

**OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT**

**ANNUAL EVALUATION SUMMARY REPORT
FOR THE
REGULATORY PROGRAM
ADMINISTERED BY THE STATE OF**

ALASKA

**EVALUATION YEAR 2005
JULY 1, 2004 to JUNE 30, 2005**



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I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that have been approved by OSM as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the Alaska program and the effectiveness of the Alaska program in meeting the applicable purposes of SMCRA as specified in Section 102. This report covers the period of July 1, 2004 to June 30, 2005. Detailed background information and comprehensive reports from the program elements evaluated during the period are available for review and copying at the Olympia, Washington OSM Office.

The following acronyms are used in the report:

DMLW	Division of Mining, Land and Water
GVEA	Golden Valley Electric Association
NOV	Notice of Violation
OSM	Office of Surface Mining
OTT	Office of Technology Transfer
PF	Poker Flats
SMCRA	Surface Mining Control and Reclamation Act of 1977
TBR	Two Bull Ridge
UCM	Usibelli Coal Mine Inc.
WRC	Western Regional Center
GRP	Gold Run Pass
TIPS	Technical Innovation and Professional Services
AML	Abandoned Mine Lands

II. Overview of the Alaska Coal Mining Industry

Alaska is home to enormous coal reserves, estimated to be approximately 170 billion tons. Currently, Healy, Alaska is the only area where active coal mining is taking place. Historically, Usibelli Coal Mine Inc. (UCM) has employed upwards of 125 to 150 employees at the mines. Even though the Healy area economy is becoming more diversified, primarily due to increased tourism, the area relies heavily on the economic contributions made possible by the mining activity.

Usibelli Coal Mine Inc. is a family owned company and has very strong ties to the Healy area. It is the largest year-round employer in the area. The company not only currently employs approximately 100 people at the mine, it is a strong supporter of youth services, education, health and social services and civic activities in the Healy area. Directly, UCM accounts for approximately an additional 80 jobs between the adjacent Golden Valley Electric Association (GVEA) mine mouth power plant, the Alaska Railroad Corporation and the Seward Coal Terminal located in Seward, Alaska. Indirectly, UCM mining activities benefit over 400 individual contractors/vendors located between Anchorage and Fairbanks with approximately 200 additional individuals being employed by the various power plants located throughout the interior of Alaska that burn coal mined from the Usibelli sites.

Since 1985, UCM has exported a sizable portion of its production to South Korea. However, in 2002, Indonesia outbid UCM for the Korean contract and the South Korean government terminated their coal contract with UCM. This resulted in decreased production during the 2003 evaluation cycle. The drop in production also resulted in a smaller workforce with employment decreasing to around the current level of 100. Since then, world coal prices have rebounded and UCM has once again begun exporting approximately 400,000 tons of coal to South Korea. Before the Korean contract was terminated, approximately 1.6 million tons of coal was mined annually in the Healy valley. With the new Korean contract in place, UCM now produces 1.72 million tons. During the past evaluation cycle, UCM also negotiated a coal sales agreement with Chile for approximately 45,000 tons of low sulphur coal to be test-burned in a power plant; shipment was scheduled to commence in August of 2004. UCM actually sent 3 shipments of approximately 50,000 tons each to Chile. UCM is confident production will rebound and is working with the GVEA power plant to explore various options as well as pursuing additional coal markets.

UCM is nearing completion of its coal mining activities at its Gold Run Pass Mine (GRP) and is actively reclaiming the appropriate areas. The Alaska Division of Mining, Land and Water (DMLW) released approximately 70 acres of Phase I and Phase II bond at GRP during the 2004 evaluation cycle. Also, very little coal remains to be mined at the Poker Flats Mine (PF) with UCM having backfilled and graded and planted over 570 acres. Coal production is increasing at the Two Bull Ridge Mine (TBR), which lies north

of the Poker Flats Mine (PF) just across the Hoseana Creek. At full production, the Two Bull Ridge Mine is capable of producing approximately 2.1 million tons of coal annually.

On April 4, 2002, DMLW approved UCM's Rosalie Mine permit in the Healy Creek Valley, approximately 7 miles east of Healy, Alaska. This mine has an estimated 6.7 million tons of reserves and an estimated mine life of 13.5 years. This is the first new surface coal mine permit issued by the Division of Mining, Land and Water (DMLW) since the Two Bull Ridge permit was issued in 1997. Mining has not yet commenced at the Rosalie Mine.

UCM has assumed, through permit transfer, the leasing and mining rights to two additional DMLW permits as well as an exploration permit. UCM plans to develop this area when the coal market improves. The permits are located in an area known as Wishbone Hill, about 1 hour northeast of Anchorage, near the town of Sutton. Considering that transportation concerns and costs often make Alaska coal economically unfeasible, the location of UCM's Wishbone Hill permits could trigger increased mining activity in the State. UCM has not yet initiated any activity at the Wishbone Hill location.

UCM has produced a conceptual design of a mine mouth power plant near an area known as Jumbo Dome, located north of the current mining operations. The proposal is for a 200 megawatt power plant with an adjacent mine capable of producing 1.5 million tons of coal annually. There is no definite schedule attached to this proposal.

The owner of the Jonesville underground mine, Nerox Power Systems Inc. (Nerox), transferred its leases and mining rights to Sutton Partners LLC doing business as Knoll Acres Associates of Boise, Idaho. The principals of Knoll Acres have been working with DMLW staff for the past several years to develop a permit application that meets all applicable regulations and will be able to be approved. The company has attempted to complete some outstanding reclamation obligations it inherited from Nerox Power. The entire process has been excruciatingly slow and frustrating; however, there has been a great deal of progress during this evaluation cycle. DMLW deemed the application both administratively and technically complete on January 14, 2005. The permit has yet to be issued pending the outcome of a series of pre-hearing conferences held after the end of the review cycle as well as receipt of the reclamation bond.

III. Overview of the Public Participation Opportunities in the Oversight Process and the State Program

Historically, there hasn't been much public participation in the Alaska coal program due to its small scale, the size and impact of the coal industry and the remoteness of the active mining operations. Until the last few years, there has been little interest on the part of the coal industry to expand existing operations or to develop new mining sites; and, as a result, public interest in coal mining and DMLW activities has been virtually nonexistent.

As mentioned in previous oversight reports, the State and OSM have provided several opportunities over the years for public involvement in both permitting activities and overall SMCRA program development and administration. Both DMLW and OSM have published public notices over the years in the State's two largest newspapers (Anchorage and Fairbanks) announcing DMLW sponsored public meetings at which interested parties could provide input. Over the years, the State has made other attempts to solicit public input, with limited success.

The State, in conjunction with the Alaska Coal Association, sponsored a 2-day workshop on August 28 and 29, 2003 to discuss proposed changes to the Alaska surface coal mining program. An OSM representative participated in the workshop as well. After approximately 2 years of work, OSM has recently completed its review of the Alaska program amendment and is finalizing its decision document.

With the increased interest in the coal resources located in the Sutton area and with greater potential for impacts, the DMLW thought that a different approach to public involvement was needed. As stated earlier, Sutton is located approximately one hour northeast of Anchorage and has a higher population density than most of Alaska. To notify the local population of coal related activities, the DMLW publishes the normal newspaper notices as well as posts informational flyers throughout the Sutton community. The DMLW staff continues to keep the Sutton Community Council, the Chickaloon native community and the Buffalo Mine Road Community Council informed of all coal related activities. This is accomplished by attending Council meetings, distributing informational flyers and by arranging site visits for interested parties. DMLW has also encouraged representatives of the coal industry to attend Council meetings and to make presentations concerning their intentions in the area and to answer questions the residents may have. As part of its Abandoned Mines Land (AML) program, the DMLW has been reclaiming abandoned coal mine waste piles in this same area and has found it useful to notify routinely, the citizens of the status of the AML project. DMLW management has realized the benefits of involving all local stakeholders as early as possible in the decision making process.

In the review and issuance of UCM's Rosalie Mine permit, DMLW staff conducted two public notice periods. Newspaper advertisements were placed in both the Anchorage and Fairbanks daily newspapers, flyers were posted on local bulletin boards, notices were mailed to DMLW's mailing list and information was posted on DMLW's website. Some public comments were received, but no issues of concern were raised.

As previously noted, public participation is increasing in the Sutton area. During the last couple of review cycles, public notices have generated a significantly higher number of public comments that have been addressed by DMLW. During this evaluation cycle, DMLW staff conducted a public hearing for a proposed coal leasing action in the Sutton area. To maximize public participation opportunities, the State used the occasion to conduct an informal conference on the Jonesville permit application. This resulted in eight individuals providing comments to DMLW. Additionally, a spin-off of the increased communications is that on several occasions, local residents have notified

DMLW staff about acts of vandalism at the permit sites as well as safety concerns involving smoldering coal waste.

Another factor that has triggered increased public participation is the DMLW's increased use of the Internet to publicize permitting decisions, to make available permitting and other related documents and to solicit public participation and input. The DMLW has put all of the coal permits on CD's and has placed a copy of the Wishbone Hill and Jonesville Mine permits in the Sutton and Palmer public libraries for public viewing.

IV. Major Accomplishments/Issues/Innovations in the Alaska Program

After many years of inactivity, the DMLW submitted to OSM, in September of 2002, an informal program amendment package intended to address 78 program issues identified by OSM. OSM staff worked with DMLW staff during the past 2 years to address identified deficiencies. Also, OSM and DMLW staff met with members of the Alaska Coal Association to address concerns and answer their questions. It all came to fruition when DMLW submitted its formal program amendment package to OSM on May 11, 2004. OSM has completed its review of the State's proposed regulation package and has prepared a draft decision package that is undergoing internal review.

As part of its data management system, the DMLW has accumulated and cataloged thousands of digital photos of all active operations, exploration sites and areas of potential coal mining. The Alaska Department of Natural Resources has adopted the system of digital photo storage and retrieval developed by DMLW. This will dovetail with Coal PITS-3, a data management system intended to integrate appropriate information from other Divisions within DNR for use by the DMLW staff.

During the first week of August, 2004, the Director of OSM, accompanied by management staff from OSM's Western Regional Center and OSM's Olympia Area Office, met with the President of Usibelli Coal Mine Inc. and his staff and toured the Usibelli operations. Later in the week, DMLW staff accompanied the OSM contingent on a site visit to the Jonesville Underground Mine and adjacent AML project. Concluding the week, the OSM Director and his staff met with the Commissioner of DNR, the Governor's Chief of Staff and the Special Assistant to the Secretary of the Interior for Alaska to discuss the relationship between OSM and DMLW in carrying out the purposes of SMCRA.

After experiencing a great deal of staff turnover and weathering a long standing vacancy, the DMLW, at the end of the review cycle, had achieved full staffing for their regulatory program.

Very little coal remains to be mined at Poker Flats. As a result, the DMLW has worked closely with the UCM staff to accomplish a tremendous amount of grading at the Poker Flats Mine. The State and mine staff have worked together to develop accurate maps depicting reclamation status and other relevant field features. This effort will culminate

with UCM attempting to complete all remaining mining, backfilling, grading and re-soiling work within the next 18 months. During this review cycle, the operator backfilled 16 acres and re-soiled/reseeded approximately 46 acres. It is anticipated that UCM will request all Phase I and Phase II bond releases at the same time.

The active mining at the Gold Run Pass Mine is winding down with little coal remaining to be mined. During the 2004 evaluation period, UCM applied for and was approved for Phase I and Phase II bond release for approximately 70 acres. This comprises mining areas 1 through 4 with only mining area 5 remaining to be mined and reclaimed.

In 2005, UCM sent 3 sample shipments of approximately 50,000 tons each to Chile to test power plant compatibility. Also, UCM has sent a small test sample to china.

DMLW has made the digital versions of all active mine permit application packages available for viewing on the internal DNR network. Also, the DMLW has posted information about the Alaska coal regulatory program on its website. For those interested, the Internet address is:

www.dnr.state.ak.us/mine.wat/coal/coal/htm

The DMLW is effectively maintaining and administering the Alaska Surface Coal Mining and Reclamation Act.

V. Success in Achieving the Purposes of SMCRA as Determined by Measuring and Reporting End Results

To further the concept of reporting end results, the findings from performance standard and public participation evaluations are being collected for a national perspective in terms of the number and extent of observed off-site impacts, the number of acres that have been mined and reclaimed and which meet the bond release requirements for the various phases of reclamation, and the effectiveness of customer service provided by the State. Individual topic findings are available in the Olympia, Washington OSM Office. The information provides additional details on how the following evaluation and measurements were conducted.

A. Off-site Impacts

During the 2005 evaluation cycle, the DMLW inspection staff did not observe any off-site impacts. OSM conducted mine site visits in Alaska in early August of last year. An OSM inspector conducted joint oversight inspections with staff of the DMLW in September of 2004. Due to climatic conditions and the shortness of the planting and growing season in Alaska, OSM schedules its field activities as late in the summer as feasible so as to observe as much recent reclamation work as possible.

B. Reclamation Success

As reported in the 2004 annual evaluation report, Alaska released Phase I and Phase II bond on approximately 70 acres at the Gold Run Pass Mine. The DMLW did not release any reclamation bonds during this review cycle. During this cycle, the coal industry did backfill and grade 16 acres and re-soiled and reseeded another 46 acres. Coal removal is winding down at both the Gold Run Pass Mine and the Poker Flats Mine so reclamation activities should continue to increase in the coming years.

C. Customer Service

The DMLW has actively sought to increase public awareness and involvement. With recent leasing/re-permitting/AML activities taking place in the more populated Sutton area, the public has shown more interest in Alaska's coal program. DMLW attempts to meet regularly with the Sutton Community Council, the Chickaloon native community and the Buffalo Mine Road Community Council and when appropriate, make coal industry staff available to the interested groups. The DMLW staff, on numerous occasions, has conducted site visits with interested citizens living in the Sutton area.

As previously noted, the DMLW, in conjunction with OSM, attended a 2-day working session with members of the Alaska Coal Association to identify issues associated with the State's proposed program amendment. The amendment package was formally submitted to OSM on May 11, 2004. OSM published a public notice announcing receipt of the proposed regulation package and the opportunity to provide comments. OSM has considered the comments and completed its review. OSM's draft decision document is currently undergoing internal review.

VI. OSM Assistance

Throughout the evaluation cycle, OSM staff from the OSM Olympia Area Office and the Western Regional Center (WRC) provided informal, undocumented assistance to DMLW staff. Primarily, the assistance was generated by telephone inquiries concerning permitting, procedural/administrative or technical issues. The small size of both the DMLW staff and the Olympia Area Office staff lends itself to such informal communications.

On a more formal note, OSM's Technical Librarian filled 1 reference request from DMLW staff. In addition, Alaska was provided with several technical publications, CDs, DVDs, posters and other teachers' materials. The WRCC's Office of Technology Transfer (OTT) provided contractual technical assistance in the area of database management during this review cycle. Additionally, a member from OSM's Technical Innovation and Professional Services (TIPS) provided on-site consultation to Alaska concerning information technology support.

OSM, with cooperation from DMLW, hosted one of two New Technologies Implementation Workshops in Anchorage in September of 2004. Eight employees from the Alaska Department of Natural Resources attended the workshop with seven of those making presentations on the State's use of software and technology. Participants in the workshop included representatives from seven western coal states, OSM, consultants and the Alaskan mining industry. Additionally, the manager of the coal program made presentations at the second New Technologies Implementation Workshop held in Helena, Montana in May of 2005.

VII. General Oversight Topic Reviews

Program oversight activities and oversight related discussions between Alaska DMLW and OSM occur routinely and regularly throughout the entire evaluation cycle. This is possible due to the small and stable population of operating mines in Alaska. Another key to the success of this approach is the solid, day-to-day working relationship and open lines of communication between DMLW staff and OSM staff. Due to the small size of the DMLW staff and the OSM Olympia Area Office staff, there is a great deal of discussion about routine program matters and operational issues. This approach has resulted in an informal and comfortable relationship that allows for the easy transfer of ideas and information. As a result of this approach, there are rarely any surprises involving program implementation.

OSM and DMLW each have an individual designated as the lead program evaluation team representative to handle routine oversight matters. Should the need arise, technical specialist from OSM's WRC or specialists from other agencies within state government would be involved in the program evaluation process. For this evaluation cycle, it was decided to conduct follow-up assessments on 2 long-term and nagging issues. The first issue involves DMLW's efforts to maintain its permanent program regulations in a manner no less effective than the Federal regulations at 30 CFR. The second issue involves reviewing DMLW actions to date, to resolve the Jonesville underground mine permitting situation. OSM is also evaluating DMLW's implementation of the State's Directive System.

In addition to evaluating these individual program components, OSM Olympia, throughout the evaluation year, receives and reviews copies of all inspection reports, all enforcement documents, grant documents and permitting related documents.

➤ Maintenance of Approved Program

This topic, a follow-up topic from previous years was selected because not much was done to address program maintenance prior to the 2001 evaluation cycle. In late 2001, OSM's Management Council identified program maintenance as a high priority for the agency. This was due in part because some citizen-based lawsuits had been filed against some other State regulatory agencies for not adequately maintaining their approved program in accordance with SMCRA. During the 2001 evaluation year, OSM prepared and forwarded to DMLW a complete list of modifications needed to bring the Alaska program into compliance with the Federal program. The State committed to working with OSM to resolve the remaining issues.

A tentative schedule and draft list of program revisions were submitted by DMLW to OSM for review and comment. Due to budget constraints and the events of September 11, 2001, a working meeting planned in Anchorage did not take place. Numerous telephone conversations between OSM staff and DMLW staff concerning program amendment issues took place during that evaluation year. During the 2002 evaluation year, the DMLW staff made working on the program amendment a top priority. An OSM staff member spent one week in Anchorage working with the State staff to resolve some issues and to provide some guidance on this matter.

A follow-up meeting was held in Anchorage in early September to resolve a few remaining issues and to review a draft informal program amendment package. After making some last minute revisions based on those discussions, DMLW submitted an extensive informal program amendment package to OSM in late September 2002. The amendment package was intended to address approximately 78 issues identified by OSM over the years.

OSM conducted a detailed review of the State's informal submission and developed a list of items that needed to be addressed. On April 30, 2003, OSM mailed to DMLW a letter identifying those items. DMLW staff and OSM staff met in Olympia Washington on May 15, 2003, to discuss the identified deficiencies. Based on that discussion, several items were able to be removed from the deficiency list. OSM followed up that meeting with a second letter, dated May 29, 2003, identifying the agreed upon remaining deficiencies.

On May 11, 2004, DMLW submitted to OSM its formal program amendment package. OSM staff conducted an extensive review of the formal submission and announced its receipt and availability for review and comment by the public in the July 19, 2004, Federal Register. OSM received comments from the Anchorage office of the Bureau of Land Management. OSM notified Alaska on October 4, 2004 of identified issues concerning the program submission. Alaska responded in a letter dated April 1, 2005, by submitting a revised amendment package. Based upon Alaska's revisions to its amendment, OSM reopened the comment period in the June 23, 2005, Federal Register. Although outside of this evaluation cycle, OSM received comments from one Federal agency and one local agency. After addressing the

comments, OSM has prepared a draft Federal Register notice announcing its decision on the State's submission; that document is currently undergoing internal review. The current DMLW staff involved, are to be commended for addressing this nagging program maintenance issue. For more detailed information on this topic contact the OSM Olympia Area Office.

➤ **DMLW's Administration of the Jonesville Underground Mine Permit**

This is a follow-up review concerning a permitting issue that DMLW has been wrestling with for several years.

Nerox Power Systems Inc. (Nerox) held a permit for the Jonesville underground coal mine located near Sutton, Alaska, about 60 miles northeast of Anchorage. Nerox permitted the previously disturbed and abandoned site with the intention of reopening the underground mine and taking advantage of the existing transportation system and proximity to Anchorage. After an initial flurry of on-site improvements and monetary investments, Nerox encountered some financial setbacks and, coupled with decreasing coal prices, never mined any coal from the Jonesville site. Concurrently, Nerox lost a court case and was ordered to pay a sizeable judgment, \$300,000, to three contractors for work performed at the mine.

DMLW, not wanting to forfeit the bond and possibly force Nerox into bankruptcy, attempted to work with the permittee to ensure that environmental controls were in place and that no off-site impacts occurred while Nerox attempted to find a buyer for the mine. Both the State and OSM thought that this was the best approach, in light of the fact that several other companies had expressed interest in the Jonesville site.

During the 2000 evaluation year, DMLW was in the process of reviewing a permit transfer application. All Notice of Violations (NOV's) and Reclamation Directives had been complied with and all required abatement work had been accomplished. A Nerox employee was given the responsibility to address permit related deficiencies as well as ensure on-the-ground compliance during the permit transfer process. Although some progress had been made, it became apparent that the permit transfer was not going to happen due to problems associated with the State lease.

Since DMLW was planning to combine the permit transfer effort with the permit renewal effort in an attempt to clean up the current permit, they had to shift priorities and focus solely on the permit renewal effort. Nerox submitted a timely permit renewal application to DMLW for processing, but was less than diligent in responding to the State's request for additional information. As in the past, lack of money seemed to be the main problem. After many rounds, DMLW determined that the Nerox application was complete on July 19, 2002.

Concurrent with DMLW's re-permitting effort, the Alaska Mental Health Trust Land Office requested that DMLW cease all permit application processing activities until Nerox resolved all lease related issues involving the Mental Health Trust Funds lands. On September 27, 2002, the DMLW suspended all permit related reviews and at the end of the evaluation year, everything was on hold. On January 6, 2003, DMLW received word from the Mental Health Trust Land Office that most lease/royalty related issues had been resolved and gave DMLW the go-ahead to resume processing the permit renewal application. On January 6, 2003, the DMLW provided Nerox with a lengthy list of technical issues that need to be addressed.

During the entire process, DMLW continued to enforce the permit conditions. The staff continued to conduct regular mine inspections, and ensured that Nerox was diligent in preventing any off-site impacts, maintaining the mine site in a safe condition, and keeping current with their monitoring and maintenance requirements.

On June 18, 2004, DMLW received a permit transfer request and a major permit revision request from Sutton Partners LLC doing business as Knoll Acres Associates LLC of Boise, Idaho. At the end of the 2004 evaluation cycle, DMLW staff was conducting its technical evaluation of the permit application and were confident that Knoll Acres was going to have the monetary resources and the technical support staff to see the permitting effort through to its conclusion. DMLW held numerous meetings with Knoll Acres representatives and their permit consultant and on January 14, 2005, determined that the application was complete

After several rounds of reviewing and commenting on the technical components of the Knoll Acres permit transfer/major revision application, the DMLW determined that the application was technically complete. Concurrent with the permitting activity, the State was processing a 40 acre lease adjacent to the Knoll Acres application site. The intent was for the applicant to reprocess the coal waste material from the lease tract in combination with the underground mining activity.

The DMLW notified 22 different government agencies, advocacy groups, community organizations and native/tribal groups of its initial determination of technical adequacy and its intention to lease the 40 acre site to Knoll Acres. Additionally, the State ran public notice ads in the Anchorage Daily News for four consecutive weeks announcing its initial decision, posted a copy of its notice in the U.S. Post Office in Sutton, Alaska and posted the notice on the DNR website.

The State received a request to conduct a hearing on the proposed 40 acre coal lease. The State decided that the hearing would also serve as an informal conference for the mine permit/transfer decision. DMLW held the informal conference at the Sutton Library on April 12, 2005. Twenty people attended the meeting with eight of those providing comments concerning transportation issues, right-of-entry issues, reclamation standards and environmental protection.

After addressing the public comments, the State, on April 27, 2005, published its "Final Decision and Findings of Compliance" document approving, with stipulations, the permit transfer of the Jonesville Underground Coal Mine permit to the Sutton Partners LLC and the major revision.

DMLW announced its action in the May 11, 2005 issue of the Anchorage Daily News. As provided for in the Alaska regulations, an interested party requested a hearing on the issuance of the permit. The Alaska Office of Administrative Hearings was conducting a series of informal, pre-hearing conferences at the conclusion of the

evaluation cycle. DMLW staff are confident that all of the issues can be resolved in this informal manner.

Although the permitting of the abandoned Jonesville Underground Mine site has dragged on far longer than anyone would have liked, there appears to be light at the end of the tunnel. The State, not wanting to initiate forfeiture actions against a company with questionable financial resources, persevered and showed both patience and flexibility while working with all interested parties to make the permit transfer a reality. At the same time DMLW ensured that all permit requirements and environmental performance standards were enforced on the ground.

➤ **DMLW's Administration of the Directive System**

In 1996, the State of Alaska instituted a new component within its regulatory program called the Directive System. The Directive System was designed in cooperation with the permitting staff from Usibelli Coal Mine Inc. Prior to 1996, the relationship between the regulatory authority and the coal industry was rather contentious with most field related issues either becoming protracted situations or evolving into heated, politicized enforcement actions.

Personnel changes on both sides provided an opportunity to develop a different approach for bringing field related concerns to the attention of the operator in a non-intimidating manner. When a DMLW inspector or technical specialist identifies a situation or condition in the field that, if not addressed, could become a violation, a Directive is issued to the operator. The Directive is used to document the situation, direct the operator towards remedial action within a certain timeframe and prevent the situation from worsening into a violation that would require an enforcement action and associated penalty.

A Directive, if addressed, carries no penalty, does not appear to carry the stigma of an error or omission on the part of the operator as does a Notice of Violation, results in quicker resolution of field issues which has translated into improved environmental protection at lower administrative and legal costs to both the State and operator.

While a Directive carries no penalty, failure to either complete the required remediation work or file an appeal within the allotted timeframe, results in a Notice of Violation and associated penalty. Should there be any off-site impacts, identified violation of the Alaska regulations or approved permit, willful negligence or failure to comply with a previously written Directive, a Notice of Violation is issued.

In discussions with both the State regulators and industry representatives, both parties agreed that the Directive System is working better than the old system. It is much less confrontational, provides a better paper trail for tracking field issues and has resulted in quicker and better attention to field issues before they become full blown violations. The industry field people find the Directive System useful in getting management buy-in to projects as well as aiding in resource allocation for those projects.

During the 2005 evaluation cycle, DMLW staff issued 35 Directives with 28 being resolved and 7 outstanding at the end of June. The breakdown, as to the nature of the Directives, is available by contacting the OSM Olympia Office.

For more information on these evaluation topics, or any other aspect of the 2005 annual oversight process, feel free to contact:

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APPENDIX A:

These tables present data pertinent to mining operations and State and Federal regulatory activities within Alaska. They also summarize funding provided by OSM as well as Alaska staffing. Unless otherwise specified, the reporting period for the data contained in all of the tables is July 1, 2004 to June 30, 2005. Additional data used by OSM in its evaluation of Alaska's performance is available for review in the evaluation files maintained by the Olympia, Washington OSM Office.

APPENDIX B: