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DART 3100 (100 Ton)



DART 3110 (110 Ton)



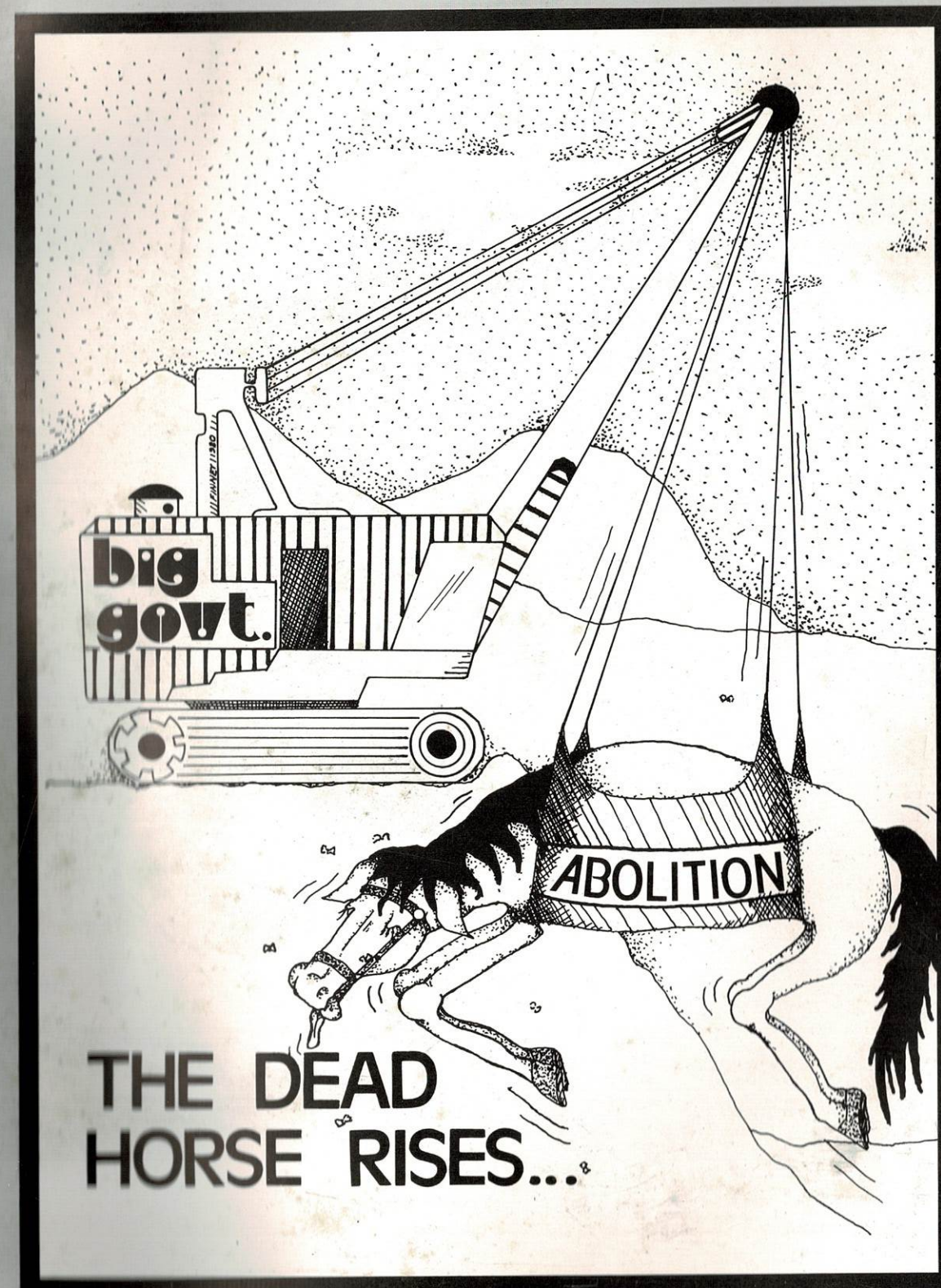
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Summer 1980

Green

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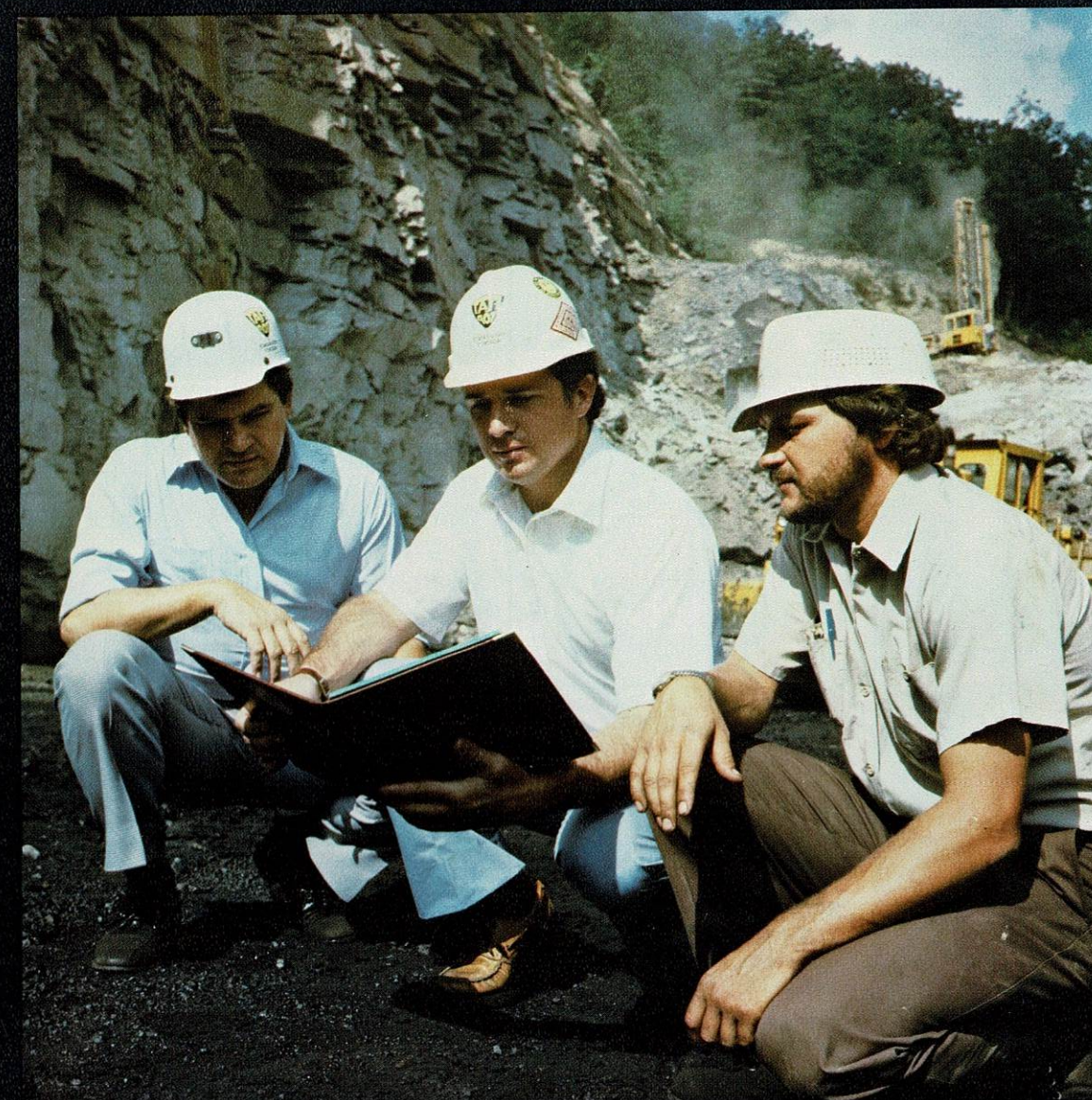
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Green Lands

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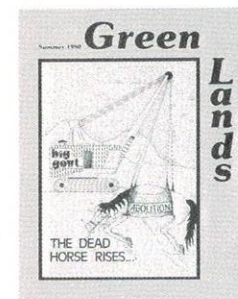
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
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Congress gives and - - -

Though it is nowhere mentioned and only vaguely implied in the United States Constitution, the federal bureaucracy can trace its beginnings back to 1789, when Congress created four federal departments.

From those modest roots, the system has expanded to 13 cabinet level departments, each with numerous agencies, commissions, etc., as well as some 60 independent agencies.

The bureaucracy has made its great leaps forward as a joint enterprise of the executive and legislative branches of government. Though organized under and staffed by the executive branch, the myriad agencies are created and empowered by Congress.

The proliferation of bureaucracy is almost inevitable. Congress, if it does not enact new legislation, has little to do. Increasingly, each new piece of legislation carries with it the creation of a fresh layer of bureaucracy. As part of the executive branch, the bureaucracy is charged with carrying out legal policy as enacted by the Congress. This concept, unfortunately, works far better on paper than it does in practice.

The initial and primary function of any given agency in implementing a law of Congress is to promulgate regulations. These regulations, while deriving authority from the legislation, are largely the bureaucrat's interpretation of the law. In the field, where Washington's work hits home the hardest, these regulations typically have far greater impact than the law itself.

By law, agencies must conduct public hearings prior to promulgating final regulations, ostensibly to expose themselves to public and professional input.

The most complete, practical and competent input would logically come from those who are experts in the industry being regulated. However, these people are nearly always those who are or have been employed by the industry. Input from them is not highly desired or taken seriously.

This situation gives rise to the standard complaint that bureaucracy is inefficient. This charge is undeniable. Unfortunately, under our present system, it is also inevitable. Such factors as public accountability, bottom heavy organization, cross purpose of components, and sheer size, preclude the possibility of the federal machine running smoothly.

A more formal complaint has gained impetus in recent years, one that might be best expressed with a question. That is, "Who elected these people, anyway?" The answer, of course, that no one elected them, least of all those who will be most affected by their presence. They are appointed by other appointees to fill positions created by the collective legislative branch. This is indirect representation at its most indirect.

Congress is empowered to review agencies and regulations, but traditionally has taken little time or shown little inclination to do so. It is a power which should be indulged more frequently and more vigorously.

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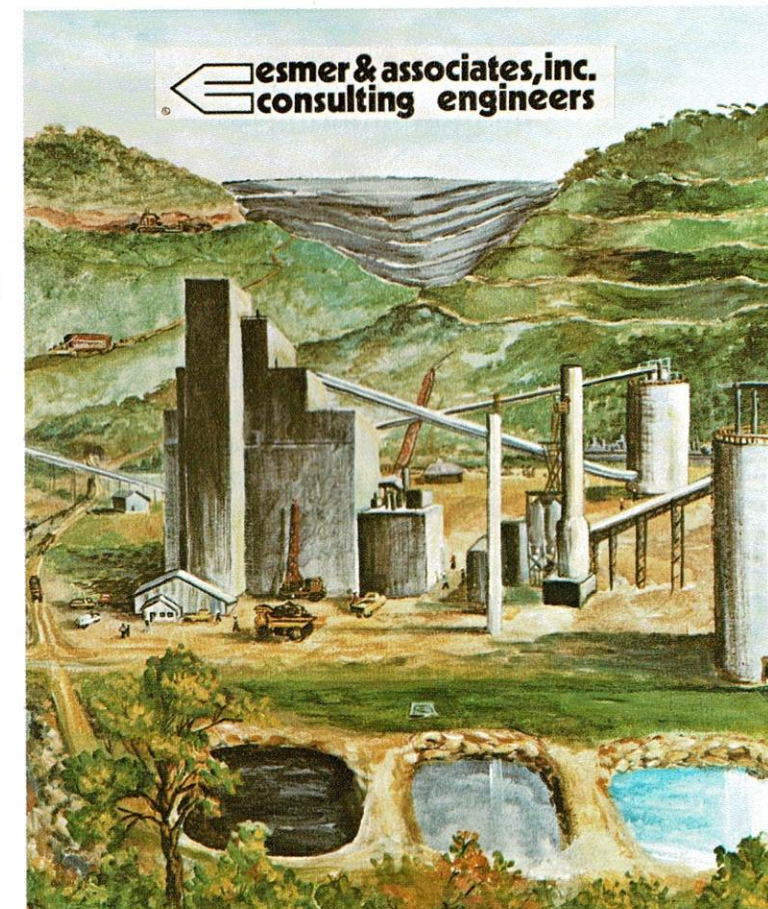
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The dead horse rises

For West Virginians, particularly those associated with the coal mining industry, the term "abolition" has a modern meaning, unrelated to the 19th century issue of slavery.

In 1971, the West Virginia House of Delegates voted on a measure to abolish the surface mining of coal in this state. It was narrowly defeated. Since that time, the abolition fight has consisted primarily of scattered skirmishes—localized battles over isolated chunks of acreage.

In 1980, a full decade after the abolition fight supposedly peaked out, the war on the coal industry is being waged again. The frontal assault of the 1970's has evolved into the guerilla warfare of the 1980's.

This time around, the enemy is armed, not just with rhetoric, but with a vast array of legalistic weaponry. This time, the self-appointed public saviors do not so directly offend public sensibilities with talk of an outright ban on an entire industry. The not-so-loyal opposition has by now recognized the greater effectiveness of the hit-and-run attack, the roadblock and sniper-fire method of reducing ranks, the piecemeal dismantling of industry's ability to defend itself on all fronts simultaneously.

In addition to being equipped with numerous legal devices to fight the coal industry, those seeking surface mine abolition receive the direct backing of the government through free or low cost legal counsel. These of course, are funded through the taxpayer.

In West Virginia, this counsel is provided through one of three organizations. The largest is the West Virginia Legal Services plan, Inc. with a staff of 70, including 26 attorneys. This organization is in effect the

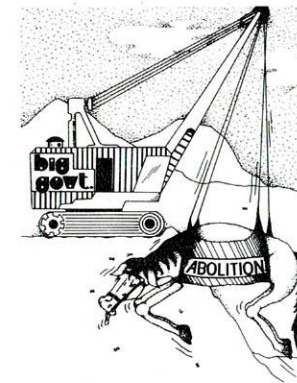
state branch of the Legal Services Corporation, a non-profit, federally funded corporation based in Washington, D.C. It serves 35 of West Virginia's 55 counties. The remaining counties are similarly served by two other publicly funded organizations, the North Central Legal Services Corporation, and the Appalachian Research and Defense Fund. All three organizations supplement their service by using public funds to retain other lawyers from private practice. Clients are eligible for the service, which is limited to certain types of civil cases, based primarily on income. Individual attorneys within the service are free to choose which cases they accept.

Obviously, this setup allows a lot of room for maneuvering by anti-industry people. Two well known anti-coal attorneys make their living through this organization. All they need is one person with an elligibly low income and they can take on any coal related issue at public expense.

Since the 1960's, when public protest again became fashionable, organizations based on such activity have proliferated. Ironically the groups show a government like penchant for acronyms and over organization. In the broad environmental arena there are certainly more such organizations than there are issues.

The best known are regional in scope, with a few attempting to blanket all of West Virginia. There is a multitude of local and county groups, usually headed by one or more members of the larger organization, or founded to cover one segment of the larger group's objective.

These organizations, through their self-bestowed titles, like to preempt the moralis-



tic buzz words from what they perceive to be the enemy. Perhaps the most galling of these is "citizens" with its obvious inference that those not aligned with them somehow lack citizenship. Another favorite title term is "coalition" implying a much broader base of support than is actually enjoyed.

A favorite tactic by these groups in recent public hearings has been to express sympathy for the problems of the coal industry, while denying any effort to further undermine production capabilities.

A coal industry still trying to recover from labor strife of 1978, suffering from extensive market loss, and facing years of costly adjustment to still more government regulation, has witnessed the following expressions of sympathy in the courtrooms and government offices in West Virginia and Washington, D.C.:

Surface mining was effectively banned by the state regulatory agency in the entire county of Lincoln for reasons expressly unrelated to any environmental concerns. Though coal is extensively deep mined in the county, it was held that surface operations would disrupt the rural and rustic lifestyle of the local populace.

A federal court, the Environmental Protection Agency, and publically funded "citizens" groups successfully halted mining operations in the headwaters of the Little Kanawha River. EPA tabled the company's NPDES permit application for over a year. When ordered by a court to take action, the agency decided on an 18 month study to prepare an Environmental Impact Statement. The company has since gone out of business.

The Office of Surface Mining has consi-

dered a petition to declare the entire Tug Fork River valley unsuitable for surface mining. This southern West Virginia area is in the heart of the richest coal field in the world.

OSM has been similarly petitioned to declare federal land in the Shavers Fork basin unsuitable for any coal mining. This, despite the fact that the federal government, when it originally purchased the land, did not wish or attempt to obtain mineral rights.

There is currently a bill before Congress to declare 35,500 acres of central West Virginia, known as the Cranberry Backcountry, off limits to mining and other forms of development.

The federal government has declared the Birch River to be "wild and scenic," and therefore off limits to mining operations. The U.S. Forest Service is currently studying the Bluestone, Gauley and Greenbrier Rivers for similar designation. It is not yet known whether the prohibited areas of a designated river will include its tributaries, or what constitutes mining "on the river," but these decisions are in the hands of the federal bureaucracy.

This represents an incomplete list of the localized battles brewing in just one major coal producing state, over a very short period of time. The period of time in question is one in which coal is receiving long overdue recognition as the answer to the nation's energy shortfall.

(Though West Virginia, as the most coal intensive of states, is undergoing extensive economic harm through this phenomenon, it by no means stands alone as a victim. For related articles of a national scope see pages 42 and 46.)

OSM report

As required by Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, Interior Secretary Cecil D. Andrus has submitted his Annual Report to President Carter. It is instructive in several areas. For instance:

For fiscal year 1980, when OSM hopes to turn regulatory primacy over to the several states, the agency has budgeted itself for \$179.6, an increase of more than 55% over fiscal year 1979.

In FY 1979, OSM received 554 citizen complaints, 98% of which resulted in inspections. On the other hand, and it certainly is a different hand, OSM's received from operators 481 petitions and applications for review concerning violations and cessation orders, of which only 28% resulted in hearings.

The Act "expressly forbids Federal and State employees engaged in its administration from holding direct or indirect financial interests in coal mining." No mention is made of a similar prohibition for those who have made a career from opposing coal mining.

The Abandoned Mine Lands Reclamation Fund, through September 30, 1979, has collected \$29,288,901.90 from West Virginia mining operations. Of that total, \$14,644,450.96, or 50%, has been allocated for use in West Virginia, whence it came. Of that total, \$413,479.00 less than 3%, has actually been transferred back to the State. Thanks, fellas.

The inspection summary for FY 1979 shows Region I, home of West Virginia, still leading the way, having hosted about 22 visits for every one conducted in Region V, the westernmost. The Mountain State and neighboring Kentucky continue in an inspection frequency class by themselves. Within Region I, OSM apparently finds Pennsylvania far less in need of its services than West Virginia, having conducted only 2/3 as many inspections there. Pennsylvania's citizens however, disagree, having filed nearly four complaints for every one in neighboring West Virginia.

So you want to protest - - -

Suppose you choose to pursue a career in public protest. West Virginia is certainly fertile ground for your aspirations. While it lacks the protesting traditions of a California, or maybe New York, you must admit it's a land of opportunity, rich in the ingredients for modern, 1980's style protest.

For instance, it's a state with a backwards reputation and a scattered population, much in need of your youthful wisdom. Best of all, it's a state rich in natural resources. There's coal, the opposition to which can be your life's work; and there are huge areas of wilderness, where you can indulge your prerequisite hobby of backpacking, and on which you can launch your own saving organization.

An organization is a must. You can't get anywhere in the protesting business without an organization behind you. The membership, you worry about later. The first order of business is a catchy name. You shouldn't be too direct with the name business. "End of Progress in America," for instance is telling it like it is, but that reveals a bit too much of what you're up to. Besides, the initials have already been used by the federal government. Words like citizens, save, and coalition are on the order of what you need, but those particular ones are currently a little overworked.

This naming is fairly important and should be done systematically. Think in terms of an acronym. Besides being memorable and tricky, it gives you something in common with government people, and that's very important later on.

Next, fix on a definite entity, or a place. Appalachia, water, earth, wilderness—all of these have been worked to death. Be a little original. Dirt—there's a good basic commodity that everyone can identify with, and it probably hasn't ever been used. Now finish up with a phrase that sounds idealistic and could include anyone. You couldn't do better than "mankind united." Now you've got it "Mankind United for Dirt—MUD.

Now down to business. Call a press conference and announce to a waiting world that dirt has been abused for too long by that pernicious oppressor of mankind—big business. Tell them that you and your fellow MUDders will fight the good fight until all dirt is protected in its proper and natural state.

As you build your following, be sure to include some native sons and daughters. West Virginians often manifest an unnatural distaste for young northeasterners restructuring their lives. So get some West Virginians of your own to trot out at public hearings and similar functions to show the government that not all hillbillies are ignorant and that the others can be made to see the light.

By now, you'll be needing some funds if this is truly to be a career, but, not to worry. The fact that you've chosen not to make a constructive contribution to society won't cause old Uncle Sam to bat an eyelash. Apply for a grant. Tell them you want to study dirt and the effects it has on water. Hell, man, you're the president of MUD. How can they deny you?

Now you're really ready to get down to brass tacks. Take some poor sucker to court. Don't worry about the legal expense. Your government will provide. Be sure to file for legal assistance as an individual or through one of your less well heeled constituents. As long as you're in West Virginia, it might as well be a coal company that you go after first. When in Rome. . . .

A few letters to nearby colleges should produce ample expert witnesses for your side. Don't worry if the witnesses don't know a coal mine from a well. After all it's all dirt, and it's only the government you're trying to convince. Don't forget, all you're after is more regulation. They're on your side, man.

Other good ideas will come to you as you move along. You'll need to do some homework though. Wade through the various laws and regulations of recent years. They're chock full of goodies you can use to delay and confuse the enemy. Remember, each time you go to court, it's costing him a bundle. He doesn't do this for free like you citizens do.

Write a congressman demand an investigation. Who can ignore "mankind united" for anything. Better to pick a congressman from another part of the country. He doesn't give a damn what goes on in West Virginia and it will make a nice trip for one of his aides.

If the congressman of your choice doesn't toe the mark or doesn't confirm your preliminary findings, call another press conference. Tell the world that he doesn't care about mankind or dirt, and target him for "non-re-election."

Don't put all of your eggs in the dirt basket. Get in touch with your fellows involved with other natural elements—fire, wind, and water. Form a coalition of natural elements. Pool your government funding. If you can nail down the presidency of a coalition, brother, you're on your way in your chosen field.

L.B. SMITH PRESENTS THE 325-H.



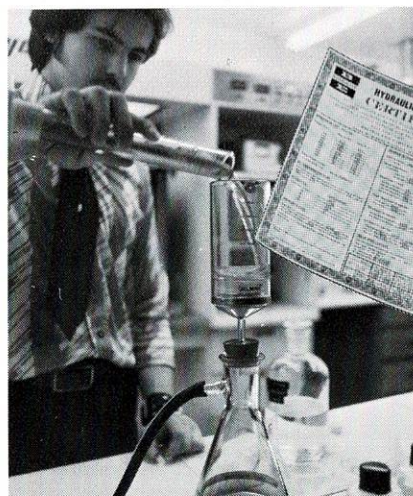
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Too many cooks in the broth

Federal Agencies that Impact the Mining, Transportation, and Use of Coal

Department of Energy

- Office of Fossil Energy
- Office of Resources Application
- Office of Environment
- Federal Energy Regulatory Commission
- Economic Regulatory Administration
- Energy Information Administration
- Office of Energy Research
- Office of Policy & Evaluation

Department of Interior

- Bureau of Mines
- Geological Survey
- Office of Surface Mining Reclamation & Enforcement
- Bureau of Land Management
- U.S. Fish & Wildlife Service
- Office of Hearings and Appeals
- Interior Board of Surface Mining & Reclamation Appeals

Department of Agriculture

- Forest Service
- Soil Conservation Service
- Rural Electrification Administration

Department of Labor

- Mine Safety & Health Administration
- Office of Worker's Compensation
- National Labor Relations Board
- Federal Mine Safety & Health Review Commission

Department of Transportation

- Federal Railroad Administration
- Federal Highway Administration
- Office of Secretary & General Council
- United States Coast Guard

Department of Commerce

- Economic Development Administration
- Census Bureau
- Customs Bureau

Department of Health and Human Services

- National Institute of Occupational Safety & Health

Environmental Protection Agency

- Office of Air Quality Planning & Standards
- Office of Water & Waste Management
- Office of Toxic Substances
- Office of Enforcement
- Office of Research & Development
- Office of Planning & Management

Department of Defense

- Army Corps of Engineers

Interstate Commerce Commission

Appalachian Regional Commission

Tennessee Valley Authority

Department of Treasury

- Internal Revenue Service
- Alcohol, Tobacco & Firearms

State Agencies that Impact the Mining, Transportation, and Use of Coal

Air Pollution Control Commission

Culture & History, Department of Historic Preservation

Employment Security, Department of Unemployment Compensation Division

Fire Marshall, State

Health, Department of

- Emergency Medical Services
- Environmental Health Division
- Sanitation
- Solid Waste Disposal Program

Highways, Department of

- Permit Section
- Right of Way Division
- Roadside Services Division
- State Highway Engineer



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Human Rights Commission

Mines, Department of

- Permits & Enforcement
- Mine Foreman Examiner
- Oil & Gas Division
- Board of Appeals
- Board of Coal Mine Health & Safety
- Board of Miner Training, Education & Certification

Motor Vehicles, Department of

Natural Resources, Department of

- Public Land Corporation
- Reclamation Division
- Mine Refuse & Dam Control Section
- Environmental Analysis Section
- Water Resources Division
- Wildlife Resources Division
- Reclamation Board of Review
- Water Resources Board

Federal and State Agencies That Regulate, Duplicate, and Overlap

BEFORE OPERATION

Mine Refuse:

- Mine Safety & Health Administration
- Mine Refuse & Dam Control Section
- Reclamation—Department of Natural Resources
- Environmental Protection Agency
- Hazardous Waste
- Office of Surface Mining
- Water Resources—Department of Natural Resources
- Air Pollution Control Commission

Water Quality:

- Environmental Protection Agency
- National Pollutant Discharge Elimination System
- New Source
- Safe Drinking Water
- Office of Surface Mining
- Reclamation—Department of Natural Resources
- Water Resources—Department of Natural Resources
- Environmental Analysis—Department of Natural Resources

Public Service Commission

- Motor Carrier Division
- Railroads Division
- Utility Rate Control

Secretary of State

- Domestic Corporation Division

State Tax Department

- Business Tax Division
- Excise & License Tax Division
- Income Tax Division

Workmen's Compensation Fund

- Processing & Claims Service Division
- Occupational Pneumoconiosis Fund
- Appeal Board

- Wildlife Resources—Department of Natural Resources
- U.S. Fish & Wildlife Service
- Corps of Engineers

Reclamation:

- Reclamation—Department of Natural Resources
- Office of Surface Mining
- Wildlife Resources—Department of Natural Resources
- U.S. Fish & Wildlife Resources (Wetlands)
- Water Resources
- Mine Safety & Health Administration—Deep Mine
- Department of Mines—Deep Mine
- Local Government

Dust:

- Environmental Protection Agency
- Reclamation
- Water Resources
- Mine Safety & Health Administration

- Office of Surface Mining
- Department of Mines
- Air Pollution Control Commission
- Black Lung
- National Institute of Occupational Safety & Health (NIOSH)

Explosives:

- Mine Safety & Health Administration
- Department of Mines
- Fire Marshall
- Office of Surface Mining
- Reclamation—Department of Natural Resources
- Department of Transportation
- Alcohol, Tobacco, & Firearms

Haulage Construction:

- Right-of-Way Division—Department of Highways
- Permit Section (Approach Permit)
- Mine Safety & Health Administration
- Department of Mines
- Reclamation—Department of Natural Resources
- Office of Surface Mining
- Public Land Corporation

Bathhouses:

- Health Department
- Sanitation
- Solid Waste
- Environmental Protection Agency
- Mine Safety & Health Administration
- Department of Mines
- Water Resources Division—Department of Natural Resources
- National Institute of Occupational Safety & Health (NIOSH)

Similar areas of concern are overlapping, but have been made different by each agency.

DURING MINING OPERATION

Environmental Protection Agency

- Water Quality
- Air (Dust-Tipple-Deep Plant)
- Mine Refuse Disposal
- Bathhouse Discharge

Office of Surface Mining

- All Aspects of Every Type Mining Operations & Facilities Until All Areas Are Completed

Mine Safety & Health Administration

- All Aspects of Safety On or In All Types of Mining Operations & Facilities
- Mine Refuse
- Explosives

Department of Mines

- Safety
- Deep Mine Abandonment
- Explosives

Alcohol, Tobacco, & Firearms

- Explosives (Usually Done by MSHA)

Reclamation Division

- All Aspects, Excluding Employee Safety, of All Types Mining Operations & Facilities

Water Resources Division

- Water Quality—All Mining

Wildlife Resources

- Quality Streams

U.S. Fish & Wildlife Service

- Wetlands
- Quality Streams

Corps of Engineers

- Wetlands
- Dredge & Fill

Mine Refuse & Dam Control

- Mine Refuse
- Dam Construction

Department of Transportation

- Explosive Haulage

Department of Highways

- Weight Limits

Air Pollution Control Commission

- Dust
- Air Quality From Any Facility

National Institute of Occupational Safety & Health

- Dust Standards
- Noise Standards
- Bathhouses
- Toilet Facilities

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A case history of government overregulation

Statement of Jerry L. Lombardo
Director of Environmental Affairs Island Creek Coal
Company before the Senate Small Business
Subcommittee Washington, D.C.

Mr. Chairman and Members of the Subcommittee:

My name is Jerry L. Lombardo. I am Director of Environmental affairs of Island Creek Coal Company with corporate offices in Lexington, Kentucky. I am appearing today to discuss the impact of over-regulation on the coal mining industry. My remarks this afternoon will touch on just one subject and that is water quality.

I cannot discuss our efforts towards compliance on this most important subject without at some point referring to the following:

- The National Environmental Policy Act (NEPA) (42 USC 4341, PL 91-190),
- The Federal Water Pollution Control Act Amendments of 1972 (PL 92-500 as amended by PL 95-217),
- Federal Coal Mine Health and Safety Act of 1969 (as amended in 1977),
- The Surface Mining Control and Reclamation Act of 1977 (30 USC 1201, PL 95-87)

Most of these laws have a counterpart at the state level which also affect our industry to a large degree. My company, for example, mines coal in the four appalachian states of Kentucky, Pennsylvania, Virginia, and West Virginia. Time does not allow me to list and describe each and every law in these states which overlap in the areas of permit requirements and enforcement. For our convenience, I have attached as exhibit I a listing of those laws and regulations in each state

which overlap the federal laws and regulations we discuss today. As shown, some 28 different laws and regulations are listed.

Except for coal preparation, dust suppression and fire prevention, we use very little water in coal mining. Perhaps, five (5) percent of the water we handle everyday is actually put to use. The rest is an unwanted intruder which must be diverted or pumped away for the safety of men and equipment.

When we pump water from a deep mine or impound water at surface mines, we have created "point sources" which are regulated under the federal water pollution control act (PL 92-500). Thus, we must apply for a National Pollutant Discharge Elimination System (NPDES) permit created under that act to be allowed to discharge water. In three of the four states in which we mine, this means applying to the U.S. EPA. To date, only Virginia of these four states has been given primacy by EPA to issue NPDES permits.

Issuance of a NPDES permit by EPA constitutes a "major federal action" and thus comes under the authority of the National Environmental Policy Act (NEPA) which as you know requires an environmental assessment to predict the impact such an action may have on the environment. We had been assured by EPA that only "new sources" will come under NEPA scrutiny and one would think that under this concept, that the application of NEPA to our discharges would be narrowed considerably. But that turns out not to be the case. When promulgating "new source performance standards" (NSPS) for the coal industry (40 CFR 434, FR 2586, January 12, 1979) EPA

imposed seven conditions (they call them "events") under which an **existing** mine could be declared a new source. (This absurd concept became known in the industry as "snowmelt and the seven events" because EPA, at about the same time, began including snowmelt as a consideration to sizing runoff ponds.) I won't bore you with listing all seven. One, however, includes the mere construction of a new shaft as a condition which could throw an existing mine into the new source category.

Now, we have deep mines which are 25 and 30 years old in some cases. As the mine develops and expands, we must drill new shafts to provide fresh air to men underground. In constructing the shaft, we are apt to intercept aquifers. To keep this water uncontaminated, devices called "water rings" are built into the shaft to route water to the shaft bottom where it is pumped away to the surface. This activity also requires a water discharge permit. At that point, EPA could declare that this 25 year old mine is a new source calling for an environmental assessment before permit approval can be granted. The assessment could take up to a year of data gathering. Now, what could an environmental assessment show in an area where mining had been going on for 25 or more years? How could we establish or even estimate what the baseline conditions were prior to mining. As to social and economic effects, the miners have been hired, more than likely a townsite has sprung up and any supporting community developments have already taken place. Well, one might presume, that in cases of this type, EPA could easily issue a "negative declaration" and not require a full-blown environmental impact statement. EPA does nothing easily. There are built-in time delays inherent in the application review process and public notice procedures for both the intent to issue a negative declaration and permit approval.

It is a well-known fact that there are well-organized groups who are dedicated in their opposition to our industry who jump at every

chance to lodge protests during public notice periods regardless of the permit involved and with little regard for the merit of their protests. As you know, all recent legislation, both state and federal, include extensive public participation provisions and well they should. But these provisions have become an area of abuse by a vociferous few who use them as delaying tactics whenever possible. And as you know, delays in starting new mines or actual shutdowns of existing mines because of excessive permitting requirements are costs which must be accounted for even though admittedly it may be difficult to estimate what those costs really are.

On April 26, 1977, EPA finalized the "effluent limitations guidelines for existing sources in the coal mining point source category" (40 CFR part 434, FR 21380). They include such discharge parameters as pH, iron, acidity, alkalinity, manganese and total suspended solids (TSS). It should be pointed out that even though these guidelines were issued in 1977, EPA began issuing permits for our industry as early as 1973 under the interim effluent guidance document. This document contains the same parameters as those we now face with the exception of manganese which was added after an extensive study of our industry. It is important that you note that our industry has been regulated by EPA since early 1973.

In August of 1977, Congress passed and the President signed The Surface Mining Control and Reclamation Act (SMCRA). Under that act, an entirely new agency, The Office of Surface Mining and Reclamation Enforcement (OSMRE, or OSM) was created. Its function primarily is to ensure proper reclamation of all lands disturbed by coal mining, to avoid over-regulation and duplication of effort by two independent executive agencies. Congress included Title VII in the Act, which among other things, states (Section 702) "nothing in the Act shall be construed as superseding, amending, modifying or repealing the. . ." and

thereafter a list of Federal Laws is given which I will not repeat at this time. The intent of this section was to ensure that any regulations which were to be promulgated by OSM were not to supersede those already in existence by other agencies such as EPA covering the same subject matter. Indeed, the president in his executive order No. 12044 has expressly stated that duplication of federal regulatory procedures must be avoided.

Apparently, this message has been lost on OSM. Rather than defer to EPA for water quality control, OSM chose to promulgate its own regulations including the same areas of concern now addressed by EPA and in most cases circumvented EPA's authority. It should be remembered that EPA, prior to promulgating the coal mining point source guidelines spent four years studying the industry to determine what reasonable control levels should be. The EPA studies, however, concentrated on those areas of primary concern in the industry of acid mine drainage. The numerical limitations recommended by EPA were intended for that portion of the industry where acid mine drainage treatment is required. For surface mines where suspended sediment is of primary concern, EPA recognized that further study would be required before reasonable numerical limitations could be promulgated. Although the EPA point source guidelines do encompass surface mining operations, several important qualifiers were included which limited the application of the numerical limitations. They did this because EPA recognized that their present data base could not support across-the-board application of the numbers. For example, EPA addresses only **active** mining and does not include regraded areas as an area requiring continued surveillance. Also, the rainfall exemption included in the point source guidelines, while based on the 10-year, 24-hour storm runoff volume as a pond design, nonetheless is intended to control **base flow** and **not ALL RUNOFF**, EPA app-

lies the very-stringent levels of 35 mg/l monthly average and 70 mg/l daily maximum TSS (35/70) only to base flow with the **exemption** provided for "any increase in volumes" due to runoff from major precipitation events.

OSM, on the other hand, took these same numerical limitations, developed by EPA for only a limited section of the industry and applied them wholesale across the entire spectrum of the industry. And in doing so, OSM conveniently (or inadvertently) omitted the special qualifiers which EPA included to limit their application. It means that the very stringent limits of 35/70 for TSS will apply at all times for all discharges regardless of any background water quality reflective of the land in its natural state and regardless of the condition of the receiving stream.

Under OSM regulations, we are required to handle more water for longer time periods than that envisioned by EPA. **(1) For example: EPA proposes pond sizes be based on the runoff from a 10-year, 24-hour storm from the ACTIVE area; OSM proposes that the entire watershed including regraded areas be controlled. (2) EPA allows excess volume increases to be EXEMPTED from numerical limitations thereby limiting the size ponds are required to be.** EPA accepts the so-called permanent pool pond design which are constructed under state regulations. OSM, on the other hand, with its detailed "cookbook" pond design requirements and its strict definition of detention time forces us to construct ponds of such spillway designs as to retain more water and to operate them essentially as a dry pond. On top of that OSM requires two additional volume dimensions; one for sediment storage and the other for freeboard. What normally were silt control ponds under EPA and state regulations now become dams in Appalachia under OSM requirements. Appalachian states do **not** encourage the construction of dams for silt control purposes for obvious reasons. Kentucky, for example, strongly recommends

that all silt structures be under 20' in height.

Since we are required to handle more water under a more diverse set of conditions under OSM regulations than those studied by EPA, it means that the EPA studies of the coal industry completed several years ago are not applicable to OSM regulations. It means that OSM has no technological foundation for their water quality regulations.

A logical question to ask is: Which system will produce the better quality water, the so-called permanent pool we now use or the OSM method which encourages a dry basin? I can state without fear of contradiction that neither method will produce water quality which meets the 35/70 limits at all times under all runoff conditions. I only know that based on our experiences the ponds we now build will produce good quality water most of the time with temporary excursions over the 35/70 limits during heavy rainfalls. **OSM, on the other hand, does not know how a pond built to their design will perform. They have never studied nor ever built one for that matter to see if it will work.** It is my belief that the permanent pool-type ponds we now build are more effective for normal routine storms while perhaps the OSM dry pond will be more effective during the 10-year, 24-hour storm. And since we experience many more small storms over the life of the ponds (about 3 years), those that we now build should be more effective in terms of everyday water quality.

As mentioned before, OSM regulations in most cases will require large pond volumes to meet their pond design. When ponds meet certain specifications such as the embankment height being 20' or higher or when the pool retains 20 acre-feet (about 6½ million gallons) or greater, these structures become dams under mine safety health administration definition and another agency (MSHA) enters the picture. Dams in the coal mining industry require certification by MSHA. The scrutiny under MSHA regulations is much more detailed

and time consuming, as it should be. After all the construction of dams is a serious business. Obviously this leads to even further delays in mine plans and permit approval. I might also add that again rather than simply including MSHA regulations by reference, OSM chose to reproduce them as part of its own regulatory package with a few extra embellishments to make them even more stringent in certain areas.

And finally, other parts of the OSM regulations will require placement of sizeable culverts and the construction of bridges under those provisions for diversions of stream flow and haulroad construction. Lurking in the background is the U.S. Army Corps of Engineers (COE) jurisdictions under the "Dredge and Fill" requirements of Section 404 of PL 92-500. Here, too, approvals and permits will be required from the COE in many instances for our construction activities in large water sheds. (A postscript, here, is that EPA is just now proposing new regulations under Section 404 to strengthen their review and approval authority of the COE.)

In summary, then, in this one area alone, that of water quality, we attempt to show through a careful reconstruction of all overlapping laws and authorities how the same activities in the coal mining industry are overviewed by no less than four federal agencies — EPA, OSM, MSHA and COE. **We show how OSM has actually usurped EPA powers by taking EPA guidelines developed for a select portion of the coal industry and by applying them wholesale across-the-board to include discharges not originally intended by EPA.** OSM did this without one shred of technological data to support this approach. OSM is authorized under SMCRA to restrict "additional contributions of suspended solids to stream flow" (Section 515 (B) (10)). There is no technical justification to support their contention that discharges greater than 35/70 MG/L TSS constitutes additional contributions from every surface mine in the country.

We show where compliance with OSM pond design requirements will result in the construction of dams for silt control which in some cases are in direct conflict with state recommendations.

Through all this, we only briefly mention those state agencies who also claim jurisdiction over our activities in this area. They too take an active role in the permitting and enforcement process and they too must be satisfied. One need only look at the extensive listing in Exhibit 1 to assess the active role they play.

What we now face in our industry are four (4) classical forms of duplication of effort or over-regulation.

1) Review Duplication — when more than one agency has the responsibility to review the same plans or application for the same activity.

2) Permit Duplication — When more than one agency requires a permit for the same facility or facet of operation.

3) Cross Emphasis of Plans and Permits — When one or more agencies have regulations which must be complied with or another permit required as a pre-requisite to the intended permit.

4) Pyramiding of Permits — When compliance with one agency's regulations causes a condition which in turn requires compliance with those of another agency which has overlapping jurisdiction.

If there ever was a classical example of over-regulation in any industry, we have one in the coal industry in water quality control.

Thank you.

EXHIBIT 1

Duplicative State Laws and Regulations in Water Quality Control

Kentucky:

Water Pollution Control Law; KRS Chapter 224.

401 KAR 5:005, permits to discharge industrial waste.

401 KAR 5:035, compliance with treatment requirements.

KRS 151:250, permit to construct in flood plain strip mining Law, Title XXVIII, Chapter 350.

402 KAR 1:025, surface mine regulations.

Pennsylvania:

Clean streams law, Articles I through IV. Chapter 91, Water Resources Rules and Regulations.

Chapter 95, Wastewater Treatment Requirements.

Chapter 97, Industrial Wastes.

Chapter 102, Erosion Control.

Chapter 105, Water Obstructions.

Chapter 99, Mine Drainage.

Chapter 100, Mine Resources Management.

Surface Mining Conservation and Reclamation Act (52 P.S. 1396.1).

Chapter 77, Open Pit mining of Bituminous Coal.

Virginia:

Water Pollution Control Laws, Code of Virginia, Sections 15-29.

Water Control Laws, Code of Virginia Title 62.1.

Water Control Laws & Regulations, 1975 Amendments.

Virginia Environmental Impact Report Law (Sections 10-17.107 to 10-17.107 to 10-17.112).

Virginia Water Pollution Control Regulations.

Virginia Discharge Permit Regulations (NPDES).

Surface Mining of Coal, Chapter 17, Title 45.1.

Coal Surface Mining Regulations.

West Virginia:

Water Pollution Control Act, Chapter 29, Article 5A.

West Virginia Water Quality Regulations.

West Virginia Surface Mining Act, Chapter 20, Article 6.

West Virginia Surface Mining Reclamation Regulations.

Dam Control Act, Chapter 20, Article 5D.

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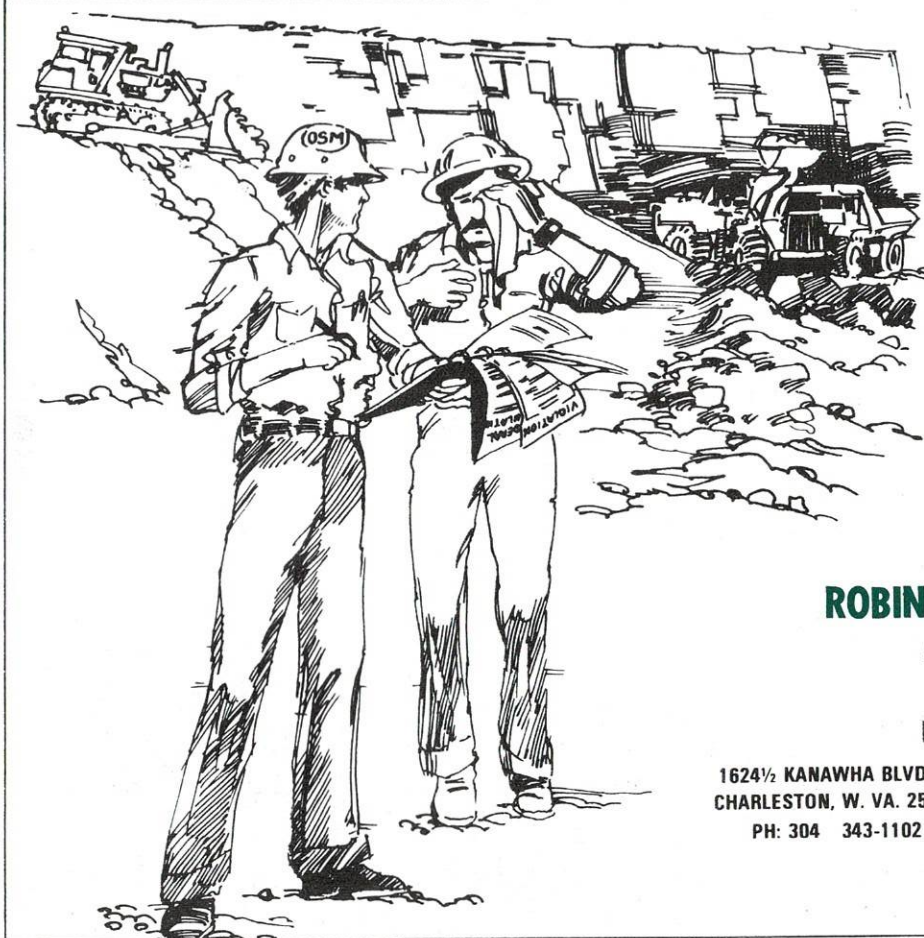
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Federal Registers

1. March 13, 1979 Book 2 of 3 — Preamble to Regulations
2. March 13, 1979 Book 3 of 3 — Permanent Regulatory Program
3. May 25, 1979 Surface Mining Reclamation and Enforcement Provisions; Final Rules for Initial Regulatory Program
4. June 11, 1979 Prime Farmland; Initial Regulatory Program
5. June 18, 1979 Permanent Regulatory Program; Clearance of Recordkeeping Requirements by General Accounting Office
6. June 22, 1979 Surface Coal Mining and Reclamation Operations; Initial Regulatory Program
7. June 29, 1979 Training Programs for Blasters and Members of Blasting Crews and Certification Programs for Blasters
8. August 1, 1979 Abandoned Mine Land Reclamation Program; Guidelines Covering Reclamation Standards
9. September 6, 1979 Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Performance Bonding
10. September 19, 1979 Guidelines for Contact with Interior Department Employees and Officials During Consideration of State Permanent Regulatory Program
11. September 25, 1979 Memorandum of Understanding — Department of Interior — Environmental Protection Agency
12. September 28, 1979 Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Operator Compliance with Standards on Federal Lands
13. October 18, 1979 Part II — Permanent Regulatory Program; Petitions to Amend Sediment Control Performance Standards and the Regulations Governing Approved State Programs
14. October 18, 1979 Part III — State Permanent Regulatory Program Submissions; Procedure for Approval or Disapproval
15. October 22, 1979 Proposed State Programs, Extension of Time for Initial Submission
16. October 24, 1979 Backfilling and Grading to Achieve Approximate Original Contour; Proposed Rulemaking
17. November 5, 1979 Abandoned Mine Lands Reclamation Program; Availability of Draft Environmental Impact Statement
18. November 6, 1979 Abandoned Mine Land Reclamation Program; Proposed Guidelines

19. November 21, 1979 Abandoned Mine Reclamation fund; final Rule
20. November 27, 1979 Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Suspension of Certain Rules
21. December 11, 1979 Wyoming Permanent Regulatory Program; Notice of Public Hearing and Public Comment Period
22. December 19, 1979 Surface Coal Mining Reclamation Operations; Permanent Regulatory Program
23. December 31, 1979 Interim and Permanent Regulatory Program
24. January 11, 1980 Services of Notices of Violation, Cessation of Orders and Show Cause Orders and Informal Public Hearings; Final Rulemaking
25. January 14, 1980 Final Rule Change on the Grant Period for Program Development Grants and Implementation of Program Policies for Abandoned Mine Land Reclamation; Extension of Comment Period on Draft Environmental Impact Statement
26. January 23, 1980 Regulation of Coal Mining on Federal Lands in North Dakota; Federal/State Cooperative Agreement and Surface Mining Reclamation and Enforcement; Civil Penalties, Proposed Modifications
27. January 24, 1980 Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Performance Bonding
28. January 30, 1980 Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Correction and Addition to Notice of Suspension and Withdrawal
29. February 6, 1980 Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program
30. February 25, 1980 List of Laboratories Qualified To Perform Work Under Small Operator Assistance Program
31. February 27, 1980 Conditioned Approval of the Texas Proposed Permanent Regulatory Program
32. March 6, 1980 Abandoned Mine Land Reclamation Program
33. April 16, 1980 Disposal of Excess Spoil in Durable Rock Fills, Interpretative Ruling; Permanent Regulatory Programs, Corrections
34. April 16, 1980 Permanent Regulatory Program; Prime Farmlands Grandfather Provisions; Surface Coal Mining and Reclamation Operations, Experimental Practices
35. May 16, 1980 Surface Coal Mining and Reclamation Operations Interim and Permanent Regulatory Program; Steep Slope Mining

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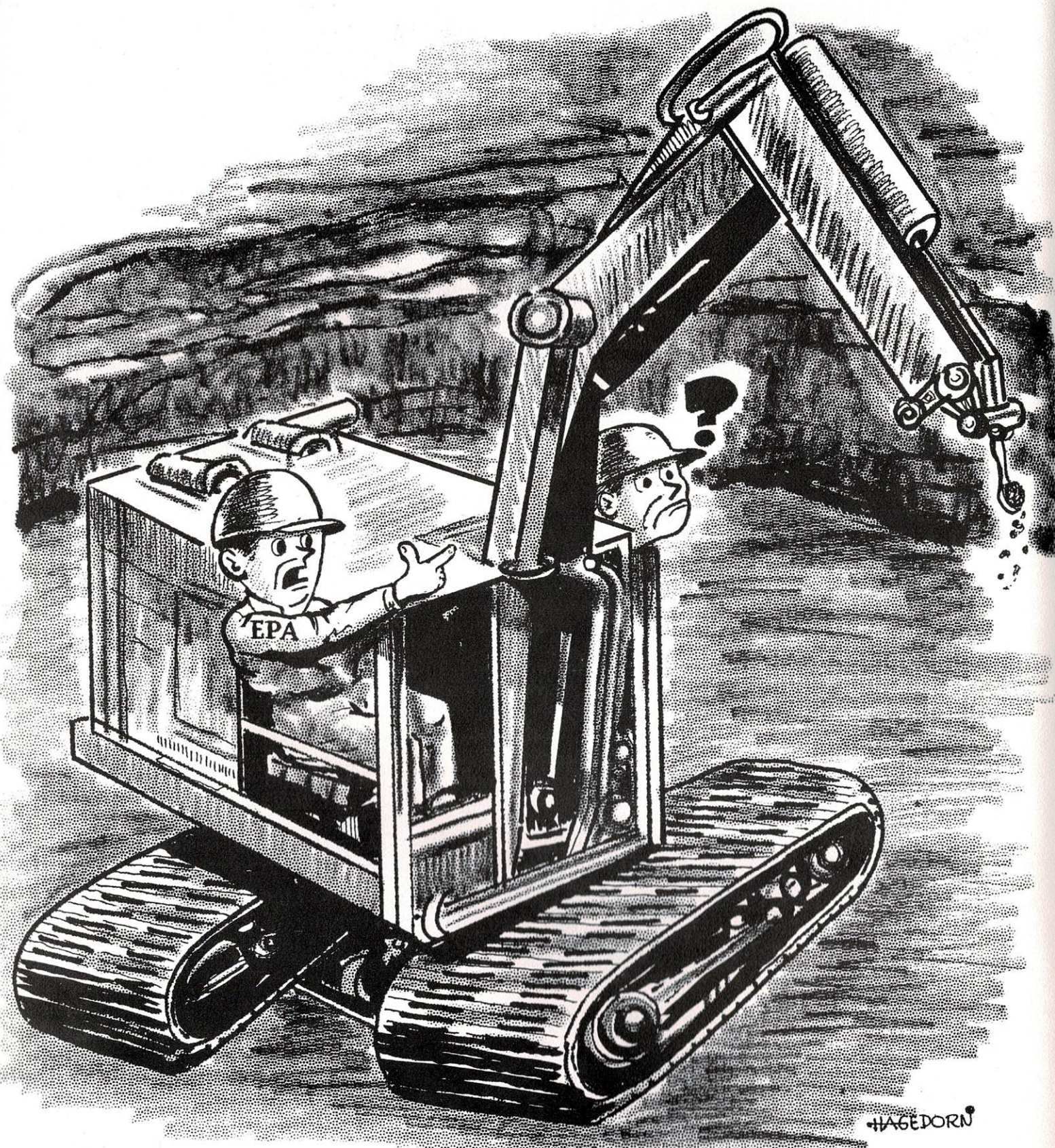
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Barbour	Barbour Coal	40	40
Boone	Westmoreland	160	592
	Whitesville A&S	22	
	Eastern Associated	200	
	Cedar/Southern App.	170	
Brooke	Starvaggi Ind.	287	287
Fayette	United Pocahontas	50	
	Semet-Solvay	250	300
Harrison	Consolidation	262	262
Kanawha	Carbon	41	
	Bethlehem	376	417
Logan	Pittston	333	
	Chafin	300	
	Logan Mohawk	100	
	(Unidentified)	800	1,533
Marion	Eastern Associated	208	
	Bethlehem	40	
	Consolidation	44	292
Marshall	Consolidation	778	
	Valley Camp	290	1,068
McDowell	Consolidation	821	
	United Pochontas	200	
	Eastern Associated	130	
	Semet-Solvay	400	1,551
Monongalia	Eastern Associated	31	31
Mingo	Island Creek	325	325
Nicholas	Island Creek	197	
	Pittston	185	382
Preston	Reliable Coal	180	180
Raleigh	Consolidation	100	
	Pittston	431	
	Westmoreland	700	
	Eastern Associated	160	
	Sterling Smokeless	350	
	Slab Fork	300	
	Bethlehem	202	2,243
Wayne	Pittston	88	88
Wyoming	Consolidation	371	
	Pittston	100	
	Eastern Associated	335	
	Slab Fork	160	966
		TOTAL	10,557



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West Virginians for work

Lenora Riley

Trying to navigate the maze and clear the hurdles of governmental agencies and regulations at both the state and federal level is having a crippling and agonizing effect upon West Virginians. If you have never experienced the duplication, overlap, and decisive inaction at all levels of government, the frustration of modern governmental administration defies description.

The sheer magnitude of government's involvement in the coal industry boggles the mind. There exists such overlap and duplication that the screams of frustration are being sounded. The surface mining industry for example, now has to deal with thirteen agencies and thirty-nine subdivisions at the federal level and fourteen separate agencies and thirty-four subdivisions at the state level. One hundred different agencies are making demands that overlap, duplicate, complicate, and contradict one another. A problem with several major underlying causes, it is killing the coal-based economy of West Virginia.

However, there is one group of West Virginians who refuse to accept what is happening. West Virginians for Work, led by President Jack Depue of Bridgeport, is a recently formed organization which has vowed to counter the special interest groups and the regulatory processes. Its goals are to repeal and change conflicting federal and state laws; to work with regulatory agencies to show them how their decisions affect the lives and the economy of West Virginians; to try to preserve anybody's job that is affected by over-regulation, bureaucracy, and special interest groups; and to seek out and publicly endorse elected officials that are

compatible with the goals of West Virginians for Work.

The organization has a current membership of five-hundred in a five county area and is growing daily. Its success is directly linked to the fact that it represents more than one industry and more than one group. The membership reflects oil, gas, and coal; it reflects labor and management; it reflects people who are calling for a common sense approach to the problem of a healthy environment balanced with a healthy economy. It believes both are possible.

"The major problem," says Depue, "is too damn many laws. More and more people are realizing the government has created a situation for industry where it is a damned-if-you-do and damned-if-you-don't situation. Our membership shows that more and more workers understand economic problems in industry are not being caused by poor management, but by the duplication, overlap, and inaction at all levels of government."

The group is having an effect. Lloyd Lang, President of Enviro-Energy, stated at a Department of Natural Resources hearing in May that the three hundred and fifty West Virginians for Work who attended the public meeting in Elkins accomplished more in one night toward the issuance of a DNR permit for Enviro-Energy than had been accomplished in six and one-half years. The group was also well represented at the EPA hearing on the same permit application in Elkins. Although the meeting elicited some verbal conflict between members of West Virginians for Work and the representatives of various environmentalist groups, Jack Depue, who was a speaker, claims: "We were there

with the other side of the story. It is time to let public officials know there is a majority of West Virginians who believe jobs as well as a healthy environment are an important political issue."

One of the precipitating reasons for the formation of West Virginians for Work is the case of Holly Grove Coal Company, which is a classic example of what can happen to a conscientious surface mining company trying to operate in West Virginia. Holly Grove, a subsidiary of LaRosa Fuel Corporation, has been halted in its efforts to mine 250 acres in Upshur County near the headwaters of the Little Kanawha River. A small group of environmentalists calling themselves Friends of the Little Kanawha (FOLK) brought suit against Holly Grove, the Office of Surface Mining, the West Virginia Department of Natural Resources, and the Environmental Protection Agency.

Holly Grove applied for a National Pollution Discharge Elimination System (NPDES) permit from EPA in January, 1979. In initial hearings, EPA asserted Holly Grove had no "on-going activity which required an EPA permit." However, in a turnabout of confusion, EPA, pressured by FOLK, claimed Holly Grove's preparatory activity was in violation of EPA's rules and regulations because of the lack of the NPDES permit. To further frustrate and delay, EPA has now made known its intentions to conduct an Environmental Impact Study.

"We are out of business," says Charles Miller, President of Holly Grove. "One small group of people using tax-supported legal services and capitalizing upon the inefficiency of a governmental agency has forced a company out of business and one hundred and sixty-two people out of a job."

The irony of the situation is that no company has ever spent as much effort and money preparing themselves to safely, legally, and correctly mine an area as Holly Grove spent in preparation for this project. They met all legal regulatory and technical tests. They applied for the EPA's NPDES per-

mit. And Dave Callaghan, director of West Virginia's Department of Natural Resources, stated that his department never received a more complete or better prepared application than the one submitted by Holly Grove Coal Company.

Miller, who worked with the US Soil Conservation Service prior to taking the helm of Holly Grove, explains the frustration felt by himself and the employees. "We are convinced; the West Virginia Department of Natural Resources is convinced; the United States Office of Surface mining is convinced we can mine this coal without causing irreparable damage to the environment. But those who oppose the operation are capitalizing on the delay and inefficiency of a federal regulatory agency and ignoring the fact that we are West Virginians who are also concerned about the effect of our operation on the environment."

"If it can happen to us," Miller predicts, "it can happen to any other surface mining operation in this state. The laws appear not to regulate, but to serve as punitive action against an entire industry and those people who desire to earn a living instead of living off welfare."

He adds, "We are seeing the surface mining abolition movement of the early 1970's resurrected in West Virginia under the guise of environmental concern."

Nothing is hidden about the purpose and the determination of West Virginians for Work. Board member Betty Joe Bennett of Elkins, a housewife married to a miner forced out of work by the Holly Grove shutdown, expresses her concern and determination. "We are going county to county. . . using the phone. . . writing letters. . . doing some hard campaigning. We want the beauty of West Virginia, but we also want and need work. We know we can have both. When you threaten people's homes and jobs, there has to be a stop. We're really going to get things done."

A commitment to "get things done" is evident throughout the board membership. The

following individuals serve as the board of directors: Jack Depue, Anthony Silvester, Victor Price, Betty Joe Bennett, George Duffer, Orsen Lombruno, and Fred Tice. Jack Depue, president, is project superintendent for Bridgeport Hills Development Corporation. Anthony Silvester, vice president, is an unemployed coal mine supervisor. Victor Price, secretary, is an unemployed equipment operator. Betty Joe Bennett, treasurer, is the wife of an unemployed coal miner. George Duffer, a professional engineer, prepares permits and has to deal daily with governmental regulations. Orsen Lombruno, a coal company principal, and Fred Tice, a professional forester, complete the board of directors.

The organization has no desire to abolish regulations from the various industries. "We recognize," says Depue, "that regulation is necessary and desirable, but an insane situation now exists. It is humanly impossible to be in total compliance in some instances. One agency's regulations will totally contradict the regulations of another agency. And some regulations designed for one reason are blindly enforced in areas where they have absolutely no application whatsoever."

West Virginians for Work also intends to survey candidates seeking to be elected to public office from West Virginia. Depue says, "The problem has been caused by action taken on the state and federal level. We feel the solution will be found at the point of origin. It is an absolute shame that our leaders have been allowed to cripple West Virginia. Charleston and Washington representatives seem to have forgotten the West Virginia spirit. We feel our state motto, 'Mountaineers are always free', reflects a spirit and work ethic that has been forgotten by those who helped write the laws and regulations now threatening our right and desire to work."

He also points out that no state has as stringent regulations as does West Virginia governing the surface mining industry. The

Mountain State has led all others in reclaimed acreage for ten consecutive years. Each year for the last seven years, West Virginia has had more acres reclaimed than mined. It was West Virginia that passed the nation's first surface mining law in 1939, and it has continually upgraded and strengthened it since then, with the most recent upgrading taking place this year. It was also West Virginia who was the first state to prohibit the placement of spoil over the outslope. This is now part of a federal law. This controlled placement concept put West Virginia miles ahead of its neighbors in the key areas of sediment control, soil stabilization, revegetation, and reduction of disturbed acreage. West Virginia's Special Reclamation Fund serves as a model for a similar plan in federal law. West Virginia has not been lax in the area of regulation and reclamation. Millions of dollars and countless manhours have been poured into projects designed to minimize and reverse potential environmental harm. A need exists for a balance of energy, environment, and economics; however, current trends indicate that a devastating imbalance exists.

Senator Jennings Randolph has stated he believes recent federal regulations governing surface mining are excessive, and it is his intention to sponsor legislation to eliminate these excesses, if they are not resolved by regulations. Members of West Virginians for Work maintain lip service is not enough. Many openly wonder why West Virginia's two powerful senators in Washington have not looked out for the interests of this West Virginia industry more effectively.

"We can only assume it is because there was heretofore no group such as ours, West Virginians for Work—a coalition of management and labor and a coalition of industries—calling for wiser action and monitoring the actions of our elected officials," says Depue.

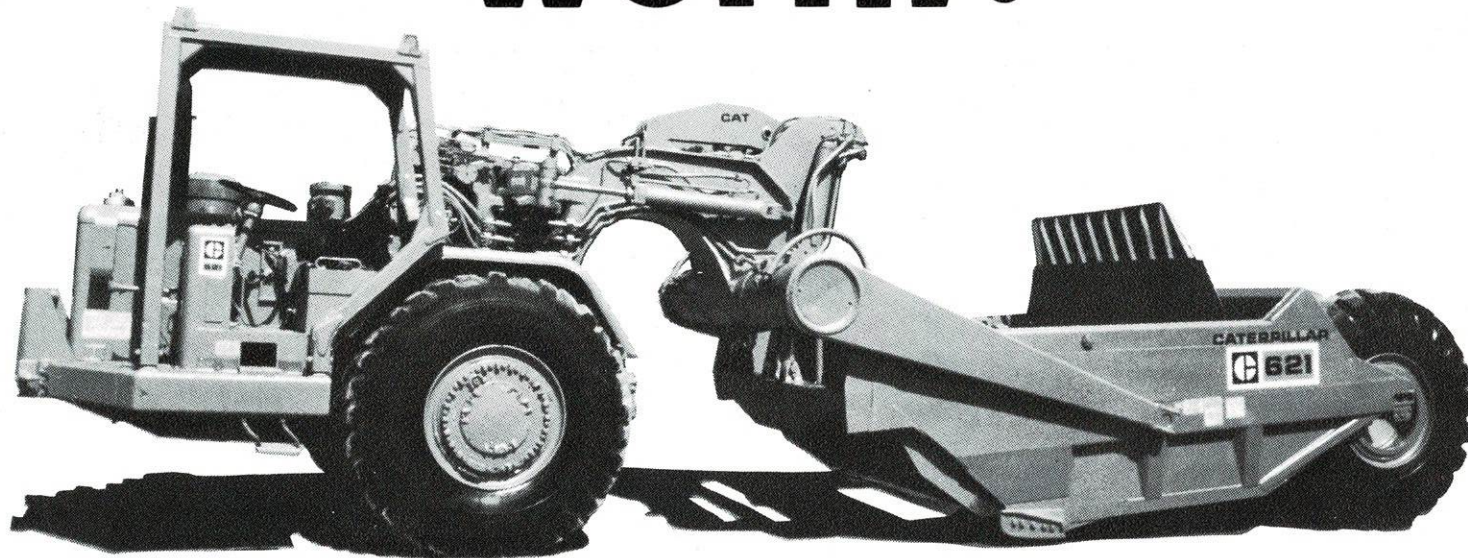
He adds, "It is going to take a lot of hard work, but that is what West Virginians for Work is all about—work."



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Acid Rain —

The Allegations, the Facts and the Unanswered Questions

William C. Hamilton
Senior Research Scientist
Conoco, Inc.

ALLEGATION I: Acid rain is a phenomenon of recent vintage. CEQ says: "In the eastern half of the United States, the acidity of rainfall appears to have increased about 50-fold during the last 25 years."

FACT — In 1852, J. A. Barral showed that sufficient nitric acid fell annually at Paris, France, to give a rainfall of pH 4. This is more acidic than the present rainfall at Yonkers, New York, or Hubbard Brook, New Hampshire. There are other literature references from the 19th century and early 20th century which clearly indicate acid rain was falling then.

FACT — Samples of rainfall taken at Mauna Loa, Hawaii, showed a pH of 4.2, roughly the acidity of rainfall in Yonkers, New York. The pH of rainfall at Samoa, thought to have some of the cleanest air on our planet, is 5.0, about 4 times as acid as "theoretically pure" rain. Australia, in the springtime, has atmospheric nitrate levels 10 times as high as the highest American levels. These correlate well with thunderstorm activity.

QUESTION — Is it possible that "acid rain" is in part a natural phenomenon, and that it has been with us for a long, long time?

ALLEGATION II: The acid rain "problem" has grown rapidly, and is still spreading. Professor Likens' famous maps (*Scientific American*, October 1979) show an enormous increase in the "acid rain area" in the Eastern U.S. between 1955-56 and 1972-73.

FACT — Scientists at EPRI have examined the data from which these maps were constructed, and compared data from common sampling stations for the 3 periods cited, i.e., 1955-56, 1965-66, and 1972-73. They found this:

- Comparing 1955-56 with 1965-66, there were only ten common sampling stations (i.e., where the sampling point was the same in the two periods). Of these ten, four showed a decrease in acidity, three showed an increase, and three showed no change.
- Comparing 1965-66 with 1972-73, only eight sites were common. Of these, three showed a decrease in acidity, one showed an increase, and four showed no change.
- Comparing 1955-56 with 1972-73, only two sites were common. At one of these the acidity increased, at the other it decreased.

The importance of "common sampling stations" lies in the fact that sampling stations separated by only a few tens of miles can show rainfall acidities which vary by a factor of ten or a hundred. For example, CONSOL has been sampling for the past year at two sites located near Pittsburgh. These two sites are separated by only about 40 miles, yet the acidity of the rainfall at one is 100 times greater than at the other.

QUESTION — The Eastern third of the United States comprises nearly a million square miles. Is it in the national interest to further hinder the use of coal if the decision to do so is based on a handful of data of questionable merit?

ALLEGATION III: Serious environmental damage is already being done, and much more will take place unless we immediately curtail the "acid rain threat".

FACT — It seems clear that the acidity of certain lakes, especially in the Adirondacks, is greater now than 20 or 30 years ago. These are typically in areas where the soil is thin and has little or no buffering capacity. It is also clear that acidity has an adverse effect on aquatic life, and that in some lakes fish populations have been depleted or have disappeared. It is by no means clear that this is necessarily due to acid rain. EPRI has found three lakes in the Adirondacks, lying within a few miles of each other, which have very different acidities. One of them has a pH of 7.0, the second a pH of 5.5-7.0, and the third a pH of 4.5-5.5. Yet, the chemistry of the rainfall at the three lakes was apparently identical. The pH of streams and lakes can be changed by a variety of things, including changing agricultural practices and changing forestry practices. And fish loss can be caused by various factors, including disease, fishing pressure, poaching practices (e.g., netting, dynamiting), loss of calcium ion in the water, and water pollution.

As to the impact of acid rain on crops and forests, there is little convincing evidence that any harm is being suffered at present levels of acidity. A TVA scientist points out that SO₂ abatement plans will cause a \$300 million annual crop loss in the Tennessee Valley, unless steps are taken to incorporate additional sulfur compounds into fertilizers. Experiments in Norway showed that treatment of lodge-pole pines with synthetic acid rain resulted in a 20% increase in height growth. Even Professor Likens concedes that "...the overall effect of acid precipitation has to be regarded as ambiguous in the light of present knowledge."

QUESTION — Might it not be better to find out what damage (if any) is being caused by acid rain, before we embark on some ambitious remedial program?

ALLEGATION IV: Acid rain is caused mainly by the burning of fossil fuels, especially from sulfates arising from coal combustion.

FACT — If CEQ's allegation that rainfall

acidity in the Eastern U.S. has increased 50-fold in the past 25 years, one would expect to find a huge increase in sulfur oxide emissions over the period. A 50-fold increase, after all, is a 5000% increase in acidity. But as Professor Likens' paper shows, the increase in national sulfur oxide emissions over the period 1950-1975 was only 5%. Likens and his colleagues attribute the difference in acidity over the period in part to the building of tall stacks by the utilities, a practice which did not begin until the 1950's. But if this were the main cause, it ought to be reflected in vastly increased ambient sulfate levels, in the U.S., and no such increase is evident. Unfortunately, says the National Academy of Sciences, "the historical base for sulfate concentration is weak." The Academy cites EPA data from 12 Northeastern sites as showing an increase in ground level sulfate of only about 5% during the period 1962-1973. Moreover, the limited data available to us indicate that the large increase in stack heights did not occur until the late 1960's and early 1970's, too late to be of much help to the theories of Professor Likens, the CEQ, and the EPA.

It should be remembered that nature herself contributes heavily to the atmospheric burden of both sulfates and nitrates. Natural sources of sulfur compounds included ocean spray, volcanoes, vegetation decay products and wind-blown soil particles. On a global basis, these are probably twice as great as man-made emissions. Nitrogen compounds come not just from the burning of fossil fuels, but from microbial processes in the soil, from lightning and from other sources. Lightning alone is thought by some investigators to contribute as much as 50% of the total NO_x atmospheric burden, far more than comes from man's activities.

QUESTION — Before this nation launches some grand "corrective" scheme for acid rain, which will certainly cost tens or hundreds of billions of taxpayer and/or consumer dollars, would we not be wise to get some clearer idea of what causes acid rain?

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Designation of lands unsuitable for mining

John L. Kilcullen, Attorney
Washington, D.C.

For the first 200 years of our Nation's history the individual States, and their counties and cities, had the exclusive power to regulate the use of private non-federal lands within their borders. Zoning laws, use restrictions, building permits and all other forms of land use regulation, including issuance of permits for mining, have been traditional and historic functions of State and local governments. This was a plain and simple fact of life which everyone took for granted.

Everyone, that is, except a small group on the radical fringe of the political spectrum who contend that the States can't be trusted to make intelligent decisions about such important matters as land use planning, and that the federal government should be the ultimate arbiter of the question of what any particular parcel of land should be used for.

It is unlikely that one in a hundred American citizens would accept this premise if it were put to a vote, yet it is an astonishing fact that this revolutionary concept has now been enacted into law by the United States Congress, and the power to decide how private land may be used is now in the process of being transferred from State and local authorities to the bureaucratic establishment in Washington, D.C.

This is the de facto result of the adoption of the Federal Surface Mining Control and Reclamation Act, an Act which thrusts the federal government squarely into the field of land use regulation.

The main thrust of the Act is directed at control of land use for surface coal mining, with particular emphasis upon the post-mining condition and utilization of land areas disturbed by surface coal mining. The regulatory scheme of the Act in its overall effect is to drastically restrict (and in substantial part prohibit) the beneficial use of land and the recovery of mineral resources vital to the economic and social well-being of the local communities and people in many coal producing regions.

In contrast to other federal mining legislation, such as the Federal Mine Safety and Health Act of 1977 which deals with the safety and health of miners employed in

production of coal and other minerals for interstate commerce, the Surface Mining Act is directed not to the "commerce" aspects of surface mining, i.e. the operations involved in extraction, transportation and sale of surface mined coal, but deals entirely with aspects of land use. By imposing federal controls upon land use for surface mining, and dictating the criteria for reclamation of land areas after active mining has ceased, Congress has in effect transferred to a federal agency the traditional authority of State and local governments in respect to these functions, and has created a comprehensive body of federal police powers designed to supplant the inherent police powers of State and local governments.

It is undeniable that coal is a commodity which moves in interstate and foreign commerce, and is subject to regulation by Congress under the Commerce Clause. The issue here, however, is not simply a question of regulation of a commodity which moves in interstate commerce, but whether the power to regulate commerce carries with it the power to regulate the real estate incident to production of such commodity.

While the entire scheme of the Act intrudes upon land use powers of the States, nowhere is this more apparent than in Section 522 which provides for designating areas unsuitable for surface coal mining. It directs that before any State can assume regulatory powers under the Act it must establish land use planning processes in compliance with the criteria laid down in the Act. Section 522 also contains an outright prohibition on surface mining within 300 ft. of any dwelling, public building, school, church or institutional building, or within 100 ft. of a public road or cemetery.

It doesn't stop there, however. Subsection 522(c) provides that any person having an interest which is or may be adversely affected may petition to have an area designated as unsuitable for mining, and upon filing of such a petition a full scale formal hearing must be held, followed by a written decision and all the appeal procedures which go along with administrative decision making.

a secret weapon for the opponents of coal

Needless to say, this provides a federally mandated channel by which environmentalists, or any assortment of cranks, can tie up coal mine operators in harassing litigation that may go on for months or even years. In other words, it is an open invitation to any disaffected person or group to use legally mandated procedures to block the issuance of surface coal mining permits in almost any type of situation.

If one had any doubts on this score it is only necessary to read Subchapter F of the OSM's Permanent Regulations, and particularly sections 764.17 through 764.25.

The OSM criteria for designating lands unsuitable, which appear in Part 762 of the Permanent Regulations, could well be used to ban surface mining in an entire region such as, for example, the Central Appalachian region which comprises several counties in East Kentucky, portions of Southern West Virginia, and virtually all of the coal producing counties in Southwestern Virginia. This area is characterized by high mountain ranges with deep gorges and virtually no level or gently sloping land. In Virginia, for example, 95% of the surface mineable coal is situated in mountainous terrain designated as steep slopes under section 515(d) of the Act. In East Kentucky at least 75% of surface coal mining involves steep slopes, and in Southern West Virginia the situation is very similar.

Environmental groups have long been striving to bring about a total ban on surface mining in the Central Appalachian mountains, and with the help of OSM they seem to be now in sight of that goal. The criteria for designating lands as unsuitable, which appear in section 762.11 of the Permanent Regulations seem specifically tailored for that purpose. That section provides that:

"(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the regulatory authority determines that reclamation is not technologically and economically feasible under the Act, this

Chapter and an approved State program. (b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

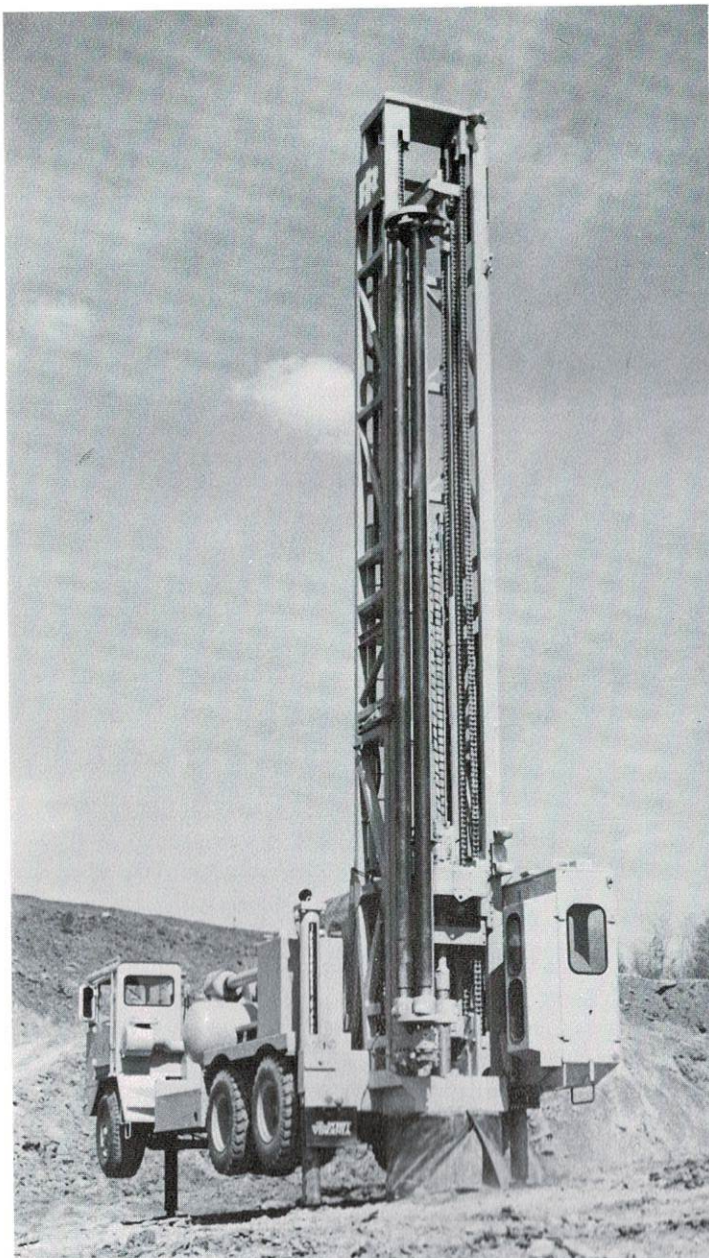
(4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology."

One needs no great stretch of imagination to envision the interpretations which may be placed upon this language in the hands of zealous opponents of the coal industry.

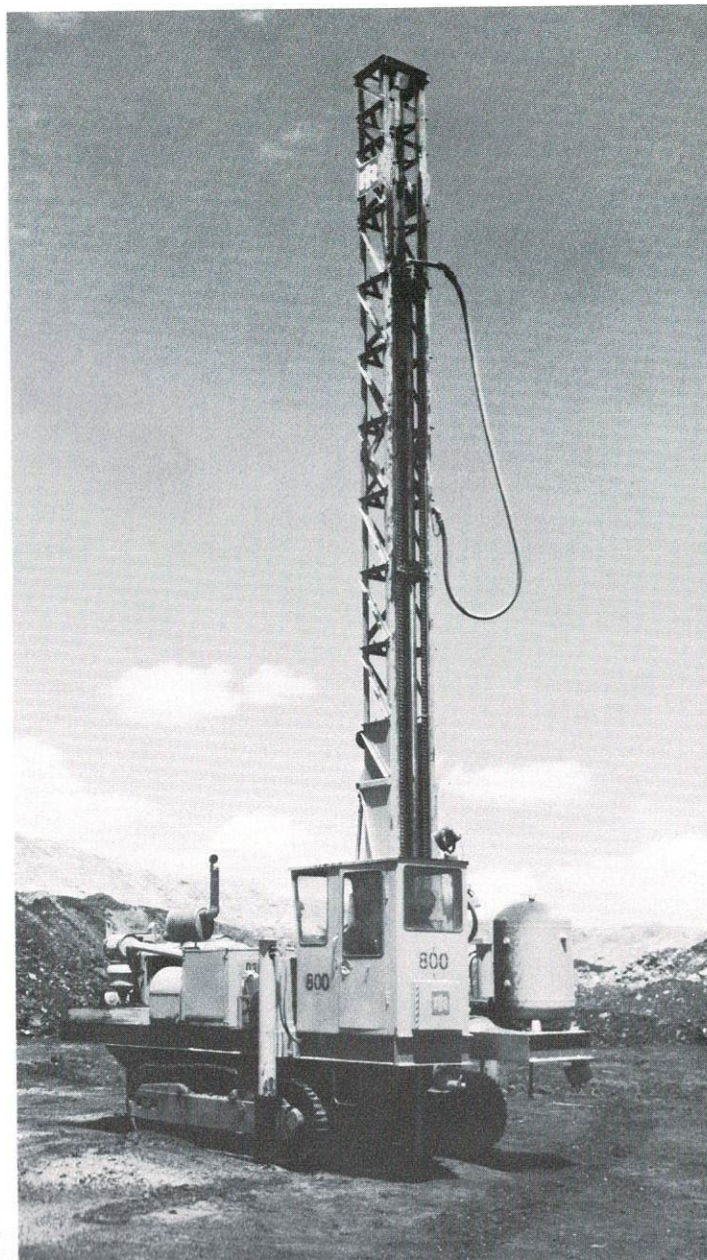
Where does this leave the owner of the lands and the valuable mineral rights they hold? If the coal cannot be extracted is not the owner deprived of the value of his property and its beneficial use? These questions raise serious constitutional issues under the "just compensation" clause of the Fifth Amendment, which are now pending before the Supreme Court in the appeal by OSM from the decision of Judge Glen Williams in the United States District Court for the Western District of Virginia.

These constitutional issues are by no means limited to surface coal mining, but have extremely broad implications for all industries. If under the Constitution the federal government can exercise the power to regulate use of land for surface mining there are no foreseeable limits upon the exercise of the same power in respect to all other industrial use of land. Once this principle is established a federal permitting system can be made applicable to industrial plants, office buildings, shopping centers, housing developments, and virtually every other significant use of land.

For this reason alone, the unsuitable lands provision of the Surface Mining Act is indeed a "secret weapon" which carries with it enormous implications for all of American industry.



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The Environmental Volcano of the 1970's and its Acid Fallout

Remarks by I. W. Tucker,
President, National Council for Environmental Balance
to the West Virginia Surface Mining
and Reclamation Association,
July 12, 1980

As a college professor, it shouldn't be surprising that I would ask you a question, and not just a simple question, but whether an acronym was spelled forward or backward. A-P-E would have stood for Administration to Protect the Environment, so you can understand that the bureaucratic powers in order to avoid the tag "a-p-e", chose to reverse the name to E P A. As things have developed, however, over the years of the U. S. E. P. A., we have to wonder if the agency has not gone ape after all — certainly in selected areas.

SURFACE MINING

Now, I would not presume to know a great deal about surface mining, although I have visited Hazard on a number of occasions and taken several aerial sightseeing tours over that part of Appalachia. If one thing stands out, it is that there are many more hilltops and mountain tops than anyone could use. There are few places for productive farming, building houses, or landing an airplane, which might be more on your mind on such an occasion. Quite obviously, the law and regulations requiring the restoration of the original contour following surface mining in this type terrain is just another case of the bureaucratic agency going ape. I was particularly pleased to note that Billy Hurd down our way in Clay County has taken on the bureaucracy in an effort to retain in productive use several acres of flatland resulting

from a prior mining operation. The Hardly Able Coal Company had contracted with Hurd to leave his property flat after they stripmined it, rather than return it to its original sloped contour. In all but one respect, they followed the prescribed procedure as outlined in the Strip Mining Act of 1977. That one exception was non-conformity with the **AOC** (Approximate Original Contour) provision. The Federal Government now wants Hurd to put his seven acre "bench" back to its approximate original contour, and Hurd, along with friends, including Kentucky's Attorney General and others, have joined the suit, claiming the government has violated Hurd's constitutional rights as guaranteed by the Fifth Amendment (private property should not be taken for public use without just compensation). This is the same type of case ruled upon by a federal judge in Virginia in favor of common sense and which now is before the U. S. Supreme Court, having been appealed by Cecil Andrus, Secretary of the Interior.

In Billy Hurd's words, "Why, they didn't hurt this land, them people that stripped it. Why, gee whiz, it was a bluff before." If you have been down and around that area of Kentucky, you know that flat land is a priceless commodity and I have visions of mining providing the salvation of the area, producing perhaps a little Switzerland, where dairy herds, grapes, wine, cheese and possibly a glass works might be profitable operations of the future. A small beginning has been made in this direction, particularly by Falcon Coal, a showplace of profitable land reclamation, which your environmental committee of the House chose to ignore when they

were considering the Surface Mining Act of 1977.

ENVIRONMENTAL OBSTRUCTIONISTS

My very first visit to Appalachia was about 1970 with an Audubon Society group. I considered it an opportunity to **learn** first hand something about surface mining. To my amazement, the better the reclamation, the more the Audubons were infuriated. If it were really a superior job of reclamation, they concluded that it proved how evil you were since you went to such lengths to prove otherwise. This is really one of the major tactics we face in this kind of situation. Some of you will surely recall that nuclear energy was the clean and safe alternate to dirty coal. Only as nuclear power proved successful did they reverse their claims. More recently, however, the outlandish claims for solar and conservation are used to forestall coal utilization.

I'm reminded of the story of a husband who asked for scrambled eggs one morning. His wife replied that she was unable to scramble eggs because the handle on her garden hoe was broken. For someone who simply doesn't want to do something, any excuse will do, whether valid or otherwise.

I am sure, too, that if someone achieves a breakthrough on solar energy, these same obstructionists will turn against it — probably on the basis that it would occupy too much land — a view that they now refuse to believe or acknowledge.

BURNING COAL

Your experience with surface mining, no doubt, is typical of what many others experience in a variety of other industries and occupations. The one perhaps of greatest interest to you would be that involving the utilization of coal. A major deterrent to this is the resistance of EPA to burning it, except utilizing expensive facilities requiring more coal than necessary for the removal of sulfur oxides far beyond any reasonable rate of health benefit. You may recall that the standards for sulfur oxide were set by the EPA in the early days of its existence, or even before when the organization was

operated as the Public Health Service. Earlier, I have said facetiously that the basis on which EPA selected the pollutants it wishes to control was on the basis of its ability to spell them and they, therefore, chose CO, SO₂, NO_x and O₃. I still make the same claim about the reason for choosing these particular elements to control, but I am beginning to believe what I said earlier about their reasons.

Soon after, you may recall, they banned DDT, three letters long, and it took them awhile to decide on large or small letters, and whether commas or dashes should separate them.

The first question that arises, of course, is whether or not there is any necessity for removing SO₂. SO₂ is a material that has been around since the beginning of time on this planet and is a natural constituent of pristine air. It is unavoidably injected into our air mass from episodes such as the recent eruption of Mt. St. Helens. Sulfur happens to be one of the essential nutrients for life, both human and animal and plants. Its presence in the atmosphere is an essential part of maintaining what we call the biosphere. As your industry takes coal from the ground, it includes an amount of sulfur that represents the bio-material from which the coal derived. This bio-material will profitably be recycled only as someone specifically removes it from the coal and replaces it in the forests, or it is taken from the stack gases in a form suitable for redistribution to our productive land, or is allowed to be discharged and widely distributed as fall out. The last thing we should do is bury it in a dump, the very thing EPA wants done.

This, in particular, illustrates the **EPA** going **APE** in a very non-productive way, non-beneficial to man and non-productive in environmental enhancement. The current processes being promoted for flu gas desulfurization are those which simply collect the removed sulfur in the form of a waste of no earthly value to be placed in some kind of pit at considerable expense and of no benefit to anyone — in other words, an answer for a question not yet formulated.

Now, it may well be at some future date, if we should burn much larger amounts of coal, that the sulfur oxides will become excessive. By that time, however, we should expect that superior methods of dealing with the problem will develop, so that instead of a waste material, a useful form of agricultural sulfate will be available for marketing. It has recently been proposed that flu gases be treated with raw phosphate ore with the net result that the phosphate itself is upgraded and the product would contain amounts of sulfate agriculturally beneficial, to boot.

As things now stand, one can calculate that of all of the coal burned throughout the United States, the sulfur discharged to the air amounts to the equivalent of approximately five pounds of sulfur per acre. Five pounds of sulfur per acre translates to approximately 20 pounds of ammonium sulfate, which is far less than a reasonable application of this same chemical on a productive farm or forest. In other words, the present practice of allowing sulfur to be discharged from the stack actually provides a most efficient means of distributing sulfur to farm land in a most economical manner — recognizing, of course, that with insufficient planning some areas might get too much.

THE SUCCESSFUL U.K. PROGRAM OF COAL UTILIZATION

The situation in the United Kingdom will illustrate the excess of the U. S. policy. There, sulfur oxide levels throughout the country average about twice what they do in the United States and in the view of the most experienced medical expert, no human health effects are in the least evident. Some of you may have heard Drs. Lawther and Hinkle testify to this in Columbus, last week.

ACID RAIN

More recently you have heard about acid rain. Except that we have previously heard, the charges of health hazards attributable to sulfur dioxide which turn out to be entirely erroneous. I might be inclined to believe that acid rain does in fact constitute a problem. If it does, it most certainly is not a centralized problem but one of specific concern in cer-

tain types of lakes, or other limited areas. Should the problem on further evaluation turn out to be real, a variety of corrective actions are available short of demanding universal FGD as EPA seems on the verge of demanding. Again, we see, in this case, an answer being given will in advance of any knowledge of what the problem or the question really is.

In terms of my theme that EPA-APE is a bass-ackward-oriented agency, let's take a look at what its first administrator says (now) about what course the agency followed earlier.

In 1979, William D. Ruckelshaus, referring to his early days at EPA, stated: "I thought we knew what the bad pollutants were. . . where they came from. . . at what levels they caused an adverse health effect or environmental effect and, thus, how far we had to reduce them to protect public health or the environment. . . my awakening was that what I thought we knew, we didn't. . . and not to the degree of specificity necessary to make the 1970 Clean Air Act a statement of wise public policy."

In a similar vein, the first Deputy Administrator of the EPA, John A. Quarles, who served under several administrations, finally to be acting head of the agency, states: "We need to develop tactics to achieve better understanding of what the problems are and what the solutions would be. . . develop factual analyses, try to get as much reliable information as we can about specific situations and specific impacts, avoiding rhetoric, avoiding exaggeration. . ."

The two gentlemen just quoted were, of course, lawyers, and you may wish to know something of the views in the scientific community relative to these same matters. Earlier, I wrote a paper entitled, "Boycott EPA Style," giving certain quotations from a number of outstanding scientists on the subject of the sulfur oxide standards, as well as other similar statements dealing with automotive emissions. On SO₂ the adverse criticism of the EPA is the equivalent of calling the role of nearly all of the outstanding scientists who on the activation of the EPA

organization, or soon after, returned to academic life, perhaps, rather than suffer the political pressures of the new agency. They include Dr. Merrill Eisenbud, first administrator of the New York City EPA; Dr. Arthur Stern, formerly the Dean of Air Pollution Science in the U. S. Public Health Service; Dr. Herbert Stokinger, formerly of the U. S. Public Health Service, now retired. Joining these, we have such outstanding scientists as Dr. Lawrence Hinkle, Head of Human Ecology, Cornell University Medical School; Dr. Herbert Schimmel, Albert Einstein College of Medicine; and the outstanding man in clinical medicine, Dr. Patrick Lawther, twenty-five years in charge of air pollution matters for the Medical Research Council for the United Kingdom. To a man, these people subscribe to the view that sulfur oxides current levels bear no significant relation to human illness.

I was not surprised recently when the press asked why on Dr. Ackerman's program only Drs. Hinkle and Lawther were present and that no one with an opposing view was invited to appear. There were actually several reasons, but one which in my mind stands out is that I don't know a single scientist of comparable credentials who takes an opposing view. Many who may seem to think otherwise seem to be deriving their support from the massive EPA so-called research program which seems largely to exclude men of the competence of those I have mentioned.

In spite of this overwhelming proof of the folly of extreme measures to control sulfur oxides, the EPA persists in striving for measures which in the aggregate place billions of dollars of additional burden on all consumers of electric power. It was recently reported that the cost of scrubbers alone involved a capital outlay of \$96- per kilowatt. I understand this to be in excess of 10% of the cost of the basic utility unit. Add to this the continuing operating costs increase of approximately 10% and you can see a burden being placed upon consumers and industry alike. Only a bureaucratic ego could be satisfied with this approach.

AUTOMOTIVE

One can show similar excesses for the automotive pollutants — ozone, hydrocarbons, carbon monoxide and NO_x — where public interests stand to lose from extreme measures sought by EPA. Not only are these ambient standards lacking in validity, it is further clear that their application in enforcing further restrictive regulation fails to take into account a large and variable contribution of other factors leading to elevated ozone levels. In particular, it has been observed that ozone concentrations are seriously and variably influenced by discharges from foliage of various types, as well as air movements involving the higher levels of the atmosphere.

These factors, coupled with local meteorological conditions, bring into serious question the wisdom of seeking additional restrictive measures, particularly on the automotive public, including inspection and maintenance programs — an extremely expensive and cumbersome course of action — and one of dubious value.

EPA'S earlier estimate for meeting a standard of 0.10 ppm O₃ was in the range of \$6.9 - \$9.5 billion dollars per year, a figure which is approximately just half of industry's estimate of \$14.3 - \$18.8 billion per year. At these levels of cost, it can be estimated that we are paying at the rate of \$1,000 to \$4,000 each hour of reduced human exposure, that exposure being no more than minor discomfort at most, entirely reversible within a short time.

Now, if these measures to which I referred entailed only dollar costs per se, the consequences might not be disastrous. The fact is, however, that whatever that amount is for which no benefit derives, it would provide very positive benefits in many other ways. In the case of energy, or course, a disproportionate share of added costs falls on the poor and the elderly whose interest would be served much more effectively by applying the sums to other programs at the very least. In my own personal experience, I have investigated within the last year two fatal accidents which could have been prevented

by the simple expedient of a proper building inspection.

With respect to the elderly or those seriously ill, financial assistance in providing more comfortable quarters and air conditioning in their illness would be distinct advantages far outweighing any marginal or insignificant benefits of reduced sulfur oxide levels in ambient air. . . and at a much lower public cost.

DOUBLE DIGIT DECAY

There can be no doubt that the United States today is more threatened with the possibility of a general (or major) war and economic collapse than at any time in the last thirty-five years. This, of course, derived primarily from our massive dependence on foreign petroleum, as well as our massive inflation — two items closely related.

Our situation is entirely of our own making to the extent that for a dozen or more years it was evident (see J. J. McKetta, 1968 and after) that the current situation could develop. We allowed, however, certain so-called environmental interests to dominate our policy to the point where measures to forestall our energy dependency were not taken. Instead, we have allowed existing coal generating facilities in the early 1970's to be converted to petroleum. These same forces succeeded in deferring the availability of Alaskan and other domestic oil for years. Similarly they are responsible for the serious delay and construction of nuclear plants, stalled the approval of others and are responsible for the cancellation of many other plans for construction that would have been undertaken.

Had we not allowed these things to happen, I believe that it could be shown that our petroleum import dependency would currently be of manageable proportions. We might well be importing 20% or less of current needs. However, our own resources and conservation under those circumstances would be enough to forestall any effort of OPEC even to have organized, no less tighten a noose on U. S. energy supplies. The U. S. under those circumstances could

readily have pressured foreign suppliers either to be reasonable in their pricing, or cause them to suffer a boycott.

On the conservation front, we have similarly allowed our automotive production to be forced into pollution control measures counter-productive in terms of energy conservation. The car engines themselves have been degraded in efficiency by virtue of the lower compression ratios required to meet the standards. Added to this, we are increasingly denying ourselves the advantage of leaded fuel, which provides higher miles per gallon and requires some 10% less crude in its manufacture. In the automotive field alone, we could now be reducing our import dependency by some 10 or more percent. It was recently reported that a Canadian Horizon consumed 17% less crude than the comparable U. S. equipped car.

Similarly, demands for excessive emission controls on coal generating utilities consume not only additional coal but other costly resources as well.

Also, we are increasingly denying our American Farmer the technology which brought him to the acme of productive efficiency by the withdrawal of major agricultural chemicals. Significantly, those chemicals that were withdrawn were the safest judged by any reasonable measurement and fair evaluation.

Never in the history of mankind has any single item preserved and enhanced human health to the extent that was realized through the use of DDT. In spite of its use on a vastly greater scale than any other chemical known, not a single case of human illness has ever been documented as attributable to it. We see now similar action being taken against 2,4,5-T, another agent of tremendous benefit in food, timber and fibre production and in the conservation of energy, as well as manpower, and in improved productivity.

It appears that the more successful the chemical the more determined the adversary group is in outlawing it, resorting to any and all kinds of distortion, misrepresentation and outright lying. These counter-

agricultural measures have a net result of retarding productivity, thereby necessitating increased energy utilization. Bountiful domestic farm production has been the major factor in supporting our unfavorable trade balance from petroleum imports and we can see a continuing erosion of our ability to sustain this vital production.

In the case of timber, over and above the withdrawal of agricultural chemicals, a number of other measures have undertaken to reduce the availability of forest land for productive jobs and essential products by assigning public land to various classifications prohibitive of resource development, or productive use.

With respect to all of the above, there is hardly a shred of evidence of even a suspicion that human health is to be benefitted by these measures. This does not imply that reasonable measures should or should not have been undertaken to control air or water discharges. However, the public has been grossly misled relative to the total safety of the United States environment.

Taking cancer as an example, only lung cancer has increased largely as a result of cigarette smoking, whereas other cancers have shown no change in incidence and stomach cancer has markedly decreased.

This latter provides the strongest indication of all that not only has our food containing the many recently developed additives not been detrimental, but in fact, has resulted in a superior, more sanitary, nutritious and safe food supply. In spite of this, food additives and farm chemicals are prime targets of these obstructionists.

With respect to air pollution, a twenty-year review by the American Cancer Society concludes that air pollution is not a significant factor in human cancer. Nevertheless, we are already hearing rumblings that the EPA wants to forestall coal utilization and diesel transportation on the basis of an imagined cancer threat.

Concerning the recent alarm over water supplies and the by-products of chlorination, a recent cancer meeting revealed that the levels of "carcinogens" was well below

any level that could be considered a human threat.

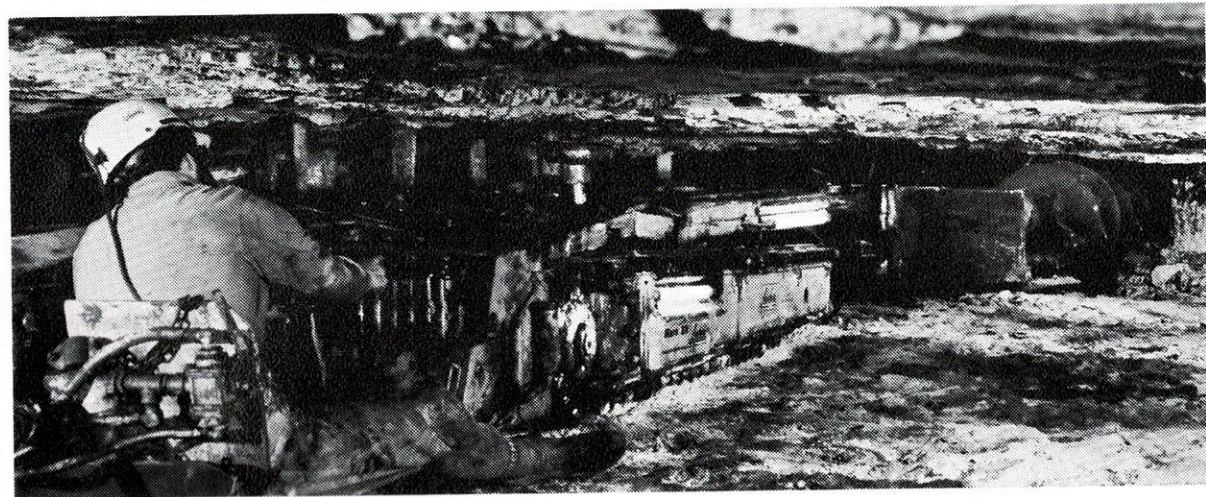
There most certainly are pockets of pollution and types of pollution which require serious attention and concern. As often as not, under the present policies, public attention being directed at everything under the sun fails to provide the opportunity to undertake problems of possibly far greater significance than those covered by present central and local government programs.

Whereas we have fumbled about with our concerns over energy resources and the so-called health benefits, the measures taken during the 70's impacted severely on the economic capability of the United States to sustain a vigorous economy either domestically or internationally. We have successively seen the disappearance of our export potential in the field of radio, automobiles, chemicals, steel, drugs, chemicals, synthetic fibres, and coal. The restraints on research and development have severely arrested our potential for the discovery of new and improved products and for the development of more efficient productive systems. All of these plus the increased risks of government intervention is a major deterrent to anyone undertaking any speculative development, should an otherwise successful undertaking be achieved.

We accordingly, find ourselves in an extremely weakened position with respect to the availability of resources and economic strength to sustain our standard of living. The threat of war becomes more real as each day passes, as we allow ourselves to be restrained to undertake essential energy development projects and to enhance our food, timber and fibre production capability and to provide sufficient and acceptable housing and consumer goods for all Americans.

Every day that we pay tribute to environmental excesses increases the chances of war and economic collapse. Enlightened environmental policies, on the other hand, could rapidly lift the pale of our energy shortage and trigger the restoration of national vitality.

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Federal Coal Management Threaten Long-Term Stability

An Address By **CARL E. BAGGE**
President National Coal Association
Washington, D.C.
To The **DENVER COAL CLUB**
Denver, Colorado
February 14, 1980

I welcome this opportunity to address the Denver Coal Club. This organization and its many distinguished members are being recognized increasingly for their contribution to the debate on national policies affecting coal. It is a genuine privilege to appear here.

Today, I want to cover two topics—one very briefly and one in more detail:

- First, I want to spend a few minutes summarizing recent developments in coal demand and production, the near-term outlook, and the need for changes in government policies that are adversely affecting that outlook.
- Secondly, I want to talk about matters that are beginning to affect the mid- and long-term outlook for coal that concern me and which I believe will occupy a growing share of the time and attention of all of us in this room. More specifically, I want to talk about the "coal management" and coal transportation policies of the federal government that have every prospect of both constraining coal supplies and pushing up coal prices beginning in the late 1980s—with costs borne by consumers and the returns flowing to the government and to coal transporters.

RECENT DEVELOPMENTS AND NEAR-TERM OUTLOOK

For the past few years, most of us in the coal industry have been focusing our attention primarily on the current and near-term

problems of inadequate demand for coal. We have been justifiably frustrated as we recognize the tremendous role that coal could be playing in supplying the nation's energy needs—and at the same time saw little or no growth in demand, considerable unused productive capacity, and an increasing reliance on even more insecure foreign oil.

But the energy shocks of the past 14 months—principally the cut-off of Iranian oil production and the doubling of the price of imported oil—have served to focus national attention once again on the potential of the nation's vast coal reserves and have already contributed to increased demand for coal.

The following points illustrate the current and near-term situation:

- U.S. coal production reached 770 million tons in 1979, up an average of 5.5% per year over 1977.
- U.S. consumption reached 740 million tons, up 4.7% per year over 1977. Utilities, for example, have plans for bringing on line about 275 new coal-fired generating units over the next ten years, which will use 400 million tons annually—if they can get the necessary government approvals for plants.
- Exports reached nearly 65 million tons in 1979, up about 10.5% per year over 1977. Exports of steam coal accounted for some of the rise and there are growing indications of a major market in Western Europe and Japan for U.S. steam coal.

and Transportation Policies of Coal Price and Supply

- Coal oil mixtures have emerged as a very promising potential for reducing utility oil consumption. And, the prices of home heating oil have increased to the point where plug in resistance heating is cheaper than oil heat in those areas of the country where electricity is generated primarily by coal, nuclear and hydro plants.

The energy shocks—including the growth of U.S. dollar outflow for imported oil which are forecast for \$88 billion in 1980—have now focused new public, media and government attention on coal. But, unfortunately, the shocks have yet to result in any significant change in the unwise government policies and requirements which unnecessarily hold down coal demand and push up the cost of using coal. And there is no indication that the Carter administration is prepared to face up to the need for tradeoffs among energy, economic, national security and environmental objectives.

I could go on for hours on these unwise policies affecting the near-term coal situation. Right now, about 20,000 miners are out of work and unused capacity is available to produce at least 100,000,000 tons of coal annually. In short, coal could be supplying a much greater share of the nation's energy needs. Certainly there are many to talk about. But, I will resist that temptation.

We all know what the coal industry has been through in the past decade of governmental involvement in its affairs. We have moved from a situation of virtually no regulations on production to massive and pervasive governmental control of all aspects of the mining cycle. It has not been easy. But this body of law and regulation is now largely in place. We are learning to exist under it. The costs imposed by these regulations

are being defined, are being internalized and reflected in the price of coal. We are now paying our dues. The price of other fuels will continue to increase rapidly, but coal should now therefore be able to look forward to a period of relatively stable and predictable coal prices. But as we look to the mid- and long-term, we have two reasons for concern about price stability and it is these concerns that I want to discuss with you today.

POLICIES AFFECTING THE MID- AND LONG-TERM OUTLOOK

I want to turn to the federal government "coal management" and transportation policies that are beginning to affect adversely the mid- and long-term outlook for coal. For these policies will determine coal supply, coal prices, who pays and who gets the returns.

The Government's Monopoly Control Over Most Western Coal Reserves

As all of you here are well aware, the government has monopoly control over most western coal reserves and comprehensive regulatory control over many eastern reserves. Monopolies are always dangerous, but the potential for disaster grows when the federal government is in control. The most direct control is in the federal ownership of 60 percent of all coal west of the Mississippi. In addition, the federal government has de facto control over the development of an additional 15-25 percent of non-federal coal reserves by virtue of checkerboard ownership patterns. Furthermore, a complex and continually expanding set of laws and regulations—give the federal government absolute control over which reserves are and are not produced, even on private lands.

may even be considered if all of the coal now in this region is to be leased, it is likely that Interior's targets would not be

Estimates of Recoverable Coal That Will Prevent Production
In addition to the downward estimates now being made, Interior has not yet taken the full effect of the either Interior's new determining unsuitability.

Interior has developed 20 criteria for determining the unsuitability for mining and two are under consideration. I need to go into detail about the flora and fauna that are designed to protect the agencies administering the criteria cannot do them. The only thing they agree upon is that they are already having significant making land off-limits

problem is compounded by the fact that, even after the application of the unsuitability criteria in the planning process, Section 301 of the Surface Mining Control and Reclamation Act (SMCRA) requires any interested citizen to petition the Secretary of the Interior to designate lands for mining.

The statute is itself broad and OSM has seen fit to ignore the impact. Over the years, objections, OSM has introduced a requirement for formal adjudication to review these petitions, based on little more

than a slip of paper, interested parties can stop mining immediately without compensation to the owner of the coal.

The first test of this far-reaching statutory provision has now been set in motion in Utah. A petition by environmental groups has been filed for the designation of lands in Kane and Garfield Counties, including the Alton Coal Field, as unsuitable for mining. This area is estimated to hold 200 to 400 million tons of strippable coal and 1.5 billion tons of reserves. If this petition succeeds, it could eliminate the fuel source for the Alien-Warner Valley Energy System, including one mine, two coal slurry pipelines and two coal-fired generating units with a capacity of 2,500 megawatts.

Interior's Moves to Apply Tight "Diligent Development" Criteria Would Further Limit Coal Supplies

So far, we've been talking about new leases. What about existing leases?

In summary, diligent development requirements mean that substantially less federal coal may be available for development when the existing rules take effect in 1986. This threat to future coal supply was made even more serious when Interior recently disclosed "policy guidelines" which they now have under consideration for the granting of the sole five-year extension available to existing leases. These guidelines reflect a clear intent to take stringent measures to force the surrender of existing leases.

All of the points that I have made thus far will work to constrain the supply of coal that will be available. Constraints on supply generally result in higher prices. In addition, there are several other government policies that are working directly to push up prices and I would like to turn now to those policies.

Interior's Proposed Application of "Fair Market Value" and "Minimum Acceptable Bid" Requirements Add Further Confusion

Interior apparently intends to continue to use its current procedure for determining "fair market value" of coal to be leased. This has already resulted in unrealistically high minimum acceptable bids, and bypassed federal coal.

In this process, Interior attempts to determine the amount of coal reserves in the potential lease, the cost of recovering such reserves, and an "adequate" return to the lessee upon his capital investment. The fair market value and the minimum acceptable bid are set at the level which would capture, by royalties, bonuses, or both, the difference between this calculated value and the estimate sales price of the coal. Interior calls this the recovery of "economic rent," which they also describe as "excess profits."

By failing to take into account the effects of inflation, and by failing to allow an appropriate rate of return upon capital investment, USGS estimates of the value of new leases have been significantly higher than those of the bidders. Some new leases have been issued at exorbitantly high royalty rates where the lessees absolutely required the coal involved, while in other instances valuable federal coal has been permanently "bypassed" because the only available operator elected not to attempt to meet the minimum acceptable bid.

The basic issue raised by the Interior plan is whether the federal government should exercise its monopoly position in this way. It will limit supply and increase coal prices, thereby reducing or eliminating economic incentives to use coal in preference to oil or natural gas. The proposed procedures would effectively make the government's estimate of the probable highest bid the minimum acceptable bid. The effect might not be serious in a world of perfect and certain information, but the practical result is to reduce potential bidding and competition for

new coal supplies and to increase the future price of coal.

Government Policies Affecting Coal Transportation Also Push Up Coal Transportation Costs, Contribute to Market Dominance, and Fail to Provide Adequate Protection for Captive Coal Shippers

Recent policies and actions by the U.S. Department of Transportation (DOT) and the Interstate Commerce Commission (ICC)—particularly when combined with the move toward reduced regulation of railroads—threaten further increases in coal transportation costs and greater market dominance for railroads. As indicated earlier, coal producers and users are heavily dependent on railroads and 85 percent of all coal transported by rail nationally and 98 percent of western coal moved by rail is "captive" in the sense of having no practical alternative transportation available.

As you can readily understand, government actions which contribute to increased transportation costs, to increased monopoly power for the railroads, or to reduced regulatory protection against unreasonable rates or inadequate service are of great concern to both coal producers and users. Several recent developments illustrate our concern.

- **DOT Position on Rail Rates Is Unrealistic.** In September 1978, hearings before the ICC, U.S. Department of Transportation officials took the position that the ICC "... should permit railroads to set rates up to a level that equates the delivered price of coal per unit of electricity with the delivered price of alternative fuels as though there were no price controls on those other fuels."

As you will readily recognize, such an approach does not take into account the higher costs associated with coal storage, handling and use after delivery (including higher capital, operating and pollution control costs.) It would allow railroads—and not consumers—to capture the advantage of the lower prices

for coal compared to oil or natural gas. And it would, in effect, allow OPEC-set prices for imported oil to set the upper bounds for rail transport rates.

- **ICC Has Sustained Large Rate Increases and Reduced Its Vigilance in Market Dominant Situations.** Coal producer and user concerns have been heightened further in recent months as the ICC has sustained high rail rates proposed by railroads—including rates which generate revenue-to-variable cost ratios of 170 percent to more than 200 percent. In addition, very recent ICC actions have suggested a tendency to abrogate responsibility to protect captive shippers against high prices in cases of rail market dominance. The unusual interpretation of market dominance in the movement of coal from Axial, Colorado to Coletto Creek, Texas made in the ICC's January 15, 1980 decision is a good example. Among its unusual features are the ICC's conclusion that rail market dominance did not exist because the utility had the option of securing coal from South Africa or Australia, and the utility's more than \$15 million investment in rail equipment does not establish that it is rail market dominant.

Developments such as these contribute to the concern about the future impact on coal rates of proposals by the Carter administration and the Congress to reduce regulation of railroads. We favor the reduction of unnecessary regulations, but we have yet to see an acceptable substitute for regulatory protection for captive shippers.

The Combined Effects of Government's Leasing and Transportation Policies Have Serious Implications for Both Coal Producers and Users

The fact that the government owns or controls roughly 80 percent of western reserves means that the government can effectively control the rate, the quantity and the location

of production, as well as coal prices. Interior has made clear its intent to refuse to lease coal in the quantities that would be needed to permit future coal markets to operate competitively. Instead, Interior will limit leasing, seek to match producers and users and limit competition.

Government matching of producers and users will make even more powerful the ability of railroads to charge the rates that they desire since neither producer nor user will have as much opportunity to seek other customers or sources of domestic supply.

The combined effects of constrained supplies, high transportation rates, and high payments to the government for government-owned coal will push up coal prices to the benefit of the government and the railroads only, and the consumer will pay the bill.

CONCLUSION AND RECOMMENDATIONS

In summary, the collection of policies that I have summarized and illustrated add up to a complex web that—if maintained—will have the following effects:

- Coal supplies will be constrained beginning in the late 1980s.
- Coal prices will be forced upward to the sole benefit of the government and coal transporters.
- If prices are pushed up high enough, the market for coal will be reduced and the nation forced to increase its reliance on insecure imported energy supplies.

The benefits of these policies are hard to identify. In fact, it's quite fair to ask: What would be the benefits and the adverse impact if coal leasing policies were adopted which resulted in overestimation of coal demand and the leasing of more coal than was needed? The answer is that the benefits are clear—in terms of supply, price, increased competition and greater reliance on domestic energy sources.

The adverse effects of such an approach are hard to identify. They certainly do not include unwarranted profits for producers.

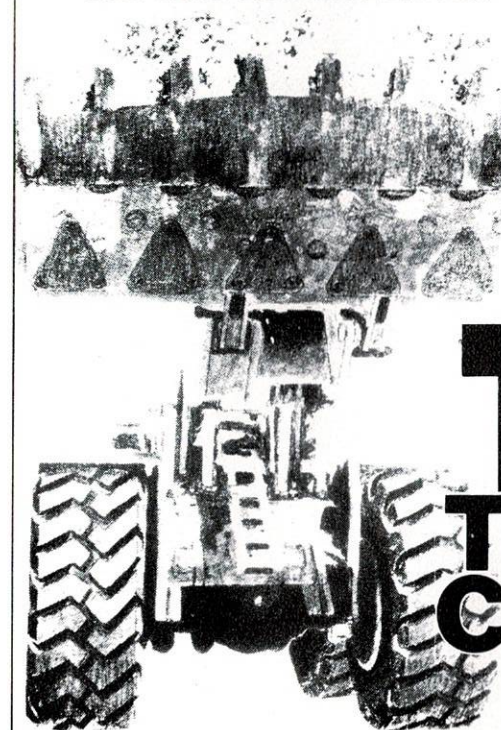
An excess of supply over demand will hold down prices—as most coal producers are now only too well aware! Neither do the adverse effects include unacceptable environmental damage. No damage occurs from issuance of a lease, and production is now rigidly regulated through government approval of mining plans.

Notwithstanding some glowing reports from Interior, the simple fact is that there has been no significant leasing of coal since the moratorium was declared by press release in 1971. While quantities then available were, with some exceptions, adequate to maintain supplies, the nine-year moratorium—and the scheduled application of diligent development requirements—have now reduced sharply the amount of time left to implement a workable leasing program based on common sense. Actions on such a sensible program must begin promptly.

In overview, five steps must be taken:

1. The government must recognize its inherent inability to assemble the monumental amounts of data and information that would be required to carry out a program such as Interior has developed.
2. The government must abandon the central economic planning approach to the identification of quantities of coal for leasing.
3. The government must avoid unnecessary constraints on the mineability of coal reserves—particularly those which do not balance adequately the nation's various energy, economic and environmental objectives.
4. The government must avoid unnecessary requirements that push up the cost of coal, or which are based on the ill-advised objective of maximizing government revenue at the expense of consumers.
5. The government must recognize its obligation to give rate and service protection to captive coal shippers and energy consumers.

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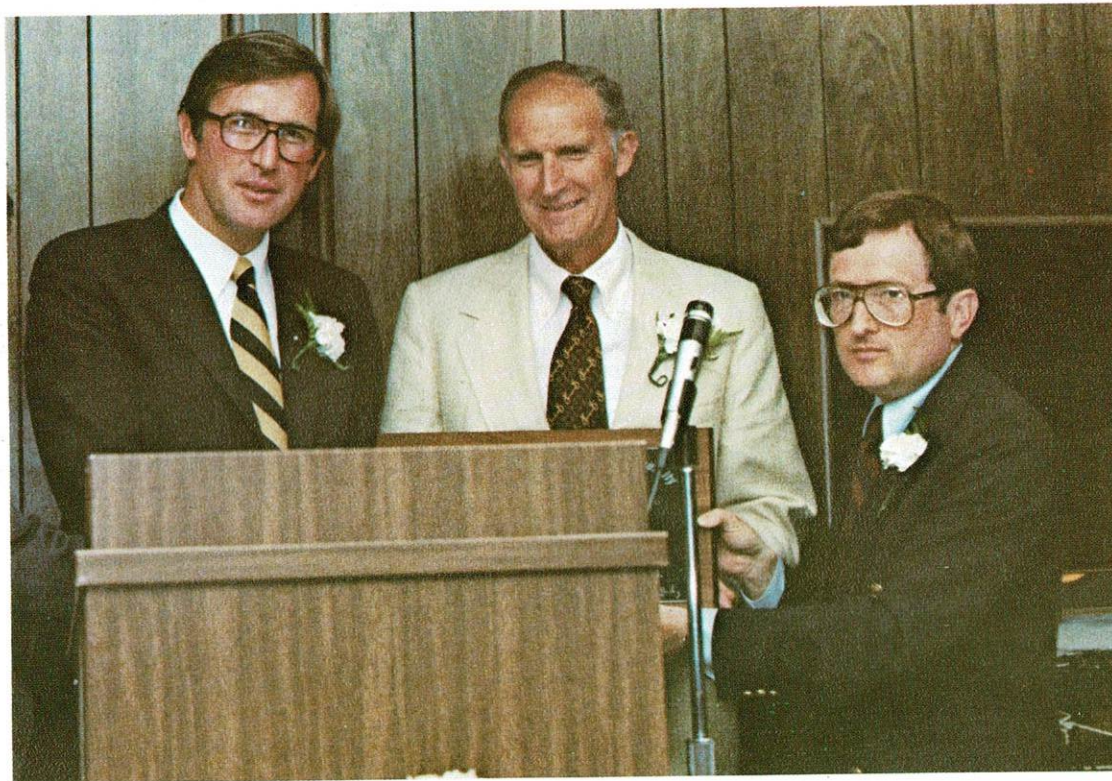


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Coal Men of the Year

Three members of the Association were recognized this summer as West Virginia Coal Men of the Year for 1980. The three were guests of honor at a banquet June 6 at the Lakeview Inn and Country Club in Morgantown. West Virginia University sponsored the event.

Accepting the awards from West Virginia Governor John D. Rockefeller IV and WVU President Gene A. Budig, are (top) Deep Miner of the Year Herbert E. Jones Jr. of Amherst Coal Co., (top, facing page) Supplier of the Year Orville R. Thomas of Wright-Thomas Equipment Co., and (bottom, facing page) Surface Miner of the Year Lawson W. Hamilton, Jr. of Ford Coal Co.

Also honored were Elmo Hurst of Lively Manufacturing and Equipment Co., and Association members Bernard J. Folio of Explosives, Inc., Carl DeSignore of Buffalo Coal Co., and Tracy W. Hylton of Whitesville A&S Coal Co. These individuals were recognized for their outstanding contributions to the coal industry and to WVU.





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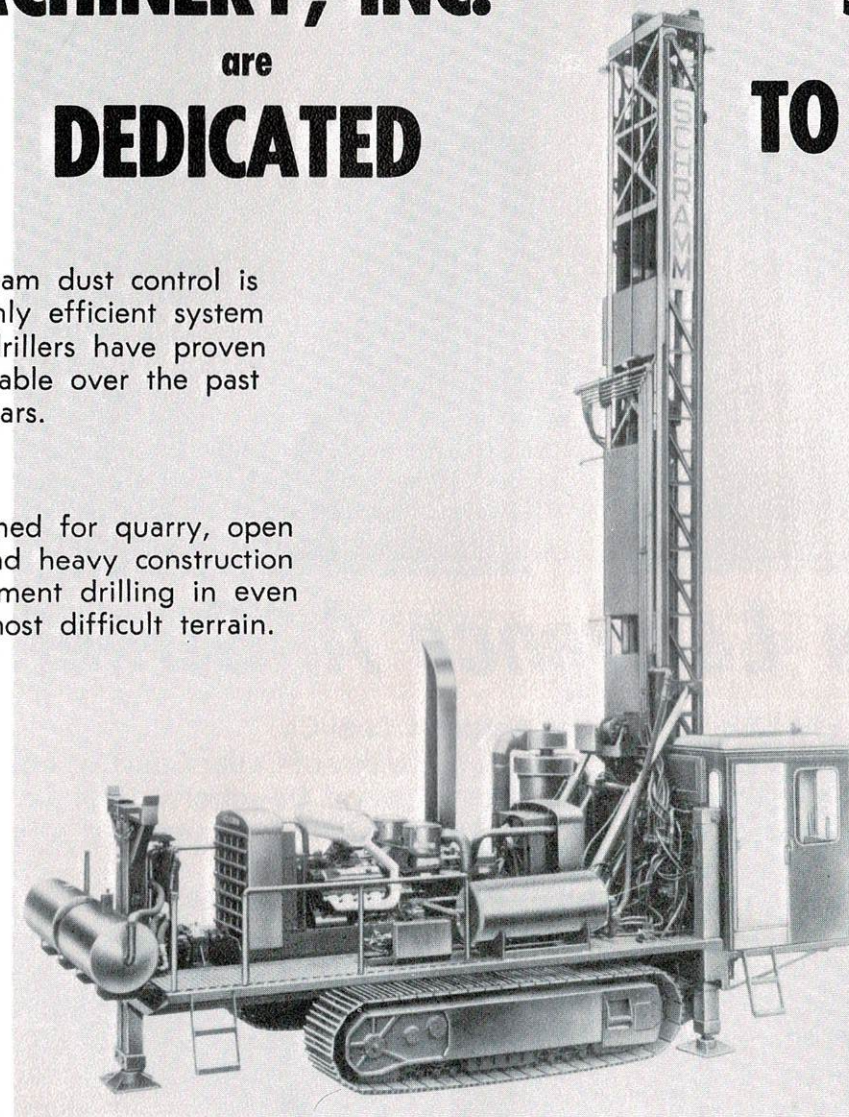
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New Chairman Lawrence A. Streets

Board Elects Lawrence A. Streets

Lawrence A. Streets of Allegheny Mining Corp. is the Association's new Chairman of the Board. Streets was elected at the organization's Annual Meeting at the Greenbrier Hotel in White Sulphur Springs. He served the Association as First Vice-Chairman during the past year.

Replacing Streets as First Vice-Chairman is William C. M. Butler, III of Princess Susan Coal Co., Inc. Donald R. Donell of Starvaggi Industries, Inc. will serve as Second Vice-Chairman for the coming year. Frank D. Jennings of Big Mountain Coals, Inc. was reelected Secretary-Treasurer, and James R. White of Pioneer Fuel Corp. was elected as Chairman-Associate Division.

Four members were newly elected to the Board of Directors. These include Jack R. Fairchild of Fairchild Inc., Robert Kosnoski of Mountaineer, Inc., Robert C. Miser of DLM Coal Co., and Fred R. Toothman of Western Pocahontas Corp.

In addition to Streets, Donell, and Jennings, three men were reelected to their positions on the Board, including Carl Del-Signore of Buffalo Coal Co., James H. Harless of Lynn Land Co., and Charles T. Jones

of Amherst Coal Co.

Gerald Hartley of Cedar Coal Co., and Max A. Messinger of Daugherty Coal Co., Inc. were appointed to fill unexpired terms on the Board.

The meeting agenda was dominated by concern for environmental and regulatory issues. These subjects were addressed by National Coal Association President Carl Bagge, I. W. Tucker, president of the National Council for Environmental Balance, and John L. Kilcullen, a Washington, D.C. attorney experienced in coal litigation. Their remarks are reprinted elsewhere in this issue of **Green Lands**.

The meeting also featured several technical presentations as well as social events. The golf tournament, always a popular feature was enhanced this year through the generosity of two associate members. Ray C. Call, Inc. added two gift certificates to the list of prizes, and Miller & Miller Auctioneers, Inc. provided a beverage wagon for thirsty golfers.

The next full membership meeting is scheduled for February in Marco Island, Florida.



Banquet speaker J. Allen Overton, Jr., president of the American Mining Congress



Bridge winners—l.-r. Mary Lynne Barksdale, 3rd; Bridge Chairman Hazel Kennedy; Lucille Moir, 1st; Betsy Harrold, 2nd.

Tennis winners—l.-r. Gina McClure, mixed doubles; Susan Bliss, women's singles; Alex Lawrence, mixed doubles and men's round robin; Mary Ann Atkins women's doubles; Cathy Porreca, women's doubles.



Men's golf, low gross winner Bob Bliss.



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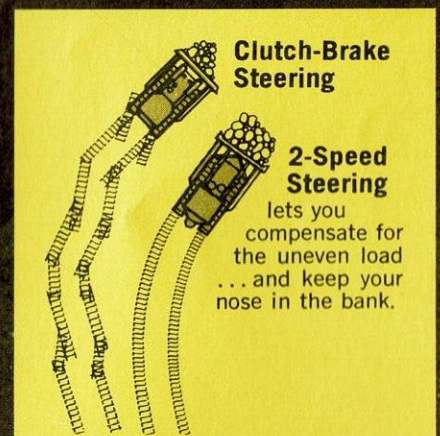
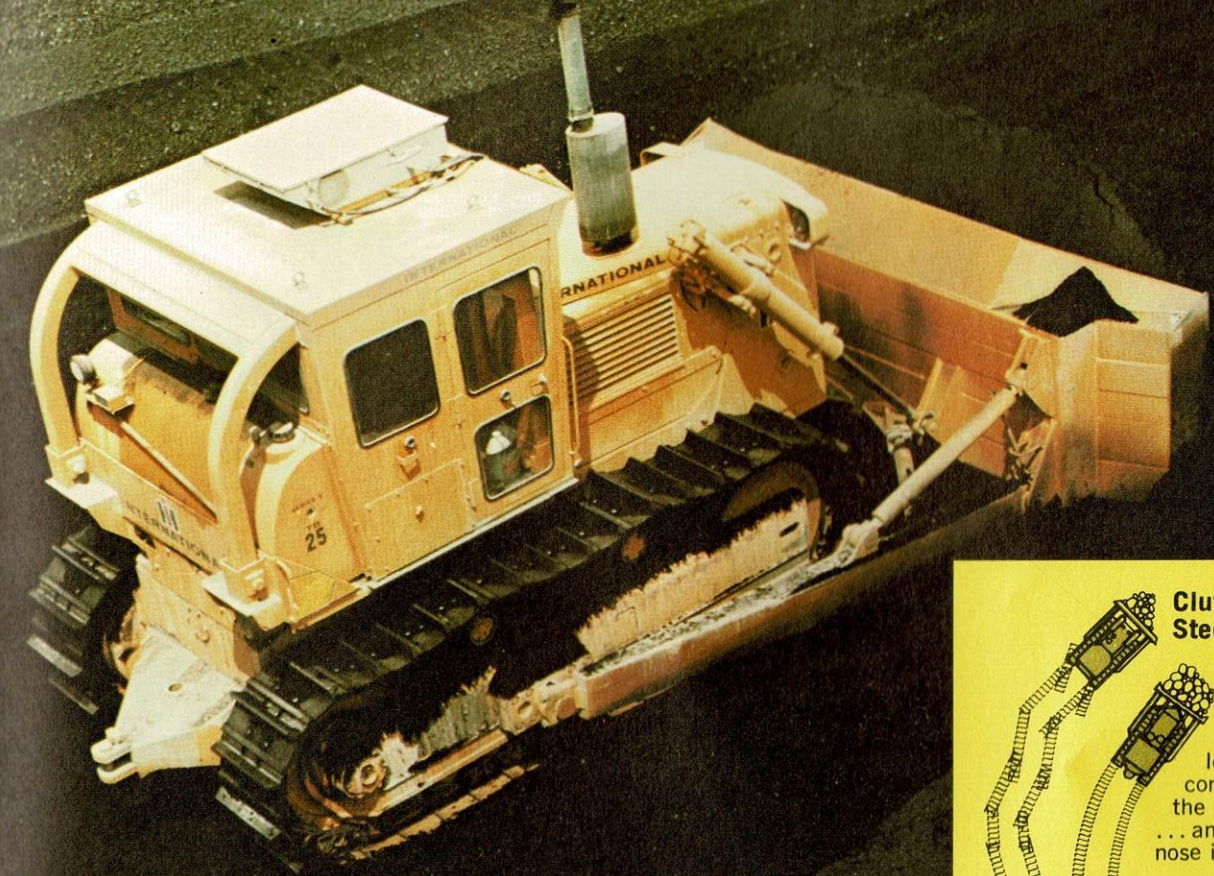
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