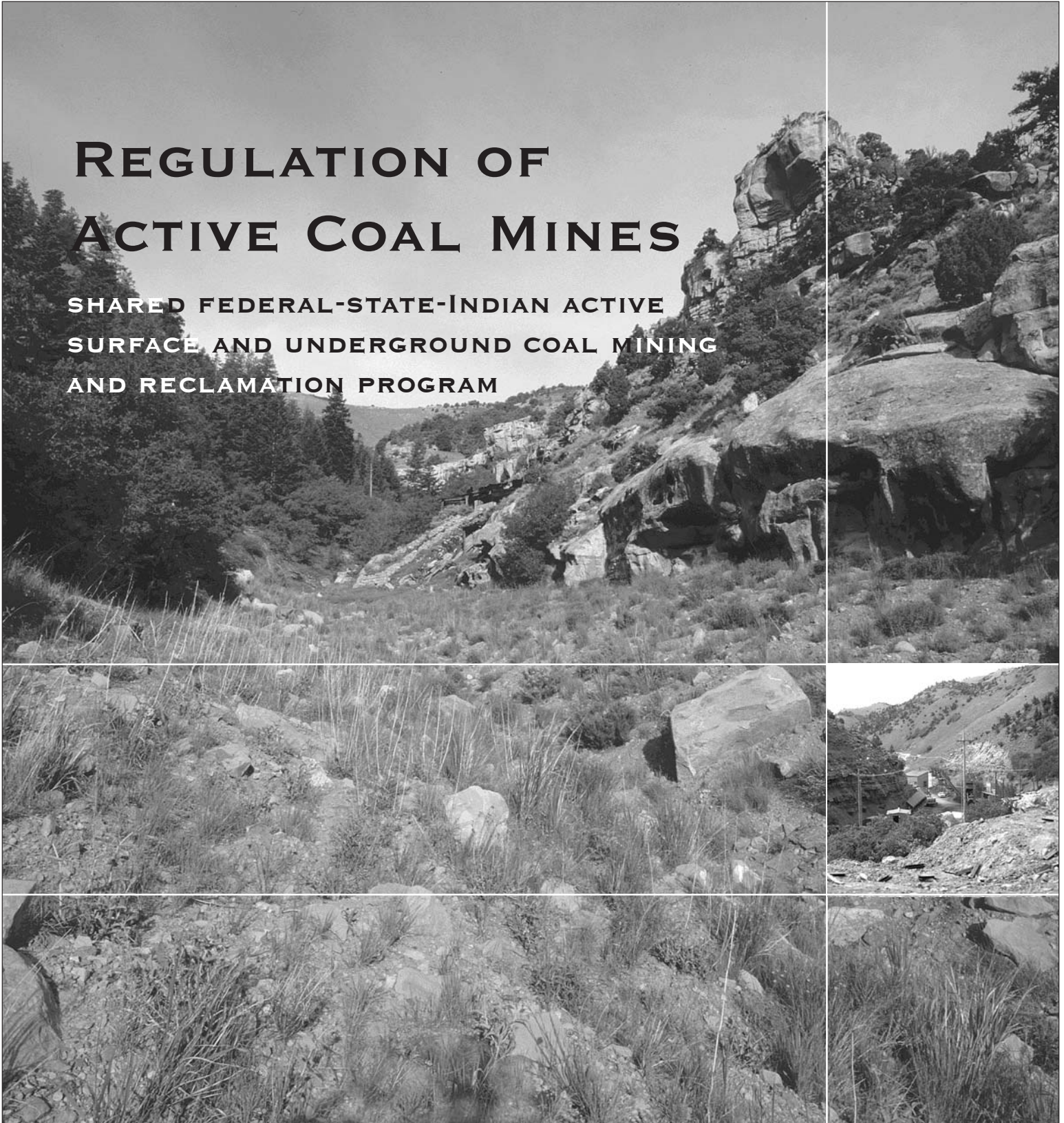


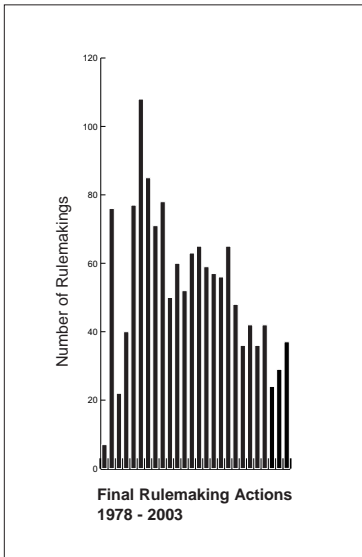
REGULATION OF ACTIVE COAL MINES

SHARED FEDERAL-STATE-INDIAN ACTIVE
SURFACE AND UNDERGROUND COAL MINING
AND RECLAMATION PROGRAM



Under the Surface Mining Law (www.osmre.gov/smcra.htm), the Office of Surface Mining is responsible for publishing the regulations (www.osmre.gov/regindex.htm) necessary to carry out the Law. The permanent regulatory program and approved state programs provide the fundamental mechanism for ensuring that the goals of the Surface Mining Law are achieved. A major objective is to maintain a stable regulatory program by improving the regulation development process and obtaining a broad spectrum of viewpoints on rulemaking activities.

Rulemaking and State Program Amendments



The 2003 rulemaking process included discussions with coal industry representatives, citizen groups, and state regulators to obtain their input and suggestions.

During the year, the Office of Surface Mining published one final permanent program rule in the *Federal Register*, Abandoned Mine Land Reclamation Notices (RIN 1029-AB99) (see

Table 7). Subject to Office of Surface Mining approval, states have the right to amend their programs at any time for appropriate reasons. Whenever the Surface Mining Law or its implementing regulations are revised, the Office of Surface Mining is required to notify the states of the changes needed to make sure that the state programs continue to meet federal requirements. As a result, the states have submitted a large number of complex amendments. The Office of Surface Mining has taken several steps to process states' submissions more efficiently. For example, the amendment review process within the Office of Surface Mining has been decentralized, and standard format and content guidelines for state program submissions have been issued to the states. In 2003, the Office of Surface Mining published 24 proposed and 37 final state program amendments in the *Federal Register*. A complete list and summary of all Office of Surface Mining *Federal Register* notices can be seen at www.osmre.gov/ocfeder.htm.

Significant Court Decisions

During 2003, there were five significant court decisions that influenced the implementation of the Surface Mining Law. The cases involved issues on subsidence, valley fills, bonding, and takings (see Table 8).

State Programs

Since May 3, 1978, all surface coal mines have been required to have permits and to comply with either Office of Surface Mining regulations or corresponding approved

TABLE 7: FINAL RULES PUBLISHED

Abandoned Mine Lands

30 CFR 875

2/27/03

This rule revises Office of Surface Mining regulations governing the processing of state and tribal grant applications to build public facilities using Abandoned Mine Land Reclamation funds.

(Left) From the 1880s until 1989 this steep, mountainous canyon near Price, Utah was the site of intensive, underground coal mining. Before reclamation, the site contained portals, buildings, truck loading facilities, and large quantities of coal refuse. Today, following reclamation it is an outstanding wildlife habitat and grazing land. The streams are clean and it's once again a magnificent, picturesque mountain canyon.

TABLE 8: SIGNIFICANT COURT DECISIONS

Citizens Coal Council v. Norton, No 02-51-36 (D.C. Cir.)

On June 3, 2003, a U.S. Court of Appeals upheld the Secretary's rule interpreting subsidence from underground mining not to fall within the scope of the term "surface coal mining operations" as defined in section 701(28) of SMCRA. The rule provides that subsidence is not prohibited on lands protected by section 522(e) of SMCRA. The decision concluded that Congress did not speak unambiguously on the issue in SMCRA, and, because the court found the Secretary's interpretation reasonable, the court deferred to the Secretary.

Kentuckians for the Commonwealth, Inc. v. Rivenburgh, No. 02-1736, 02-1737 (4th Cir.)

On January 29, 2003, a U.S. Court of Appeals vacated a district court injunction that prohibited the U.S. Army Corps of Engineers from issuing new valley fill permits (within its Huntington District) that have no primary purpose or use but the disposal of waste. The court held that "to create valley fills with the spoil of mountaintop- coal mining is not *ultra vires* under the Clean Water Act and that the injunction issued by the district court was overbroad." The court also found that SMCRA "does not prohibit the discharge of surface coal mining excess spoil in waters of the United States."

West Virginia Highlands Conservancy v. Norton, No. 00-1062 (S.D.W.Va.)

On January 8, 2003, a U.S. District Court upheld OSM's decision to approve West Virginia's amended "alternative bonding program." That program consists of both a site-specific penal bond as well as a supplementary statewide bonding pool funded by a tax on each ton of coal mined in the state. The court also upheld OSM's approval of all but four of twenty-five miscellaneous new West Virginia program amendments.

Appollo Fuels, Inc. v. United States, No. 00-1L (Fed. Cl.) On December 18, 2002, the U.S. Court of Federal Claims granted the government's motion for summary judgment in this regulatory takings case. The plaintiff alleged a taking of its coal reserves and mining rights based on OSM's designation of the watershed of Little Yellow Creek in Claiborne County, Tennessee, as unsuitable for surface coal mining (but not underground mining from portals outside the petition area). The court held that there had not been a taking because: (1) plaintiff lacked a reasonable investment-backed expectation that "its land would be unfettered by regulatory imposition"; (2) the designation protected against water pollution; and (3) plaintiff failed to demonstrate the requisite economic impact of the designation. This case is currently on appeal.

Cane Tennessee, Inc. v. United States, No. 96-237L; **Colten, Inc. v. United States**, No. 00-513L; **Mary Anne Wyatt v. United States**, No. 02-945L (Fed. Cl.)

(consolidated)

On June 27, 2003, the U.S. Court of Federal Claims granted the government's motion for summary judgment in two of these consolidated regulatory takings cases, dismissing the claims of plaintiffs Cane and Colten (case numbers 96-237L and 00-513L). Plaintiffs Cane and Colten own the fee interest (surface and minerals) in certain lands and the mineral interests in other lands located in close proximity to Fall Creek Falls State Park in Tennessee. Plaintiffs claim that OSM's permitting actions and the Secretary's designation of certain lands as unsuitable for surface coal mining operations effected takings of their coal rights. In support of its conclusion that there had not been a taking, the court held that: (1) plaintiffs did not suffer the requisite economic impact; and (2) plaintiffs lacked reasonable investment-backed expectations (having purchased their property after the enactment of SMCRA, plaintiffs were charged with notice of its restrictions).

state program provisions (in states that have primacy). Currently, there are 24 primacy states that administer and enforce approved programs for regulating surface coal mining and reclamation under the Surface Mining Law. An effective relationship between the Office of Surface Mining and the states is fundamental to the successful implementation of the Surface Mining Law. This shared federal-state commitment to carry out the requirements of the Surface Mining Law is based on a relationship that includes common goals and principles.

On June 19, 2003, the Director of the Missouri Regulatory Authority notified the Office of Surface Mining that funding and staffing for the Missouri Regulatory Program had been severely cut by the Missouri Legislature. The Legislature appropriated funds for bond forfeiture reclamation; but, failed to

provide adequate funding for the inspection, enforcement, permitting, and bonding portions of its program. On July 2, 2003, the Land Reclamation Program of the Missouri Department of Natural Resources' Air and Land Protection Division notified the Office of Surface Mining that as of July 18, 2003, all but four of its regulatory program staff would be transferred to other offices.

In an August 4, 2003, letter, Office of Surface Mining Director Jeffrey Jarrett notified Governor Bob Holden of Missouri that serious program implementation problems, if not addressed, could require withdrawal of state program approval and implementation of a federal regulatory program.

On August 21, 2003, the Office of Surface Mining substituted federal enforcement to address those portions of the Program no longer supported by Missouri. The Office of Surface Mining did not withdraw approval of Missouri's program based upon an indication by the state that it intends to resolve the funding and staffing deficiencies.

Oversight of State Programs

Section 517(a) of the Surface Mining Law requires the Office of Surface Mining to make inspections as necessary to evaluate the administration of approved state programs. Most state programs were approved in the early 1980's, and the Office of Surface Mining's oversight of these programs focused on the implementation of the many procedural and process requirements such as permitting, inspection, enforcement, and penalties, each with numerous mandated requirements prescribed to achieve the environmental protection performance standards and the overall purposes of the Surface Mining Law.

The Office of Surface Mining now employs a results-oriented oversight strategy that was devised in consultation with the states and emphasizes cooperative problem-solving, tailors evaluations to state-specific conditions, and develops performance agreements between each state and its Office of Surface Mining field office.

Specifically, to further reporting of end results and on-the-ground success, the Office of Surface Mining now evaluates and reports state-specific and national findings for offsite impacts and reclamation success. The purpose of measuring offsite impacts is to protect

TABLE 9: FEDERAL OVERSIGHT OF STATE PROGRAMS

State	Site Visits	Violations Cited by the Office of Surface Mining ¹		
		Notice of Violations	Failure-To-Abate Cessation Orders	Imminent Harm Cessation Orders
Alabama	75	0	0	0
Alaska	0	0	0	0
Arkansas	8	0	0	0
Colorado	16	0	0	0
Illinois	119	0	0	0
Indiana	80	0	0	0
Iowa	10	0	0	0
Kansas	6	0	0	0
Kentucky	371	26	7	0
Louisiana	3	0	0	0
Maryland	33	0	0	0
Mississippi	1	0	0	0
Missouri	53	0	0	0
Montana	5	0	0	0
New Mexico	4	0	0	0
North Dakota	1	0	0	0
Ohio	131	0	0	0
Oklahoma	23	0	0	0
Pennsylvania	503	8	3	0
Texas	18	0	0	0
Utah	2	0	0	0
Virginia	150	1	0	0
West Virginia	468	4	1	0
Wyoming	17	0	0	0
Total	2,097	39²	11²	0

1. Excludes any Notice of Violations or Cessation Orders that have been vacated.

2. Of the 39 Notice of Violations, 36 were for Abandoned Mine Land Fee related problems (Kentucky 26, Pennsylvania 7, Virginia 1, and West Virginia 2) and of the 11 Cessation Orders, 10 were for Abandoned Mine Land Fee related problems (Kentucky 7, Pennsylvania 2, and West Virginia 1)

citizens, public and private property, and the environment outside of areas authorized for mining and reclamation activities. This measurement is intended to identify the number and severity of offsite impacts, determine causes of the impacts, and identify where improvements may be made to lessen the number and degree of these impacts. Success is determined by the number expressed as a percent of inspectable units¹¹ that achieve the goal of

11. An inspectable unit is a coal mining or exploration operation where an inspection obligation exists under the Surface Mining Law. One unit may consist of an individual permit; a consolidation of several permits issued to the same permittee, which for all practical purposes, constitutes the same mining operation; or in the case of large mines, smaller, logical units of a single permit that are more amenable to inspections.

TABLE 10: REGULATORY PROGRAM STATISTICS

State/Indian Lands	Regulatory Staffing	AML Staffing	New Permits	New Acreage Permitted	Total Acreage Permitted	Inspectible Units	Complete Inspections	Partial Inspections	Notice of Violations	Failure-To-Abate Cessation Orders	Imminent Harm Cessation Orders	Bond Forfeitures	Acreage of Phase I Bond Release	Acreage of Phase II Bond Release	Acreage of Phase III Bond Release
Alabama	26.00	16.75	7	2,136	84,908	224	2,488	374	161	8	0	11	4,656	3,130	5,325
Alaska	3.67	6.62	0 ¹	0 ¹	23,773 ¹	11	20 ¹	43 ¹	1 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹
Arizona	NA	NA	0	0	417	0	0	0	0	0	0	0	0	0	0
Arkansas	3.95	6.75	0 ¹	0 ¹	1,263 ¹	13	42 ¹	82 ¹	3 ¹	1 ¹	0 ¹	0 ¹	27 ¹	0 ¹	43 ¹
Colorado	22.00	14.00	0 ¹	494 ¹	3,723,701 ¹	52	145 ¹	266 ¹	13 ¹	0 ¹	0 ¹	0 ¹	154 ¹	253 ¹	1,510 ¹
Crow	1.30	3.70	0	27	4,768	1	3 ¹	6 ¹	0	0	0	0	609 ¹	0 ¹	0 ¹
Georgia	0.00	0.00	0 ¹	0 ¹	0 ¹	6	6 ¹	1 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹
Hopi	2.45	6.40	0	0	6,137	2	6	4	0	0	0	0	0	0	0
Illinois	52.00	28.00	1 ¹	0 ¹	74,661 ¹	86	932 ¹	2,277 ¹	34 ¹	0 ¹	0 ¹	0 ¹	12,030 ¹	13,974 ¹	16,523 ¹
Indiana	50.00	21.00	5 ¹	7,810 ¹	228,176 ¹	137	551 ¹	1,065 ¹	30 ¹	0 ¹	0 ¹	2 ¹	5,136 ¹	2,652 ¹	3,602 ¹
Iowa	3.15	4.45	0 ¹	0 ¹	4,133 ¹	24	67 ¹	6 ¹	0 ¹	0 ¹	0 ¹	23 ¹	0 ¹	3,453 ¹	0 ¹
Kansas	3.25	10.75	1 ¹	3,449 ¹	4,237 ¹	11	33 ¹	100 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹	565 ¹	565 ¹
Kentucky	340.54	80.00	74	39,192	1,691,660	2,043	8,626	15,528	738	134	31	17	12,327	6,952	11,918
Louisiana	2.65	0.60	0 ¹	0 ¹	44,225 ¹	2	6 ¹	12 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹
Maryland	11.38	4.80	0 ¹	0 ¹	5,864 ¹	61	290 ¹	476 ¹	13 ¹	0 ¹	0 ¹	0 ¹	53 ¹	65 ¹	81 ¹
Michigan	0.00	0.00	0	0	0	0	0	0	0	0	0	0 ¹	0	0	0
Mississippi	2.28	0.00	1	5,809	5,809	1	4	8	0	0	0	0	0	0	0
Missouri	12.10	8.20	0 ¹	0 ¹	18,085 ¹	46	83 ¹	140 ¹	11 ¹	6 ¹	0 ¹	0 ¹	0 ¹	149 ¹	1,064 ¹
Montana	16.80	8.85	0 ¹	0 ¹	63,354 ¹	16	75 ¹	60 ¹	5 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹
Navajo	6.00	23.40	0	0	96,322 ¹	23	44	41	7	0	0	0	448	0	320
New Mexico	10.50	9.05	1 ¹	0 ¹	103,280 ¹	13	52 ¹	104 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹	0 ¹	150 ¹
North Dakota	8.70	6.41	0 ¹	0 ¹	78,620 ¹	35	105 ¹	354 ¹	2 ¹	0 ¹	0 ¹	0 ¹	72 ¹	72 ¹	72 ¹
Ohio	26.00	41.73	23 ¹	2,071 ¹	100,337 ¹	357	1,069 ¹	1,528 ¹	130 ¹	0 ¹	13 ¹	3 ¹	3,670 ¹	2,214 ¹	4,478 ¹
Oklahoma	25.80	7.00	2 ¹	3,145 ¹	31,000 ¹	86	254 ¹	358 ¹	12 ¹	0 ¹	0 ¹	0 ¹	1,689 ¹	3,889 ¹	1,989 ¹
Pennsylvania	240.00	121.00	47 ¹	5,800 ¹	397,782 ¹	2,025	5,934 ¹	8,658 ¹	776 ¹	25 ¹	NA	10 ¹	4,877 ²	4,974 ²	4,068 ³
Tennessee	42.00	4.00	6	5,067	30,370	367	947	969	31	2	1	0	402	824	899
Texas	40.00	8.00	1 ¹	17,660 ¹	264,128 ¹	30	76 ¹	162 ¹	9 ¹	0 ¹	0 ¹	0 ¹	279 ¹	0 ¹	473 ¹
Utah	23.00	10.00	0 ¹	84 ¹	50,747 ¹	27	102 ¹	144 ¹	12 ¹	4 ¹	6 ¹	0 ¹	57 ¹	62 ¹	0 ¹
Ute Mountain Ute	0.00	0.00	0	0	175	2	1	4	0	0	0	0	0	0	0
Virginia	77.00	15.00	22	3,695	74,480	572	2,743	3,349	194	2	9	0	646	1,189	2,563
Washington	NA	0.00	0	0	14,930	2	15	2	0	0	0	0	0	0	0
West Virginia	295.00	67.60	73	14,262	305,550	2,426	7,736	11,563	1,278	89	31	20	2,450 ¹	5,551 ¹	4,545
Wyoming	21.59	14.75	0 ¹	3,013 ¹	343,262 ¹	35	111 ¹	176 ¹	7 ¹	0 ¹	0 ¹	0 ¹	6,647 ¹	0 ¹	453 ¹
Total	1,369.11	548.81	264	113,714	7,876,154	8,736	32,566	47,860	3,467	271	91	86	56,229	49,968	60,641

1. Estimated annual statistics, see footnote 2, page 1 for a description of the methodology.
 2. Pennsylvania estimated Phase I and II bond release data based on an average of the past four years of data, and then adjusted those averages downward for the 9-month evaluation period.
 3. Pennsylvania determined Phase III bond release acres by calculating the difference between 2002 and 2003 permitted acreage, and then deducting the number of acres associated with new permits issued in 2003. The remainder represents the total number of acres bond released and bond forfeited during 2003. Finally, the number of forfeited acres was deducted to arrive at the acres of Phase III release. The decrease in Pennsylvania's bond release data in 2003 is in part due to the significant effort required to transition from an alternative bond system to a conventional bonding system.
 NA Not available.

having no offsite impacts and on the number of acres that meet the bond release requirements for the various phases of reclamation. During 2003, 92.8¹² percent of the inspectable units were free of offsite impacts (the same percentage as 2002) and does not meet the goal of 94 percent of the sites free from offsite impacts.

Since 1996, the Office of Surface Mining has completed four reviews of the implementation of the oversight policy. Although there are a few exceptions, the four reviews showed that the cooperative approach provides for better problem resolution with states. Also, this oversight strategy has resulted in improvements to state program implementation and in the resolution of some long-standing issues. (See www.osmre.gov/report03.htm for copies of current Annual State Oversight Reports.)

Table 9 provides a summary of the Office of Surface Mining's oversight inspection and enforcement activities during 2003. Detailed reports are available monthly at www.osmre.gov/ieindex.htm.

Federal Programs

Section 504(a) of the Surface Mining Law requires the Office of Surface Mining to regulate surface coal mining and reclamation activities on non-federal and non-Indian lands in any state if:

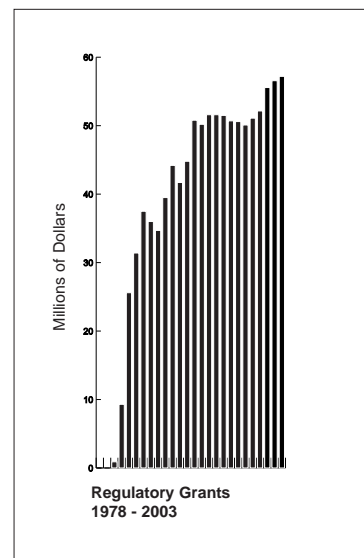
- the state's proposal for a permanent program has not been approved by the Secretary of the Interior;
- the state does not submit its own permanent regulatory program; or
- the state does not implement, enforce, or maintain its approved state program.

Although the Office of Surface Mining encourages and supports state primacy in the regulation of coal mining

and reclamation operations, some states with coal reserves have elected not to submit or maintain regulatory programs. Those states are called federal program states, and their coal mining and reclamation operations are regulated by the Office of Surface Mining. Federal programs are in effect in 12 states: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington.

Of the federal program states, only Tennessee and Washington had active coal mining in 2003. Table 10 includes the regulatory activities in those two states during 2003.

Grants to States and Tribes



Section 705 of the Surface Mining Law authorizes the Office of Surface Mining to provide grants to states with approved regulatory programs in amounts not exceeding 50 percent of annual state program costs, matching state regulatory costs dollar for dollar. In addition, when a state elects to administer an approved program on federal land through a cooperative agreement

with the Office of Surface Mining, the state becomes eligible for financial assistance of up to 100 percent of the amount the federal government would have spent to regulate coal mining on those lands. Table 11 shows grant amounts provided to states during 2003 to administer and enforce regulatory programs. During 2003, the Office of Surface Mining awarded 100 percent of the regulatory grants to the states within 60 days of receiving the grant application.

12. Estimated annual statistic, see footnote 4, page 1 for a description of the methodology.

TABLE 11: REGULATORY GRANT OBLIGATIONS

State/Tribe	2003 Federal Funding	2002 Federal Funding	Cumulative Through 2003 Federal Funding ¹
Alabama	\$1,050,377	\$1,021,425	\$26,122,208
Alaska	184,220	182,455	5,720,450
Arkansas	147,512	137,851	3,561,667
Colorado	1,930,677	1,885,631	29,555,683
Illinois	2,984,915	2,884,006	54,943,560
Indiana	1,918,700	1,874,576	32,826,990
Iowa	127,150	126,089	2,727,378
Kansas	111,191	125,114	2,921,817
Kentucky	13,158,691	13,067,882	272,434,078
Louisiana	165,322	158,404	3,629,809
Maryland	561,704	572,272	11,784,983
Michigan	0	0	135,458
Mississippi	112,328	109,628	1,255,199
Missouri	84,633	505,153	8,530,397
Montana	1,018,122	957,649	17,422,186
New Mexico	728,439	743,966	12,965,143
North Dakota	486,543	421,240	11,511,192
Ohio	1,822,626	2,135,541	58,847,422
Oklahoma	899,535	1,230,080	18,554,467
Pennsylvania	10,534,351	11,380,931	217,426,617
Rhode Island	0	0	158,453
Tennessee	0	0	5,340,085
Texas	1,495,192	1,451,800	23,178,610
Utah	1,709,100	1,763,318	29,131,252
Virginia	3,197,057	3,183,539	68,359,686
Washington	0	0	4,893
West Virginia	10,056,687	7,929,525	125,026,210
Wyoming	2,038,607	2,023,230	34,219,505
Crow Tribe	62,102	72,832	1,098,870
Hopi Tribe	171,834	168,849	1,713,146
Navajo Nation	443,147	435,450	4,253,780
Northern Cheyenne Tribe	0	26,564	88,379
Total	\$57,200,762	\$56,575,000	\$1,085,449,573

1. Includes obligations for AVS, TIPS, Kentucky Settlement, and other Title V cooperative agreements. Figures for 2003 do not include downward adjustments of prior-year awards. However, cumulative figures are net of all prior-year downward adjustments.

Lands Program on February 16, 1983. The federal lands program is important because the federal government owns significant coal reserves, primarily in the West. Of the 147 billion tons of recoverable coal reserves in the western United States, 60 percent is federally owned. The development of federal coal reserves is governed by the Federal Coal Management Program of the Department of the Interior's Bureau of Land Management.

Through cooperative agreements, the administration of most surface coal mining requirements of the Federal Lands Program may be delegated by the Secretary of the Interior to states with approved regulatory programs. Through 2003, the Secretary had entered into such cooperative agreements with Alabama, Colorado, Illinois, Indiana, Kentucky, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West Virginia, and Wyoming (see www.osmre.gov/coop.htm). Under the Surface Mining Law, once the Secretary and a state have signed a cooperative agreement, the state regulatory authority assumes permitting, inspection, and enforcement responsibilities for surface coal mining activities on federal lands in that state. The Office of Surface Mining maintains an oversight function to ensure that the regulatory authority fully exercises its delegated responsibility under the cooperative agreement. In states without cooperative agreements, the required permitting, inspection, and enforcement activities are carried out by the

Office of Surface Mining. In 2003, the Office of Surface Mining did not issue any new permits on federal lands.

For states with leased federal coal, the Office of Surface Mining prepares the Mining Plan Decision Documents required by the Mineral Leasing Act and documentation for other nondelegable authorities, for approval by the

Regulation of Surface Mining on Federal and Indian Lands

Section 523(a) of the Surface Mining Law requires the Secretary of the Interior to establish and implement a federal regulatory program that applies to all surface coal mining operations that take place on federal land. The Office of Surface Mining enacted the current Federal



This Southern Indiana site was mined during the 1990s. Reclamation has established diverse wildlife habitats, with particular emphasis on wetlands. Warm season grasslands and legume foraging areas were established to provide grazing and nesting areas. Tree and shrub species were planted strategically throughout the site to provide thickets and woodlands. And, large portions of the reclaimed area have been accepted into the Indiana Department of Natural Resources Classified Wildlife Habitat Program and the Classified Forest Program. This outstanding reclamation is a credit to the mine operator and a valuable resource for the community for years to come.

Secretary of the Interior. During 2003, four mining plan actions were prepared and approved for coal mines on federal land (one each in Colorado, Oklahoma, Utah, and Wyoming).

Pursuant to Section 701 of the Surface Mining Law, the Office of Surface Mining regulates coal mining and reclamation on Indian Lands. On September 30, 2003, there were 10 surface coal mining operations permitted on Indian reservations or Indian-owned lands as follows:

- Three active permanent program operations on the Navajo reservation (Mckinley, Navajo, and Burnham Mines);
- Two active operations on both the Navajo and Hopi reservations—one permanent and one initial program permit (Kayenta and Black Mesa Mines). An active preparation plant on the Navajo Reservation (Kayenta Mine) has had a separate permit application submitted in accordance with the permanent Indian Lands Program, and is operating under administrative delay;
- Two initial program operations on the Navajo reservation that are being reclaimed (Amcoal and Burnham Mines). The Office of Surface Mining, in cooperation with the Bureau of Indian Affairs and the Navajo Nation, is overseeing the final reclamation at these sites;
- One active mine producing coal owned by the Crow tribe on the Crow ceded strip (Absaloka Mine);
- One portion of an underground mine on lands owned by the Ute Mountain Ute tribe (King Coal Mine); and
- One permitted haul road on the Ute Mountain Ute reservation (La Plata Haul Road).
- During 2003, one mine on the Navajo Reservation was granted final bond release under the Indian Lands

Program and the Office of Surface Mining terminated its jurisdiction in August 2003 (De-Na-Zin Mine).

Section 2514 of the Energy Policy Act of 1992 (Public Law 102-486) gives authority to provide grants to the Crow, Hopi, Navajo, and Northern Cheyenne Tribes to assist them in developing programs for regulating surface coal mining and reclamation operations on Indian lands. The development of these programs includes: creating tribal mining regulations and policies; working with the Office of Surface Mining in the inspection and enforcement of coal mining activities on Indian lands (including permitting, mine plan review, and bond release); and education in the area of mining and mineral resources. Development grant funding for 2003 was \$677,083. Table 10 includes statistics on regulatory activities on Indian lands during 2003.

Mountaintop Mining

As part of a 1998 settlement agreement in *Bragg v. Robertson, No. 98-0636 (S.D.W.Va.)*, the Office of Surface Mining has continued to work with the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the West Virginia Department of Environmental Protection to prepare an environmental impact statement (EIS) on mountaintop mining and valley fills in the steep slope regions of Appalachia. In May 2003, the agencies published an eleven-volume, 4,000 page draft EIS encompassing more than 30 technical studies. The draft EIS is available on-line at: www.epa.gov/region3/mntnptop/index.htm. The public comment period for the draft EIS ended January 6, 2004, and the final EIS is currently scheduled for winter 2004.

The draft EIS recommends actions designed specifically to ensure more effective protection for human health and the environment while enabling the Nation to continue to receive the energy benefits of cleaner burning Appalachian coal. The steps outlined in the draft EIS

build upon federal and state actions undertaken in recent years that are effectively reducing mountaintop coal mining-related environmental impacts. The draft EIS evaluates a broad range of possible federal and state actions proposed to further prevent or reduce adverse environmental impacts to Appalachian streams, as well as to clarify lines of responsibility among the agencies, designed to improve implementation of the Clean Water Act and the Surface Mining Law. The draft EIS recommends that federal and state agencies work cooperatively to make the following program enhancements applicable to mountaintop coal mining operations:

- Better protection of streams from direct, indirect, and cumulative impacts, by improved characterization of aquatic resources and better prediction of potential adverse effects.
- To ensure full replacement of lost aquatic functions through stream restoration with improved design, inspection, and enforcement.
- More watershed level advance planning to identify special/high value environmental resources where impacts should be avoided.
- Review Clean Water Act water quality standards to fully protect against potential water quality impacts downstream of mining operations and to require better stream monitoring.
- Clarification where necessary of Surface Mining Law regulations to ensure that any necessary excess spoil fills are as small as possible and located where they cause the least environmental impact.
- Development of “Best Management Practices” for mine site reclamation to better avoid or minimize adverse environmental impacts, and that promote the benefits of reforestation.

- Preparation of guidance for improved surface water runoff analysis from mining operations to ensure these operations do not increase the risk of floods.
- Preparation of “Best Management Practices” to improve control of fugitive dust and blasting fumes under the Clean Air Act.
- Development of additional specific protection plans for threatened and endangered species.

As provided in the settlement agreement, the Office of Surface Mining also continued to cooperate with West Virginia in the review of permit applications proposing to construct large fills as part of the mining operation. During 2003, the Office of Surface Mining participated in the review of six permit applications.

A complete listing of mountaintop mining information is available at www.osmre.gov/mtindex.htm.

Pennsylvania Anthracite Program

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

In 2002¹³, the anthracite mining industry produced approximately 3.82 million net tons, a decrease of two percent from year 2001. Anthracite operators mined approximately 1.89¹⁴ million tons from culm and bank material (compared to 2.09 in 2001), 1.63 million tons from surface mines (compared to 1.65 million tons in

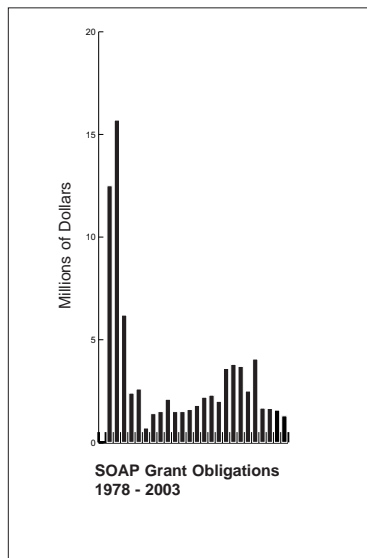
13. Calendar Year

14. Pennsylvania Department of Environmental Protection, Harrisburg, 2002

2001), and 0.30 million tons from underground mines (compared to 0.15 million tons in 2001). The reprocessing of anthracite culm banks accounts for a little over half of the total anthracite coal production and helps to fuel several cogeneration plants.

The Pennsylvania anthracite program currently includes 319 inspectable units (58 underground, 14 preparation plants, 4 refuse disposal sites, 121 reprocessing operations, and 122 surface mines). Pennsylvania's Department of Environmental Protection conducted 2,862 inspections (compared to 3,290 last year) and issued 147 violations (compared to 161 last year) in the Anthracite regions. Pennsylvania's Department of Environmental Protection continues to successfully carry out the provisions of the anthracite regulatory program.

Small Operator Assistance Program (SOAP)



Section 401 (c)(11) of the Surface Mining Law authorizes up to \$10 million annually of the fees collected for the Abandoned Mine Reclamation Fund to be

used to help qualified small mine operators obtain technical data needed for permit applications. Qualifying operators produce no more than 300,000 tons of coal per

year. The Energy Policy Act of 1992 (Public Law 102-486) expanded the technical permitting services eligible for funding under the Small Operator Assistance Program to include engineering analyses and design necessary for hydrologic impact determination, cross-section maps and plans, geologic drilling, archaeological and historical information, plans required for the protection of fish and wildlife habitat and other environmental values, and pre-blast surveys. The program has always funded the hydrologic and geologic data collection and analyses required as part of the probable hydrologic consequences determination, and the statement of overburden analysis required under Section 507(c) of the Surface Mining Law.

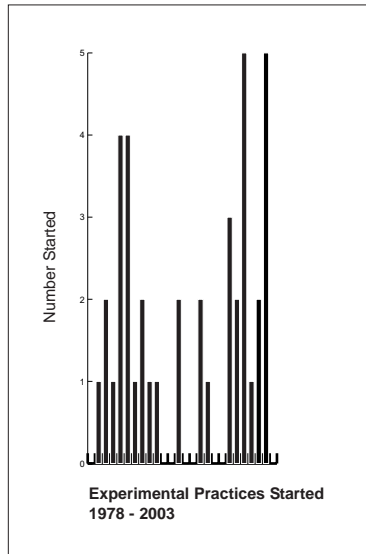
The Small Operator Assistance Program is operated by the states that have Office of Surface Mining approved surface mining programs. In states with federal programs, the Office of Surface Mining operates the Small Operator Assistance Program. In 2003, 56 small mine operators received assistance (compared to 107 in 2002 and 79 in 2001). Table 12 provides a summary of the Small Operator Assistance Program by state during 2003.

TABLE 12: SMALL OPERATOR ASSISTANCE PROGRAM

State	Grant Amount ¹		Operators	Projects Started
	2003	2002		
Alabama	\$35,000	\$35,000	1	1
Kentucky	403,631	513,441	20	22
Maryland	0	35,000	1	5
Ohio	57,884	100,000	5	5
Pennsylvania	729,200	805,054	26	28
West Virginia	64,929	84,743	3	0
Total	\$1,290,644	\$1,573,238	56	61

1. These figures do not include downward adjustments of prior-year awards.

Experimental Practices



Section 711 of the Surface Mining Law allows variances from Sections 515 and 516 of the performance standards as alternative, or experimental, mining and reclamation practices to encourage advances in mining technology or to allow innovative industrial, commercial, residential, or public postmining land uses.

However, the experimental practices

must be potentially more, or at least as, environmentally protective as the environmental protection performance standards established by the Surface Mining Law. Approval and monitoring of a permit containing an experimental practice requires a close working relationship between the mine operator, the state, and the Office of Surface Mining.

Since the program began, 44 projects have been undertaken. In addition to the 19 experimental practices currently underway, 18 were determined to be successful, three unsuccessful, one was terminated due to a regulation change, and three have been completed though a final report has not yet been submitted.

Reclamation Awards

To recognize and transfer the lessons learned from completing the Nation's most outstanding reclamation, the Office of Surface Mining presents awards to coal mine operators who have completed mining and reclamation operations that result in outstanding on-the-ground performance. For a description of the active

mining award program and 2004 rules, see www.osmre.gov/activerules01.htm.

This year, for the first time the Office of Surface Mining presented three Good Neighbor Awards. The three awards were presented for achievement of exemplary interaction, communication, and involvement with the surrounding land owners and local community. Establishment of good working relations and interaction with mine neighbors is an important element of the Surface Mining Law that mine operators are achieving in many different ways. These awards recognize this achievement and promote the Good Neighbor concepts so others can use them.

The 2003 Awards were presented October 1, 2003, at a banquet hosted by the National Mining Association, and the award winners were as follows:

Director's Award:

Each year, one coal mining operation in the country is selected to receive the Director's Award for outstanding achievement in a specific area of reclamation. This year, the award was presented to both the United Minerals Company and Black Beauty Coal Company, for working together to create exemplary wetlands at the Deer Ridge Mine.

In the steeply rolling hills and deep valleys of rural Pike and Warrick Counties in Indiana, this reclamation resulted in 44 shallow wetlands covering approximately 160 acres. They range in size from less than one to more than 20 acres, and all have variable water depths.

In addition, there are now 72 permanent impoundments covering approximately 246 acres. Many of the impoundments were constructed with remnant standing timber that provides protected bird nesting sites.

Although many of the reclamation techniques are not unique to the mining industry, the quality and extent of the project leaves a valuable wetland resource.

National Awards:

■ The Drummond Company Cedrum No. 4 Mine, located in Townley, Alabama has many unique aspects that make it one of the best in 2003.

Extensive mitigation of premining natural areas was accomplished by constructing wetlands that now provide a diverse plant and animal community.

Following mining 2,600 feet of stream was replaced and improved to provide additional habitat for the endangered flattened musk turtle.

Four cemeteries were located on the property. They were not disturbed and are all integrated into the landscape.

Today, without any trace of coal mining this land provides a rich wetland and a pastoral Alabama landscape that is even more diverse than the surrounding unmined areas.

■ The Peabody Energy, Caballo Mine, located just south of Gillette, Wyoming in the Powder River Basin, mines over 21 million tons of coal per year using the truck and shovel mining method.

Reclamation has returned the land to a livestock grazing and wildlife habitat. Small ponds were constructed replacing wetlands that were eliminated during mining. These areas are an oasis for water fowl and shore birds and provide a dependable source of water for the native wildlife.

Many natural premining features have been incorporated into the landscape. An outcrop of scoria, or coal outcrops that caught fire and burned, formed steeper slopes than

the surrounding terrain. Incorporated into the reclamation, these features retain the characteristic look of the Wyoming landscape.

■ TXU Mining Company's Monticello Mine reclamation in East Texas has shifted from predominantly agriculture to trees and native vegetation, resulting in the wildlife habitat becoming a significant percentage of the land use.

Reclamation at this 412 acre site included native grasses, pasture, hardwood trees, and ponds.

The area now contains all elements of food, water, and cover to support and perpetuate resident as well as migratory wildlife. The establishment of a tall grass prairie adds to the very small amount remaining in the country.

Twenty-two different species of trees were planted with upland and bottomland oaks emphasized around the wetland areas. They provide both fast growing cover and wildlife corridors.

In the years to come this vegetation will continue to grow and enhance this reclaimed Texas landscape.

■ Located at the southern end of the Powder River Basin, Kennecott Energy's Antelope Mine has produced over 169 million tons of coal since it began operations in 1984.

Field studies have indicated that the Mountain Plover, a migratory bird under status review, has a strong affinity for black-tailed prairie dog colonies at the mine. As a result, part of the reclamation plan includes establishment of artificially constructed colonies of prairie dogs.

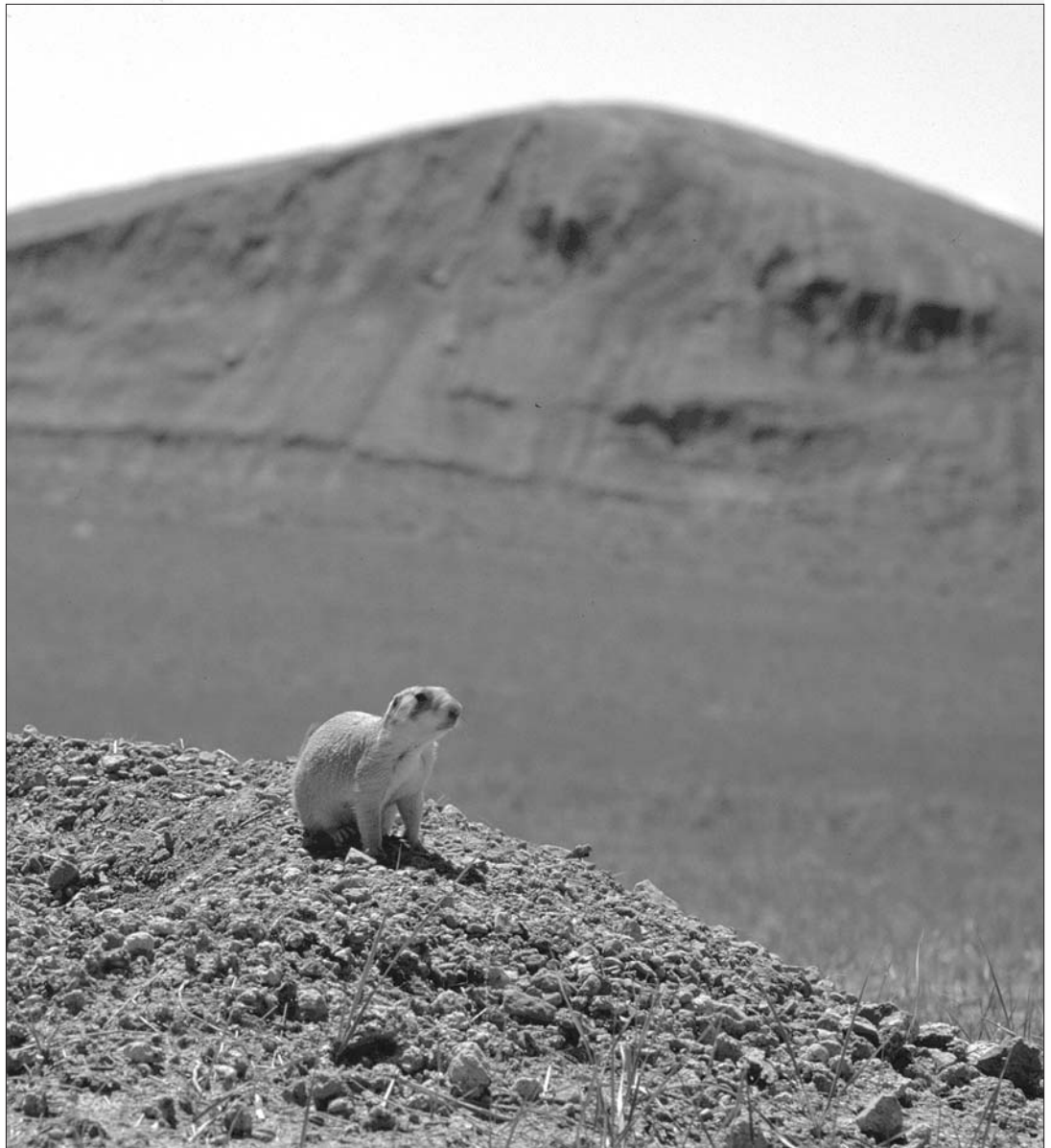
Before trapped animals were moved to the reclaimed land, burrow tunnels and chambers were constructed. Plywood boxes lined with grass nests were set in the ground and corrugated four inch plastic pipe used for the burrow tunnels.

Since relocation the prairie dogs have also dug natural burrows.

This innovative relocation work shows that reclaimed mine lands can be used to enhance wildlife habitats and increase long-term survival of the native species.

■ Castle Gate Holding Company, Castle Gate Mine is located in a steep, mountainous canyon near Price, Utah, underground coal mining started in the 1880's. Before reclamation, the site contained buildings such as a coal cleaning plant, bath houses, and truck loading facilities. The buildings and old equipment were removed along with large quantities of coal refuse.

The entire area was covered with soil and graded to include small basins about four feet wide and two feet deep. This prevented water runoff and eliminated the need for hundreds of feet of silt fence.



Wildlife does not usually come to mind when people think of coal mining. However, many companies include wildlife habitats into the reclamation and reestablish or even improve wildlife habitats. At this reclaimed Wyoming mine site a prairie dog colony was successfully relocated. This relocation was primarily to provide a home for the mountain plover, a bird that is currently under status review by the U.S. Fish and Wildlife Service and lives in close proximity to prairie dog colonies. At this site, both the prairie dogs and mountain plovers are living on the reclaimed land, and prairie dog predators such as golden eagles, coyotes, badgers, bobcats, and red fox are seen on the reclaimed site.

Native grasses, forbs, and shrubs were planted, and there is a large increase in vegetative cover compared to undisturbed adjacent areas.

This is a great model for other sites with historic mine problems in dry, steep terrain. Today, it's a magnificent, picturesque mountain canyon.

■ Mining at the Consolidation Coal Company Burning Star No. 5 Mine from 1975 to 1989 required reclamation of 3,200 acres of land, an area that previously contained wetlands and prime farmland.

More than 148 acres were restored into wetlands. Depths up to 12 feet provide both shallow water for natural colonization by emergent, submergent, and floating vegetation, as well as deeper water that allows the aquatic species to survive the cold winters.

Riparian forests of cypress, river birch, pin oak, sycamore, and button bush now surround the wetland areas which are annually flooded.

In addition, approximately 1,400 acres of cropland was reestablished, providing feeding areas for resident and migratory wildlife.

■ The Squaw Creek Coal Company, Squaw Creek Mine, located near Chandler, Indiana, was reclaimed with a mixture of cropland, pasture land, forest, water impoundments, wildlife habitat, and a residential area.

At the suggestion of the Indiana Department of Natural Resources mine inspector, native species of grasses were used for the wildlife areas to add diversity and provide cover and food for grassland birds.

In 2000 the mining company purchased a special warm season grass drill for planting native grasses – Indian grass, big bluestem, little bluestem, and switch grass. These grasses produce hay crops, yield additional seed for planting natural grass areas, and provide wildlife with a unique habitat.

The value of the land to both the community and the land owners has been enhanced. It's an outstanding example of the opportunities land reclamation offers.

Good Neighbor Awards:

■ **Bronze Award:** Between 1988 and 2000 the Bridgeview Coal Company in Farmington, Pennsylvania mined and reclaimed just over 800 acres that is now actively farmed just as it was before mining.

The company and community continually worked together.

- A dangerously twisting township road was changed to a safe, reasonably straight road.
- The company donated a water truck to the local fire department and built a stock car racetrack that is the principle source of fund raising for the fire department.
- A ball field was constructed at the local park, and the company made their excavators and loader available for township use.
- A safe shooting range was built for a nearby hunting and shooting club.
- Culverts and drainpipes were installed, and township roads resurfaced.

The Bridgeview Coal Company, with community cooperation, mined the coal and reclaimed the land to the highest standards. And, throughout the operation the coal company was an integral part of the community.

■ **Silver Award:** The Vigo Coal Company constructed a 45 acre wetlands/flood control area at its Cypress Creek Mine in Boonville, Indiana.

Newspaper headlines tell the story. Historic coal mining had created continuous downstream flooding in Boonville, Indiana. Farmers had crop losses, the city's waste water treatment plant was frequently flooded, and roads were often not passable.

As part of its mine plan, Vigo hauled approximately 2 million yards of excess spoil to create the 250 acre-feet of storm water storage for the drainage system. Today the water discharge goes through a 36 inch diameter pipe, and a 15 foot wide grouted riprap channel acts as an emergency spillway.

The benefits to the community are obvious: downstream flooding has been eliminated and the integral wetland area is enjoyed by the community.

Vigo's good neighbor policy has had a Boon to Boonville.

■ **Gold Award:** Located just South of Monument Valley on the Navajo and Hopi Indian reservations, the Peabody Western Coal Company's Kayenta and Black Mesa Mines have reclaimed more than 12,000 acres, and made being a good neighbor part of everyday life for residents of the area.

- A supply of potable drinking water is available at two stands.
- 150 miles of local roads are maintained and graded by the company on a regular basis.
- There is a 24-hour emergency medical clinic, equipped with a modern ambulance.
- Peabody provides fence and homesite improvements as well as a water delivery service for homes and livestock.

For more than 30 years this good neighbor policy has helped many residents and established a unique company/community relationship.

Best-of-the-Best Award

Since 1996, when the Office of Surface Mining began presenting annual awards for the best reclamation, it was evident that in most cases there were one or two individuals responsible for achieving the success. It was sometimes the mine manager, the reclamation specialist, or in one case a reclamation specialist and a state inspector working together. But in all cases, these people were the linchpin that held the project together and the ones who made the extra effort to ensure achievement of the outstanding reclamation. The Office of Surface Mining recognizes these special individuals to give them credit for their work and to highlight their efforts as a model for others in the mining and reclamation field.

The 2003 award was presented to an individual who was responsible for reclamation that has not been easy and required continued testing and use of many new reclamation techniques. In each case the success can be attributed to personal foresight, initiative, and creative implementation--attributes that make this person a model in both the coal industry and government regulatory environment.

Accomplishing outstanding reclamation is always a balance between production schedules, costs, and desire for the best possible reclamation. The ability to make it all work while achieving award-winning reclamation was exemplified by the 2003 Best-of-the Best winner, Johnny Pappas, Environmental Engineer, Castle Gate holding Company, in Helper, Utah.