

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

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

of

WEST VIRGINIA

for

Evaluation Year 2001
October 1, 2000 to September 30, 2001

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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 OSM has approved as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the effectiveness of the West Virginia program in meeting the purposes of SMCRA specified in section 102. This report covers the period of October 1, 2000, to September 30, 2001. Detailed background information and comprehensive reports for the program elements evaluated are available at the Charleston Field Office, 1027 Virginia Street, East, Charleston, West Virginia, 25301, phone (304) 347-7158.

The following acronyms are used in this report:

ACSI	Appalachian Clean Streams Initiative
AMD	Acid Mine Drainage
AML	Abandoned Mine Land
AMLR	Abandoned Mine Land Reclamation
ARCC	Appalachian Regional Coordinating Center
CFR	Code of Federal Regulations
CHIA	Cumulative Hydrologic Impact Assessment
CHFO	Charleston Field Office
EIS	Environmental Impact Statement
EY 2001	Evaluation year 2001 (October 1, 2000 to September 30, 2001)
HCPA	Hominy Creek Preservation Association
IBR	Incidental Boundary Revision
NOI	Notice of Intent to Sue
OSM	Office of Surface Mining
SMCRA	Surface Mining Control and Reclamation Act of 1977
SWROA	Surface Water Runoff Analysis
WCAP	Watershed Cooperative Agreement Program
WCMS	Watershed Characterization and Modeling System
WVDEP	West Virginia Department of Environmental Protection
WVSCMRA	West Virginia Surface Coal Mining Reclamation Act

II. Overview of the West Virginia Coal Mining Industry

Coal has been mined in West Virginia using underground methods since the early 1700's. Currently, the Abandoned Mine Land (AML) inventory contains a record of 3,599 sites left unreclaimed prior to the passage of SMCRA in 1977.

Coal production in West Virginia accounts for about 14 percent of the Nation's total production. In 1999, West Virginia produced 158 million tons of coal, allowing it to retain its ranking as the second largest coal producing State.

West Virginia is the Nation's leading coal exporter with 39 percent of the country's foreign exports. Approximately 86 percent of the coal produced in West Virginia is used domestically, with 18 percent of that

coal being consumed within the State. About 320 companies produce coal in West Virginia.

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. The coal industry accounts for nearly 27 percent of the State's business tax, and approximately 10 percent of the statewide property tax collections.

Underground mines produce approximately 66 percent of the State's total coal production. Fourteen of the Nation's seventy-six longwall mining operations are in West Virginia. Longwall mining operations accounted for 43 percent of the State's underground coal production.

Thirty-four percent of the coal produced in West Virginia is by surface mining methods. Surface coal production increased by 0.5 percent in 1999, whereas underground production decreased by 11.5 percent. Mountaintop and multiple seam mining operations are largely responsible for the increased surface coal production. Eighty-six percent of the State's surface coal production was produced by mountaintop and multiple seam mining operations.

West Virginia has 2,429 inspectable units. Underground mines account for about 41 percent of the total inspectable units and surface mines account for 34 percent. The remaining 25 percent consists of other facilities, including such things as preparation plants, refuse piles, loading facilities, and haulroads.

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

Throughout the EY 2001 evaluation year, WVDEP and OSM officials met with representatives of various citizen, environmental, and industrial groups including:

- West Virginia Highlands Conservancy,
- West Virginia Mining and Reclamation Association,
- West Virginia Coal Association,
- Ohio Valley Environmental Coalition,
- Contractor's Association of West Virginia,
- River of Promise,
- Coal River Watch,
- West Virginia Watershed Network, and
- Plateau Action Network.

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

- West Virginia Watershed Management Framework,
- Friends of the Cheat Annual Festival, and
- Watershed Cooperative Agreement Grant Program.

The CHFO maintains a mailing list of organizations and individuals that have been active in regulatory and AML issues in West Virginia. Office

staff routinely interacts with individuals and groups throughout the year. Besides the normal oversight activities, CHFO participated in public meetings regarding the mountaintop mining environmental impact statement (EIS).

OSM has maintained contact with numerous watershed groups throughout the State through a network of summer interns funded through the OSM budget. These interns work 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.

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 abandoned mine land 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 Program

A. Accomplishments/Innovations

1. Hydrologic Assessment Model

During the evaluation period, West Virginia University in cooperation with WVDEP continued development of a hydrologic assessment model known as the Watershed Characterization and Modeling System (WCMS). During the evaluation period, several copies of WCMS were distributed to the regional offices and some training was provided.

The WCMS will be a useful tool for the geologic/hydrologic permit reviewer as well as the cumulative hydrologic impact assessment preparer. Planned uses for the model include:

- predicting mine impacts from surface and underground mines on surface waters that affect the hydrologic balance;
- preparing cumulative hydrologic impact assessments;
- assessing stream loadings;
- setting effluent limits; and
- conducting water quality investigations.

It was determined during the evaluation year, however, that further development was needed for both the software and hardware systems. This includes upgrading the operating system of the software and migrating the data to a central location for server style access.

2. Watershed Management Framework and Clean Water Action Plan

During the evaluation year, both WVDEP and OSM participated with other State and Federal agencies in efforts associated with the West Virginia Watershed management Framework and the Clean Water Action Plan. The Watershed Management Framework is West Virginia's plan for coordinating the operations of existing water quality programs and activities. Its goal is to better achieve water resource management goals and objectives shared by multiple agencies. This management initiative involves using watersheds as a way to organize and focus Federal and State agency partners' activities.

A component of the West Virginia Watershed Management Framework is the Clean Water Action Plan. This is a Federal initiative introduced early in 1998 to help chart a course toward fulfilling the original goals of the Clean Water Act for restoring and protecting the nation's water resources. OSM and WVDEP jointly participate in this initiative.

3. Bonding Program Improvements

During the evaluation period, WVDEP undertook several actions in an effort to improve its alternative bonding system (ABS).

OSM informed the State on September 29, 2000, that Federal corrective action would be taken unless the Legislature adopted the necessary program changes during its 2001 regular legislative session. However, the Legislature adjourned without taking any action on the WVDEP's proposals. OSM later notified the State on June 29, 2001, that it was initiating action under 30 CFR Part 733 to require corrective action from the State to resolve the long outstanding issues regarding its ABS.

During a special legislative session on September 15, 2001, the West Virginia Legislature passed legislation that is intended to address the problems with the State's ABS. Enrolled Senate Bill 5003 was signed by the Governor on October 4, 2001. The State submitted the legislation to OSM as a program amendment on September 24, 2001. Under Enrolled Senate Bill 5003, the State's special reclamation tax rate is increased from 3 cents per ton of clean coal to 14 cents for 39 months; thereafter it is reduced to 7 cents per ton and may not be reduced further until the State's ABS has sufficient money to meet all of its bond forfeiture reclamation responsibilities. The tax rate is reviewed, and if necessary, adjusted annually by the Legislature upon recommendation by a newly created advisory council.

OSM approved the amendment on December 28, 2001, but we deferred making a decision on whether the amendment will fully resolve all issues with the State's ABS. At the same time, OSM published a Federal Register notice providing for a 90-day comment period on whether the amendment satisfies all outstanding program requirements. By this approach, West Virginia will be able to collect the much needed additional funds while soliciting additional comments to make a more informed decision as to the ultimate resolution of outstanding concerns with the fund adequacy into the future.

4. Funding for Increase in Staffing (Program Improvement Cooperative Agreement)

OSM awarded WVDEP a Regulatory Program Improvement Cooperative Agreement (PICA) on November 1, 2000, in the amount of \$3.6 million to hire 59 additional employees. The agreement requires the State to provide 50 percent matching funds for these positions. The source of funding, effective January 1, 2001, is a 50-cents per ton synfuels tax that was passed during a special legislative session and signed by the Governor on November 14, 2000. The agreement provides the State a 24-month transition period to reach a full staffing level of 286 positions. The agreement also requires the State to report its progress on a quarterly basis. As of October 30, 2001, WVDEP had filled 56 percent of the new positions. However, due to normal attrition and the need to fill some of the new positions from within the agency, 35 additional vacancies were created. In order to fully staff its regulatory program, WVDEP still needs to fill 45 positions. The State has until October 31, 2002, to reach full strength in its regulatory program.

5. Funding for Program Enhancements (Program Enhancement Cooperative Agreement)

On February 1, 2001, OSM awarded WVDEP a Regulatory Program Enhancement Cooperative Agreement (PECA) for \$6.2 million. OSM and WVDEP agreed to have an OSM employee through an interagency personnel assignment assist the State in the management of the cooperative agreement. To date, WVDEP has procured software and hardware for electronic permitting and the development of a centralized database for geological and hydrological data, software for watershed modeling, network software, and hardware for a communications network that will serve as the backbone for its electronic permitting system. WVDEP has also issued contracts for: 1) the modification of existing software to enhance watershed modeling; 2) the hiring of three temporary programmers to assist with the development of the electronic permitting system; and 3) the digitizing of existing permit maps that will enable WVDEP to populate its geospatial database. WVDEP officials are conducting regular meetings with contractors and OSM personnel to monitor the progress of all contracts. OSM and State personnel are planning the development of models and the proposed locations of trend stations throughout the State to help assess the cumulative impact of mining on watersheds. In addition, a contract is to be issued to allow for the purchase of airborne imaging/remote sensing equipment to monitor the effects of mining operations on watersheds. As of October 31, 2001, WVDEP had expended 12 percent of the funds awarded under PECA, and all

projects are about 25 percent complete. The State has until January 31, 2003, to complete all projects under PECA.

6. Flooding Analysis of Permit Applications/SWROA

In March 2000, COE, EPA, OSM, and WVDEP formed a technical team to evaluate the potential effects of flooding from mining operations being proposed in the Island Creek watershed. As a result of these evaluations, the agencies began to formulate preferred procedures to evaluate potential flooding impacts from mining operations. In early 2001, WVDEP released a draft document addressing procedures for completing a flood routing analysis and surface water runoff analysis. The document was a compilation of the issues raised during interagency reviews of the applications in the Island Creek watershed. The document was distributed to interested parties for comment and has been continually updated as new issues became apparent and/or public comments were received. WVDEP is currently seeking additional input on the document.

7. Active and Bond Forfeiture Mine Drainage Inventory Cost Estimates

During this evaluation year, both OSM and WVDEP worked hard to develop the first comprehensive cost estimates for the annual treatment and capitol costs associated with all active and bond forfeiture permits with acid mine drainage. WVDEP hired a consultant to assist them in this effort and worked independently from OSM in developing their cost estimates. Although independently conducted, both WVDEP's and OSM's estimated annual treatment costs were very close to the same amount.

B. Issues

1. Program Maintenance

As discussed in Section VI.E., the State has responded to many of the required program amendments with the submission of two program amendments currently under review by OSM. The State has also advised that it has developed regulatory revisions that are to be submitted during the 2002 regular legislative session which are intended to satisfy some of the outstanding required amendments and Part 732 issues. OSM will reassess the State's progress on program maintenance after concluding its review of the two program amendments and receiving whatever new amendments come from the 2002 legislative session.

During the evaluation period, WVDEP fully satisfied one required amendment and partially satisfied one required amendment. OSM modified one existing required amendment and added thirteen new required amendments. At the end of the reporting period, there were fifty-five required amendments that were still outstanding. More than half of the required amendments relate to the State's commercial forestry and homesteading rules that were promulgated in response to the Consent Decree that settled the mountaintop mining litigation. In addition, the State has thirty-one deficiencies resulting from 30 CFR Part 732 notifications that need to be resolved.

In addition to the required program amendments, the WVDEP has submitted for OSM approval other program amendments which are pending a final decision. Some of these amendments relate to changes in the language of the State's stream buffer zone rule so it mirrors the Federal wording and adding a definition of material damage which is not defined in the Federal rules.

2. Litigation

Bragg v. Robertson, Civil Action No. 2:98-0636 (S.D. W.Va.)

On July 16, 1998, the West Virginia Highlands Conservancy (WVHC) and ten other individuals sued the WVDEP and the U.S. Army Corps of Engineers (COE) in the U.S. District Court for the Southern District of West Virginia. The law suit concerns the loss and degradation of West Virginia streams resulting from the construction of excess spoil fills associated with surface mining activities, including mountaintop-removal, steep slope and multiple seam mining operations.

On December 23, 1998, attorneys for the WVHC, EPA, FWS, COE, WVDEP and OSM signed a settlement agreement to resolve all claims brought against the federal defendants. The agreement requires the federal agencies to prepare an environmental impact statement (EIS) on the effects of mountaintop mining. Specifically, the agencies are, "to consider developing agency policies, guidance, and coordinated agency decision-making processes to minimize, to the maximum practicable extent, the adverse environmental effects to waters of the United States and to fish and wildlife resources affected by mountaintop mining operations, and to environmental resources that could be affected by the size and location of excess spoil disposal sites in valley fills." WVDEP and OSM have both been participating in this EIS process. The EIS is still under development.

On October 20, 1999, Chief U.S. District Judge Charles H. Haden II ruled that the placement of excess spoil from surface mining operations in intermittent and perennial streams violates Federal and State surface mining laws and the Clean Water Act (CWA). On October 29, 1999, Judge Haden stayed his October 20 ruling prohibiting the placement of excess spoil fills in intermittent or perennial streams. WVDEP and coal industry attorneys appealed Judge Haden's decision to the U.S. Court of Appeals for the Fourth Circuit.

On April 17, 2000, the Department of Justice filed a brief with the U.S. Court of Appeals on behalf of the COE, EPA and OSM which concluded that the U.S. District Court correctly found that the stream buffer zone rule prohibits the burial of substantial portions of intermittent and perennial streams beneath excess mining spoil. However, the brief argues that the Court incorrectly found that the COE lacks authority to regulate the disposal of surface mining spoil under Section 404 of the CWA. The U.S. District Court had ruled that the discharge of excess spoil from mountaintop removal mining does not amount to the discharge of "fill material" under the COE's regulations because the spoil is discharged for the purpose of waste disposal. The Federal appellants did not challenge the U.S. District Court's conclusion that the CWA

404(b)(1) guidelines cannot be used as a substitute for the stream buffer zone rule.

On April 24, 2001, the U.S. Court of Appeals overturned Judge Haden's stream buffer zone decision. In a 41-page opinion, the Appeals Court ruled that the State's sovereign immunity is protected by the 11th Amendment to the Constitution that barred the Federal District Court from hearing the case. The Appeals Court ruled that SMCRA provides for either State regulation of surface coal mining within its borders or Federal regulation, but not both. Therefore, citizens can only sue State officials in State court whenever they fail to perform any act or duty under an approved State program. The Appeals Court, however, upheld the settlement agreed to by the WVDEP and the consent decree that Judge Haden entered approving it.

On July 13, 2001, the U.S. Court of Appeals denied petitions by both the Federal government and the WVHC for reconsideration.

On October 11, 2001, lawyers for the WVHC petitioned the U.S. Supreme Court to hear their appeal of the 4th Circuit's decision. WVDEP asked the Supreme Court on December 18, 2001, not to consider the appeal. In a brief filed on the same day, the Department of Justice said that Judge Haden was right to hear the case, but the Supreme Court should still not consider an appeal of the 4th Circuit's ruling at this time. Coal industry lawyers also filed a petition on December 20, 2001, urging the Supreme Court not to hear the case. On January 22, 2002, the Supreme Court decided not to hear this appeal.

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

On November 14, 2000, the West Virginia Highlands Conservancy (WVHC) filed a complaint in U.S. District Court for the Southern District of West Virginia against OSM and WVDEP. The suit alleged that WVDEP had failed to implement, maintain, and enforce its approved State program and that OSM had subsequently failed to promulgate and implement a federal program. The counts included allegations of inadequate staffing, outstanding regulatory program amendments in addition to the failure of the State's alternative bonding system (ABS) to have sufficient revenue to complete reclamation, including water treatment, at all bond forfeiture sites. The WVHC filed a motion on May 14, 2001, for a preliminary injunction on the bonding portion of the complaint and requested a hearing.

On May 29, 2001, Chief U.S. District Judge Charles H. Haden II denied WVHC's request for a preliminary injunction and dismissed the WVDEP from the suit, noting that the State had immunity from such lawsuits under the Eleventh Amendment to the Constitution.

On June 19, 2001, the WVHC filed a motion for a partial summary judgment and a permanent injunction against OSM asserting a failure to perform nondiscretionary duties related to State program maintenance and oversight under the Act. WVHC sought an injunction ordering OSM to prepare, promulgate, and implement a Federal bonding program for West Virginia within 30 days of an order granting the injunction, due to

OSM's alleged unreasonable delay in taking this action following its disapproval of several aspects of West Virginia's ABS and the State's failure to submit revisions. In the alternative, the WVHC sought an order requiring OSM to withdraw approval of the West Virginia bonding program within 7 days of the Court's granting of the injunction and then initiate proceedings under 30 CFR Part 736 to promulgate a Federal program within 30 days of the court order. As a third alternative, the WVHC asked the Court to order OSM to initiate action under 30 CFR Part 733.12(d) and (e) to substitute Federal enforcement of the West Virginia bonding program, or to withdraw approval of the bonding program and initiate a Federal bonding program, within 15 days of the Court's granting of the injunction.

On June 29, 2001, OSM notified WVDEP that, pursuant to 30 CFR 733.12, it had reason to believe that the State was failing to properly maintain its alternative bonding system. OSM directed the State to 1) submit to the West Virginia Legislative Rulemaking Review Committee by July 27, 2001, its proposed regulatory initiatives to address the problems; 2) simultaneously submit a copy of the regulatory initiatives and any necessary, statutory proposals to OSM, along with a timetable for enactment; and 3) within 45 days after the close of the 2002 legislative session, provide OSM with final enacted legislation signed by the Governor that fully resolves all outstanding problems with its alternative bonding system.

The Federal defendant's reply brief in support of its opposition to WVHC's motion of partial summary judgment and for a permanent injunction was filed on July 23, 2001.

On August 31, 2001, Judge Haden issued a decision granting the WVHC's partial motion for summary judgment, denying the Federal defendant's motion to dismiss, but denying the WVHC's motion for a permanent injunction, because the Court held that the deadlines set for compliance by OSM's Part 733 notification are reasonable.

In addition, the Court ordered that the parties may continue discovery as WVHC requested; the parties must provide reports to the Court every six weeks on the State's progress in meeting OSM's Part 733 deadlines; proposed statutory amendments are to be made available to the Court when presented to OSM; and entry of the final order is deferred until the earlier of the presentation to OSM of final enacted legislation or 45 days after the close of the 2002 State legislative session. The first report was submitted to Judge Haden on October 12, 2001, and the second report was filed on November 14, 2001.

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, the Ohio River Valley Environmental Coalition, (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 that the WVDEP be compelled to perform certain functions that the plaintiffs allege are nondiscretionary legal obligations under SMCRA. The suit alleged that WVDEP had approved permits and significant amendments without performing adequate

cumulative hydrologic impact assessments (CHIA), without requiring adequate baseline data and without requiring adequate hydrologic monitoring and reclamation plans. The plaintiffs further alleged that the WVDEP implemented a program amendment in the form of the May 18, 1999, CHIA Guidance Memorandum without OSM approval or public review.

In a February response, the WVDEP filed a motion for dismissal of the case for lack of jurisdiction because the plaintiffs had failed to exhaust their administrative remedies before filing the suit. In a May 1, 2000, order, Judge Chambers denied the WVDEP motion. After the April 24, 2001, decision of the U.S. Court of Appeal for the Fourth Circuit in the Bragg v. West Virginia Coal Association litigation, the WVDEP asked the Court to revisit the May 1 decision and dismiss the case for lack of jurisdiction because the issues of the doctrine of sovereign immunity which barred plaintiffs in that case from bringing their claims against WVDEP in federal court were identical to the issues in this case.

On June 14, 2001, the plaintiffs filed a motion to amend their existing complaint against the WVDEP and other intervenor-defendants to seek relief against a new defendant, the U.S. Department of the Interior. On September 20, Judge Chambers granted the plaintiff's motion to amend their complaint and denied the defendants motion to dismiss the case on the jurisdictional issue. The Court held that although the *Bragg* decision may compel the dismissal of the other claims, the one regarding implementation of the CHIA Guidance Memorandum without first obtaining federal approval of the policy changes mandated by that document, is distinguishable from the claims brought in the *Bragg* case.

On September 25, 2001, the plaintiffs filed an amended complaint which also named the U.S. Department of the Interior as a defendant. The plaintiffs argued that the alleged WVDEP actions set out in the complaint are a failure to perform non-discretionary duties which constitutes a failure to implement the approved program. Therefore, the plaintiffs argue that the Secretary must promulgate and implement a federal regulatory program for West Virginia and that the program be prepared and implemented within a specific, reasonable amount of time. The Secretary's answer to the amended complaint was filed January 7, 2002.

3. Disallowed Costs

A previous audit by OSM revealed that WVDEP had improperly charged personnel and other costs for quarry inspectors to OSM's regulatory grant. However, other eligible costs not charged more than offset the questioned amount. OSM and WVDEP reached agreement on accounting and reporting procedures and closed the audit.

4. Pattern of Violations

In last year's evaluation (EY 2000), OSM conducted a review to: (1) evaluate for proper determination of patterns of the same or related violations resulting from downslope spoil and offsite disturbance; and (2) evaluate for issuance of appropriate show cause orders and consent agreements for patterns of these same or related violations.

The review indicated that the WVDEP was not considering two of the same or similar violations in their determination of a pattern of violations, except for significant offsite issues. In addition, the State was not applying appropriate criteria in determining that the operator caused the violations willfully or through an unwarranted failure to comply. Finally, there was no evidence of consideration of previous years' history of violations in making the determinations. These findings were published in the EY 2000 annual report. In October of 2000, WVDEP responded to these findings and agreed to provide the necessary guidance to their inspection staff. Program managers provided this guidance in EY 2001.

5. Surety Bankruptcy and Bond Replacement

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

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

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

On October 15, 2001, a New York State Court ruled that Frontier was insolvent. On November 1, 2001, WVDEP began issuing notices of violation requiring operators to replace reclamation bonds that had been underwritten by Frontier within 15 days, as required by the approved State program.

Because of various external events, such as the World Trade Center disaster and the Enron financial scandal, replacement bonds have been more difficult to obtain.

State and OSM officials are continuing to work with Frontier and other surety companies to find replacement bonds. The State has granted AEI an extension until March 1, 2002, to replace all bonds.

6. Contemporaneous Reclamation

In the 2000 Annual Evaluation Report, OSM identified a difference between its interpretation of the "conventional fill" definition from that of WVDEP. Acreage associated with a "conventional fill" can be exempted from the disturbed acreage calculations for determining contemporaneous reclamation, thereby allowing more acreage to remain unreclaimed. During this evaluation year, and as reported in the 2000 Annual Evaluation Report, OSM proposed to monitor this part of the State program closely and to resolve any issues through the ten-day notice process. At the conclusion of this review period, OSM had not issued any ten-day notices for this activity or identified any problems related to this practice.

7. Acid Mine Drainage Treatment/Bond Pool Adequacy

During the evaluation period, the State took action to increase revenue to its ABS, but as mentioned above, OSM has yet to determine if the changes will ensure the long-term solvency of the ABS, especially with regard to AMD treatment. On December 28, 2001, OSM published a notice in the *Federal Register* soliciting additional comments from the public on this topic. In addition, the State is revising its regulations to require more stringent contemporaneous reclamation of mountaintop mining operations. These revisions are to be acted upon during the regular 2002 legislative session. Pursuant to OSM's Part 733 notification of June 29, 2001, WVDEP must submit to OSM all final enacted legislation that fully resolves its ABS problems within 45 days after the close of the 2002 regular legislative session or by April 23, 2002.

8. Staffing

As discussed last year, on February 8, 2000, OSM provided WVDEP a 30 CFR part 732 notification regarding staffing. During this evaluation period, the State increased revenue for staffing and entered a Regulatory Program Improvement Cooperative Agreement with OSM to hire 59 additional employees. While more than half of the positions have been filled by WVDEP, additional vacancies within the agency have resulted due to normal attrition and filling the new positions with existing employees. The State still needs to hire 45 additional employees to reach its full staffing level of 286 positions by October 31, 2002.

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

To further the concept of reporting end results, the findings from performance standard and public participation evaluations are being collected for a national perspective in terms of the number and extent of observed off-site impacts, the number and percentage of inspectable units free of off-site impacts, the number of acres that have been mined and reclaimed and which meet the bond release requirements and have been released for the various phases of reclamation, and the effectiveness of customer service provided by the State. Individual topic reports are available in the Charleston Field Office which provide additional

details on how the following evaluations and measurements were conducted.

A. Off-Site Impacts

An evaluation of all West Virginia non-forfeited coal mining permits was conducted to determine the effectiveness of the State program in protecting the environment and the public from off-site impacts resulting from surface coal mining and reclamation operations. The evaluation revealed that 94 percent of the State's 2068 permits were off-site impact free.

During this evaluation period, the State conducted 19,539 inspections and issued 1037 enforcement actions. Of these enforcement actions, 216 off-site impacts were found on 135 permits. In comparison to last years 152 impacts on 117 permits, the number of impacts off-site has increased by 42, and the number of permits with off-site impacts by 15 percent. Most of the off-site impacts (97 percent) were categorized as minor. The figures representing resources affected, degree of impact, and type of impact can be found on Table IV.

Hydrology, representing 70 percent of the type of impact affected this year, still remains the most common type of impact affected by the mining operations. This category has decreased 3 percent from last year's 73 percent.

The State's Special Reclamation group conducted an off-site impact evaluation of the forfeited permits for the review period of July 1, 2000, through June 30, 2001. During this period of review 33 sites were added to the inventory. One of these sites has off-site impacts relating to hydrology. The degree of impact for this new site is moderate.

The State reported that 32 bond forfeiture sites were reclaimed during the review period, resulting in 2 off-site impacts relating to water quality problems being corrected. The forfeited permit inventory is 361 with 137 having off-site impacts. Of the 137 off-site impacts, 3 are related to land problems and 134 are related to water quality problems, primarily acid mine drainage.

The Special Reclamation group continues to maintain the inventory of the State's forfeited permits and are responsible for the reclamation of these sites. Some of the sites with off-site impacts are being monitored with plans being prepared to bring these sites into regulatory compliance, while others are in various planning stages in preparation for remedial work to be performed.

B. Reclamation Success

The success of the state program in ensuring reclamation on lands affected by surface coal mining operations is based on the number of acres meeting the bond release standards and subsequently released by the state. Phase I release indicates that the land contour has been returned to its approximate original configuration or an approved variation. The phase II release verifies that the vegetative cover or

other erosion control techniques have adequately stabilized the surface from erosion and the soil resources are adequate to support that cover. The phase III, or final release, verifies that the mine site is fully reclaimed to achieve the approved postmining land use. Restoration of the vegetative cover and surface and ground water are reflected by this release.

During the evaluation year, WVDEP granted 6,885 acres phase III bond release based on the successful completion of all reclamation requirements. Phase I and phase II bond releases during the year were 11,535 and 5,826 acres respectively. Inspections of bond release sites are discussed below in Section VII.A. It was found that overall the sites inspected demonstrated satisfactory reclamation and verified that West Virginia is conducting its bond release program in accordance with applicable law, regulations and policies and therefore can be used as indicators of standards of reclamation success.

C. Bond Release - Customer Service

The CHFO conducted this review to determine the timeliness, accuracy, completeness and appropriateness of WVDEP's customer service regarding bond release notification. WVDEP approves approximately 400 bond release requests per year. Ten bond release requests, approved during evaluation year 2000, were randomly selected from each of the four WVDEP District Offices for review. Each request was evaluated to determine the quality of WVDEP's action as it relates to customer service. In this case the customers are the permittees, the surface owners, the adjacent property owners, and local governments involved in the bond release process.

Bond release requirements and procedures are outlined under Section 22-3-23 of the West Virginia Surface Coal Mining and Reclamation Act and Section 38-2-12.2 of the West Virginia Surface Mining Reclamation Regulations. These laws and rules require the permittee and the WVDEP to provide notification and opportunity to comment to the public regarding the release of performance bond following reclamation.

Requirements for the permittee's bond release applications include: a copy of the newspaper advertisement, published on four successive weeks, with location, acres, permit number, and date approved, bond on deposit and amount sought to be released, and type of reclamation performed; proof-of-publication for the advertisement; copies of letters sent by the permittee to adjoining property owners and local governments; a Final Map for Phase I releases.

Requirements for the WVDEP include: conducting an inspection and evaluation of the reclamation work involved within 30 days of receipt of the release application; notifying surface owners of the inspection and provide an opportunity for them to participate; notifying the permittee in writing of their decision to release or not release bond within 60 days from the date of the initial publication of the advertisement; notifying the municipality where the permit is located at least 30 days prior to the release of the bond.

All of the requirements for the permittee's bond release applications were met on all 40 selected for review. Each application contained the requisite documentation necessary for the WVDEP to process the bond release.

The WVDEP did not conduct an inspection of the reclamation work within 30 days of receipt of the release application in most cases. In one case the initial inspection took place more than two years after the request was received. Some reasons given by bond release personnel for not meeting the 30-day requirement were: weather conditions; conflicts in scheduling inspections to meet with land owners who wish to participate; knowledge that the release could not be approved without revisions.

The WVDEP properly notified surface owners of the permittee's request for reclamation bond release by letter, which provided them with the opportunity to participate in the bond release inspection, in all bond release applications reviewed.

The WVDEP did not notify the permittee in writing of their decision to release or not release bond within 60 days from the date of the initial publication of the advertisement, in most cases. The time period for this notification ranged from 40 days to over two and one-half years.

VI. OSM Assistance - Regulatory Program

A. Site Specific Technical Assistance

OSM provided site specific technical assistance to the WVDEP regulatory program on three sites during this evaluation year. Staff from the Appalachian Regional Coordinating Center (ARCC) in Pittsburgh provided technical assistance in evaluating potential hydrologic impacts from two underground mines. One involved potential impacts to a stream and the other involved potential impacts to a recreational lake. The third site involved an analysis of a citizen complaint alleging water loss due to blasting from a surface mine.

B. Mountaintop Interim Interagency Permit Evaluation

In accordance with a Memorandum of Understanding resulting from the Settlement Agreement in *Bragg, et al. v. Robertson, et al*, assistance has been provided under the terms of a work plan signed by OSM and WVDEP on July 2, 1999. OSM has provided technical assistance to WVDEP in the review of large surface mining applications likely to require the issuance of a CWA Section 404 Individual Permit since April 1999. Assistance has also been provided in implementing State Cumulative Hydrologic Impact Assessment standards revised in 1999. The OSM team providing this assistance during EY 2001 consisted of three geologists/hydrologists, two engineers, a manager, and other staff as needed.

As of September 30, 2001, eleven permit applications were being jointly reviewed by OSM and WVDEP. It is likely that six of these operations will not require a CWA Individual Permit, however, OSM is continuing to

provide assistance until the WVDEP can reach a permit decision on each of the applications. During EY 2001, five jointly reviewed SMCRA permit applications were approved by WVDEP. A monthly report to the West Virginia Congressional Delegation, prepared by WVDEP, OSM, EPA, COE, and FWS, provides the current status of SMCRA and CWA application reviews. Each month's report is available for viewing on OSM's Web Page under the Index heading "Mountain Top Mining." OSM is also continuing to coordinate with the EPA, FWS, COE, and WVDEP to find better ways to coordinate the reviews necessary to begin a surface mining operation.

C. OSM Technical Training

As part of your technical transfer program, OSM conducted courses throughout the year in the latest technology related to active and abandoned mine reclamation. During EY 2001, OSM provided technical training to 18 WVDEP regulatory personnel through this program.

D. Underground Mine Hydrology/Mon Pool Research

OSM continued to conduct technical analysis regarding the flooding of underground mine voids. Decades of underground mining on the Pittsburgh Coal Seam have left many mine voids. These are either flooded or currently flooding. In 1996, these mine voids filled to a near-land surface. Mounting concern that the pool would start discharging into the Monongahela River prompted various agencies to collaborate on the problem in 1998. These included OSM, EPA, WVDEP, and the National Mine Land Reclamation Center (NMLRC), along with Consolidated Coal Company. These agencies are studying the effects of a mine pool buildup and considering possible solutions to the problem. Part of the overall work plan included developing a drilling program to install monitoring wells into several mines. Information gathered from the wells will augment information from existing boreholes. Data from these two sources should provide information about the parts of the mine pool where there are no known boreholes.

In EY 2001, OSM continued to monitor and collect data from the existing boreholes. Data analysis continued through the year. Technical problems developed with two boreholes, and OSM is evaluating the need for drilling additional holes in EY 2002. Monitoring and analysis will continue in EY 2002.

E. GIS Fill Inventory Cooperative Agreement

As part of the Mountaintop Mining EIS development, the WVDEP, assisted by cooperative agreements with OSM, has developed a geographic information system (GIS) inventory of valley fills or head-of-hollow fills in West Virginia. The GIS mapping inventory includes several features digitized as layers. Besides the fill boundaries, the layers include:

- VII. permit boundaries,
- VIII. drainage structures,
- IX. watersheds of the fills,
- X. mineral removal area,
- XI. coal seams, and

XII. watershed boundaries of the permit.

The second phase of the inventory consisting of approximately 109 pending permit applications was provided to OSM after the end of the evaluation year. The data is currently being reviewed for use in the EIS. WVDEP has continued to build its GIS database making permit information more readily available to all, including permit reviewers, permit applicants, consultants, and the public.

F. Permitting Consistency Phase I

In April 2000, OSM and WVDEP began to update agency guidance documents to reflect current requirements and policies of WVDEP. Six areas were chosen for development of revised policy documents during the first phase of the project. The areas chosen were: probable hydrologic consequences and hydrologic reclamation plans; cumulative hydrologic impact assessment; geology; topsoil and revegetation; subsidence; and, approximate original contour. The work plan for each of these areas also includes development of a training program for WVDEP permit review personnel and industry personnel involved in permit preparation. AOC guidance has been developed and training has been conducted. Topsoil guidance has been drafted, reviewed by WVDEP policy staff, and returned to OSM for revision. Geology guidance was distributed to WVDEP geology staff and comments have been received. The remaining topics are in process.

G. Financial Analysis of State's Alternative Bonding System Proposal

On August 8, 2001, WVDEP asked OSM to review draft statutory revisions commonly referred to as the 7-Up Plan. Under the draft legislation, the special reclamation tax would be increased from three cents to 14 cents per ton of clean coal mined for 39 months and reduced to seven cents thereafter with biennial review by an advisory council.

On August 9 and August 28, 2001, OSM provided WVDEP its informal review of the proposed statutory revisions. In addition, OSM released its financial analysis of the State's proposal on September 7, 2001. OSM cautioned WVDEP that it was only a preliminary analysis and its findings could change with the submission of additional information. Also, because all of the projections in the analysis were based on estimates, OSM advised the State that it would continue to refine those estimates. Based on its analysis of the State's 7-Up Plan, OSM concluded that a proposed special reclamation tax rate of 14 cents per ton of coal for up to 39 months and 7 cents thereafter would eliminate the deficit and meet bond forfeiture land reclamation and water treatment needs for about 9 years, but future adjustments in revenues would have to be made to satisfy the long-term needs of the State's alternative bonding system (ABS).

Because of the complexity of the issues surrounding the long-term solvency of the State's ABS, OSM plans to continue working with the State in evaluating this issue. In addition, OSM is soliciting further comments from the public on whether the State's ABS proposal, with its reliance on a coal production tax and an advisory council, is sufficient to satisfy existing and future bond forfeiture reclamation demands.

VII. General Oversight Topic Evaluations - Regulatory Program

A. Oversight Inspections

During Evaluation Year (EY) 2001, the Charleston Field Office conducted 438 inspections to evaluate West Virginia's program. Also, as part of the oversight inspection process, we conducted a review of West Virginia's bond release activities, and an aerial review of selected sites. Our findings for these review activities follow. The following is a breakdown of the inspections by type.

Citizen Complaint	3
Citizen Complaint Follow-up	2
Citizen Complaint Referral	16
Federal Complete	4
Federal Follow-up	4
Other Follow-up	6
Sample Inspection - Complete	55
Sample Inspection - Partial	159
Bond Release Review - Partial	28
Document Review - AMD	144
AMD Review	16
Other Oversight	1
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	438

One hundred forty-four of the inspections consisted only of review of documents pertaining to acid mine drainage (AMD). The reviews were conducted to determine if the State had properly removed the sites from the AMD inventory. If a determination could not be made by reviewing the documentation, an on-the-ground review was conducted.

A total of 294 on-the-ground inspections were conducted. One hundred eighty-three violations of the State Program were observed on 101 of the 294 inspections. This shows that violations of the State Program were observed on 34.3 percent of the inspections.

Most of the identified state program violations were properly handled by the State. Fifteen of the violations had been previously cited by the State, 136 were cited at the time of the inspection and 30 violations resulted in the issuance of Ten-Day Notices (TDN). State responses have been determined to be appropriate on 16 of the TDN violations. Responses have been received on the remaining 14 violations and are currently being evaluated. Following is a breakdown of violations by type.

Administrative

Mining Within Valid Permit	2
Mining Within Bonded Area	6
Terms and Conditions of Permit	19
Liability Insurance	3
Temporary Cessation	1
Administrative - Other	2

Hydrologic Balance

Drainage Control	25
Inspections and Certifications	18
Siltation Structures	11
Discharge Structure	2
Diversions	1
Effluent Limits	11
Ground Water Monitoring	2
Surface Water Monitoring	8
Drainage-Acid/Toxic Materials	1
Impoundments	1
Hydrologic Balance - Other	4

Topsoil and Subsoil

Removal	1
Storage and Protection	1

Backfilling and Grading

Exposed Openings	1
Contemporaneous Reclamation	8
Highwall Elimination	3
Downslope/Off-Site Disturbance	6
Stabilization	1
Backfilling and Grading - Other	1

Excess Spoil Disposal

Placement	2
Surface Stabilization	1

Coal Mine Waste (Refuse Piles and Impoundments)

Drainage Control	1
Surface Stabilization	1
Placement	6
Inspections and Certifications	2

Use of Explosives

Distance Prohibitions	3
Control of Adverse Effects	3
Blast Survey/Schedule	1
Warnings and Records	5
Use of Explosives - Other	1

Subsidence Control Plan

Revegetation

Vegetative Cover	1
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Distance Prohibitions

Roads

Construction	2
Drainage	3
Surfacing and Maintenance	6

Signs and Markers

Signs	1
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	183

B. Bond Release

This review consisted of on-the-ground inspections as well as an aerial review of bond released sites. Our 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 for which a release is requested, if the site is listed on the AMD inventory. Site reviews included: 33 - Phase I, 13 - Phase II, and 19 sites on which Phase III release had been granted.

Our review found that release standards were properly applied on most of the sites. One site, a load-out facility, was granted a Phase III release without being properly reclaimed. The proposed postmining land use was changed to industrial and the bond was released. The permittee has not taken action to develop the site as was planned. The WVDEP has initiated action to see that the site is developed as planned or that the site is properly reclaimed.

On another site, AMD was identified at the site. The permittee had requested a Phase I release. The WVDEP had appropriately denied the release. However, the WVDEP had not taken any action to cause the water to be treated. As a result of a joint OSM/State inspection, the WVDEP cited the violation.

Another site, which was identified in EY 2000, the State released the bond without requiring highwall elimination. The violation existed on two contiguous permits. The State's TDN response was being evaluated at the end of EY 2000. The State response was reviewed and their action was determined to be inappropriate. OSM initiated Federal enforcement on both permits. After the Federal Notices of Violation were issued, the permittee entered into a settlement agreement with OSM. The permittee has now posted bond and obtained permit coverage for the site.

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

C. Aerial Inspections

This evaluation focused on sites which received a Phase III bond release since October 1, 1999. The review was conducted in counties which have

been determined to have a high probability for AMD. The sites were reviewed to see if seeps, which had not been previously identified, were present and to see if the approved postmining land use had been achieved.

The sites to be reviewed were randomly selected from a list of sites which had received a Phase III release between October 1, 1999 and November 15, 2000.

Thirty-six sites, which had received Phase III bond release, were reviewed. No probable AMD problems were observed on the released sites. However, one site was observed which had not achieved postmining land use. This site is discussed under our bond release section.

In addition to reviewing sites which had been bond released, inspectors conducted aerial reviews of large mining operations prior to conducting on-the-ground inspections. This provided a better overview of the site and assisted our inspectors in identifying potential violations. An aerial review of selected refuse impoundments was also conducted.

D. Slurry Impoundment Inventory

During the evaluation period, OSM, in cooperation with WVDEP, compiled an inventory of coal-related impoundments in the State with storage volumes of 20-acre feet or more. This inventory was developed using the State's dam control inventory, the impoundment inventory dated November 8, 2000, of the U.S. Mine Safety and Health Administration (MSHA), and OSM oversight inspection reports. In addition, OSM reviewed all State permit files which were believed to include a coal refuse impoundment. As discussed in IV.B.6, this evaluation was part of a larger oversight initiative to ensure that coal refuse impoundment breakthroughs into underground mine workings do not occur in the future.

The review found that there are 147 sediment, slurry, freshwater, or other impoundments located in the State. However, for the purpose of the review, there were only 130 impoundments with reservoir volumes equal to or greater than 20-acre feet. OSM identified 15 impoundments where we could not determine their storage volumes based on file reviews. In addition, OSM identified 21 impoundments that are not on WVDEP's impoundment inventory. On October 5, 2001, OSM provided its findings to the State, and requested its assistance in resolving the differences in the inventories.

At the same time, OSM also provided its findings to MSHA Districts 3 and 4. OSM identified 80 impoundments that are not on MSHA's impoundment inventory. Thirty-two of the impoundments are in District 3 and forty-eight are in District 4. MSHA District 4 provided OSM an updated active impoundment listing for its District that indicated that MSHA's national inventory may not be complete. OSM intends to continue working with WVDEP and MSHA to resolve the differences in the impoundment inventories.

E. AMD Inventories for Active and Bond Forfeiture Sites

It was related in last years annual evaluation report that OSM and WVDEP were working to reach agreement on those permanent program bond forfeited permits with acid mine drainage (AMD) that should appear on an Inventory. Work continued on this joint effort into this evaluation year and an initial Inventory was prepared in March 2001. That Bond Forfeiture AMD Inventory included 155 permits and 322 discharge sites. (OSM and WVDEP agreed that for purposes of the Inventory a "discharge site" represents the location on the permit where water is sampled to measure the flow and assess its untreated quality before it leaves the permit. Drainage on permits is not always conveyed to one location; therefore, some permits may have multiple discharge sites.)

Subsequent to March, WVDEP prioritized the Inventory to differentiate between those permits they believed would require treatment and those where the discharge or quality was not sufficient to warrant treatment. After considerable interaction between OSM and WVDEP regarding the prioritization of sites, a revised inventory was prepared that includes 148 permits and 322 discharge sites. OSM has divided the Inventory into three categories that includes those bond forfeited permits that require treatment (113 permits and 279 discharge sites); Permits where the WVDEP is already conducting chemical treatment (9 permits and 9 discharge sites); and Permits WVDEP determined as low priority (26 permits and 34 discharge sites). Among other things, OSM plans to conduct file and field evaluation during 2002 of this last category to determine the appropriateness of WVDEP's lower prioritization ranking for these permits.

OSM and WVDEP independently employed separate costing methodologies to estimate the total annual treatment cost and capitol costs for the inventoried permits. For all 148 permits OSM estimates that the annual treatment cost to be approximately \$6 million per year and capitol costs totaling approximately \$17 million. WVDEP estimates the total annual treatment for the same sites to exceed \$4.6 million and the capitol costs to be approximately \$20 million.

During the 2002 evaluation year, OSM and WVDEP plan to continue their efforts and coordination to maintain and improve the Bond Forfeiture AMD Inventory.

WVDEP also conducted its fourth AMD inventory of active mining sites in October 2000 of this evaluation year, but is reevaluating that data due to possible errors, duplications, and other quality control issues. The 2000 Active Mine Drainage Inventory includes 363 permits and 635 discharge sites. OSM estimated the total annual treatment cost for these permits to be approximately \$24 million. Using WVDEP's 1998 Active Mine Drainage Inventory, OSM had estimated the annual treatment cost to be \$25 million for 352 permits with 574 discharge sites. Estimated capitol costs between the two agencies were also very similar but are not useful in projections because the treatment facilities are already constructed. OSM's annual treatment costs include a projection for maintenance and refurbishing existing facilities. OSM plans to coordinate with WVDEP on revisions to the October 2000 Active Mine Drainage Inventory during the 2002 evaluation year.

To determine treatment and capitol costs for both active and bond forfeiture permits OSM developed a cost-estimating treatment methodology. The methodology (called Turbo-Treat) was designed to provide OSM personnel with a time-efficient and uniform methodology for determining the cost to treat mine drainage on a global scale but not necessarily permit specific costs. To achieve this task, many assumptions relating to treatment facilities (treatment facility components, size and shape of ponds, labor rates, etc,) were incorporated into the methodology. It is important to note that the use of Turbo-Treat to calculate costs other than global treatment costs (e.g. the cost of a single treatment facility) is inconsistent with the basic assumptions of the methodology.

F. Program Amendment Status

Homesteading

On March 14, March 28, and April 6, 2000, WVDEP submitted an amendment to its program. The amendment concerned changes to the State's Surface Mining Reclamation Regulations made by the State Legislature in House Bill 4223, and changes made to the Code of West Virginia in Senate Bill 614. Most of the amendment was intended to comply with the Consent Decree that was agreed to by the plaintiffs and the WVDEP and approved by the U.S. District Court for the Southern District of West Virginia on February 17, 2000, in the matter of Bragg v. Robertson, Civil Action No. 2:98-0636 (S.D.W.Va.). On April 25, 2000, OSM announced receipt of the proposed amendment in the *Federal Register* and requested public comments (65 FR 24158-24162). To expedite the review of the amendment, OSM separated the amendment into two parts - amendments to the proposed rules at new section CSR 38-2-7.5 concerning "homesteading" as a postmining land use for permits that meet the requirements for a variance from AOC; and changes to the Code of West Virginia in Senate Bill 614 and the regulatory changes at CSR 38-2-7.4 concerning commercial forestry postmining land use for mountaintop removal mining operations receiving an AOC variance, and various other regulatory changes. During the last reporting period, on August 18, 2000, OSM published its final decision in the *Federal Register* on the proposed statutory revisions in Senate Bill 614 and the regulatory changes at CSR 38-2-7.4 regarding commercial forestry (65 FR 50409-50431). OSM published its final decision in the *Federal Register* on December 21, 2000, approving, with certain exceptions, West Virginia's homesteading rules (65 FR 80308-80328). As a result of that decision, OSM added thirteen more required amendments.

Blasting

On October 30, 2000, the WVDEP submitted another amendment to its program (Administrative Record Number WV-1187). The amendment concerned the addition of West Virginia Title 199, Series 1 regulations, entitled Surface Mine Blasting Rule. These regulations consisted of new blasting provisions and blasting provisions that have been relocated or derived from previously approved West Virginia blasting provisions. OSM approved, with certain exceptions, statutory revisions regarding blasting (64 FR 61507-61518) on November 12, 1999. The current amendment is intended to revise the State's blasting rules to implement

the approved statutory provisions. On December 5, 2000, OSM published a *Federal Register* notice announcing receipt of the amendment and a public comment period on it (65 FR 75889-75897). The proposed regulatory revisions are still under review by OSM.

Required Amendments

On November 30, 2000, the WVDEP submitted an amendment to its program consisting of written response to several required regulatory program amendments codified at 30 CFR 948.16 (Administrative Record Number WV-1189). In its letter, WVDEP stated that the amendment submittal is a revision of its previous letter to OSM dated August 3, 2000, (Administrative Record Number 1172). The WVDEP stated in its November 30, 2000, letter that the required program amendments codified at 30 CFR 948.16(jjj), (kkk), and (lll) regarding its alternative bonding system would be addressed separately. The State indicated that it had submitted draft proposed regulations to the State legislature during its 2001 regular session. The WVDEP said that the draft proposed language would satisfy the required amendments codified at 30 CFR 948.16(xx), (qqq), (ffff), (gggg), (hhhh), (jjjj), (nnnn), and (pppp). The WVDEP claimed that its existing program requirements were as effective as the Federal requirements, and it provided reasons why it did not have to revise its program to satisfy the remaining required amendments. OSM announced receipt of the proposed amendment in the January 3, 2001, *Federal Register*, and invited public comment on the adequacy of the proposed amendment (66 FR 335-340). The public comment period closed on February 28, 2001. This proposed amendment is still under review by OSM.

732 Deficiencies

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) provided 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 amendment is intended to satisfy thirty-one deficiencies that are set forth in seven Part 732 letters from OSM. On January 12, 2001, a notice announcing receipt of the amendment and a public comment period on it was published in the *Federal Register* (66 FR 2866-2869). The public comment period closed on February 12, 2001. OSM is still evaluating the proposed amendment.

House Bill 2663

On May 2, 2001, WVDEP submitted another amendment to its program consisting of changes to the West Virginia Surface Mining Reclamation Regulations at 38 CSR 2, as amended by 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 closed on July 13, 2001. OSM is still reviewing this amendment.

Master Land Use Plan

On May 21, 2001, WVDEP submitted an amendment to its program (Administrative Record No. WV-1217). The amendment concerns reclamation plan requirements and authorizes the submittal of a master land use plan for postmining land use. The amendment also revises provisions regarding the Office of Coalfield Community Development. On June 20, 2001, OSM published a *Federal Register* notice announcing receipt of the amendment and a public comment period on it (65 FR 33032-33034). The proposed statutory revisions are still under review by OSM.

Alternative Bonding System

On September 24, 2001, WVDEP formally submitted statutory revisions concerning its alternative bonding system, as amended by Enrolled Senate Bill 5003 (Administrative Record Number WV-1238). The amendment was submitted in response to our Part 733 notification of June 29, 2001, and certain outstanding required amendments at 30 CFR 948.16(jjj), (kkk) and (lll). In accordance with our Part 733 notification, the State also informed us on November 30, 2001, that it is developing regulatory changes that will be submitted to the Legislature during the upcoming regular legislative session that begins on January 9, 2002 (Administrative Record Number WV-1253). The amendment adds W. Va. Code section 22-1-17, which establishes the Special Reclamation Fund Advisory Council. The amendment also revises W. Va. Code 22-3-11 by increasing the special reclamation tax rate and revises W. Va. Code 22-3-12 by deleting certain site-specific bonding provisions. On October 24, 2001, OSM published a *Federal Register* notice announcing receipt of the proposed amendment and soliciting public comments on it (66 FR 53749-53754). The public comment period closed on November 23, 2001. A *Federal Register* notice approving the amendment, but deferring on the broader issue of whether it satisfies the required amendment at 30 CFR 948.16(lll) was published on December 28, 2001. A *Federal Register* notice providing for a 90-day public comment period on that issue was published on the same day.

G. Costs Charged to SOAP Grant

The OSM ARCC grants staff conducted a review of charges to Small Operator Assistance Program grants during the period October 1, 1996, to August 31, 2001, in an effort to determine 1) whether the request for an additional \$133,779 was justified, and 2) to review allegations that SOAP funds had been misappropriated beginning with the FY 96 SOAP grant. The need for an additional \$133,779 could not be justified, and review of the allegations of misappropriation found that SOAP costs were paid from the oldest open SOAP grant without regard to the year with which such costs may have been associated. This was a misapplication of funds. However, all spent funds were used to pay SOAP obligations, and all unspent funds were deobligated and returned to OSM. Therefore, while there was misapplication of funds, there was no misappropriation. Since there was no misappropriation, there was no need for reimbursement, although there is a need for strengthened procedures.

H. AMD Prevention

The WVDEP and OSM prepared a workplan for the topic *Acid Mine Drainage Prevention* to be complete during the evaluation period. The purpose of

the review was to determine whether potential long-term AMD problems are being identified during permit review or early in the mining process. The review was also to determine whether measures to prevent or remediate the occurrence of postmining AMD were planned and implemented rather than just ensuring that water quality standards were being met during mining. This evaluation is currently underway.

I. Slurry Impoundments/Blowout Study

During the evaluation period, OSM initiated an oversight effort to ensure that coal refuse impoundment breakthroughs into underground mine workings do not occur in the future. As part of that initiative, OSM and WVDEP signed a detailed workplan on December 6, 2000.

The workplan required OSM to conduct a side-by-side analysis of the State's coal refuse impoundment regulations. Differences between the State and Federal regulations were identified and provided the State. Based on discussions with State officials, OSM agreed to consider the language differences during further oversight to determine if there was any effect, as a result of any differences, in actual program administration. OSM is continuing to work with the State to ensure that its coal refuse impoundment regulations are as stringent as the Federal regulations.

OSM also reviewed State and Federal databases and State permit files and developed an inventory of all coal refuse, freshwater and sediment impoundments in the State with a storage capacity of 20 acre-feet or more. An inventory of 177 sites was initially developed by OSM. After coordinating with WVDEP, the inventory was reduced to 147 sites. This inventory was provided to WVDEP and MSHA Districts 3 and 4 for comment in October 2001. See VII.B for further discussion of this issue.

In an effort to improve the technical reviews of coal refuse impoundments, OSM is reviewing permitted sites with coal refuse impoundments to ensure that recent State evaluations are complying both on paper and in the field with its own regulations. To complete this review, OSM must now consider the State's July 2002 order to all companies with impoundments to fully consider the State's implementation of impoundment requirements.

J. Underground Mine Hydrology/Impacts to Surface Water

In EY 2000, OSM and WVDEP began to see interest from several different parties on the impact of underground mining on the amount of surface water available to a stream. Citizen groups and individual citizens expressed concern about not only the amount of water, but also the changes in streambed configuration and how this affects stream flow characteristics.

In EY 2001, WVDEP and OSM conducted a limited inventory of impacts to stream flow from underground mining. WVDEP staff contacted field supervisors and individual inspectors to inventory their institutional knowledge of these types of impacts. Based on this limited initial inventory, both agencies felt additional study was needed to further quantify the impacts, and determine if they needed to make any changes

in the regulatory approach. Because of these efforts, OSM and WVDEP prepared and signed a work plan to conduct additional study on these impacts during EY 2002.

K. Mountaintop Mining Action Plan

As part of OSM's mountaintop mining oversight report, OSM and WVDEP announced a joint agreement to undertake certain steps to resolve outstanding mountaintop mining issues. Appendix C of the report contained an action plan that was signed by both agencies on April 27, 1999. The following summarizes the fifteen components of that action plan and the status of each.

- WVDEP was to develop, with OSM assistance, criteria for assessing excess spoil calculations in determining AOC and begin implementing the concept on a pilot basis.

WVDEP published its AOC criteria on March 18, 1999, and began using it in evaluating permit applications. Negotiations later led to the development of the AOC Process Guidance Document, which is commonly called the AOC Plus Guidelines. Those guidelines were to further clarify the process of determining when AOC has been achieved and optimizing spoil placement for excess spoil fills. OSM approved the guidelines on March 24, 2000, and WVDEP began implementing them on June 5, 2000. WVDEP has been evaluating new mountaintop mining applications using the AOC Plus Guidelines. OSM has been providing assistance in this area with certain large mountaintop applications as described in Section VI.B. OSM also plans to select recently approved permit applications to evaluate the implementation of those guidelines and determine if similar guidance would be suitable on a regional or national basis.

- WVDEP was to review current permit applications to assure that the proper classification of mining type and applicable AOC variance was reflected in the State's permitting database, Environmental Resources Information System (ERIS). OSM agreed to continue working with WVDEP to improve its data collection efforts.

OSM's review of some permit applications found the type of postmining land use and the AOC variance listed in ERIS for several mountaintop and steep slope mining permits to be questionable. OSM met with the State and discussed those findings. The State has verified the data for the permit applications with its inspectors and modified ERIS, where necessary.

- WVDEP was to ensure that mountaintop mining permit applications with AOC variances require information regarding expected need and market data.

WVDEP submitted statutory revisions regarding expected need and market data in March 2000, and OSM approved the amendment on August 18, 2000, (65 FR 50410). OSM has been providing assistance in this area with certain large mountaintop applications as described in Section VI.B. OSM plans to review randomly selected

mountaintop removal permit applications to determine how well these criteria are applied where OSM assistance is not provided.

- WVDEP was to clarify how it interpreted its "commercial woodland" requirements and submit other criteria which demonstrate that "commercial forestry" constitutes an acceptable postmining land use for mountaintop mining operations with AOC variances.

Last year, the State submitted regulations including "commercial forestry" as an acceptable postmining land use for mountaintop removal mining operations. In addition, the State removed "commercial woodlands" as an approvable postmining land use for mountaintop removal mining operations. OSM approved the revisions on August 18, 2000 (65 FR 50410). No further action is required.

- WVDEP agreed to modify its program to clarify that the term "public use" will be interpreted the same as "public facility use" at Section 515(c)(3) of SMCRA. In addition, the State agreed to stop approving "fish and wildlife habitat and recreation lands" as an allowable postmining land use for mountaintop mining operations.

Last year, the State submitted a program amendment to delete "fish and wildlife habitat" as an approvable postmining land use for mountaintop removal mining operations. WVDEP also revised the term "public use" to "public facility including recreational uses." OSM approved the changes on August 18, 2000, to the extent that "public facility including recreational uses" is interpreted to mean the same as the SMCRA term "public facility (including recreational facilities) use" (65 FR 50410).

- WVDEP agreed to review mountaintop removal mining permits with inappropriate postmining land uses. The State also agreed to revise existing permits that allow for unauthorized postmining land uses of "forestry" and "fish and wildlife habitat and recreation lands." To assist the State in its evaluation, OSM agreed to publish a postmining land use policy document for mountaintop mining operations with AOC variances.

On June 26, 2000, OSM issued its final policy clarifying allowable postmining land uses and related permitting requirements for mountaintop removal and steep slope mining operations with AOC variances. On August 18, 2000, OSM approved the State's commercial forestry program amendment with certain exceptions (65 FR 50409-50431). "Commercial forestry" is now allowed, but "fish and wildlife habitat" is no longer an acceptable postmining land use for mountaintop removal mining operations. Neither postmining land use is allowed for steep slope mining operations with AOC variances. Last year, OSM reviewed ERIS and identified thirteen mountaintop removal mining permits and eight combination mountaintop removal and steep slope mining permits with AOC variances that require further evaluation by the State. WVDEP has not completed its investigation of all of the permits. However, in March 2001, the State did issue letters to five operators with not started operations requiring them to submit modifications for

those permits with unallowable postmining land uses. Depending on the outcome of its permit evaluations and field investigations, the State may require revisions to other permits.

- WVDEP agreed to modify its permit application form and review document to include specific findings for mountaintop-removal and steep-slope mining AOC variances.

WVDEP has modified its permit application form to require the specific findings. OSM plans to sample newly issued permits to ensure compliance with the revised forms and procedures.

- WVDEP agreed to modify the West Virginia program to limit approval of steep-slope AOC variances to specific postmining land uses authorized under SMCRA.

WVDEP submitted a program amendment that limited the approval of steep slope AOC variances to certain specific postmining land uses. On October 1, 1999, OSM approved the State's amendment to CSR 38-2-14.12.a.1. which limits the postmining land uses approvable for steep slope mining operations with AOC variances to industrial, commercial, residential or public use, including recreational facilities (64 FR 53201). No further action is required for this element.

- WVDEP agreed to review permits with steep-slope mining AOC variances to determine the appropriateness of the variance and the postmining land use.

On June 26, 2000, OSM issued its final policy clarifying allowable postmining land uses and related permitting requirements for mountaintop removal and steep slope mining operations with AOC variances. Last year, OSM reviewed ERIS and identified sixteen steep slope mining permits and eight combination mountaintop removal and steep slope mining permits with AOC variances that require further evaluation by the State. WVDEP has not completed its investigation of all of the permits. However, in March 2001, the State did issue letters to five operators with not started operations requiring them to submit modifications for those permits with unallowable postmining land uses. Depending on the outcome of its permit evaluations and field investigations, the State may require revisions to other permits.

- WVDEP agreed to work with OSM to further clarify how SMCRA and WVSCMRA are to be applied with regard to protecting riparian vegetation, natural watercourses and the buffer zones of intermittent or perennial streams while allowing the disposal of excess spoil in streams.

Completion of this task is an integral part of the EIS being prepared under the 1998 Settlement Agreement in Bragg v. Robertson (see Section IV.B.2.). WVDEP and OSM are participants with five other agencies in these efforts.

- WVDEP agreed to participate with OSM in the evaluation of the probable hydrologic consequences determinations, cumulative hydrologic impact assessments and hydrologic reclamation plans of large mountaintop mining operations to ensure that adequate steps are being taken to minimize disturbances to the hydrologic balance.

During the evaluation period, the WVDEP revised its permit application form to include a section entitled hydrologic reclamation plan. In cooperation with OSM, WVDEP is developing guidance documents and making other procedural changes to improve the evaluation of the hydrologic portion of permit applications. See Section D below for further discussion of this ongoing effort.

- WVDEP agreed to participate with OSM in the evaluation of mountaintop mining permits to ensure compliance with the contemporaneous reclamation requirements of the approved State program.

Last year, OSM, in cooperation with WVDEP, completed an evaluation of the State's enforcement of its contemporaneous reclamation requirements. No significant problems were identified. Pursuant to the January 3, 2000, Consent Decree, WVDEP agreed to make site-specific written findings for permits with contemporaneous reclamation variances. The State has modified its permitting procedures to comply with this requirement. OSM has been providing assistance in this area with certain large mountaintop applications as described in Section VI.B. OSM plans to evaluate some newly approved permits to ensure that the required findings are being made.

- WVDEP agreed to cooperate with OSM and allow Federal oversight and technical assistance activities to occur prior to the issuance of surface mining permits.

Interagency review of applications prior to permit issuance is still being conducted by OSM and WVDEP to ensure compliance with SMCRA and CWA requirements. For further discussion of these efforts, see Section D below.

VIII. Abandoned Mine Land Reclamation Program (AMLR)

A. General

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

1. General Program Information

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

- The regular construction program abates high priority, 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.

2. Appalachian Clean Streams Initiatives (ACSI)

In 1995, OSM started a new program within the AML program called the Appalachian Clean Streams Initiative (ACSI). The ACSI original goals were to raise awareness about the condition of streams and rivers polluted by AMD from abandoned coal mines, to coordinate with researchers, academia, the industry and others to improve AMD remediation technology, and to facilitate and provide assistance to State and Federal agencies and private organizations in addressing and remediating AMD problems.

Beginning in 1997, OSM received funding from Congress for the ACSI. They then distributed this money to State AML Programs to fund clean up of abandoned sites causing pollution to streams and rivers. Over the past four years, West Virginia has received \$4,894,932 for ACSI projects. The WVDEP has earmarked these funds for AMD remediation at eleven abandoned coal mine sites. To date, WVDEP has expended \$3,610,922 of the total award amount and completed construction on ten of the eleven projects.

Measures to improve water quality at the completed projects involved construction of various passive treatment systems including wetlands, open limestone channels and successive alkalinity producing systems (SAPS). Additionally, land reclamation accounted for a significant portion of any water quality improvement as several sites involved covering and vegetating exposed toxic refuse material.

The WVDEP office of AML continued to cooperate on three AMD clean up projects with Watershed Organizations that received funding from OSM's Watershed Cooperative Agreement Program (WCAP). The partnering organizations include Friends of the Cheat, Lower Paint Creek Association and Friends of Deckers Creek. With their WCAP grant monies, these organizations will contribute nearly \$240,000 toward the cost of water quality improvement at three project sites. Work continued on all three projects during 2001.

3. Drawdown Analysis

Appalachian Regional Coordinating Center Grants staff conducted quarterly drawdown analysis at the WVDEP during the period October 2000 through September 2001. Drawdown activities were found to be in compliance with applicable requirements as follows: 1) fund disbursement was as close to fund receipt as was administratively feasible; and, 2) Funds were not drawn in excess of immediate disbursement needs.

B. Noteworthy Accomplishments

1. Construction Activities

Table 9 of Appendix A lists the cumulative accomplishments in West Virginia. A comparison of this table with the EY 2000 West Virginia Evaluation Report shows that during EY 2001 West Virginia reclaimed:

- 1.4 miles of clogged streams;
- 2,600 linear feet of dangerous highwalls;
- 82 dangerous impoundments;
- 370 acres of dangerous piles and embankments;
- 20 acres of dangerous slides;
- 78 hazardous equipment and facilities;
- 2 hazardous water bodies;
- 1 industrial and residential waste sites;
- 208 portals;
- 6 sites of polluted waters, agricultural, and industrial;
- 5,914 acres of polluted water human consumption¹;
- 14.2 acres of subsidence;
- 17.9 acres of surface burning;
- 7 vertical openings;
- 29 acres of gob piles;
- 9 acres of gob; and
- 23 acres of spoil areas.

2. Emergencies

In FY 2001 the State of West Virginia sought and received approval for 50 AML Emergency projects with an estimated total cost of \$1,569,410 resulting in an overall average estimated cost of \$31,388 per project. Included in this group were 28 pothole type mine subsidences, nine portals, three vertical openings, six earth slides, one burning refuse pile and three dangerous impoundments (actual or potential blowouts). Little in the way of field oversight was completed because of Title V priorities.

C. OSM Technical Assistance

1. Technical Training

¹Reporting units changed for this problem code from numbers of hook ups to acres of area impacted. This large jump from last year is a byproduct of the change in reporting procedures.

As part of our technical transfer program, OSM conducted courses throughout the year in the latest technology related to active and abandoned mine reclamation. During EY 2001, OSM provided technical training to four WVDEP AML personnel through this program.

2. Site Specific Assistance

During FY 2001, State Emergency Coordinators in a few instances called ahead to coordinate with CHFO about the appropriateness of certain projects for emergency funding or status. In some cases, it was determined that other approaches to funding or changes in exact scope of work would be better. This occurred a few times. Documentation of it would require some research time.

D. Results of Enhancement and Performance Reviews

1. Abandoned Mine Land Emergency Oversight

For every potential AML emergency project submitted, a paper review of the submittal is conducted to ensure it meets the AML guidelines and established grant criteria (GMT 10-7). This was done for all 50 sites approved for FY 2001. OSM reviewed eight of the approved AML emergencies to obtain final cost data. The reviews did not find any problems.

At the latter part of the fiscal year, OSM conducted site reviews on 10 AML-funded emergency projects at various stages of completion. This was primarily a file review at the WVDEP office in Nitro. Most of these reviews occurred at the pre-bid conferences and no serious problems were noted.

2. Drawdown Analysis

Appalachian Regional Coordinating Center Grants staff conducted quarterly drawdown analysis at the WVDEP during the period of October 2000 through September 2001. Drawdown activities were found to be in compliance with applicable requirements as follows: 1) fund disbursement was as close to fund receipt as was administratively feasible; and, 2) funds were not drawn in excess of immediate disbursement needs.

3. Site Inspections (AML)

AML Emergency Coordinator did a field review at one prebid. During the evaluation period, 10 field checks were conducted and reports submitted. As stated above, the reviews found no significant problems.

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>			
1998	54.7	118.0	172.7
1999	54.3	103.4	157.7
2000	59.8	98.8	158.6
Total	168.8	320.2	489.0
<p>^ACoal production as reported in this table is the gross tonnage which includes coal that is sold, used, or transferred as reported to OSM by each mining company on form OSM-1 line 8(a). Gross tonnage does not provide for a moisture reduction. OSM verifies tonnage reported through routine auditing of mining companies. This production may vary from that reported by States or other sources due to varying methods of determining and reporting coal production.</p>			

TABLE 2

INSPECTABLE UNITS As of September 30, 2001												
Coal mines and related facilities	Number and status of permits								Insp. Unit^D	Permitted acreage^A (hundreds of acres)		
	Active or temporarily inactive		Inactive		Abandoned		Totals					
			Phase II bond release									
	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	Total
STATE and PRIVATE LANDS REGULATORY AUTHORITY: STATE												
Surface mines	0	542	3	118	13	144	16	804	820	10.7	2128.9	2139.6
Underground mines	0	657	0	198	1	141	1	996	997	0.1	315.3	315.4
Other facilities	0	414	1	120	3	65	4	599	603	0.5	428.0	428.5
Subtotals	0	1,613	4	436	17	350	21	2,399	2,420	11.3	2872.2	2883.5
FEDERAL LANDS REGULATORY AUTHORITY: STATE												
Surface mines	0	0	0	0	0	0	0	0	0	0	0	0
Underground mines	0	2	0	2	0	1	0	5	5	0	0.6	0.6
Other facilities	0	0	0	4	0	0	0	4	4	0	0.5	0.5
Subtotals	0	2	0	6	0	1	0	9	9	0	1.1	1.1
ALL LANDS ^B												
Surface mines	0	542	3	118	13	144	16	804	820	10.7	2128.9	2139.6
Underground mines	0	659	0	200	1	142	1	1,001	1,002	0.1	315.9	316.0
Other facilities	0	414	1	124	3	65	4	603	607	0.5	428.5	429.0
Totals	0	1,615	4	442	17	351	21	2,408	2,429	11.3	2873.3	2884.6
Average number of permits per inspectable unit (excluding exploration sites)											<u>1</u>	
Average number of acres per inspectable unit (excluding exploration sites)											<u>118.8</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>417</u>									On Federal lands: <u>0</u>		^C	
<p>IP: Initial regulatory program sites. PP: Permanent regulatory program sites.</p> <p>^A When a unit is located on more than one type of land, includes only the acreage located on the indicated type of land.</p> <p>^B Numbers of units may not equal the sum of the three preceding categories because a single inspectable unit may include lands in more than one of the preceding categories.</p> <p>^C Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management.</p> <p>^D Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management.</p>												

TABLE 3

STATE PERMITTING ACTIVITY As of September 30, 2001												
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	31	30	10,247	34	11	181	10	9	675	75	50	11,103
Renewals		48			52			35			135	
Transfers, sales and assignments of permit rights	NA	58		NA	92		NA	38		NA	188	
Small operator assistance	1	1		4	0		0	0		5	1	
Exploration permits	0	0		0	0		0	0		0	0	
Exploration notices ^B		NA			NA			NA			133	
Revisions (exclusive of incidental boundary revisions)		177			109			70			296	
Incidental boundary revisions		88	813		136	505		40	295		264	1,613
Totals	32	402	11,060	38	400	686	10	192	970	80	1,067	12,716

NA Information not available from State data.

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

^B State approval not required. 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			
		mino r	moderat e	majo r	mino r	moderat e	majo r	mino r	moderat e	majo r	mino r	moderat e		majo r
TYPE OF IMPACT	Blasting	10	1	0	5	0	0	0	0	0	1	0	0	17
	Land Stability	2	0	0	35	0	1	1	0	0	0	0	0	39
	Hydrology	0	0	0	0	0	0	147	2	3	0	0	0	152
	Encroachment	2	0	0	5	0	0	0	0	0	1	0	0	8
	Other													
	Total	14	1	0	45	0	1	148	2	3	2	0	0	216
Total number of inspectable units: <u>2,068</u>														
Inspectable units free of off-site impacts: <u>1,933</u>														
OFF-SITE IMPACTS ON BOND FORFEITURE SITES														
DEGREE OF IMPACT		RESOURCES AFFECTED											Total	
		People			Land			Water			Structures			
		mino r	moderat e	majo r	mino r	moderat e	majo r	mino r	moderat e	majo r	mino r	moderat e		majo r
TYPE OF IMPACT	Blasting													
	Land Stability						1							1
	Hydrology							75	34	25				134
	Encroachment					2								2
	Other													
	Total					2	1	75	34	25				137
Total number of inspectable units: <u>361</u>														
Inspectable units free of off-site impacts: <u>293</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 	11,535
Phase II	<ul style="list-style-type: none"> • Surface stability • Establishment of vegetation 	5,826
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 	6,885
	Bonded Acreage Status ^A	Acres
	Total number of bonded acres at end of last review period ^B	282,920
	Total number of acres bonded during this evaluation year	11,103
	Number of acres bonded during this evaluation year that are considered remaining, if available	NA
	Number of acres where bond was forfeited during this evaluation year (also report this acreage on Table 7)	2,262
^A Bonded acreage is considered to 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 (A)

STATE OF WEST VIRGINIA INSPECTION ACTIVITY		
PERIOD: OCTOBER 1, 2000 - SEPTEMBER 30, 2001		
Inspectable Unit Status	Numbers of Inspections Conducted	
	Partial	Complete
Active*	10,060	4,569
Inactive*	1,129	2,867
Abandoned*	10	13
Exploration*	102	396
Total	11,301	7,845

** Use terms as defined by the approved State program.*

TABLE 6 (B)

STATE OF WEST VIRGINIA ENFORCEMENT ACTIVITY		
PERIOD: OCTOBER 1, 2000 - SEPTEMBER 30, 2001		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	1,079	1,079
Failure-to-Abate Cessation Order	63	63
Imminent Harm Cessation Order	33	33
<i>* Does not include those violations that were vacated.</i>		

TABLE 6(C)

STATE OF WEST VIRGINIA LANDS UNSUITABLE ACTIVITY			
PERIOD: OCTOBER 1, 2000 - SEPTEMBER 30, 2001			
Number of Petitions Received	0		
Number of Petitions Accepted	0		
Number of Petitions Rejected	0		
Number of Decisions Declaring Lands Unsuitable	0	Acreage Declared as Being Unsuitable	
Number of Decisions Denying Lands Unsuitable	0	Acreage Declared as Being Unsuitable	

TABLE 7

STATE BOND FORFEITURE ACTIVITY* (Permanent Program Permits)		
Bond Forfeiture Reclamation Activity by SRA	Number of Sites	Permit Acres
Sites with bonds forfeited that were unreclaimed as of September 30, 2000 (end of previous evaluation year) ^A	411	22,891
Sites with bonds forfeited during Evaluation Year 2001 (current year)	37	2,262
Sites with bonds forfeited that were repermited during Evaluation Year 2001 (current year)	0	0
Sites with bonds forfeited that were reclaimed during Evaluation Year 2001 (current year)	16	476
Sites with bonds forfeited and requiring no further reclamation as of September 30, 2001 (end of current year)	3	96
Sites with bonds forfeited that were unreclaimed as of September 30, 2001 (end of current year) ^{A and B}	429	24,581
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of September 30, 2000 (end of previous evaluation year) ^c	16	1,124
Sites where surety/other party agreed to do reclamation during Evaluation Year 2001 (current year)	0	0
Sites being reclaimed by surety/other party that were repermited during Evaluation Year 2001 (current year)	0	0
Sites with reclamation completed by surety/other party during Evaluation Year 2001 (current year) ^d	0	0
Sites being reclaimed by surety/other party as of September 30, 2001 (current year) ^c	16	1,124
<p>^A Includes data only for those forfeiture sites not fully reclaimed as of this date.</p> <p>^B Includes 98 sites and 4,606 acres with land reclamation complete but probable AMD discharge.</p> <p>^C Includes all sites where surety or other party has agreed to complete reclamation and site is not fully reclaimed as of this date.</p> <p>^D This number also is reported in Table 5 as Phase III bond release has been granted on these sites.</p>		
<p>* Inconsistencies exist between the number of sites and the acreage reclaimed and/or to be reclaimed reported on this table and reported in other tables and narrative discussions. These inconsistencies are due in large part to the nature of the WVDEP stand-alone database utilized for the Special Reclamation Fund (SRF) activities. WVDEP is taking actions to correct this problem including the hiring of a person to manage the database and redesign it in such a manner that it will be integrated with the other WVDEP systems for inspection and enforcement activities and financial activities. OSM is working closely with the WVDEP to review and verify the inventory of sites with either land reclamation or water quality liabilities for the SRF and anticipate completion of this effort by the end of the next evaluation year.</p>		

TABLE 8

WEST VIRGINIA STAFFING (Full-time equivalents at end of evaluation year)	
Function	EY 2001
Abandoned Mine Land Program Total	60.0
Regulatory Program	
Permit review ^A	51.0
Inspection ^B	76.0
Blasting ^C	15.0
Other (administrative, fiscal, personnel, etc.) ^D	144.7
Total for Regulatory Program	287
^A Includes 10 vacant positions. ^B Includes 10 vacant positions. ^C Includes 6 vacant positions. ^D Includes 21 vacant positions.	

TABLE 9

FUNDS GRANTED TO WEST VIRGINIA BY OSM (Millions of dollars) EY 2000		
Type of grant	Federal funds awarded	Federal funding as a percentage of total program costs
Administration and Enforcement	\$ 8,143,010	50%
Abandoned Mine Lands		
Small Operator Assistance	\$ 224,916	100%
Program Improvement Cooperative Agreement (PICA)	\$ 3,599,000	50%
Program Enhancement Cooperative Agreement (PECA)	\$ 6,222,000	100%
Totals	\$18,188,926	

TABLE 10

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	22.5	1.3	45.3	69.1
Clogged Stream Lands	Acres	166.8	0.0	160.3	327.1
Dangerous Highwalls	Lin feet	1,394,122.0	2,700.0	228,298.0	1,625,120.0
Dangerous Impoundments	Count	590.0	76.0	462.2	1,128.2
Dangerous Piles & Embankments	Acres	1,210.6	229.5	4,739.6	6,179.7
Dangerous Slides	Acres	339.9	4.0	491.7	835.6
Gases: Hazardous/Explosive	Count	0.0	0.0	4.3	4.3
Hazardous equip. & facilities	Count	719.0	39.0	547.0	1,305.0
Hazardous Water Bodies	Count	20.0	0.0	10.0	30.0
Industrial/Residential Waste	Acres	7.0	0.5	34.8	42.3
Portals	Count	1,787.0	38.0	2,186.0	4,011.0
Polluted Water: Agri & Indus	Count	118.0	9.1	38.0	165.1
Polluted Water: Human Consum	Count	2,325.0	2,568.0	6,977.0	11,870.0
Subsidence	Acres	760.4	24.0	263.1	1,047.5
Surface Burning	Acres	83.9	4.0	450.8	538.7
Underground Mine Fires	Acres	1,937.5	0.0	19.3	1,956.8
Vertical Openings	Count	155.0	2.0	134.3	291.3
Priority 3 (Environmental restoration)					
Benches	Acres	221.8	0.0	27.0	248.8
Ind/Res Waste	Acres	49.5	0.0	2.0	51.5
Equipment/facilities	Count	129.0	0.0	9.0	138.0
Gob Piles	Acres	1,846.9	59.0	279.0	2,184.9
Haulroads	Acres	11.1	0.0	0.0	11.1
Highwalls	Feet	3,299,293.1	20,616.0	63,462.0	3,383,371.0
Mine Openings	Count	32.0	0.0	0.0	11.1
Pits	Acres	47.1	0.0	11.0	58.1
Slumps	Acres	35.3	0.0	0.0	35.3
Slurry ponds	Acres	12.0	0.0	0.0	12.0
Spoil Areas	Acres	744.3	0.0	246.5	990.8
Water problems	Gal./min	13,154.5	0.0	722.0	13,865.5
Other		154.0	0.0	0.0	154.0
Note: All data in this table are taken from the Abandoned Mine Land Inventory System (AMLIS)					

APPENDIX B: STATE COMMENTS ON THE REPORT



Office of Abandoned Mine Lands and Reclamation
 10 McJunkin Road
 Nitro, WV 25143-2506
 Phone: 304-759-0521
 Fax: 304-759-0527

West Virginia Department of Environmental Protection

Bob Wise
 Governor

Michael O. Callaghan
 Secretary

March 7, 2002

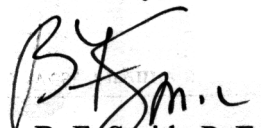
DEPT OF INTERIOR
 2002 MAR 1 AM 11:30
 OSM CHARLESTON

Mr. Roger Calhoun, Director
 Dept. of the Interior
 Office of Surface Mining
 Reclamation and Enforcement, Chas. Field Office
 1027 Virginia Street East
 Charleston, West Virginia 25301

Dear Mr. Calhoun,

This letter is in reference to your request that we review and make comments from the Office of Abandoned Mine Lands and Reclamation on the draft Annual Evaluation Summary Report for the West Virginia Regulatory and Abandoned Mine Land Reclamation Programs. We have no comments or changes on this draft. This period covers Evaluation year October 1, 2000 to September 30, 2001.

Sincerely,


 B. F. Smith, P. E.
 Chief

BFS/bst

cc: AML Year 2001



Division of Mining and Reclamation
#10 McJunkin Road
Nitro, WV 25143
Telephone Number: 304-759-0510
Fax Number: 304-759-0528

West Virginia Department of Environmental Protection

Bob Wise
Governor

Michael O. Callaghan
Secretary

March 4, 2002

Roger Calhoun, Director
Charleston Field Office
Office of Surface Mining
1027 Virginia Street, East
Charleston, West Virginia 25301

Dear Director Calhoun:

Attached are comments of the West Virginia Division of Mining and Reclamation on your draft Annual Evaluation Summary Report for the West Virginia Regulatory Program. The report covers the period from October 1, 2000 to September 30, 2001.

Should you have questions please contact our office.

Sincerely,

Matthew B. Crum, Director

DEPT OF INTERIOR
2002 MAR -5 PM 12: 34
OSM - CHARLESTON

Comments to OSM on draft Annual Evaluation Summary Report for the West Virginia Regulatory Program:

IV.A.1- Should be titled “hydrologic assessment model” instead of “Impact Assessment Model.” Also, in the second paragraph it should be noted that this tool would also be useful for NPDES permit writers.

IV.A.3- The state suggests deleting the last sentence in the first paragraph as factors in addition to the required amendments caused this issue to be addressed.

The last sentence of the last paragraph should read “West Virginia will be able to” rather than “OSM will enable.”

The Tennessee litigation on SMCRA bonding requirements should be disclosed as part of the report since the outcome of that litigation would likely affect how OSM views the pending West Virginia bonding program improvements. This comment pertains to sections IV.B.2, VI.H and VII.E and F as well as IV.A.3.

IV.A.4- The phrase “effective January 1, 2001” should be added after the word “funding” in the second sentence. The dates in the last sentence of the section should be verified with the work plan.

IV.A.6- The state suggests removing in the last sentence the phrase” before making a decision to fully adopt the guidelines.” The reason for this suggestion is that until input is received and evaluated by WVDEP, it is premature to indicate the guidelines will be “fully adopted.”

IV.B.1-The state would prefer the order of the first two paragraphs be reversed. The wording of these two paragraphs suggests that the state has not been diligent in satisfying required program amendments and 732 notifications, when in fact the state has responded to all of the required program amendments and 732 notifications.

In addition to the required program amendments, the WVDEP has submitted for OSM approval other program amendments which are pending OSM decision. Some of these amendments are changes to the language of the buffer zone rule so it mirrors the Federal wording and adding a definition of material damage, which term does not have a federal counterpart.

IV.B.2- The select details on the litigation are confusing and the WVDEP suggests more succinct statements about the litigations to replace the current language.

If the select details are to remain in the report it is suggested that the paragraph on the December 1998 settlement agreement, in section VI.B, be added as the second paragraph of the Bragg narrative in IV.B.2.

The second sentence of the Conservancy v. Norton civil action could be revised to accurately portray the claims made by inserting the words “alleging inadequate staffing, outstanding program amendments and “after the word “counts,” and the deletion of the words “primarily relating to.”

IV.B.3- The state suggests that the improper charges be identified as those for quarry inspectors.

IV.B.4- The second paragraph is inappropriate and misleading as the state has administered this portion of the program in accordance with the state rules.

IV.B.5- The state suggests including a statement that OSM is working with other states on this problem as well as West Virginia, since the Frontier circumstances affects reclamation bonding in other states.

The last sentence of the second paragraph is not clear. Is this a percentage of total bonds or total bond amount?

In the first sentence of the last paragraph the state suggests adding after the word “State” the phrase “and OSM.”

IV.B.7- In the third sentence the state suggests removing the wording “enhance its bonding mechanisms and ensure better” and inserting “require more stringent.”

V.A.- The last sentence of this section mentions several permits being added with offsite impacts. Does this alter the number of permits with off-site impacts in the preceding paragraph?

V.F- The portion of the inventory mentioned in the second paragraph was provided to OSM in this evaluation year.

V.G- Topsoil guidance was reviewed by WVDEP and sent back to OSM for revisions.

VII.D- The state suggests deleting the fourth and fifth sentence of the second paragraph and the whole third paragraph or fully explain the reasons for the differences in inventory numbers.

VII.K- The last sentence in the last paragraph of the fifth bullet point should be removed in light of our discussions on the required program amendment responses.

APPENDIX C: OSM RESPONSE TO STATE COMMENTS

APPENDIX C - OSM RESPONSE TO STATE COMMENTS

WVDEP Comment for Section IV.A.1.

Should be titled "hydrologic assessment model" instead of "Impact Assessment Model." Also, in the second paragraph it should be noted that this tool would also be useful for NPDES permit writers.

Response to WVDEP Comment for Section IV.A.1.

We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

WVDEP Comment for Section IV.A.3

(1) The State suggests deleting the last sentence in the first paragraph as factors in addition to the required amendments caused this issue to be addressed.

(2) The last sentence of the last paragraph should read "West Virginia will be able to" rather than "OSM will enable."

(3) The Tennessee litigation on SMCRA bonding requirements should be disclosed as part of the report since the outcome of that litigation would likely affect how OSM views the pending West Virginia bonding program improvements. This comment pertains to Sections IV.B.2., VI.H. and VII.E. and F. as well as IV.A.3.

Response to WVDEP Comment for Section IV.A.3.

(1) We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

(2) We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

(3) No change was made in response to this comment. This document reports the results of OSM oversight of the West Virginia regulatory and AML programs. It is premature to speculate on the outcome of litigation in Tennessee and then further speculate on the impact to other programs.

WVDEP Comment for Section IV.A.4.

The phrase "effective January 1, 2001," should be added, after the word "funding" in the second sentence. The dates in the last sentence of the section should be verified with the work plan.

Response to WVDEP Comment for Section IV.A.4.

We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

WVDEP Comment for Section IV.A.6.

The state suggests removing in the last sentence the phrase "before making a decision to fully adopt the guidelines." The reason for this suggestion is that until input is received and evaluated by WVDEP, it is premature to indicate the guidelines will be "fully adopted."

Response to WVDEP Comment for Section IV.A.6.

We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

WVDEP Comment for Section IV.B.1.

(1) The state would prefer the order of the first two paragraphs be reversed. The wording of these two paragraphs suggests that the state has not been diligent in satisfying required program amendments and 732 notifications, when in fact the state has responded to all of the required program amendments and 732 notifications.

(2) In addition to the required program amendments, the WVDEP has submitted for OSM approval other program amendments which are pending OSM decision. Some of these amendments are changes to the language of the buffer zone rule so it mirrors the Federal wording and adding a definition of material damage, which term does not have a federal counterpart.

Response to WVDEP Comment for Section IV.B.1.

(1) We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

(2) We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

WVDEP Comment for Section IV.B.2.

(1) The select details on the litigation are confusing and the WVDEP suggests more succinct statements about the litigations to replace the language.

(2) If the select details are to remain in the report it is suggested that the paragraph on the December 1998 settlement agreement, in Section VI.B., be added as the second paragraph of the Bragg narrative in IV.B.2.

(3) The second sentence of the Conservancy v. Norton civil action could be revised to accurately portray the claims made by inserting the words "alleging inadequate staffing, outstanding program amendments and "after the word "counts," and the deletion of the words "primarily relating to."

Response to WVDEP Comment for Section IV.B.2.

(1) The litigation discussed in this section has been a time-consuming part of the oversight process in recent years. Therefore, we believe that the details are necessary and no changes have been made in response to this comment.

(2) We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

(3) The sentence referenced in the WVDEP comment has been revised to include the alleged counts of inadequate staffing and outstanding program amendments as part of the litigation. However, an additional sentence was added to note the significance of the bonding issue in this litigation.

WVDEP Comment for Section IV.B.3.

The state suggests that the improper charges be identified as those for quarry inspectors.

Response to WVDEP Comment for Section IV.B.3.

We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

WVDEP Comment for Section IV.B.4.

The second paragraph is inappropriate and misleading as the state has administered this portion of the program in accordance with the state rules.

Response to WVDEP Comment for Section IV.B.4.

This finding is a carryover finding from Evaluation Year 2000. Since the State provided guidance to their inspectors to resolve this in October of 2001, we included a discussion of this issue in this year's report to document the resolution of the issue. We have modified this section to better reflect that this is a carryover from the previous year's evaluation.

WVDEP Comment for Section IV.B.5.

(1) The state suggests including a statement that OSM is working with other states on this problem as well as West Virginia, since the Frontier circumstances affects reclamation bonding in other states.

(2) The last sentence of the second paragraph is not clear. Is this a percentage of total bonds or total bond amount?

(3) In the first sentence of the last paragraph the state suggests adding after the word "State" the phrase "and OSM."

Response to WVDEP Comment for Section IV.B.5.

(1) We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

(2) The percentage refers to total bond amounts. The section has been revised to clarify the statement.

(3) We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

WVDEP Comment for Section IV.B.7.

In the third sentence the state suggests removing the wording "enhance its bonding mechanisms and ensure better" and inserting "require more stringent."

Response to WVDEP Comment for Section IV.B.7.

We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

WVDEP Comment for Section V.A.

The last sentence of this section mentions several permits being added with offsite impacts. Does this alter the number of permits with off-site impacts in the preceding paragraph?

Response to WVDEP Comment for Section V.A.

The last sentence has been deleted. It did not alter the number of permits with off-site impacts.

WVDEP Comment for VI.F.

The portion of the inventory mentioned in the second paragraph was provided to OSM in this evaluation year.

Response to WVDEP Comment for VI.F.

This section has been revised to reflect that the inventory data has now been provided to OSM.

WVDEP Comment for Section VI.G.

Topsoil guidance was reviewed by WVDEP and sent back to OSM for revisions.

Response to WVDEP Comment for VI.G.

We concur with the WVDEP comment and the suggested change has been incorporated into the final version.

WVDEP Comment for VII.D.

The state suggests deleting the fourth and fifth sentence of the second paragraph and the whole third paragraph or fully explain the reasons for the differences in inventory numbers.

Response to WVDEP Comment for VII.D.

No changes are being made to this section. OSM is attempting to develop a complete and accurate inventory using all data available. WVDEP has not yet responded to the October 5, 2001, OSM request for assistance in resolving the differences in the inventories.

WVDEP Comment for VII.K.

The last sentence in the last paragraph of the fifth bullet point should be removed in light of our discussions on the required program amendment responses.

Response to WVDEP Comment for VII.K.

We concur with the WVDEP comment and the suggested change has been incorporated into the final version.