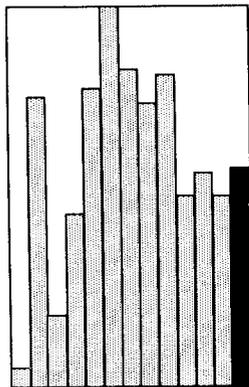


4. REGULATORY ENFORCEMENT

REGULATORY DEVELOPMENT



Final Rulemaking Actions 1978-90

SMCRA charges OSM with responsibility for publishing rules and regulations as necessary to carry out the purposes of the Act. OSM's permanent regulatory program and related rules provide the fundamental mechanism for ensuring that the goals of SMCRA are achieved. A major objective of OSM is to establish a stable regulatory program by improving the regulatory development process and by obtaining a broad spectrum of viewpoints on rule-making activities.

Although 1990 was not a year of extensive rulemaking, several complex and controversial rules were finalized. Throughout this period, the rulemaking process included discussions with representatives of the coal mining industry, environmental groups, and State regulatory authorities to obtain their input and suggestions. Table 3 describes the final regulations published in the Federal Register during 1990. Each regulation is identified with the Federal Register citation by volume and page number, Code of Federal Regulations (CFR) number, effective and published dates.

RULE CHALLENGES

During 1990 the government defended a large number of

OSM regulations in suits brought both by environmental and industry groups. Table 4 summarizes decisions by the U.S. District Court for the District of Columbia that upheld or dismissed challenges to the Secretary's actions concerning OSM regulatory matters.

STATE PROGRAM AMENDMENTS

Following their initial promulgation in 1979, the federal regulations governing permanent regulatory programs were completely revised in 1981-83 to allow States and operators greater flexibility in the means by which they achieve compliance with SMCRA. In response to extensive litigation and agency policy, these rules have been further revised, beginning in 1985 and continuing to the present.

Under 30 CFR 732.17(e), the Director must notify States whenever, as a result of changes in SMCRA or federal regulations, State programs are no longer consistent with SMCRA or federal regulations. During 1990, in compliance with this provision, OSM issued such "732" letters to all States on the following topics:

- During 1989-90, letters covering all regulatory changes through July 30, 1989;
- On February 7, 1990, a letter covering the rule published on December 10, 1989, concerning exemption for coal extraction incidental to the extraction of other minerals;

**TABLE 3
FINAL RULES PUBLISHED DURING 1990**

Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

54FR52092 4/1/90 (30 CFR Parts 700, 702, 750, 870, 910, 912, 921, 922, 933, 939, 941, 942, and 947) Published 12/20/89

This rule provides guidance to the coal and noncoal mining industry and to coal regulatory authorities on the implementation of the exemption for coal extractions incidental to the extraction of other minerals under Section 701 (28) of SMCRA and establishes criteria and procedures for determining whether an operation qualifies initially and on a continuing basis for the exemption.

Federal Lands Program

55FR9400 4/14/90 (30 CFR Part 740) Published 3/13/90

Amends a portion of the federal lands regulations to conform to the July 6, 1984, decision of the U.S. District Court for the District of Columbia with respect to the applicability of the federal lands program.

Application Fee for Permit to Conduct Surface Coal Mining Operations

55FR29536 8/20/90 (30 CFR Parts 736 and 750) Published 7/19/90

Regulations were amended to add a system of fees to be paid to the Office of Surface Mining Reclamation and Enforcement by applicants to obtain processing and issuance of new surface coal mining permits in federal program States and on Indian lands.

TABLE 4
COURT CHALLENGES TO THE SECRETARY'S RULEMAKING ACTIONS

| Date | Rule and Code of Federal Regulations Citation |
|------|---|
|------|---|

CHALLENGES DISMISSED

| | |
|---------|---|
| 2/12/90 | Pre-subsidence surveys and the information required in subsidence control plans (30 CFR 784.20(d)) |
| 2/12/90 | Planned subsidence (30 CFR 817.121(a)) |
| 6/8/90 | Revegetation (30 CFR Parts 701, 816, and 817) |
| 6/8/90 | Restoration of ground water recharge capacity for underground mines (30 CFR Parts 784.14 and 817.41) |
| 6/8/90 | Fish and wildlife resource information, planning requirements, and the protection of fish and wildlife values (30 CFR Parts 780.16, 784.21, 816.97, and 817.97) |
| 8/30/90 | The use of prime farmlands for impoundments and the disposal of coal mine waste resulting from underground mines on prime farmlands (30 CFR 785.17(e)(5), 823.11, 813.12, and 813.14) |
| 8/30/90 | Post-mining roads (30 CFR 816.150(a)(2)(ii) and 817.150(a)(2)(iii)) |
| 8/30/90 | Probable hydrologic consequences (PHC) standards (30 CFR 780.21(f) and 784.14(e)) |
| 8/30/90 | Off-site processing plant rules (30 CFR Parts 785.21 and 827.1) |
| 8/30/90 | Stability of water impoundments (30 CFR 816.49(a)(3) and 817.49(a)(3)) |
| 9/5/90 | Alluvial valley floors: the definitions of "agricultural activities" and "farming" (30 CFR Parts 701.5 and 785) |
| 9/5/90 | Performing reclamation without renewing a permit (30 CFR 701.11, 740.13(a)(1) and (3), 750.11(a)-(c), 773.11(a), 843.11(a)(2), 774.10, and 800.60(b)) |
| 9/5/90 | Coal exploration: test burns (30 CFR 772.14(b)) and narrative descriptions (30 CFR 772.11(b)(3)) |

CHALLENGES UPHELD

| | |
|---------|--|
| 2/12/90 | Underground operator's liability for subsidence damage to structures (30 CFR 817.121(c)(2)) |
| 2/12/90 | The date SMCRA became applicable to off-site coal preparation plants (30 CFR 827.13) |
| 2/12/90 | The definition of "previously mined area" (30 CFR 701.5) |
| 8/30/90 | Termination of regulatory jurisdiction for reclaimed sites or completed surface coal mining and reclamation operations and the reassertion of that jurisdiction (30 CFR 700.11(d)) |
| 8/30/90 | Inspection frequency for abandoned sites (30 CFR 840.11(g) and (h), 842.11(e) and (f)) |
| 8/30/90 | Use of geographic proximity test for determining regulatory jurisdiction over off-site coal preparation plants (30 CFR 785.17(e)(5)) |
| 9/5/90 | The Secretary's non-promulgation of a VER requirement to conduct coal exploration in Section 522(e) areas |

- On June 22, 1990, a letter concerning the decision by the U.S. District Court for the District of Columbia relative to the regulatory provisions for limitations to subsidence liability.

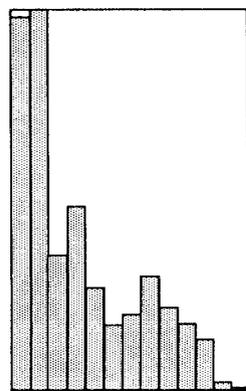
These letters resulted in the submission of a large number of complex amendments from the States. OSM has taken a number of steps to process these submissions more efficiently. For example, the amendment review process within OSM has been decentralized and format and content guidelines for the State program amendment submittal have been issued to the States.

STATE REGULATORY PROGRAMS

Since May 3, 1978, all surface coal mining operations have been required to be permitted by the States and to comply with OSM regulations. Currently there are 24 primacy States that administer and enforce programs for regulating surface coal mining and reclamation under SMCRA. In addition, during 1990, three States had federal programs where OSM regulated surface coal mining and reclamation. Table 5 summarizes State program statistics during the period from July 1, 1989, through June 30, 1990. (OSM's annual statistics on State and federal regulatory programs are compiled on a July-June cycle.)

GRANTS TO STATES

PROGRAM DEVELOPMENT GRANTS

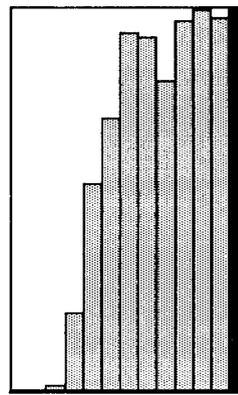


Program Development Grants 1978-90

Section 201 of SMCRA authorizes OSM to assist State regulatory agencies in developing or revising surface mining regulatory programs. All regulatory program development funding for the three coal resource tribes (Crow, Hopi, and Navajo) has been suspended in view of the unlikelihood of foreseeable Congressional action on legislation to allow for tribal primacy under SMCRA Section 710. However, in 1990 OSM continued funding to Indian Tribes to allow tribal

participation by the Hopi and Navajo in the preparation of the environmental impact statement for the Black Mesa-Kayenta mine in Arizona. Table 6 summarizes program development grants in 1990.

REGULATORY GRANTS



Permanent Program Regulatory Grants 1978-90

Section 705 of SMCRA authorizes OSM to provide grants to States with approved regulatory programs in amounts not exceeding 50 percent of annual State program costs.

In addition, when a State elects to administer an approved program on federal lands through a cooperative agreement, the State becomes eligible to receive financial assistance for up to 100 percent of the amount the Federal Government would have expended in regulating coal mining on those lands. Table 7 shows the grant amounts provided to States during 1990 to administer and enforce regulatory programs.

FEDERAL PROGRAMS FOR STATES

Section 504(a) of SMCRA requires OSM to regulate surface coal mining and reclamation activities on non-federal and non-Indian lands in a State if:

- the State's proposal for a permanent program is not approved by the Secretary;
- the State does not submit its own permanent regulatory program; or
- the State does not implement, enforce, or maintain its approved State program.

Although OSM encourages and supports State primacy in the regulation of surface coal mining and reclamation operations, certain States with coal reserves elected not to submit or maintain regulatory programs. These States, thus, became federal program States, with surface coal mining and reclamation operations regulated by OSM. Full federal programs are in effect in eleven States: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. Of the federal programs, only California, Tennessee, and Washington have active coal mining. Table 8 summarizes OSM's regulatory actions in those three States during 1990.

FEDERAL OVERSIGHT OF STATE REGULATORY PROGRAMS

SMCRA Section 517(a) states that OSM shall make such inspections as are necessary to evaluate the administration of approved State programs. In meeting this requirement, OSM reviews permits, conducts oversight inspections of mine sites, and undertakes special studies on

TABLE 5
STATE PROGRAM STATISTICS
1990 (July 1, 1989-June 30, 1990)

| | Alabama | Alaska | Arkansas | Colorado | Illinois | Indiana | Iowa | Kansas | Kentucky | Louisiana | Maryland | Missouri |
|---------------------------------------|---------|--------|----------|----------|----------|---------|------|--------|----------|-----------|----------|----------|
| State Staffing (FTE's 6/30/90) | | | | | | | | | | | | |
| Regulatory Program | 36 | 4.75 | 8.15 | 17.5 | 91 | 67 | 4.53 | 6.85 | 456 | 4.5 | 13.6 | 13.23 |
| AML Program | 32 | 2 | 4.15 | 9 | 35 | 22 | 5.60 | 4.40 | 48 | 1.5 | 2.4 | 12.10 |
| Permits | | | | | | | | | | | | |
| New Permits Issued | 34 | 0 | 3 | 0 | 10 | 13 | 1 | 1 | 198 | 0 | 4 | 3 |
| Inspections | | | | | | | | | | | | |
| Inspectable Units (6/30/90) | 315 | 2 | 33 | 54 | 113 | 491 | 31 | 33 | 4,179 | 2 | 108 | 92 |
| Complete Inspections | 3,095 | 8 | 145 | 224 | 472 | 1,887 | 112 | 134 | 15,946 | 8 | 558 | 359 |
| Partial Inspections | 880 | 16 | 222 | 316 | 1,110 | 3,372 | 231 | 264 | 24,054 | 16 | 1,063 | 719 |
| Citations Issued | | | | | | | | | | | | |
| Notices of Violations (Actions) | 329 | 1 | 15 | 45 | 136 | 248 | 35 | 5 | 3,000 | 4 | 25 | 35 |
| Failure-to-Abate Cessation Orders | 71 | 0 | 4 | 0 | 10 | 34 | 3 | 0 | 567 | 0 | 3 | 17 |
| Imminent Harm Cessation Orders | 0 | 0 | 1 | 1 | 3 | 0 | 1 | 0 | 59 | 0 | 10 | 0 |
| Bonds | | | | | | | | | | | | |
| Forfeitures | 10 | 0 | 1 | 0 | 2 | 1 | 0 | 0 | 98 | 0 | 0 | 0 |
| Abandoned Mine Lands | | | | | | | | | | | | |
| Acreage Reclaimed | 196.45 | 1 | 40 | 107 | 753 | 32.7 | 106 | 10.5 | 148.5 | 0 | 6.3 | 693 |

TABLE 5 Continued
STATE PROGRAM STATISTICS
1990 (July 1, 1989-June 30, 1990)

| | Montana | New Mexico | North Dakota | Ohio | Oklahoma | Pennsylvania | Texas | Utah | Virginia | West Virginia | Wyoming |
|-----------------------------------|---------|------------|--------------|--------|----------|--------------|-------|------|----------|---------------|---------|
| State Staffing (FTE's 6/30/90) | | | | | | | | | | | |
| Regulatory Program | 15.9 | 14.5 | 9.7 | 100.22 | 44.1 | 329 | 47.25 | 18.5 | 98 | 120 | 39.25 |
| AML Program | 7 | 9.25 | 6.05 | 46.46 | 6 | 162 | 17 | 7 | 17 | 51 | 10.5 |
| Permits | | | | | | | | | | | |
| New Permits Issued | 0 | 1 | 2 | 100 | 9 | 213 | 1 | 1 | 36 | 153 | 0 |
| Inspections | | | | | | | | | | | |
| Inspectable Units (6/30/90) | 20 | 14 | 45 | 904 | 179 | 3,472 | 33 | 30 | 964 | 3,385 | 44 |
| Complete Inspections | 147 | 56 | 220 | 3,818 | 643 | 13,658 | 138 | 133 | 3,982 | 2,301 | 161 |
| Partial Inspections | 115 | 108 | 592 | 5,897 | 848 | 22,785 | 290 | 237 | 4,698 | 1,633 | 473 |
| Citations issued | | | | | | | | | | | |
| Notices of Violations (Actions) | 22 | 12 | 5 | 1,002 | 80 | 768 | 6 | 43 | 478 | 2,553 | 21 |
| Failure-to-Abate Cessation Orders | 0 | 0 | 0 | 147 | 27 | 173 | 0 | 0 | 23 | 301 | 0 |
| Imminent Harm Cessation Orders | 1 | 0 | 0 | 31 | 0 | 1 | 0 | 1 | 16 | 49 | 1 |
| Bonds | | | | | | | | | | | |
| Forfeitures | 0 | 0 | 0 | 28 | 0 | 41 | 0 | 0 | 13 | 58 | 0 |
| Abandoned Mine Lands | | | | | | | | | | | |
| Acres Reclaimed | 247.5 | 47 | 231 | 101.7 | 105 | 1,293.8 | 44 | 30 | 82.6 | 377.9 | 335 |

TABLE 6
PROGRAM DEVELOPMENT GRANTS 1990
 Obligations

| Indian Tribe | FY 1990 |
|--------------|----------|
| Crow | \$ 0 |
| Hopi | 35,000 |
| Navajo | 40,000 |
| Total | \$75,000 |

topics of concern in the 24 States with approved primary programs. Oversight inspections are conducted on a random sample basis or in response to citizen complaints. If OSM has reason to believe a violation of the State program exists, OSM must notify the State (except in the case of imminent danger to the public or the environment, in which case OSM must immediately inspect the site and issue a cessation order when a State has not taken appropriate action). OSM notifies the State of a possible violation with a "Ten-Day Notice." Once notified of a possible violation, the State then has ten days in which to take appropriate action to cause the violation to be corrected, or to show good cause for not doing so. In the relatively few instances where OSM determines that a State has not taken appropriate action or shown good cause, a federal inspection is conducted and, if a violation is found to exist, a federal Notice of Violation or a Cessation Order is issued.

Since 1989, changes have been implemented in the manner in which OSM conducts oversight of State programs. These changes included revised requirements for the field office director's report on each State program, an emphasis on oversight tailored to specific areas under each State program based on perceived need or to follow up on prior problems, and the use of action plans developed jointly between field office directors and States to resolve problems when they occur. Table 9 summarizes OSM's oversight inspection and enforcement activities during 1990.

REGULATION OF SURFACE MINING ON FEDERAL AND INDIAN LANDS

FEDERAL LANDS PROGRAM

Section 523(a) of SMCRA requires the Secretary of the Interior to establish and implement a federal regulatory program applicable to all surface coal mining and reclamation operations taking place on federal lands. On

February 16, 1983, OSM promulgated the current federal lands program.

The federal lands program is critical because the federal government owns significant coal reserves, primarily in the West, whose development is governed by the Federal Coal Management program of the U.S. Department of the Interior's Bureau of Land Management. Of the 234 billion tons of identified coal reserves in the western U.S., 60 percent is federally owned.

Through cooperative agreements, the administration of most surface coal mining requirements for the federal lands program may be delegated by the Secretary to States with approved regulatory programs. By the end of 1990, the Secretary had entered into such cooperative agreements with Alabama, Colorado, Illinois, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West Virginia, and Wyoming.

Once the Secretary and the State have a signed cooperative agreement, the State regulatory authority assumes responsibility under SMCRA for permitting, inspection, and enforcement for surface coal mining activities on federal lands in that State. OSM then maintains an oversight function to ensure that the regulatory authority fully exercises its delegated responsibility under the cooperative agreement. In States without cooperative agreements, the required permitting, inspection, and enforcement activities under SMCRA are carried out by OSM. During 1990, 22 permitting actions were completed by OSM for surface coal mining operations on federal lands in Kentucky.

INDIAN LANDS PROGRAM

Pursuant to Section 710 of SMCRA, OSM regulates coal mining and reclamation on Indian lands. Mines on the Navajo and Hopi Reservations and a portion of a haul road which crosses the Ute Mountain Reservation are

**TABLE 7
REGULATORY GRANT FUNDING
1990 Obligations**

| State | Federal Lands | Non-Federal Lands (Federal Share) | Total Federal Funding* |
|---------------|--------------------|--|------------------------------|
| Alabama | \$25,033 | \$1,002,926 | \$1,027,959 |
| Alaska | 0 | 274,397 | 274,397 |
| Arkansas | 0 | 158,600 | 158,600 |
| Colorado | 800,788 | 252,764 | 1,053,552 |
| Illinois | 94,195 | 2,364,693 | 2,458,888 |
| Indiana | 0 | 1,220,293 | 1,220,293 |
| Iowa | 0 | 167,826 | 167,826 |
| Kansas | 0 | 184,941 | 184,941 |
| Kentucky | 0 | 11,847,320 | 11,847,320 |
| Louisiana | 0 | 192,037 | 192,037 |
| Maryland | 0 | 492,008 | 492,008 |
| Mississippi | 0 | 22,981 | 22,981 |
| Missouri | 0 | 430,402 | 430,402 |
| Montana | 565,669 | 153,329 | 718,998 |
| New Mexico | 236,700 | 322,400 | 559,100 |
| North Dakota | 283,004 | 214,624 | 497,628 |
| Ohio | 0 | 2,699,033 | 2,699,033 |
| Oklahoma | 15,593 | 869,233 | 884,826 |
| Pennsylvania | 0 | 10,046,974 | 10,046,974 |
| Texas | 0 | 961,275 | 961,275 |
| Utah | 876,463 | 207,226 | 1,083,689 |
| Virginia | 5,943 | 3,124,563 | 3,130,506 |
| West Virginia | 0 | 3,206,614 | 3,206,614 |
| Wyoming | 1,215,366 | 240,266 | 1,455,632 |
| Hopi Tribe | 0 | 35,000 | 35,000 |
| Navajo Tribe | 0 | 41,500 | 41,500 |
| Total | \$4,118,754 | \$40,733,225 | \$44,851,979 |

*Includes obligations for AVS, TIPS, Kentucky Settlement Agreement, and other Title V cooperative agreements.

**TABLE 8
FEDERAL REGULATORY PROGRAMS
STATES WITH ACTIVE MINING
1990 (July 1, 1989 - June 30, 1990)**

| | Tennessee | Washington | California |
|---|-----------|------------|------------|
| Permits | | | |
| New Permits Issued | 11 | 0 | 0 |
| Permits Suspended | 4 | 0 | 0 |
| Permits Revoked | 4 | 0 | 0 |
| Inspections | | | |
| Inspectable Units | 761 | 4 | 3 |
| Complete Inspections | 1937 | 31 | 12 |
| Partial Inspections | 3963 | 11 | 24 |
| Citations Issued | | | |
| Notices of Violation | 392 | 2 | 1 |
| Failure-to-Abate Cessation Orders | 71 | 0 | 0 |
| Imminent Harm Cessation Orders | 9 | 0 | 0 |
| Bonds* | | | |
| Final Bonds Released | 18 | 0 | 0 |
| Forfeitures Initiated | 6 | 0 | 0 |
| Bonds Collected | 3 | 0 | 0 |
| Default Sites Reclaimed | 0 | 0 | 0 |
| Designation of Lands Unsuitable for Mining | | | |
| Petitions Received | 0 | 0 | 0 |
| Acres Designated Unsuitable | 5250 | 0 | 0 |

*Permanent Program Sites only.

within the responsibility of OSM's field office in Albuquerque, New Mexico.

For the Crow Ceded Area in Montana, OSM and the Montana Department of State Lands have developed a Memorandum of Understanding under which the State and OSM cooperatively administer applicable surface mining requirements, including the permitting and inspection functions. The mine on the Crow Ceded Area is under the jurisdiction of OSM's field office in Casper, Wyoming. Table 10 provides statistics on regulatory activities on Indian lands during 1990.

HEARINGS AND APPEALS

SMCRA requires the Secretary of the Interior to provide administrative review of OSM's actions, including the opportunity for hearings governed by the Administrative

Procedure Act. The Secretary has delegated this administrative review function to the Department's Office of Hearings and Appeals (OHA), which is not part of OSM but which handles all the administrative review responsibilities of the Department of the Interior.

OHA consists of a Hearings Division -- staffed by administrative law judges who hold hearings under the Administrative Procedure Act -- and several appeals boards established to review appeals arising from decisions of administrative law judges or from decisions of certain program bureaus within the Department of the Interior. The appellate functions of the Secretary under SMCRA have been delegated to the Interior Board of Land Appeals (IBLA). Under SMCRA, a person adversely affected by a written decision of the director of OSM, or by a delegate of the Director, may appeal directly to IBLA if

TABLE 9
FEDERAL OVERSIGHT OF STATE PROGRAMS
1990 (July 1, 1989 - June 30, 1990)

| State | Number of OSM Inspections | | Violations Cited in OSM Enforcement Actions | |
|---------------|---------------------------|--------|---|---------|
| | Random | Other* | NOV's** | CO's*** |
| Alabama | 154 | 15 | 0 | 0 |
| Alaska | 2 | 0 | 0 | 0 |
| Arkansas | 16 | 6 | 0 | 0 |
| Colorado | 25 | 6 | 0 | 0 |
| Illinois | 57 | 26 | 0 | 0 |
| Indiana | 193 | 48 | 0 | 0 |
| Iowa | 14 | 3 | 1 | 0 |
| Kansas | 17 | 15 | 2 | 0 |
| Kentucky | 430 | 1313 | 7 | 3 |
| Louisiana | 1 | 0 | 0 | 0 |
| Maryland | 56 | 15 | 0 | 0 |
| Missouri | 41 | 11 | 1 | 0 |
| Montana | 9 | 3 | 0 | 0 |
| New Mexico | 7 | 0 | 0 | 0 |
| North Dakota | 29 | 5 | 0 | 0 |
| Ohio | 276 | 96 | 3 | 0 |
| Oklahoma | 67 | 83 | 8 | 0 |
| Pennsylvania | 348 | 316 | 0 | 0 |
| Texas | 15 | 4 | 0 | 0 |
| Utah | 15 | 5 | 2 | 0 |
| Virginia | 276 | 54 | 0 | 0 |
| West Virginia | 348 | 683 | 12 | 5 |
| Wyoming | 17 | 14 | 1 | 0 |

*Reflects additional inspections required to implement litigation settlement agreements.
**Notices of Violation
***Imminent Harm or Failure-to-Abate Cessation Orders

the decision specifically grants the right to appeal.

The headquarters of OHA is in Arlington, Virginia, where the chief administrative law judge, the various appeals boards, and a number of other administrative law judges, including one charged with OSM matters, maintain their offices. Three Hearings Division field offices, in Pittsburgh, Pennsylvania; Knoxville, Tennessee; and Salt Lake City, Utah, currently handle OSM matters. Administrative review under SMCRA has presented the administrative law judges and IBLA with a variety of issues for resolution. In 1990, IBLA issued decisions in 35 SMCRA cases.

KENTUCKY SETTLEMENT AGREEMENT

In September 1987, a Settlement Agreement was reached between the National Wildlife Federation et al. and the Commonwealth of Kentucky.

The Department of the Interior, the Commonwealth of Kentucky, and environmental and industry groups participated in negotiations on the settlement agreement. At the same time, a Supplemental Memorandum of Understanding was entered into between OSM and Kentucky. Congressional authorization for funding to carry out terms of the Memorandum of Understanding was approved in December 1987 for \$12,900,000, and OSM and Kentucky signed a three-year Cooperative Agreement

TABLE 10
REGULATORY ACTIVITIES ON INDIAN LANDS
1990

| | Number |
|--|--------|
| Indian lands in Arizona and New Mexico | |
| Total permits | 6 |
| Inspectable Units (All lands) | 9 |
| Total Inspections (Partial and Complete) | 79 |
| Enforcement Actions (Notices of Violations issued) | 13 |
| Indian lands in Montana | |
| Total Permits | 1 |
| Inspectable Units (All lands) | 1 |
| Total Inspections (Partial and Complete)* | 12 |
| Enforcement Actions (Notices of Violations issued) | 0 |

*All inspections (partial and complete) are conducted jointly by the Montana Department of State Lands and the OSM Casper Field Office

covering funding on February 23, 1988. The Cooperative Agreement provides \$10,540,000 for the accomplishment of tasks and additional duties enumerated in the Settlement Agreement and the Supplemental Memorandum of Understanding. The remaining funds are being used by OSM for background hydrology studies and acidity problems and for the development of bond release training. Since that time, the Cooperative Agreement has been amended to include an additional hydrology study, an eight-module video and training program, and special equipment.

An important requirement of the Settlement Agreement is the aerial overflight program. This requires that all permanent program surface coal mining operations without a Phase II bond release be overflown and videotaped. Kentucky is reviewing the videotapes and conducting follow-up inspections to determine if violations exist on the ground. Where it is determined that an inspector is not fulfilling the requirements of his or her position, training or other appropriate action is being taken.

The aerial overflight program has given the Kentucky management team a first-hand experience into the on-ground conditions that exist in Kentucky. The videotapes are being used by Kentucky's management in making important decisions on the overall program. The aerial overflight program has been so successful that Kentucky will continue this effort when the Settlement Agreement expires on January 31, 1991.

Because the Settlement Agreement emphasizes the elimination of illegal coal mining, coordination groups were formed between the various State and federal agencies involved with controlling this activity. These groups are now routinely discussing problems and sharing information gathered by the different agencies, where formerly each operated independently. This unified effort is showing positive results, as is demonstrated by the last two OSM annual reports, which show a significant drop in the number of illegal coal mine sites. In fact, in this year's study no additional illegal mining operations were found in a county that in the past had many illegal mining operations.

Other provisions within the Settlement Agreement and Supplemental Memorandum of Understanding include: upgrading computer systems; one-time inspection and photographing of all interim program permits and on-site construction exemptions; continuing the issuance of Failure-to-Abate Cessation Orders; assessing penalties of \$750.00 per day; development of computer tracking for unabated Cessation Orders with alternative enforcement follow-up; development of an inventory of exploration notices/permits and taking enforcement action where abuses have occurred; and denying or suspending permits in accordance with the Applicant Violator System.

Kentucky conducted a special study on 88 mine sites thought to have prematurely or improperly released bonds, concluding that while some of the mine sites certainly have problems that were caused by mining activities, it was not possible to determine whether those problems existed at the time of bond release or occurred after-

wards. Kentucky decided that it would be a waste of time and resources to take any further action on any of those mine sites.

Kentucky has made significant progress in implementing the requirements of the three agreements. The added support has led to innovative methods of mine inspection and data processing and has placed Kentucky in a position of leadership in terms of technical sophistication. A growing spirit of cooperation between coal operators and the State has resulted in improvement of the Kentucky regulatory program and an increase in voluntary compliance throughout the State's coal industry.

Overall, Kentucky is committed to improving its inspection and enforcement program. This commitment was reinforced by the 1990 Kentucky General Assembly's approval of an additional \$25 million for the next two years for continuing many of these new programs and other improvements that were a result of the 1988 National Wildlife Federation Settlement Agreement. With this additional funding, many of the new and innovative programs that Kentucky has implemented over the past few years will be continued.

PENNSYLVANIA ANTHRACITE REGULATORY PROGRAM

Section 529 of SMCRA provides an exception from federal performance standards for anthracite coal mining operations, provided the State law governing these operations was in effect on August 3, 1977. Pennsylvania is the only State with an established regulatory program qualified for exception, and thus regulates anthracite mining independent of SMCRA permanent program standards.

The Pennsylvania anthracite coal region is located in the northeast quarter of the State and covers approximately 3,300 square miles. The more than 20 different coal beds there vary in thickness from a few inches to 50 or 60 feet. The anthracite region is characterized by steeply pitching seams, some with dips steeper than 60 degrees. Such strata require highly specialized mining techniques and present unique challenges to ensure that highwalls are eliminated and the area is restored to productive post-mining land use. The long history of mining in the anthracite region has produced a legacy of abandoned mine land problems. However, because most current mining operations affect previously disturbed land, a large percentage of abandoned mine land is eventually restored to productive land use.

Anthracite mining produces about 3.3 million tons per year, approximately 4.5 percent of Pennsylvania's annual coal production. The Pennsylvania anthracite pro-

gram covers 462 inspectable units permitting over 103,000 acres, and includes 104 underground mines, 284 surface mines, 17 preparation plants, and 57 combination operations.

Pennsylvania has fully addressed conditionally approved provisions of the anthracite program through subsequent program revisions. Anthracite program permitting and inspection have experienced continued improvement; however, a disturbing enforcement trend was noted in uncited violations observed on random sample inspections. Several factors, including a significant shortage of field personnel and several changes in staff assignments, influenced this abrupt change in program achievement.

Anthracite program permitting efforts have concentrated on two areas: small underground operations and preparation plants. Pennsylvania has successfully applied program permitting and performance standards to a class of small underground operations which historically have operated without regulatory requirements. Anthracite preparation plants have been permitted or are under review for appropriate enforcement or permitting action in response to a program amendment approved during July 1989.

RECLAMATION AWARD PROGRAM

In 1986, to give well-earned public recognition to the coal mine operators responsible for the nation's most outstanding achievements in environmentally sound surface mining and land reclamation, OSM initiated the annual Excellence in Surface Coal Mining and Reclamation Awards. Since then, 33 companies have received awards for exemplary reclamation under SMCRA.

During 1988, in addition to presenting the Excellence in Surface Coal Mining and Reclamation Awards, OSM established the Director's Award, an award given annually at the discretion of the Director to one mining company in recognition of outstanding achievement in a special area of reclamation.

The 1989 awards were presented to the nine winning coal mine operators by Secretary of the Interior Manuel Lujan, Jr., in May 1990 at the American Mining Congress's annual meeting in Cincinnati, Ohio.

National public recognition of these outstanding operators:

- Promotes their exemplary performance using standard reclamation practices;
- Publicizes the development and implementation of new reclamation technologies;

- Encourages wider use of the best reclamation technology through information exchange and technology transfer;
- Provides the public with a better understanding of mined-land reclamation achievement under SMCRA; and
- Encourages voluntary action by coal mine operators that goes beyond minimum compliance with regulatory requirements to protect the environment and manage coal resource recovery.

The 1989 winners were:

The Director's Award

- Peabody Coal Company, for exemplary wetlands reclamation at its Will Scarlet Mine, located near Carrier Mills, Illinois.

Excellence in Surface Coal Mining and Reclamation Awards

- Vigo Coal Company, Discovery No. 1 Mine; Buckskin, Indiana
- Drummond Coal Company, Kellerman No. 2 Mine; Jasper, Alabama
- Lee Jay Corporation, coal refuse dump; Clarksville, Pennsylvania
- Southern Ohio Coal Company, Martinka No. 1 Mine; Fairmont, West Virginia
- Associated Electric Cooperative, Bee Veer Operations; Clifton Hill, Missouri
- Basin Cooperative Services, Glenharold Mine; Stanton, North Dakota
- Texas Utilities Mining Company, Monticello-Winfield North Lignite Mine; Mount Pleasant, Texas
- R & S Coal Company, J & B No. 3 Mine; Lamar, Arkansas

Nominations for the 1990 award program were due November 30, 1990, for winners to be selected in the spring of 1991. Information materials, which have been distributed to encourage participation in the program and communicate reclamation information to mining companies throughout the U.S., included a video program describing winning reclamation, a flyer, and booklets illustrating specific attributes of the winning reclamation projects.