



ANNUAL REPORT 1979

of the Secretary of the Interior, under the Surface Mining Control and Reclamation Act of 1977

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UNITED STATES DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20240

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

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To the President of the United States:

To the Congress of the United States:

I am pleased to transmit herewith the 1979 Annual Report required by the Surface Mining Control and Reclamation Act of 1977, P. L. 95-87.

While the major accomplishment of 1979 for the Office of Surface Mining was the publication of its permanent regulatory program in March, public participation and the courts continued to help shape the direction of OSM's programs. Priority effort was directed toward assisting the coal-producing States to assume primary regulatory authority for surface mining operations. The Office vigorously supported an extension for State program submittal, and strengthened its commitment to public involvement in its regulatory process.

CECIL D. ANDRUS
SECRETARY

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EXECUTIVE SUMMARY

When the Surface Mining Control and Reclamation Act was signed into law by President Carter on Aug. 3, 1977, it set in motion a program to establish the first nationwide environmental controls on the surface effects of coal mining. To steer these standards into place, the Act created a new government agency within the Department of the Interior, the Office of Surface Mining Reclamation and Enforcement—OSM. This report covers OSM's activities and programs during its second full year of operations.

OSM: AN OFFICE AND ITS MISSIONS

The law sets minimum national standards for regulating the surface effects of coal mining: both strip and underground. It also directs OSM to assist States to develop and implement their own regulatory programs, and promote reclamation of previously mined areas. Regulatory programs will be carried out by the States, under programs approved by the Secretary of the Interior. A Federal program will be implemented in a State only when it has failed to submit an acceptable program of its own. OSM also has responsibility for regulating surface coal mining on Indian and Federal lands.

By the end of 1979, OSM had filled all but 80 permanent positions. Seventy-five percent of OSM's personnel are assigned to either one of five regional, 14 district, or 28 field offices in locations keyed to the coalfields.

To fund OSM activities, Congress appropriated \$115.4 million for FY 1979. The FY 1980 budget is \$179.6 million.

As 1979 drew to a close, several legal actions which challenged the constitutionality of the Act were pending—including two raised by States—Indiana and Virginia. This report summarizes the progress of these cases so far.

TRANSLATING THE LAW: THE REGULATORY PROGRAM

Since May 3, 1978, all surface coal mining operations must have State permits and must comply with initial program regulations. These regulations—published Dec. 13, 1977—underwent several revisions in 1979 as the result of public comment and petitioning. These include: standards for spoil and waste disposal, prime farmlands, enforcement procedures, and approximate original contour (AOC).

Since States needed to amend their programs to enforce the initial standards, OSM gave 21 States a total of \$14,895,507 to cover the additional costs of their efforts.

On Mar. 13, 1979, OSM issued its final permanent regulatory program regulations. The regulations had been written in final form after a comment period of more than 100 days, 25 days of public hearings in six cities, and thousands of pages of comment and testimony were analyzed. The regulations set standards for development and implementation of State regulatory programs, Federal programs in lieu of State programs, and Federal lands programs. Requirements on mine operators take effect through State, Federal, and Federal lands programs after they are implemented.

The permanent program regulations, while not actually in force, had a number of revisions proposed to their contents in 1979. OSM announced plans to revise its bonding program. A more simplified hydrologic permitting system as well as possible changes in design standards for sediment control are two areas where some change in 1980 might be anticipated.

On June 19, 1979, Secretary of the Interior Cecil D. Andrus had asked Congress to allow an additional seven months for submission and approval of programs. On July 23, 1979, responding to a suit by the State of Illinois and the Commonwealth of Virginia, Federal District Court Judge Thomas A. Flannery extended until Mar. 3, 1980, the Aug. 3, 1979 deadline for submission of State plans for regulation of surface mining.

On Sept. 11, 1979, the Senate passed S. 1403 which would extend the deadline for State program submissions and for Secretarial approval as well by 12 months. The bill also would eliminate the necessity that State programs meet the requirements of the Federal regulations. By the end of 1979, no further action on this bill had been taken.





In 1979, four States submitted their program proposals—Texas, Mississippi, Montana, and Wyoming. Two others—Georgia and Washington—have indicated that they do not want their own permanent regulatory program.

In FY 1979, 14 States received a total of \$3.15 million to help develop their own permanent programs.

The Small Operator Assistance Program (SOAP)—for qualified small operators producing less than 100,000 but more than 250 tons of coal annually—went into effect in July 1979. Since then, eight States have declared their intent to have OSM run SOAP during the initial program on their behalf; fourteen others will administer their program with OSM grants. Nine States have received SOAP grants for a total of \$12,593,564.

Surface coal mining and reclamation operations on Indian lands were regulated during 1979 with limited performance standards and more comprehensive inspection and enforcement procedures.

Work was nearing completion in late 1979 on an update of Indian coal regulations and an agreement between OSM, the Geological Survey, and the Bureau of Indian Affairs to define their agencies' changing roles.

The Act required the Secretary to develop a Federal lands program for surface coal mining and reclamation activities on Federal lands. Regulations for the permanent program were published Mar. 13, 1979. Under the new regulations, new mining operations or additional permit areas on present mining operations would need to comply with permanent program requirements. At the end of the year, the Federal lands program was being operated under the initial regulatory program's performance standards.

In June 1979, Montana, Utah and Wyoming and the Department of the Interior signed modified cooperative agreements. The State of North Dakota also entered into a cooperative agreement with Interior late in 1979. These agreements offer a mechanism for State regulatory agencies to exercise their enforcement powers on Federal lands.

Prompted in part by a petition from Montana, subsequently joined by other Western States, on Sept. 28, 1979, OSM proposed changes to the schedule for compliance with permanent performance standards by existing operations on Federal lands. After an analysis of all comments received, the Secretary decided to postpone operator compliance with the permanent program until a State program had been approved or a Federal program for a State had been implemented. The amended schedule applies to all operations and to all States.

INSPECTION AND ENFORCEMENT

In FY 1979 OSM conducted 13,932 inspections at 6,770 separate mines, resulting in 3,055 notices of violations covering some 6,859 separate violations, and 602 cessation orders, which contained 804 separate violations.

In 1979 the most frequent serious violation was failure to meet effluent standards, followed by failure to pass all surface drainage through sedimentation ponds; improper handling of topsoil; haul roads; improper identification signs and markers; and placing spoil on the downslope.

Any citizen can request inspection of the surface or area of a mine where a violation of the Act, regulations, or permit conditions may exist, or if there is thought to be an imminent danger or harm. Nationwide, in FY 1979, OSM received 554 citizen complaints. Ninety-eight percent of them resulted in inspections.

From Feb. 14, 1979 to Aug. 10, 1979, OSM inspectors were enjoined from inspecting in Virginia in connection with the lawsuit filed against the Department by the Virginia Surface Mining and Reclamation Association. The injunction was lifted by the Court of Appeals for the 4th Circuit, August 10. By the end of 1979, Virginia's inspection teams had averaged 50 inspections per week in the State's southwestern coalfields.

REPAIRING THE LAND: THE ABANDONED MINE LANDS PROGRAM

The Abandoned Mine Land Reclamation Fund finances State, Federal and Indian reclamation programs, with top priority given to projects which, in their present condition, are active hazards to public health and safety. The fund is supported by a fee charged on all coal production. Regulations covering administration of these funds were published Oct. 25, 1978.

By the end of FY 1979 the fund had collected more than \$290 million. Fifty percent of this was allocated to those States and Indian lands where the fees were collected. The balance of the fund is distributed as follows: \$10 million annually for a Small Operator Assistance Program (SOAP); up to 20 percent to the Soil Conservation Service for a Rural Lands Reclamation Program (RAMP); and the remainder to be used by OSM for a program of reclamation projects which will be carried out through contracts or additional grants to States.

Even before a State's regulatory program has been approved, a State or Indian tribe can get an advance of funds from the AML Fund. In FY 1979, 14 States and one Indian tribe received these advance funds through individual cooperative agreements.

An analysis of how States and Indian tribes can develop abandoned coal mine reclamation plans to comply with provisions of the Act was widely distributed in FY 1979. OSM also proposed reclamation guidelines to help States and Indian Tribes develop their own AML plans on Nov. 6, 1979.

A major task in 1979 involved developing a national inventory of abandoned mine lands. A memorandum of understanding between Interior and the Department of Energy's Oak Ridge Laboratory to establish this program was signed in the Spring. By the end of 1979, one tribe and 25 States had agreed to prepare bibliographies of existing abandoned mine land information.

LOOKING TOWARD THE FUTURE: EDUCATION, RESEARCH AND INFORMATION TECHNOLOGY

Research and education continued to play an important role in supporting the regulatory and reclamation programs provided by the Act.

By Oct. 1, 1979, 462 scholarships, graduate fellowships and postdoctoral fellowships—totalling \$1,185,000—had been awarded by 22 State Mining and Minerals Resources and Research Institutes. More than 50 percent of these awards were in undergraduate level courses to encourage recipients to continue in their chosen mineral resources field.

The research grants called for in the Act were awarded by OSM for the first time in FY 1979. Fifty-one separate **research** grants were awarded, amounting to \$2.73 million.

The Advisory Committee on Mining and Minerals Resources and Research continued to provide guidance to the Secretary and to OSM—including assistance in selecting the peer panel reviewers to evaluate proposals for the initial research grants.

In 1979, the list of applied research projects—in support of the regulatory program—grew longer. Additions included hydrologic monitoring, aerial photo surveillance, groundwater movement and chemistry, vegetative cover for disturbed areas.

Work continued on OSM's feasibility study for a cataloging data center. Requirements of both headquarters and five regional offices will be studied in determining overall information needs.

Regulations to establish a nationwide training, examination and certification program for blasters were proposed June 29, 1979.

An in-depth study of surface coal mining conditions in Alaska was scheduled for completion in 1980.

OSM: AN OFFICE AND ITS MISSIONS

On Aug. 3, 1977, President Jimmy Carter signed the Surface Mining Control and Reclamation Act into law in White House Rose Garden ceremonies. That day marked the culmination of a 10-year struggle to place uniform Federal controls over the surface mining of coal.

Surface mining today accounts for more than 50 percent of the Nation's coal production, but that extraction can be costly. For when he surface mines, man literally must move mountains. In the process, he changes the land. Before environmental controls, strip mining and the surface effects of underground mining often rendered the mined land useless. Streams and rivers—clogged and polluted—spelled death for fish and wildlife populations. Smoke from burning piles of coal mine wastes polluted the air for miles. And unsafe coal mine dams posed a constant treat to inhabitants of mountain communities.

The infliction of such widespread environmental damage is becoming history as programs initiated by this landmark legislation begin to show results.

The Act called for a program that would protect society and the environment from the adverse surface effects of coal mining operations, and at the same time would strike a balance with the increased demand to make America "energy sufficient" through development of its immense coal resources.

To accomplish this, the program established minimum standards for regulating the surface effects of coal mining, assisting States to develop and implement their own regulatory programs, and promoting reclamation of previously mined areas. Surface mining will be regulated by the States, under programs approved by the Secretary of the Interior. A Federal program would be implemented in a State only after that State has failed to submit an acceptable program of its own, or failed to administer or enforce a program approved by the Secretary.

Statutory Authority

To execute this program, the Act created an Office of Surface Mining Reclamation and Enforcement—shortened to OSM—within the U.S.

Department of the Interior. As authorized by the law, 30 U.S.C. 1201 et seq., OSM was established by the Secretary of the Interior on Sept. 7, 1977.

Walter N. Heine, formerly Associate Deputy Secretary for Mines and Land Protection in the Pennsylvania Department of Environmental Resources, was sworn in as Director on Dec. 7, 1977. Paul L. Reeves—head of the task force that developed the fledgling office—became his deputy in January 1979.

Organization

Charged with administering the new law, OSM set up four major program areas and an administrative support staff. They are:

- *State and Federal Programs*, which develops criteria for State regulatory programs; provides grants to States to develop State programs and to operate their own regulatory programs on both an initial and permanent basis; reviews State programs; monitors approved State programs; implements Federal programs in those States that do not regulate surface coal mining; coordi-



nates regulation on Federal and Indian lands; establishes criteria for designating lands unsuitable for coal mining; coordinates processing of petitions for designating lands unsuitable for mining; manages a program to aid small mine operators; conducts a study of how Indian tribes might assume regulatory authority for surface coal mining on Indian lands.

- *Inspection and Enforcement*, which conducts inspections on surface coal mining operations to insure compliance with the Act and Federal regulations; takes enforcement action in cases of violations; assesses penalties on violations; assists and monitors State inspection programs; protects coal mine employees from discrimination because of actions taken under this law.

- *Abandoned Mine Lands (AML)*, which manages the Abandoned Mine Reclamation Fund, a unique feature of the Act, which utilizes fees levied on current coal mining operations to correct environmental damage resulting from past mining practices. It also administers Federal AML reclamation projects; provides guidelines to State and Indian tribes for their AML reclamation programs; provides reclamation funds to State and Indian tribes with approved regulatory and reclamation programs.

- *Technical Services and Research*, which stipulates technical requirements for permits, reclamation plans and performance standards; funds the State Mining and Mineral Resources and Research Institutes (MMRRI) program; develops and conducts the inspector training program; provides technical back-up and support to the other three program areas.

THE OSM NETWORK

The Office of Surface Mining is headquartered in Washington, D.C., and maintains a nationwide organization of five regional and 14 district offices located in or near the coal-

producing areas. Each of the program areas is headed by an assistant director. The directorates are divided into divisions and branches in a structure that is duplicated at the regional level. Both assistant directors and regional directors report to the OSM director. A complete chart appears on page 19 of this report.

The regional offices are in Charleston, W. Va.; Knoxville, Tenn.; Indianapolis, Ind.; Kansas City, Mo.; and Denver, Colo. Additionally, 14 district and 28 field offices were set up in the heart of the coalfields to furnish the inspection, enforcement and technical support vital to the success of the program.

BUDGET

The Department of the Interior and Related Agencies Appropriations Act for FY 1979 provided \$115.4 million for FY 1979. Of this, \$49.7 million was for financial assistance to the States, mineral institutes, and small mine operators. The remaining \$65.7 million was for direct Federal programs. The FY 1980 budget of \$179.6 million included \$82.7 million in financial assistance activities and \$96.9 million for Federal functions. Additional budgetary information is presented in Table I-1 and I-2, on pages 50 - 51.

PERSONNEL

Initial staffing of OSM was substantially complete by the end of 1979, with 942 out of 1,022 authorized positions filled. Seventy-five percent of these personnel were assigned to the field.

Recruiting persons with the highly specialized backgrounds required in OSM's many technical positions, including women and minorities, required an extensive outreach effort through public and private environmental protection agencies, universities, industry organizations, and professional societies.

As full staffing became a reality,

the Division of Personnel turned its efforts toward programs such as training, Upward Mobility and cooperative education, review of employee appeals procedures, refinement of the merit promotion plan, and institution of executive development (Senior Executive Service) and incentive awards programs. Regions I and III began testing the feasibility of compressed or alternative work schedules.

EQUAL EMPLOYMENT OPPORTUNITY

At OSM, the equal employment opportunity (EEO) program primarily emphasized recruitment activities to attract minority and women applicants. In 1979, there was an intense involvement by EEO staffers at conventions and conferences expressly for this purpose. A special recruiting conference was held in Puerto Rico to identify Hispanic science and engineering students for potential referral to OSM's cooperative education program. Another emphasis was on increasing contact with historically black colleges and universities to publicize this cooperative education program. An EEO officer was placed in each of the five regional offices, and specialist positions were added at headquarters to assist program activities. Special efforts were made to identify and inform minority contractors, particularly those who qualify for contracts under the Small Operator Assistance Program (SOAP).

CONFLICT OF INTEREST

The Act was the first to expressly forbid Federal and State employees engaged in its administration and enforcement from holding "direct" or "indirect" financial interests in coal mining. Regulations establishing methods for monitoring and enforcing these provisions were issued on Oct. 20, 1977.

During 1979 all OSM employees submitted statements of employment and financial interests. From each Department of the Interior bureau and other Federal agencies performing functions under the Act, OSM also received a list of positions involved in those duties. All submitted financial interest statements were reviewed thoroughly for compliance with the conflict-of-interest provisions.

In 1979 OSM considered a joint petition from five environmental organizations which contended that granting exemptions to members of boards or commissions who represent multiple interests is contrary to Congressional intent as stated in the 1977 Act. OSM then proposed that State advisory board members with such conflicts of interest continue to participate in board activities—as long as they made up less than half the board members and did not act on issues from which they could personally profit. On September 25, OSM held a hearing on the proposed change. At the end of 1979 no final ruling had been made.

JUDICIAL INTERPRETATION

As 1979 drew to a close, several actions challenging the constitutionality of the Act were pending.

On Mar. 26, 1979, in *Virginia Surface Mining and Reclamation Association v. Andrus*, the U.S. District Court for the Western District of Virginia issued a preliminary injunction against the Secretary prohibiting the enforcement of Sections 502 through 522 of the Act. This decision was appealed to the U.S. Court of Appeals for the 4th Circuit, which reversed the lower court and lifted the injunction on Aug. 10, 1979. In April 1979, the District Court held a hearing on a motion for a permanent injunction in this case, after which legal briefs were filed by the parties. The District Court had not ruled on the permanent injunction motion by the end of the year.

In *Indiana Coal Association v. United States and State of Indiana v. Andrus*, filed in the U.S. District Court for the Southern District of Indiana, industry plaintiffs challenged the constitutionality of the Act, in particular the prime farmlands provisions, while the State of Indiana maintained the Act violates the Constitution by intruding upon internal State affairs. On Apr. 18, 1979, the Court held a hearing on the plaintiffs' motion for preliminary injunction and the government's motion to dismiss. The parties submitted briefs thereafter. No decision had been rendered by the court by the end of 1979.

In *Star Coal Company v. Andrus*, filed Apr. 18, 1979, in the U.S. District Court for the Southern District of Iowa, Star requested the Court to declare the Act unconstitutional and issue preliminary and permanent injunctions against its implementation. The primary bases for the challenge to the Act were (1) that because Star Coal's mining operations within the State of Iowa do not substantially affect interstate commerce, Congress may not regulate them under the commerce clause of the Constitution, and (2) the prime farmlands' provisions unconstitutionally take coal underlying farmlands without compensation.

Union Carbide Company v. Andrus was filed May 4, 1979, in the U.S. District Court for the Southern District of West Virginia. Cannelton Industries was allowed to intervene in this suit by order of the Court on July 16, 1979. These consolidated cases are suits for declaratory judgment and preliminary and permanent injunction to restrain the Secretary during the initial program from, among other things: conducting Federal inspections and enforcement unless there is compliance with Section 521 (a)(1) of the Act regarding notice to the States; and issuing notices of violation and cessation orders under the provisions of Section 521(a)(3) where the operators are not "permittees" under the

Act. On July 17, 1979, the Court dismissed all of the plaintiffs' contentions, but deferred a decision on the Section 521(a)(3) claim in order to consider arguments that that section is unconstitutional or is being unconstitutionally applied. The Department filed its answer Dec. 5, 1979.

ADMINISTRATIVE REVIEW

The Secretary of the Interior must provide an administrative review for many of OSM's implementing and enforcement actions. In addition, several sections of the Act also require the opportunity for trial-type hearings under the Administrative Procedures Act.

OFFICE OF HEARINGS AND APPEALS

The Secretary exercises this administrative review process through the Office of Hearings and Appeals (OHA). OHA consists of a Hearings Division—staffed by administrative law judges—and several appeals boards established to review appeals stemming from initial decisions of administrative law judges or from decisions from Department of the Interior program bureaus.

OHA's hearings division is located in Arlington, Va., where the chief administrative law judge and one administrative law judge charged with OSM matters have their offices. To expeditiously handle cases, the Hearings Division created four additional field offices and stationed four administrative law judges in Knoxville, Tenn., Louisville, Ky., Charleston, W. Va., and Pittsburgh, Pa. Administrative law judges in OHA field offices in Sacramento, Calif., and Salt Lake City, Utah, conduct most of the hearings in the Western States.

The Board of Surface Mining and Reclamation Appeals, a three-member body responsible for reviewing decisions under the Act, was established Oct. 20, 1977. The Board also is headquartered in Arlington, Va.

Appeals to the Board under the initial regulatory program can involve:

- Petitions for review of proposed assessments of civil penalties issued by OSM;
- Applications for review of notices of violations and cessation orders or modifications, vacations, or terminations of such notices;
- Proceedings for suspension or revocation of permit issued;
- Applications for review of alleged discriminatory acts filed;
- Applications for temporary relief;
- Petitions for award of costs and expenses;
- Certification of an interlocutory ruling or interlocutory appeal.

In addition, any person adversely affected by a written decision of the Director of OSM or his delegate can appeal to the Board where the decision specifically grants such right of appeal.

CASELOAD IN THE FIRST THREE QUARTERS OF 1979

In the first three quarters of 1979, the Hearings Division received 361 applications for review of notices of violation or cessation orders, 119 petitions for review of proposed assessments of civil penalties, and one show-cause order concerning the suspension or revocation of a permit. The Hearings Division held 136 hearings. It disposed of 62 review cases by decision and 124 by dismissal. Thirty-nine penalty cases were disposed of by decision and 31 were dismissed. Twenty-six cases were appealed to the Board.

In the first three quarters of 1979, the Board docketed 26 cases and decided 23 cases, 15 by opinion and 8 by various types of orders. Of the 26 cases docketed, 20 concerned applications for review of notices of violation or cessation orders, four

involved petitions for discretionary review of civil penalties, one was a petition for costs and expenses, and one was an interlocutory appeal.

The following types of cases were decided by opinion: 12 applications for review of notices or orders; two civil penalty cases—one case involving the Board's decision on an interlocutory ruling certified to the Board by an administrative judge in a civil penalty proceeding; and one award of costs and expenses.

The Board also disposed of eight other cases by orders. A temporary relief case (carried over from 1978) was dismissed. A civil penalty case and two review cases were dismissed after requests by OSM for voluntary dismissal. A review case was dismissed after OSM withdrew the appeal and a request for an interlocutory appeal was denied. The Board denied a petition for discretionary review of a civil penalty and dismissed one review case because the appellant failed to pursue the appeal.

In four of the cases docketed with the Board, intervention was sought by the Council of the Southern Mountains, Inc.; the Environmental Policy Institute; the National Wildlife Federation; the Appalachian Coalition; the Tug Valley Recovery Center, Inc.; Save Our Mountains; Virginia Citizens for Better Reclamation; and Save Our Cumberland Mountains. Intervention was granted in all cases. In two cases, the Board granted oral argument requested by a party, and in one case the Board ordered oral argument on its own motion.