 10: Regulatory Program Statistics

State/Indian Lands	Regulatory Staffing[1]	AML Staffing[1]	New Permits[2]	New Acreage Permitted[2]	Total Acreage Permitted[2]	Inspectable Units[1]	Complete Inspections[2]	Partial Inspections[2]	Notice of Violations[2]	Failure-To-Abate Cessation Orders[2]	Imminent Harm Cessation Orders[2]	Bond Forfeitures[2]	Acreage of Phase I Bond Release[2]	Acreage of Phase II Bond Release[2]	Acreage of Phase III Bond Release[2]
Alabama	26.00	17.05	10	2,569	85,328	225	2,480	282	157	0	0	8	1,610	1,251	3,285
Alaska	3.48	5.60	0	0	9,099	11	30	59	2	2	0	0	69	69	0
Arkansas	3.95	6.75	1	19	502	13	53	103	3	0	0	0	0	0	0
Colorado	24.00	13.80	0	0	162,900	51	195	319	10	2	0	0	980	10	1,868
Crow[5]	1.00	3.70	0	62	5,496	1	2	8	0	0	0	0	2,151	1,280	0
Georgia[5]	0.00	0.00	0	0	0	6	3	1	0	0	0	0	0	0	0
Hopi[5]	3.00	5.40	0	0	6,137	2	8	4	0	0	0	0	0	0	0
Illinois	35.90	29.00	8	2,196	57,713	88	395	831	34	5	0	1	1,546	3,860	3,922
Indiana	49.00	22.00	6	959	267,600	121	673	1,343	40	3	0	0	5,275	4,710	5,775
Iowa	3.15	4.45	0	0	3,334	20	19	31	0	0	0	17	0	0	0
Kansas	3.25	10.75	1	260	4,478	12	48	89	0	0	0	0	0	0	0
Kentucky	315.00	83.00	86	32,815	1,705,900	1,992	7,858	14,680	721	183	32	10	10,952	3,736	11,122
Louisiana	2.65	0.60	0	0	41,215	2	8	16	0	0	0	0	0	0	989
Maryland	11.38	4.80	3	190	6,103	60	350	576	14	2	1	0	26	58	59
Mississippi	2.25	0.00	0	0	5,809	1	4	9	0	0	0	0	0	0	0
Missouri	2.40	7.10	1	344	18,610	47	107[3]	277[3]	0	0	0	0	748	391	569
Montana	16.70	8.85	0	0	62,687	15	94	106	8	0	0	0	2,571	991	18
Navajo[5]	5.00	24.70	0	0	95,822	24	60	50	9	0	0	0	0	0	0
New Mexico	12.50	8.05	0	0	79,325	11	50	125	2	0	0	0	54	500	793
North Dakota	8.70	4.88	1	17,051	93,218	35	148	548	1	0	0	0	1,062	1,228	2,400
Ohio	21.00	41.30	60	12,233	102,074	356	1,385	2,218	191	3	7	5	2,278	2,519	5,121
Oklahoma	20.80	14.00	0	32	28,069	81	312	394	12	0	0	0	2,557	4,808	2,909
Pennsylvania	253.00	117.00	71	14,621	383,398	1,948	7,531	10,996	713	70	0	4	5,874	6,537	4,371
Tennessee[5]	41.00	4.00	12	1,956	29,175	347	917[4]	932[4]	36	0	1	0	2,885	248	1,067
Texas	34.00	8.00	1	7,887	270,600	31	120	242	13	0	0	0	878	778	37
Utah	32.50	10.00	1	89	2,690	28	115	192	22	4	0	0	33	0	14
Ute Mountain Ute[5]	0.00	0.00	0	0	175	3	3	8	0	0	0	0	0	0	0
Virginia	79.00	16.00	13	5,022	76,978	550	2,679	3,280	410	4	11	0	286	863	1,694
Washington[5]	NA	0.00	0	0	14,930	2	9	17	3	0	0	0	0	5	5
West Virginia	290.00	54.60	67	18,500	317,521	2,414	6,830	12,462	1,218	117	26	19	4,049	3,763	4,066
Wyoming	28.89	13.80	0	0	345,570	35	142	251	7	0	0	0	6,550	0	0
Total	**1,329.50**	**539.18**	**342**	**116,805**	**4,282,456**	**8,532**	**32,628**	**50,449**	**3,626**	**395**	**78**	**64**	**52,434**	**37,606**	**50,084**

1. As of September 30, 2004.
2. State program statistics for the one year period, July 1, 2003 - June 30, 2004, except where noted (federal statistics for Crow, Georgia, Hopi, Navajo, Tennessee, and Washington, see footnote 5). Statistics for the fourth quarter (July 1, 2003 - September 30, 2003) are included in both the 2003 and 2004 Annual Report state program information.
3. As a result of the substitution of federal enforcement in Missouri on August 22, 2003, 87 of the 107 complete inspections and 180 of the 277 partial inspections were conducted by the Office of Surface Mining during the period October 1, 2003 - September 30, 2004, and the remainder (20 complete and 97 partial inspections) conducted by the state of Missouri Regulatory Authority during the period July 1, 2003 - June 30, 2004.
4. Includes 92 complete and 26 partial inspections of exploration and Notice of Intent sites.
5. Federal statistics for the one year period, October 1, 2003 - September 30, 2004.
NA. Statistics not available.

degree of these impacts. Success is expressed as a percent of inspectable units[11] that achieve the goal of having no offsite impacts and as the number of acres that meet the bond release requirements for the various phases of reclamation. During 2004, 93 percent[12] of the inspectable units were free of offsite impacts (compared to 92.3 percent in 2003) and does meet the goal of 93 percent of the sites free from offsite impacts.

Since 1996, the Office of Surface Mining has completed four reviews of the implementation of the oversight policy. Although there are a few exceptions, the reviews showed that the cooperative approach provides for better problem resolution with states. Also, this oversight strategy has resulted in improvements to state program implementation and in the resolution of some long-standing issues. (See www.osmre.gov/report04.htm for copies of 2004 Annual State Oversight Reports.)

Table 9 provides a summary of the Office of Surface Mining's oversight inspection and enforcement activities during 2004. Detailed monthly reports are available monthly at www.osmre.gov/ieindex.htm.

Federal Programs

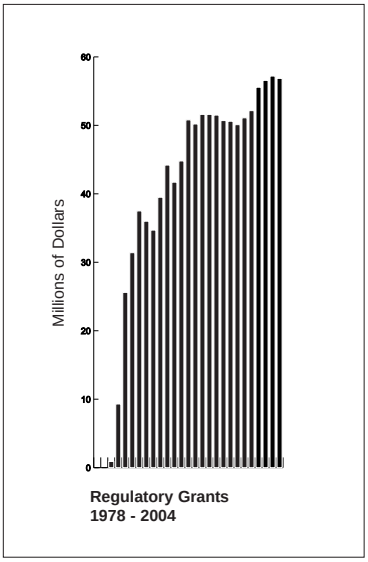
Section 504(a) of the Surface Mining Law requires the Office of Surface Mining to regulate surface coal mining and reclamation activities on non-federal and non-Indian lands in any state if:

- 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 regulatory 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 coal mining and reclamation operations, some states with coal reserves have elected not to submit or maintain regulatory programs. Those states are called federal program states, and their coal mining and reclamation operations are regulated by the Office of Surface Mining. 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 2004. Table 10 includes the regulatory activities in those two states during 2004.

Grants to States and 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 primacy state elects to administer an approved program on federal land 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 11 shows grant amounts provided to states during 2004 to administer and enforce regulatory programs. During 2004, the Office of Surface Mining awarded 100 percent of the regulatory grants to the states within 60 days of receiving the grant application.

Regulation of 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 promulgated the current Federal Lands Program on February 16, 1983. The federal

11. An inspectable unit is a coal mining or exploration operation where an inspection obligation exists under the Surface Mining Law. One unit may consist of an individual permit; a consolidation of several permits issued to the same permittee, which for all practical purposes, constitutes the same mining operation; or in the case of large mines, smaller, logical units of a single permit that are more amenable to inspections.
12. Estimated statistics. States provided data for the period July 1, 2003 - June 30, 2004, to accommodate the 2004 accelerated reporting requirements. Estimates were made for the fiscal year time frame. Statistics for Tennessee and Washington are for the October 1, 2003 - September 30, 2004 period and were not estimated.

Table 11: Regulatory Grant Obligations

State/Tribe	2004 Federal Funding	2003 Federal Funding	Cumulative Through 2004 Federal Funding[1]
Alabama	$987,979	$1,050,377	$27,106,229
Alaska	188,518	184,220	$5,908,968
Arkansas	149,352	147,512	$3,708,041
Colorado	1,954,760	1,930,677	$31,510,443
Illinois	2,439,511	2,984,915	$57,383,071
Indiana	1,992,281	1,918,700	$34,770,090
Iowa	128,736	127,150	$2,822,210
Kansas	112,578	111,191	$3,015,400
Kentucky	12,313,367	13,158,691	$284,747,445
Louisiana	167,384	165,322	$3,765,466
Maryland	667,922	561,704	$12,452,905
Michigan	0	0	$135,458
Mississippi	113,729	112,328	$1,354,751
Missouri	84,633	84,633	$8,547,018
Montana	1,030,822	1,018,122	$18,385,222
New Mexico	737,526	728,439	$13,666,999
North Dakota	501,824	486,543	$12,013,016
Ohio	2,020,039	1,822,626	$60,867,461
Oklahoma	940,477	899,535	$19,468,131
Pennsylvania	10,665,756	10,534,351	$228,092,373
Rhode Island	0	0	$158,453
Tennessee	0	0	$5,340,085
Texas	1,350,638	1,495,192	$24,529,248
Utah	1,730,419	1,709,100	$30,861,671
Virginia	3,259,433	3,197,057	$71,570,907
Washington	0	0	$4,893
West Virginia	10,520,169	10,056,687	$135,546,379
Wyoming	2,120,036	2,038,607	$36,339,541
Crow Tribe	62,832	62,102	$1,153,901
Hopi Tribe	173,977	171,834	$1,885,320
Navajo Tribe	448,675	443,147	$4,702,211
N. Cheyenne Tribe	0	0	$86,888
Total	**$56,863,373**	**$57,200,762**	**$1,141,900,194**

1. Includes obligations for Applicant/Violator System, Technical Innovation and Professional Services, Kentucky Settlement, and other Title V cooperative agreements. Figures for 2004 do not include downward adjustments of prior-year awards. However, cumulative figures are net of all prior-year downward adjustments.

government owns significant amounts of land and coal reserves, primarily in the West. Of the 147 billion tons of recoverable 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 Secretary of the Interior may delegate most regulatory responsibilities for surface coal mining operations on federal lands to states with approved regulatory programs. Through 2004, the Secretary had entered into cooperative agreements with 14 states: Alabama, Colorado, Illinois, Indiana, Kentucky, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West Virginia, and Wyoming (see www.osmre.gov/coop.htm). 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 coal mining and reclamation activities on federal lands in that state. The Office of Surface Mining maintains an oversight function to ensure that the state regulatory authority fully exercises its delegated responsibility under the cooperative agreement. In states without cooperative agreements, the required permitting, inspection, and enforcement activities are carried out by the Office of Surface Mining. In 2004, the Office of Surface Mining did not issue any new permits on federal lands.

For states with leased federal coal, the Office of Surface Mining prepares the Mining Plan Decision Documents required by the Mineral Leasing Act for approval by the Secretary of the Interior. During 2004, two mining plan actions were prepared and approved for coal mines on federal land (North Dakota and Wyoming).

Pursuant to Section 701 of the Surface Mining Law, the Office of Surface Mining regulates coal mining and reclamation on Indian Lands. On September 30, 2004, there were 10 surface coal mining operations permitted on Indian reservations or Indian-owned lands as follows:

- Two active permanent program operations on the Navajo reservation (Mckinley and Navajo Mines);
- Two active operations on both the Navajo and Hopi reservations—one permanent and one initial program permit (Kayenta and Black Mesa Mines). An active preparation plant on the Navajo Reservation (Black Mesa Preparation Plant) has had a separate permit application submitted in accordance with the permanent Indian Lands Program, and is operating under administrative delay;

- Two Initial Program operations on the Navajo reservation that are being reclaimed (Amcoal and Burnham Mines). The Office of Surface Mining, in cooperation with the Bureau of Indian Affairs and the Navajo Nation, is overseeing the final reclamation at these sites;

- One active mine producing coal owned by the Crow tribe on the Crow Ceded Strip (Absaloka Mine);

- One portion of an underground mine on lands owned by the Ute Mountain Ute tribe (King Coal Mine);

- One permitted haul road on the Ute Mountain Ute reservation (La Plata Haul Road).

During 2003, one mine on the Navajo Reservation was granted final bond release under the Indian Lands Program, and the Office of Surface Mining terminated its jurisdiction in August 2003 (De-Na-Zin Mine).

The Office of Surface Mining awards 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

Located in the City of Boonville, Indiana, mining activity in the 1930s left this abandoned coal mine site unreclaimed. To eliminate the dangers to residents living in homes along the top of the highwall, the site was regraded and fill placed against the highwall to prevent continued erosion and sluffing. At the same time the stagnant pooled water next to the local hospital was eliminated. This removed the danger of children playing on the frozen water in the winter and the mosquito problems long associated with this abandoned mine site. In addition, a frequent flooding and runoff problem was eliminated by constructing a drainage system that included a small holding basin that catches storm water runoff and slowly releases the water over an 18-hour period. In hindsight this reclamation project was a showcase for community involvement. The hospital staff, local school board, City of Boonville officials, and the local residents all saw a common goal in getting these abandoned mine hazards eliminated and all participated in the planning and reclamation process. Today, with the abandoned mine hazards eliminated, the site has been turned into a useful and attractive resource for the community. On September 30, 2004, there were more than 7,000 feet of dangerous abandoned highwalls that needed reclamation in Indiana.

release); and education in the area of mining and mineral resources. Development grant funding for 2004 was $685,484. Table 10 includes statistics on regulatory activities on Indian lands during 2004.

Mountaintop Mining

As part of a 1998 settlement agreement in *Bragg v. Robertson, No. 98-0636 (S.D.W.Va.),* the Office of Surface Mining continued to work with the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the West Virginia Department of Environmental Protection to prepare an environmental impact statement on mountaintop mining and valley fills in the steep slope regions of Appalachia.

In May 2003, the agencies released the draft environmental impact statement to the public for review and comment. The comment period closed in January 2004, and agencies received more than 83 thousand comments. The agencies are analyzing comments to determine what subsequent steps are needed to complete the process.

As provided in the settlement agreement, the Office of Surface Mining continued to cooperate with the West Virginia Department of Environmental Protection in the review of permit applications proposing to construct large fills as part of the mining operation. During 2004, the agencies decided to limit reviews of permits that require an individual Clean Water Act permit by the U.S.

In the Anthracite coal region of eastern Pennsylvania, coal seam fires are common. This fire, located under a community, burned to the surface, emitting smoke and noxious fumes. At this location the smoke and fumes had killed all vegetation and emergency action to remove the burning coal was required. If left in place, the burning coal fire could have spread and started a forest fire and further endangered the nearby residents. On September 30, 2004, there were over 1,200 acres of underground mine fires that needed reclamation in Pennsylvania.

Army Corps of Engineers. Three of five applications being reviewed under the cooperative effort were removed from the process by this decision. One of the two remaining permits was later terminated by the State and the other is still under review. On July 8, 2004, District Judge Joseph Goodwin of the Southern District of West Virginia enjoined the U.S. Army Corps of Engineers from issuing Nationwide Permit 21 Clean Water Act authorizations within the Southern District of West Virginia. The effect of the Court action on the Settlement Agreement creating the interagency permit evaluations is under consideration.

A complete listing of mountaintop mining information is available at www.osmre.gov/mtindex.htm.

Pennsylvania Anthracite Program

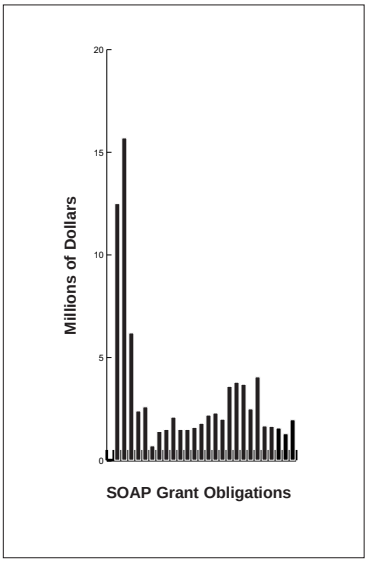
Section 529 of Surface Mining Law provides an exemption from federal performance standards for anthracite coal mining operations, provided the state law governing those operations was in effect on August 3, 1977. Pennsylvania is the only state with an established regulatory program qualifying for the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

In 2004, the anthracite mining industry produced approximately 1.7 million tons, approximately 1.5 million tons from surface mines and 0.2 million tons from underground mines. In addition, the reprocessing of anthracite coal waste banks continued throughout the Anthracite region and during 2004, and produced 2.5 million tons used to fuel approved cogeneration (waste burning) electric plants.

The Pennsylvania anthracite program currently includes 313[13] inspectable units (52 underground, 15 preparation plants, four refuse disposal sites, 122 reprocessing operations, and 120 surface mines). Pennsylvania's Department of Environmental Protection conducted 3,090[13] inspections (compared to 2,862 last year) and issued 165[13] violations (compared to 147 last year) in the anthracite region. Pennsylvania's Department of Environmental Protection continues to successfully carry out the provisions of the anthracite regulatory program.

13. 12-month period, July 1, 2003 - June 30, 2004

Small Operator Assistance Program



Section 401 (c)(11) of the Surface Mining Law authorizes up to $10 million annually 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. Qualifying operators produce no more than 300,000 tons of coal per year. The Energy Policy Act of 1992 (Public Law 102-486) expanded the technical permitting services eligible for funding under the Small Operator Assistance Program to 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 the statement of overburden analysis required under Section 507(c) of the Surface Mining Law.

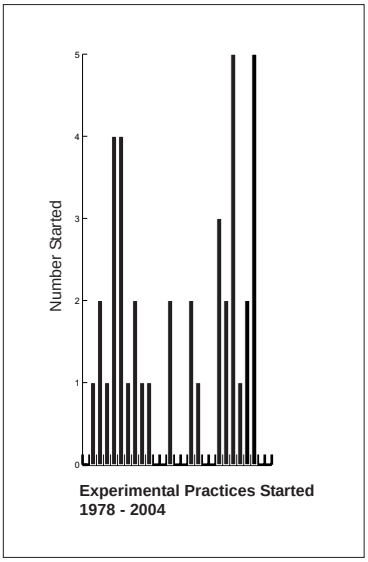
Table 12: Small Operator Assistance Program

Grant Amount[1] State	2004	2003	Operators	Projects started
Alabama	$39,049	$35,000	1	1
Kentucky	883,844	403,631	26	17
Maryland	35,000	0	2	2
Ohio	0	57,884	2	2
Pennsylvania	966,617	729,200	27	27
West Virginia	49,584	64,929	1	0
Total	**$1,974,094**	**$1,290,644**	**59**	**49**

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

Administrative responsibility for the Small Operator Assistance Program resides with the state regulatory authority in primacy states and with the Office of Surface Mining in other states. In 2004, 59 small mine operators received assistance (compared to 56 in 2003 and 107 in 2002). Table 12 provides a summary of the Small Operator Assistance Program by state during 2004.

Experimental Practices



Section 711 of the Surface Mining Law allows variances from the performance standards of Sections 515 and 516 of the Surface Mining Law on an experimental basis. These variances are intended 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 relationship between the mine operator, the state, and the Office of Surface Mining.

Since the program began, 46 projects have been undertaken and 26 completed. Of the completed projects, 21 were determined to be successful and 5 unsuccessful. Two were terminated due to a regulation change. Currently there are 18 projects underway.

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 result in outstanding on-the-ground performance. For a description of the active mining award program and 2005 rules, see www.osmre.gov/activerules01.htm.

The 2004 awards were presented September 27, 2004, at a luncheon hosted by the National Mining Association. The award winners were 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 to Arch of West Virginia for reclamation of abandoned mine land problems as part of active mining and reclamation at the Ruffner Mine.

Reclamation at the Ruffner mine eliminated 9.4 miles of dangerous abandoned highwalls, cleaned up numerous abandoned refuse disposal areas, and eliminated a large underground mine fire. This reclamation work was done as part of the active mining and required no cost to the state or federal government.

With the abandoned mine hazards eliminated and reclamation completed, the land has been returned to a productive hay and pasture land use.

National Awards
■ Mining is only a temporary use at the Black Beauty Coal Company, Farmersburg Mine. Located in Vigo and Sullivan Counties of Indiana, the reclaimed land is producing above average crop yields.

The primary reasons for the success of this reclamation is the soil handling method used and more than double the amount of soil required by the regulations that is spread on the reclaimed land.

While waiting for final bond release, much of the reclaimed land has been leased to local farmers and it is difficult to identify where mining did or did not occur.

At this West Virginia abandoned mine reclamation site a concrete lined channel was used to prevent erosion. This quickly installed structure allowed drainage from the steep woodlands above the project to run down the reclaimed slope without causing damage. In a few years both woody and herbaceous vegetation will grow through holes in the concrete

■ Reclamation experts describe the grading techniques and water channel design used at the San Juan Coal Company, San Juan Mine in Waterflow, New Mexico "as the most innovative reclamation technology that has been developed for western coal mining during the past 25-years."

Mining company employees have recreated the slopes with characteristics of the undisturbed lands.

Using a slope design process based on fluvial geomorphic principles, the reclaimed topography is more stable, diverse, and resistant to damage from flash flooding than traditional reclaimed land in this arid environment.

■ Overburden removal at the TXU Mining Company Tatum Lignite Coal Mine in Beckville, Texas provided a unique opportunity for the development of water features in the reclamation.

A pond-in-series design resulted in five wetland areas being developed. Native grasses and forbs were planted and more than 40 acres of hardwood species are now established. This wetland resource will serve the east Texas community with wildlife, fish, diverse aesthetics, sediment retention, and groundwater recharge for years to come.

■ Mining in a coal seam known for acid mine drainage problems, the Patriot Mining Company, Guston Run Mine near Pursglove, Pennsylvania incorporated coal ash from a local power plant to prevent acid problems.

The ash spread on the pit floor, mixed in the backfill, and on the final slopes prior to topsoil placement acted as a sealer and neutralizing agent.

Good reclamation practices and use of the ash has resulted in good water quality discharges and postmining land that should remain productive for years in the future.

■ With more than 30,000 permitted acres and the regulatory requirement to return the land to prior productivity, the Consolidation Coal Company worked to develop a successful reclamation method in prime

The pleasant View Mine site is located in Western Kentucky adjacent to the city of Madisonville. A 1930s coal mine, typical of that time, left spoil ridges and a large final pit which eventually impounded water. Mining activity resumed in the 1960s when millions of tons of acidic coal refuse from an underground mine was disposed of on the site. Once the site was abandoned it degraded and the coal refuse generated large amounts of acid drainage, polluting the water impounded in the final pit to such a degree that is was a deep red color and became known as "Ketchup Lake." In 1997, with encouragement from local citizen groups, the state classified the site as a threat to public health and safety and the Appalachian Clean Streams Initiative funding became available and the reclamation began. The reclamation plan eliminated the impoundment and then covered the entire area with soil obtained from the ridges created by the original mining. During reclamation 2.5 million cubic yards of material were moved and 26,000 tons of agricultural limestone, 88 tons of fertilizer, 500 tons of straw mulch, and 10 tons of seed were used on the 250-acre site. With reclamation complete streams near the site, once little more than a conduit for acid mine drainage from Ketchup Lake, have been restored. Today the streams are healthy, aquatic life is returning, and the water is no longer polluting downstream wetlands. In addition, the knowledge gained about water treatment has been used in developing treatment methods at other sites. On September 30, 2004, there were more than 40 hazardous water bodies that needed reclamation in Kentucky.

farmland conditions on its Illinois surface mining operations.

Research results showed soil loosening was needed to eliminate compaction problems and a special plow was developed.

Capable of plowing to depths of 48 inches, the 17-inch lifting motion fractures compacted soils and creates soil conditions that can consistently meet performance standards.

■ Operating within sight of Morgantown, West Virginia, the Shafer Brothers Construction Company Payne Mine used coal ash from a power plant to minimize acid mine drainage from the acid-producing layer just below the coal.

Ash was primarily used to seal the pit floor by creating a dish that prevented water from getting into the potential acid-producing material.

This reclamation resulted in water discharges that meet all effluent standards without treatment and an excellent hay crop that is being harvested by the landowner.

■ Reclamation at the Jacobs Ranch Coal Company, Jacobs Ranch Mine in Wright, Wyoming included playa wetlands, which are a valuable vegetation and wildlife habitat resource in this western environment.

These intermittent wetlands are used by waterfowl as well as antelope, deer, and elk. This year-around habitat and seasonal water supply has been reestablished even though mitigation is not required by the U.S. Army Corp. of Engineers.

The establishment of these valuable features is a credit to the company and an example for others to follow.

■ In 2004, a special award was presented to Coal Loaders, Inc., in Unity Township, Pennsylvania for outstanding reclamation performed using Government Financed Reclamation Contracts administered by the Pennsylvania State Regulatory Authority.

A 1940s surface mine left abandoned highwalls, sinkholes, acid mine discharges, and piles of coal refuse. The coal remaining was not enough to justify permitting, so the project was completed as an abandoned mine project funded by the mine operator. Through two contracts, Coal Loaders was able to mine the remaining coal, fully reclaim the site, and complete improvements to the property.

Good Neighbor Awards

Three Good Neighbor awards were presented for establishing good working relations and interaction with mine neighbors.

■ In Craig, Colorado, the Trapper Mining Company is part of the community and the company plays an important role in the economic, social, and environmental well-being of the area.

Examples of community involvement include building a fitness center, the only community health club in the county, and donating it to the community college; providing personnel, machinery, and funds to construct nine holes of the Yampa Valley Golf Course; and, working with the community leaders, providing labor, machinery, and funds to build an athletic complex.

Many abandoned mine projects have the goal of closing underground mine openings without preventing bats access to their nesting sites inside the old mines. Closing mine openings and controlling human access is the only sure solution to eliminating dangerous problems. However, abandoned underground mines are one of the homes for a significant bat population. Bats use the abandoned mines for maternity roosts, young bats are born and raised in the mine tunnels, and bats hibernate there during the winter. Projects like this eliminate the hazards to people while saving the bat habitat and are found throughout the country. Bat gates provide easy access for bats and a safety barricade for people.

■ At the Coal-Mac Phoenix Mine in Ragland, West Virginia, both the company and employees are part of the local community.

The company has initiated education programs and works with schools on environmental issues in the classroom and on-site at the mines.

Employees are career spokespersons and reading volunteers at the schools. The children in local schools were presented monetary education incentive awards established by Coal-Mac.

■ Working with county, state, and federal agencies as well as community leaders, and other groups, the Coteau Properties Company's, Freedom Mine near Beulah, North Dakota designed and developed the Harmony Lake Wildlife Management Area.

The 45-acre lake, and 637-acre wildlife area which was donated to the state of North Dakota, is a great long-term resource.

By working together, the mining company and community have developed a unique resource that is now an integral part of Hazen and Beulah, North Dakota.

The town of Huntington has a rich history in coal mining, and has the distinction of being the gateway to the most extensive unreclaimed surface and underground coal mine tract in Arkansas. This abandoned surface coal mine had typical dangerous mine-related features that fascinate the public; steep and unstable piles and embankments that were used by all-terrain enthusiasts, a dangerous vertical and unstable highwall with a road at the top edge, and treacherously deep acid water bodies that were used for swimming. Working together the Arkansas Department of Environmental Quality and the Agriculture Department's Natural Resources Conservation Service reclaimed the site and eliminated the health and safety hazards and the site is now an integral part of the Arkansas landscape. On September 30, 2004, there were over 140 acres of dangerous piles and embankments that needed reclamation in Arkansas.