

Annual Evaluation Summary Report
for the
Regulatory and Abandoned Mine Land Reclamation Programs
Administered by the State

of

WEST VIRGINIA

for

Evaluation Year 2003
October 1, 2002 to June 30, 2003

October 2003

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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 West Virginia Program and the effectiveness of the West Virginia program in meeting the applicable purposes of SMCRA as specified in Section 102. This report covers the period of September 30, 2002, to June 30, 2003. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the OSM Charleston Field Office.

The following acronyms are used in this report:

ABS	Alternative bonding system
ACSP	Appalachian Clean Streams Program
AMD	Acid Mine Drainage
AML	Abandoned Mine Land
AMLR	Abandoned Mine Land Reclamation
AOC	Approximate Original Contour
ARCC	Appalachian Regional Coordinating Center
AVS	Applicant Violator System
CHIA	Cumulative Hydrologic Impact Assessment
CHFO	Charleston Field Office
COE	U.S. Army Corps of Engineers
CWA	Clean Water Act
DNR	Division of Natural Resources
EIS	Environmental Impact Statement
EQuIS	Environmental Quality Information System
EY 2003	Evaluation Year 2003 (September 30, 2002 to June 30, 2003)
FTE	Full Time Equivalent
KFTC	Kentuckians for the Commonwealth, Inc.
MCCC	Martin County Coal Company
NWP	Nationwide Permit
NOV	Notice of Violation
OEB	Office of Explosives and Blasting
OLS	WVDEP Office of Legal Services
OSM	Office of Surface Mining Reclamation and Enforcement
OVEC	Ohio River Valley Environmental Coalition, Inc.
SOAP	Small Operators Assistance Program
SMCRA	Surface Mining Control and Reclamation Act of 1977
SRP	Special Reclamation Program
TDN	Ten-Day Notice
WCMS	Watershed Characterization and Modeling
WV	West Virginia
WVDEP	West Virginia Department of Environmental Protection
WVHC	West Virginia Highlands Conservancy
WVSCMRA	West Virginia Surface Coal Mining Reclamation Act
WVU	West Virginia University

II. Overview of the West Virginia Coal Mining Industry

Coal has been mined in West Virginia using underground methods since the early 1700's. Underground mining increased throughout the 1800's and into the 1950's. Surface mining began around 1916, but significant production from surface mining did not occur until World War II. Many of the sites mined before 1977 were not reclaimed and present problems for the public and the environment. Currently, there are 3,876 unreclaimed high priority sites listed in the Abandoned Mine Land (AML) inventory for West Virginia.

West Virginia's demonstrated coal reserve base totals 33.9 billion tons. In 2002, West Virginia produced 163.9 million tons of coal (14 percent of the National total), allowing it to retain its ranking as the second largest coal producing State (see Table 1, Appendix A for coal production based on sales).

Underground mines produce approximately 61 percent of the State's total coal production. Twelve of the Nation's fifty-two longwall mining operations are in West Virginia. Longwall mining operations accounted for 38 percent of the State's underground coal production and 23 percent of the State's total coal production in 2002. However, continuous mining operations continue to account for most of the State's underground production.

Contour, area, auger, and mountaintop mining operations are the most common methods of surface mining in the State. Thirty-nine percent of the coal produced in West Virginia is by surface mining methods. Eighty-one percent of the State's surface coal production was produced by the 255 mountaintop mining operations.

At the end of 2002, 46 coal synfuel facilities were reporting production in the United States. There were eight coal synfuel plants in West Virginia. These facilities process both coal refuse and run of mine coal. During 2002, coal synfuel facilities processed 82 million tons of synthetic fuel nationwide. Legislation was passed in November 2000, which imposed a 50-cent per ton synfuels tax to help fund the State's coal regulatory staff. Coal-based synfuel production is likely to remain at the current production level through 2007, at which time the Section 29 tax credit of about \$26 per ton will expire.

Approximately 63 percent of the State's permits are active and require monthly inspections by the West Virginia Department of Environmental Protection (WVDEP). Underground mines account for about 41 percent of the total inspectable units and surface mines account for 35 percent. The remaining 24 percent consists of other facilities, including such things as preparation plants, refuse piles, loading facilities, and haulroads.

Coal accounts for nearly 13 percent of the Gross State Product, a measure of the total value of all goods and services produced in the State. West Virginia's coal industry pays more than \$200 million annually in business and severance taxes to State and local governments and another \$180 million in Federal taxes. The coal industry accounts for nearly 27

percent of the State's business tax, and approximately 10 percent of the statewide property tax collections.

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

Throughout the EY 2003 evaluation year, WVDEP and OSM officials met with representatives of various citizen, environmental, and industry groups including:

- West Virginia Highlands Conservancy,
- West Virginia Coal Association,
- Ohio River Valley Environmental Coalition,
- Contractor's Association of West Virginia,
- River of Promise Steering Committee (Cheat River)
- Coal River Watch,
- West Virginia Watershed Network,
- Plateau Action Network,
- Shavers Fork Coalition,
- Morris Creek Watershed Association,
- Friends of the Blackwater River,
- Friends of Deckers Creek,
- Lower West Fork Watershed Association, and
- Paint Creek Watershed Association

Additionally, OSM attended public meetings associated with the following activities:

- Surface Mine Drainage Task Force Symposium,
- West Virginia Watershed Management Framework,
- Friends of the Cheat Annual Festival,
- Watershed Cooperative Agreement Grant Program, and
- Watershed Celebration Day.

The Charleston Field Office (CHFO) maintains a mailing list of individuals and organizations that have been active in regulatory and AML issues in West Virginia. Office staff routinely interacts with individuals and groups throughout the year.

OSM has maintained contact with many watershed groups throughout the State and provides assistance through a network of summer interns and VISTA workers funded through the OSM budget. These interns and VISTA workers interact with local watershed groups and provide additional feedback to the CHFO concerning citizen concerns.

West Virginia's approved regulatory program provides many additional opportunities for public participation. In the permitting process, the State must advertise each application for a new or revised permit and must provide interested citizens the opportunity to comment. Citizens may request that the WVDEP hold an informal conference to discuss the

application before making a decision to issue or deny the permit. Filing written citizen complaints concerning specific issues also gives citizens the opportunity to participate in the inspection and enforcement process at particular mine sites. They may also seek administrative review of WVDEP decisions by the West Virginia Surface Mine Board or judicial review through the state court system.

During Evaluation Year 2003 (EY 2003), OSM published notices requesting public comment on several significant rulemaking activities. Notices were sent to various State and Federal agencies along with public interest groups such as the WVHC. Requests for public comment were also published in the Federal Register.

During EY 2003, OSM in conjunction with West Virginia and Pennsylvania finalized a model for predicting acid mine drainage costs from mine sites. This was distributed through statewide media outlets, and citizens and local watershed groups were encouraged to obtain this model to assist with their local projects.

As part of OSM's outreach efforts, its web page in Washington, D.C. has a link to a form for citizens to report suspected violations of mining and reclamation laws. There are also links to information packages that citizens can request about specific areas of the SMCRA. These include educational packets for schools and civic groups. In EY 2003, the Charleston Field Office developed a web page. The Appalachian Regional Coordination Center (ARCC) has a link to the Field Office web page on their web site. It also has a form to fill out to report an abandoned mine land emergency. The two sites are www.osmre.gov/ and arcc.osmre.gov/.

The WVDEP has aided in the development of the watershed management framework and other initiatives to preserve, protect, and restore stream water quality. The WVDEP's Office of Environmental Advocate also offers a means for public participation. This office works on a variety of environmental issues within the state. They encourage participation on the regulatory process by individuals and groups.

The approved Abandoned Mine Land Reclamation Plan provides opportunities for public participation. These include public interaction during the processing of citizen complaints concerning AML problems. WVDEP also publishes newspaper notices seeking comment on each proposed construction project before requesting funding approval from OSM.

IV. Major Accomplishments/Issues/Innovations in the West Virginia State Regulatory Program

A. Accomplishments/Innovations

- Permitting QA/QC Panel meeting's continuing implementation and guidance including site visits (per Consent Order).
- Director's meeting with industry and individual companies to discuss various issues (integration of compliance, permitting, legislative concerns, and problem resolution).

- Administratively Complete Checklist instituted on September 1, 2002, to enhance "time of submittal" permit quality.
- Endangered Species Written determination from the U.S. Fish & Wildlife Service requirement added and implemented to Administratively Complete requirements.
- Biological Work Group Training - Natural Stream Channel Restoration (Rosgen/CVI); Endangered Species and the 1996 Biological Opinion, Benthics.
- Updated the Memorandum of Agreement (1982) between the Division of Natural Resources' (DNR) Wildlife Resources Section and the WVDEP's Division of Mining and Reclamation.
- Distributed the new web-based "DMR-Mailing List" for notification.
- As of June 30, 2003, the Trend Station Monitoring Program is about 60 percent complete. This data is being used as the centerpiece of the WCMS/CHIA HSPF watershed model that is being developed by WVU, OSM, and WVDEP. An operational flow and quality system model for almost all mining watersheds should be finished by the end of the year.
- Improved the Small Operator Assistance Program (SOAP) with three ongoing projects and updated the SOAP application (MR-30). Presently, an Expression of Interest template, a new requirement from the WV Division of Purchasing, is being developed.
- Updated automated complaint tracking and handling system.
- WVDEP's Citizen Services System has logged 521 complaints, including 259 that are blasting-related.
- Held quarterly Pre-blast Surveyor classes beginning in February 2003.
- Standardized the Pre-blast Survey form (EB40).
- Finalized the Pre-blast Policy in December 2002.

1. Watershed Management Framework

In May 1997, the WVDEP and OSM CHFO signed a "Resolution of Mutual Intent" with the Governor of West Virginia and 10 other State and Federal agencies in a partnership for statewide watershed management. The resulting Watershed Management Framework provided a way to coordinate the operations of existing water quality programs and activities in West Virginia to better achieve shared watershed management goals and objectives. The Framework identifies watershed issues around the state and works to coordinate agency efforts to more effectively implement water quality improvement projects on a five-year cycle.

Initial attempts at implementing the watershed management approach met some obstacles and prompted the agency partners to renew their commitments to this process. On March 27, 2003, in a show of commitment to the protection and restoration of West Virginia's streams and rivers, 14 state and federal agencies signed the West Virginia Watershed Management Framework. The signing ceremony signified the partnering agencies' commitment of financial, technical, and human resources in tackling the state's water quality issues, including the effects of acid mine drainage.

State and federal agencies signing the framework agreement include: the WVDEP, U.S. Office of Surface Mining, U.S. Army Corps of Engineers, the Monongahela National Forest, the U.S. Environmental Protection Agency, U.S. Geological Survey, West Virginia Department of Health and Human Resources, West Virginia State Conservation Committee, West Virginia Department of Agriculture, West Virginia Division of Forestry, West Virginia Department of Transportation, West Virginia Division of Natural Resources, the U.S. Natural Resources Conservation Service and the Ohio River Sanitation Commission.

2. Bonding Program Improvements

During the evaluation period, WVDEP continued to undertake several actions in an effort to improve the State's alternative bonding system (ABS). All of these actions have resulted in a much improved ABS. OSM and the State are committed to making sure that the ABS has sufficient funds to complete the reclamation, including water treatment, at all existing and future bond forfeiture sites.

As mentioned last year, OSM announced its decision in the *Federal Register* on May 29, 2002, to fully approve the State's ABS. OSM took this action because the State increased the special reclamation tax rate from 3 cents per ton of clean coal mined to 14 cents for 39 months; created the Special Reclamation Fund Advisory Council (Advisory Council) to monitor the progress of the ABS in meeting future bond forfeiture reclamation obligations; and removed the limitation on funding for treating pollutional discharges at bond forfeiture sites. While OSM has acknowledged that the amendment may not be perfect, it provides a basis from which WVDEP can initiate action to ensure the long-term success of its ABS. The passage of this legislation has enabled WVDEP to hire additional bond forfeiture reclamation staff, continue its effort to eliminate the ABS deficit, begin work on the backlog of more than 400 unreclaimed bond forfeiture sites within the State, and to initiate treatment of pollutional discharges at sites that require such treatment.

The increased special reclamation tax rate generates about \$18.6 million annually in funding for bond forfeiture reclamation, including water treatment. During the evaluation period, the Special Reclamation Program (SRP) within WVDEP, which is responsible for conducting bond forfeiture reclamation throughout the State, increased its staff to meet the increased workload. The State hired seventeen additional employees. The SRP staff increased from 10 to 27 full-time employees. These employees are responsible for conducting land reclamation and treating pollutional discharges at existing and future bond forfeiture sites.

These recent actions demonstrate WVDEP's continued commitment to improve its ABS. The State's effort to improve its existing bond forfeiture database and to collect new information at bond forfeiture sites should enable WVDEP and the Advisory Council to ensure the long-term success of the ABS. OSM will continue to monitor the implementation of the new bonding requirements to ensure that the State's ABS remains financially sound.

In the 2002 Annual Evaluation Report, OSM reported that the analysis of data collected to assess and validate the completeness and accuracy of the Acid Mine Drainage (AMD) Bond Forfeiture Inventory (the Inventory) had not been finalized. Further, it was noted that the review would be completed during the beginning of 2003 and conclusions presented in this annual report.

The 2002 study focused on three areas intended to validate the accuracy of the Inventory. The first part of this review focused on the 699 permits that were not evaluated during the original development of the Inventory. At that time, the entire population of bond forfeited permanent program permits totaled 918 permits. OSM and WVDEP initially considered only 219 permits where WVDEP had recorded in its "permits" database that the permit at one time produced AMD. During the 2002 review period, a spot check was conducted of the remaining 699 permits where the database AMD field was left blank, coded as "N" (no AMD) or as "PN" (inspector indicates no water quality problems), and the reclamation status was shown as complete. From this review, 40 permits were evaluated resulting in six permits being added to the Inventory.

The second part of the study was to resolve the water quality/quantity issues for those permits that did not have sufficient data available in the development of the 2000/2001 AMD Inventory. Additionally, the review focused on those permits from the AMD Inventory that were not prioritized for water treatment.

The third part of the review evaluated whether permits with AMD, revoked after December 31, 2000, were being added to the Inventory. From January 1, 2001, through December 31, 2001, the WVDEP revoked 38 permits. Three of the revoked permits appeared on the WVDEP active Mine Drainage Inventory and had been added to the AMD Bond Forfeiture Inventory.

The 2002 study was to also include a review of all consent agreements, orders, or other formal or informal arrangements where bond forfeiture reclamation had been abdicated to a third party. This review was projected to be conducted in 2003, but has been postponed until 2004.

The AMD Bond Forfeiture Inventory is a dynamic document with permits and discharge sites being added and deleted, water quality and quantity data being adjusted, and individual permit status changing as WVDEP constructs treatment facilities. It is anticipated that maintaining and monitoring the AMD Bond Forfeiture Inventory will continue to be an annual activity coordinated between WVDEP and OSM.

For EY 2003, OSM and WVDEP agreed to evaluate the remainder of permits from the groupings that were only spot-checked during the 2002 study. A file review of 109 permits was conducted during the review period.

Findings from this review had not been discussed with WVDEP by the end of this shortened evaluation year. These findings will be addressed in next year's annual report.

In 2003, OSM monitored the implementation of WVDEP's September 8, 2002, Action Plan and attended meetings of the Special Reclamation Advisory Council. Among other things, the Action Plan provides for the development of several planning and procedural documents for the Special Reclamation Program. At the end of the review period, WVDEP had not finalized these documents, but did expect the documents to be completed by late 2003. The Action Plan also included provisions to develop a prioritized schedule of permits for land and water reclamation. Additionally, a Special Reclamation Fund audit procedure and schedule were to be developed. The Advisory Council is reviewing WVDEP's prioritized schedule and is reviewing actions for an audit/actuarial study that will be contracted out in 2004.

The Advisory Council's report to Legislature at the beginning of 2003 did not recommend an increase or decrease to the Special Reclamation Tax or its duration. The Council did identify that data to reach those conclusions was limited and consequently "the projected cash flow balance in 2003 presents a concern to the Council." The Council proposed to formally consider a recommendation to change the rate or the duration of the Special Reclamation Tax in its 2003 midyear meeting. That meeting had not occurred at the time this report was prepared.

During its 2002 review of reclamation success at bond forfeiture sites, OSM identified problems where trees were not being planted as required by the approved planting plans or the approved postmining land use. During the 2003 review period, WVDEP began contracting for tree plantings as per the requirements of each forfeited permit. Plantings are proposed to begin in the spring of 2004.

3. Funding for Increase in Staffing (PICA)

As discussed in previous reports, OSM awarded WVDEP a Regulatory Program Improvement Cooperative Agreement (PICA) in the amount of \$3.6 million to hire 57 additional employees. The State's source of mutual funding is a 50-cents per ton synfuels tax that was approved during a special legislative session in 2000. The State has filled 100 percent of the 57 specifically added positions and are at 92 percent of its total expected program staffing.

4. Funding for Program Enhancements (PECA)

On February 1, 2001, OSM awarded WVDEP a Regulatory Program Enhancement Cooperative Agreement (PECA) for 6.2 million. To date, WVDEP has:

- Purchased software and hardware for electronic permitting, software for the development of a centralized database for geological and hydrological data, software for watershed modeling, network software, and hardware for a communication system that will serve as the backbone for its electronic permitting system.
- Developed forms for electronic permitting and began Beta testing.

- Initialized a process to convert existing hydrologic and geologic paper data into the Environmental Quality Information System (EQuIS) for permits issued over the last five years. The network software was finally developed to accommodate uploads of data from standalone, non-network computers. Water quality and flow data from trend station sites are currently being captured and uploaded into the database. Also, in order to minimize issues with data integrity, it was decided during the last reporting period to capture data from permits issued during the last five years.
- Placed 233 trend stations in watersheds and initiated monitoring to gather quality and quantity to assist the agency in making future cumulative impact decisions.
- Continued development of watershed flow analysis and water quality modeling software (Watershed Characterization and Modeling (WCMS)).
- Digitizing of existing permit mine maps for WVDEP to populate its geospatial database is essentially complete. To date, 3,724 permit mine maps have been digitized. In addition, airborne imaging/remote sensing equipment to monitor the effects of mining operations on watersheds was installed on the existing agency helicopter. Overflights have just recently begun.

5. SWORA: Fill/Peak Runoff Rule: Mountaintop Mining Action Plan Accomplishments

During this evaluation period, the WVDEP took several actions to address concerns with fill construction and peak runoff increase potential. WVDEP implemented revised rules requiring more timely reclamation of inactive fills.

Further, WVDEP developed and obtained Legislative approval of rules containing revised fill construction requirements and requiring existing operations to demonstrate that the operation would not contribute to peak runoff. These provisions will be implemented in January 2004. A fill evaluation project was also initiated by WVDEP early in the evaluation year and later expanded to create a fill inventory that will be updated semiannually. Several policy clarifications have been issued to permitting and inspection staffs during the evaluation year, including revised guidance on drainage control and engineer certifications of fills.

Finally, OSM joined with WVDEP in reviewing all existing unreclaimed fills to ensure that there was no imminent danger from slides or peak runoff immediately below the fills.

6. WVDEP Reorganization

During the reporting period, the WVDEP reorganized several of the agency's divisions. A new Division of Land Restoration was created to address environmental damages to older industrial and natural resources extraction sites. These changes were made to efficiently combine agency remediation expertise and restoration functions under one division.

Three existing offices were combined to form the new division. Abandoned Mine Lands and Reclamation (AML), Environmental Remediation, and Special Reclamation shape the new division. Before the reorganization, AML was aligned with the Office of Administration while the Special Reclamation group was part of the Division of Mining and Reclamation. Also, all Division of Mining and Reclamation administrative support positions were moved to WVDEP's Office of Administration. This was done to implement the first phase of the agency's reorganization.

In addition, the Divisions of Water Resources and Waste Management were combined to form a new Division of Water and Waste Management. However, these changes did not directly impact the mining program.

7. Program Amendments Resolution

As discussed in detail in Section VII.D, WVDEP submitted program amendments to OSM that satisfied twenty outstanding required amendments during the reporting period. OSM announced its approval of the program amendments that resulted in the removal of the required amendments in the *Federal Register* on June 27, 2003, and July 7, 2003 (68 FR 38178-38188 and 68 FR 40157-40167). These efforts ensure that the State's permanent regulatory program is consistent with the Federal regulations and SMCRA. Currently, the State has twelve outstanding required program amendments. This is the fewest number of outstanding required amendments that the State has had on its program since it was conditionally approved in 1981.

In addition, as announced in *Federal Register* notices published on December 3, 2002, May 7, 2003, and July 7, 2003, OSM approved amendments to the State's contemporaneous reclamation, master land use plan, stormwater runoff and durable rock fill requirements (66 FR 71832-71840, 68 FR 24355-24539, and 68 FR 40157-40167). These requirements were initiated by the State to improve the effectiveness of its program. OSM determined that these program amendments did not conflict with any Federal requirements and approved them as part of the State's permanent regulatory program.

B. Issues

1. Program Maintenance

During the evaluation period, the State satisfied five 30 CFR Part 732 issues. The Part 732 issues are the result of changes in the Federal regulations. Given ongoing litigation, OSM agreed that the State did not have to take any action at this time with regard to three Part 732 notifications concerning ownership and control, subsidence, and valid existing rights. Due to the issuance of four prior Part 732 notifications, there are still thirteen Part 732 issues that need to be resolved by the State. During the evaluation period, the State submitted revisions to OSM which may satisfy seven of the Part 732 issues. To expedite the resolution of the remaining Part 732 issues, OSM has divided the Part 732 issues into two separate amendments. OSM will go ahead and act on those issues that have been fully addressed by the State and continue working with the State on the remaining Part 732 issues.

2. Litigation

West Virginia Highlands Conservancy v. Norton, et al, Civil Action No. 2:00-1062 (S.D. W.Va.)

On November 14, 2000, the West Virginia Highlands Conservancy (WVHC) filed a complaint in U.S. District Court for the Southern District of West Virginia against OSM and WVDEP. The suit had several counts relating to the failure of the State's alternative bonding system (ABS) to have sufficient revenue to complete reclamation, including water treatment, at all bond forfeiture sites and the failure of WVDEP to satisfy several outstanding required program amendments. Chief U.S. District Judge Charles H. Haden II later dismissed the WVDEP from the suit, noting that the State had immunity from such lawsuits under the 11th Amendment to the Constitution.

During the ensuing 3 years (2000 - 2003), OSM and WVDEP took several actions addressing the concerns identified in the initial litigation. The results of these actions include the approval of significant changes to the State's bonding system and removal of 25 required program amendments. The bonding system was changed to provide for additional income to eliminate the backlog of land reclamation and initiate water treatment on forfeited permits with long-term AMD. Also, an Advisory Council was created to ensure long-term solvency of the bond system.

On August 30, 2002, the WVHC requested that the District Court set aside OSM's decisions and require it to take over West Virginia's ABS and other parts of the State's approved program. The Federal government filed a memorandum in opposition to WVHC's motion for summary judgment and permanent injunction on September 27, 2002.

On January 9, 2003, Judge Haden issued a memorandum opinion and order denying without prejudice WVHC's motion to set aside OSM's May 2002 approval of the bond program changes; denying as moot WVHC's motion for injunctive relief; denying WVHC's motion for summary judgment on OSM's approval of State program amendments based on policy or guidance documents; granting WVHC's motion for summary judgment on OSM's approval of certain State program amendments because OSM found them consistent through operation of law; and vacating OSM's approval of four required program amendments at 30 CFR 948.16(nnn), (ooo), (sss), and (oooo) and remanding them to OSM for further consideration in light of this opinion and Federal law. Subsequent actions taken by WVDEP and OSM in response to this decision are discussed below in Section VII.D under "Reinstated Required Amendments." An order was also issued on January 9, 2003, in conjunction with the District Court's memorandum opinion and order scheduling a status conference to determine a schedule for disposing of the remainder of this action.

On March 11, 2003, the status conference was held with the parties in this case. After which, a status conference order was issued by the District Court. After hearing all parties, it was determined that no immediate issues required Court action and the items that were remanded were proceeding through the administrative and legislative process. In addition, Judge Haden ordered the parties to file regular status reports with the Court. On April 14, 2003, a joint status report was filed with

the Court in response to the March 11, 2003, order. The case was closed on March 11, 2003, but several motions for interim award of fees and costs are still pending before the District Court. The WVHC also decided to accept WVDEP's invitation to participate in the Advisory Council.

3. Surety Bankruptcy and Bond Replacement

In May 2000, the U.S. Department of the Treasury removed Frontier Insurance Company (Frontier) of Rock Hill, New York from the list of approved surety companies that can underwrite Federal surety bonds. The New York State Insurance Department took control of the financially ailing insurance company in August 2001.

Because Frontier is a large surety company that underwrites reclamation bonds in West Virginia and other states, OSM and those state regulatory authorities which includes WVDEP have been monitoring Frontier's financial situation very closely. In West Virginia, the West Virginia Insurance Department has also been actively involved. State records show that, as of December 2001, 315 permits involving 36 different coal companies had Frontier bonds. These bonds amount to \$78.1 million and guarantee reclamation on approximately 18 percent of the State's permitted acreage. Practically all of Frontier's bonds are associated with mining operations in the southern part of the State. One company, AEI Resources, accounted for 85 percent of Frontier's outstanding bond obligation. Bankrupt/bond forfeited companies in the State accounted for 8 percent of the Frontier bonds.

On April 9, 2001, Frontier entered into an Agreed Order with the West Virginia Insurance Commissioner to cease and desist writing any new or renewal insurance in West Virginia as of March 16, 2001. Policies in existence on March 16, 2001, could be renewed until March 30, 2001, after which those policies would cease to be renewed.

On October 15, 2001, a New York State Court ruled that Frontier was insolvent. On November 1, 2001, WVDEP began issuing notices of violation requiring operators to replace reclamation bonds that had been underwritten by Frontier within 15 days, as required by the approved State program. Because of various external events, such as the World Trade Center disaster and the Enron financial scandal, replacement bonds have been more difficult to obtain.

State officials are continuing to work with Frontier and other surety companies to find replacement bonds. Horizon Natural Resources, formerly AEI Resources, has replaced all of its Frontier bonds. Below is the current status of the remainder of the companies that had Frontier bonds in this year's evaluation cycle. None of the Frontier bonded sites are mining coal.

- Chicopee Coal - 9 permits, (4 were revoked);
- Falcon Land Company - 5 bonds being replaced by new owner (Arch Coal);
- Lodestar - 6 bonds on 6 permits;
- Pritchard Mining - 1 bond on 1 permit;
- J & N Processing CO, LLC - 1 permit with 4 bonds revoked;
- Golden Falcon Resources, Inc. - 1 permit with one bond revoked; and,
- New Allegheny, Inc. - 1 bond on 1 permit replaced.

4. Staffing

As discussed in prior reports, OSM provided WVDEP a 30 CFR Part 732 notification regarding staffing on February 8, 2000. Since then, the State has increased revenue for staffing and entered a Regulatory Program Improvement Cooperative Agreement (PICA) to hire 57 additional employees.

As of May 31, 2003, WVDEP had filled all 57 new positions authorized under PICA. In addition, WVDEP had filled 100 percent of the 25 backfill vacancies that had occurred due to filling the new positions with existing employees from within the agency. However, 62 regular vacancies occurred due to normal attrition. As of May 31, 2003, WVDEP filled 68 percent of its regular vacancies. Due to the regular vacancies, WVDEP has a net gain of 35 employees. The State still needs to hire 22 additional employees to reach its agreed staffing level of 286 positions.

In addition to the base regulatory level of 286 positions, WVDEP decided to add 17 positions in the Special Reclamation Program to perform bond forfeiture reclamation, including water treatment. As of May 31, 2003, all but one position within the Special Reclamation Program had been filled. Once this position and the other regular vacancies are filled, WVDEP's full staffing level will total 295 FTE positions (See Table 8).

As of June 30, 2003, the State had expended 76 percent of the funds awarded under PICA. At WVDEP's request, OSM extended the cooperative agreement through November 30, 2003, to provide the State additional time to fill the current vacancies and to expend the remaining funds.

During the evaluation period, WVDEP made excellent progress in filling all of the new positions under PICA and eliminating its backfill vacancies. However, 22 regular vacant positions remain to be filled. WVDEP recently notified OSM that it may only fill ten of those positions. Although some normal vacancy rate is expected, OSM is concerned that not all of the 22 positions are in some state of hiring or advertising.

5. Productivity Standards/Measurement Techniques for Grazingland, Pastureland, Hayland, Rangeland, and Cropland

As discussed in the *Federal Register* on May 1, 2002, OSM approved a program amendment for establishing productivity success standards for grazingland, pastureland, hayland, rangeland, and cropland (67 FR 21904-21932). In addition, OSM approved selected productivity and revegetation sampling techniques to be used when measuring the success of ground cover, stocking, or production within the State.

Procedures for establishing productivity and ground cover success standards are set forth in a WVDEP policy dated May 1, 2002, entitled, *Productivity and Ground Cover Success Standards*. In that policy, WVDEP specified that the sampling techniques it would use for measuring ground cover and productivity - are described in the publication; *Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II* dated 1981. The method commonly referred to in the publication for measuring ground cover is the Rennie-Farmer Method and the method for determining productivity is "cut and weigh."

During this review period, OSM learned that WVDEP had not implemented these techniques on ongoing bond releases. Further, WVDEP conducted training for its staff on measurement techniques (pasture plate) that had not been approved as part of the State program. On April 9, 2003, OSM and WVDEP met on this issue. During that meeting, State officials proposed that pasture plate as well as total yield data be used as a means for determining productivity. A State/Federal team was formed to ensure that future bond release applications would be evaluated properly and that the "pasture plate" or other methods could be considered by OSM for approval. The team facilitated discussion between OSM's statistician and a Forage Agronomist at WVU to assist in initial evaluation of the pasture plate method. As recommended, the WVDEP team is now in the process of contracting to test/calibrate the pasture plate method on actual bond release applications.

This study would ensure that the pasture plate method is statistically valid and meets all applicable Federal requirements for productivity and ground cover measurements. During the interim, if bonds on sites with hayland, pastureland, or rangeland are to be released and are for various reasons not part of the study, the State has agreed to use its approved Rennie-Farmer and cut and weigh methods prior to bond release. OSM and WVDEP will continue to work on finalizing a work plan that will lead to the development of a program amendment that can be submitted for approval.

6. AMD Inventory of Active Permits

The last inventory of AMD discharges on currently permitted (non-forfeited) operations was conducted by WVDEP personnel as a one-time water sample in 2000. WVDEP and OSM personnel noted discrepancies between the 1998 inventory and the 2000 inventory. Also, WVDEP and OSM agreed that the one-time water sample every 2 years was not sufficient for cost estimations related to future financial assurances for water treatment. Therefore, on September 8, 2002, WVDEP committed to an action plan which provided for WVDEP to begin requiring operator's currently treating AMD to submit additional water quality and quantity information for future cost estimation. This new reporting was to occur before June 30, 2003, but the order has not yet been given to operators.

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

A. Off-Site Impacts

An evaluation of all West Virginia non-forfeited coal mining permits was conducted to determine the effectiveness of the State program in protecting the environment and the public from off-site impacts resulting from surface coal mining and reclamation operations. The evaluation revealed that 93 percent of the State's 1,970 permitted sites were free of off-site impacts.

During the period July 1, 2002, to June 30, 2003, the State conducted 18,921 inspections and issued 1,256 enforcement actions. Of these enforcement actions, 198 off-site impacts were found on 140 permits. In

comparison to last years 234 impacts on 148 permits, the number of impacts off-site has decreased by 15 percent, and the number of permits with off-site impacts has decreased by 5 percent. Most of the off-site impacts (99 percent) were categorized as minor. The figures representing resources affected, degree of impact, and type of impact can be found in Table 4.

Hydrology, representing 66 percent of the type of impact affected this year, still remains the most common type of impact affected by the mining operations. This category has decreased 10 percent from last year's 76 percent.

The State's Special Reclamation group conducted an off-site impact evaluation of the forfeited permits for the review period of July 1, 2002, through June 30, 2003. During this period of review 26 permits were forfeited and these sites were added to the inventory. One of these sites has off-site impacts relating to hydrology. The degree of impact for this new site is minor. The State reported that 11 bond forfeiture sites were reclaimed during the review period, resulting in 1 off-site impact relating to water quality problems being corrected.

OSM continued to work with the Special Reclamation group during the year to upgrade and better characterize the individual bond forfeiture permits with water quality problems. The off-site impacts related to water were previously being reported only when degradation to the receiving stream was apparent. This year's off-site report includes all permanent program permits with polluted discharges whether or not there is a stream impact. The number of forfeited permits where reclamation has not been completed and determined successful now stands at 456 and the number with off-site impacts remains at 138. Of the 138 off-site impacts 3 are related to land problems and 135 are related to water quality problems.

B. Reclamation Success

The success of the state program in ensuring reclamation on lands affected by surface coal mining operations is based on the number of acres meeting the bond release standards and subsequently released by the state. Phase I release indicates that the land contour has been returned to its approximate original configuration or an approved variation. The phase II release verifies that the vegetative cover or other erosion control techniques have adequately stabilized the surface from erosion and the soil resources are adequate to support that cover. The phase III, or final release, verifies that the mine site is fully reclaimed to achieve the approved postmining land use. Restoration of the vegetative cover and surface and ground water are reflected by this release.

During the evaluation year, October 1, 2002, through June 30, 2003, WVDEP approved 2,383 permitted acres for phase III bond release based on the successful completion of all reclamation requirements. The bond release acreage consisted of 1,635 acres that were disturbed and subsequently reclaimed. The remainder of the permitted acreage was either not disturbed by the mining operation, included in a newly issued permit, or included in a special use authorization such as allowing a pond or access road to remain after mining at the request of the landowner. Phase I and Phase II bond releases during the year were 2,344 and 4,773 acres

respectively. The seemingly reduced rate of released acres can be attributed to the shortened time period for this evaluation year. Additionally, several releases have been delayed due to issues pertaining to vegetation productivity measurements as described in Section IV.B.5. of this report.

Permits with bond releases are included as a portion of the sample mine site evaluations conducted during the evaluation year. The findings from those inspections are discussed in section VII. A. Oversight Inspections. Overall, the sites inspected demonstrated satisfactory reclamation and indicate that West Virginia is releasing bonds in accordance with its regulatory program.

C. Customer Service - Emergency Warning Plans

OSM chose to review the emergency warning plans for large slurry impoundments as the customer service evaluation for EY 2003. These impoundments are hazard class C structures that might cause a loss of human life or serious damage to homes, buildings, public utilities, and highways should a structural failure occur. The federal regulations require that if a potential hazard is found to exist, the regulatory authority shall be promptly informed of the finding and of the emergency procedures formulated for public protection and remedial action. The approved West Virginia regulatory program has similar provisions in sections 38.2.22.4(e) and 38.2.22.5(h) of the West Virginia Surface Mining Reclamation Regulations for hazardous conditions but also requires a plan for all class C structures.

OSM found WVDEP was implementing its program by requiring the owners of all Class C structures to submit an emergency warning plan. Further, WVDEP was requiring additional measures through the Coal Dam Safety Rules to ensure that the County Sheriffs, the County Office of Emergency Services, and other appropriate persons acknowledged having read and understood the plan and that they would carry out their assigned tasks. The Coal Dam Safety Rules, which are not part of the approved program, provide for an annual update of the plans. OSM noted that plans were not always updated on time although 7 out of 10 late submissions were submitted within 30 days of the anniversary date. OSM suggests the State implement a tracking system in ERIS to remind operators and inspectors of the anniversary date.

VI. OSM ASSISTANCE - REGULATORY PROGRAM

A. Site Specific Technical Assistance

OSM provided site specific technical assistance to the WVDEP regulatory program on several instances during this evaluation year. Staff from the OSM Appalachian Regional Coordinating Center in Pittsburgh provided assistance in evaluating potential subsidence impacts to several residences in Boone County. The Charleston Field Office provided assistance in the investigation of an alleged water well loss from underground mining. Charleston staff also assisted WVDEP in the review of data from 109 bond forfeited sites to determine if water quality

issues were present that would place the site on the State's AMD Bond Forfeiture Inventory.

B. Mountaintop Interim Interagency Permit Evaluation

OSM Technical Assistance in the review of certain permit applications has been provided to WVDEP since April 1999. The assistance was outlined in a Memorandum of Understanding and specifically identified in a work plan signed by OSM and WVDEP in 1999. Under the work plan OSM provides assistance to WVDEP in the review of selected large surface mining applications. As of June 30, 2003, OSM was providing assistance on five permit applications.

C. OSM Technical Training

OSM conducts courses throughout the year in the latest technology related to active and abandoned mine reclamation. During EY 2003, OSM provided technical training to 86 WVDEP regulatory personnel through this program.

D Underground Mine Hydrology/Mon Pool Research

OSM continued to conduct technical analysis regarding the flooding of underground mine voids. Decades of underground mining in the Pittsburgh Coal Seam have left approximately 25,000 acres of abandoned mine voids. These mine voids are either flooded or currently flooding. In 1996, these mine voids filled to a near-land surface. Mounting concern that the pool would start discharging into the Monongahela River prompted various agencies to collaborate on the problem in 1998. These included OSM, EPA, WVDEP, and the National Mine Land Reclamation Center (NMLRC), along with Consolidated Coal Company. These agencies are studying the effects of mine pool buildup and considering possible solutions to the problem. Currently, the level of water in the mine pool is controlled by pumping and treating the water.

In EY 2003, OSM continued to monitor water levels at twelve locations in ten mines which included three new wells installed in October 2002. The distribution of monitoring points is intended to provide water level data in each major mine, and at different parts of the mine pool flow system. Water levels are measured on a monthly basis at all monitoring points. Pressure transducers are installed in four wells, and collect hourly water level measurements. These hourly data, along with climactic data, are being used to analyze mine pool behavior in more detail. Preliminary data suggests that some mines with isolated pools will rise to elevations where they will merge with the adjoining mine pools. Monitoring and analysis will continue in EY 2004.

E. Permitting Consistency Phase I

In 2000, OSM agreed to provide assistance to WVDEP by updating agency guidance documents to reflect current requirements and policies. Six areas were chosen for the first phase of the project. The areas chosen were: probable hydrologic consequences and hydrologic reclamation plans; cumulative hydrologic impact analysis; geology; topsoil and revegetation; subsidence; and, approximate original contour (AOC). A training program for WVDEP permit review staff and industry personnel involved in

preparing applications is planned for each of the areas. During this evaluation year, geology guidance was drafted and distributed for public comment. Guidance for AOC determinations, as well as training, was completed in a prior evaluation year. The remaining four topics are in various stages of development.

F. Excess Spoil Fills and Flooding Oversight and Technical Assistance Agreement

On July 19, 2002, storm water, rock, mud, and debris from a permitted surface mine flooded the southern West Virginia community of Lyburn. OSM and WVDEP signed an agreement on December 2, 2002, outlining actions to minimize the possibility of similar flooding at other mining sites.

The State has acted on many elements of the plan discussed in Section IV.A.5. above. In addition, OSM has provided assistance in the resolution of other elements of the agreement, including the approval of a program amendment on December 3, 2002, containing revised contemporaneous reclamation requirements. Another program amendment requiring demonstrations that existing operations will not contribute to peak runoff and containing revised fill construction provisions was approved by OSM on March 21, 2003.

These revised requirements will result in more timely reclamation, require operators to assess and mitigate the operations' contributions to peak runoff; and provide better erosion control at excess spoil fills throughout the State.

OSM also tailored an Excess Spoil Disposal course to West Virginia situations and provided it to State staff during February 2003. OSM also participated in the excess spoil fill evaluations discussed above in Section IV.A.5.

G. O&C Investigation of Bond Forfeiture Sites

In June 2002, the WVDEP requested investigative assistance from the OSM Applicant Violator System Office (AVS) for 98 permits held by 33 companies with permit revoked and bonds forfeited since January 1, 2000. During the period from August through December 2002, investigations were conducted for 31 of the 33 companies on the list. After the list had been prepared, the permits of two of the companies were transferred or were in the process of being transferred to new permittees who would post new bonds and assume responsibility for the sites. The investigations determined who owned and/or controlled the operations at the time of the violations resulting in permit revocation and bond forfeiture, the net worth of the permittee and any other person(s) found to be a responsible party for the operations. The information collection methods included field trips, accessing public information using the Internet, interviews, and the issuance and serving of subpoenas as necessary. The investigation summaries included recommendations to the WVDEP regarding whether alternative enforcement remedies might be successful in obtaining reclamation of the sites.

At this time, the alternative enforcement actions taken on these cases include: show cause orders; permit revocations that resulted in bond forfeitures; and the pursuit of collection of civil penalties. The WVDEP Office of Legal Services (OLS) requested additional assistance in obtaining addresses of these companies and their officers. Also, assistance was needed to secure service of process of documents pertaining to suits filed for past due civil penalties. This service has been achieved on 10 cases with one case settled.

The WVDEP is establishing selection criteria for future alternative enforcement investigations and procedures for referral of these cases to OLS for legal assistance and counsel in any potential litigation. In February 2003, the AVS Office conducted training in the use of alternative enforcement procedures for WVDEP and their OLS.

Further assistance has been requested over the next few months for address verifications and net worth determinations for an additional 22 companies owing past due civil penalties and accounting for 34 additional bond forfeitures. Investigations are being conducted for these additional companies based on the OLS established priorities and investigation summaries are being prepared and delivered to the OLS.

VII. General Oversight Topic Evaluations - Regulatory Program

A. Oversight Inspections

During Evaluation Year 2003, the Charleston Field Office conducted 334 inspections to evaluate West Virginia's program. Also, as part of the oversight inspection process. A review was conducted of West Virginia's bond release activities and an aerial review of selected sites. The following is a breakdown of the inspections by type and findings from the reviews.

Citizen Complaint	2
Citizen Complaint Follow-up	3
Citizen Complaint Referral	2
Document Review - AMD Tech Assistance	43
Federal - Resulting from Inappropriate TDN	3
Federal Follow-Up	2
Bond Release Review	20
Bond Release Review - AMD	4
Sample Inspection - Comprehensive	51
Sample Inspection - Partial	157
Impoundments - Partial	2
Stream Loss Review	42
Other Follow-Up	3
	<u>334</u>

Forty-three of the inspections consisted only of review of documents pertaining to acid mine drainage (AMD). The reviews were conducted to provide technical assistance to the State to evaluate bond forfeiture sites to see if they should be added to the AMD inventory.

A total of 291 on-the-ground inspections were conducted. One hundred thirty-one violations of the State Program were observed on 77 of the 291 inspections. This shows that violations of the State Program were observed on 26.5 percent of the inspections.

All but two of the identified state program violations were properly handled by the State. Twenty of the violations had been previously cited by the State, 88 were cited at the time of the inspection, 21 violations resulted in the issuance of Ten-Day Notices (TDN) and two violations resulted in the issuance of Federal Notices of Violation (NOV). State responses have been determined to be appropriate on six of the TDN violations. Responses have been received on the remaining 19 violations and are currently being evaluated. One response was determined to be inappropriate and a Federal NOV was issued.

The Charleston Field Office issued two Federal Notice of Violations (NOVs) during EY 2003. One NOV was issued for failing to reclaim a minesite in a contemporaneous manner. The permittee had requested an unofficial bond release review by the bond release specialist. The specialist advised the permittee that the site would not qualify for release because the highwall had not been eliminated. The company then appealed the unofficial decision of the bond release specialist to the Surface Mine Board (Board), which ordered the WVDEP to grant the release. The second NOV was the result of a Ten Day Notice (TDN) that was issued in EY 2002 for failure to prevent iron seeps from leaving the permit area. The WVDEP had cited the violation and the permittee appealed the NOV to the Surface Mine Board. The Board ordered the violation to be terminated with no remedial action. The Board felt that if the seeps were sealed at their current location, they would come out somewhere else.

Following is a breakdown of violations by type.

Administrative

Mining Within Valid Permit	3
Mining Within Bonded Area	6
Terms and Conditions of Permit	8
Liability Insurance	2
Temporary Cessation	1
Administrative - Other	1

Hydrologic Balance

Drainage Control	14
Inspections and Certifications	6
Siltation Structures	9
Discharge Structure	1
Diversions	1
Effluent Limits	9
Ground Water Monitoring	9
Surface Water Monitoring	4
Drainage-Acid/Toxic Materials	1
Impoundments	1

Stream Buffer Zones	1
Hydrologic Balance - Other	1
<u>Topsoil and Subsoil</u>	
Removal	1
Redistribution	1
<u>Backfilling and Grading</u>	
Contemporaneous Reclamation	5
Highwall Elimination	1
Steep Slopes (includes downslope)	5
Stabilization (rills and gullies)	1
<u>Excess Spoil Disposal</u>	
Placement	2
Surface Stabilization	3
Inspections & Certifications	2
<u>Coal Mine Waste (Refuse Piles and Impoundments)</u>	
Drainage Control	1
Impounding Structures	1
<u>Use of Explosives</u>	
Blaster Certification	1
Warnings and Records	4
Control of Adverse Effects	1
<u>Subsidence Control Plan</u>	3
<u>Roads</u>	
Road Certifications	1
Drainage	2
Surfacing and Maintenance	6
<u>Signs and Markers</u>	
Markers	2
<u>Revegetation</u>	
Vegetative Cover	3
Timing	1
<u>Postmining Land Use</u>	5
Postmining Land Use - Other	1
Total	131

Bond Release

This review consisted of on-the-ground inspections as well as an aerial review of bond released sites. The on-the-ground review consisted of sites that were in varying stages of release. In addition to randomly selecting sites for review, OSM conducts an inspection on any site where a release is requested if the site is listed on the AMD Active Mine Drainage Inventory. Site reviews included: 27 - Phase I, 12 - Phase II, and 9 sites on which Phase III release had been granted.

The review found that release standards were properly applied on most of the sites. The State has not implemented its program requirements concerning the measuring of vegetative ground cover and productivity for sites with postmining land uses of grazingland, pastureland, hayland, rangeland, and cropland. OSM is currently working with the State to have these requirements implemented.

Overall, the sites inspected demonstrated satisfactory reclamation and shows that West Virginia is conducting its bond release program in accordance with applicable law, regulations, and policies. The reported bond release activities can be used as indicators of standards of reclamation success.

Results of our aerial review are contained in the following section.

Aerial Inspections

This evaluation focused on sites which received a Phase II or Phase III bond release since January 1, 2002. The review was conducted in counties that have been determined to have a high probability for AMD. The sites were reviewed to determine whether seeps, that had not been previously identified, were present and to see if the approved postmining land use had been achieved.

The sites to be reviewed were randomly selected from a list of sites that had received a Phase II or Phase III release between January 1, 2002 and December 31, 2002.

Forty sites were reviewed. No AMD problems were observed on the released sites and the approved postmining land use appears to have been achieved.

B. Impoundment Investigation/Breakthrough Potential

As discussed in last years report, OSM and WVDEP signed a detailed workplan on December 6, 2000, to evaluate the potential for coal refuse impoundment breakthroughs into underground mine workings.

During EY 2003, OSM conducted an analysis of the State's coal refuse impoundment regulations to determine if any differences existed between State requirements and Federal requirements. Some potential differences were identified and four recent permit applications were evaluated to determine if the differences resulted in any real impact on how permits are issued or operations are conducted. OSM also conducted an administrative completeness review of the same four

applications to ensure that all requirements of the approved State program are being addressed by applicants. Both reviews are nearly complete and reports are being prepared. OSM expects both reports to be finalized before the end of the calendar year.

OSM and WVDEP also agreed that technical reviews, including field investigations, would be conducted on selected impoundments. Two impoundments were initially selected to validate OSM's review criteria and five others were selected because they were believed to pose the greatest threat to public health and safety or the environment. During this evaluation period, OSM, in cooperation with WVDEP, completed reports on the two sites selected to validate the review criteria and one of the other sites. Reviews and reports of the remaining four sites are at various stages of completion. OSM plans to complete the remaining technical reviews during EY 2004.

C. Blackwater Spills - General Enforcement Review

During the review period, OSM and WVDEP continued to jointly study the issue of blackwater spills inadvertently released into streams. The study was initiated in June 2002 to evaluate the history of blackwater spills, including causes, sources, frequency of spills, and enforcement and remedial measures. The purpose of the study is to determine if patterns could be identified so that preventative measures could be recommended.

The review team anticipates a report will be available in the fall of 2003 and findings from the study will be included in next year's annual report.

D. Program Amendment Status

30 CFR Part 732 Issues

On December 20, 2000, WVDEP submitted an amendment consisting of written responses to letters sent by OSM as required by 30 CFR 732.17(d). The Federal regulations at 30 CFR 732.17(d) provide that OSM must notify the State of all changes in SMCRA and its regulations which may require an amendment to the State program. Such letters sent by OSM are often referred to as A732 letters. The State's amendment was intended to satisfy thirty-one deficiencies that are set forth in seven Part 732 letters from OSM. A notice announcing receipt and a public comment period on the amendment was published in the *Federal Register* on January 12, 2001 (66 FR 2866-2869). The public comment period closed on February 12, 2001.

On April 9, 2002, WVDEP submitted Enrolled House Bill 4163 which authorized the revision of several requirements contained in the State's Surface Mining Reclamation Regulations and created the Coal Related Dam Safety Rule at 38 CSR 4. The revisions are intended to satisfy several of OSM's Part 732 issues relating to prime farmland, SOAP, etc. A notice announcing receipt and a public comment period on the amendment was published in the *Federal Register* on June 6, 2002 (67 FR 38919-38924). Because some revisions were inadvertently omitted from the initial *Federal Register* notice, on August 16, 2002, OSM reopened the

comment period on the regulatory revisions (67 FR 53542-53545). The comment period closed on September 16, 2002. A *Federal Register* notice approving those provisions relating to the Part 732 issues was approved on June 27, 2003 (68 FR 38179-38188).

During the evaluation period, State and Federal officials met several times to discuss the remaining outstanding Part 732 issues. Given ongoing litigation, it was determined that the State would not take any action at this time regarding: (1) OSM's Part 732 letter dated December 26, 1996, relating to ownership and control, (2) OSM's Part 732 letter dated August 22, 2000, concerning subsidence, and (3) OSM's Part 732 letter dated August 22, 2000, regarding valid existing rights. Given recent proposed changes in its regulations, OSM agreed to reevaluate several of the Part 732 issues, especially those relating to impoundments. In March 2003, OSM provided the State an updated review of its outstanding Part 732 issues. Given the number of issues relating to impoundments, it was decided that a State and Federal engineer would meet separately to evaluate those issues and develop proposed revisions for resolution. On May 27, 2003, WVDEP responded and advised OSM of the actions it had taken or planned to take with regard to the remaining Part 732 issues. Given that some of the Part 732 issues will require further review or legislative action in 2004, it was decided to break the issues into two separate amendments. OSM will proceed on those issues that have been fully addressed by the State, and continue working with WVDEP on the other Part 732 issues.

Blasting

On October 30, 2000, WVDEP submitted an amendment to its blasting program (Administrative Record Number WV-1187). The amendment consists of West Virginia Title 199, Series 1 regulations, entitled Surface Mine Blasting Rule. On November 12, 1999, OSM approved, with certain exceptions, the State's statutory revisions regarding blasting (64 FR 61507-61518). The current amendment is intended to revise the State's blasting rules and implement the approved statutory provisions. On December 5, 2000, OSM published a *Federal Register* notice announcing receipt and a public comment period on the amendment (65 FR 75889-75897).

On November 28, 2001, WVDEP submitted an amendment consisting of Enrolled Senate Bill 689 (Administrative Record Number WV-1258). The amendment is intended to revise the State's Surface Mine Blasting Rule, and amend State statutory requirements regarding preblast surveys, site specific blasting designs, and liability and civil penalties in the event of property damage due to blasting. OSM published a *Federal Register* notice on January 31, 2002, announcing receipt and a public comment period on the amendment (67 FR 4689-4692). The comment period closed on March 4, 2002. A portion of the amendment was approved in the *Federal Register* on May 1, 2002 (67 FR 21904-21932). OSM completed a review of the remaining statutory and regulatory revisions in June 2003.

During the evaluation period, the State requested that OSM give higher priority to other amendments that were pending. To accommodate the State, OSM had to delay making a final decision on the blasting

amendment. Currently, OSM is in the process of drafting a final rule which contains its final decision on all of the States remaining blasting revisions.

House Bill 2663

On May 2, 2001, WVDEP submitted another amendment to its program consisting of revisions to West Virginia's Surface Mining Reclamation Regulations, as amended by Enrolled Committee Substitute for House Bill 2663 (Administrative Record Number WV-1209). OSM announced receipt of the proposed amendment in the May 24, 2001, *Federal Register* and invited public comment on the adequacy of the proposed amendment (66 FR 28682-28685). The public comment period was to close on June 25, 2001. However, upon request of two individuals, the deadline for submitting comments was extended to July 13, 2001. A portion of this amendment was approved by OSM in the *Federal Register* on May 1, 2002 (67 FR 21904-21932).

On February 26, 2003, OSM requested clarification from the State concerning the deletion of the definition of cumulative impact, the addition of a definition of material damage to the hydrologic balance, and the addition of a provision for government-financed construction. On July 1, 2003, the State provided OSM further clarification of these three proposed revisions (Administrative Record Number WV-1365). A *Federal Register* notice announcing receipt of the State's clarification and reopening the public comment period on the remaining unapproved provisions in this amendment will be published in the near future. A final decision on this amendment will be rendered by OSM after the close of the public comment period.

Master Land Use Plan

On May 21, 2001, WVDEP submitted an amendment to its program which was authorized by Enrolled Senate Bill 603 (Administrative Record Number WV-1217). The amendment concerns reclamation plan requirements and authorizes the submittal of a master land use plan for postmining land use. The amendment also revises provisions regarding the Office of Coalfield Community Development. On June 20, 2001, OSM published a *Federal Register* notice announcing receipt and a public comment period on the amendment (65 FR 33032-33034).

On August 12, 2002, WVDEP submitted additional revisions that were authorized by Enrolled Senate Bill 698 (Administrative Record Number WV-1326). The amendment consists of statutory revisions and emergency regulations relating to the Office of Coalfield Community Development. A notice announcing receipt and a public comment period on the amendment was announced in the *Federal Register* on November 6, 2002 (67 FR 67576-67580). A final decision announcing OSM's approval of the amendment was published in the *Federal Register* on May 7, 2003 (68 FR 24355-24539).

Contemporaneous Reclamation

As discussed earlier in this report, on April 9, 2002, WVDEP submitted revisions to its Surface Mining Reclamation Regulations that were

authorized by Enrolled House Bill 4163. A notice announcing receipt and a public comment period on the amendment was published in the *Federal Register* on June 6, 2002 (67 FR 38919-38924). The comment period closed on July 8, 2002.

On June 19, 2002, WVDEP submitted additional revisions to its regulations authorized by Enrolled Senate Bill 2002. OSM announced receipt and a public comment period on the regulatory revisions in the *Federal Register* on August 16, 2002 (67 FR 53542-53545). The public comment period closed on September 16, 2002. To expedite the review of the State's contemporaneous reclamation standards, OSM separated those standards from the other requirements submitted with the amendments discussed above. A final decision announcing the approval of the State's contemporaneous reclamation standards was announced in the *Federal Register* on December 3, 2002 (67 FR 71832-71840).

Reinstated Required Amendments

As discussed earlier in this report, on January 9, 2003, the United States District Court for the Southern District of West Virginia in *West Virginia Highlands Conservancy v. Norton* Civil Action No. 2:00-1062 (S. D. W. Va. January 9, 2003) vacated OSM's decision to remove the required program amendments codified at 30 CFR 948.16(nnn), (ooo), (sss), and (oooo). A notice implementing that decision was published in the *Federal Register* on March 4, 2003 (68 FR 10178-10179).

By letter dated March 18, 2003, WVDEP submitted a program amendment that was intended to resolve the required amendments at 30 CFR 948.16 (nnn), (ooo) and (qqqq) (Administrative Record Number WV-1352). A notice announcing receipt and a public comment period on the proposed amendment was published in the *Federal Register* on April 14, 2003 (68 FR 17896-17903). On May 5, 2003, WVDEP submitted a description of actions that it proposed to take to resolve all of the required amendments (Administrative Record Number WV-1361). A final rule announcing OSM's approval of the amendment and removing the required amendments at 30 CFR 948.16(nnn), (ooo), and (qqqq) was published in the *Federal Register* on July 7, 2003 (68 FR 40157-40167). At the same time, the required amendment at 30 CFR 948.16(sss) was modified by OSM. The State has until September 5, 2003, to address that required amendment, and it intends to introduce a regulatory change during the 2004 legislative session that will resolve the other required amendment at 30 CFR 948.16(oooo).

House Bill 4163 and Senate Bill 2002

As mentioned earlier in this report, on April 9, 2002, WVDEP submitted revisions to its Surface Mining Reclamation Regulations that were authorized by Enrolled House Bill 4163. A notice announcing receipt and a public comment period on the amendment was published in the *Federal Register* on June 6, 2002 (67 FR 38919-38924). The comment period closed on July 8, 2002.

On June 19, 2002, WVDEP submitted additional revisions to its regulations authorized by Enrolled Senate Bill 2002. OSM announced receipt and a public comment period on the regulatory revisions in the

Federal Register on August 16, 2002 (67 FR 53542-53545). The public comment period closed on September 16, 2002.

To expedite the review of certain provisions, OSM separated the bills into several amendments. A final rule announcing OSM's approval of the remaining provisions contained in House Bill 4163 and Senate Bill 2002 was published in the *Federal Register* on June 27, 2003 (68 FR 38179-38-1888). With this decision, OSM removed seventeen required amendments from the State's program at 30 CFR 948.16 (rrrr), (ssss), (ttt), (uuuu), (vvvv), (xxxx), (yyyy), (zzzz), (bbbb), (cccc), (dddd), (eeee), (gggg), (hhhh), (mmmm), (nnnn) and (qqqq).

Durable Rock Fill/Stormwater Runoff Requirements

On March 18, 2003, WVDEP submitted a program amendment consisting of changes to the State's Surface Mining Reclamation Regulations as contained in House Bill 2603 (Administrative Record Number WV-1352). A notice announcing receipt and a public comment period on the proposed amendment was published in the *Federal Register* on April 14, 2003 (68 FR 17896-17903). The amendment related to a variety of topics including bond release, coal refuse, sediment control, durable rock fill construction, fish and wildlife considerations, revegetation, remining, etc.

A final rule announcing OSM's approval of the amendment was published in the *Federal Register* on July 7, 2003 (68 FR 40157-40167). Under the new rules, all operators will be required to analyze stormwater runoff from proposed mining operations. In addition, the new rules provide for the construction of either single-lift durable rock fill with erosion protection zones at the toe of the fills or durable rock fills constructed from the toe upward. To satisfy a concern of the U.S. Environmental Protection Agency, OSM disapproved language that would have allowed erosion protection zones that are constructed with single-lift durable rock fills to remain after mining.

E. Underground Mine Hydrology/Impacts to Surface Water

In EY 2001, WVDEP and OSM conducted a limited inventory of impacts to stream flow from underground mining. WVDEP staff contacted field supervisors and individual inspectors to inventory their institutional knowledge of these types of impacts. Based on this limited initial inventory, both agencies determined they needed additional study to quantify the impacts further. OSM and WVDEP prepared and signed a work plan to conduct additional study on these impacts during EY 2002.

The review consisted primarily of looking at mine maps and interviewing State inspectors. Work was somewhat delayed on this study until EY 2003 because of other commitments and workload. In EY 2003, the review team obtained copies of mine maps all deep mines with longwall mining occurring. Team members obtained additional mine maps from areas where stream impacts from mining was known to have occurred based on the earlier limited interviews with State reclamation staff. The team then developed a questionnaire to obtain more detailed information on mines where stream impacts were thought to have occurred. Part of the questionnaire was designed to obtain additional information from the

State reclamation staff about additional instances of stream impacts from deep mining that the initial inventory may have overlooked. This questionnaire was distributed to the State inspection staff early in 2003, and by April all of the interviews and questionnaires were completed and returned to the team.

Analysis of the information is ongoing. A report on the finding is expected to be completed this calendar year and summarized in the EY 2004 report.

F. Mountaintop Mining Action Plan

In 1999, OSM and WVDEP signed an action plan to resolve certain mountaintop mining issues. The following summarizes the outstanding components of the action plan and discusses the activities required to finalize each item.

- In 2000, WVDEP finalized criteria for demonstrating whether a proposed operation would achieve AOC. The criteria apply to all permit applications submitted after March 24, 2000. The action plan provided that OSM would evaluate the implementation of the policy. As soon as a sufficient number of permits have been approved using the new criteria, OSM plans to select a sample of approved permits that were not jointly reviewed by OSM to evaluate the implementation of the State's criteria.
- On August 18, 2000, OSM approved a program amendment requiring mountaintop mining permit applications that request an AOC variance to demonstrate the expected need and present market data for the proposed postmining land use. OSM has been providing assistance in this area with certain large mountaintop applications, as described in Section VI.B. As soon as a sufficient number of permits that were not jointly reviewed by OSM and WVDEP are approved, oversight will be conducted to evaluate how well these criteria are applied by WVDEP.
- WVDEP agreed to review the approved postmining land use on approved mountaintop removal and steep-slope mining permits. In 2000, OSM published a postmining land use policy clarifying allowable postmining land uses and related permitting requirements for mountaintop removal and steep slope mining operations with AOC variances. In 2001, the State issued letters to five operators of not started operations approved with unallowable postmining land uses requiring them to submit modifications before beginning operations. OSM has conducted oversight inspections to verify that appropriate actions were taken and a report of the inspections is expected to be completed by the end of calendar year 2003.
- WVDEP has modified its permit application form to require specific findings for mountaintop removal and steep-slope mining AOC variances. OSM is conducting a review of permits approved since the form was modified and expects to prepare a report on the findings during the coming evaluation year.

- WVDEP and OSM are participating with five other agencies in the preparation of the environmental impact statement (EIS) on mountaintop mining and valley fill operations in the Appalachian coal fields in accordance with the 1998 Settlement Agreement in the Bragg v. Robertson litigation. A draft EIS has been released for public comment and public hearings have been held. The public comment period ends January 6, 2004. Following the opportunity for public comment, the document will be finalized.
- The State has modified its permitting procedures to require site-specific written findings for permits with contemporaneous reclamation variances. OSM is conducting a review of permits approved since the procedures were modified and will prepare a report on the findings during the coming evaluation year.

VIII. Abandoned Mine Land Reclamation Program (AMLR)

A. General

The mission of the AMLR program is to reclaim abandoned mine sites by abating hazards, reducing/mitigating adverse effects of past mining, and restoring adversely affected lands and water to beneficial uses. WVDEP's Office of AML is successfully accomplishing this mission in West Virginia, but much work remains.

1. General Program Information

The State conducts all AML reclamation in West Virginia. OSM has approved four primary AML components:

- The regular construction program abates high priority, nonemergency problems. OSM approved it on February 23, 1981.
- The emergency program abates emergency problems caused by abandoned coal mining practices. OSM approved it on August 26, 1988.
- Water supply provisions allow the State to repair or replace water supplies where the damage results from mining occurring primarily before August 3, 1977. OSM approved them on July 25, 1990.
- The AMD set-aside program allows the State to use 10 percent of its annual grant allocation to reclaim watersheds impacted by AMD. OSM approved the program on March 26, 1993, and WVDEP funded the first project on August 23, 1995.

2. Appalachian Clean Streams Program (ACSP)

From fiscal years 1997 through 2003, West Virginia has received \$7,403,715 for Appalachian Clean Streams Program projects. The WVDEP has earmarked these funds for acid mine drainage remediation at 12 abandoned coal mining operations. At the end of June 2003, WVDEP had expended \$3,635,815 of the total award amount and completed design and construction on 10 of the 12 projects. Measures to improve water

quality at the completed projects involved: construction of wetlands, open limestone channels, successive alkalinity producing systems, and in-stream treatment with limestone sands. Additionally, land reclamation accounted for a significant portion of water quality improvements as several of the sites involved regrading and revegetating exposed toxic refuse and overburden materials.

B. Noteworthy Accomplishments

1. Fish and Wildlife Coordination Activities

During EY 2003, the U.S. Fish and Wildlife Service discovered evidence that the population of endangered bats in West Virginia was more widespread than previously thought. To address these concerns regarding bat habitat, WVDEP, OSM, and the Fish and Wildlife Service agreed to enhance their coordination procedures on abandoned mine land projects. WVDEP is now coordinating directly with the U.S. Fish and Wildlife Service early in the planning process to address concerns about destruction of endangered bat populations when sealing abandoned deep mines. A joint training session for WVDEP and OSM employees is planned for EY 2004 to enhance both agencies abilities in considering bat habitat issues during AML reclamation.

2. Construction Activities

Table 13 of Appendix A lists the cumulative AML reclamation accomplishments in West Virginia. A comparison of this table with the EY 2002 West Virginia Evaluation Report shows that during EY 2003 West Virginia reclaimed:

- 0.7 miles of clogged streams;
- 1,000 linear feet of dangerous highwalls;
- 36 dangerous impoundments;
- 151.4 acres of dangerous piles and embankments;
- 14.7 acres of dangerous slides;
- 25 hazardous equipment and facilities;
- 118 portals;
- 2.7 acres of polluted waters used for agriculture and industry;
- 5.1 acres of subsidence;
- 1.1 acres of burning mine waste material;
- 2 vertical openings; and
- 1,000 lineal feet of highwall.

The reporting period for the Annual Oversight Report changed this year, and these figures reflect nine months instead of 12 months of accomplishments. Additionally, by eliminating the July, August, and September months from the data, we have eliminated much of the accomplishments that the State would have entered into AMLIS at the end of the summer construction season. For these reasons, this data does not indicate a drop in productivity at the State. Next year's report will be a better indicator of reclamation accomplishments since it will be back on a 12 month reporting cycle.

3. Emergencies

During FY 2003, 45 AML emergencies were initiated by the WVDEP at an estimated cost of \$5,478,793 or an average of \$121,740 per project. This was an exceptionally busy year for the emergency program because of the heavy rainfall this spring and summer. Field investigators reviewed 160 complaints.

C. OSM Technical Assistance

1. Technical Training

OSM conducts courses throughout the year in the latest technology related to active and abandoned mine reclamation. During EY 2003, OSM provided technical training to three WVDEP AML personnel in three classes through this program.

2. Site Specific Assistance

During EY 2003, OSM provided on-site guidance to State Emergency Coordinators about the appropriateness of certain projects for emergency funding or status. This coordination occasionally resulted in modification to the planned abatement procedures. Additionally, the State requested hydrological assistance on one AML site. A hydrologist from the Appalachian Regional Coordinating Center provided this assistance.

D. Results of Enhancement and Performance Reviews

1. Abandoned Mine Land Emergency Oversight

For every potential AML emergency project the State submits, the CHFO conducts a paper review of the submittal to ensure it meets AML guidelines and established grant criteria. The CHFO conducted this review on all emergency projects submitted this year.

During the evaluation period, OSM conducted two site reviews on AML-funded emergency projects at various stages of completion. No problems were noted during these reviews.

2. Drawdown Analysis/Audit

OSM's ARCC Grants Staff conducted Quarterly Drawdown Analyses at WVDEP during EY 2003. They were conducted in accordance with the following applicable requirements:

- Department of Treasury Fiscal Requirements Manual 6-2080.20, which requires that periodically, but not less than each calendar quarter, the Federal program agency shall review each recipient's use of funds advanced. To satisfy this requirement, we determined:
 - o that there was no difference between the total amount of funds drawn via the Drawdown Express (DDX) and disbursements related to the Federal program; and

- o that cash was being withdrawn in accordance with program disbursement needs.
- Treasury Circular 1075 (31 CFR 205) requires that cash advances to a recipient organization shall be limited to the minimum amounts needed, and shall be timed to be in accord only with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization. There were no discrepancies related to this requirement.

WVDEP drawdown activities were found to be in compliance with both of these requirements.

There was one audit finding referred to OSM for disposition by WVDEP during this Evaluation Year.

3. Site Inspections (AML)

During EY 2003, the CHFO issued five notices to proceed for the nonemergency AML construction projects listed below.

Project Name	Date Approved
Fish Run Refuse	May 9, 2003
Minden C. Refuse	May 7, 2003
Mcalpin Eroding Refuse Dump	November 27, 2002
Kingwood Waterline	October 28, 2002
Bartley Dump Project	October 15, 2002

This represents a significant drop from last year's report of 32. Two factors contributed to this drop. As discussed previously, this report is for a 9 month period instead of the 12 month period normally covered. In addition, the State has modified their procurement procedures for selecting design firms. WVDEP must now individually bid each project for a design contract, and this change has reduced the number of projects in the design phase. However WVDEP expects the pace of submissions to pick up again as they become accustomed to the new contract system. OSM will monitor these activities in EY 2004.

APPENDIX A: TABULAR SUMMARY

These tables present data pertinent to mining operations and State and Federal regulatory activities within West Virginia. They also summarize funding provided by OSM and West Virginia staffing. Unless otherwise specified, the reporting period for the data contained in all tables is the same as the evaluation. Additional data used by OSM in its evaluation of West Virginia's performance is available for review in the evaluation files maintained by the Charleston Field Office.

TABLE 1

COAL PRODUCTION (Millions of short tons)			
Period	Surface mines	Underground mines	Total
Coal Production ^A for entire State:			
<u>Calendar Year</u>			
2000	59.8	98.8	158.6
2001	62.5	100.7	163.2
2002	61.2	89.4	150.6
Total	183.5	288.9	472.4
<p>^ACoal production as reported in this table is the gross tonnage which includes coal that is sold, used, or transferred as reported to OSM by each mining company on form OSM-1 line 8(a). Gross tonnage does not provide for a moisture reduction. OSM verifies tonnage reported through routine auditing of mining companies. This production may vary from that reported by States or other sources due to varying methods of determining and reporting coal</p>			

TABLE 2

INSPECTABLE UNITS As of June 30, 2003												
Coal mines and related facilities	Number and status of permits								Insp. Unit ^D	Permitted acreage ^A (hundreds of acres)		
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals					
	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	Total
STATE and PRIVATE LANDS REGULATORY AUTHORITY: STATE												
Surface mines	0	434	3	188	12	200	15	822	837	9	2,291	2,300
Underground mines	0	631	0	188	1	171	1	990	991	0	316	316
Other facilities	0	464	1	58	3	68	4	590	594	1	435	436
Subtotals	0	1,529	4	434	16	439	20	2,402	2,422	10	3,052	3,048
FEDERAL LANDS REGULATORY AUTHORITY: STATE												
Surface mines	0	0	0	0	0	0	0	0	0	0	0	0
Underground mines	0	0	0	2	0	1	0	3	3	0	0	0
Other facilities	0	0	0	1	0	0	0	1	1	0	0	0
Subtotals	0	0	0	3	0	1	0	4	4	0	0	0
ALL LANDS ^B												
Surface mines	0	434	3	188	12	200	15	822	837	9	2,291	2,300
Underground mines	0	631	0	190	1	172	1	993	994	0	316	316
Other facilities	0	464	1	59	3	68	4	591	595	1	435	436
Totals	0	1,529	4	437	16	440	20	2,406	2,426	10	3,042	3,052
Average number of permits per inspectable unit (excluding exploration sites) <u>1</u>												
Average number of acres per inspectable unit (excluding exploration sites) <u>126</u>												
Number of exploration permits on State and private lands: <u>0</u> On Federal lands: <u>0</u> ^c												
Number of exploration notices on State and private lands: <u>116</u> On Federal lands: <u>0</u> ^c												
<p>IP: Initial regulatory program sites.</p> <p>PP: Permanent regulatory program sites.</p> <p>^A When a unit is located on more than one type of land, include only the acreage located on the indicated type of land.</p> <p>^B Numbers of units may not equal the sum of the three preceding categories because a single inspectable unit may include lands in more than one of the preceding categories.</p> <p>^c Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management.</p> <p>^D Inspectable Units include multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.</p>												

TABLE 3

STATE PERMITTING ACTIVITY												
OCTOBER 1, 2002 THROUGH JUNE 30, 2003												
Type of application	Surface mines			Underground mines			Other facilities			Totals		
	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres ^A	App. Rec.	Issued	Acres	App. Rec.	Issued	Acres
New permits	14	25	11,468	9	24	472	4	7	600	27	56	12,540
Renewals	23	64	32,797	97	115	5,170	87	138	11,938	207	317	49,905
Transfers, sales and assignments of permit rights	N/A	26		N/A	53		N/A	20		43	99	
Small operator assistance												
Exploration permits	0	0		0	0		0	0		0	0	
Exploration notices ^B		N/A			N/A			N/A			56	
Revisions (exclusive of incidental boundary revisions)		121			90			57			268	
Incidental boundary revisions		53	538		79	282		30	299		162	1,119
Totals	37	289	44,803	106	361	5,924	91	252	12,837	277	958	63,564

N/A - Information not available by type of mining operation.

^A Includes only the number of acres of proposed surface disturbance.

^B Involves removal of less than 250 tons of coal and does not affect lands designated unsuitable for mining.

TABLE 4

OFF-SITE IMPACTS															
DEGREE OF IMPACT		RESOURCES AFFECTED												Total	
		People			Land			Water			Structures				
		minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major		
Type of Impact and Total Number of Each Type	Blasting	10	0	0	0	0	0	0	0	0	0	0	0	0	10
	Land Stability	0	0	0	34	0	0	0	0	0	0	0	0	0	34
	Hydrology	0	0	0	0	0	0	129	2	0	0	0	0	0	131
	Encroachment	0	0	0	23	0	0	0	0	0	0	0	0	0	23
	Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	10	0	0	57	0	0	129	2	0	0	0	0	0	198
Total number of inspectable units: <u>1,970</u>															
Inspectable units free of off-site impacts: <u>1,830</u>															
OFF-SITE IMPACTS ON BOND FORFEITURE SITES															
DEGREE OF IMPACT		RESOURCES AFFECTED												Total	
		People			Land			Water			Structures				
		minor	moderate	major	minor	moderate	major	minor	moderate	major	minor	moderate	major		
Type of Impact and Total Number of Each Type	Blasting														
	Land Stability	0	0	0	0	0	1	0	0	0	0	0	0	0	1
	Hydrology	0	0	0	0	0	0	80	23	32	0	0	0	0	135
	Encroachment	0	0	0	0	2	0	0	0	0	0	0	0	0	2
	Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0	0	0	0	2	1	80	23	32	0	0	0	0	138
Total number of inspectable units: <u>456</u>															
Inspectable units free of off-site impacts: <u>318</u>															

TABLE 5

ANNUAL STATE MINING AND RECLAMATION RESULTS		
Bond release phase	Applicable performance standard	Acreage released during this evaluation period
Phase I	<ul style="list-style-type: none"> • Approximate original contour restored • Topsoil or approved alternative replaced 	2,344.4
Phase II	<ul style="list-style-type: none"> • Surface stability • Establishment of vegetation 	4,772.9
Phase III	<ul style="list-style-type: none"> • Postmining land use/productivity restored • Successful permanent vegetation • Groundwater recharge, quality and quantity restored • Surface water quality and quantity restored 	2,382.6
Bonded Acreage Status ^A		
Total number of bonded acres at end of last review period (September 30, 2002). ^B		296,300
Total number of acres bonded during this evaluation year.		13,659
Number of acres bonded during this evaluation year that are considered remaining, if available.		N/A
Number of acres where bond was forfeited during this evaluation year (also report this acreage on Table 7)		949.8
^A Bonded acreage is considered to be approximate and represent the number of acres disturbed by surface coal mining and reclamation operations. ^B Bonded acres in this category are those that have not received a Phase III or other final bond release (State maintains jurisdiction).		

TABLE 6

STATE BOND FORFEITURE ACTIVITY (Permanent Program Permits)		
Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Permit Acres
Sites with bonds forfeited and collected that were unreclaimed as of September 30, 2002 (end of previous evaluation year) ^a	420	23,566
Sites with bonds forfeited and collected during Evaluation Year 2003 (current year)	9	79
Sites with bonds forfeited and collected that were repermited during Evaluation year 2003 (current year)	0	0
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2003 (current year)	5	171
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2003 (end of current year) ^a	375	16,841
Sites with bonds forfeited but uncollected as of June 30, 2003 (end of current year)	64	5,970
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of September 30, 2002 (end of previous evaluation year) ^b	14	1,026
Sites where surety/other party agreed to do reclamation during Evaluation Year 2003 (current year)	0	0
Sites being reclaimed by surety/other party that were repermited during Evaluation Year 2003 (current year)	0	0
Sites with reclamation completed by surety/other party during Evaluation Year 2003 (current year) ^c	12	1,000
Sites being reclaimed by surety/other party as of June 30, 2003 (current year) ^b	2	56
^a Includes data only for those forfeiture sites not fully reclaimed as of this date. ^b Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date. ^c This number also is reported in Table 5 as Phase III bond release had been granted on these sites.		

TABLE 7

WEST VIRGINIA STAFFING (Full-time equivalents at end of evaluation year)	
Function	EY 2003
Abandoned Mine Land Program Total ^A	67.6
Regulatory Program	
Permit review ^B	50
Inspection ^C	80
Blasting	15
Other (administrative, fiscal, personnel, etc.) ^D	150
Total for Regulatory Program ^E	295
TOTAL	362.60
^A Includes 11 vacant positions. ^B Includes 4 vacant positions. ^C Includes 8 vacant positions. ^D Includes 10 vacant positions. ^E Includes 22 vacant positions.	

TABLE 8

FUNDS GRANTED TO WEST VIRGINIA BY OSM (Millions of dollars) EY 2003		
Type of grant	Federal funds awarded	Federal funding as a percentage of total program costs
Abandoned Mine Lands	\$35,593,326	100%
Administration and Enforcement	\$ 8,491,924	50%
Small Operator Assistance	\$ 64,929	100%
Program Improvement Cooperative Agreement (PICA)	\$ 3,599,000	50%
Program Enhancement Cooperative Agreement (PECA)	\$ 6,222,000	100%
Totals	\$53,971,179	

TABLE 9

STATE OF WEST VIRGINIA INSPECTION ACTIVITY		
PERIOD: OCTOBER 1, 2002 - June 30, 2003		
Inspectable Unit Status	Numbers of Inspections Conducted	
	Complete	Partial
Active*	4,274	8,111
Inactive*	1,329	348
Abandoned*	0	0
Exploration*	187	43
Total	5,790	8,502

* Use terms as defined by the approved State program.

TABLE 10

STATE OF WEST VIRGINIA ENFORCEMENT ACTIVITY		
PERIOD: OCTOBER 1, 2002 - June 30, 2003		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	903	903
Failure-to-Abate Cessation Order	46	46
Imminent Harm Cessation Order	21	21
<i>* Does not include those violations that were vacated.</i>		

TABLE 11

STATE OF WEST VIRGINIA LANDS UNSUITABLE ACTIVITY			
PERIOD: OCTOBER 1, 2002 - JUNE 30, 2003			
Number of Petitions Received	0		
Number of Petitions Accepted	0		
Number of Petitions Rejected	0		
Number of Decisions Declaring Lands Unsuitable	0	Acreage Declared as Being Unsuitable	-
Number of Decisions Denying Lands Unsuitable	0	Acreage Declared as Being Unsuitable	-

TABLE 12

ABANDONED MINE LAND RECLAMATION NEEDS AND ACCOMPLISHMENTS SINCE PROGRAM APPROVAL					
Problem Type	Units	Unfunded	Funded	Completed	Total
Priority 1 & 2 (Protection of public health, safety, and general welfare)					
Clogged Streams	Miles	275.1	1.5	48.0	324.6
Clogged Stream Lands	Acres	166.8	0.0	160.3	327.1
Dangerous Highwalls	Lin feet	1,413,777.0	5,100.0	233,543.0	1,652,420.0
Dangerous Impoundments	Count	634.0	49.0	564.0	1,247.0
Dangerous Piles & Embankments	Acres	1,176.5	137.0	5,263.0	6,576.5
Dangerous Slides	Acres	347.4	4.0	519.6	871.0
Gases: Hazardous/Explosive	Count	0.0	0.0	5.3	5.3
Hazardous Equip. & Facilities	Count	607.0	32.0	618.8	1,257.8
Hazardous Water Bodies	Count	16.0	0.0	11.0	27.0
Industrial/Residential Waste	Acres	6.2	1.5	35.8	43.5
Portals	Count	1,955.0	26.0	2,486.0	4,467.0
Polluted Water: Agri & Indus	Count	125.0	18.0	50.1	193.1
Polluted Water: Human Consum	Count	2,556.0	751.0	9,250.0	12,557.0
Subsidence	Acres	764.4	12.0	304.3	1,080.7
Surface Burning	Acres	79.2	2.5	473.1	554.8
Underground Mine Fires	Acres	1,937.5	0.0	20.3	1,957.8
Vertical Openings	Count	145.0	3.0	145.3	293.3
Priority 3 (Environmental restoration)					
Benches	Acres	216.8	0.0	27.0	243.8
Ind/Res Waste	Acres	49.5	0.0	2.0	51.5
Equipment/facilities	Count	77.0	3.0	9.0	89.0
Gob Piles	Acres	1,602.5	15.0	500.0	2,117.5
Haulroads	Acres	11.0	0.0	0.0	11.0
Highwalls	Feet	3,401,563.0	9,100.0	68,987.0	3,479,614.0
Mine Openings	Count	34.0	0.0	9.0	43.0
Other		154.0	0.0	0.0	154.0
Pits	Acres	43.1	0.0	11.0	54.1
Slumps	Acres	35.3	0.0	0.0	35.3
Slurry	Acres	10.0	2.0	0.0	12.0
Spoil Areas	Acres	989.8	0.0	250.5	1,240.3
Water problems	Gal./min	12,024.5	0.0	722.0	12,746.5
Note: All data in this table are taken from the Abandoned Mine Land Inventory System (AMLIS)					