

## REGULATORY DEVELOPMENT

SMCRA charges OSMRE with the responsibility of publishing rules and regulations as necessary to carry out the purposes of the Act. OSMRE's permanent regulatory program and related rulemakings provide the fundamental mechanism for assuring that the purposes of SMCRA are achieved. A major objective of OSMRE is to establish a stable regulatory program by improving its regulatory development process and by obtaining a broad spectrum of viewpoints on rulemaking activities. A central staff, reporting to the Director, has the primary function of managing the process of regulatory development.

The first major activity of this staff was to establish the OSMRE Rulemaking Outreach Program to obtain the early involvement of major constituent groups in the regulatory program. During fiscal year 1986, meetings were held with representatives from the coal industry, environmental groups, and state regulatory authorities to obtain input to assist OSMRE in establishing regulatory development schedules. OSMRE also established a process for obtaining pre-rulemaking review and recommendations on regulatory issues from constituent groups. As part of the outreach effort during fiscal year 1986, OSMRE held a meeting to identify regulations that could be developed using various approaches to negotiated or facilitated rulemaking. OSMRE plans to use facilitated rulemaking during the coming year. OSMRE also conducted working sessions with interest groups to consider bonding and state oversight issues.

By the end of fiscal year 1986, four permanent program rules had been published as final in the **Federal Register**, 11 rules were being prepared for publication as final, nine rules were under development for publication as proposed rulemakings, and 33 rules were scheduled for future development or were being studied prior to establishing a schedule for their development. These 58 rules cover a broad range of issues, including lands unsuitable for mining, subsidence resulting from underground mining, permit approval conditions, exemptions from the requirements of SMCRA, reclamation performance standards, and fish, wildlife, and historic property protection.

## ALTERNATIVE ENFORCEMENT

In addition to its inspection activities, OSMRE uses a number of alternative enforcement mechanisms to assure compliance with the surface mining law.

During fiscal year 1986, OSMRE continued to implement several such programs that were started as a result of a February 1, 1985, court order, which has become known as the Revised Parker Order. Those programs include: (1) permit blocking systems to implement section 510(c) of the Act; (2) alternative enforcement actions stemming largely from Federal program enforcement activities; (3) disposition of alternative enforcement actions already referred to the Office of the Solicitor; and (4) the promulgation of new regulations to enhance alternative enforcement.

At the Federal and state levels, OSMRE is developing an applicant/violator system (AVS). When complete, the computerized system will identify and match surface coal mining permit applicants with violators through common ownership or control to determine whether permit applicants, or those who own or control such applicants, are in violation of the Act. Development of the computerized system will provide state regulatory authorities with information that can be used to withhold or deny permits to violators who do not take corrective action to abate violations or pay penalties or AML fees.

OSMRE continued to use an interim permit blocking system where mining is proposed on Federal lands that are regulated under approved state programs and in states where OSMRE is the regulatory authority.

During fiscal year 1986, OSMRE reviewed 189 surface coal mining permit applications from 134 companies. Of these, 60 applicants were found to be in full compliance with the Act and 74 applicants were found to have (or were linked to entities having) outstanding violations or unpaid civil penalties or AML fees. Permit blocking continued to be an effective tool to bring about settlements leading to necessary reclamation and improved collection of monies owed the Federal government.

As an additional measure, OSMRE has continued to implement procedures to suspend or revoke improvidently issued permits. These permits are ones that were inappropriately issued to an entity with (or linked to through common ownership or control to an entity with) unabated Federal violations or unpaid civil penalties. When OSMRE pursues such actions against a violator who also owes AML fees, OSMRE also seeks to collect those fees as well. In fiscal year 1986, OSMRE investigated 74 cases where permits were suspected of having been improvidently issued. As a result, Federal enforcement action was taken in 29 instances in six states. OSMRE was also successful in entering into an agreement with eight companies to reclaim the land or pay civil penalties or AML fees owed the Federal government. Cooperation with state agencies resulted in the cessation of mining at ten operations and the suspension or revocation of eight permits. OSMRE's Nationwide Violator List was circulated quarterly to the states, as it has been in the past. The list has proven to be an effective tool in preventing violators from receiving permits.

During fiscal year 1986, OSMRE accomplished much through the implementation of alternative enforcement, particularly through the use of injunctions. OSMRE's commitment to taking enforcement action against violators who incur failure-to-abate cessation orders resulted in the review of 737 enforcement actions. Of those reviewed by OSMRE during fiscal year 1986, 626 recommendations for injunctive relief were referred to the Office of the Solicitor for legal action.

OSMRE is taking measures to act on the cases reviewed under earlier court orders stemming largely from SMCRA's initial regulatory program. The Revised Parker Order provides for the Secretary to make use of Departmental resources to assist in this effort. In some cases, entities and parties responsible for violating the Act are insolvent, and additional litigation or collection actions would be fruitless. Therefore, in order to continue to set priorities and focus valuable resources where they can be put to best use, OSMRE and the Office of the Solicitor are identifying cases that should be pursued for judicial action and cases that should be closed. OSMRE is determining the net worth of each entity found to have an unabated cessation order, as well as the net worth of the entity's president or chief executive officer. These net worth determinations are being used to evaluate whether an entity or individual possesses sufficient assets to compel compliance with the Act. If the net worth determination establishes that an entity is insolvent, then the case is closed and prosecution is not pursued. During fiscal year 1986, OSMRE ordered from its contractor 1,175 net worth determinations. OSMRE and the Office of the Solicitor are presently analyzing the net worth determinations received thus far. The net worth determinations will be used in deciding which enforcement actions to litigate.