

**Annual Report of the
U.S. Department of the Interior
Office of Surface Mining**

Fiscal Year 1991



United States Department of the Interior

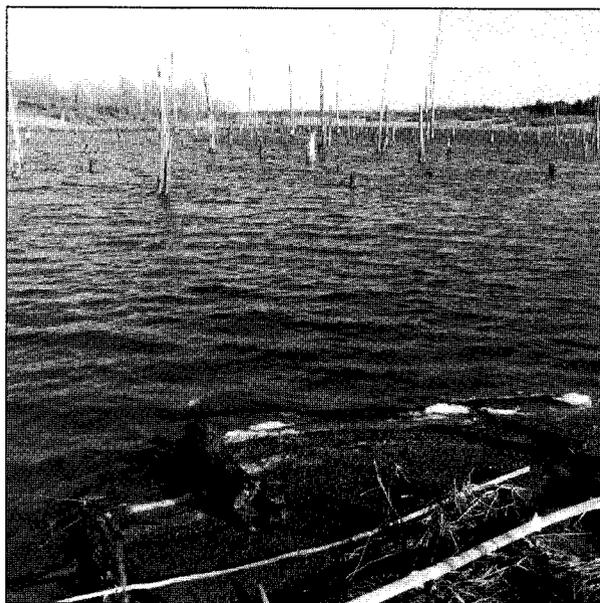
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(COVER PHOTO) Reclamation at the Peabody Coal Company's Will Scarlet Mine, near Carrier Mills, Illinois. Often referred to as the "nation's worst" example of pre-SMCRA acid soils and water associated with surface coal mining, the Peabody Coal Company assumed reclamation and water treatment responsibility for past mining problems when it purchased the 8,000-acre mine in 1967 (left). To abate acid discharges, a plant for treating 3.5 million gallons per day of acid mine drainage was constructed. However, without reclamation to eliminate the sources of acid runoff, costly treatment would be a continual problem. In the early 1980's, Peabody, in cooperation with the Southern Illinois University Cooperative Wildlife Research Laboratory, began the nation's largest mined-land wetland reclamation effort. Over 35,000 tons of agricultural limestone were used to neutralize the pyritic spoil and refuse materials. The limestone was covered with more than 35,000 tons of sewage sludge. Erosive banks and gullies were stabilized using over 20,000 tons of riprap, and nearly 10,000 pounds of seed were used to reestablish vegetation. Today, this reclaimed wetland supports a resident giant Canada goose population and provides winter refuge for thousands of Canada geese, ducks, and other waterfowl. In addition to the wildlife benefits, the wetlands have become a natural "treatment plant," with the potential to completely eliminate the need for chemical treatment. What was previously called the "nation's worst" acid mine drainage problem is now described as the "nation's best" example of wetland and wildlife development on surface-mined land.

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**United States Department of the Interior
Office of Surface Mining Reclamation and Enforcement
Washington, D.C. 20240
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1. INTRODUCTION

This report was compiled for the President and the Congress as required by Section 706 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The report describes the operations of the Interior Department's Office of Surface Mining Reclamation and Enforcement (OSM) for the period October 1, 1990, through September 30, 1991 -- fiscal year 1991.¹ Included in this report are activities regarding Title IV, Abandoned Mine Reclamation; Title V, Control of the Environmental Impacts of Surface Coal Mining; Title VI, Designation of Lands Unsuitable for Noncoal Mining; and Title VII, Administrative and Miscellaneous Provisions.

SMCRA responsibilities of other bureaus or agencies are omitted from this report. These responsibilities include Title III, the Mining and Mineral Resources and Research Institutes Program, which is administered by the U.S. Bureau of Mines; Titles VIII and IX, the University Coal Research Laboratories and the Energy Resource Graduate Fellowships, which are administered by the Secretary of Energy; and Section 406, the Rural Abandoned Mine Program (RAMP), which is administered by the Secretary of Agriculture. Information about these activities is reported directly to Congress by the agencies responsible.

This year's report format is similar to OSM's combined report for 1988-89 and its annual report for 1990. This facilitates easy comparison of data from year to year. However, the format differs in appearance from earlier OSM annual reports, which were written not only to meet the reporting requirement to Congress, but also for general distribution to the public. This report, which contains current data and only brief background information, was prepared primarily for the President, the Congress, and the State regulatory authorities. The condensed format and more specific focus has resulted in publication cost savings and strict adherence to the standards of the Joint Committee on Printing for federal agency annual reports. The information in this report is organized to facilitate either an examination of specific elements or a review of the entire program.

Section 2 summarizes OSM's principal accomplishments and outlines issues confronting the agency during 1991. Although these are further described with text and statistics in the body of the report, they are presented here to give the reader both an overview and summary of OSM's activities during the past fiscal year.

Sections 3 through 6 describe OSM's administration of the SMCRA Regulatory and Abandoned Mine Land Programs. Statistics are provided in tabular form. Where

appropriate, graphs show current and historic levels so that trends since the beginning of the program are readily apparent.

Section 7 lists citations of OSM technical publications, reports, and video programs developed during 1991. This eliminates extraneous text and should aid readers who require more detailed information about OSM operations. Some of these materials are unpublished; however, machine copies are available from OSM upon request.

Section 8 provides a directory of the 30 OSM office locations.

For information about OSM activities, news releases, and publications, or for additional copies of this report, contact:

Public Affairs
Office of Surface Mining
1951 Constitution Ave., NW, Room 138
Washington, D.C. 20240
(202) 208-2553

1. Throughout this document, "1991" always refers to FY 1991, unless otherwise noted.

2. EXECUTIVE SUMMARY

Over the years, the demand for energy resources has been growing. Meeting the demand has become increasingly expensive. With all the focus on oil, particularly in light of recent dramatic events in the Persian Gulf, many people tend to lose sight of the fact that the United States continues to rely heavily on coal to fuel its economy. In 1991 more than half of the Nation's electricity was produced from coal. Projections now show that by the year 2010 production could reach almost 1.6 billion tons annually. That would be an increase of more than 60 percent over 1991 production.

In 1991 the Office of Surface Mining emphasized that implementation of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) has become more stable and predictable. In years past, implementation of the Act was accompanied by considerable uncertainty for both the coal industry and environmental interests. Past regulatory requirements had been in a constant state of fluctuation as a result of much litigation and frequent changes in leadership at OSM. This year, regulations fared better in litigation than in the past, and the Secretary of the Interior's discretion was upheld. More stable management is bringing about a more balanced approach to regulation.

The year 1991 was challenging but productive for OSM. Progress in the regulatory area has been achieved to bring about much-needed stability, predictability, and fairness in the regulation of surface coal mining.

The following are the principal areas where OSM expended major effort during 1991:

REGULATORY ACCOMPLISHMENTS

Proposed rules were published for Applicant/Violator System (AVS) procedures, individual civil penalties, previously mined areas, Abandoned Mine Land (AML) reauthorization, final bond release certification, and temporary cessation. During 1992 OSM plans to publish final rules on reclamation technology, exploration, and impoundments/spillways. Work is also under way on a rule to improve the wetlands provisions of the regulations by providing incentives for the creation of wetlands as a post-mining land use. And, in January 1991, OSM signed a Memorandum of Understanding with Ducks Unlimited that promotes the conservation of wetlands.

But achieving regulatory stability takes time. There are still several important regulatory issues to be resolved at OSM, and decisions are pending on several issues under litigation.

It has been extremely difficult to bring about consensus in determining Valid Existing Rights (VER) to mine coal in protected areas and to set liability for subsidence damage. However, OSM is moving ahead on resolving these issues and plans to publish rules on the subject as scheduled in 1992. OSM continues to work toward a predictable regulatory scheme so that all the Nation's coal operators will know what is expected when they begin mining and what is expected when they finish, and so that citizens can count on environmental protection during coal mining and land reclamation afterward.

On the same day a VER rule was proposed, OSM published a Notice of Inquiry seeking comments on the possibility of revision to the subsidence rules. A notice was used to ensure that the process was as open and thorough as possible. This makes certain that all the relevant issues are identified so they can be fully addressed. On September 6th, 10 environmental organizations filed suit in the U.S. District Court for the District of Columbia. The lawsuit challenges OSM's statement in the Notice of Inquiry that subsidence is not prohibited within areas covered by the mining prohibitions in Section 522(e). OSM undertook a serious and sustained effort to address the very complex issues related to how subsidence can be most effectively and equitably dealt with in the regulations. A court decision is expected. In the meantime, OSM is moving toward subsidence regulations that are fair, sound, and responsive to the needs of those who live in the coalfields.

APPLICANT/VIOLATOR SYSTEM (AVS)

During 1991 major improvements were made in AVS. The system is now the most current and most accurate it has ever been for verifying AVS recommendations on permit applications. System reliability on those recommendations is now up to 98 percent, and State cessation orders have been added to the system. Also, Memoranda of Understanding for use in implementing AVS have been signed by OSM and all State regulatory programs except Maryland's. Additionally, the Tennessee Valley Authority has entered into an agreement with OSM to check coal suppliers against AVS to determine whether they have outstanding violations.

The AVS Office is examining the collection and maintenance of ownership and control information to identify ways to streamline the process and reduce duplication. In addition, in 1991 the AVS Office added features that are directly beneficial to the user public. For example, operators can contact OSM to obtain AVS ownership and control information on their companies. They receive

graphic printouts, called "footprints," that illustrate company ownership and control data. In 1991 more than 500 footprints were sent to operators, giving companies an opportunity to review AVS data and allowing them to point out any discrepancies that needed correction.

More and more companies are querying AVS for information on individuals and contractors with whom they may be considering doing business. Also, as a result of the work of the AVS Office, 1,300 obsolete AML fee accounts were deactivated and will no longer receive OSM-1 forms. This will reduce the paperwork burden for many operators and eliminate the risk of an operator being unfairly blocked.

PRIMACY

Possibly the biggest issue in 1991 was the question of West Virginia primacy. Although it only directly affected one State, this particular crisis had implications that are fundamental to the way OSM implements SMCRA.

Stability is not limited to the content of the rules or settling outstanding violations. It also means making sure that regulatory authority doesn't change hands unnecessarily. One of the guiding principles of SMCRA is that each State -- not the Federal Government -- is best suited to make the decisions that will ultimately affect the people within its boundaries. While the Federal Government establishes the basic requirements for surface mining and reclamation nationwide, it is the States that know how to best achieve those requirements. This principle -- primacy -- is the underlying basis for implementing SMCRA. It has worked and continues to work effectively throughout the Nation. But in 1991, primacy was in jeopardy in West Virginia because inadequate resources made the State unable to implement its approved State program satisfactorily. OSM stepped in and provided short-term staffing assistance to help the State resume effective operation. Working directly with Governor Caperton, the West Virginia Legislature, and the State Regulatory Authority, needed changes and resource levels were documented. The Governor and State legislature responded. Adequate funding was provided, and West Virginia is now well on the way to successful program implementation.

In 1991, in addition to the efforts to strengthen the State program in West Virginia, OSM also began to take a fresh look at Tennessee. Talks began with Governor McWherter about the possibility of Tennessee's re-establishing a State primacy program. Recognizing that there are many factors that a State must consider when considering the possibility of taking over regulatory responsibility, OSM stands ready to help Tennessee evaluate the benefits and costs of primacy.

OUTSTANDING VIOLATIONS

During 1991 OSM entered into agreements with several

major coal operators to resolve outstanding violations, particularly those linked to the operators through contract mine operators. These agreements resulted in the resolution of a large number of violations and reclamation problems. By resolving the violations, OSM is making the permitting process more open and timely.

ABANDONED MINE LANDS

Congress extended the authority to collect tonnage-based reclamation fees through September 1995. This extension includes certain changes to the program, and work was completed in 1991 on proposed regulations. Final regulations will be published in fiscal year 1992. These regulations will successfully implement legislative changes to the program that were enacted in 1990.

TWO-ACRE EXEMPTION

When SMCRA was enacted in 1977 it provided an exemption for sites of two acres or less which involved the removal of less than 250 tons of coal. The intent of this exemption was to ease regulatory and financial burdens on small-scale or "mom and pop" surface coal mining operations. Although some mines operating under this exemption stayed within the two-acre limit, most did not. Still others, which claimed to be small, locally-owned, independent mines, were actually run by large corporations that tried to circumvent the law by appearing to mine only two acres at a time. From a relatively low number of two-acre permits in the early 1980's (42 in 1982), the number exploded to over 1,700 by the end of 1984.

OSM initially identified a potential problem in 1983 and took steps to increase the level of oversight on the two-acre exemption. In 1985, Congress provided funding that authorized the establishment of 20 additional positions in Lexington, Kentucky, and opened the new Hazard Area Office. In April 1988 OSM signed an agreement with Kentucky stipulating OSM's regulatory responsibility over two-acre exemptions.

Since the beginning of the two-acre effort, the Hazard Area Office has issued 338 Federal enforcement actions, compelling companies and individuals to reclaim the land damaged by abuse of the exemption. This has included reclamation of a massive landslide which blocked a major railroad line, and several cases where landslides of mine spoil damaged homes. Significant success has been achieved, with almost 1,300 sites totalling over 3,000 acres of reclaimed land. In addition, over \$732,378 in delinquent Federal taxes has been collected, with billing completed on almost \$2,000,000 more.

On April 11, 1991, the OSM Director signed an agreement with environmental groups ending almost ten years of controversy and litigation over the abuse of the two-acre exemption.