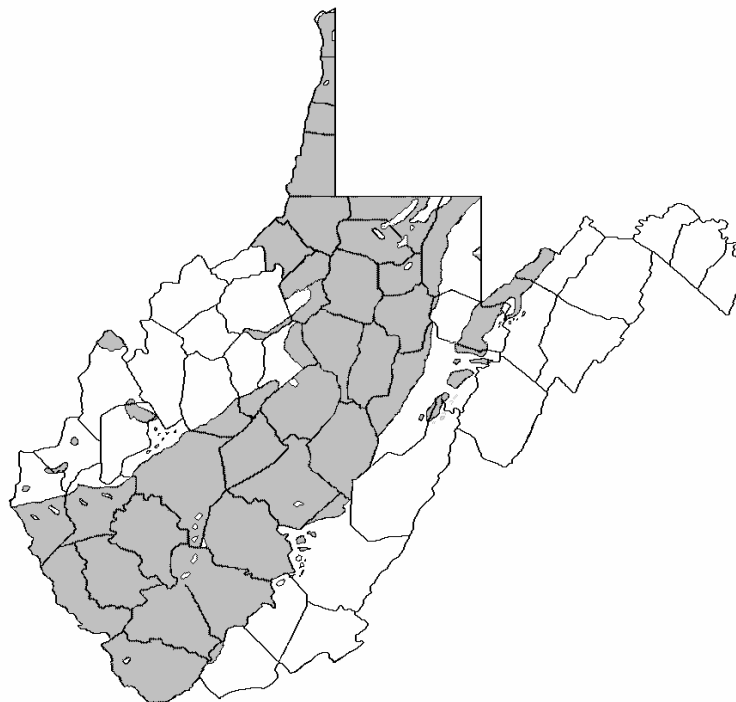


**2006
WEST VIRGINIA
ANNUAL EVALUATION REPORT**



PREPARED BY

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

ANNUAL EVALUATION SUMMARY REPORT
FOR THE
REGULATORY AND ABANDONED MINE LAND
RECLAMATION PROGRAMS
ADMINISTERED BY THE STATE
OF
WEST VIRGINIA
FOR
EVALUATION YEAR 2006
JULY 1, 2005 TO JUNE 30, 2006

SEPTEMBER 2006

TABLE OF CONTENTS

I.	Introduction	1
II.	Overview of the West Virginia Coal Mining Industry	1
	State Coal Severance Taxes	4
III.	Overview of the Public Participation Opportunities in the Oversight Process and the State Program.....	4
IV.	Major Accomplishments/Issues/Innovations in the West Virginia State Regulatory Program	6
	A. Accomplishments/Innovations	6
	1. Reforestation Initiative.....	6
	2. Program Amendments and Part 732 Issues Resolution	7
	3. U.S. Fish & Wildlife Service Awards	7
	4. Geologic Handbook.....	8
	5. Assessment of Alternative Funding Mechanisms	8
	B. Issues	9
	1. Acid Mine Drainage (AMD) Inventory of Active Permits	9
	2. Bond Forfeiture – Special Reclamation of Sites with 3rd Party Liabilities	9
	3. Bond Forfeiture Site Inspections	9
	4. Downslope Spoil Placement.....	10
	5. Inactive Status (Temporary Cessation) for Excess Spoil Disposal Sites.....	10
	6. Material Damage Litigation	10
	7. Part 733 Requests.....	11
	8. Off-Site Disturbance	12
V.	Success in Achieving the Purposes of SMCRA as Determined by Measuring And Reporting End Results	12
	A. Off-Site Impacts.....	12
	B. Reclamation Success	13
	C. Customer Service – Permit Application Completeness	14
VI.	OSM ASSISTANCE – REGULATORY PROGRAM	15
	A. Site Specific Technical Assistance	15
	B. Bonding Forfeiture Liability Factors.....	15
	C. Underground Mine Hydrology/Mine Pool Research	15
	D. Permitting Guidance	16
	E. Productivity Measurement Technique	16
	F. Cumulative Hydrologic Impact Assessments (CHIAs)	16
	G. Technical Training.....	17
	H. U.S. Fish & Wildlife Service’s Biological Opinion Negotiations	17
	I. Horizon Bankruptcy	17
	J. Remote Sensing.....	18
	K. Off-Site Disturbance.....	18

VII.	General Oversight Topic Evaluations – Regulatory Program -----	18
	A. Oversight Inspections -----	18
	B. Slurry Impoundment Study-----	21
	C. Fill Quality Control Reviews -----	21
	D. Program Amendment Status/Program Maintenance -----	21
	E. Liability Insurance -----	25
	F. Mountaintop Mining Action Plan-----	26
	G. AMD Prediction – Underground Mining and Expansions -----	26
	H. Fill/Flood Oversight and Technical Assistance Plan -----	26
	I. Bond Forfeiture – Special Reclamation of Sites with 3rd Party Liabilities -----	27
	J. Blackwater Spills -----	28
	K. Downslope Spoil Placement-----	28
	L. AMD Inventory of Active Permits -----	29
	M. Bonding Program Improvements -----	30
VIII.	Abandoned Mine Land Reclamation Program -----	30
	A. General-----	30
	1. General Program Information -----	31
	2. Appalachian Clean Streams Program-----	31
	B. Noteworthy Accomplishments -----	32
	1. Construction Activities/Authorizations to Proceed -----	32
	2. Emergency Program -----	32
	3. AMD Abatement and Treatment Plan -----	32
	C. OSM Technical Assistance -----	33
	1. Technical Training -----	33
	2. Site Specific Assistance -----	33
	3. Fish & Wildlife Coordination – Culvert Project -----	33
	4. Reclamation Information Management System (RIMS) -----	33
	5. State Plan Informal Program Amendment -----	34
	D. Results of Enhancement and Performance Reviews -----	34
	1. Drawdown Analysis/Resolve Audit Issues-----	34
	2. Regular AML Construction Program -----	35
	3. AML Regular Construction/Emergency Project Inspections -----	35
	4. AMLIS Review -----	36
	5. AMD Abatement and Remediation Plans -----	37
	6. AML AMD/Mine Fire Inventories -----	38
	7. AML Water Treatment Database-----	38
	8. No-Cost Contracts/Coal Refuse Reprocessing Study -----	39

APPENDIX A: TABULAR SUMMARY

Table 1	Coal Production -----	A-1
Table 2	Inspectable Units -----	A-2

Table 3 State Permitting Activity ----- A-3
Table 4 Off-Site Impacts ----- A-4
Table 5 Annual State Mining and Reclamation Results ----- A-5
Table 6 State Bond Forfeiture Activity ----- A-6
Table 7 West Virginia Staffing ----- A-7
Table 8 Funds Granted to West Virginia by OSM ----- A-8
Table 9 State of West Virginia Inspection Activity ----- A-9
Table 10 State of West Virginia Enforcement Activity ----- A-10
Table 11 State of West Virginia Lands Unsuitable Activity ----- A-11
Table 12 Abandoned Mine Land Reclamation Needs and
Accomplishments Since Program Approval ----- A-12

I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provides authority to OSM to oversee the implementation of and provide Federal funding for State regulatory programs that have been approved by OSM as meeting the minimum standards specified by SMCRA. This report contains summary information regarding the West Virginia Program and the effectiveness of the West Virginia program in meeting the applicable purposes of SMCRA as specified in Section 102. This report covers the period of July 1, 2005, to June 30, 2006. Detailed background information and comprehensive reports for the program elements evaluated during the period are available for review and copying at the OSM Charleston Field Office.

The following acronyms are used in this report:

ACSP	Appalachian Clean Streams Program
AMD	Acid Mine Drainage
AML	Abandoned Mine Land
AMLR	Abandoned Mine Land Reclamation
AMLIS	Abandoned Mine Land Inventory System
ARO	Appalachian Regional Office
ARRI	Appalachian Regional Reforestation Initiative
CHFO	Charleston Field Office
CHIA	Cumulative Hydrologic Impact Assessment
CSR	Code of State Regulations
ERIS	Environmental Resources Information System
EY 2006	Evaluation Year 2006 (July 1, 2005 to June 30, 2006)
FRA	Forestry Reclamation Approach
McDCEDA	McDowell County Economic Development Authority
NOV	Notice of Violation
NTTP	National Technical Training Program
RIMS	Reclamation Information Management System
OSM	Office of Surface Mining Reclamation and Enforcement
SOAP	Small Operators Assistance Program
SMCRA	Surface Mining Control and Reclamation Act of 1977
TDN	Ten-Day Notice
TIPS	Technical Information Processing System
WV	West Virginia
WVDEP	West Virginia Department of Environmental Protection
WVDMR	West Virginia Division of Mining and Reclamation
WVSCMRA	West Virginia Surface Coal Mining and 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. Underground mining increased throughout the 1800's and into the 1950's. Surface mining began around 1916, but significant production from surface mining did not occur until World War II.

Mining activities occurring before passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977 resulted in many unreclaimed or under reclaimed areas within the State. Currently, there are 4,126 sites listed in the Abandoned Mine Land Inventory System (AMLIS) for West Virginia. Two percent of the sites are undergoing reclamation, 61 percent are awaiting reclamation and 37 percent have been reclaimed through the State's Abandoned Mine Land Reclamation (AMLR) Program.

West Virginia's demonstrated coal reserve base totals 33.2 billion tons, and its estimated recoverable reserves total 18.1 billion tons. The State's estimated recoverable coal reserves at producing mines totaled 1.5 billion tons in 2005. West Virginia ranks fourth in the country in demonstrated coal reserves and second in recoverable coal reserves at producing mines. Coal occurs in all but two of the State's 55 counties. Mineable seams occur in 43 of the 55 counties. Of the 117 identified coal seams in the State, 65 seams are mineable using current technology.

West Virginia's production accounts for 13 percent of the Nation's total coal production. In 2005, West Virginia produced 159.5 million tons of coal, allowing it to retain its ranking as the second largest coal producing State (see Table 1, Appendix A for coal production based on sales). Coal was produced from 53 different seams. The Pittsburgh, Coalburg, Lower Kittanning, Eagle and Stockton-Lewiston coal seams accounted for about 58 percent of the State's total coal production. During 2005, coal was produced in twenty nine counties in West Virginia. The top six coal producing counties in 2005 by production were: Boone, Kanawha, Marshall, Mingo, Logan, and Monongalia Counties. The State's producing mines had an average coal recovery rate of 61 percent. The average price per ton of coal mined in West Virginia during 2004 increased to \$35.41. The average price per ton of coal nationwide increased to \$19.93 in 2004.

West Virginia leads the Nation in underground coal production. Underground mines produce approximately 62 percent of the State's total coal production. In 2005, there were 47 longwall mines in the country. Longwall mining occurs in eleven States. West Virginia has more longwall mining operations than any other State with 13 longwall mines. Longwall mining operations accounted for 44 percent of the State's underground coal production and 27 percent of the State's total coal production in 2005. Although longwall production continues to increase, continuous mining activities still account for most of the State's underground coal production.

Contour, area, auger, mountaintop, and highwall mining operations are the most common methods of surface mining in the State. With advances in mining technology, surface mines are becoming larger and more complex. Thirty-eight percent of the coal produced in West Virginia is by surface mining methods. Surface coal production increased by almost 10 percent, whereas underground production increased by less than 1 percent in 2005. Mountaintop and contour mining operations are largely responsible for the increased surface coal production. Seventy percent of the State's surface coal production was produced by mountaintop mining operations in 2005. Approximately 45 percent of the coal production from mountaintop removal mining operations came from Boone, Logan, Mingo and Kanawha Counties. According to the West Virginia Office of Miners' Health Safety and Training, there are approximately 70 mountaintop mining operations in the State. Production from mountaintop mining operations in 2005 increased to 42.7 million tons. Peak production reached 52.6 million tons in 2000. Continued increases in production from contour, auger, and highwall mining operations have caused surface coal production in the State to increase in recent years.

West Virginia has 2,258 inspectable units. The average number of acres per inspectable unit is 148 acres. Surface mines average 322 acres per unit, whereas underground mines average only 37 acres per unit. The number of new permits issued annually by the State has declined, but the complexity and size of the operations have increased. Approximately 71 percent of the State's permits are active and require monthly inspections by the WVDEP. Underground mines account for about 40 percent of the total inspectable units and surface mines account for 35 percent. The remaining 25 percent consists of other facilities, such as preparation plants, coal refuse piles, loading facilities, and haulroads.

Approximately 89 percent of the coal produced in West Virginia is used domestically, with 24 percent of that coal being consumed within the State. Most coal produced in West Virginia is used to generate electricity. Sixty two percent of the State's domestic coal production is used by electric utilities in 23 States, including West Virginia. Coal produces 98 percent of the electricity generated in State. Approximately 10 percent of the State's domestic coal production is used by coke plants and the remaining 28 percent is for industrial, commercial and residential use. Ohio, North Carolina, and Pennsylvania import 42 percent of West Virginia's domestic coal production. Fifty-nine percent of the State's coal production is transported by railroad, 12 percent is transported by water, and the remainder by truck, conveyor, or is stockpiled.

West Virginia is the Nation's leading coal exporter with 35 percent of the country's foreign exports. Canada, Italy, France, and the Netherlands are the leading importers of West Virginia coal. Metallurgical coal comprises 91 percent of West Virginia's coal exports to foreign countries. Fifty-two percent of the Nation's metallurgical coal exports come from West Virginia. Both the State's and the Nation's foreign coal exports increased by 14 percent in 2004. For a discussion of severance tax litigation relating to coal exports, see the section below.

About 270 companies produce coal in West Virginia. Due to increased mechanization and consolidation in the mining industry, more than 10,000 mining jobs have been lost in the State since 1990. Most of the decline in employment has been at underground mines. However, due to improved market conditions, the number of employees in the State's mining industry increased by 12 percent in 2005. During 2005, the State's coal mining industry directly employed 17,992 people with a payroll of almost \$1 billion. Total employment, including independent contractors, is about 42,744 employees. Sixty nine percent of the miners in the State work in underground mines. Boone, Kanawha, Mingo, Logan, and Wyoming Counties employ 52 percent of the miners in the State. Unions now only represent 34 percent of the miners in the State, and the remaining miners are non-union. West Virginia's miners are among the most productive in the Nation producing approximately 4 tons of coal per miner per hour. Estimates are that the State's coal industry generates approximately 80,000 additional coal-related jobs.

Coal accounts for nearly 13 percent of the Gross State Product, a measure of the total value of all goods and services produced in the State. The State's severance tax rate is 5 percent of the gross value of coal production. West Virginia's coal industry pays more than \$270 million annually in business and severance taxes to State and local governments and another \$180 million in Federal taxes. The coal industry accounts for nearly 27 percent of the State's business tax and approximately 10 percent of the statewide property tax collections. Overall, it is estimated that every \$1 billion worth of coal production generates \$3.5 billion throughout the economy.

State Coal Severance Taxes

During the evaluation year, the West Virginia Supreme Court upheld a Kanawha County Circuit Court decision, U.S. Steel Mining Company et al. v. Helton, regarding coal severance taxes imposed on coal mined within West Virginia and exported to foreign countries. That decision involved eight coal companies that filed a lawsuit in 2002 and maintained that severance taxes on coal exports were illegal because they violated the Import-Export clause of the U.S. Constitution.

On December 2, 2005, the West Virginia Supreme Court ruled that the coal severance taxes contained in current and earlier versions of the W.Va. Code do not offend the Import-Export Clause of the U.S. Constitution. Essentially, this decision upheld the constitutionality of the State's coal severance taxes.

The West Virginia Supreme Court ruling, however, was appealed to the U.S. Supreme Court. On June 5, 2006, the U.S. Supreme Court refused to review the ruling by the West Virginia Supreme Court, thus letting it stand. Several State officials had feared that an adverse ruling would have forced the State to refund an estimated \$500 million in coal severance taxes to the coal and steel companies that brought the suit.

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

Throughout the 2006 Evaluation Year, WVDEP and OSM officials met with representatives from the following citizen, environmental, and industry groups.

- o West Virginia Highlands Conservancy,
- o West Virginia Coal Association,
- o Ohio Valley Environmental Coalition,
- o Contractor's Association of West Virginia,
- o River of Promise Steering Committee (Cheat River),
- o Deckers Creek Restoration Team (Deckers Ck. of the Monongahela River),
- o Mid-Atlantic Highlands Action Program,
- o Eastern Coal Region Roundtable,
- o Appalachian Coal Country Watershed Team,
- o West Virginia Rivers Coalition,
- o River Network,
- o Tygart River Watershed Association,
- o Friends of the Cheat,
- o North Fork Watershed Project Team,
- o Potomac Headwaters RC&D,
- o Guardians of the West Fork,
- o West Virginia Watershed Network,
- o Lower Paint Creek Watershed Association,
- o Morris Creek Watershed Association,
- o Friends of the Blackwater River,
- o Friends of Deckers Creek,
- o Plateau Action Network,
- o Rural Appalachian Improvement League,
- o Upper Guyandotte Watershed Association,
- o Buckhannon River Watershed Association,

- o Kellys Creek Communities Association,
- o Lower West Fork Watershed Association,
- o West Virginia Watershed Network,
- o Buckhannon River Project Team,
- o American Society of Mining and Reclamation, and
- o Canaan Valley Institute.

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

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

To measure the State's success in meeting the environmental protection goals of SMCRA, OSM and WVDEP have cooperatively developed Regulatory and Abandoned Mine Land (AML) Performance Agreements. The Agreements focus on measuring the on-the-ground success of the approved program and identifying the need for financial, technical, and other program assistance. The current Agreements contain the basic framework for oversight activities beginning on July 1, 2005, and ending on June 30, 2007. In developing the Agreements, OSM solicited input from the public and other State and Federal agencies to identify program areas to evaluate during the upcoming evaluation years.

The Charleston Field Office (CHFO) maintains a mailing list of individuals and organizations that have been active in regulatory and AML issues in West Virginia. The office staff routinely interacts with individuals and groups throughout the year. OSM has maintained contact with many watershed groups throughout the State and provides assistance through a network of summer interns and Volunteers in Service to America (VISTA) workers funded through the OSM budget. These interns and VISTA workers interact with local watershed groups and provide additional feedback to the CHFO concerning citizen concerns. West Virginia's approved regulatory program provides many additional opportunities for public participation. In the permitting process, the State must advertise each application for a new or revised permit and must provide interested citizens the opportunity to comment. Citizens may request that WVDEP hold an informal conference to discuss the application before making a decision to issue or deny the permit. Filing written citizen complaints concerning specific issues also gives citizens the opportunity to participate in the inspection and enforcement process at particular mine sites. They may also seek administrative review of WVDEP decisions by the West Virginia Surface Mine Board or judicial review through the state court system.

During EY 2006, OSM finalized rules regarding civil penalty adjustments and the State program amendment process and published notices requesting public comment on rulemaking activities involving its proposed stream buffer rules. Notices were sent to various State and Federal agencies along with public interest groups. OSM also published requests for public comment in the Federal Register. As part of OSM's outreach efforts, its web page in Washington, D.C. (www.osmre.gov) has a link to a form for citizens to report suspected violations of mining and reclamation laws. There are also links to information packages that citizens can request about specific areas of SMCRA. These include educational packets for schools and civic groups. The

Appalachian Regional Office (ARO) has a link to the Charleston Field Office web page at http://www.arcc.osmre.gov/about_cfo.asp.

The CHFO publishes this oversight report as a way to keep the public informed about the State's administration of its approved programs and to solicit public input. In addition, OSM compiles an Annual Report that includes data on all coal producing States. These documents may be viewed at: www.osmre.gov/ and www.arcc.osmre.gov/.

The WVDEP has aided in the development of the watershed management framework and other initiatives to preserve, protect, and restore stream water quality. The WVDEP's Office of Environmental Advocate also offers a means for public participation. This office works on a variety of environmental issues within the state. They encourage participation on the regulatory process by individuals and groups. The approved Abandoned Mine Land Reclamation Plan provides opportunities for public participation. These include public interaction during the processing of citizen complaints concerning AML problems. WVDEP also publishes newspaper notices seeking comment on each proposed construction project before requesting funding approval from OSM.

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

A. Accomplishments/Innovations

1. Reforestation Initiative

WVDEP and OSM have been working together since 2004 to promote the Forestry Reclamation Approach (FRA) as part of the Appalachian Regional Reforestation Initiative (ARRI). The FRA is based on knowledge gained from scientific research and experience. The five steps of FRA include:

- create a suitable rooting medium for good tree growth that is no less than 4 feet deep and comprised of topsoil, weathered sandstone and/or the best available material;
- loosely grade the topsoil or topsoil substitute established in step one to create a non-compacted growth medium;
- use ground covers that are compatible with growing trees;
- plant two types of trees-early succession species for wildlife and soil stability and commercially valuable crop trees; and,
- use proper tree planting techniques.

During EY 2006, WVDEP and OSM provided FRA training to the State's permitting staff, so that they would be familiar with new FRA language in the reclamation plans as contained in permit applications, and be aware of what to look for in the planting plans being prepared by professional foresters. The WVDEP inspection and enforcement staff was also given training in the implementation of FRA. A field tour of mine sites using FRA, in Kentucky and West Virginia, was provided to OSM and

State inspection staffs from both states. The Abandoned Mine Land Reclamation Office of WVDEP has been approached on several occasions to adopt tree planting using FRA on some of their restoration sites. One project, Kempton Refuse, is being considered as a possible site to try the FRA. WVDEP gave an ARRI/FRA presentation at the WV Forestry Symposium, which was sponsored by the WV Division of Forestry and the West Virginia Land & Minerals Council. A similar presentation was given to Huntington Realty, which represents several large landowners.

Permittees have been encouraged to adopt and experiment with the FRA. Following a presentation by WVDEP and OSM on FRA, one large operator has submitted revisions to several existing permits to change the reclamation plan to add FRA language, both to increase tree growth and as a cost savings due to reduced grading. Another large mining complex has gained approval for an experimental practice to evaluate whether tree survival and growth in unweathered gray sandstone is superior to tree survival and growth in weathered brown sandstone. Annual monitoring, in conjunction with West Virginia University, will continue for 12 years.

WVDEP and OSM presented the ARRI 2005 Excellence in Reforestation Award to two operators who have successfully implemented the FRA. Apogee Coal Company was presented the award for their tree planting on the Ruffner Mine in Logan County, in conjunction with Earth Day. Alex Energy's Wildcat Mine in Nicholas County was the site of the second ARRI award presentation, which occurred on Arbor Day.

2. Program Amendments and Part 732 Issues Resolution

As discussed in detail in Section VII.D, during this evaluation period, WVDEP submitted a program amendment to OSM that satisfied eleven outstanding required amendments and six Part 732 issues, which were the result of Federal rule changes. OSM announced its approval of the program amendment that resulted in the removal of the required amendments and Part 732 issues in the *Federal Register* on March 2, 2006 (71 FR 10764-10790) (Administrative Record Number WV-1458). These efforts ensure that the State's permanent regulatory program is consistent with the Federal regulations and SMCRA.

As a result of this action, WVDEP has fully resolved all outstanding required program amendments and Part 732 issues. In a press release issued on March 2, 2006, OSM officials applauded West Virginia and announced that its surface coal mining regulatory program had reached a new level of excellence by being fully compliant with all the requirements of SMCRA and the Federal regulations promulgated thereunder.

At that time, Brent Wahlquist, acting OSM Director, stated that, "West Virginians can be proud of the fact that their State has taken the time and effort to get everything right in this important program. It demonstrates that diligence and continual improvement are important parts of West Virginia's surface mining regulatory program."

3. U.S. Fish & Wildlife Service Awards

In an awards ceremony in May 2006, the U.S. Fish and Wildlife Service (USFWS) honored WVDEP and two of its employees for their efforts in helping them break a logjam by conducting Endangered Species Act reviews for coal mining permits at the USFWS Field Office in Elkins for nearly six months. The USFWS recognized WVDEP

Secretary Timmermeyer, and employees Bob Fala and Kevin Quick. WVDEP was given a Certificate of Appreciation and Bob and Kevin were each given the Regional Director's Conservation Award.

The USFWS review process ran into a major glitch last year when both USFWS staffers working on mining permit applications moved to other jobs, decreasing the office's workforce by one-fourth and halting permit processing. Secretary Stephanie Timmermeyer came to their aid, offering the assistance of two of her staff. So, beginning in August 2005, WVDEP employees Bob Fala and Kevin Quick traveled from Charleston to Elkins for two to three days a week at WVDEP expense and worked to help process paperwork for the mining permits.

According to the USFWS, every mining project requires a threatened and endangered species review. This is especially important as the entire State of West Virginia is considered to have potential maternity habitat for the Federally-listed endangered Indiana bats. The Elkins Office averages 15 Indiana bat survey requests per month. Each review involves researching the latest information on species locations using the GIS database, State Department of Natural Resources records, and conversations with surveyors.

The partnership began a transition in February 2006 with Fala and Quick working shorter stints in Elkins due to the hiring of an experienced biologist by the USFWS to conduct the reviews.

According to Tom Chapman, USFWS Field Office Director, "During the past several months we have developed and nurtured a better relationship with the State as we worked together successfully. Beyond the real benefit of the WVDEP rescuing us has been a deeper appreciation for the work of each agency and increased communication between the two agencies."

4. Geologic Handbook

As discussed in detail in Section VI.D, WVDEP published its Geologic Handbook in September 2005 in cooperation with OSM. The handbook was developed as a tool to promote consistency and efficiency in the preparation and review of the geologic portions of permit applications. WVDEP will periodically review and update the handbook to accommodate changes in technical procedures and requirements.

5. Assessment of Alternative Funding Mechanisms

As discussed in Sections VII.D and VII.M, legislation was adopted in 2005 that extended the special reclamation tax. That legislation also required WVDEP to evaluate various alternative financial mechanisms to complete reclamation of bond forfeiture sites.

On February 13, 2006, Marshall University, under contract with WVDEP, issued a final report entitled, "Assessment of Alternative Funding Mechanisms to Encourage Environmental Compliance and To Maintain Solvency of the Special Reclamation Fund." This report evaluates the history of expenditures made by the State's Special Reclamation Fund (SRF) in reclaiming bond forfeiture sites since 1977 and projects future liabilities through FY 2026. The report also evaluates different funding mechanisms and their impact on the overall stability of the SRF.

In addition, on May 15, 2006, Marshall University issued a draft reconciliation report in response to the report described above. The draft Marshall University report describes and reconciles the methodological differences between WVDEP's internal projected balance of the SRF and the SRF balance which was estimated by Marshall University in February 2006.

B. Issues

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

As discussed in Section VII.L, the State completed an action plan in September 2002 that would have required an update in the State's AMD inventory of active permits. The last time that the inventory was updated by the State was in 2000. However, the action plan that was executed in 2002 was never fully implemented by the State.

Information that the State has regarding water treatment on active permits is outdated. During the evaluation period, OSM and WVDEP executed another work plan to provide for an update of its AMD inventory. As more fully discussed in Section VII.L., measures have been taken which could allow for the completion of the AMD inventory update during the next evaluation year.

2. Bond Forfeiture – Special Reclamation of Sites with 3rd Party Liabilities

During the evaluation period, a file review was conducted of revoked permanent program permits where a 3rd party had assumed reclamation. From the file reviews, the reviewers were not able to determine the adequacy of reclamation for 27 permits. A follow-up evaluation of the 27 permits is being planned for EY 2007 to resolve any outstanding reclamation issues related to these permits and to evaluate the implementation of certain procedural recommendations from the study. See Section VII.I of this report for more information on this topic.

3. Bond Forfeiture Site Inspections

As discussed in the *Federal Register* on February 8, 2005, OSM announced approval of the State's abandoned sites rule at CSR 38-2-20.1.a.6 (70 FR 6583-6584). Pursuant to that rule, the State may reduce its inspection frequency on abandoned or bond forfeited sites. The criteria that the State may use to provide for reduced inspection frequency are set forth in that rule. Prior to the approval of these provisions, the State was required to conduct monthly inspections of abandoned and bond forfeited sites.

As shown in Table 6, there were 339 bond forfeiture sites that required some reclamation as of June 30, 2006. Of the 339 permanent program sites, 51 sites have been reclaimed, but still need water treatment systems to be contracted by the State. Active or passive water treatment systems have been contracted or are installed at an additional 45 permanent program sites that are being monitored by the WVDEP on a routine basis.

As shown in Table 9, the State maintains that it completed 6,176 inspections of bond forfeiture sites during the evaluation year. Once a permit is revoked and the bond is forfeited, the State is required to inspect the site on a monthly basis or at a reduced frequency, if it has complied with all of the requirements set forth at CSR 38-2-20.1.a.6. State officials acknowledge that each bond forfeiture site has received at

least one annual inspection, but the State has not fully implemented its procedures for reducing inspection frequency. OSM will work closely with the State during the upcoming evaluation period to ensure compliance with those requirements.

4. Downslope Spoil Placement

During this evaluation year, OSM and WVDEP completed a study to determine if the State had successfully implemented recommendations from an EY 1999 study regarding perimeter protection. This year's report found that the previous recommendations, including the implementation of a regulation and policy regarding constructed outcrop barrier design and certification, did not appear to be fully implemented by the State. In an attempt to fulfill the recommendations of this year's evaluation, WVDEP conducted training for its inspection and enforcement staff in the prevention of downslope placement of material in steep slope areas. See Section VII.K. for further discussion of this issue.

5. Inactive Status (Temporary Cessation) for Excess Spoil Disposal Sites

In EY 2004, WVDEP adopted a policy to assure that excess spoil disposal sites were adequately maintained and proper information was obtained prior to approving the temporary cessation of operations at those sites. Although few requests have been approved by the State, and those that have been approved did not contain fills in the stage of construction envisioned by the policy, OSM found that the procedure adopted in EY 2004 has not been fully implemented. See Section VII.H. for further information regarding this issue.

6. Material Damage Litigation

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

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

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

In addition to vacating OSM's December 1, 2003, decision, OVEC wanted the District Court to compel OSM to notify WVDEP that it must rescind its definition of material damage, implement its former definition of cumulative impact, and perform a new

cumulative hydrologic impact assessment (CHIA) for each permit issued since OSM's decision.

On September 30, 2005, the District Court vacated the Secretary's approval of the State's deletion of its definition of "cumulative impact" and its addition of the definition of "material damage to the hydrologic balance outside the permit area." In response to the Court's decision, on November 1, 2005, OSM sent WVDEP a 30 CFR Part 732 notification stating that the State cannot implement the new definition of "material damage to the hydrologic balance outside the permit area," and it must amend the West Virginia program to include the deleted definition of "cumulative impact" (Administrative Record Numbers WV-1439 & WV-1454-A).

On November 22, 2005, the Court issued an amended judgment order that directed OSM to instruct the State that it may not implement the deletion of the definition of "cumulative impact" nor the addition of the definition of "material damage to the hydrologic balance outside the permit area". The Court clarified that the State must enforce only the State program as approved by OSM prior to the amendments. In response to the Court's decision, on January 5, 2006, OSM sent WVDEP a letter rescinding the November 1, 2005, 30 CFR Part 732 notification and informing the State that the definition of "cumulative impact" remains part of the approved West Virginia program and, as such, must be implemented by the State. OSM also stated that the definition of "material damage to the hydrologic balance outside the permit area" remains disapproved and cannot be implemented (Administrative Record Numbers WV-1454 & WV-1456).

On January 18, 2006, the U.S. Department of the Interior (DOI) appealed the District Court's Judgment Order of September 30, 2005, and the Amended Judgment Order of November 22, 2005, to the U.S. Court of Appeals for the Fourth Circuit. The Circuit Court established a briefing schedule on January 27, 2006, for OVEC, et al. v. Norton, Case Number 06-1122.

OVEC and others filed a brief in the case on May 8, 2006, and DOI filed a reply brief on May 24, 2006. Oral arguments are scheduled for September 18, 2006. A decision in the case will be rendered thereafter.

7. Part 733 Requests

During EY 2006, OSM addressed two requests for an evaluation of the West Virginia permanent regulatory program under 30 CFR Part 733.

On March 24, 2006, OSM declined to conduct a review of an alleged programmatic failure of the West Virginia program related to the issuance of a permit for a Tucker County underground mine. The March 8, 2006, request by several citizens groups who participate regularly in the West Virginia program alleged that the mine will produce acid mine drainage (AMD) with no defined end point after closure. The permit application approved by WVDEP proposed methods for dealing with AMD. A similar request for evaluation under Part 733 had been submitted and denied late in the previous evaluation period. Both requests were denied on the basis that they did not provide specific allegations of a systemic failure of the West Virginia permitting system.

On June 5, 2006, OSM sent a final reply to the West Virginia Highlands Conservancy, Inc. (the Conservancy) related to a request for evaluation of the State's use of the

"Colombo Amendment." The Conservancy alleged that the State was using the provision "to release performance bonds and thereby attempt to terminate regulatory jurisdiction." The request was submitted in 1994 together with a request for Federal inspection and enforcement action at several identified mines. The "Colombo Amendment" was a provision of State law that provided for the release of bonds, under certain conditions, whenever the quality of the post-mining discharges were equal to or better than the pre-mining discharges. The provision was approved as part of the regulatory program for a period of time in the mid-1980's under certain conditions, but it was disapproved later following a change that would have expanded its application. When the Part 733 request was initially received in 1994, OSM conducted extensive reviews to determine if and to what extent the "Colombo Amendment" was being misused, but failed to inform the Conservancy of its decision. By the time the Conservancy inquired of the status of the review in 2006, the "Colombo Amendment" had been removed from the approved State program. Since the provision was no longer part of the approved program, no programmatic action was available to address the concerns expressed by the Conservancy and the request for evaluation was denied.

8. Off-Site Disturbance

During the evaluation period, OSM provided WVDEP technical assistance in the evaluation of a mining operation in Mingo County. Heavy rainfall and severe erosion affected citizens living at the mouth of an excess spoil fill that was being constructed by White Flame Energy. As a result of the evaluation, OSM has recommended that the State examine more closely fill certifications and the use of diversions for both sediment and stormwater runoff control. See Section VI.K for further discussion of this issue.

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

A. Off-Site Impacts

During the evaluation year, OSM conducted a review of all West Virginia non-forfeited coal mining permits to determine the effectiveness of the State program in protecting the environment and the public from off-site impacts resulting from surface coal mining and reclamation operations. The evaluation revealed that 94% of the State's 1,910 permits were off-site impact free.

During this evaluation period, the State conducted 20,802 inspections and issued 1,037 enforcement actions. Of these enforcement actions, 178 off-site impacts were found on 119 permits. In comparison to last year's 141 impacts on 127 permits, the number of impacts off-site has increased by 26 percent, and the number of permits with off-site impacts has decreased by 6 percent.

Most of the off-site impacts (99.5 percent) were categorized as minor. Hydrology, which accounts for 65 percent of the off-site impacts, remains the most common type of impact. This category has decreased 4 percent from last year. In addition, 22 percent of the off-site impacts relate to land stability, 4 percent relate to blasting, and the remaining 9 percent represent encroachment by mining companies. The figures representing resources affected, degree of impact, and type of impact can be found on Table 4.

The State's Office of Special Reclamation (OSR) conducted an off-site impact evaluation of the revoked permits. During this period, 13 permits were forfeited and added to the inventory. These sites only have off-site impacts relating to land reclamation. The State completed land reclamation on 66 bond forfeiture sites during the review period. The State installed active or passive water treatment systems on 12 sites to abate water quality impacts.

The off-site impacts on bond forfeiture sites have decreased to 115. Of the 115 off-site impacts, two are related to land stability problems and 113 are related to water quality problems.

In addition to the 66 sites where reclamation was completed during the evaluation year, the OSR also issued reclamation contracts on 49 sites, and 6 more active or passive water treatment sites are currently under contract. The OSR continues to maintain an inventory of the State's bond forfeited sites, and it is responsible for the reclamation of these sites.

B. Reclamation Success

About two percent of the State's total land area was under permit as of June 30, 2006. The effectiveness of a State program in ensuring reclamation success can be based on the number of acres that meet State bond release standards, including postmining land use, and have been final released by WVDEP.

State reclamation bonds are released in three phases. Phase I bond release indicates that the land contour has been returned to its approximate original contour or a variation thereof. Phase II bond release verifies that the vegetative cover or other erosion control measures have adequately stabilized the surface from erosion and the soil resources are adequate to support that cover. In addition, the site is not contributing suspended solids to streamflow or runoff outside the permit area. Finally, Phase III release, or final bond release, confirms that the mine site is fully reclaimed and the approved postmining land use has been achieved. Complete restoration of land and water resources affected by mining is demonstrated by this release.

Based on the successful completion of all reclamation requirements, WVDEP granted 49 Phase III bond releases during the evaluation period totaling 2,021 acres, as reported in Table 5. There were 92 Phase I and II bond releases during the year that totaled 5,547 and 2,716 acres, respectively. This demonstrates that about 2.5 percent of the permitted area of the State was in some stage of reclamation, and less than one percent of the total permitted acreage received final bond release. In addition, the State's Special Reclamation Program reclaimed 66 additional bond forfeiture sites resulting in 2,651 acres of reclaimed land. Overall, about 1.4 percent of the State's permitted and forfeited acreage was completely reclaimed at the end of the reporting period.

The percentages and types of postmining land uses for those mine sites that were fully reclaimed and received final bond release during the evaluation period are as follows: 42 percent forestland; 4 percent rangeland; 13 percent hay/pastureland; 4 percent fish and wildlife habitat; and 37 percent combined uses. In addition, bond forfeiture reclamation during the year resulted in the following postmining land uses: 29 percent combined uses; 36 percent fish and wildlife habitat; 5 percent

hay/pastureland; 7 percent industrial; 2 percent rangeland; and 21 percent forestland.

C. Customer Service – Permit Application Completeness

During the evaluation period, WVDEP and OSM executed a work plan to evaluate the completeness of permit applications to ensure that the public has sufficient information to make informed and accurate comments on them during the public comment periods. To accomplish this objective, the team reviewed eight new permit applications that had undergone administrative completeness review by the State's permitting staff. In addition, the team developed a questionnaire and interviewed State permit supervisors to determine what subsequent changes in an administratively complete application should be readvertised, because they could affect the public's ability to make informed and accurate comments on the permit application.

The Code of State regulations at CSR 38-2-3.2.a provide that, prior to the publication of an advertisement for a surface mining permit, the applicant must submit an administratively complete surface mining permit application and obtain a surface mining application (SMA) file number. CSR 38-2-2.9 defines administratively complete application to mean an application for permit approval which the Secretary determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review. To implement these requirements, the State developed an Administratively Complete Checklist dated September 1, 2002, and revised it in July 2004, that each permit review team is required to complete prior to the issuance of an SMA number.

For the most part, the review team found that, as required by the approved State program, permit applications were administratively complete at the time of advertisement. In fact, some applicants delayed advertisement pending the completion of the initial technical review by the State. However, some initial permit applications were determined by the State to be administratively incomplete that required substantial revisions. Once an application was found to be administratively complete, the State technical reviews also identified substantial problems that required extensive revisions in some permit applications.

To further improve the public notice process, WVDEP has proposed revising its permit advertisement requirements. As proposed, CSR 38-2-3.2.g would require an applicant to advertise a permit application after the WVDEP deems it to be technically complete. The notice would state that the application has been deemed technically complete and provide for a 15-day public review period. A notice of technical completeness would not be necessary if a permit application is found to be technically correct prior to the end of the initial comment period and a decision is made within 90 days of the end of the comment period or informal conference.

The review team found that the permit application process generally complied with the current legal requirements of the program, but it recommended some enhancements to ensure that the public is able to comment on that version of the application most resembling the final document at the time of approval. The team's recommendations related to timing of the advertisements in relation to technical corrections, the use of electronic permit submission, changes that would require readvertisement, and other procedural issues.

VI. OSM ASSISTANCE – REGULATORY PROGRAM

A. Site Specific Technical Assistance

OSM provided site specific technical assistance to the WVDEP regulatory program for four investigations during this evaluation year. Staff from the OSM Appalachian Region Office in Pittsburgh and the Charleston Field Office provided assistance in evaluating water loss at two sites; blowout potential at another site; and, subsidence impacts at the fourth site. Assistance was also provided in the form of expert testimony for a West Virginia Surface Mine Board proceeding involving the subsidence investigation conducted during the evaluation year. All of the investigations have been completed. The expert testimony assistance effort is continuing.

B. Bonding Forfeiture Liability Factors

WVDEP requested OSM's assistance in identifying bond forfeiture liability factors. These factors can help the State identify companies that may be at risk for permit revocation and bond forfeiture.

During the review period, WVDEP and OSM worked together to identify potential liability factors. These factors include such things as violation history, management experience, work force size, permit status, price of coal, etc. The State will use this information in the administration of its alternative bonding system, commonly known as the Special Reclamation Fund.

OSM also provided the State training in the use of OSM's Handbook for the Calculation of Bond Amounts. State staff from both the AML and Special Reclamation Programs attended the course. The course was designed to help State staff better estimate the cost of reclaiming abandoned and bond forfeiture sites.

In addition, OSM provided WVDEP an analysis of the coal industry in West Virginia. The study found that 90 percent of the State's total coal production in 2005 was produced by 15 coal companies. In addition, 69 percent of the State's total coal production was produced by publicly-traded companies. It is anticipated that the smaller companies, which produced about 10 percent of the State's total coal production in 2005, will eventually go out of business, merge, or be acquired by larger firms. Generally, the study found that the smaller a company is, the more likely it is to be private. Medium-sized firms in the State tend to be controlled by investment firms, and the larger firms tend to be publicly-traded companies.

C. Underground Mine Hydrology/Mine Pool Research

Since the late 1990's, OSM has conducted monitoring of the mine pool in mine voids created by extensive underground mining in the Fairmont, West Virginia area. The water has a high iron concentration and reached a level where it nearly discharged into the Monongahela River in 1996. Since that time, Consolidation Coal Company has removed and treated water from the pool in order to maintain water elevation at a level that will not discharge to the surface. During EY 2006, OSM continued quarterly monitoring of water levels at 12 locations in ten mines within the pool. In addition, automatic water level recordings are conducted at one-hour intervals at four sites. The distribution of monitoring points and the analysis of the data from these

points are providing water level data for each major mine and at different parts of the mine pool flow system.

D. Permitting Guidance

On February 3, 2005, OSM and WVDEP entered into a work plan providing for OSM assistance in the development of permitting guidance and training related to geology and subsidence. After making a draft geology guidance document available for public comment, WVDEP finalized and released the *DEP Geologic Handbook* in September 2005. Preliminary discussion on subsidence guidance was held, but no further activity occurred during this evaluation year. OSM remains available to provide any level of assistance requested by WVDEP and will determine in EY 2007 if further assistance is desired.

E. Productivity Measurement Technique

A joint WVDEP/OSM team completed its evaluation of a new method of measuring productivity success known as the pasture plate method. The team also evaluated the use of total yield data as a means for determining productivity. Currently, the approved method for measuring ground cover in West Virginia is the Rennie-Farmer Method and the method for determining productivity is "cut and weigh."

During previous evaluation years, the West Virginia University (WVU) Extension Service evaluated the pasture plate method for determining productivity success under a contract issued by WVDEP. As reported last year, the team concluded that the pasture plate method is a viable method for determining the productivity of reclaimed mined lands. However, it was agreed that certain parts of the study needed to be revised.

On October 11, 2005, the WVU Extension Service submitted a revised report based on the team's comments. The report entitled "Estimation of Forage Mass from Sward Height and Forage Density on West Virginia Surface Mine Sites" dated October 10, 2004, was amended on October 11, 2005. The revised report noted conditions where the pasture plate method would meet regulatory requirements, as well as areas where its usefulness is limited.

Near the end of the evaluation year, OSM provided WVDEP all documents relating to the study. WVDEP plans to submit these documents as a formal program amendment to allow for the implementation of the pasture plate method for measuring productivity success on reclaimed mined lands in West Virginia.

F. Cumulative Hydrologic Impact Assessments (CHIAs)

On January 21, 2000, the Ohio River Valley Environmental Coalition, Inc. and the Hominy Creek Preservation Association filed a civil suit against the WVDEP in the U.S. District Court for the Southern District of West Virginia [Civil Action No. 3:00-0058, (S.D. W.Va.)]. OSM later became a party to the suit. As part of a settlement agreement in the case, a quality review panel was established to review the cumulative hydrologic impact assessments of twelve West Virginia permits.

During this evaluation year, the panel completed its review of the final six permits, and it is preparing a final report of their activities to be submitted to the WVDEP. Upon the completion of the report, the panel will be disbanded.

G. Technical Training

OSM conducts courses throughout the year in the latest technology related to active and abandoned mine regulation. These courses are administered through OSM's National Technical Training Program (NTTP) and the Technical Information Processing System (TIPS). During EY 2006, WVDEP sent regulatory staff members to 95 NTTP courses and 30 TIPS courses.

H. U.S. Fish & Wildlife Service's Biological Opinion Negotiations

Progress continues on the implementation of the 1996 Biological Opinion regarding Endangered Species consultation between the U.S. Fish and Wildlife Service (USFWS), WVDEP, and OSM.

Meetings were held to discuss the role of each agency. The three agencies recommended that the WVDEP would assume an increased leadership role in this process. Details of how this could be accomplished are the basis for ongoing discussions.

The agencies are also working on a specific Indiana bat protocol for West Virginia. State and Federal officials are also monitoring the development of a revised nationwide recovery plan for the Indiana bat.

I. Horizon Bankruptcy

As reported last year, Horizon Natural Resources Company (Horizon) filed for Chapter 11 bankruptcy protection in November 2002, resulting in the largest coal bankruptcy in U.S. history. At the time of filing, the company was the fourth largest coal producing company in the country. The company had 425 coal mining operations in five States, including West Virginia. The bankruptcy filing showed that the company's liabilities, including reclamation responsibilities, exceeded its assets.

In August 2004, the U.S. Bankruptcy Court in Kentucky approved the company's reorganization which included the sale of some company assets to an investor group for \$786 million, which included \$304 million in cash and \$482 million in second-lien notes. Under the plan, some of the assets which were sold were being formed into a new mining company known as International Coal Group (ICG), others were merged into Massey Energy Company, and the remaining formed a new company, Lexington Coal Company (LCC). The permits that were sold were transferred to ICG and Massey Energy Company, thus preventing the potential for Horizon to default on those reclamation obligations.

LCC was assigned to work in conjunction with the surety companies and to complete the reclamation of those permits that were not sold. Several of the LCC holdings were sold to other viable mining companies after the plan was approved. LCC primary focus now is to complete the land reclamation on those remaining permits and to develop plans to provide for the treatment of any pollutional discharges that may be present.

During the evaluation year, LCC renegotiated with the surety companies to end their direct involvement in the administration of the reclamation activities by replacing the

surety bonds with letters of credit. This action will result in less outlay of capital for administrative purposes and more funding for land and water reclamation. OSM and the State regulatory authorities are closely monitoring the progress of LCC in completing the reclamation of these remaining sites

J. Remote Sensing

During the evaluation period, WVDEP and OSM reviewed the application and effectiveness of remote sensing technology in determining changes to the directional flow of water on large surface disturbances, using currently available data. One investigation examined streams and drainages catchments where no significant mining had occurred. This was designed in order to establish a basic understanding of the character and magnitude of discrepancies that might arise due to data error rather than real change. The goal of the other investigation was to identify actual drainage changes due to mining activity. A final report on the study is currently being drafted.

K. Off-Site Disturbance

On August 18, 2005, a heavy rainstorm with periods of high intensity fell on the Evans Ferrell Branch watershed, located on White Flame Energy's Permit S-5015-01 near Delbarton in Mingo County, West Virginia. This precipitation event, coupled with the subsequent erosive event, adversely affected the citizens living at the mouth of the hollow below the valley fill. Because this was a significant event that might relate to valley fill construction, OSM thought it was important to determine the exact cause of the offsite damage. On August 25, 2005, an OSM technical assistance review team proceeded to the site to assess the situation.

The review team determined that causes of the event could be attributed to both the rainfall event and the condition of the mine at the time the rainfall event occurred. The mine was not following the Stormwater Run-Off Analysis (SWROA) procedures required by the State program prior to the incident. The WVDEP had not identified some basic problems at the site, such as failure to control drainage away from the face of the fill, prior to the incident.

The WVDEP enforcement actions after the event were effective for gaining control of the immediate threat. However, OSM recommended that WVDEP look more closely at fill certifications and the use of diversions for both sediment and stormwater runoff control.

In addition, OSM recommended WVDEP review its procedures with its employees to ensure that permits follow the appropriate SWROA and bottom-up fill construction requirements.

VII. General Oversight Topic Evaluations – Regulatory Program

A. Oversight Inspections

On-the-Ground Inspections

During the evaluation year, the CHFO conducted 194 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.

Assistance	1
Assistance – Experimental Practice	2
Citizen Complaint Referral	2
Bond Release Review	28
Bond Release Review - AMD	4
Sample Inspection – Comprehensive	68
Sample Inspection – Partial	81
Other	2
Other Follow-Up	4
Impoundment	1
Federal Follow-up	<u>1</u>
	194

A total of 194 on-the-ground inspections were conducted by OSM. Eighty-eight violations of the State program were observed on 56 of the 194 inspections. This shows that violations of the State program were observed on 29 percent of the inspections.

Most of the identified State program violations were properly handled by the State. Twenty-six of the violations had been previously cited, 52 were cited at the time of the inspection, three were abated before or during our inspection, one was a follow-up on an outstanding Federal NOV and six violations resulted in the issuance of Ten-Day Notices (TDN). State responses have been determined to be appropriate on four of the TDN violations. Responses have been received on the remaining two violations; however, OSM has requested additional information from the WVDEP.

The following is a breakdown of the violations by type.

Administrative

Mining Within Valid Permit	2
Mining Within Bonded Area	3
Terms and Conditions of Permit	10
Liability Insurance	3
Temporary Cessation	2

Hydrologic Balance

Drainage Control	11
Inspections and Certifications	5
Siltation Structures	8
Effluent Limits	3
Ground Water Monitoring	4
Surface Water Monitoring	2
Hydrologic Balance – Other	5

Backfilling and Grading

Contemporaneous Reclamation	7
Handling of Acid and Toxic Materials	2

Excess Spoil Disposal

Drainage Control 6

Coal Mine Waste (Refuse Piles and Impoundments)

Inspections and Certifications 1

Use of Explosives

Blast Survey/Schedule 1

Warnings and Records 1

Control of Adverse Effects 2

Subsidence Control Plan 1

Roads

Certification 1

Drainage 4

Surfacing and Maintenance 2

Revegetation

Vegetative Cover 2

Total 88

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: 24 - Phase I, 17 - Phase II, and two sites on which Phase III release had been granted. OSM also conducted an on-the-ground review of 25 sites which had requested a Phase III release and the release had not yet been approved.

Overall, the sites inspected demonstrated satisfactory reclamation and confirm 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, as further discussed in Section V.B.

Aerial Inspections

This evaluation focused on sites which received a Phase II or Phase III bond release since January 1, 2005. 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 II or Phase III release between January 1, 2005, and December 31, 2005.

Forty sites were reviewed. The approved postmining land uses appear to have been achieved.

B. Slurry Impoundment Study

In 2000, OSM began a technical review of the potential for breakthrough into active or abandoned underground mine workings at seven selected slurry impoundments. The review was completed in 2005. Because some issues were identified, OSM and WVDEP decided that further review of more recently approved permits was warranted.

In December 2005, a work plan was signed that provided for the review of the three most recently approved slurry impoundment permits. Since that time, an additional approved permit has been added.

During this evaluation year, one of the four impoundments has been reviewed and a report is being prepared. The remaining three impoundments will be reviewed before the end of the next evaluation year.

C. Fill Quality Control Reviews

The Fill Quality Control Review Team was unable to complete its review of fills during this evaluation year. The WVDEP inspectors were completing the fill forms and photographing the fills during the second quarter (April – June) of 2006.

The Review Team will meet and review the data submitted by the WVDEP inspectors next year. Field inspections will be conducted as needed to verify conditions at fills where compliance cannot be verified by the information submitted to the team.

D. Program Amendment Status/Program Maintenance

Program Amendment Status

During the current evaluation period, the following State program amendments were submitted to OSM and were acted upon or are currently pending approval.

Statutory/Regulatory Revisions and Policy Considerations:

On June 13, 2005, WVDEP submitted proposed revisions to its surface coal mining regulatory program (Administrative Record Numbers WV-1419, WV-1420, and WV-1421). The amendments consist of several statutory revisions passed during the 2005 legislative session, proposed regulatory revisions governing surface mining and blasting activities, and a draft policy concerning erosion protection zones associated with durable rock fills. In addition, WVDEP submitted a Memorandum of Agreement between WVDEP and the West Virginia Division of Natural Resources Wildlife Resources Section (Administrative Record Number WV-1405), the State's water rights and replacement policy which identifies the timing of water supply replacement (Administrative Record Number WV-1425), and the Permittee's Request for Release Form (Administrative Record Number WV-1424).

Enrolled House Bill (HB) 2333 amends the W. Va. Code by adding new Article 27 entitled the Environmental Good Samaritan Act. HB 2333 establishes a program to encourage voluntary reclamation of lands adversely affected by mining activities by limiting the liability that could arise as a result of the voluntary reclamation of abandoned lands or reduction abatement of water pollution.

Enrolled Committee Substitute for HB 3033 amends the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) at W. Va. Code §22-3-11 concerning the State's special reclamation tax. This bill was passed by the Legislature on April 1, 2005, and signed by the Governor on April 18, 2005, with an effective date of April 1, 2005. HB 3033 extends the temporary special reclamation tax that funds the State's alternative bonding system for an additional 18 months and provides additional duties for the WVDEP Secretary in managing the State's alternative bonding system at W. Va. Code §22-3-11(h)(2), (3), and (4). OSM determined that the proposed extension of the special reclamation tax for an additional 18 months does not need OSM's specific approval, because the extension is in keeping with the intent of its original approvals.

Enrolled HB 3236 amends the WVSCMRA by adding new W. Va. Code §22-3-11a concerning the special reclamation tax, and adding new §22-3-32a concerning the special tax on coal. Enrolled HB 3236 provides that the special reclamation tax and the special tax, which is used to administer the State's approved regulatory program, are applicable to thin seam coal, and the special reclamation tax is subject to the WV Tax Crimes and Penalties Act and the WV Tax Procedure and Administration Act.

Enrolled Committee Substitute for HB 2723 authorizes amendments to the West Virginia Surface Mining Reclamation Rules at CSR 38-2 and amendments to the Surface Mining Blasting Rule at CSR 199-1. The proposed rule changes pertain to the definitions of previously mined areas, community or institutional building, public building, and structure; incidental boundary revisions; requirements for impoundments meeting Class B or C criteria for dams in Earth Dams and Reservoirs, TR-60; standards applicable to mountaintop removal mining operations with a postmining land use of commercial forestry and forestry; standards applicable to mountaintop removal mining operations with a homestead postmining land use; standards for vegetative cover; water supply replacement; contemporaneous reclamation; procedures for assessing civil penalties; blasting signs and markers; blasting control for other structures; violations by a certified blaster; and penalties for certified blasters.

WVDEP submitted a draft policy concerning durable rock fills with erosion protection zones (Administrative Record Number WV-1421). In its June 13, 2005, submittal letter, WVDEP requested that OSM reconsider its earlier decision to disapprove certain language at CSR 38-2-14.14.g.2.A.6, thus requiring the removal of erosion protection zones. In addition to the draft policy, WVDEP submitted other information in support of its request to leave erosion protection zones under certain circumstances after mining.

WVDEP submitted a policy dated August 1995 regarding water rights and replacement. Its purpose is to define the time periods for providing temporary and permanent water replacement. The policy, which was submitted in response to OSM's 30 CFR Part 732 notification dated June 7, 1996, is intended to satisfy the Federal requirement by setting forth time periods within the State program for providing

temporary and permanent water replacement (Administrative Record Number WV-1037(a)).

WVDEP also submitted the Permittee's Request for Release Form dated March 2005. The form was submitted in response to an OSM 30 CFR Part 732 notification dated July 22, 1997 (Administrative Record Number WV-1071). In that notification, OSM advised the State that the Federal regulations at 30 CFR 800.40(a)(3) were amended to require that each application for bond release include a written, notarized statement by the permittee affirming that all applicable reclamation requirements specified in the permit have been completed. The State revised its bond release form to include this requirement and submitted it for approval.

On August 26, 2005, OSM announced receipt and a public comment period on the proposed State program amendments in the *Federal Register* (70 FR 50244-50257). The public comment period closed on September 26, 2005. However, at the request of an industry group, we extended the comment period through September 30, 2005 (Administrative Record Number WV-1437).

A final decision was published in the *Federal Register* on March 2, 2006, announcing OSM's approval, with certain exceptions, of the proposed amendments to the State's permanent regulatory program. As a result of this decision, several State provisions received qualified approvals, and the required amendments at 30 CFR 948.16 (a), (sss), (www), (ffff), (iiii), (jjjj), (kkkk), (llll), (oooo), (pppp), and (rrrr) were satisfied and removed. In addition, the State's Environmental Good Samaritan Act was approved to the extent that none of the provisions therein can be interpreted as abrogating the authority or jurisdiction of the U.S. Environmental Protection Agency (EPA). The State's policy and regulation allowing erosion protection zones to remain after mining under certain circumstances received EPA concurrence and were approved by OSM. Furthermore, the words "impoundments meeting" at CSR 38-2-5.4.e.1 were not approved, and the deletion of the following words at CSR 38-2-7.4.b.1.J.1(c) were not approved: "surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D."

Surety Bond Requirements:

On October 17, and November 4, 2005, West Virginia submitted revisions to its surety bond requirements (Administrative Record Number WV-1441). The amendment is intended to provide the State with an alternative source of reliable financial information about the surety, and to allow sureties that are licensed and in good financial condition, but are not currently listed with the U.S. Department of the Treasury as an acceptable surety of Federal bonds to provide surety bonds to the coal industry in West Virginia. The amendment was authorized by the West Virginia Secretary of State as an emergency rule under the State's Administrative Procedures Act. According to WVDEP, an emergency exists because there is presently a great demand for reclamation bonds from the coal industry in West Virginia that is not being met by the limited number of sureties currently offering surety bonds in the State. When WVDEP filed the emergency rule, it also filed a legislative rule containing the same language with the Secretary of State.

On November 8, 2005, OSM published a *Federal Register* notice announcing receipt and a public comment period on both the emergency rule and the legislative rule, together with suggested revisions to both rules as recommended on October 14,

2005, (70 FR 67654-67657) by OSM. The public comment period closed on December 8, 2005.

On December 30, 2005, a final decision on the surety bond requirements was published in the *Federal Register* (70 FR 77321-77325). With the exception of a typographical error, OSM approved the emergency surety bond rule. In addition, OSM acknowledged that a legislative rule that would make permanent the emergency rule was submitted to the Legislative Rulemaking Review Committee on November 2, 2005. It was to be acted upon by the Legislature during the 2005-2006 regular legislative session. OSM stated that if the legislative rule is adopted with language that is identical to the emergency rule being approved, no further action would be required by OSM. However, any substantive changes that go beyond the language approved by OSM would be subject to public review and further rulemaking.

On April 25, 2006, OSM notified the State that the surety bond rule, which was published in the *State Register* on November 2, 2005, and adopted by the Legislature as a legislative rule on March 11, 2006, at §64-3-1, paragraph (j) of Enrolled Committee Substitute for House Bill 4135 and approved by the Governor on April 4, 2006, is identical to the emergency surety bond rule that OSM approved in the *Federal Register* on December 30, 2005 (Administrative Record Number WV-1461).

In accordance with that *Federal Register* notice, because the State adopted language in the legislative rule that is identical to that which OSM approved in the emergency State rule, no further action is required by OSM. The State legislative rule took effect on March 11, 2006.

Statutory/Regulatory Amendments:

On April 17, 2006, WVDEP submitted an amendment to its permanent regulatory program (Administrative Record Number WV-1462). The amendment consists of Committee Substitute for House Bill 4135, which amends the State's Surface Mining Reclamation Regulations by adding a postmining land use of bio-oil cropland and criteria for approving bio-oil cropland as an alternative postmining land use for mountaintop removal mining operations with variances from approximate original contour. Also submitted is Senate Bill 461, which amends W. Va. Code §22-3-24 relating to water rights and replacement. In its submittal of the amendment, the WVDEP stated that the codified timetable for water replacement is identical to the one contained in the agency's policy dated August 1995 regarding water rights and replacement that is referenced in the March 2, 2006, *Federal Register* (71 FR 10784-10785). Both bills were passed by the Legislature on March 11, 2006, and signed into law by the Governor on April 4, 2006.

The Governor also signed Senate Bill 774, on April 4, 2006, which amends language concerning definitions, offices, and officers within WVDEP. OSM determined that the amendments to Senate Bill 774 are non-substantive and do not require its approval. Therefore, the amendments to Senate Bill 774 can take effect as provided therein on June 9, 2006.

OSM announced receipt and a public comment period on the proposed statutory and regulatory revisions in the *Federal Register* on June 2, 2006 (71 FR 31996-31999). The public comment period closed on July 3, 2006. OSM intends to announce a final decision on the proposed amendment within the near future.

Program Maintenance

Required Program Amendments:

During the evaluation period, WVDEP satisfied eleven required program amendments. At the end of the reporting period, the State had no outstanding required program amendments.

As mentioned above, on March 2, 2006, OSM approved a program amendment that was submitted by WVDEP on June 13, 2005, and modified on August 23, 2005. With the approval of this amendment, the State resolved all of its outstanding required amendments. This is the first time in 25 years that the State has a fully approved permanent regulatory program without any required amendments.

The program amendment submitted by the State on April 17, 2006, and still pending OSM's approval was submitted voluntarily. It is intended to enhance the State's approved program.

30 CFR Part 732 Notifications:

During the evaluation period, the State resolved six program issues resulting from the issuance of two 30 CFR Part 732 notifications by OSM. The Part 732 notifications were issued to the State as a result of changes in the Federal regulations. The statutory and regulatory revisions submitted on June 13, 2005, and the additional policies and form that were submitted by the State on August 23, 2005, and approved by OSM in the *Federal Register* on March 2, 2006, resolved all the State's outstanding Part 732 issues.

As previously reported, OSM agreed in 2003 that, given ongoing litigation, the State did not have to take any action with regard to Part 732 notifications concerning ownership and control, subsidence, and valid existing rights. A formal announcement of that decision was published in the *Federal Register* on April 29, 2004 (69 FR 23474). OSM will notify the State if and when these Part 732 issues will have to be resolved.

E. Liability Insurance

Because of concerns in other States, both WVDEP and OSM agreed to evaluate liability insurance policies purchased by coal companies operating in West Virginia to ensure that there are no deductible clauses in them that may affect policy coverage and to guarantee that both the liability period and the liability coverage amounts are sufficient to cover personal and property damage, as provided by the approved State program.

State regulations require that an applicant must provide liability insurance for each surface mining and reclamation operation and maintain such insurance throughout the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation operations. The minimum amounts for each surface mining and reclamation operation are: \$300,000 for each occurrence and \$500,000 aggregate for bodily injury; and \$300,000 for each occurrence and \$500,000 aggregate for property damage, with no exclusions for blasting, landslides, or water loss. Currently, there are approximately twenty-two insurance companies that issue liability insurance policies for surface coal mining reclamation operations in the State.

During the review period, OSM and State officials met with representatives from the insurance industry and discussed the issue. To complete the review, a representative sample of all insurance companies that issue liability policies to coal companies in the State were identified. Insurance policies/forms issued by those companies are currently being evaluated. Special attention will be given to the type of policy, the amount of any deductible, and if any exclusions are identified in the policies. Because this review has not been completed, it will be continued into the next evaluation period.

F. Mountaintop Mining Action Plan

In 1999, OSM and WVDEP signed an Action Plan for Resolving Mountaintop Mining Issues. The only remaining item from the action plan at the beginning of this evaluation year was Item II.D. This item provided that WVDEP would identify permits with an AOC variance that was justified by a postmining land use (PMLU) not authorized by the approved State program. The identified permittees were to submit a revision for an approvable PMLU use or revise the permit to remove the AOC variance.

Of the 37 active permits identified as having inappropriate land uses to support the AOC variance, all but three were addressed at the end of the previous evaluation period. During this evaluation year, the remaining three operators submitted and received approval for appropriate permit revisions. On May 31, 2006, OSM notified WVDEP that the action plan was considered complete.

G. AMD Prediction – Underground Mining and Expansions

During the review period, OSM and WVDEP jointly developed a work plan to evaluate underground mining permits where discharges have developed or where pumped water requires treatment. The review was designed to determine whether AMD formation could have been predicted and properly addressed through better permitting considerations and decisions. Staff from the CHFO, ARO, and WVDEP participated in the evaluation.

The evaluation of nine permits has been completed. Three of the permits were located in the northern part of the State and six were located in the south.

OSM and WVDEP team members are preparing a report that is expected to be completed during the next evaluation year.

H. Fill/Flood Oversight and Technical Assistance Plan

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

At the conclusion of the last evaluation year, the only activity remaining under the Agreement was the evaluation of the implementation of the valley fill inactive status policy issued by WVDEP in October 2004. Since that time, few requests for inactive status of valley fills have been received. However, during this evaluation year, three

approved inactive status permits containing valley fills were identified and evaluated to determine if the policy was being properly implemented by WVDEP staff. The policy was developed to address fills that were actively under construction and needed to become idle for a period of time. Although the fills on the three selected permits did not exactly meet the situation for which the policy was developed, one was reclaimed, one had only minor disturbance, and the third had only been cleared and grubbed, it appears that little or no consideration was given to the policy during the approval process. WVDEP is currently reviewing the findings of the evaluation, and will provide comments and corrective actions during the next evaluation year.

I. Bond Forfeiture – Special Reclamation of Sites with 3rd Party Liabilities

For more than five years, WVDEP and OSM have worked together to improve the accuracy of the inventory of revoked permanent program permits, especially those that continue to generate AMD discharges. During this effort, an issue was identified concerning instances where 3rd parties, (identified as someone other than the Permittee or the State Regulatory Authority), assumed the reclamation responsibility at a revoked site and may not have met the reclamation obligations as required by the approved State program. Consequently, WVDEP and OSM agreed to initiate a file review of those permits where a 3rd party had assumed all or some of the reclamation responsibilities, with the objective to determine if land and water reclamation had been accomplished.

The file review included 42 permits that were identified as potentially having a 3rd party obligated to complete land and/or water reclamation. At the conclusion of the permit file reviews, the reviewers could not determine whether reclamation had been completed for more than half of the 42 permits. In all, the reviewers were not able to determine the adequacy of reclamation for 27 permits that were to be reclaimed by a 3rd party. In these instances, a Federal or State settlement agreement, consent agreement, or other arrangement had been developed for the completion of land reclamation and/or water treatment. It was noted that many of the permits and their associated agreements included in this review were old and do not necessarily represent the current procedures of the WVDEP related to 3rd party reclamation activities. However, the review team identified several procedural issues that should be considered in the event of future State approvals of 3rd party reclamation agreements, including:

- better communication and coordination between various WVDEP divisions;
- development of a tracking procedure to monitor the implementation of 3rd party agreements to ensure reclamation work is completed;
- conducting routine inspections of 3rd party reclamation sites; and,
- updating files with current information on the status of the 3rd party reclamation efforts.

WVDEP and OSM agree that the issues identified by the study need to be addressed and follow-up actions need to be taken on those permits where land reclamation or water treatment has not been adequately documented or completed. A joint WVDEP/OSM follow-up study will be conducted during the next evaluation year for these 27 revoked permits.

J. Blackwater Spills

WVDEP and OSM agreed to conduct a follow-up study this year, as a result of the EY 2004 blackwater spills general enforcement review. During this review period, CHFO and WVDEP developed a work plan to evaluate and report on the effectiveness of customer service provided by the WVDEP regarding blackwater spills.

This study is continuing and the findings for this report will be submitted and finalized next year.

K. Downslope Spoil Placement

As discussed in last year's report, WVDEP and OSM jointly developed a work plan to review violations related to the downslope placement of spoil in steep slope areas. The purpose of the review was to determine if WVDEP implemented recommendations from a Perimeter Protection Evaluation Report in EY 1999 and whether those actions reduced the frequency of downslope violations. The study also wanted to further determine if there are adequate safeguards against downslope spoil that may present a threat to citizens living below mining operations.

The State statutory and regulatory requirements at W.V. Code §22-3-13(d) and CSR 38-2-14.8.a.1 prohibit placement of spoil, debris, waste mineral matter, or abandoned or disabled equipment downslope of the initial mining cut in steep slope areas, except as provided in W.Va. Code §22-3-13(d). Subsection (d) provides that soil or spoil from the initial cut in a new surface mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the Secretary that the soil or spoil will not slide and the other requirements of Section 13 can still be met.

CSR 38-2-14.8.6 provides that constructed outcrop barriers shall be designed using standard engineering procedures to inhibit slides and erosion to ensure the long-term stability of the backfill. The constructed outcrop barriers shall have a minimum static safety factor of 1.3, and where water quality is paramount, the constructed barriers shall be composed of impervious material with controlled discharge points. In addition, the State's constructed outcrop barrier policy dated May 1, 2002, provides that standard engineering practices for constructed outcrop barriers shall include the following:

- The design of the constructed barrier shall take into consideration site conditions;
- The construction of the outcrop barrier shall occur simultaneously with the removal of the natural barrier and be located at or near the edge of the lowest coal seam being mined, and temporary measures must be in place until the barrier is constructed;
- The recommended outslope of the constructed barrier is 2h:1v with a static safety factor of 1.3;
- If the proposed outslope is steeper than 2h:1v, the constructed barrier shall be designed to have a static safety factor of 1.5; and,

- If the constructed barrier is part of the sediment control system, the constructed barrier shall be designed to have a static safety factor of 1.5.

The study found that the majority of downslope violations were attributed to blasting and failure to properly construct sediment control structures and outcrop barriers. It appeared that WVDEP had failed to fully implement its policy and regulations approved in May 2002 for the design and certification of constructed outcrop barriers. Some State representatives feel that the problem was primarily the failure of operators to document the factor of safety for outcrop barriers in permit applications. Others feel that, while the policy is technically sound, the integrity of constructed outcrop barriers is totally dependent on the ability of operators to adapt the construction material and techniques to site specific conditions found in the field. The team also found that some of the recommendations from the earlier Perimeter Protection Report had not been fully implemented by the State.

The team recommended that those earlier recommendations be implemented. In addition, it made some additional recommendations which are being considered by the WVDEP. One of their recommendations which involved training has already been implemented by the State. Earlier in the year, WVDEP conducted training for its inspection and enforcement staff in the prevention of downslope placement of material in steep slope areas. The training focused on specific measures needed in order to prevent the occurrence of downslope violations. Proper construction techniques of outcrop barriers were discussed and specific instructions given to State inspectors to monitor each phase of construction. Given the decrease in the number of downslope violations cited this year, some State officials feel that they are seeing improvement in this area.

L. AMD Inventory of Active Permits

As previously reported, WVDEP completed AMD inventories of active sites in 1994, 1996, 1998, and 2000. In September 2002, the State completed an action plan that would have provided for another AMD inventory update of active sites, but it was not fully implemented.

During this evaluation period, WVDEP and OSM executed a work plan and assigned team members to conduct another review. The purpose of the review is to assist the State in the development of a current inventory of active mining and reclamation operations with AMD treatment, and to implement a process that will allow for the regular collection of raw water data at those sites in the future.

The work plan provides that the team will query existing databases; compare data; determine type of treatment and reasons for treating; identify National Pollutant Discharge Elimination System (NPDES) outlets that qualify for relief from the manganese limit due to the five mile radius rule; develop and implement a method that will allow for the collection of raw water data; and establish a process that will enable the State to estimate future capital and operating costs at NPDES outlets requiring treatment.

The team decided to evaluate the State's NPDES database, which includes information regarding raw water and the type of treatment for each NPDES outlet. This data is obtained from NPDES Permit Reissuance applications. Given the number of NPDES Permit Reissuance applications, it was decided that it would be too time consuming to review these applications individually.

A preliminary review, however, showed that there was a problem linking the NPDES and Article 3 permits. The State inspection report, DMR 6, form was modified years ago, and it no longer provides this information. WVDEP modified its DMR 6 form this year. With this modification, the State inspector is to check a box which indicates whether or not the operator is treating and at which outlet. The form does not indicate what is being treated or what reagents are being used.

Inspectors started gathering this information on May 1, 2006. It was determined that all the necessary data should be available in ERIS for evaluation by September 2006. Due to the difficulty of obtaining data, this review will continue into the next evaluation period.

M. Bonding Program Improvements

On May 29, 2002, OSM fully approved the State's Alternate Bonding System (ABS) that: (1) included an increase in the special reclamation tax rate from 3 cents per ton of clean coal mined to 14 cents, with 7 of the 14 cents expiring after 39 months; (2) created a Special Reclamation Advisory Council (the Council) to monitor the progress of the ABS in meeting future bond forfeiture reclamation obligations; and (3) removed the limitation on funding for treating pollutional discharges at bond forfeiture sites.

The Council met several times during the year to evaluate the status of the Special Reclamation Fund (SRF) and to monitor the progress of land reclamation and water treatment at bond forfeiture sites. One Council member (the citizen representative) resigned for personal reasons during the review period, and that position has not been replaced at this time.

In September 2005, the Council accepted the final actuary report that was started during the last evaluation year. A "Request for Proposals" is being prepared for a second actuary study that will be submitted for bid by the end of the calendar year.

Acting on recommendations from the Council, the additional 7 cents described above was extended for an additional 18 months during the last legislative session. The Council did not prepare a report for the 2006 legislative session.

At present, the additional 7 cent tax will expire on October 1, 2006. OSM will continue to monitor the effect this reduction will have on the ability of the SRF to meet land and water reclamation obligations.

During the evaluation period, the Council continued to work with Marshall University on other funding mechanisms to replace or supplement the current SRF. See Section IV.A.5. for a detailed discussion of these efforts.

VIII. Abandoned Mine Land Reclamation Program

A. General

The mission of the Abandoned Mine Land Reclamation (AMLR) Program is to reclaim abandoned mine sites by abating hazards, reducing or mitigating the adverse effects of past mining, and restoring adversely affected lands and water to beneficial uses. WVDEP's Office of Abandoned Mine Lands and Reclamation is successfully carrying out

this mission. But, many more abandoned mine land problems remain that need to be addressed and ultimately abated.

1. General Program Information

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

- The regular construction program abates high priority, non-emergency problems caused by past mining practices. OSM approved the regular abandoned mined lands construction program on February 23, 1981.
- The emergency program abates emergency problems caused by past coal mining practices. OSM approved the emergency program on August 26, 1988.
- Water supply provisions allow the State to repair or replace water supplies when the damage from past mining practices occurred primarily before August 3, 1977. OSM approved this program provision on July 25, 1990. Also, during this evaluation year, WVDEP changed the funding mechanism for partially funded AML waterline projects. In the past, contracts were awarded and used as a funding source. Sub-grants are now used by the agency when the percent of impacts from AML eligible lands is less than 100 percent, while State procurement procedures are followed if the percent of eligible impacts is 100 percent.
- The AMD set-aside program allows the State to keep up to 10 percent of its annual grant allocation for future use to reclaim watersheds impacted by AMD. OSM approved this program component on March 26, 1993. The first AMD project was funded on August 23, 1995. To date, West Virginia has set-aside about \$12 million.

2. Appalachian Clean Streams Program

For Fiscal Years 1997 through 2006, West Virginia received \$9,795,266 from the Appalachian Clean Streams Program (ACSP) for acid mine drainage remediation projects at abandoned coal mine sites. AMLR has funded 16 projects with ACSI funding at a total cost of \$8,723,873. All of these projects are completed, with the exception of two that are under construction.

AMLR estimates that 128 miles of stream are polluted by AMD discharges from all abandoned sites funded through the ACSP. To date, reclamation and water treatment conducted at these sites has improved 59 stream miles.

The completed projects involved construction of wetlands, open limestone channels, successive alkalinity producing systems, and in-stream limestone sand treatment. Additionally, land reclamation accounted for a significant portion of water quality improvements as several of the sites involved regrading and revegetating exposed toxic coal refuse materials. AMLR monitors downstream water quality for each of the completed ACSP project sites. AMLR is continuing its efforts to measure the success of these projects. The collection of data and overtime will determine the overall success of the reclamation and water treatment efforts.

AMLR continues to be an important partner to West Virginia watershed organizations on acid mine drainage remediation projects. AMLR has used monies from its ACSP to

help fund AMD projects in partnership with watershed organizations and other funding partners. ACSP has contributed a total of \$6,747,683 for these projects.

B. Noteworthy Accomplishments

1. Construction Activities/Authorizations to Proceed

During EY 2006, CHFO issued notices to proceed for the following non-emergency AML construction projects:

Project Name	Date Approved
McDunn Refuse	July 8, 2005
Sarah Ann Drainage	July 26, 2005
Coal Hollow Refuse	July 26, 2005
Overfield Refuse	August 23, 2005
Harding Drainage	August 23, 2005
McConnell Portals	August 26, 2005
Dayton Park	August 26, 2005
War Impoundment	October 11, 2005
Righter Mine	November 2, 2005
Jolo Waterline	November 11, 2005
Sanger Drainage	January 12, 2006
Bearwallow Refuse	March 24, 2006
Weaver Portals	March 24, 2006
Dempsey Branch	March 29, 2006
Handley Drainage	March 29, 2006
Route 39/Peters Creek Waterline	April 6, 2006
Key Rock Water System	April 27, 2006
Minden Portals	May 9, 2006

The number of notices to proceed issued during this evaluation period is essentially the same when compared to the previous evaluation period.

2. Emergency Program

During EY 2006, WVDEP initiated 36 emergency projects with a total anticipated cost of \$1,623,755. These costs have decreased significantly from last year, primarily due to a relatively dry year which resulted in only two new landslide emergency projects. Twenty-four of the thirty six emergency projects involved subsidence, all of which were estimated to cost \$50,000 or less. Only six of the 36 projects were estimated to cost more than \$50,000, with three projects estimated at more than \$100,000. Other types of emergency projects completed this year include the extinguishment of burning refuse, sealing of open portals and air shafts, correction of drainage problems, and repair to a previously constructed OSM retaining wall.

3. AMD Abatement and Treatment Plan

During the past year, AMLR has been aggressive in identifying AMD projects in qualified hydrologic units and developing abatement and treatment plans for OSM's approval. During the evaluation year, WVDEP submitted and received approval for 16 AMD

Abatement and Treatment Plans. See Section VIII.D.5. of this report for additional information about this topic.

C. OSM Technical Assistance

1. Technical Training

OSM conducts courses throughout the year in the latest technology related to active and abandoned mine regulation. These courses are administered through OSM's National Technical Training Program (NTTP) and the Technical Information Processing System (TIPS). During EY 2006, WVDEP sent AML staff members to 43 NTTP courses and 21 TIPS courses.

2. Site Specific Assistance

During EY 2006, ARO and CHFO provided site specific assistance to WVDEP to evaluate potential pre-law impacts and/or remedial measures at seven sites. Four of these included efforts begun during the previous evaluation period, including two that are still under evaluation. A total of five assistance efforts were completed during the evaluation period. The investigations related to potential gas problems with methane and carbon dioxide; an eligibility determination for seepage at a combined pre-law/post-law refuse pile; landslides; subsidence; and, the evaluation of bat gates at open portals. The methane investigation and the coal refuse pile eligibility determination are still pending.

3. Fish & Wildlife Coordination – Culvert Project

The bat culvert study continues to move forward. It is being conducted in two phases.

Phase I consists of surveying two sites that have been reclaimed using the culvert style bate gate. These sites, with multiple portals, were surveyed prior to culvert bat gate installation, and post-gate installation surveys will be conducted during the 2006 fall swarming season. An Indiana bat was captured at the Montgomery site, and plans were changed to install a proven standard bat gate at this location. Completed survey reports will be submitted by November 15, 2006.

Phase II of the study consists of surveying seven additional sites. This phase was to begin in the spring of 2006, but it was delayed by WVDEP because State purchasing procedures did not allow the hiring of a contractor to conduct surveys in time for the spring swarming season. Pre-culvert bat gate installation surveys will now begin during the 2006 fall swarming season. Pre-installation survey reports will be submitted by November 15, 2006. The post-installation surveys will be conducted during the fall 2007 swarming season. This is an ongoing study that will continue for a minimum of three years.

4. Reclamation Information Management System (RIMS)

In February 2006, OSM and AMLR signed a work plan and created a team to evaluate the State's existing Reclamation Information Management System (RIMS). RIMS is the primary database and management system for AMLR. The system has not been fully developed and those parts which have been developed have not met the expectations of AML management and staff. The initial intent of the review was to evaluate the purpose, intent and success of the system to date; the amount of assistance AML has

received from WVDEP's Information Technology Office (ITO) in developing RIMS; the cost for developing, implementing and maintaining the system; and the evaluation of the products developed and proposed, along with other issues.

The team includes ITO staff and management; AML staff and management; and technical and programmatic staff from OSM. During the initial meeting in April 2006, the team agreed that RIMS is not functioning properly and that the focus of the team should be directed toward the development and/or reconstruction of a working system rather than spending a significant amount of time evaluating past problems.

Existing modules, which relate to abandoned mine land reclamation, including planning, design, realty, construction, emergencies, complaints/investigations, and finance, have been reviewed, and a priority system has been established for developing and/or updating the modules. All modules are to be functioning by June 30, 2007. This review will be continued through the next evaluation period.

5. State Plan Informal Program Amendment

During the evaluation year, OSM provided WVDEP technical assistance and advice in updating the State's AML Reclamation Plan.

OSM had provided the State some informal comments last year as result of an earlier review. Several meetings were held during the year to discuss those comments and to make revisions to the State Plan.

As a result, the State submitted revisions to the State AML Plan to address OSM's informal comments. Subsequently, OSM provided the State additional suggested revisions to the State Plan. OSM also provided the State guidance for the development of guidelines regarding coal refuse reprocessing and remining.

After the close of the evaluation year, on July 3, 2005, WVDEP formally submitted an amendment that contains the proposed revisions to the State's AML Reclamation Plan. The receipt of the proposed amendment and a public comment period will be announced shortly in the *Federal Register*. The amendment will be processed in accordance with the Federal AML program amendment requirements at 30 CFR 884.15.

D. Results of Enhancement and Performance Reviews

1. Drawdown Analysis/Resolve Audit Issues

ARO's Grants staff conducted Quarterly Drawdown Analyses during FY 2006. The drawdown analyses were conducted in accordance with the following requirements:

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

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

WVDEP's drawdown activities were found to comply with both of these requirements. In addition, there were no audit findings referred to OSM for disposition during this evaluation year.

2. Regular AML Construction Program

Table 12 lists the cumulative AML reclamation accomplishments in West Virginia. A comparison of this table with the EY 2005 West Virginia Annual Evaluation Report shows that during EY 2006 West Virginia reclaimed:

- 1.9 miles of clogged streams;
- 12,600 lineal feet of dangerous highwalls;
- 49 dangerous impoundments;
- 220 acres of dangerous piles & embankments;
- 14.7 acres of dangerous slides;
- 12 hazardous equipment units & facilities;
- 28 portals;
- 3.4 units of polluted water for agricultural and industrial use;
- 110 units of polluted water: human consumption;
- 29.7 acres of subsidence;
- 15.7 acres of surface burning;
- 8 acres of underground mine fires;
- 3 vertical openings;
- 2 acres of priority three benches;
- 1 priority three acre of industrial and residential waste;
- 1 priority three equipment and facilities unit;
- 4 acres of priority three gob piles;
- 4 acres of priority three spoil areas; and,
- 20 gallons per minute of priority three water problems.

For most of the above categories, overall reclamation progress improved for this year. Significant accomplishments involved eliminating dangerous highwalls, abating mine fires, and stabilizing subsidence areas.

3. AML Regular Construction/Emergency Project Inspections

CHFO conducts periodic inspections/evaluations on a sample of all types of abandoned mine land problems, including emergencies, regular grant projects, and watershed cooperative agreement projects. Sites may be evaluated during: the planning stage, the pre-bid conference, construction, and at the final inspection. The EY 2006/2007 Abandoned Mine Land Performance Agreement established that 15 AML inspections would be conducted during the year, with the majority being conducted on emergency

projects. However, because so few large-sized emergency projects were conducted this year, inspections concentrated on larger AML projects and watershed cooperative agreement sites. No significant problems were observed on the project inspections, and work was being done in accordance with the approved State program and the specific reclamation plans for the projects. However, as discussed below, one site has been problematic.

Shannon Branch Refuse Pile

The McDowell County Economic Development Authority (McDCEDA) was awarded a sub-grant in 2004 to remove a coal refuse pile along Shannon Branch. The intent of the project was to utilize McDCEDA's prison work force and training programs to conduct the reclamation at the site. The refuse material was to be reprocessed, with profits from the sale of the coal going back into the project, and the reject from the reprocessing being used as needed sub-base for a proposed County landfill in the head of Shannon Branch Hollow.

McDowell County is one of the most economically-challenged counties in the State and one of the project goals for McDCEDA was to provide unemployed and underemployed County residents (previous coal miners) with construction related jobs and training due to the reduced number of mining operations in the area.

Several problems have occurred at the site since the initial award of the contract. In the spring of 2005, an explosion occurred off-site while the reprocessor attempted to open a sealed mine shaft to obtain water. The accident at the site resulted in an extended shut down of the reprocessing activities, which initiated legal issues between the County and their reprocessing subcontractor. Very little work was conducted on the site until late March 2006, primarily due to litigation between the subcontractor and the sub-grantee. Refuse reprocessing is currently on-going, but several issues remain to be resolved with the litigation. WVDEP continues to provide daily inspections of the site with frequent inspections by OSM.

4. AMLIS Review

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

To comply with the OIG's recommendations, CHFO developed procedures to conduct AMLIS reviews to ensure that data is, in fact, entered and accurate. For this evaluation report, the AMLIS review involved:

- The review of OSM directives and guidance to update AMLIS;
- The review of the State AML Reclamation Plan and State procedures to update AMLIS;
- AMLR staff interviews;
- The identification of the process that the State uses to update and maintain AMLIS data;

- The determination if the process meets current guidelines and incorporates a quality control aspect; and,
- The sampling of emergency projects and non emergency projects from July 1, 2005, through December 31, 2005, to verify that the data was entered and accurate.

After completing the review, CHFO found that the State maintains a process to validate the accuracy of the data entered into AMLIS. The only exceptions noted were (1) the funding category had not been changed from unfunded to funded on two regular construction projects, (2) four emergency projects had not been entered into the system until sometime after the projects had started, and, (3) the final costs for two of these projects had not been updated until sometime after the projects had been completed. The emergency project lag time occurred primarily because of certain uncontrollable factors (i.e., several key emergency employees left and certain technical issues that involved internet access). CHFO does not consider any of these concerns to represent a systemic problem. WVDEP has recently developed and implemented written procedures that should address these and any future concerns. Furthermore, AMLIS has been recently updated to reflect the proper project funding category, the appropriate emergency project cost, and the correct emergency project completion data.

5. AMD Abatement and Remediation Plans

In 1987, Congress amended Section 402 (g) (3) of SMCRA to establish the first set-aside program, which authorized states to deposit up to ten percent of the funds granted annually into a special trust fund. Such funds and all interest earned on the funds are then eligible to be used by a state after August 3, 1992, to carry out the purposes of Title IV. The law was amended again in 1990 by adding subsection (g) (6) to section 402, authorizing two set-aside programs.

402(g)(6): (A) a special trust fund established under State law pursuant to which such amounts are expended by the State solely to achieve the priorities stated in section 403 (a) after September 30, 1995; or (B) an acid mine drainage abatement and treatment fund.

The latter requires the State, among other things and before expending such funds, to prepare an AMD Abatement and Treatment Plan within a qualified hydrologic unit for review and approval by the Secretary of the U.S. Department of the Interior.

In 1992, WVDEP began setting aside a percentage of its grant monies into an AMD Abatement and Treatment Fund (set-aside fund). To date, the State has set aside approximately \$12 million for AMD abatement and treatment. Most recently, WVDEP requested that \$500,000 be set-aside into this fund from its FY 2006 AML Administration Grant.

To date, WVDEP has submitted and received approval for twenty-one AMD Abatement and Treatment Plans. Projects within qualified hydrologic units are located in the following watersheds: Middle Fork of the Tygart River, Blackwater River, Deckers Creek, Ten Mile Fork of Paint Creek/Kanawha River, Morris Creek of the Kanawha River, Coons Run of the West Fork River, Wolf Creek of the New River, and the Cheat River. WVDEP either maintains treatment facilities in these watersheds or is in some phase of project construction.

The magnitude of AMD pollution from abandoned mines (impacting over 500 of West Virginia streams and rivers) and the cost to clean up these pollution sources, exponentially exceeds the funds available from the set-aside program. Consequently, WVDEP has been conservative regarding the expenditures from its set-aside program, so as to insure availability of funds for the operation and maintenance at AMD sites already developed. Both the Blackwater River drum station and the Middle Fork River projects require perpetual addition of alkaline materials to maintain a trout fishery for approximately 50 stream miles.

6. AML AMD/Mine Fire Inventories

The purpose of the AMD review was to aid WVDEP in initiating the development of an inventory of AML sites in the State with AMD and include the data in AMLIS. The WVDEP identified potential areas of AMD sources by conducting a density analysis on their remote sensing data in a watershed with known AMD. This data was then field verified to determine the accuracy of the density analysis. The team located an area with moderate density profile. The team located an unknown source of AMD at that location. The source for the AMD was located on top of a refuse pile. Based on this investigation, the density analysis appears successful at locating potential AMD discharges. This method is effective and time saving for field inspectors. This study will continue into the next evaluation year.

The purpose of the other project is to identify and inventory AML sites with active mine fires. WVDEP plans to conduct aerial flights to aid in the delineation of mine fires, and produce a base map with known AML fire locations. However, due to complications with their hardware failure, this has taken longer than expected to complete. This project will continue into the next evaluation year.

7. AML Water Treatment Database

OSM and the Pennsylvania Department of Environmental Protection completed a GIS database of all passive treatment AMD remediation projects in Pennsylvania in 2005. The concept was expanded to a regional concept, and West Virginia began gathering information concerning the extent and location of passive treatment systems statewide in early 2006. Letters were written to State and Federal agencies having possible involvement with water quality improvement and/or mining and reclamation, as well as active watershed groups, universities and non-profit organizations which may have knowledge or experience with AMD systems. Those parties were requested to provide basic information (project name, location, and parties involved) so that a list could be generated and sites could be identified. Once the sites were identified, the lead agency/organization was requested to complete a detailed data collection form and submit it back to OSM.

Seventy-seven passive treatment sites were identified in the State, with the large majority of those sites being constructed by the AMLR, using regular grant funding, or funding through ACSP. Other primary funding sources were OSM's Watershed Cooperative Agreement Program (WCAP) in direct grants to watershed groups, U.S. Environmental Protection Agency's 319 program, and the Federal Natural Resources Conservation Service. Private funding sources, as well as university and non-profit organizations, have also contributed to the treatment of AMD sources in the State. A regional database is currently being updated with the information collected from the various agencies.

8. No-Cost Contracts/Coal Refuse Reprocessing Study

The purpose of this study was to review the State's existing requirements concerning no-cost reclamation and enhancement projects, and to ensure that WVDEP is following its approved program. A review of the contract documents was also done to determine if WVDEP staff had adequate control over the contractors.

A careful review of all six AML no-cost reclamation and AML enhancement sites showed that WVDEP followed existing Federal and State requirements for all of these sites. The three sites that were completed did not deviate from their final reclamation plans. A site that was still in the process of being reclaimed was following its approved plan. Two of the sites had not started.

It must be noted that WVDEP is currently revising its abandoned mine land no-cost reclamation guidelines and drafting abandoned mine land enhancement rules. These new requirements will clarify what constitutes "no-cost" and "enhancement" projects. In addition, they will separate coal refuse piles into a third category to be called "abandoned coal refuse removal" and revise their guidelines accordingly. Since West Virginia is a primacy State, we have encouraged WVDEP to finalize its AML Enhancement requirements as soon as possible, to make their State AML Program consistent with the Federal requirements.

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) EY 2006			
Period	Surface Mines	Underground mines	Total
Coal Production ^A for entire State:			
<u>Annual Period</u>			
2003	54.100	87.700	141.800
2004	55.900	90.300	146.200
2005	61.600	90.800	152.400
Total	171.600	268.800	440.400
<p>^A Coal production as reported in this table is the gross tonnage which includes coal that is sold, used, or transferred as reported to OSM by each mining company on form OSM-1 line 8(a). Gross tonnage does not provide for a moisture reduction. OSM verifies tonnage reported through routine auditing of mining companies. This production may vary from that reported by States or other sources due to varying methods of determining and reporting coal production.</p>			

TABLE 2

INSPECTABLE UNITS As of June 30, 2006												
Coal mines and related facilities	Number and status of permits								Insp. Unit^D	Permitted acreage^A (hundreds of acres)		
	Active or temporarily inactive		Inactive Phase II bond release		Abandoned		Totals					
	IP	PP	IP	PP	IP	PP	IP	PP		IP	PP	Total
STATE and PRIVATE LANDS REGULATORY AUTHORITY: STATE												
Surface mines	0	537	3	73	11	171	14	781	795	13.10	2544.12	2557.22
Underground mines	0	639	0	156	0	113	0	908	908	0	331.19	331.19
Other facilities	0	434	1	67	2	50	3	551	554	0.38	451.94	452.32
Subtotals	0	1610	4	296	13	334	17	2240 ^E	2257	13.48	3327.25	3340.73
FEDERAL LANDS REGULATORY AUTHORITY: STATE												
Surface mines	0	0	0	0	0	0	0	0	0	0	0	0
Underground mines	0	0	0	0	0	1	0	1	1	0	0.14	0.14
Other facilities	0	0	0	0	0	0	0	0	0	0	0	0
Subtotals	0	0	0	0	0	1	0	1	1	0	0.14	0.14
ALL LANDS ^B												
Surface mines	0	537	3	73	11	171	14	781	795	13.10	2544.12	2557.22
Underground mines	0	639	0	156	0	114	0	909	909	0	331.33	331.33
Other facilities	0	434	1	67	2	50	3	551	554	0.38	451.94	452.32
Totals	0	1610	4	296	13	335	17	2241	2258	13.48	3327.39	3340.87
Average number of permits per inspectable unit (excluding exploration sites)										1.....		
Average number of acres per inspectable unit (excluding exploration sites)										140.02		
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>201</u> ^E										On Federal lands: <u>0</u> ^C		
IP: Initial regulatory program sites. PP: Permanent regulatory program sites.												
^A When a unit is located on more than one type of land, include only the acreage located on the indicated type of land. ^B Numbers of units may not equal the sum of the three preceding categories because a single inspectable unit may include lands in more than one of the preceding categories. ^C Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program. Excludes exploration regulated by the Bureau of Land Management. ^D Inspectable Units include multiple permits that have been grouped together as one unit for inspection frequency purposes by some State programs. ^E Includes 4 permits and 468.6 acres with a facility type of both surface and underground. ^F Includes 4 revoked exploration notices that total 14.31 acres.												

TABLE 3

**STATE PERMITTING ACTIVITY
AS OF JUNE 30, 2006**

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	32	16	5,432	24	20	407	14	7	356	70	43	6,195
Renewals	63	51	28,226	60	64	1,874	44	41	4,262	167	156	34,362
Transfers, sales and assignments of permit rights	N/A	141		N/A	152		NA	70		N/A	363	
Small operator assistance	0	0		0	0		0	0		0	0	
Exploration permits	0	0		0	0		0	0		0	0	
Exploration notices ^B		N/A			N/A			N/A			N/A	
Revisions (exclusive of incidental boundary revisions)		293			322			217			832	
Incidental boundary revisions		202	1,499		142	540		52	479		396	2,518
TOTALS	95	703	35,157	84	700	2,821	58	387	5,097	237	1,790	43,075

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

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

Table 4

OFF-SITE IMPACTS														
DEGREE OF IMPACT		RESOURCES AFFECTED												Total
		People			Land			Water			Structures			
		Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	
	Blasting	4			3									7
	Land Stability				40									40
	Hydrology							114	1					115
	Encroachment				16									16
	Other													0
	Total	4	0	0	59	0	0	114	1	0	0	0	0	178
Total number of inspectable units: <u>1,910</u>														
Inspectable units free of off-site impacts: <u>1,791</u>														
OFF-SITE IMPACTS ON BOND FORFEITURE SITES														
DEGREE OF IMPACT		RESOURCES AFFECTED												Total
		People			Land			Water			Structures			
		Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	Minor	Moderate	Major	
TYPE OF IMPACT	Blasting													
	Land Stability				2									2
	Hydrology							71	23	19				113
	Encroachment													
	Other													
	Total	0	0	0	2	0	0	71	23	19	0	0	0	115
Total number of inspectable units: <u>348</u>														
Inspectable units free of off-site impacts: <u>233</u>														

TABLE 5

ANNUAL STATE MINING AND RECLAMATION RESULTS		
Bond release Phase	Applicable performance standard	Acreage released during this evaluation period ^A
Phase I	<ul style="list-style-type: none"> • Approximate original contour restored • Topsoil or approved alternative replaced 	5,547.40
Phase II	<ul style="list-style-type: none"> • Surface stability • Establishment of vegetation 	2,715.91
Phase III	<ul style="list-style-type: none"> • Postmining land use/productivity restored • Successful permanent vegetation • Groundwater recharge, quality and quantity restored • Surface water quality and quantity restored 	2,021.11
Bonded Acreage Status ^B		
Total number of acres bonded at end of last review period (June 30, 2005)		322,100
Total number of acres bonded during this evaluation year.		8,868.77
Total number of acres bonded during this evaluation year that are considered remaining, if available.		1,509
Total number of acres where bond was forfeited during this evaluation year (this acreage also reported on Table 6) ^C		552.33
Number of bond forfeited acres reclaimed during this evaluation year (this acreage also reported on Table 6)		2,651.22
<p>^A The acreage is permitted and bonded acreage released. Some acreage may not have been disturbed and some may have been released due to being included in a new permit.</p> <p>^B Bonded acreage is considered to be approximate and represent the number of acres disturbed by surface coal mining and reclamation operations.</p> <p>^C Two prospect permits with bonds totaling \$3,803 were forfeited but not included.</p>		

TABLE 6

STATE BOND FORFEITURE ACTIVITY (Permanent Program Permits)		
Bond Forfeiture Reclamation Activity by SRA *	Number of Sites	Permit Acres
Sites with bonds forfeited (collected or uncollected) that were unreclaimed as of June 30, 2005 (end of previous evaluation year) ^A	392	24,135.70
Sites with bonds forfeited (collected or uncollected) during Evaluation Year 2006 (current year).	13	552.33
Sites with bonds forfeited (collected or uncollected) that were re-permitted during Evaluation year 2006 (current year).	0	0.00
Sites with bonds forfeited (collected or uncollected) that were reclaimed during Evaluation Year 2006 (current year). ^D	66	2,651.22
Sites with bonds forfeited (collected or uncollected) that were unreclaimed as of June 30, 2006 (end of current year) ^{A^EF}	339	22,036.81
Sites with bonds forfeited but uncollected as of June 30, 2006 (end of current year). ^G	44	3,329.98
Surety/Other Reclamation (In Lieu of Forfeiture)		
Sites being reclaimed by surety/other party as of June 30, 2005 (end of previous evaluation year) ^B	4	402.00
Sites where surety/other party agreed to do reclamation during Evaluation Year 2006 (current year).		
Sites being reclaimed by surety/other party that were re-permitted during Evaluation Year 2006 (current year).		
Sites with reclamation completed by surety/other party during Evaluation Year 2006 (current year). ^C		
Sites being reclaimed by surety/other party as of June 30, 2006 (current year). ^B	4	402.00
<p>* West Virginia has an alternative bonding system, and it may reclaim some sites prior to full bond collection</p> <p>^A Includes data only for those forfeiture sites not fully reclaimed as of this date.</p> <p>^B 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>^C This number is reported in Table 5 as Phase III bond release has been granted on these sites.</p> <p>^D Does not include 4 sites involving 62 acres with land reclamation completed, but AMD discharge still undetermined.</p> <p>^E Includes 96 sites involving 4,290 acres with land reclamation completed, but AMD discharge remains to be or is being treated.</p> <p>^F Includes 4 revoked exploration notices that include 14.31 acres.</p> <p>^G Does not include 8 sites involving 185 acres that were previously reclaimed, but the bonds are still uncollected.</p>		

TABLE 7

WEST VIRGINIA STAFFING (Full-time equivalents at end of evaluation year)	
Function	EY 2006
Abandoned Mine Land Program Total ^A	56.7
Regulatory Program	
Permit review ^B	53.3
Inspection ^C	76.5
Blasting	16
Other (administrative, fiscal, personnel, etc.) ^D	135.4
Total for Regulatory Program ^E	281.2
TOTAL ^F	337.9
^A Includes 4 vacant positions. ^B Includes 9 vacant positions. ^C Includes 4 vacant positions. ^D Includes 9 vacant positions. ^E Includes 22 vacant positions. ^F Includes 26 vacant positions.	

TABLE 8

FUNDS GRANTED TO WEST VIRGINIA BY OSM (Millions of dollars) EY 2006		
Type of grant	Federal funds awarded	Federal funding as a percentage of total program costs
Abandoned Mine Lands	\$ 24,559,499	100%
Administration and Enforcement ^A	\$ 11,199,595	50%
Small Operator Assistance	\$ -0-	100%
Pittsburgh Mine Pool Monitoring ^A Cooperative Agreement	\$ 50,000	100%
Totals	\$ 35,809,094	
^A \$37,600 was also awarded in FY 2006 under the A&E Grant for this project.		

TABLE 9

WEST VIRGINIA INSPECTION ACTIVITY		
PERIOD: JULY 1, 2005 - June 30, 2006		
Inspectable Unit Status	Numbers of Inspections Conducted	
	Complete	Partial
Active	4,745	11,413
Inactive	2,800	1,844
Abandoned	6,176	0
Total	13,721	13,257
Exploration	290	127

TABLE 10

WEST VIRGINIA ENFORCEMENT ACTIVITY		
PERIOD: JULY 1, 2005 - June 30, 2006		
Type of Enforcement Action	Number of Actions*	Number of Violations*
Notice of Violation	963	963
Failure-to-Abate Cessation Order	59	59
Imminent Harm Cessation Order	15	15
<i>* Does not include those violations that were vacated.</i>		

TABLE 11

WEST VIRGINIA LANDS UNSUITABLE ACTIVITY			
PERIOD: JULY 1, 2005 - JUNE 30, 2006			
Number of Petitions Received	1		
Number of Petitions Accepted	0		
Number of Petitions Rejected	2		
Number of Decisions Declaring Lands Unsuitable	0	Acreage Declared as Being Unsuitable	-
Number of Decisions Denying Lands Unsuitable	0	Acreage Denied as Being Unsuitable	-

TABLE 12

ABANDONED MINE LAND RECLAMATION NEEDS AND ACCOMPLISHMENTS SINCE PROGRAM APPROVAL					
Problem Type	Units	Unfunded	Funded	Completed	Total
Priority 1 & 2 (Protection of public health, safety, and general welfare)					
Clogged Streams	Miles	289.8	0.0	54.7	344.5
Clogged Stream Lands	Acres	142.9	0.0	177.3	320.2
Dangerous Highwalls	Feet	1,432,112.0	600.0	256,905.0	1,689,617.0
Dangerous Impoundments	Count	813.0	17.0	681.0	1,511.0
Dangerous Piles & Embankments	Acres	1,437.2	21.0	5,744.2	7,202.4
Dangerous Slides	Acres	410.3	10.5	575.9	996.7
Gases: Hazardous/Explosive	Count	2.0	0.0	5.3	7.3
Hazardous Equip. & Facilities	Count	635.0	3.0	678.8	1,316.8
Hazardous Water Bodies	Count	16.0	0.0	12.0	28.0
Industrial/Residential Waste	Acres	10.2	0.0	37.3	47.5
Portals	Count	2,131.0	11.0	2,605.0	4,747.0
Polluted Water: Agri & Indus	Count	153.9	8.1	69.7	231.7
Polluted Water: Human Consumption	Count	6,531.0	472.0	11,101.0	18,104.0
Subsidence	Acres	804.78	12.1	406.5	1,223.4
Surface Burning	Acres	68.2	6.0	510.1	584.3
Underground Mine Fires	Acres	1,968.5	0.0	28.3	1,996.8
Vertical Openings	Count	138.0	0.0	156.3	294.3
Priority 3 (Environmental restoration)					
Benches	Acres	215.8	0.0	29.0	244.8
Ind/Res Waste	Acres	49.5	0.0	3.0	52.5
Equipment/facilities	Count	84.0	0.0	13.0	97.0
Gobs	Acres	1,667.8	0.0	521.0	2,188.8
Haulroads	Acres	114.0	0.0	0.0	114.0
Highwalls	Feet	3,653,060.0	1,500.0	78,763.0	3,733,323.0
Mine Openings	Count	53.0	0.0	9.0	62.0
Other		154.0	0.0	0.0	154.0
Pits	Acres	43.1	0.0	11.0	54.1
Slumps	Acres	42.3	0.0	0.0	42.3
Slurry	Acres	10.0	0.0	2.0	12.0
Spoil Areas	Acres	1,053.8	0.0	289.5	1,343.3
Water problems	Gal./min.	11,987.5	0.0	747.0	12,734.5
Note: All data in this table are taken from the Abandoned Mine Land Inventory System (AMLIS)					