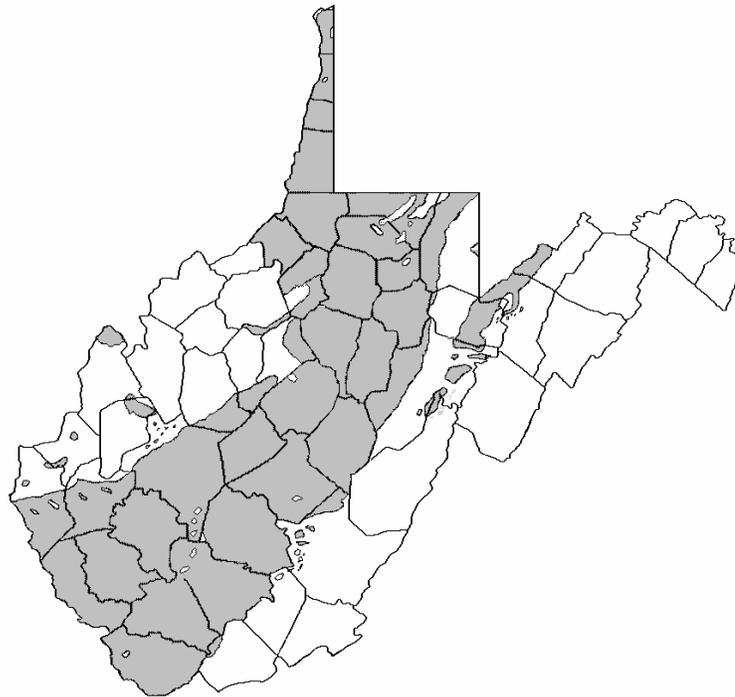


**2004
WEST VIRGINIA
ANNUAL EVALUATION REPORT**



PREPARED BY

***Charleston Field Office
Office of Surface Mining Reclamation and Enforcement
Charleston, West Virginia***

ANNUAL EVALUATION SUMMARY REPORT
FOR THE
REGULATORY AND ABANDONED MINE LAND
RECLAMATION PROGRAMS
ADMINISTERED BY THE STATE
OF
WEST VIRGINIA
FOR
EVALUATION YEAR 2004
JULY 1, 2003 TO JUNE 30, 2004

SEPTEMBER 2004

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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 July 1, 2003, to June 30, 2004. 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:

ACSP	Appalachian Clean Streams Program
AMD	Acid Mine Drainage
AML	Abandoned Mine Land
AMLR	Abandoned Mine Land Reclamation
AMLIS	Abandoned Mine Land Inventory System
AOC	Approximate Original Contour
ARCC	Appalachian Regional Coordinating Center
AVSO	Applicant Violator System Office
CHFO	Charleston Field Office
CHIA	Cumulative Hydrologic Impact Assessment
COE	U.S. Army Corps of Engineers
CWA	Clean Water Act
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
EQUIS	Environmental Quality Information System
ESA	Endangered Species Act
EY 2004	Evaluation Year 2004 (July 1, 2003 to June 30, 2004)
FWS	U.S. Fish and Wildlife Service
HCPA	Hominy Creek Preservation Association,
HSPF	Hydrological Simulation Program-Fortran
NMLRC	National Mine Land Reclamation Center
NWP	Nationwide Permit
NOV	Notice of Violation
OIG	Office of Inspector General
OSM	Office of Surface Mining Reclamation and Enforcement
OSR	Office of Special Reclamation
OVEC	Ohio Valley Environmental Coalition
PMLU	Postmining Land Use
SOAP	Small Operators Assistance Program
SMCRA	Surface Mining Control and Reclamation Act of 1977
SRF	Special Reclamation Fund
SWROA	Surface Water Runoff Analysis
TDN	Ten-Day Notice
WCMS	Watershed Characterization and Modeling Software
VISTA	Volunteers in Service to America
WV	West Virginia

WVDEP	West Virginia Department of Environmental Protection
WVDMR	West Virginia Division of Mining and Reclamation
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.

Mining activities occurring before passage of SMCRA in 1977 resulted in many unreclaimed or under reclaimed areas within the State. Currently, there are 4,005 sites listed in the Abandoned Mine Land (AML) inventory for West Virginia. Three percent of the sites are undergoing reclamation, 61 percent are awaiting reclamation, and 36 percent have been reclaimed through the State's AML Program.

West Virginia's demonstrated coal reserve base totals 33.7 billion tons and its estimated recoverable reserves total 18.4 billion tons.

In 2003, West Virginia produced 145.9 million tons of coal, allowing it to retain its ranking as the second largest coal producing State (see Table 1, Appendix A for coal production based on sales).

West Virginia leads the Nation in underground coal production. Underground mines produce approximately 63 percent of the State's total coal production. Twelve of the Nation's fifty-two longwall mining operations are in West Virginia.

Contour, area, auger, mountaintop, and highwall mining operations are the most commonly used methods of surface mining in the State. Thirty-seven percent of the coal produced in West Virginia is by surface mining methods. Surface coal production declined by 15.2 percent, and underground production declined by 8.3 percent in 2003. Since 1991, underground coal production in the State has an average annual decrease of about 2 percent, while surface mine production has increased by about 2 percent annually. Seventy-two percent of the State's surface coal production was produced by mountaintop mining operations in 2003.

West Virginia has 2,418 inspectable units. The average number of acres per inspectable unit is 131 acres. Surface mines average 2894 acres per unit, whereas underground mines average 31 acres per unit. Shadow areas of underground mines are not included in the permitted acres. 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.

Approximately 91 percent of the coal produced in West Virginia is used domestically, with 24 percent of that coal being consumed within the State. Most coal produced in West Virginia is used to generate electricity.

West Virginia is the Nation's leading coal exporter with 36 percent of the country's foreign exports.

About 300 companies produce coal in West Virginia. During 2003, the State's coal mining industry directly employed 14,871 people with a payroll of about \$800 million. Total employment, including independent contractors, is about 38,500 employees. Since 1991, the number of miners in the State has declined by nearly 7 percent annually, with most of the jobs being lost in the northern part of the State. Estimates are that the State's coal industry generates approximately 60,000 additional coal-related jobs.

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. Overall, it is estimated that every \$1 billion worth of coal production generates \$3.5 billion throughout the economy.

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

Throughout Evaluation Year 2004 (EY 2004), WVDEP and OSM officials met with the following representatives of various citizen, environmental, and industry groups.

- o West Virginia Highlands Conservancy,
- o West Virginia Coal Association,
- o Ohio River Valley Environmental Coalition,
- o Contractor's Association of West Virginia,
- o River of Promise Steering Committee (Cheat River),
- o Friends of the Cheat,
- o Guardians of the West Fork,
- o West Virginia Watershed Network,
- o Plateau Action Network,
- o Shavers Fork Coalition,
- o Morris Creek Watershed Association,
- o Friends of the Blackwater River,
- o Friends of Deckers Creek,
- o Lower West Fork Watershed Association,
- o Paint Creek Watershed Association
- o American Society of Mining and Reclamation
- o McDowell County Economic Development Authority
- o Mingo County Redevelopment Authority, and
- o Canaan Valley Institute.

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

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

- o Public Hearing for Stream Buffer Zone Rule, and
- o 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. The 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 Volunteers in Service to America (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 EY 2004, OSM published notices requesting public comment on several rulemaking activities. Notices were sent to various State and Federal agencies along with public interest groups. OSM also published requests for public comment in the Federal Register. 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. The Appalachian Regional Coordination Center (ARCC) has a link to the Charleston Field Office web page at http://arcc.osmre.gov/about_cfo.asp. The CHFO published its draft 2-year oversight plans as a method to solicit public input. 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

1. Watershed Management Framework

During the EY 2004, both WVDEP and OSM participated with other State and Federal agencies in a partnership for statewide watershed management called the West Virginia Watershed Management Framework (the Framework). The Framework provides a way to coordinate the operations of existing water quality programs and activities in West Virginia to better achieve shared watershed management goals. 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.

During the past year and under the Framework, project teams were assembled in priority watersheds to begin developing and funding remedial projects to improve water quality, habitat, and aquatic life in the streams. In addition to government agencies already involved through the Framework, these efforts are being coordinated with watershed organizations, industry, academia, and other local interests. A primary focus of the Project Teams is the clean up of acid mine drainage from old abandoned mines.

2. Bonding Program Improvements

During the evaluation period, WVDEP continued to take actions to improve the State's alternative bonding system (ABS). On May 29, 2002, OSM fully approved the State's ABS that included an increase in the special reclamation tax rate from 3 cents per ton of clean coal mined to 14 cents (with 7 of the 14 cents expiring after 39 months); created a Special Reclamation Advisory Council (the 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 forfeited sites.

The Council met several times during the year to evaluate the status of the Special Reclamation Fund (the Fund) and monitor the progress of land reclamation and water treatment at bond forfeited sites. The Council is taking their Legislative charge seriously and has shown great interest and resolve in carrying out their duties. The Council has sanctioned three studies including a Consensus Coal Production Forecast; a Bond Forfeiture Risk Study; and an Evaluation of Acid Mine Drainage Treatment Strategies. Only the Consensus Coal Production Forecast was presented in final form to the Council before the end of the evaluation period.

Additionally, and as required by Legislature, the Council is working with the WVDEP to contract an Actuarial study of the Special Reclamation Fund. The WVDEP did not receive any bid submissions in response to their initial Request-for-Proposals (RFP). Consequently, they reannounced the Request-for-Proposal in July and opened and began evaluating bid proposals in August. A contract is expected to be awarded in September and the actuarial study to begin soon after.

On December 29, 2003, the Council submitted its annual summary report and recommendations to Legislature. The report, among other things, provides the Legislature with the Council's comments regarding the future financial position of the Special Reclamation Fund. In this report the Council expressed its concern that; "under plausible projections the Fund may prove inadequate subsequent to the removal of the second 7-cent component in 2005." The Council goes on to reference the studies that are being conducted that will give a better picture of the existing conditions relative to the coal market/production and the viability of companies in arriving at a decision concerning the Fund. The Council's next report to Legislature, in

December of 2004, will recommend whether the additional 7-cent tax should remain or be allowed to expire after 39 months as originally planned.

The WVDEP Special Reclamation Program has been supportive, open, and helpful to the Council in this process. They have continually provided thorough and detailed documentation, and have been very responsive to the Councils requests.

WVDEP has developed a schedule through June 2006 to complete reclamation of its backlog of forfeited permits for both land and water. There are 134 permits scheduled for water treatment within that period. Of the 134 permits, water treatment has been completed for 10 and 25 are in some phase of contracting or reclamation. Additionally, the WVDEP is monitoring 59 permits to determine whether treatment will be needed. These sites will be added to the schedule if determined to require treatment.

There are more than 440 permits included in WVDEP's schedule for land reclamation. The WVDEP has completed land reclamation for 122 permits since March 2002 and 160 permits are in some phase of contracting or reclamation.

3. Revegetation Efforts to Evaluate Feasibility or Pasture-Plate Method

WVDEP and OSM are currently working together to test a new method of measuring revegetation success. The WVDEP is interested in evaluating this method, known as the pasture plate, to determine if it is accurate and more efficient than the currently approved evaluation methods.

A State/Federal team was formed to field test the pasture plate method. During this evaluation year, the WVDEP, with the assistance from the West Virginia University Cooperative Extension Service, conducted field trials. Preliminary results are promising, but further field work is planned later in the year to complete the evaluation of the pasture plate method.

4. Funding for Program Enhancements (PECA)

On February 1, 2001, OSM awarded WVDEP a Regulatory Program Enhancement Cooperative Agreement (PECA) for 6.2 million. Through the end of the performance period, June 30, 2004, 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 and implemented an electronic permitting system. This system enables mining companies to apply for and receive mining permits on line.
- Placed 235 trend stations in selected watersheds. These trend stations provide quality and quantity data to assist the agency with cumulative hydrologic assessment reviews.
- Implemented EQUIS, a centralized database, designed for the management of geophysical, chemistry, and hydrological information concerning surface water and

ground water conditions, as the repository for field sample data. Water quality and flow data from trend station sites are currently being captured and uploaded into this database.

- Provided funding to acquire United States Geological Survey (USGS) stream gauging station data. The gauging stations provide flow data to populate a watershed modeling software program. Using the stream flow data, USGS/WVDEP and WVU developed calibration parameters and modeled the simulated flow for eight reference watersheds.
- Enhanced the existing watershed modeling software. Developed new modeling tools, modeled the simulated flow for eight reference watersheds, and incorporated a (USGS) modeling program Hydrological Simulation Program-Fortran (HSPF) to be used with the Watershed Characterization and Modeling Software (WCMS) for watershed modeling. WCMS provides statistical and graphical analysis tools within the HSPF/WCMS Cumulative Hydrologic Impact Assessment (CHIA) modeling environment to facilitate comparisons between pre-mining and post-mining watershed hydrologic responses.
- Digitized 3,719 existing paper copies of permit maps. Added these digitized maps to WVDEP's geospatial database. In addition, airborne imaging and remote sensing equipment to monitor the effects of mining operations on watersheds was installed on the agency helicopter. Mine site overflights began during the previous reporting period.

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

On December 2, 2002, OSM and WVDEP signed an agreement outlining actions to reduce the potential for flooding similar to that which occurred in the community of Lyburn in the summer of 2002. The agreement addressed a broad range of actions including approval and implementation of revised regulations to address flooding and fill construction, establishment of work groups to evaluate some of the broader issues identified at the Lyburn site, and development of additional guidance and training.

During EY 2003, WVDEP received OSM approval for revised excess spoil fill construction and contemporaneous reclamation rules. These rules also required existing operations to complete a surface water runoff analysis (SWROA) demonstrating that they will not contribute to peak discharges during storm events. Operators were individually notified by WVDEP inspection staff of the submission schedule for the analysis in March of 2004. Training in the preparation of SWROA's was also provided to industry and WVDEP permit staff during this evaluation year.

Two teams established by the Agreement also completed their activities during EY 2004. The report of the team established to evaluate whether each fill in the state created a hazard to downstream residents was finalized in November 2003, and the report of the team established to evaluate the durability of rock being placed in durable rock fills was completed in June 2004.

WVDEP also issued two policy clarifications related to the Fill and Flooding Agreement during the evaluation year. On September 4, 2003, a policy was issued to permitting staff outlining when a permit revision would necessitate a revision of the probable hydrologic consequences statement included in the original permit. On May 15, 2004,

WVDEP issued a revised policy on fill certifications by a registered professional engineer.

With the completion of the SWROA staffing study discussed in Section VII.I., the only actions remaining under the fill and flooding Agreement are the development of two WVDEP policies as discussed in Section IV.B.5. and three OSM oversight evaluations to ensure that implemented changes have achieved the desired results.

6. Program Amendment Resolution

As discussed in detail in Section VII.D, during the evaluation period, WVDEP submitted program amendments to OSM that satisfied four outstanding required amendments, and OSM found that the State did not have to make changes to satisfy six Part 732 issues, which were the result of Federal rule changes. OSM announced its approval of the program amendments that resulted in the removal of the required amendments in the *Federal Register* on July 7, 2003, and June 17, 2004 (68 FR 40157-40167 and 69 FR 33851-33854). In addition, OSM published its decision regarding the six Part 732 issues in the *Federal Register* on April 29, 2004 (60 FR 23473-23477). 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 and eleven Part 732 issues that remain to be satisfied. During the reporting period, the State submitted a formal program amendment on March 25, 2004, that among other things, is intended to satisfy one required amendment and three Part 732 issues. In addition, WVDEP submitted proposed regulatory revisions on May 18, 2004, and June 9, 2004, that are intended to resolve all of the remaining required amendments and Part 732 issues. These proposed revisions are to be acted upon during the upcoming legislative session, and, if adopted, will be formally submitted to OSM next year. The State is continuing to make progress in resolving all of these issues.

B. Issues

1. Litigation (CHIA) Program Amendment

Ohio Valley Environmental Coalition, Inc., et al., v. Secretary Norton, DOI, Civil Action No. 3:04-00084 (S.D. W.Va.)

On January 30, 2004, the Ohio Valley Environmental Coalition (OVEC) and others filed a complaint requesting that the U.S. District Court for the Southern District of West Virginia vacate OSM's December 1, 2003, *Federal Register* decision approving a State program amendment providing for a new definition of material damage and the deletion of an existing definition of cumulative impact which are to ensure the protection of the hydrologic balance during surface coal mining activities (68 FR 67035-67045) (Administrative Record Number WV-1382).

OVEC alleges that OSM's approval of the amendment is 1) unlawful because it is based on interpretations of Federal law and regulations that have never been promulgated as Federal requirements; 2) in violation of the Administrative Procedures Act because OSM refused a request to reopen the comment period to receive and consider comments prior to approving the amendment and failed to adequately respond to comments that were raised during the comment period; and 3) not supported by the existing record and is arbitrary, capricious, and otherwise

inconsistent with Federal law partly because it is based upon a clarification letter from WVDEP that is erroneous.

In addition to vacating OSM's December 1, 2003, decision, OVEC wants the District Court to compel OSM to notify WVDEP that it must rescind its definition of material damage, implement its former definition of cumulative impact, and perform a new cumulative hydrologic impact assessment for each permit issued since OSM's decision. Judge Robert C. Chambers was assigned the case.

On March 29, 2004, Secretary Norton filed an answer to OVEC's allegations. In it, Secretary Norton requested that the District Court dismiss the complaint with prejudice (Administrative Record Number WV-1397).

On April 1, 2004, Judge Chambers issued an order and notice setting various dates and times by which certain events in the case must occur. In response to the order, a joint report was filed by the parties on June 7, 2004. Pursuant to the joint report, Judge Chambers entered a Scheduling Order on June 10, 2004. According to the Order, the Secretary must file an administrative record by July 9, 2004; OVEC must file a motion for summary judgment by August 9, 2004; the Secretary must file a cross-motion for summary judgment and a memorandum in opposition to the Plaintiffs' motion by September 8, 2004; and OVEC must file a reply motion by September 23, 2004.

In keeping with the joint report and the Order, on behalf of the Secretary, OSM filed an administrative record with the District Court on July 7, 2004. The administrative record, which consists of two volumes, contains various documents pertaining to OSM's approval of West Virginia's definition of material damage.

Ohio River Valley Environmental Coalition, Inc., et al., v. Michael Callaghan, et al., Civil Action No. 3:00-0058, (S.D. W.Va.)

On January 21, 2000, OVEC and the Hominy Creek Preservation Association (HCPA) filed suit in U.S. District Court for the Southern District of West Virginia at Huntington. The suit asked the court to compel the WVDEP to perform certain functions that the plaintiffs allege are nondiscretionary legal obligations under SMCRA. Among other items, the suit alleged that WVDEP had approved permits and significant amendments without doing adequate CHIAs, without requiring adequate baseline data and without requiring adequate hydrologic monitoring and reclamation plans. On June 14, 2001, the plaintiffs filed a motion to add the U.S. Department of the Interior as a defendant that the judge granted. The plaintiffs argued that the alleged WVDEP actions set out in the complaint are a failure to perform non-discretionary duties. Since this is a failure to carry out the approved program, the plaintiffs argue that the Secretary must promulgate and implement a Federal regulatory program for West Virginia within a specific, reasonable amount of time.

Plaintiffs and OSM reached a mutually acceptable consent order for this case which was entered by the Court on May 5, 2004. The plaintiff's have also signed a settlement agreement with the WVDEP. WVDEP has agreed to establish a quality review panel to review CHIAs, and in the consent order, OSM agreed to provide a technical representative to this panel.

2. Staffing

As discussed in prior reports, OSM provided WVDEP a 30 CFR Part 732 notification regarding staffing on February 8, 2000. In response to the Part 732 notification, the State increased revenue for staffing and entered a Regulatory Program Improvement Cooperative Agreement (PICA) to hire 57 additional employees. On November 20, 2003, OSM approved the State's request to extend PICA through December 31, 2003. Since then, the State has expended all of the funds awarded it under PICA.

On March 29, 2004, WVDEP filed its final report on PICA for the period ending December 31, 2003. The State acknowledged that all 57 new positions as authorized under PICA were filled. In addition, WVDEP filled all 25 backfill vacancies that had occurred due to the filling of new positions with existing employees from within the agency. However, 31 regular vacancies still exist due to retirements, resignations, terminations, or transfers to other program. Due to the regular vacancies, WVDEP has a net gain of 27 employees after the completion of PICA. Most of the regular vacancies are in permitting and inspection and enforcement.

During the evaluation period, because of insufficient Federal funding, OSM was not able to fund the full amount of WVDEP's FY 2004 Administrative and Enforcement Grant. Due to the lack of funding, WVDEP informed OSM that it would take no action on 16 of the regular vacancies, but it would continue to fill the remaining 15 vacancies. OSM expressed concern regarding this decision, and on June 23, 2004, after securing supplemental funding, the State's FY 2004 Administration and Enforcement Grant was amended to fully fund the State's initial grant request. The additional funding was for the 16 previously frozen positions. OSM recently agreed to work with WVDEP on an updated review of its staffing levels.

3. Acid Mine Drainage (AMD) Inventory of Active Permits

OSM reported last year that the WVDEP's AMD inventory for active mining permits had not been updated since 2000. That remained unchanged at the time this report was prepared.

In 2002, WVDEP and OSM had agreed that a one-time water sample every 2 years was not sufficient for cost estimations related to future financial assurance for water treatment. In that regard, the WVDEP prepared an action plan with a commitment to begin requiring operator's currently treating AMD to submit additional water quality and quantity information for future cost estimation. The new reporting requirement was to have been initiated more than a year ago, but the order has not been given to operators. WVDEP officials have advised that they still consider the information important but are considering other options to collect it.

OSM remains concerned that WVDEP has not been more diligent in pursuing this action. The potential impacts of not having adequate water quality/quantity information for active mining operations that treat water include:

- Cost assumptions to judge future forfeiture costs and, hence, the adequacy of the Special Reclamation Fund (SRF) may be based on inaccurate information. The original approval of changes to the special reclamation fund was based on one-time water samples with the anticipation that actual costs would be refined and considered by the Special Reclamation Advisory Council. Getting good water data

on all permits with the expectation that some may be forfeited is a critical part of that process.

- Actual reclamation and water treatment of newly forfeited permits may be delayed until the State pays for and collects its own water quality information for seasonal data. In addition to delayed reclamation, the SRF will incur additional monitoring costs and the effects of inflation because WVDEP is not requiring background water data of a seasonal nature.
- Even if the operation never forfeits its bond, OSM questions how WVDEP can judge the adequacy of the active operator's hydrologic reclamation plan where it has never obtained seasonal water quality and quantity information on the water pollution after it was discovered.
- OSM notes that the lack of accurate raw water data of a seasonal nature also hinders the State's ability to portray costs in its negotiations with companies that are facing bankruptcy or reorganization. Bankruptcy proceedings and third party negotiations often occur rapidly leaving little time for data gathering for water treatment cost projections.

4. Mountaintop Mining Action Plan

Under the Mountaintop Mining Action Plan described in Section VII.F., WVDEP was to identify and take action to insure that all permits with Approximate Original Contour (AOC) variances contain postmining land uses allowable under the approved program. Of the 37 active permits identified as having inappropriate land uses to support the AOC variance, all but eight have been addressed. One of the remaining permits is the subject of an outstanding ten-day notice, with a final response due in early August. The remaining seven have been reported to be returning the minesites to AOC but, to OSM's knowledge, no permitting action has been taken to remove the AOC variance.

In addition, efforts under the Action Plan identified five permits with inappropriate postmining land uses (PMLU) that had not started mining. These permittees were instructed by the Director of WVDEP to not begin any activity until the PMLU was revised or the AOC variance removed. Three of the permits were later activated without addressing the Director's instructions. On further review, one of the three permits was found not to contain an AOC variance. The remaining two were again instructed to revise their permit.

OSM is currently awaiting a status report from WVDEP on the eight permits originally identified with inappropriate PMLUs and the two that started operations after being instructed not to begin until the PMLU was revised.

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

Two policy statements required by the Excess Spoil Fills and Flooding Oversight and Technical Assistance discussed in Section IV.A.5. have not been completed. Policies related to inactive status approvals and drainage were issued in February 2003, but later rescinded on October 15, 2003. OSM is continuing to work with the State to finalize revised policies.

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

A. Off-Site Impacts

We conducted an evaluation of all West Virginia non-forfeited coal mining permits 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 92 percent of the State's 1,958 permits were off-site impact free.

During this evaluation period, the State conducted 19,176 inspections and issued 1,218 enforcement actions. Of these enforcement actions, 210 off-site impacts were found on 155 permits. In comparison to last years 198 impacts on 140 permits, the number of impacts off-site has increased by 6 percent, and the number of permits with off-site impacts has increased by 5 percent. Most of the off-site impacts (94 percent) were categorized as minor. The figures representing resources affected, degree of impact, and type of impact can be found on Table 4.

Hydrology, representing 74 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 increased 8 percent from last year's 66 percent.

The State's Office of Special Reclamation (OSR) conducted an off-site impact evaluation of the forfeited permits. During this review period, 19 permits were forfeited and were added to the inventory. Four of these sites have off-site impacts relating to hydrology. The degree of impact for these new sites is 2 minor, 1 moderate, and 1 major. The State completed land reclamation on 30 bond forfeiture permits during the review period. The State installed active water treatment equipment on five sites to abate the impacts to water quality.

The number of bond forfeited permits with off-site impacts decreased by 2 to 136. Of the 136 off-site impacts, 3 are related to land problems and 133 are related to water quality problems. Land reclamation contracts have been completed at 91 sites that remain under a contract warranty status pending a final evaluation of reclamation success.

In addition to the sites where reclamation was completed during the evaluation year, the OSR issued reclamation contracts on 75 sites and 11 more sites are currently under construction.

B. Reclamation Success

The success of the State program in ensuring reclamation of 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, WVDEP granted 2,169 acres in Phase III bond release based on the successful completion of all reclamation requirements. Phase I and Phase II bond releases during the year were 2,206 and 2,164 acres respectively.

C. Customer Service –Underground Mine Mapping

OSM chose to review the six month advance notice of underground mining as the customer service evaluation for EY 2004. The purpose of this review was to evaluate the effectiveness of customer service provided by WVDEP's Division of Mining and Reclamation (WVDMR). The customers, landowners, and residents are entitled to be notified in advance of mining beneath their property or homes. Regulations for this requirement are outlined under Title 38, Series 2, Section 16.1 of the West Virginia Surface Mining Reclamation regulations

OSM found WVDEP was implementing its program by requiring all permittees to notify all of the residents/landowners of impending mining underneath their property a full six months in advance of mining.

Overall, the six month advance notices of underground mining sent out by the permittees have been submitted in a timely fashion. However, a few requirements warranted closer attention. WVDMR should require a routine compliance check with section H7 of their complete inspection checklist. This section requires WVDMR personnel to confirm that all the landowners have received their 6-month notification letters. Also, the review found that leases were sometimes accepted as advance mining notices. Leases should only be accepted as notification if they contain all the requirements listed in the regulations.

VI. OSM ASSISTANCE – REGULATORY PROGRAM

A. Site Specific Technical Assistance

OSM provided site specific technical assistance to the WVDEP regulatory program for six investigations during this evaluation year. Staff from the OSM Appalachian Regional Coordinating Center in Pittsburgh and the Charleston Field Office provided assistance in evaluating potential subsidence impacts at four sites. Two other sites involving well water were also investigated. The subsidence investigations have been completed and the water loss investigations are ongoing.

B. Mountaintop Interim Interagency Permit Evaluation

In accordance with the Settlement Agreement in the Bragg v. Robinson litigation, 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.

During this evaluation year, OSM and WVDEP decided to limit assistance efforts to permits determined to require an Individual Clean Water Act permit by the U.S. Army Corps of Engineers (COE). Three of the five applications being reviewed by OSM were removed from the process by this decision. One of the two remaining permits was later

terminated by WVDEP and the other still has outstanding issues that need to be addressed by the applicant.

On July 8, 2004, District Judge Joseph Goodwin of the Southern District of West Virginia enjoined COE from issuing Nationwide Permit 21 Clean Water Act authorizations within the Southern District of West Virginia. The effect of the Court action on the Settlement Agreement creating the interagency permit evaluations is under consideration.

C. OSM Technical Training

OSM conducts courses throughout the year in the latest technology related to active and abandoned mine reclamation. These courses are administered through OSM's National Technical Training Program and the Technical Information Processing System. During EY 2004, WVDEP regulatory program staff attended 71 classes.

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 which would have generated a significant AMD discharge. 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, Environmental Protection Agency (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 2004, OSM continued to monitor water levels at twelve locations in ten mines. The distribution of monitoring points is providing 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 2005.

E. Permitting Consistency Phase I

During Evaluation Year 2000, OSM and WVDEP developed a workplan providing for OSM to assist in the updating of agency guidance documents to reflect current requirements and policies. Six areas were chosen for the first phase of the multi-year project. The areas chosen were: probable hydrologic consequences and hydrologic reclamation plans; CHIA; geology; topsoil and revegetation; subsidence; and, AOC. Guidance for AOC determinations, as well as training, has been completed. In EY 2003, a draft Geologic Handbook was completed and distributed for public comment, but WVDEP has taken no action to finalize the document. Development of the hydrology and CHIA guidance was placed in abeyance due to the CHIA litigation discussed in Section IV.B.1. OSM is taking no further action on the other two topics until WVDEP decides if they want to continue the project.

F. Vegetative Cover / Productivity Standards

OSM and WVDEP formed a joint state/federal team to determine if a new method for evaluating revegetation success known as the pasture plate method is feasible, efficient, and meets regulatory requirements. WVDEP also proposed using total yield data as a means for determining productivity. Currently, the approved State method for measuring ground cover is the Rennie-Farmer Method and the method for determining productivity is "cut and weigh".

During this evaluation year, the WVDEP issued a contract to the West Virginia University (WVU) Cooperative Extension Service (Extension Service) to evaluate the pasture plate method. The Extension Service, in conjunction with WVDEP bond release personnel, conducted field evaluations on 10 revegetated surface mine sites (five Northern West Virginia sites and five Southern West Virginia sites) in September, 2003. On these evaluations, plots were clipped and the forage was oven-dried and weighed to determine productivity yield in tons per acre. Pasture plate measurements were then correlated to the yields on each site. The yield data collected on these sites can be used for productivity determinations to evaluate the sites for bond release.

In a preliminary report, the Extension Service concluded that the pasture plate method can be employed for measurement of forage productivity on reclaimed surface mined areas. However, the Extension Service recommended that additional calibration of the pasture plate be conducted across additional years and at other sites to validate the method. OSM reviewed the report and agrees that additional calibration for different times of the year would be useful. In addition to visiting new sites, OSM suggested that previously visited sites be remeasured to correlate results.

G. Alternative Enforcement

In June 2002, the WVDEP requested investigative assistance from the OSM Applicant Violator System Office (AVSO) for 98 revoked permits with bond forfeitures since January 1, 2000. Thirty-three companies held these permits. The purpose of the investigations was to determine who owned and/or controlled the operations at the time of the violations resulting in permit revocation and bond forfeiture and the net worth of the permittee and any owners or controllers. The investigation summaries included recommendations to the WVDEP regarding whether alternative enforcement remedies might assist in achieving reclamation of the sites.

The AVSO has continued to assist the WVDEP's Division of Mining and Reclamation (DMR) and Office of Legal Services (OLS) in the form of address verifications of the permit holding companies and their officers. Civil suits have been filed for past due civil penalties and collection efforts are open on 15 of the 33 cases. Investigative assistance was also provided for an additional 22 companies with 34 permits owing past due civil penalties, some of which also had permit revocations and performance bonds forfeitures. These investigations focused on address verifications and net worth determination. Collection efforts remain open on 14 cases.

In 2004, the CHFO and the AVSO jointly assisted the WVDEP DMR and OLS with expanding the alternative enforcement options considered when primary enforcement has failed to achieve correction of a violation or complete reclamation of a permit. Previously, the WVDEP almost exclusively utilized permit suspension and/or permit revocation for patterns of violations when violations remained unabated. Other alternative enforcement options available include the assessment of individual civil

penalties; civil actions in the form of injunctions and restraining orders; criminal actions; and findings of permanent permit ineligibility. With this assistance WVDEP is developing processes and procedures to evaluate potential alternative enforcement cases and referring selected cases to OLS; establishing tracking systems for both DMR and OLS to monitor alternative enforcement actions, their status and conclusion; identifying ten potential cases and conducting investigations to determine if alternative enforcement actions might be appropriate; and providing staff training.

Alternative enforcement processes and procedures have been established within DMR utilizing existing systems with slight enhancement for tracking and monitoring. The ten cases reviewed produced two good candidates for further action that should be initiated in the near future.

VII. General Oversight Topic Evaluations – Regulatory Program

A. Oversight Inspections

During EY 2004, OSM's Charleston Field Office conducted 296 inspections to evaluate West Virginia's program. Also, as part of the oversight inspection process, OSM conducted a review of West Virginia's bond release activities, and an aerial review of selected sites. OSM's findings for these review activities and a summary by inspection type follows.

Assistance – Experimental Practice	1
Document Review – PMLU	1
Citizen Complaint	5
Citizen Complaint Follow-up	2
Citizen Complaint Referral	9
Citizen Complain Congressional Referral	1
Document Review – AMD Tech Assistance	66
Federal – Resulting from Inappropriate TDN	1
Federal Follow-Up	11
Bond Release Review	22
Bond Release Review - AMD	2
Sample Inspection – Comprehensive	74
Sample Inspection – Partial	100
Other Follow-Up	<u>1</u>
	296

Sixty-six of the inspections were document reviews pertaining to AMD. The reviews were conducted to provide technical assistance to the State to evaluate bond forfeiture sites to determine whether the permit should be added to the AMD inventory. One inspection was a document review pertaining to postmining land use.

Two hundred twenty-nine on-the-ground inspections were conducted. On 89 of the 229 inspections, 139 violations of the State Program were observed. Violations of the State Program were observed on 38.8 percent of the inspections.

Most of the identified state program violations were properly handled by the State. Twenty five of the violations had been previously cited, 85 were cited at the time of the inspection, 27 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 19 of the TDN violations. Responses have been received on the remaining six violations and are currently being evaluated. Two responses were determined to be inappropriate and a Federal NOV containing two violations was issued.

The Charleston Field Office issued one Federal NOV containing two violations during EY 2004. The permittee had failed to properly construct the underdrain for two durable rock fills and had failed to divert surface runoff from areas above the fills into properly designed and constructed stabilized diversion channels. The West Virginia Department of Environmental Protection (WVDEP) declined to take enforcement action to correct the violations. Both violations have been corrected and the NOV has been terminated.

Following is a summary of violations by type.

Administrative

Mining Within Valid Permit	3
Mining Within Bonded Area	5
Terms and Conditions of Permit	12
Temporary Cessation	2
Administrative – Other	1

Hydrologic Balance

Drainage Control	11
Inspections and Certifications	12
Siltation Structures	6
Discharge Structure	1
Diversions	1
Effluent Limits	5
Ground Water Monitoring	2
Drainage-Acid/Toxic Materials	6
Stream Buffer Zones	1
Hydrologic Balance – Other	3

Backfilling and Grading

Contemporaneous Reclamation	6
Approximate Original Contour	1
Highwall Elimination	3
Steep Slopes (includes Downslope)	4
Stabilization (rills and gullies)	2

Excess Spoil Disposal

Drainage Control	15
Surface Stabilization	2
Inspections & Certifications	2

Coal Mine Waste (Refuse Piles and Impoundments)

Drainage Control	1
Placement	2
Inspections and Certifications	3

Use of Explosives

Blast Survey/Schedule	9
Warnings and Records	4
Control of Adverse Effects	1

Subsidence Control Plan 3

Subsidence Control Plan – Other	2
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Roads

Certifications	1
Drainage	1
Surfacing and Maintenance	3

Postmining Land Use 3

Total	139
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Bond Release

This review consisted of on-the-ground inspections as well as an aerial review of bond released sites. OSM's on-the-ground review consisted of sites which 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, and when the site is listed on the AMD inventory. Site reviews included: 29 - Phase I, 11 - Phase II, and 6 sites that Phase III release had been granted.

OSM's review found that release standards were properly applied on these sites.

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

Aerial Inspections

This evaluation focused on sites that received a Phase II or Phase III bond release since January 1, 2003. The review was conducted in counties that have been determined to have a high probability for AMD. The sites were reviewed to determine if seeps that had not been previously identified were present and to evaluate whether 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, 2003, and December 31, 2003.

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

B. Slurry Impoundment Study

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 2004, OSM completed 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. The December 4, 2003, report of this analysis concluded that no regulatory changes to the approved state program were required.

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. The March 5, 2004, report of this review recommended that revisions be made to the State application form and that training be provided to both WVDEP staff and industry representatives.

OSM is not aware of any changes to the application form or any training provided by WVDEP.

OSM and WVDEP also agreed that technical reviews, including field investigations, would be conducted on selected impoundments. During this evaluation period, OSM, in cooperation with WVDEP, continued review and report preparation for three impoundments. These reports will be finalized during EY 2005. After completion of these reports, only one additional site remains to be reviewed under the workplan.

C. Blackwater Spills – General Enforcement Review

As a result of extensive media coverage of blackwater spills and the numerous state enforcement actions involving blackwater in the State's streams and rivers, OSM and WVDEP agreed to evaluate the causes and effects of blackwater spills. The team reviewed two hundred and six blackwater complaints and/or violations that had been issued. The purpose of the review was to evaluate the history of blackwater spills, including causes, sources, frequency of the spills, and WVDEP's enforcement and remedial measures. Another purpose of the review was to determine if patterns/trends could be identified and prevention measures could be implemented.

The review found a variety of causes and sources of blackwater spills. The most consistent and significant source of blackwater spills originated from permitted ponds and their associated discharges. Other blackwater sources were identified as slurry lines and or pipelines, coal pits, benches, and ditches that were improperly discharging runoff from roads, sumps, stockpiles, and other discharges associated with mine blowouts, truck spills, and beltline discharges. Human error accounted for a large part of these discharges. There did not appear to be a seasonal influence in the frequency of the spills. During the period of review, a significant spill occurred in every month of the year, with the largest number of blackwater spills occurring in August 2001 and the second largest number occurring in January 2001.

A large number of blackwater spills were reported to the WVDEP. Many of these spills were deemed serious enough to warrant an NOV from the WVDEP inspector. If the variety and sources of the blackwater spills were determined to have developed into a pattern of violations (two NOV's within a twelve month time period), then a Show-Cause Order was given to the company. If the company does not comply with the Show-Cause Order, their performance bond may be forfeited.

During the time period defined in the scope of this study, five separate patterns of violation were identified on three separate permits. Three show cause orders were issued. Two of these orders are still in litigation. One of these permittees entered into a Consent Agreement with the WVDEP. Since the time of the Consent Agreement, that permit has met the requirement of the agreement and the Show Cause Order has been terminated.

D. Program Amendment Status / Program Maintenance

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 on April 14, 2003, in the *Federal Register* (68 FR 17896-17903). The amendment related to a variety of topics including bond release, sediment control, fish and wildlife considerations, revegetation, coal refuse, durable rock fill construction, 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. OSM is coordinating with the State and EPA in an effort to resolve this disapproval.

Reinstated Required Amendments

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 on April 14, 2003, in the *Federal Register* (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) regarding water supply replacement was modified by OSM. The State notified OSM on May 18, 2004, that it plans to propose a regulatory change during the 2005 legislative session to resolve the required amendment at 30 CFR 948.16(oooo) regarding coal removal incidental to development.

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 initially 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 three of the proposed revisions. On July 1, 2003, the State provided OSM further clarification concerning its proposed requirements regarding the definition of cumulative impact, material damage to the hydrologic balance, and government-financed construction (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 was published on July 31, 2003 (68 FR 44910-44913). The public comment period closed on August 15, 2003. However, at the request of a Federal agency, OSM extended the comment period through August 29, 2003 (Administrative Record Number WV-1371).

A final decision announcing OSM's approval of the amendment was published in the *Federal Register* on December 1, 2003 (68 FR 67035-67045). However, OSM deferred making a decision on provisions regarding funding for government-financed construction until the State adds counterparts to the Federal regulations at 30 CFR 707.5 and 874.17. As discussed in Section IV.B.1, a legal complaint was filed in the United States District Court for the Southern District of West Virginia over OSM's decision to approve the State's deletion of its definition of cumulative impact and its new requirements regarding material damage to the hydrologic balance.

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 comprised 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. The portion of the amendment that addressed three outstanding required amendments was approved in the *Federal Register* on May 1, 2002 (67 FR 21904-21932). As mentioned last year, the State requested that OSM give higher priority to other amendments that were pending before it. To accommodate the State, OSM had to delay processing the blasting amendment.

On December 10, 2003, a final decision on the blasting amendment was published in the *Federal Register* (68 FR 68724-68738). OSM approved the State's Surface Mine Blasting Rule to the extent that the requirements at CSR 199-1-3.10.d do not preclude the use of a preblast survey to support enforcement actions. In addition, OSM did not approve the phrase substantial or significant at CSR 199-1-4.8.c, and it required the State to amend its rules to provide that upon finding willful conduct, the Secretary shall suspend or revoke a blaster's certification.

The State plans to address these deficiencies during the upcoming legislative session. WVDEP has drafted regulatory changes in an attempt to resolve all of OSM's concerns. OSM is working with WVDEP to ensure that the draft language resolves the disapproval and the outstanding required amendment. The submission of the amendment is expected to occur next year.

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 will require an amendment to the State program. Such letters sent by OSM are often referred to as "732 letters." The State's amendment was intended to satisfy thirty-one issues that were 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 that 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, Small Operator Assistance Program (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 Part 732 issues relating to SOAP and prime farmland were approved on June 27, 2003 (68 FR 38179-38188).

During the last 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 have to take any action at this time regarding OSM's Part 732 letter dated December 26, 1996, relating to ownership and control, OSM's Part 732 letter dated August 22, 2000, concerning subsidence, and OSM's Part 732 letter dated

August 22, 2000, regarding valid existing rights. Given recent proposed changes in its regulations, OSM also 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 to resolve them. 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 would require further review or legislative action in 2004, it was decided to separate the issues into two amendments. OSM agreed to proceed on those issues that had been fully addressed by the State, and continue working with WVDEP on the other Part 732 issues.

The State eventually agreed to amend some additional Part 732 issues, and on December 2, 2003, it submitted a formal schedule for resolving them (Administrative Record Number WV 1381). On April 8, 2004, OSM provided the State its rationale for terminating some of the previously identified Part 732 issues (Administrative Record Number WV 1388). OSM concluded that, as a consequence of ongoing discussions, no changes were needed to satisfy six of the Part 732 issues. The Part 732 issues not requiring change concerned the definition of other treatment facilities; the definition of siltation structures; the definition of significant recreational, timber, economic or other values incompatible with surface mining operations on Federal lands; thin or thick overburden; repair or compensation for subsidence related material damage and replacement of water supplies contaminated, diminished or interrupted by underground mining operations conducted after October 24, 1992; and the requirement that a probable hydrologic consequences (PHC) determination contain a finding relating to underground mining.

On April 29, 2004, OSM published a *Federal Register* notice announcing its decision to withdraw the proposed 30 CFR Part 732 rulemaking as announced in the *Federal Register* on January 12, 2001(60 FR 23473-23477). OSM took this action because, for the twelve Part 732 items published as a proposed rule, the State provided rationale for not making some changes, proposed changes, or for various other reasons. OSM decided to publish the *Federal Register* notice and include its rationale for making those earlier decisions, because OSM had received comments from the public on the amendment and believed a full explanation to the public was warranted.

On May 18, 2004, WVDEP submitted some proposed rule changes that are intended to satisfy all outstanding required amendments and to resolve the remaining Part 732 issues that it agreed to earlier on December 2, 2003. OSM is working informally with WVDEP in an attempt to ensure that the proposed revisions will achieve their intended purposes. The public will be provided an opportunity to review and comment on the proposed revisions when they are submitted as a formal program amendment.

Tree Stocking Standards

On February 26, 2002, WVDEP submitted, among other materials, a letter dated November 17, 2000, from the Division of Forestry. In the letter, the Division of Forestry approved, on a statewide basis, the stoking rates at CSR 38-2-7.4, concerning standards applicable to mountaintop removal mining operations with a postmining land use of commercial forestry and forestry. OSM announced receipt of the proposed amendment in the *Federal Register* on March 25, 2004. In addition, OSM invited public comment on

its proposal to remove the required amendment at 30 CFR 948.16(aaaaa) regarding tree stocking rates (66 FR 28682-28685). The public comment period closed on April 26, 2004.

On June 17, 2004, OSM announced its final decision in the *Federal Register* (69 FR 33851-33854). OSM found that the letter from the Division of Forestry satisfies the required amendment at 30 CFR 948.16(aaaaa) which required WVDEP to consult with and obtain the approval of the Division of Forestry on the new stocking standards for commercial forestry and forestry at CSR 38-2-7.4.b.1.I. As a result of the decision, OSM removed the required amendment, and the approved stocking standards can be implemented on a statewide basis.

House Bill 4193

On March 25, 2004, WVDEP submitted House Bill 4193, that authorizes amendments to the State's Surface Mining Reclamation Regulations. The amendment relates to new forestland and wildlife provisions to ensure that reclamation techniques and husbandry practices are conducive to productive forestlands and wildlife habitats; subsidence control plan maps; contemporaneous reclamation; bonding amounts for contemporaneous reclamation variances; inspection frequency of abandoned sites; controlled placement of coal refuse; the deletion of disapproved requirements pertaining to coal removal incidental to development; and an exemption for coal removal incidental to the extraction of other minerals.

In addition, WVDEP submitted Engrossed Committee Substitute for Senate Bill 616, that was adopted by the Legislature on March 21, 2004. The Bill contained statutory provisions, which would have increased the membership of the Environmental Protection Advisory Council and established a new Quality Assurance Compliance Advisory Committee. Because the Bill was vetoed by the Governor on April 6, 2004, OSM did not include it in the rulemaking.

On May 12, 2004, OSM published a *Federal Register* notice announcing receipt and a public comment period on the amendment (69 FR 26340-26348). The comment period closed on June 11, 2004. A final decision on this amendment will be rendered by OSM in the near future.

Program Maintenance

Required Amendments

During the evaluation period, WVDEP satisfied four required amendments, and OSM modified one required amendment and added one required amendment. At the end of the reporting period, the State had twelve outstanding required amendments. Most of the remaining required amendments pertain to the State's homestead postmining land use regulations. The State has a program amendment pending before OSM that addresses one of the required amendments. In addition, the State drafted proposed regulatory revisions in an attempt to resolve all of the remaining required amendments. The proposed revisions were submitted to OSM for informal review on May 18, 2004, and June 9, 2004.

30 CFR Part 732 Notifications

Currently, the State has eleven deficiencies in its program resulting from the issuance of four 30 CFR Part 732 notifications by OSM. These 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 the outstanding Part 732 notifications concerning ownership and control, subsidence, and valid existing rights. During the evaluation period, OSM removed six Part 732 issues. The State submitted a program amendment on March 25, 2004, that addresses three Part 732 issues. In addition, the State submitted proposed regulatory revisions to OSM on May 18, 2004, in an attempt to satisfy all of the remaining Part 732 issues. WVDEP and OSM officials are continuing to work together to resolve all of these issues.

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 inventory, both agencies determined additional study was needed to quantify the impacts further. OSM and WVDEP prepared and signed a work plan to conduct additional study on these impacts. The review consisted primarily of looking at mine maps and interviewing State inspectors. 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 of known stream impacts from mining based on the earlier limited interviews with State reclamation staff. The team then developed a more detailed questionnaire to obtain information on mines with suspected stream impacts. State inspection staff completed this questionnaire early in 2003, and by April, all of the interviews and questionnaires were completed and returned to the team. Team members then reviewed the results of the survey and prepared a draft report. After receiving all comments, a final report was prepared on November 5, 2003.

The report documented stream impacts from underground mining at least 32 times on 21 permits in West Virginia. This was from a total sample size of 38 permits. Team members felt that the impact was probably greater than the report indicated due to a lack of premining information to help inspectors assess impacts. In addition, inspectors do not routinely walk the affected area of the mines during complete inspections. This is probably due to time constraints and results on overlooking instances of stream loss or reduction. The team recommended field verification to determine the success of the remedial measures employed on these impacted sites. This field verification study was postponed pending the outcome of a study of stream impacts from mining in the Appalachian region. Technical staff from the Appalachian Regional Coordinating Center are currently designing the study with assistance from several states.

F. Mountaintop Mining Action Plan

In 1999, OSM and WVDEP signed an Action Plan for Resolving Mountaintop Mining Issues. Below is the status of the action plan components that remained outstanding as of the date of the 2003 Annual Evaluation Report. The actions taken or needed to be taken to finalize each of the items are discussed also.

Item II.A. of the Action Plan provided that WVDEP would test and refine a concept designed to show how much material created during mining is excess spoil and how much must be returned to the mined area to achieve AOC. The Action Plan provided

that the experience gained in West Virginia would be used to determine if further action on AOC is needed on a national or regional basis.

WVDEP's "*Final AOC Guidance Document*", was released in early 2000. Other states such as Kentucky, Virginia, and Tennessee also developed guidance for AOC. Even with guidance in place for most of the Appalachian coal producing states, OSM recognized the need to revise and clarify our national rules. On January 7, 2004, OSM published proposed regulations to require operators to demonstrate, to the extent possible, the volume of excess spoil is minimized, fill designs are no larger than needed, alternative fill configurations are considered, and impacts are minimized.

Since OSM has determined that additional national guidance is needed to address the issue of excess spoil, OSM considers this item complete.

Item II. C. of the Action Plan addressed policy and or rule revisions related to justifications for AOC variances, and commercial woodlands and public use/public facility PMLUs.

On August 18, 2000, OSM approved West Virginia regulations requiring all requests for AOC variances to contain data demonstrating an expected need and market for the proposed PMLU. The August 18 approval also addressed issues related to commercial woodlands and public use/public facility. The commercial woodlands PMLU was deleted and replaced by a commercial forestry use. The revisions also deleted the definition of "public use" and replaced it with the term "public facility including recreational uses."

During EY 2004, OSM completed a review to determine if information is being requested and submitted to show a need and market for the proposed land use justifying a mountaintop mining approximate original contour variance. OSM found that the State has developed a process to require applicants to submit PMLU need and market data. However, due to the use of outdated application forms by some applicants, additional internal procedures were needed to insure that the process works as envisioned. As a result, WVDEP has revised their Administratively Complete Checklist to require verification that new applications are submitted on the current form.

Item II.D. of the Action Plan provided that WVDEP would identify AOC variance permits justified by a PMLU not authorized by the approved State program. The identified permittees were to submit a revision with an approvable PMLU or revise the permit to remove the AOC variance.

Of the 37 active permits identified as having inappropriate PMLUs to support the AOC variance, all but eight have been addressed and each of the remaining eight appears to be achieving AOC during their reclamation activities. However, WVDEP needs to require a permitting action to demonstrate that the site is being returned to AOC and eliminate the variance from the approved permit.

In addition to identifying active operations with an inappropriate AOC variance PMLU, five not-started permits were identified. These permittees were instructed by the Director of WVDEP to not begin any activity until the PMLU was revised or the AOC variance removed. Three of the permits were later activated without addressing the Director's instructions. On further review, one of the three permits was found to contain no AOC variance. The remaining two were again instructed to revise their permits.

OSM is currently awaiting a status report from WVDEP on the required revisions to each of these permits.

Item II.E. and III.E. addressed findings made to document the approval of PMLUs for mountaintop mines with AOC variances and contemporaneous reclamation variances, respectively. In separate reviews, OSM found that both are being documented by the use of a standard "Facts and Findings" form and an individual "Waiver and Variance Approval" form. OSM found inconsistencies in the preparation of the forms and suggested that WVDEP consider revising the Waiver form and/or provide additional guidance to permit reviewers. OSM is awaiting a response from WVDEP.

G. AMD Prediction – Phase III

During EY 2004, OSM's Charleston Field Office and WVDMR jointly developed a work plan to evaluate underground mining permits that have resulted in unanticipated AMD formation.

During the 2005 evaluation year, a team of OSM and WVDEP personnel will select and review up to fifteen permits that meet the review criteria in order to determine whether AMD formation could have been predicted and properly addressed through better permitting considerations and decisions.

H. Bond Forfeiture – Special Reclamation of Sites with Liabilities

In last year's oversight report, OSM reported that a study to analyze data collected to assess and validate the completeness and accuracy of the Acid Mine Drainage Bond Forfeiture Inventory was ongoing. Because this study includes multiple parts, it was not completed before the end of the evaluation period and will be reported on in next year's annual report.

I. Impoundment Staffing

The objective of this study was to determine if the WVDEP had sufficient staffing and the necessary resources to conduct impoundment permitting actions. The review concluded that the present engineering staff was adequate to manage the existing and anticipated workload associated with MSHA class impoundments. However, additional engineering support will be needed to accommodate SWROA reviews. The State promulgated a new rule at 30 CSR 2-5.6 that requires all active mining operations to provide written assurances that their operations comply with the new storm water runoff requirements to help minimize peak discharges during heavy rainfalls. Four additional engineering positions will be needed for this work. The WVDEP has posted two additional engineering positions and will post another two positions. In addition, headquarters personnel will be reassigned, as necessary, to process SWROA reviews. Also, work assignments will be prioritized and overtime will be employed to further accommodate SWROA requirements.

J. Fish and Wildlife Coordination

The review and issuance of permits for surface coal mining operations under SMCRA require the coordination of various laws and regulations including the Endangered Species Act (ESA) into the review process. The ESA provides that permitted surface coal mining and reclamation operations must not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of

their critical habitats. The U.S. Fish and Wildlife Service (FWS) is the agency with primary responsibility for ensuring that the requirements of the ESA are being met for all applicable projects. Regulatory authorities issuing SMCRA permits must work with the FWS to determine if site-specific measures are necessary and, if so, to develop the measures in consultation with the FWS while also providing for appropriate OSM involvement to the extent necessary.

The mountaintop mining litigation in West Virginia and the subsequent December 1998 Settlement Agreement led the agencies responsible for regulating mining operations to seek ways to enhance interagency cooperation and coordination in their review of permit applications. In September 2002, the WVDEP initiated procedures requiring that all permit applicants submit a request to the FWS for a review of the proposed mine site to determine whether any federally listed endangered or threatened species might be impacted and to include in the application documentation of that request and any subsequent correspondence. Requests were intended to precede the application so that any necessary measures for fish or wildlife considerations could be incorporated into the initial mining plan. Applications would not be considered administratively complete and could not proceed to the technical adequacy review phase without the documentation.

The purpose of the evaluation was to determine whether the new coordination process for fish and wildlife review had been fully implemented. It was found that all surface mine applications had documentation of a review request to FWS by the applicant. However, during the initial phase-in period, the WVDEP reviewed and approved some underground mine applications without the prescribed documentation. All applications had documentation that the West Virginia Division of Natural Resources had been contacted to conduct a Wildlife Resources Lands Inquiry for the site and that the FWS had been notified of the pending application according to the usual public notice procedures. When a sample of more recently submitted applications was reviewed, it was found that all of the applications, including underground, had the prescribed documentation indicating that the WVDEP had corrected any problems and had fully implemented the new procedures.

VIII. Abandoned Mine Land Reclamation Program (AMLR)

A. General

The mission of the AMLR is to reclaim abandoned mine sites by abating hazards, reducing or 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 WVDEP conducts all AML reclamation in West Virginia. OSM has approved four primary AML components:

- The regular construction program abates high priority, non-emergency 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. To date, West Virginia has received \$11,058,277 of the \$25,651,277 available to them.

2. Appalachian Clean Streams Program (ACSP)

From fiscal year 1997-2004, West Virginia has received \$8,641,829 for Appalachian Clean Streams Program projects. The West Virginia Department of Environmental Protection (WVDEP) earmarked these funds for acid mine drainage remediation at 14 abandoned coal mining operations. At the end of fiscal year 2004, WVDEP had expended \$3,635,815 of the total award amount and completed design and construction on ten of the fourteen 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 grading and vegetating exposed toxic refuse and overburden materials.

B. Noteworthy Accomplishments

1. Construction Activities

During EY 2004, the CHFO issued notices to proceed for the following nonemergency AML construction projects:

Project Name	Date Approved
Beech Bottom Refuse	December 12, 2003
Morris Creek	February 11, 2004
Bridgeport Hill Mine Drainage	April 1, 2004
Laurel Run Mine Shaft	April 8, 2004
Godby Branch Drainage	May 25, 2004
Hanover Landslide	June 9, 2004
Georges Creek	June 10, 2004
Shannon Branch	June 28, 2004
Witcher Creek	June 30, 2004

The number of notices to proceed issued during this evaluation period almost doubled when compared to the previous evaluation period. However, when compared to earlier periods, these notices to proceed represent roughly one third of the number of projects that would normally be processed. Changes to the WVDEP procurement procedures have had an impact. Since State procurement procedures have changed, each project design must now be individually bid instead of issuing work orders to firms previously evaluated and pre-qualified to do the work. Nonetheless, the pace of project submissions has recently accelerated. WVDEP anticipates the pace of submissions to increase as they become more familiar with the new procurement system.

2. Emergencies

During EY 2004, WVDEP started 49 AML emergencies with a total approximate cost of \$3,116,000. This was an average cost of \$63,592. This figure dropped from last year. The heavy rains during the previous evaluation year created a large landslide workload, and these typically cost more to abate than the other types of projects. One project (Ned's Branch) cost over \$3 million, and this inflated the average cost per project.

C. OSM Technical Assistance

1. Technical Training

OSM conducts courses throughout the year in the latest technology related to active and abandoned mine reclamation. These courses are administered through OSM's National Technical Training Program and the Technical Information Processing System. During EY 2004, WVDEP AML staff attended 41 classes.

2. Site Specific Assistance

During EY 2004, OSM provided site specific assistance to WVDEP to determine the eligibility of two sites for AML funding. In addition, the OSM Appalachian Regional Coordinating Center in Pittsburgh and the Charleston Field Office provided assistance in evaluating potential pre-law impacts at nine other sites. Two of these included sites with potential gas problems related to carbon dioxide and hydrogen sulfide, respectively. All of the assistance efforts have been completed except the hydrogen sulfide investigation and an eligibility determination at a combined pre-law/post-law refuse pile.

3. Fish & Wildlife Coordination

During EY 2003, the FWS 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 FWS agreed to enhance their coordination procedures on abandoned mine land projects. WVDEP commenced direct discussions with the FWS early in the planning process to address concerns about destruction of endangered bat populations when sealing abandoned deep mines. On October 16, 2003, the FWS signed a categorical clearance letter to provide a "no effect" determination on federally listed species in West Virginia. This categorical clearance letter defined ten categories AML reclamation that would not require further coordination from FWS. This clearance letter has been of tremendous benefit in eliminating unnecessary paperwork and streamlining the FWS coordination process. In EY 2005, the FWS, WVDEP, and OSM plan to conduct a field review of AML projects to evaluate the field success of the clearance letter.

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 year, OSM conducted site visits to three emergency reclamation projects. One site visit to Ann's Branch was to verify bat habitat mitigation measures. The site visits did not reveal any problems.

2. Drawdown Analysis/Resolve Audit Issues

OSM's ARCC Grants Staff conducted Quarterly Drawdown Analyses during FY 2004. The drawdown analyses were conducted in accordance with the following 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, OSM determined:
 - 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
 - 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 requirement 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.

The WVDEP drawdown activities were found to comply with both of these requirements.

There were no audit findings referred to OSM for disposition by WVDEP during this Evaluation Year.

3. Regular AML Construction Program

Table 12 of Appendix A lists the cumulative AML reclamation accomplishments in West Virginia. A comparison of this table with the EY 2003 West Virginia Evaluation Report shows that during EY 2004 West Virginia reclaimed:

- 2.2 miles of clogged streams;
- 17.0 acres of clogged stream lands;
- 600 lineal feet of dangerous highwalls;
- 39 dangerous impoundments;
- 180 acres of dangerous piles & embankments;
- 15.9 acres of dangerous slides;
- 29 hazardous equip. & facilities;
- 1 industrial/residential waste;
- 19 portals;
- 5.2 units of polluted water for agricultural and industrial use;
- 1,041 units of polluted water: human consumption;
- 14.7 acres of subsidence;
- 3.3 acres of surface burning;

- 3.0 vertical openings;
- 13 acres priority three gob piles;
- 2 acres of priority three slurry; and
- 7,891 lineal feet of priority three highwall.

Overall reclamation accomplishments increased this year. Last year was a 9-month reporting period and this year was a 12-month reporting period. Several items dropped, but this is due to normal variation in the types of AML features reclaimed.

4. Abandoned Mine Land Inventory System

National Abandoned Mine Land Inventory System (AMLIS) Update Procedures at the West Virginia Department of Environmental Protection.

The CHFO conducted this review to resolve Office of Inspector General (OIG) audit findings regarding AMLIS maintenance in the AML program, Appalachian Clean Stream Program, and the Watershed Cooperative Agreement Program and as part of our normal State AML oversight.

In 2003, the OIG completed an audit of AMLIS. Their recommendations included the following, "We recommend that the Director, OSM: Establish a quality control system that ensures that States, Tribes, and OSM, as applicable, review and certify the accuracy of data entered into AMLIS."

WVDEP and OSM jointly developed a workplan to comply with this audit finding. The review consisted of:

- Reviewing OSM directives and guidance regarding the updating of AMLIS.
- Reviewing the State Reclamation Plan for any State procedures regarding AMLIS maintenance and update.
- Interviewing the planning administrator and any staff involved in AMLIS updates.
- Determining what process the State is currently using to update and maintain AMLIS data.
- Determining if this process conforms to State and OSM guidelines and if the process incorporates a quality control component.
- Sampling the last 10 emergencies, the last 10 non-emergencies, and all ASCI and WCAP projects completed to see if the State is following their own process.

After completing the review, the CHFO concluded that the State has in place a system for verifying the accuracy of the data in AMLIS. The process the State uses appears to be working. We noted several small discrepancies, but they were attributed largely to items beyond the State's control. The discrepancies we observed were primarily the result of using a site information sheet that was more current than the date we obtained the data from AMLIS, and some lag time the State was experiencing due to the shutdown of Internet access to OSM data earlier this year.

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.

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>			
2001	62.5	100.7	163.2
2002	61.2	89.4	150.6
2003	54.1	87.7	141.8
Total	177.8	277.8	455.6
<p>^A Coal 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 production.</p>			

TABLE 2

INSPECTABLE UNITS As of June 30, 2004												
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	552	3	67	12	204	15	823	838	9	2,413	2,422
Underground mines	0	749	0	63	0	170	0	982	982	0	312	312
Other facilities	0	505	1	18	2	71	3	594	597	0	441	441
Subtotals	0	1,806	4	1,480	14	445	18	2,399	2,417	9	3,166	3,175
FEDERAL LANDS REGULATORY AUTHORITY: STATE												
Surface mines	0	0	0	0	0	0	0	0	0	0	0	0
Underground mines	0	0	0	0	0	1	0	1	1	0	0	0
Other facilities	0	0	0	0	0	0	0	0	0	0	0	0
Subtotals	0	0	0	0	0	1	0	1	1	0	0	0
ALL LANDS ^B												
Surface mines	0	552	3	67	12	204	15	823	838	9	2,413	2,422
Underground mines	0	749	0	63	0	171	0	983	983	0	312	312
Other facilities	0	505	1	18	2	71	3	594	597	0	441	441
Totals	0	1,806	4	148	14	446	18	2,400	2,418	9	3,166	3,175
Average number of permits per inspectable unit (excluding exploration sites)										<u> 1</u>		
Average number of acres per inspectable unit (excluding exploration sites)										<u> 131</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> 142</u>		On Federal lands: <u> 0</u> ^C			
IP: Initial regulatory program sites. PP: Permanent regulatory program sites.												
^A When a unit is located on more than one type of land, include only the acreage located on the indicated type of land. ^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. ^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. ^D Inspectable Units include multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs.												

TABLE 3

**STATE PERMITTING ACTIVITY
JULY 1, 2003 THROUGH JUNE 30, 2004**

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	12	33	17,073	19	23	467	5	11	1,010	36	67	18,550
Renewals	28	29	15,425	93	127	10,365	68	103	9,095	189	259	34,885
Transfers, sales and assignments of permit rights	N/A	76		N/A	140		NA	86		164	302	
Small operator assistance	-0-	-0-		-0-	-0-		-0-	-0-		-0-	-0-	
Exploration permits	-0-	-0-		-0-	-0-		-0-	-0-		-0-	-0-	
Exploration notices ^B		N/A			N/A			N/A			125	
Revisions (exclusive of incidental boundary revisions)		183			111			46			340	
Incidental boundary revisions		94	1,028		111	472		48	947		253	2,447
Totals	40	415	33,526	112	512	11,304	73	294	11,052	389	1,346	55,882

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	Blasting	5	0	0	0	0	0	0	0	0	0	0	0	5
	Land Stability	0	0	0	27	3	0	0	0	0	0	0	0	30
	Hydrology	0	0	0	0	0	0	148	4	3	0	0	0	155
	Encroachment	0	0	0	18	1	1	0	0	0	0	0	0	20
	Other	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	5	0	0	45	4	1	148	4	3	0	0	0	210
Total number of inspectable units: <u>1,958</u>														
Inspectable units free of off-site impacts: <u>1,803</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	Blasting	0	0	0	0	0	0	0	0	0	0	0	0	0
	Land Stability	0	0	0	1	0	0	0	0	0	0	0	0	1
	Hydrology	0	0	0	0	0	0	87	26	20	0	0	0	133
	Encroachment	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
	Total	0	0	0	3	0	0	87	26	20	0	0	0	136
Total number of inspectable units: <u>460</u>														
Inspectable units free of off-site impacts: <u>324</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 	4,049
Phase II	<ul style="list-style-type: none"> • Surface stability • Establishment of vegetation 	3,763
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 	4,066
Bonded Acreage Status ^A		
Total number of bonded acres at end of last review period (September 30, 2002). ^B		305,200
Total number of acres bonded during this evaluation year.		20,997
Number of acres bonded during this evaluation year that are considered remining, if available.		N/A
Number of acres where bond was forfeited during this evaluation year (this acreage also reported on Table 7).		1,264
^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 June 30, 2003 (end of previous evaluation year) ^A	375	16,841
Sites with bonds forfeited and collected during Evaluation Year 2004 (current year).	7	490
Sites with bonds forfeited and collected that were repermited during Evaluation year 2004 (current year).	0	0
Sites with bonds forfeited and collected that were reclaimed during Evaluation Year 2004 (current year).	15	599
Sites with bonds forfeited and collected that were unreclaimed as of June 30, 2004 (end of current year) ^A	362	17,372
Sites with bonds forfeited but uncollected as of June 30, 2004 (end of current year).	80	6,422
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of June 30, 2003 (end of previous evaluation year) ^B	2	56
Sites where surety/other party agreed to do reclamation during Evaluation Year 20034current year).	1	367
Sites being reclaimed by surety/other party that were repermited during Evaluation Year 2004 (current year).	0	0
Sites with reclamation completed by surety/other party during Evaluation Year 2004 (current year). ^C	2	56
Sites being reclaimed by surety/other party as of June 30, 2004 (current year). ^B	1	367
^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 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 2004
Abandoned Mine Land Program Total ^A	59.6
Regulatory Program	
Permit review ^B	58
Inspection ^C	80
Blasting	15
Other (administrative, fiscal, personnel, etc.) ^D	137
Total for Regulatory Program ^E	290
TOTAL ^F	349.6
^A Includes 5 vacant positions. ^B Includes 14 vacant positions. ^C Includes 12 vacant positions. ^D Includes 7 vacant positions. ^E Includes 33 vacant positions. ^F Includes 38 vacant positions.	

TABLE 8

FUNDS GRANTED TO WEST VIRGINIA BY OSM (Millions of dollars) EY 2004		
Type of grant	Federal funds awarded	Federal funding as a percentage of total program costs
Abandoned Mine Lands	\$31,040,890	100%
Administration and Enforcement	\$ 9,456,543	50%
Small Operator Assistance	\$ 49,584	100%
Program Improvement Cooperative Agreement (PICA)	\$ 3,599,000	50%
Program Enhancement Cooperative Agreement (PECA)	\$ 6,222,000	100%
Totals	\$50,368,017	

TABLE 9

STATE OF WEST VIRGINIA INSPECTION ACTIVITY		
PERIOD: JULY 1, 2003 - June 30, 2004		
Inspectable Unit Status	Numbers of Inspections Conducted	
	Complete	Partial
Active*	4,284	11,066
Inactive*	2,302	1,146
Abandoned*	NA**	NA**
Exploration*	244	250
Total	6,830	12,462
* Use terms as defined by the approved State program.		
** Number of inspections conducted by Office of Special Reclamation not available.		

TABLE 10

STATE OF WEST VIRGINIA ENFORCEMENT ACTIVITY		
PERIOD: JULY 1, 2003 - June 30, 2004		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	1,218	1,218
Failure-to-Abate Cessation Order	117	117
Imminent Harm Cessation Order	26	26
<i>* Does not include those violations that were vacated.</i>		

TABLE 11

STATE OF WEST VIRGINIA LANDS UNSUITABLE ACTIVITY PERIOD: JULY 1, 2003 - JUNE 30, 2004			
Number of Petitions Received	1		
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	279.6	1.3	50.2	331.1
Clogged Stream Lands	Acres	141.8	0.0	177.3	319.1
Dangerous Highwalls	Lin feet	1,436,922.0	6,600.0	234,143.0	1,677,665.0
Dangerous Impoundments	Count	685.0	54.0	603.0	1,342.0
Dangerous Piles & Embankments	Acres	1,178.8	185.5	5,443.2	6,807.5
Dangerous Slides	Acres	350.0	17.0	535.5	902.5
Gases: Hazardous/Explosive	Count	0.0	0.0	5.3	5.3
Hazardous Equip. & Facilities	Count	592.8	30.0	647.8	1,270.6
Hazardous Water Bodies	Count	15.0	1.0	11.0	27.0
Industrial/Residential Waste	Acres	6.7	.5	36.8	44.0
Portals	Count	2,025.0	34.0	2,505.0	4,564.0
Polluted Water: Agri & Indus	Count	126.0	24.1	55.3	205.4
Polluted Water: Human Consum	Count	1,699.0	566.0	10,291.0	12,556.0
Subsidence	Acres	801.5	16.1	319.0	1,136.6
Surface Burning	Acres	68.2	13.5	476.4	558.1
Underground Mine Fires	Acres	1,943.5	0.0	20.3	1,963.8
Vertical Openings	Count	146.0	4.0	148.3	298.3
Priority 3 (Environmental restoration)					
Benches	Acres	215.80	0.00	27.00	242.80
Ind/Res Waste	Acres	49.50	0.00	2.00	51.50
Equipment/facilities	Count	77.00	3.00	9.00	89.00
Gob Piles	Acres	1,599.50	3.00	513.00	2,115.50
Haulroads	Acres	3,404,378.00	2,885.00	76,878.00	3,484,141.00
Highwalls	Feet	13.00	0.00	0.00	13.00
Mine Openings	Count	34.00	0.00	9.00	43.00
Other		154.00	0.00	0.00	154.00
Pits	Acres	43.10	0.00	11.00	54.10
Slumps	Acres	35.30	0.00	0.00	35.30
Slurry	Acres	10.00	0.00	2.00	12.00
Spoil Areas	Acres	1,063.80	0.00	250.50	1,314.30
Water problems	Gal./min.	11,999.50	0.00	722.00	12,721.50
Note: All data in this table are taken from the Abandoned Mine Land Inventory System (AMLIS)					