

## 2006 OSM Fast Facts

**91.5 %**  
of active sites free  
of offsite impacts

**49,796**  
acres released  
from Phase III  
Performance  
Bonds

**\$56,365,347**  
in regulatory  
grants to States  
and Tribes

Protect



**Montana**  
Western Energy Company  
Rose Bud Mine, Colstrip, MT



Western Energy Company's Rose Bud Mine in Colstrip, Montana, was the first mine to receive a permit under the Surface Mining Act. Winner of many reclamation awards, the mine's operators have demonstrated a commitment to the community, which includes the nearby Northern Cheyenne Reservation. The company has mined around and preserved petroglyphs from ancient peoples, established buffalo herds for traditional ceremonies and opened reclaimed land for cattle grazing and crop production by local farmers and ranchers at no cost. The area's history, settlers cabins and an early post office have been preserved for future generations.

## Regulation of Active Coal Mines

*Title V of the Surface Mining Act: Control of the Environmental Impacts of Surface Coal Mining*

The Surface Mining Act contains five main regulatory provisions that together form the basis for protecting the environment during coal mining and ensuring prompt restoration of the land when mining is done.

**Performance Standards** are intended to make sure that all coal mining is done in ways that protect the environment and the public and that mined land is reclaimed properly afterward.

**Permits** are required before a coal operator is allowed to develop a surface or underground coal mine. Applications for a permit are detailed documents explaining the proposed mining and reclamation. Information must be provided describing environmental conditions before mining begins, how the land is currently being used, how the land will be mined and reclaimed, how the performance standards will be met and what the use of the land will be after it is mined.

**Performance Bonds** must be posted by the operator before a permit can be issued. The bond is intended to cover the cost of reclaiming the site if the operator fails to do it. Operators can get part of their money back as phases of reclamation are completed. However, the bond can't be fully released until all performance standards have been met and the land has been successfully reclaimed. Sites aren't considered to be

successfully reclaimed until five years have passed in the East and the Midwest. Because of arid conditions in the West, a site must remain stable for 10 years before the operator's bond can be fully released.

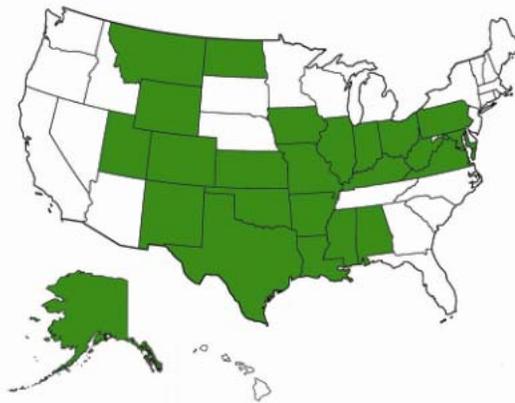
**Inspections and Enforcement** are carried out by inspectors who visit mining sites and have authority to issue a *notice of violation* if they spot problems. The problem must then be corrected. If the violation is severe, the operator may have to pay a fine. If the operator fails to correct the problem, inspectors can issue a *cessation order* to stop all mining until the situation is corrected. An inspector may skip the notice of violation and immediately issue a cessation order if a violation is found that creates an imminent danger to the public or causes significant environmental damage.

**Lands Unsuitable for Mining** are protected in the Surface Mining Act. The Act prohibits surface coal mining within national parks, forests, wildlife refuges, trails, wild and scenic rivers, wilderness or recreation areas. Mining is prohibited in places where it would adversely affect sites listed in the National Register of Historic Places and within restricted distances of homes, public roads, buildings, parks, schools, churches and cemeteries. The Act allows anyone to petition to have specific lands designated unsuitable for surface coal mining.

## Partnership with Primacy States Is Based on Shared Principles

All surface coal mines are required to have permits and comply with OSM regulations or the provisions of approved State programs. Currently, there are 24 “primacy” States that administer and enforce approved programs for regulating surface coal mining and reclamation under the Surface Mining Act.

An effective relationship between OSM and the States is fundamental to the successful implementation of the Surface Mining Act. A shared Federal-State commitment to carry out requirements of the Surface Mining Act is based on a relationship that includes common goals and principles.



“Primacy” States with regulatory authority

## Facts About Primacy States

**Wyoming**  
State with the most coal production

**Arkansas**  
State with the least coal production

**Texas**  
State with the most lignite coal production

**Alaska**  
State with the greatest unmined coal reserves

**West Virginia**  
State with the most underground coal production

**Kentucky**  
State with the most coal mines

**Pennsylvania**  
State with the most anthracite coal production

**Alabama**  
State with highest average price for coal

**Virginia**  
State with the earliest commercial coal production

## Illinois



Inspectors consult a map to determine the sequence of mining at Pyramid State Park in Illinois on land mined by Arch Minerals. From left to right – Kevin Garnett of OSM, Clay Kolar of the Illinois Office of Mines and Minerals, Perry Pursell of OSM. (Photo by Tami Heilemann)

### Oversight of State Programs

## Inspection Strategy Focuses on Results

The Surface Mining Act requires OSM to make inspections to evaluate how well State programs are administered. Oversight focuses on examining the implementation of many procedural requirements such as permitting, inspection, and enforcement, and penalties. Each facet has requirements prescribed to achieve environmental compliance.

OSM applies a results-oriented oversight strategy devised to consult with the States, a technique that emphasizes cooperative problem-solving. The OSM strategy involves evaluation and reporting State-specific and national findings for offsite impacts. The purpose of measuring offsite impacts is to gauge how the Surface Mining Act is protecting citizens, public and private

property, and the environment outside the areas authorized for mining and reclamation activities. This measurement is intended to identify the number and severity of offsite impacts, determine causes of impacts, and identify improvements to lessen the number and degree of these impacts.

Success is measured as a percentage of inspectable units 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 2006, 91.5 percent of inspectable units were free of offsite impacts and all performance bonds were released on 49,796 acres.

# Missouri



An OSM specialist and a Missouri State inspector measure topsoil depth at a mine site in southwest Missouri using a Global Positioning System-enabled tablet computer.

## Missouri Resumes Authority Over Enforcement, Permits

OSM provided inspection, enforcement, permitting, and bonding services for the first four months of FY 2006 until Missouri re-assumed full primacy over the its own regulatory program on February 1, 2006.

OSM began enforcing part of the State's mining program in August 2003 after determining that Missouri had failed to provide adequate staff or funding to implement its coal mining regulatory program. For more than two years Federal officials were responsible for enforcement, permitting, and bonding. Missouri retained bond forfeiture reclamation responsibilities.

During that time OSM conducted 20 complete and 32 partial inspections, issued one new permit and six permit revisions, and released Phase II bond on 531.2 acres and Phase III bond on 318.5 acres. No enforcement actions were issued during this period.

OSM also helped prepare the State by assisting in conducting joint inspections and permit decision reviews, and by providing training to Missouri personnel. Training courses included permitting, bond calculation, blasting, TIPS software, and mobile computing.

### Regulatory Program Strategic Plan Measures

Measure	Target	Results
Percent of active sites that are free of offsite impacts	93 %	91.5%
Number of acres where reclamation goals are achieved as evidenced by Phase III bond release	50,000	49,796

## Final Rules Published (See Appendix for Full Information)

In FY06, OSM published three final Federal program rules:

**Civil Penalty Adjustments**  
(70 FR 70698)

**Revisions to the State Program Amendment Process**  
(70 FR 61194)

**Topsoil Replacement and Revegetation Success Standards**  
(71 FR 51684)

States have the right to amend their programs. Whenever Surface Mining Act or its implementing regulations are revised, OSM is required to notify the States of changes needed to keep State programs in compliance with Federal requirements.

As a result of the process, the States have submitted a large number of complex amendments. OSM has taken several steps to process States' submissions more efficiently. For example, the amendment review process within OSM has been decentralized with format and content guidelines for State program submissions issued to the States.

In 2006, OSM published 24 proposed and 20 final State program amendments in the *Federal Register*.



Anthracite mine showing steeply dipping coal seam.

## Anthracite Industry Produces 2.1 Million Tons

In 2005, the most recent year for which complete statistics are available, the Pennsylvania anthracite mining industry produced approximately 2.1 million tons.

Approximately 1.9 million tons were produced from surface mines and 0.2 million tons from underground mines. The reprocessing of anthracite coal waste banks continued throughout the anthracite region in 2005 and produced 2.76 million tons used to fuel approved waste burning electric plants.

The Pennsylvania anthracite program currently includes 311 inspectable units (47 underground, 14 preparation plants, 3 refuse disposal sites, 122 reprocessing operations, and 125 surface mines).

Pennsylvania's Department of Environmental Protection conducted 3,655 inspections and issued 160 violations in the anthracite region. Pennsylvania's Department of Environmental Protection continues to successfully enforce the provisions of the anthracite regulatory program.

# State Oversight

## *More Than Random Inspections*

OSM conducts random inspections to provide a broad perspective of the administration of a State's program, but many of the efforts today involve more complex activities aimed at a specific or potential problem.

These activities often include both elements of oversight and technical assistance in multiple States over many years. Particular emphasis is placed on ensuring that experts working on a joint effort produce a report on any catastrophic event to share information.

This page features two examples of such process implementation.



A typical slurry impoundment in Appalachia.

### Virginia, Kentucky Incidents Raised Concern

## Impoundments Carefully Analyzed

Beginning with a slurry impoundment breakthrough into a Virginia underground mine in 1994, OSM and the States have conducted extensive inspection and analysis of impoundments.

Shortly after the first breakthrough, three additional breakthroughs occurred in Virginia. These four events resulted in having all impoundments in the State inspected and, where necessary, implementing plans to prevent additional breakthroughs.

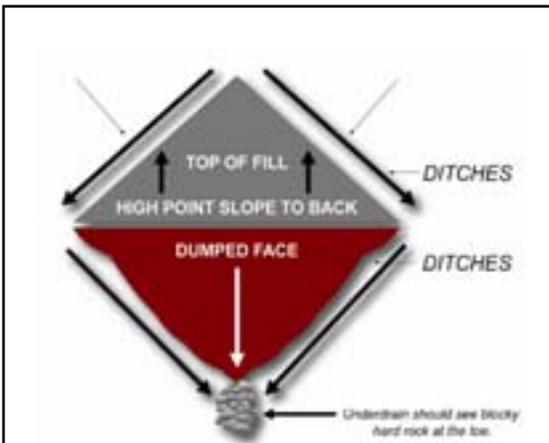
No additional breakthroughs were recorded until the October, 2000 breakthrough at the Martin County Coal Company impoundment in Kentucky. This breakthrough resulted in 250 million gallons of slurry being released and impacting over 75 miles of streams and rivers.

The seriousness of this incident led to an extensive investigation and a multi-year

OSM oversight evaluation in all of the Appalachian coal producing States. OSM's Appalachian Region's oversight plan provided for an evaluation of existing regulatory requirements in each State, as well as technical evaluations and individual on-the-ground reviews of many of the Region's impoundments.

These reviews were not only detailed field inspections but also included complex engineering reviews of permit plans and a review of the history of selected sites.

When the initial phase of the evaluation was completed, each OSM Field Office decided whether to return the level of evaluation for impoundments to routine oversight status or to continue an increased level of oversight. In either case, OSM continues to be involved in the quest for safety of impoundments in the Appalachian States.



### West Virginia

## Lyburn Lessons Led to Better Valley Fill Model

In 2002, a mudslide from an unfinished excess spoil valley fill damaged homes in the small community of Lyburn, West Virginia.

OSM conducted an independent investigation of the incident and noted several problems that led to the mudslide including inadequate surface water drainage control and a failure to reclaim the fill concurrently.

OSM has used what it learned in the Lyburn incident to provide oversight, training and technical assistance in other States. OSM uses the training aid above as a primer on proper drainage control.



OSM's first inspector orientation, April 1978 in Madisonville, KY



**Federal Agencies work to protect bat habitat**

In Tennessee, where OSM enforces the Surface Mining Act, OSM's Knoxville Field Office and the US Fish and Wildlife Service this year finalized guidelines to protect the Indiana bat (*Myotis sodalists*) when coal mining occurs in areas where the bat may reside. The guidelines were developed in coordination with the Tennessee Department of Environment and Conservation using the most current scientific research regarding the Indiana bat, its habitat and biology. (US Fish and Wildlife Service photo)

Federal Program States

**OSM Enforces Mining Laws For States With No 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 operate their own regulatory programs.

Those States are called Federal Program States, and their coal mining and reclamation operations are regulated by OSM.



States in which OSM regulates surface coal mining.

The Surface Mining Act requires OSM 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 an approved State program.

Federal programs are in effect in 12 States: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, and Washington. Tennessee and Washington are the only two Federal Program States that had active coal mining in 2006.

**REGULATORY GRANT FUNDING FY2006 OBLIGATIONS<sup>1</sup>**

State/Tribe	2006 Federal Funding		Cumulative Through 2006 Federal Funding <sup>2</sup>
	2006	2005	2006
Alabama	\$ 1,022,211	\$ 987,979	\$ 29,031,657
Alaska	\$ 183,601	\$ 188,518	\$ 6,276,914
Arkansas	\$ 145,457	\$ 149,353	\$ 3,992,277
Colorado	\$ 1,903,776	\$ 1,954,760	\$ 35,368,979
Crow Tribe	\$ 29,387	\$ 30,174	\$ 1,203,905
Hopi Tribe	\$ 169,439	\$ 173,977	\$ 2,208,775
Illinois	\$ 2,375,884	\$ 2,439,511	\$ 60,958,596
Indiana	\$ 1,787,798	\$ 1,920,252	\$ 38,362,142
Iowa	\$ 125,378	\$ 128,736	\$ 3,076,324
Kansas	\$ 109,642	\$ 112,578	\$ 3,200,718
Kentucky	\$ 1,992,212	\$ 12,313,367	\$ 309,053,024
Louisiana	\$ 163,018	\$ 167,384	\$ 4,061,003
Maryland	\$ 575,520	\$ 590,933	\$ 13,619,358
Michigan	\$ -	\$ -	\$ 135,458
Mississippi	\$ 13,459	\$ 113,729	\$ 1,441,440
Missouri	\$ 245,767	\$ 162,675	\$ 8,955,308
Montana	\$ 1,043,335	\$ 1,050,741	\$ 20,477,258
N. Cheyenne	\$ -	\$ -	\$ 86,888
Navajo Nation	\$ 436,973	\$ 448,675	\$ 5,135,009
New Mexico	\$ 718,290	\$ 737,526	\$ 15,082,421
North Dakota	\$ 513,659	\$ 501,284	\$ 13,027,959
Ohio	\$ 1,967,353	\$ 2,020,039	\$ 64,854,853
Oklahoma	\$ 919,448	\$ 1,018,398	\$ 21,214,736
Pennsylvania	\$ 10,387,573	\$ 10,665,756	\$ 248,073,600
Rhode Island	\$ -	\$ -	\$ 158,453
Tennessee	\$ -	\$ -	\$ 5,340,085
Texas	\$ 1,399,190	\$ 1,317,376	\$ 27,157,852
Utah	\$ 1,698,219	\$ 1,743,698	\$ 34,303,588
Virginia	\$ 3,174,421	\$ 3,259,433	\$ 77,953,374
Washington	\$ -	\$ -	\$ 4,893
West Virginia	\$ 11,199,595	\$ 10,520,169	\$ 157,266,143
Wyoming	\$ 2,064,742	\$ 2,120,036	\$ 40,490,319
<b>TOTAL</b>	<b>\$ 56,365,347</b>	<b>\$ 56,837,056</b>	<b>\$ 1,251,573,305</b>

<sup>1</sup> Figures have been adjusted for rounding.

<sup>2</sup> Includes obligations for AVS, TIPS, Kentucky Settlement and other Title V. cooperative agreements. Figures for FY 2006 do not include downward adjustments of prior year awards. However, cumulative figures are net of all prior year downward adjustments.

## Agreements Provide Regulation, Reclamation On Federal Lands

The Surface Mining Act requires the Secretary of the Interior to establish and implement a Federal regulatory program for surface coal mining and reclamation operations on Federal land.

The Federal government owns significant amounts of land and coal reserves — primarily in the West. Sixty percent of the 147 billion tons of recoverable coal reserves in the western US are 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.

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Sixty percent of the 147 billion tons of recoverable coal reserves in the western US are on Federal land.

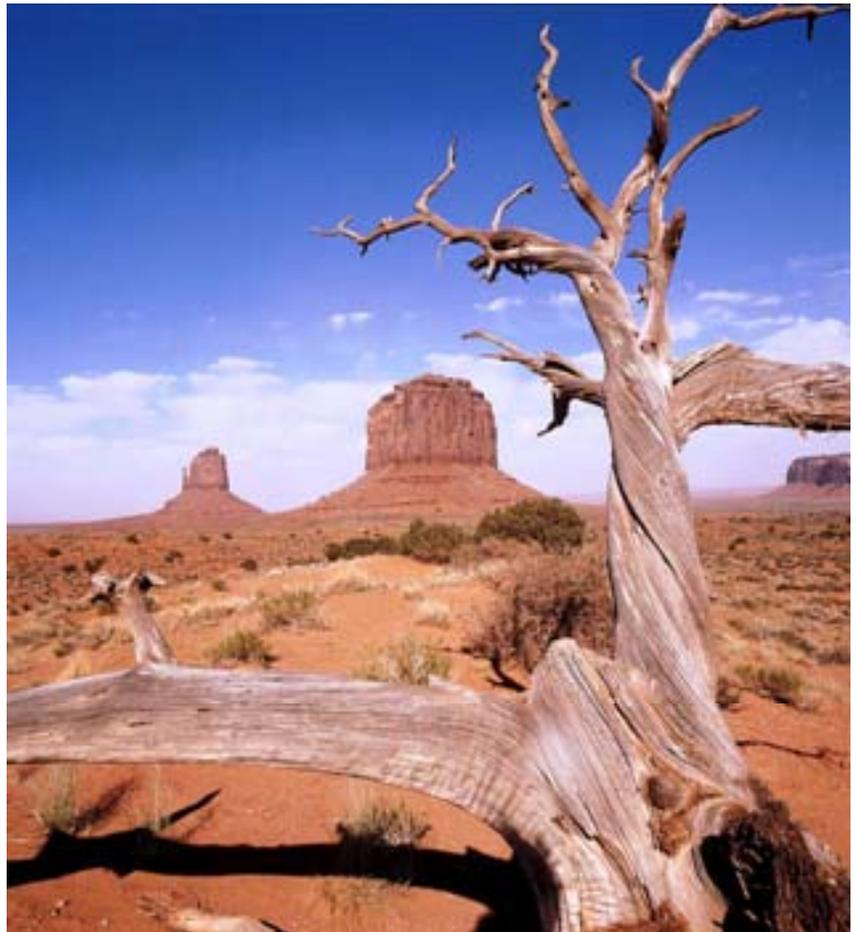
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Through cooperative agreements, the Secretary of the Interior may delegate most regulatory responsibilities for surface coal mining and reclamation operations on Federal lands to States with approved regulatory programs. Through 2005, the Secretary 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.

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.

## Grants to States and Tribes Fund Regulatory Programs

The Surface Mining Act authorizes OSM to provide grants to States with approved regulatory programs to administer and enforce the programs. States must match the Federal funds dollar for dollar, Federal funding can't pay for more than half of a State's regulatory program. When a primacy State elects to administer its approved program on Federal land through a cooperative agreement with OSM, the State becomes eligible for financial assistance of up to 100 percent of what the State spends to regulate coal mining on Federal lands.



Monument Valley on the Navajo Reservation.

## OSM Has Responsibility for Regulation on Indian land

The Office of Surface Mining directly regulates coal mining and reclamation operations on Indian lands.

During 2006 there were:

- nine surface coal mining operations permitted on reservations or Indian-owned lands;
- two active mines and an active coal preparation plant on the Navajo reservation;
- two active mines located on both the Navajo and Hopi reservations;
- one active mine producing coal owned by the Crow Tribe on the Crow Ceded Strip;
- one permitted haul road on the Ute Mountain Ute reservation;
- two inactive mines on the Navajo reservation for which OSM, in cooperation with the Bureau of Indian Affairs and the Navajo Nation, oversees reclamation.

OSM is the lead Federal agency for preparation of an Environmental Impact Statement for the Black Mesa Project and a cooperating agency on two other Environmental Impact Statements being prepared by the Bureau of Indian Affairs, Desert Rock Energy Project and Absaloka Mine Extension.

The Office of Surface Mining awards grants to the Crow Tribe, Hopi Tribe, Navajo Nation, and the Northern Cheyenne Tribe 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 OSM in the inspection of coal mining activities on Indian lands (including permitting and bond release); and education in the area of mining and mineral resources. Development grant funding for 2006 was \$635,799.

# Bonding Can Be Complex, Contentious

The Surface Mining Act requires that before a permit can be issued, applicants are required to file a performance bond with the regulatory authority to provide for proper reclamation in the event of permit revocation.

The approved regulatory program requires either a "conventional bonding system" (full cost bonding) or an "alternative bonding system" (a bond pool that distributes the reclamation liability among all participants in the pool). Within these bonding systems there are multiple bonding instruments available.

From the beginning, implementation of the bonding programs has proven to be very complex, resulting in contentious issues between States, OSM, the coal industry and

the public. Implementation is further complicated by issues relating to the bonding for long-term water treatment of acid mine drainage (AMD).

Consequently, implementing the bonding programs has resulted in multiple and complex law suits; significant disruptions resulting from bonding company failures; development of bonding policies / procedures and manuals; extensive training programs; actions by State Legislatures; formation of national bonding work groups; modifications of regulatory programs; and resource intense oversight to analyze the effectiveness and solvency of the bonding programs.

OSM recently notified Ohio of inadequacies

related in its bonding program (see story below). In the past, OSM has pursued bonding program changes in Pennsylvania, Tennessee, and West Virginia. In each situation, litigation was initiated by the public or the industry.

OSM and several States recognize this will be a long-term process with continual challenges that requires cooperation, good communication, and the resolve to maintain effective bonding programs.

For example, in West Virginia the State recognized the complexities of the issues and created an Advisory Council to monitor the implementation and solvency of its Special Reclamation Fund bond pool.



## Ohio's Bonding System Facing Federal Action

OSM has been working closely with Ohio to change the State's bonding program to provide timely reclamation of mined property.

The State's Alternative Bonding System has been considered inadequate for several years. In 2004, representatives from the State and the Ohio Coal Association began drafting legislation to address the bonding condition, as well as to provide funding for program operation. However, that effort stalled and in early 2005, Ohio informed OSM that without the agreement with the coal industry, passage of any legislation was unlikely.

Ohio's past attempts to revise the ABS were unsuccessful due to the coal industry's unwillingness to support legislation that would increase bonding or provide adequate revenue to support the ABS.

On May 4, 2005, OSM began a process under 30 CFR Part 733 that could lead to withdrawal of Ohio's authority to operate its regulatory program

Ohio renewed work on draft legislation and submitted a proposed amendment to OSM on December 19, 2005. OSM responded to Ohio's amendment on May 5, 2006, with several issues that must be addressed and additional data provided before the amendment will meet minimum Federal standards.

OSM will review Ohio's response, then review the revised amendment and determine if it can be approved. OSM must then recommend to the Secretary of the Interior whether the new amendment will result in an adequate bonding program. If not, OSM will have to decide whether to require Ohio to enact further amendments or proceed with the 733 process, which could result in OSM taking over part of Ohio's program.

OSM and its partners sign the Horizon agreement March 29, 2006

[Horizon bankruptcy agreement](#)

## OSM, States ensure reclamation

Bankruptcies in the coal industry continue to require attention from both OSM and the State Regulatory Authorities (RAs).

OSM partnered with the regulatory agencies of four States to negotiate a Permitting and Reclamation Agreement with Lexington Coal Company, LLC (LCC) that ensures the cleanup of hundreds of inactive coal permits in several States.

LCC is derived from the reorganization of Horizon Natural

Resources Company approved by the U.S. Bankruptcy Court in September 2004. LCC was tasked with completing reclamation of hundreds of inactive permits.

The Agreement ended the surety company's direct involvement in the administration of the reclamation of these inactive permits. This action will result in less capital outlay for administration and more funding for reclamation. OSM and the State RAs will continue to monitor the progress of LCC.

# Kentucky



Haybales on land reclaimed by Patriot Coal.

## Multiple Bankruptcies Can't Foil Reclamation

For a real patriot, no obstacle is too great when it comes to protecting the environment while providing America with the energy to power its economic growth.

Patriot Coal Company, Ltd., stepped in to reclaim a 1,013 acre coal mine in Henderson County, KY, left orphaned after two successive owners went bankrupt. Normally, the mine's reclamation bond would be cashed for the cleanup, however, the insurance company holding the bond also went bankrupt. Without Patriot's involvement, clean-up of the site would have cost hundreds of thousands of dollars in AML funds.

So far, Patriot has restored over 550 acres to prime farmland. Prime farmland must have at least 48 inches of topsoil and sustain crop growth at the highest levels. Over 48 acres have been established for wildlife and now attract deer, turkeys, ducks, geese and blue herons.

Additionally, this coal mine has produced approximately 4 million tons of coal.



Rows of corn growing on the reclaimed Patriot site.

## Applicant / Violator System helps Regulators spot permit problems

One of the underlying principles of the Surface Mining Act is that those who benefit from mining are responsible for returning the land and water to productive use. The law prohibits the issuance of new permits to applicants who own or control operations with unabated or uncorrected violations.

The Applicant / Violator System provides State regulatory authorities with a central database of application, permit, ownership and control, and violation information. Federal and State officials review AVS data when evaluating the applicant's eligibility for new permits. The system is also used to determine the eligibility of potential recipients of Abandoned Mine Land reclamation contracts and for inspection and oversight purposes.

During 2006, the AVS Office responded with quality reviews for 3,938 requests for data evaluations from State and Federal regulatory authorities and State abandoned mine land program officials. The Office of Surface Mining (OSM) collected or settled payments of civil penalties and reclamation fees in the amount of \$1,244,217 in part because of violation information in the system.

AVS staff continued its efforts to support States in developing strategies and responding to new bankruptcy cases filed during 2006 in Virginia, West Virginia, Maryland and Indiana. Significant progress was achieved by Lexington Coal Company in reclaiming the hundreds of permits abandoned in the Horizon Natural Resources bankruptcy case. The most noteworthy was the replacement of all surety bonds with letters of credit, completion of all obligations in Indiana and major reductions in reclamation liability in West Virginia, Illinois and Kentucky. To help ensure that outstanding reclamation obligations are met, investigative assistance was provided to several States to promote and prepare alternative enforcement actions.

In 2007 the AVS Office plans to complete a re-design project that was initiated in October 2004 to transform the system to a more user-friendly, web-based system. This includes a rewrite of the business processes and change in application language to allow for more flexibility in future system enhancements and modifications.

The Applicant/Violator System Office received a customer satisfaction rating of 97 percent for services provided. This is the eighth consecutive year that the Office has received extremely high customer satisfaction ratings.

General information about the system, including access and user information, can be found at [www.avs.osmre.gov](http://www.avs.osmre.gov).

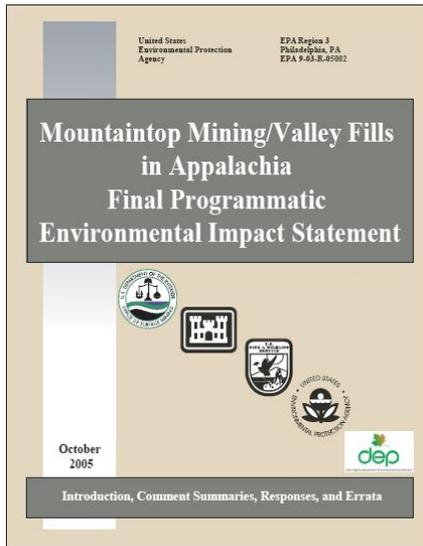
### SMALL OPERATOR ASSISTANCE PROGRAM (SOAP) 2006 GRANT AWARDS<sup>1</sup>

State	Grant Amount 2006	Grant Amount 2005	Operators	Projects Started
Alabama	\$35,000	\$60,000	2	2
Kentucky	\$0	\$606,000	18	18
Maryland	\$0	\$35,000	0	0
Ohio	\$0	\$50,000	2	2
Pennsylvania	\$79,602	\$669,000	40	53
West Virginia <sup>2</sup>	\$35,000	\$96,994	2	0
TOTAL	\$149,602	\$1,516,994	64	75

<sup>1</sup> Amounts do not include downward adjustments of prior-year awards.

<sup>2</sup> The figure for West Virginia in 2005 was reported incorrectly in the 2005 annual report. The corrected amount is shown above.

# Federal Agencies, West Virginia Release Final Mountaintop Mining/ Valley Fill EIS



The U.S. Army Corps of Engineers (COE), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service, U.S. Office of Surface Mining (OSM), and West Virginia Department of Environmental Protection (WVDEP) announced the availability of the programmatic Mountaintop Mining/Valley Fill (MTM/VF) Environmental Impact Statement (EIS) in the October 28, 2005, Federal Register.

The final EIS fulfills the commitment by the agencies in a December 23, 1998, settlement agreement on Clean Water Act (CWA) counts against the COE in the *Bragg v. Robertson* litigation filed in Federal District Court for Southern West Virginia.

The final programmatic EIS examines a broad range of potential Federal and State actions to further prevent or reduce adverse environmental impacts, as well as to clarify lines of responsibility among the agencies designed to improve compliance with and enforcement of the CWA, the Surface Mining Control and Reclamation Act (SMCRA), and The Endangered Species Act.

The preferred alternative contains

actions that consider such things as coordinated data collection and environmental analyses in a collaborative regulatory process that could result in better watershed-based permit decisions in Appalachian States where mountaintop mining occurs.

The geographic focus of the final programmatic EIS is about 12 million acres encompassing most of eastern Kentucky, southern West Virginia, western Virginia and scattered areas of east Tennessee.

During preparation of the EIS, the agencies conducted or funded over 30 studies to compile existing data, expand the current knowledge base about impacts of mountaintop mining and associated excess spoil disposal valley fills. By integrating CWA and SMCRA requirements, the agencies are making a collective effort to provide a regulatory program that balances the Nation's energy needs and the protection of environmental resources in areas where mountaintop mining / valley fill operations take place.

## *Spoil Minimization, Stream Buffer Zone Rule Due in 2007*

In 2007 OSM expects to publish a rule that will require that surface coal mining operations be designed to minimize the creation of excess spoil and the adverse environmental impacts of fills.

The rule will also clearly specify the conditions under which mining and reclamation activities may be conducted in or near streams and other waters of the United States.

Prior to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) spoils above the coal to be mined were disposed below the coal seams. SMCRA requires spoils to be returned to the mined area and the pre-mining topography restored.

The Surface Mining Act requires this leftover rock ("excess spoil") be placed in stable areas to avoid slides and erosion. In the mountainous terrain of central Appalachia, excess spoil is routinely placed in valleys adjacent to the mined-out areas. Valleys often contain small streams ranging from perennial to ephemeral.



SMCRA allows valley fills like the one shown above over some streams if they provide adequate drainage.

The placement of excess spoil fills in natural watercourses and over springs and

seeps is authorized by the Surface Mining Act so long as sufficient drainage is available.

OSM's Stream Buffer Zone rule specifies under what circumstances mining activity can be conducted within 100 feet of a perennial or intermittent stream. Historically, the rule has not been applied by States or OSM to limit fills.

However, within the past few years, there has been extensive controversy and litigation leading to varying interpretations by the agencies involved, the Federal courts, and the Department of Justice over what the Stream Buffer Zone rule means in relation to fills.

In January 2004, OSM proposed changes to clarify the stream buffer zone rule and to strengthen the requirements to limit spoil. In June 2005, OSM announced its intent to prepare an Environmental Impact Statement on the regulatory changes. Both the rule and EIS will be published in 2007.

**REGULATORY PROGRAM STATISTICS**

State/Indian Lands	Regulatory Staffing <sup>1</sup>	New Permits <sup>2</sup>	New Acreage Permitted <sup>2 &amp; 5</sup>	Total Acreage Permitted <sup>2</sup>	Inspectible Units <sup>2</sup>	Complete Inspections <sup>2</sup>	Partial Inspections <sup>2</sup>	Notices of Violation <sup>2</sup>	Failure-To-Abate CO <sub>2</sub>	Imminent Harm CO <sub>2</sub>	Bond Forfeitures <sup>2</sup>	Acreage of Phase I Bond Released <sup>2</sup>	Acreage of Phase II Bond Released <sup>2</sup>	Acreage of Phase III Bond Released <sup>2</sup>
Alabama	27.00	13	5,283	84,400	217	2140	539	123	10	0	5	2064	1369	2406
Alaska	3.88	0	0	9,099	11	27	57	1	0	0	0	0	0	0
Arkansas	3.95	0	0	1,670	12	48	98	4	0	0	0	0	0	0
Colorado	24.00	1	1,518	162,750	46	169	287	3	0	0	0	76	887	44
Crow Tribe <sup>4</sup>	0.45	0	1,713	7,209	1	3	6	0	0	0	0	0	0	0
Georgia <sup>4</sup>	0.00	0	0	0	6	1	0	0	0	0	0	0	0	0
Hopi Tribe <sup>4</sup>	2.30	0	0	6,137	1	6	7	0	0	0	0	0	0	0
Illinois	31.70	7	2,441	60,900	92	403	868	26	0	0	1	5,082	5,123	6,787
Indiana	44.00	3	672	258,230	109	545	1,206	52	2	0	1	2,680	3,552	3,412
Iowa	3.00	0	0	2,960	16	20	8	0	0	0	0	0	0	115
Kansas	3.20	2	507	4,830	12	46	90	3	0	0	0	0	0	12
Kentucky	299.00	87	89,490	1,764,200	1,931	7,834	14,487	484	36	14	5	12,828	5,978	14,006
Louisiana	2.40	0	0	42,930	2	8	14	1	0	0	0	0	0	0
Maryland	11.60	3	624	6,426	72	364	613	57	31	0	1	75	82	118
Mississippi	2.25	0	0	5,809	1	4	10	0	0	0	0	0	0	0
Missouri <sup>3</sup>	6.30	1	76	13,315	31	120	183	0	0	0	7	1,080	2,173	1,565
Montana	16.96	1	175	62,490	15	79	118	4	0	0	0	1,581	1,502	0
Navajo Nation <sup>4&amp;6</sup>	5.00	1	6,200	82,863	18	64	37	11	0	0	0	0	0	0
New Mexico	9.00	1	15,000	86,830	10	40	80	3	0	0	0	3,160	3,160	319
North Dakota	7.70	1	5,931	103,680	32	127	534	1	0	0	0	395	395	395
Ohio	34.98	27	5,331	102,700	329	1,305	2,358	130	2	4	1	2,807	4,408	3,680
Oklohoma	21.10	1	498	22,900	62	263	390	20	0	0	0	0	1,574	2,667
Pennsylvania	243.00	64	8,770	417,849	1,820	6,695	9,183	592	9	17	7	6,036	4,597	4,394
Tennessee <sup>4</sup>	37.00	4	1,558	30,200	351	558	805	75	12	0	0	459	696	782
Texas	32.00	0	13,368	270,200	30	123	247	15	0	0	0	2,345	2,794	2,974
Utah	19.50	0	548	2,682	33	117	224	12	0	0	0	11	0	0
Ute Mountain Ute Tribe <sup>4</sup>	0.00	0	0	175	1	4	6	0	0	0	ND	ND	ND	ND
Virginia	78.00	33	9,853	81,200	479	1,957	2,817	185	2	2	1	687	938	3,780
Washington <sup>4</sup>	N/A	0	0	14,910	2	8	21	6	0	0	0	0	0	0
West Virginia	281.20	43	8,713	334,087	2,258	13,721	13,257	963	59	15	13	5,547	2,716	2,021
Wyoming	29.70	1	13,369	367,600	36	143	253	4	1	0	0	3,002	0	0
<b>TOTAL</b>	<b>1,280.17</b>	<b>294</b>	<b>191,638</b>	<b>4,411,231</b>	<b>8,036</b>	<b>36,942</b>	<b>48,803</b>	<b>2,775</b>	<b>164</b>	<b>52</b>	<b>42</b>	<b>49,915</b>	<b>41,944</b>	<b>49,477</b>

<sup>1</sup> Number of regulatory program staff as of June 30, 2006.

<sup>2</sup> State program statistics are for the one-year period, July 1, 2005 - June 30, 2006, except where noted (federal statistics for Crow, Georgia, Hopi, Navajo, Tennessee and Washington. See footnote 4.

<sup>3</sup> MO resumed full primacy February 1, 2006. As a result of substitution of federal enforcement in Missouri, OSM was the regulatory authority in the state until February 1, 2006, when Missouri assumed full primacy. As a result, 34 of the 120 complete inspections were made by OSM (14 between July 1, 2005 and September 30, 2005, and 20 between October 1, 2005 and January 31, 2006). In addition, OSM made 67 of the 183 partial inspections (35 between July 1, 2005 and September 30, 2005, and 32 between October 1, 2005 and January 31, 2006). The remaining 86 complete inspections and 116 partial inspections were made by the state of Missouri between February 1, 2006, and June 30, 2006.

<sup>4</sup> Federal statistics are for the one-year period, October 1, 2005 - September 30, 2006.

<sup>5</sup> New acreage permitted includes acreage permitted for incidental boundary revisions and other revisions or amendments that add acreage, in addition to acreage for new permits.

<sup>6</sup> The figure for total permitted acreage for the Navajo Nation in 2005 was reported incorrectly in the 2005 Annual Report. The correction is reflected in the figure provided for 2006 above.