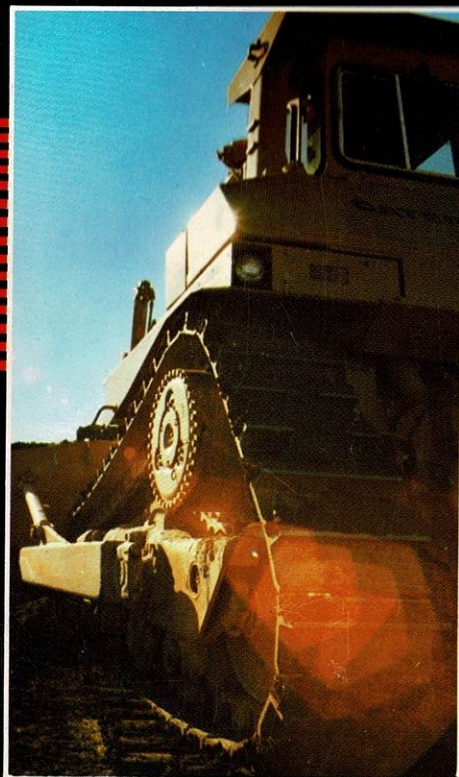


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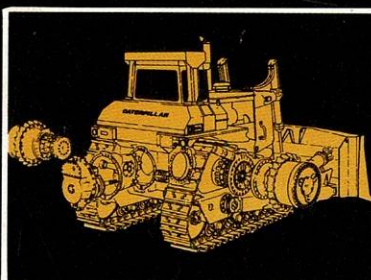
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
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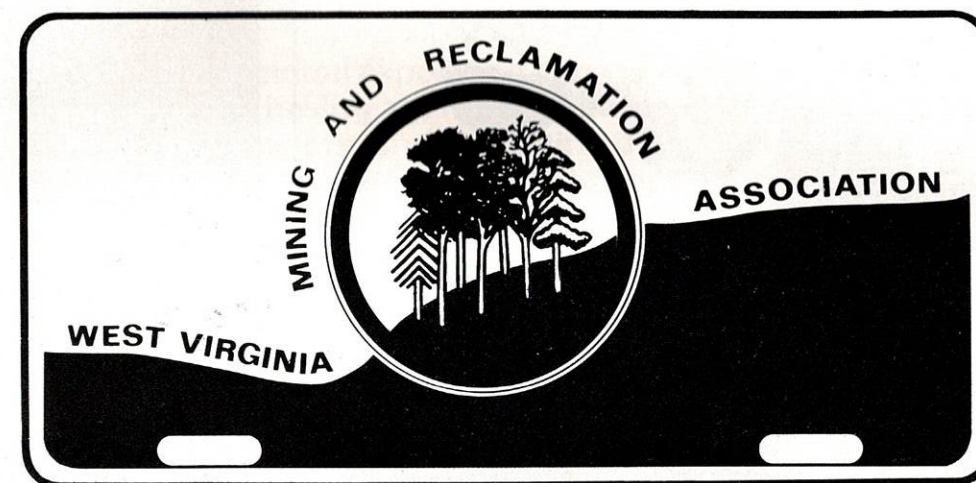


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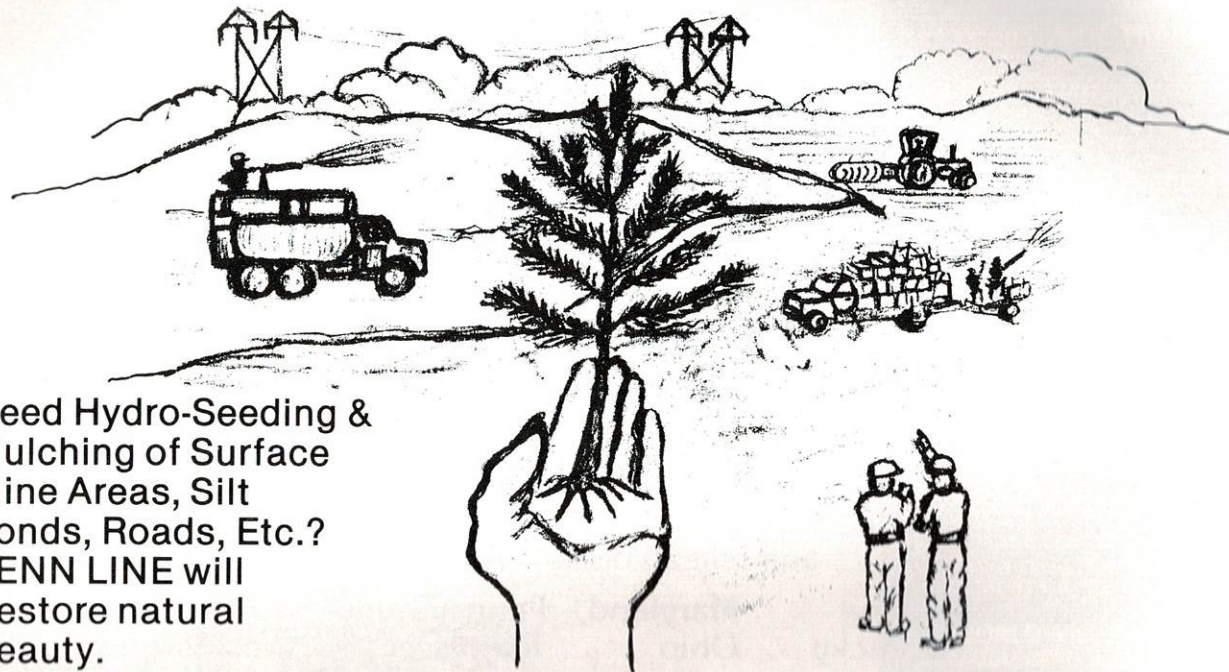
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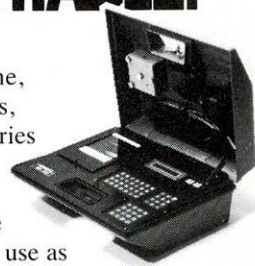
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Our Cover—Full implementation of West Virginia's AML program has multiplied the number of reclamation success stories in the state. On the cover is the completed "West End Portals Project," in Preston County. General Paving Co. was the contractor for this and other projects pictured in our cover story, beginning on page 19.



Editor

R. Daniel Miller

Business

Mary Ann Steele

Green Lands is a quarterly publication of the West Virginia Mining and Reclamation Association with offices at 1624 Kanawha Boulevard East, Charleston, West Virginia 25311 Telephone (304) 346-5318

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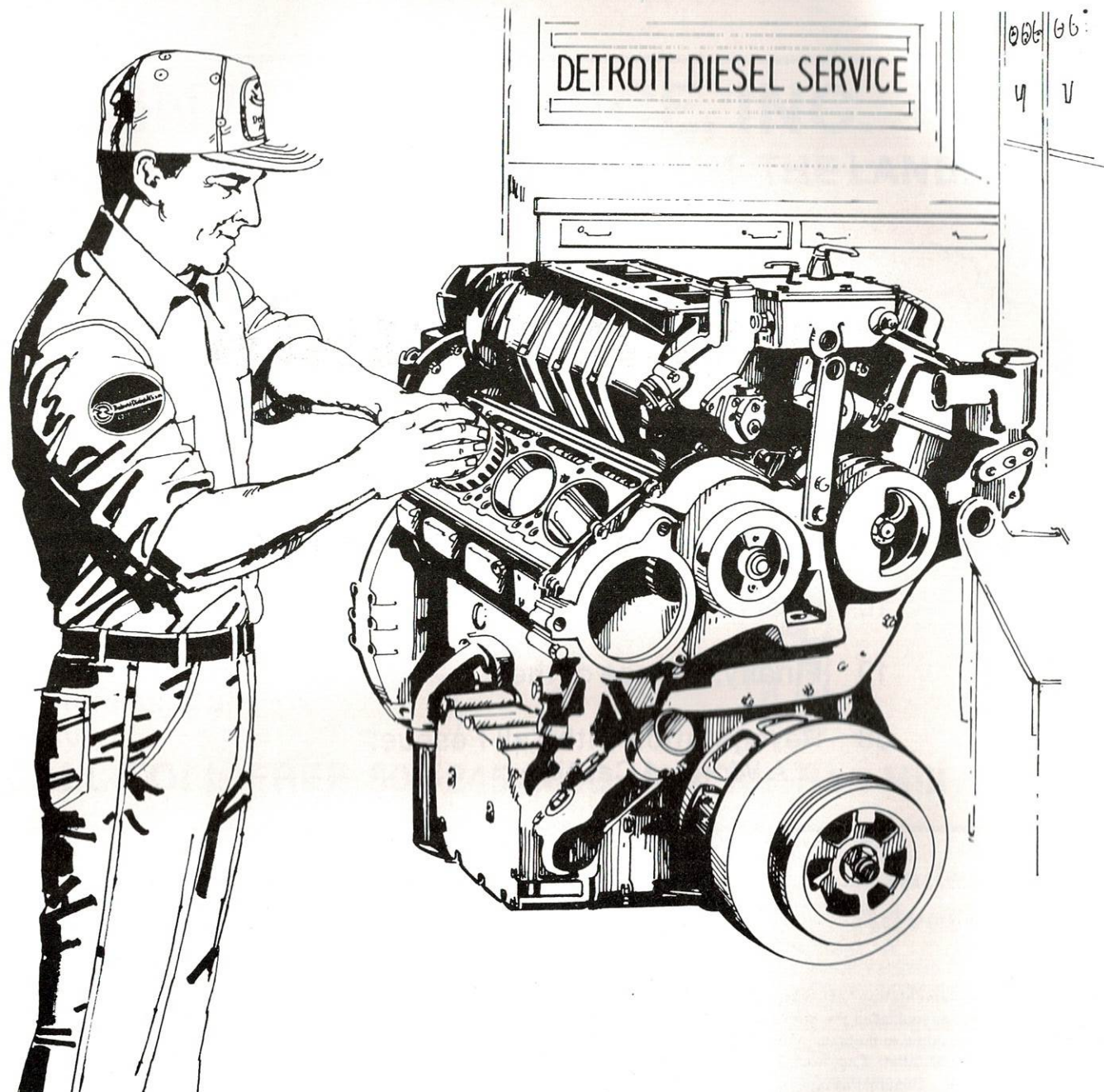
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Editorial

A Source of Pride for All Concerned

The Abandoned Mine Lands program in West Virginia, to which much of this issue of **Green Lands** is devoted, is a tribute to the West Virginia coal industry.

The AML program, as enacted by Congress as part of the Surface Mining Control and Reclamation Act of 1977, anticipates funding in the amount of \$3.3 billion — every bit of it collected from coal operators, on a per ton basis.

These operators, whether or not they were in business three or four decades ago, are paying for the reclamation of thousands of acres of abandoned mine sites from a time when American society placed a higher priority on the production of cheap energy than on environmental protection.

The industry of that time should not properly be chastised for practices which followed the standard of the day. America needed energy and the coal industry provided plenty of it. In the more environmentally conscious 1960's, 70's and 80's, we, as a society, have rightly decided to reverse the damage done to our environment in earlier times.

Cynics may question the validity of patting the coal industry on the back for paying a reclamation tax which the United States government mandated. The truth is that it was the West Virginia coal industry which first proposed and offered support for the concept of a reclamation fund for abandoned mines.

In the years of litigation which followed the passage of national reclamation legislation, the AML program went virtually unchallenged in court. West Virginia's rate of AML fee compliance is in excess of 99%, the highest in the nation. This in the face of the cumbersome bureaucratic process which delayed the actual reclamation work for years.

For its part the West Virginia DoE, and its predecessor, the Department of Natural Resources Reclamation Division, have been instrumental in the tedious process of getting AML dollars put to work reclaiming West Virginia acreage. Much of the expertise and professionalism which marks the program today has its roots in the West Virginia Special Reclamation Fund, which dates back to 1963, and later served as a model for the national program which we have today.

The Office of Surface Mining has played its part, too. A change in regulatory philosophy in 1981 contributed considerably to overcoming the governmental and legal obstacles which preceded implementation of the AML program.

In short, the Abandoned Mine Lands program in 1987, as financed and carried out by the coal industry, and as administered by OSM and WV-DoE, is something in which we can all take justifiable pride.



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Coal Calendar

- JAN**
15-16 **14th Annual West Virginia Mining Symposium**, Charleston House Holiday Inn, Charleston, contact Patty Bruce, West Virginia Mining and Reclamation Association, 1624 Kanawha Blvd. E., Charleston, 25311, (304) 346-5318.
- 17** **State Meeting, Contractors Association of West Virginia**, Marriott Hotel, Charleston, contact CAWV, Suite 608, 405 Capitol St., Charleston, 25301, (304) 342-1166.
- 19** **Hazardous Waste Workshop**, Parkersburg Community College, Parkersburg, contact Riley Sain, WV Department of Natural Resources, 1260 Greenbrier St., Charleston 25311, (304) 348-5935.
- 26** **Hazardous Waste Workshop**, Cabell County Vocational Center, Huntington, contact Riley Sain, WV Department of Natural Resources, 1260 Greenbrier St., Charleston, 25311, (304) 348-5935.
- 27-29** **1987 Bulk Transportation Policies Seminar**, Hyatt Regency Hotel, Tampa, Fla., contact National Coal Association, 1130 17th St. NW, Washington, D.C., 20036, (202) 463-2625.
- FEB**
2-3 **Annual Meeting, American Mining Congress**, Washington, D.C., contact AMC, 1920 N St. NW, Suite 300, Washington, D.C., 20036, (202) 861-2800.
- 4** **Hazardous Waste Workshop**, West Virginia State College, Institute, Contact Riley Sain, WV Department of Natural Resources, 1260 Greenbrier St., Charleston, 25311, (304) 348-5935.
- 7-11** **Annual Meeting, Contractors Association of West Virginia**, Doral Hotel and Country Club, Miami, Fla., contact CAWV, Suite 608, 405 Capitol St., Charleston, 25301, (304) 342-1166.
- 11-15** **Semi-Annual Meeting, West Virginia Mining and Reclamation Association**, Hyatt Regency Hotel, Grand Cayman,

Cayman Islands, contact WVMRA, Patty Bruce, 1624 Kanawha Blvd. E., Charleston, 25309, (304) 346-5318.

- 18-20** **AMC Tax Workshop**, New Orleans, contact American Mining Congress, 1920 N St. NW, Washington, D.C., 20036, (202) 861-2800.

- 18-20** **Seminar, "General Blasting Techniques and Explosive Regulations and Blasting Seismology,"** Harley Hotel, Lexington, Ky., contact Nancy Hopper, OISTL, 201 Porter Bldg., University of Kentucky, Lexington, Ky., 40506, (606) 257-2837.

- 26-27** **Eighteenth Annual Conference, International Erosion Control Association**, Nugget Hotel, Sparks, Nev. (Reno area), contact IECA Executive Director, P.O. Box 195, Pinole, Cal., 94564, (415) 223-2134.

- MAR**
16-20 **1987 National Meeting, American Society for Surface Mining and Reclamation**, Ramada Inn, Billings, Mt., contact William Plass, Executive Secretary, ASSMR, 21 Grandview Dr., Princeton, 24740, (304) 425-8332.

- APR**
7-8 **Eighth Annual Surface Mine Drainage Task Force Symposium**, Ramada Inn, Morgantown, Contact Jeff Skousen, 1106 Agricultural Sciences, West Virginia University, Morgantown, 26506, (304) 293-6256.

- 8-10** **American Mining Congress Financial Conference**, Phoenix, Ariz., contact AMC, Suite 300, 1920 N St. NW, Washington, D.C., 20036, (202) 861-2800.

- MAY**
3-6 **Coal Convention of the American Mining Congress**, Cincinnati, Ohio, contact AMC, Suite 300, 1920 N St. NW, Washington, D.C., 20036, (202) 861-2800.

- 19-21** **West Virginia Coal Conference and Exhibit**, Fairmont, National Guard Armory (Held in conjunction with the Three Rivers Festival), contact Peter Johnson, Industrial Presentations West, Inc., 12371 E. Cornell Ave., Aurora, CO., 80014, (303) 696-6100.

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Sharp Knob, in Pocahontas County was reclaimed under West Virginia's "Special Reclamation" Program, a forerunner of the Abandoned Mine Lands program under federal law.

Finally, a Piece of the Pie

Editor's Note: Green Lands extends its thanks to Carl Walker of OSM in Charleston and to Pat Park, chief of the AML section at the West Virginia Department of Energy, for their assistance in preparing this article. A special thanks to Danny Pritt of WV-DoE-AML, who was involved throughout. Danny's photographs appear on pages 23-25-26-27 & 34.

Public Law 95-87, Title IV, Sec. 401. (a) "There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund which shall be administered by the Secretary of the Interior."

With these words, Congress launched the Abandoned Mine Lands

(AML) Program, sort of. Through authority of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the U.S. Department of the Interior began collecting AML fees from coal operators in October 1978. Surface coal was and is assessed at the rate of 35 cents per ton, and underground production at 15 cents per ton.

According to SMCRA, the money collected by the federal government was to be apportioned in the following manner: 50% back to the state or indian tribe of origin; up to 20% for the Rural Abandoned Mine Lands Program (RAMP); 10% (up to \$10 million) for the Small Operators Assistance program (SOAP); the balance to be expended at the discretion of the Office of Surface Mining, the federal agency

created to administer the Act.

As with many others aspects of the federal reclamation law, the idea of an abandoned mine lands fund has its roots in West Virginia.

The coal industry itself proposed and supported the Special Reclamation Fund, which was enacted by the West Virginia Legislature in 1963, as part of a general revision of the state's mining law. West Virginia was the first state to create such a fund.

The original assessment was \$30 per acre, later increased to \$60. Between 1964 and 1977, the Department of Natural Resources reclaimed nearly 30,000 acres in this manner.

The idea of a tonnage fee greatly enhanced the funding potential for abandoned mine reclamation, even with the federal government keeping



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half of the pot. The flow of dollars under the federal AML program would give WV-DNR (mining in West Virginia is now regulated by the Department of Energy) the means of addressing the problem of refuse piles, most of which were not associated with surface mines, and were therefore beyond the scope of the Special Reclamation Fund.

But there were one or two catches in the language of the federal law. For instance:

Sec. 405. (c) "The (Interior) Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 503 of this Act."

In other words, before receiving AML funding each State was required to have its entire regulatory program approved by the federal agency.

This was followed to the letter. However, paragraph (a) of the same section, requiring the promulgation of regulations within six months of enactment, was not carried out.

The Act was passed in August of 1977. Regulations were issued in October of 1978. Reclamation standards and guidelines for project selection were established in March of 1980. Meanwhile, nearly every coal mining state was involved in litigation over federal approval of its established regulatory program.

In its mandate, Congress said nothing about when the AML funds would actually be returned to the individual states. As it turned out, it was more than four years before the first state regulatory agencies were able to begin carrying out the reclamation of abandoned mine lands.

Despite an abundance of ad-

ministrative and reclamation expertise within the West Virginia agency and the coal industry, the regulatory battle wore on, as OSM attempted to implement an unwieldy set of uniform standards on the diverse U.S. mining industry.

West Virginia remained in the forefront, however, and was among the first to be granted regulatory primacy. Meanwhile, the State had been gearing up its AML section, and when primacy came, West Virginia was able to start the money flow fairly quickly.

The first AML project in the state was completed in mid-1983, at Peach Creek, in Logan County, where a burning gob pile was transformed into a reclaimed area which resembles a completed haulback operation.

By this time, Mountain State coal operators had pumped well over \$100 million into the federal fund. With a 50% slice of that pie theoretically available, West Virginia's AML people

went to work.

AML funds are channeled back to the State agency each fiscal year through construction grants. The agency submits a grant application, including a budget and a proposed list of projects.

The Secretary, through OSM, approves or disapproves.

Through 8½ years of collection (1/78-6/86), West Virginia operators have paid over \$190 million into the AML fund. Nine years into the program, West Virginia is getting good value for the money paid by its coal companies.

Through last September, OSM and DoE together have expended \$115.8 million on reclaiming West Virginia acreage.

This figure includes \$94.5 million in construction grants which DoE has directly spent on 121 projects in 25 of West Virginia's 55 counties.

Perhaps not coincidentally, the

counties which have benefitted most from the program are some of those which have been hardest hit by the depressed state of the coal industry in recent years. Logan County has been the site of 72 projects, totalling \$21.8 million. Harrison County has 15 projects, at \$4.8 million. Monongalia has 10 projects, valued at \$3.7 million. Seven contracts have been awarded for work in Mingo County, at a cost of \$4.0 million. Recently DoE awarded a contract for the Itmann project, which will comprise the largest excavated job to date under the AML program, nationally.

In all, the AML program has pumped at least one million dollars into the economies of 15 different counties.

Of further benefit is the fact that much of the actual reclamation is now being done by coal companies, which have expertise in reclamation but are faced with a diminishing market for mining.

According to provisions outlined in PL 95-87, operator funded payments to the AML program will continue through 1992, unless extended by Congress. It is estimated that the lag time between the first collections and the first disbursements will allow funding for the program to continue through 1995, even if the collection period is not extended.

Much of the work done under the AML program is being done on mine sites created in the 1940's and 50's, when environmental protection took a back seat to the coal production needs of America's post war industrial boom.

Thus, West Virginia operators can be doubly proud of their modern reclamation record. Not only is mining in the '80's carried out with the utmost regard for the environment, but industry funded payments are bringing mined out sites up to modern reclamation standards.



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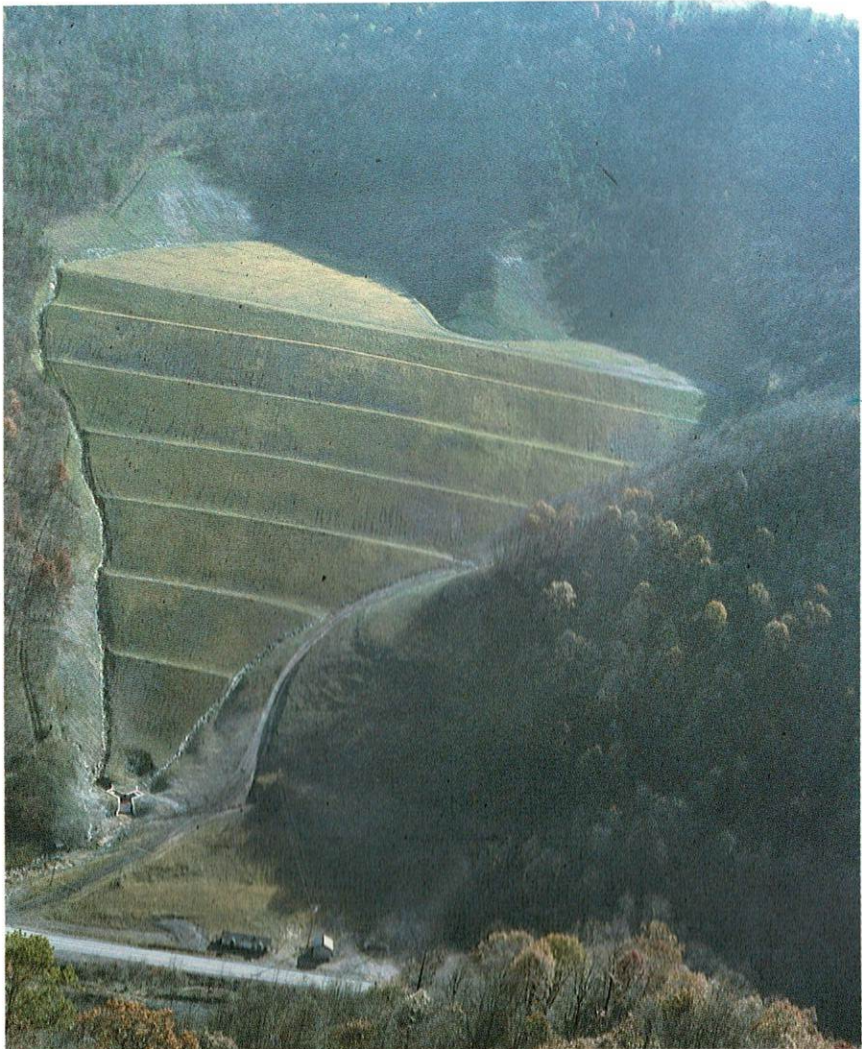
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WVMRA salutes
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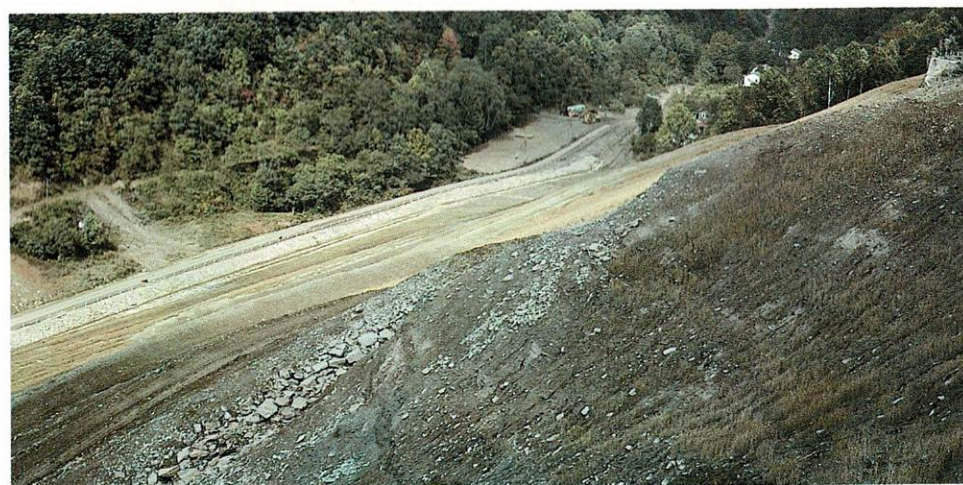
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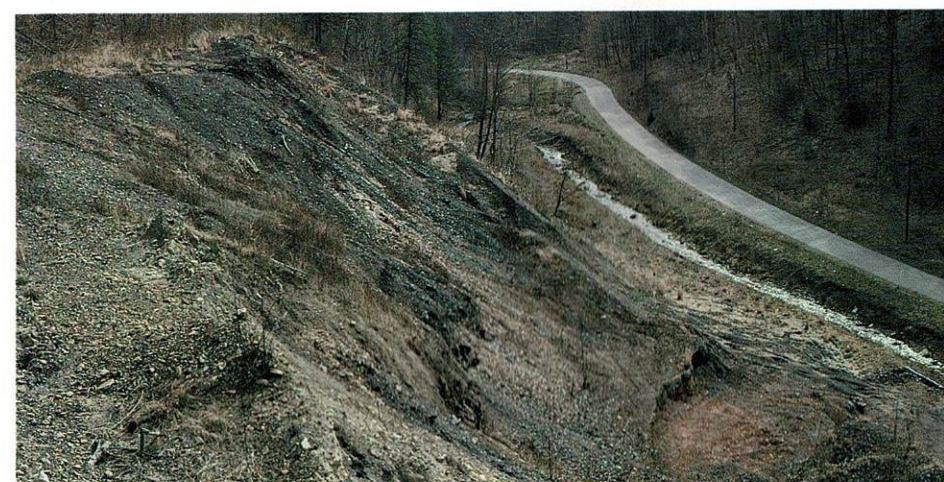
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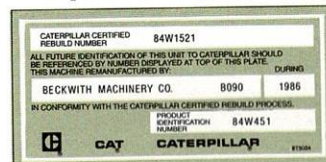


BECKWITH GIVES YOUR CAT® NEW LIFE WITH CATERPILLAR CERTIFIED REBUILD

Now the choice is yours!

By Mike Majcher

Beckwith Machinery Company, one of the nation's first and largest Caterpillar Tractor dealers, now performs Caterpillar Certified Rebuild.



This new Certified Rebuild program is a tractor rebuilding process so extensive that it virtually remanufactures Caterpillar equipment. A new identification number and a like-new warranty is assigned.

Beckwith is one of the top Caterpillar dealers in the U.S. and has long been noted for its extensive capability to service, repair and rebuild Caterpillar equipment. With one of the largest Cat dealer parts distribution centers in the world, Beckwith maintains over 50,000 items in stock as well as having eight full service branch locations and three major rebuilding facilities in western Pennsylvania.



Of Beckwith's 750 full-time employees, over 200 are mechanics who have an average of 15 years service with the company—a major factor in Beckwith's rebuilding capability. In fact, these same skilled Beckwith personnel continue to rebuild all types



of Caterpillar equipment. This capability has been a vital factor in maintaining Caterpillar equipment in this area for years.

Now, however, Beckwith provides Caterpillar owners with a choice of rebuilding programs. And, with the extensive new Caterpillar Certified Rebuild, they get:

- Like-New performance and machine availability from their present Caterpillar equipment
- Ownership at a fraction of new machine cost
- And a Like-New warranty, too!

Here's how it works:

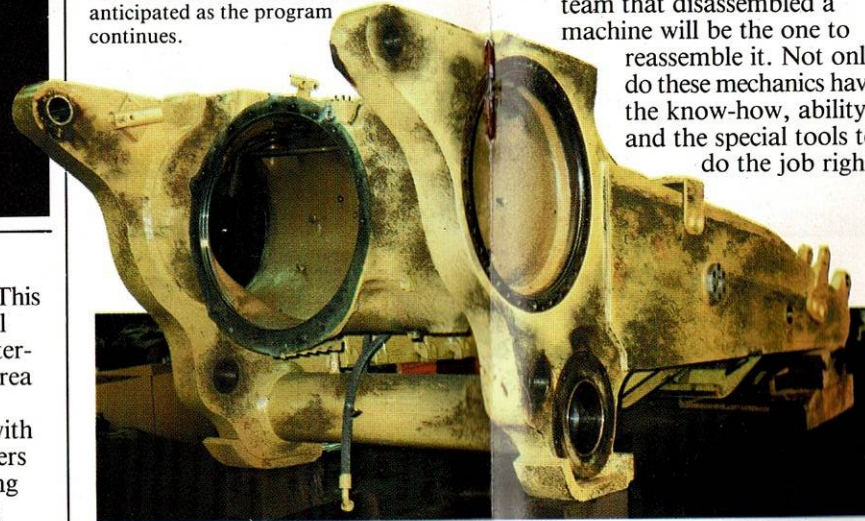
STEP ONE Inspection and estimate.

Your tractor* is examined thoroughly by Beckwith service technicians. Operational and visual checks are made and maintenance records are examined. Oil sampling is conducted to determine the machine's internal condition. A written Condition Appraisal Report is then prepared as the basis for determining rebuild candidacy and cost.



A firm price quotation with a guaranteed turnaround time is supplied at this point.

*Not all machines qualify for the program. Some may require too many parts or too much labor to economically restore them to Caterpillar's rebuild standards. Others may be in too good a condition to warrant virtual "remanufacturing." At present, Caterpillar Certified Rebuild is available for qualified D8K, D9H, D9L, and D10 tractors. However, additional machine models are being anticipated as the program continues.



STEP TWO Disassembly of the machine and its components.

Beckwith strips your tractor to the bare frame. All components are removed and disassembled. Certain parts, such as hoses, belts, seals, and bearings are summarily replaced. Others are carefully inspected and measured against Caterpillar Parts Reusability Guidelines. Those which do not meet reusability standards are replaced with only genuine new, Exchange or Caterpillar Remanufactured Products.

Scores of parts, including all critical product improvements, are installed to meet Caterpillar Certification standards.

The main frame and tractor roller frames are completely disassembled and sandblasted to allow intensive structural examination for cracks, undue wear and straightness. They are welded, straightened and reinforced wherever needed to help ensure the structural integrity of the unit.



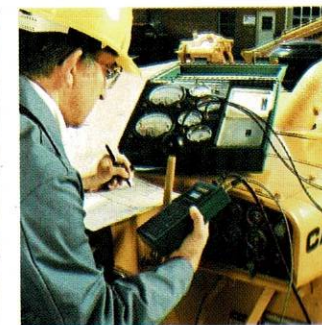
Instruments and controls are removed, inspected and replaced upon requirement. Worn linkage and pins are replaced so that controls operate with precision.

STEP THREE Reassembly by experienced mechanics using special tools.

Usually the same Beckwith team that disassembled a machine will be the one to reassemble it. Not only do these mechanics have the know-how, ability and the special tools to do the job right,

they'll know your tractor better than anyone! And they are Beckwith professionals. That's why you can be sure they will check and inspect all major parts and components with an exacting eye before and after installation.

And, Beckwith mechanics will check and recheck all critical torques, clearances and pressure settings to make sure your rebuilt Caterpillar tractor will perform with the like-new production capability you can expect from a Caterpillar Certified Rebuild.



STEP FOUR Attachments mounted and day-long performance tests conducted.

Inspections and tests made during reassembly and afterward are now verified as meeting Caterpillar standards and specifications. Then extensive testing is conducted with machine attachments in place to verify the absence of leaks, proper turbocharger boost, throttle response and proper transmission and steering clutch pressures.

Such rigid performance testing assures that all instruments and operational functions meet Caterpillar Tractor Company requirements for on the job reliability.

STEP FIVE Painted, re-identified and warranted.

Caterpillar issues a new identification number for your tractor which certifies that the rebuild process has been completed in



accordance with Caterpillar Certified Rebuild specifications and the tractor is given like-new warranty.

This special new identification is applied over a fresh, new paint job to mark your machine as a Caterpillar Certified Rebuild with new resale value and warranty—ready to perform like new.

The choice is yours.

No longer is a Cat owner faced with having to trade-in equipment that has become less productive and more expensive to maintain after thousands of hard working hours on the job. He can



choose a Beckwith rebuild—the same fine quality rebuild performed by Beckwith for all types of Caterpillar tractors, or the new Caterpillar Certified Rebuild—done to Caterpillar specifications

and offering a new I.D. and like-new warranty. These programs are a testimony to the value inherent in new Caterpillar equipment—the same value that Beckwith has been selling for the past 61 years!

In either case, Beckwith offers owners the real economical advantage of their built-to-be-rebuilt Caterpillar tractor's quality and design. It's true!

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Revegetation with Tall Fescue: A Word of Caution

BY Dr. Jeff Skousen
Extension Specialist - Land Reclamation
West Virginia University

Tall fescue (*Festuca arundinacea* Scrb.) is a major forage grass in the United States and is grown on an estimated 35 million acres. The range of tall fescue extends from Florida to Canada and is best adapted to Kentucky, Virginia, West Virginia, Ohio and Pennsylvania. It is a deeprooted, long-lived perennial which forms bunches on early plantings, but develops into a uniform sod in older stands. It grows best in well-fertilized, moist, medium - to fine - textured soils, but grows in a wide variety of soils and in harsher environments. Tall fescue grows well if the pH is 4.5 or above and has persisted on sites with lower soil pH. It is one of the more drought-resistant and cold-tolerant grasses suited to the Eastern U.S.

These characteristics also make it one of the important grasses used to revegetate disturbed lands throughout the humid Eastern U.S. Many state regulations include 'Kentucky-31' tall fescue as an important grass species for seeding surface-mined and other disturbed areas.

Even with all of its excellent agronomic and soil-stabilizing characteristics, tall fescue has been criticized for causing poor animal performance and other livestock health problems. For many years, farmers noticed that some cattle grazing on tall fescue showed lameness in the hind feet, loss

of the tip of the tail, extreme weight loss, rough hair coats, diarrhea, long periods of standing in water, and preference for shade. Researchers have called these ailments "summer slump", "summer syndrome," or "fescue foot."

Scientists have discovered that tall fescue pastures associated with livestock problems are infected by an endophytic fungus. An endophyte is a plant that grows within another plant, and in this case, the fungus is growing within the fescue. The fungus (*Acremonium coenophialium*) produces toxins of the alkaloid family which are related to the "summer slump" syndrome and fescue toxicosis.

The fungus grows between the plant cells and overwinters in the lower perennial parts of the plant. In the spring, the fungus grows along with the new grass tillers and gradually migrates up the stem and infects the seed that is produced. The primary method of transmitting the fungus is through infected seed.

What does this have to do with you in the coal industry? Some problems have developed between some West Virginia farmers and a revegetation consulting firm. A gas pipeline was constructed across several tall fescue pastures owned by the farmers. The pipeline construction company contracted a reputable revegetation firm to revegetate the disturbed areas around

the pipeline. The firm planted regular Ky-31 seed in the disturbed areas of the pasture. A year elapsed and the fescue established and produced large amounts of forage where it was seeded. However, after the fescue seeding by the revegetation firm, the farmers have complained that their cattle weight gains have declined and that there has been an increase in livestock health problems. They suggest that the revegetation firm's seeding introduced the endophytic fungus into their fescue pastures causing their livestock problems. The potential exists that the revegetation firm may be held liable for causing the livestock health problems and may be required to compensate the farmers for the reduced livestock production.

There are ways to eliminate or minimize problems with fescue toxicosis and reduce your revegetation liability. First, the most obvious answer is to select a different grass species for revegetation. There are several cool-season grass species which may substitute for Ky-31 tall fescue on grazed areas, but they are generally less suited than Ky-31. Orchardgrass (*Dactylis glomerata*) is similar to Ky-31 tall fescue in growth habit and in soil and environmental tolerances, but generally it is less persistent. Timothy (*Phleum pratense*) is used primarily for hay and is substituted for Ky-31 in wildlife plantings,



Cattle grazing a tall fescue pasture in West Virginia.

but it also is a relatively shortlived perennial. Perennial ryegrass (*Lolium perenne*) and redtop (*Agrostis spp.*) are both adapted to a wide range of soil conditions like Ky-31, but usually are seeded with species that are most persistent. Even with the availability of these other grass species, Ky-31 is the most used and most versatile of the grasses suited for revegetating surface-mined areas.

Once the decision is made to seed Ky-31, reducing the potential for tall fescue problems becomes important. If the post-mining land use is *not* for grazing, then the potential for fescue toxicosis is eliminated. On the other hand, land uses often change and vary with economic circumstances. It is commonly observed that Ky-31 seed stored for a year or more has low infection levels. The reasons for fungus death and reduced infection levels in stored seed are unclear. Regardless of

the reasons, one solution in reducing Ky-31 infection levels is to buy old seed. Adjustments to the seeding rate will be required due to the lower germination percentage in the older seed.

Another answer is to seed disturbed lands with endophyte-free strains of tall fescue. Currently, there is one variety of endophyte-free tall fescue (called Johnstone) which is certified as endophyte-free (5% infection levels), but it has limited availability.

The next approach in reducing summer syndrome involves seeding tall fescue with other species. Mixtures of species are usually required by regulation for seeding disturbed lands. Mixture create a dilution effect and generally the other species in the mixture are grazed preferentially to tall fescue during the summer months when the fungus is most active. Seeding tall

fescue with a legume (clovers, trefoil, vetch, lespedeza) greatly reduces the potential for fescue foot.

Fungicides applied to large acreages of infected pastures showed reductions of infected plants and increases in average daily gains of cattle. However, within 6 months, the endophyte levels were similar to those observed before treatment.

Tall fescue will continue to be a major grass species used for revegetating surface-mined lands. When tall fescue is the grass selected for seeding, planting a mixture (as the regulations require) is a good way to reduce the potential of fescue toxicosis. Revegetating with an endophyte-free strain of tall fescue may be the ultimate way of avoiding any liability with fescue toxicosis when considering long term land use.

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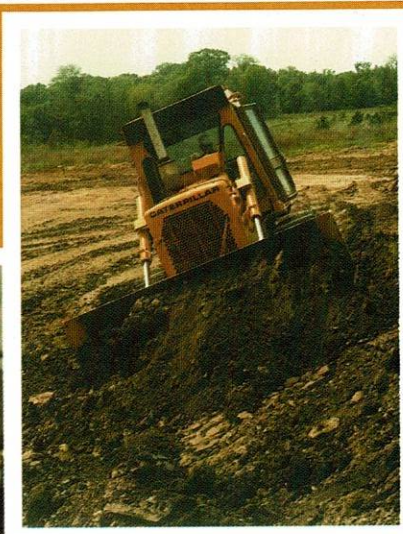
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Chronicle

Coal news and related comments from 1985

By Dan Miller

January

Wednesday the 1st — The new year begins with UMW-A.T. Massey strike apparently ended in the same way it was conducted — in a state of confusion. Workers are returning to the job, but whether its under the 1984 BCOA contract or not, depends on who you're talking to. In any case, it appears that the strike, if not the company/union differences, will soon disappear from the headlines. Meanwhile, in Virginia, operators and union members find some common ground in their opposition to the "test burn" by Virginia Power of Colombian coal.

Friday the 3rd — According to figures released by the Mine Safety and Health Administration, coal mine fatalities for 1985 were the lowest in recorded history, totaling 67 nationwide. West Virginia recorded 16 fatalities last year, which is tied for second best in our history. In fact the four best years in West Virginia mine safety have been the last four.

Tuesday the 7th — Danny Cox

of McDowell County is killed in a roof fall, the state's first mining fatality of 1986.

Wednesday the 8th — Lawyers will continue to prosper from A.T. Massey and the UMW. Massey has announced its determination not to return to employment those union members who engaged in strike related violence over the last 15 months. UMW officials intend to challenge every such instance in court. It may last until the next national contract period.

Friday the 10th — Sixteen West Virginia companies are honored with Reclamation Awards for 1985. This outstanding program has, for years, recognized the leaders in the state's unsung reclamation industry, which itself is a nationwide leader. Congratulations to these outstanding companies as well as the some four dozen others which were nominated for the honor.

Saturday the 11th — BethEnergy Mines Inc. has announced plans to consolidate the company's coal operations in West Virginia and Ken-

tucky. This is good news because the consolidated office will be located in West Virginia, Charleston to be specific.

Monday the 13th — A refreshing story of labor relations surfaces. Workers at Virginia Crews Coal Co., based in layoff ridden McDowell County, have voted to give their employer one terrific Christmas present — a free day of labor. Virginia Crews, like numerous other southern West Virginia operations, is facing a battle for survival, so the gift takes on added significance. Approximately 80% of the work force has signed a petition calling for the free day, which makes the present worth about \$40,000.

Tuesday the 14th — Acting Energy Commissioner Ken Faerber completes the sale of his energy related business holdings to come into compliance with federal conflict of interest guidelines. That should quiet his critics. Of course, should and will are worlds apart.

Wednesday the 15th — A U.S. District judge has rescheduled A.T.

Massey's latest court date with UMW, in hopes of a negotiated settlement. Currently at odds are the terms under which striking miners have returned to work. Lawyers are said to have found "several areas of agreement."

Saturday the 18th — Little news is good news. A.T. Massey subsidiaries are working with a mixture of returned strikers and continuing replacement workers, and there has been no trouble between the two groups.

Monday the 20th — State AFL-CIO President Joe Powell, whose job description apparently includes bristling at every mention of a right-to-work law, does so right on cue. West Virginia Development Director Lysander Dudley demonstrated commendable forthrightness in stating the obvious, that the state's lack of a right-to-work law is a negative factor in luring new jobs. Powell, as usual, delivers a blustering rebuttal containing no information other than conveying that union officials think that everybody should belong to a union.

Wednesday the 22nd — Mack Truck shuns no right-to-work West Virginia in favor of right-to-work South Carolina for construction of its \$80 million assembly plant. Joe Powell, at least will be happy that West Virginians who would have been employed will not have to "work for less."

Thursday the 23rd — Great news on the political front. Coal executive Charles T. Jones announced for the West Virginia Senate. A successful run by Mr. Jones would be a huge step forward in the ongoing transformation of the State Senate into a body of lawmakers with the state's economic future at heart.

Sunday the 26th — "Right-to-work bill not likely to pass," says the Sunday morning headline. Sadly, that's

not very newsworthy in West Virginia. Even those who might be philosophically attuned to such a law still allow themselves to be shouted down at every mention of the concept. House Speaker Joseph Albright blithely says it "doesn't fit the lifestyle of the state." Perhaps, sir, the lifestyle of a state which has led the nation in unemployment for more than two years now could stand some alteration.

Wednesday the 29th — Final figures from the federal Energy information Administration official drop West Virginia to third place for 1985 coal production. Surging Wyoming, which wasn't even a factor 15 years ago, is the new runnerup to national leader Kentucky. West Virginia, which lost the top spot to Kentucky in the early 1970's, must now look over its shoulder at Illinois, which pushed past Pennsylvania into fourth place. Mountain State production slipped only 3%, but with productivity on the increase, steady tonnage or slight dips actually translates to significant decreases in employment and economic activity.

Thursday the 30th — Governor Arch Moore maintains that a right-to-work law is not necessary in West Virginia. He also holds that right-to-work is not an issue in West Virginia. As to the governor's first observation, it is true that a right-to-work law SHOULD NOT be necessary. As individual should have the innate right, without law, to choose for himself whether to pay union dues, and follow union orders. How we got into the sorry state of needing a law to uphold such a basic right is the question. The governor's second assertion, that right-to-work is not an issue here, is sadly true. A viable issue needs two sides, and there are simply not enough public officials in the state of West Virginia who are willing to buck union bullying long enough to give the question a fair hearing. That West Virginians have no right-to-work union

free, and that we are not willing to make it an issue, is something of which we can all be ashamed.

Friday the 31st — Give credit where it is due; the *Charleston Gazette* has had a good idea. Let's put right-to-work on the ballot. But we would amend the idea one way. The *Gazette* says the sooner, the better. But why not a period of public education first. Let those thousands who don't know the implications of such a law find out through the campaign that would surely ensue when such a proposal placed on the ballot. When the people of West Virginia care enough about their economic future to make union leaders explain why anyone else should support their absurd position, then right-to-work will pass. When voters tell their legislators to ignore union threats and vote for the overall good of the state, then right-to-work will pass.

February

Saturday the 1st — A familiar name to friends of the coal industry will be submitted to West Virginia voters for State Senate. Tracy Hylton, the Beckley coal operator and otherwise businessman who took a previous turn in the Senate, will be on the May primary ballot. Tracy joins Charlie Jones of Kanawha County in giving voters the opportunity to further improve deliberations in Charleston. Anyone who has heard Mr. Hylton speak will tell you that no translation will be needed when he offers his views on the issues.

Monday the 3rd — Some 80 miners fired by A.T. Massey Coal Co. subsidiaries for what the companies call strike misconduct, have filed grievances. Massey management indicated this action early on, so neither the firings or the grievances come as any surprise. Perhaps never has a strike "settlement" generated so much court action.

Tuesday the 4th — Jacksonville (Fla.) Electric Authority announces the signing of a contract with the El Cerrejon Mine in Colombia, for 800,000 tons of coal per year for the next 12½ years. At the same time, smaller contracts were awarded to operations in West Virginia and Kentucky. The delivered prices to Jacksonville are as follows: Boone County, West Virginia — \$44.30; Harlan County, Kentucky — \$44.07; El Cerrejon, Colombia — \$39.00. Much of this cost competition problem of American coal producers stems from deregulated rail rates. Another part of the problem is the cost of government regulation, by far the highest in the world for American coal operators. El Cerrejon, on the other hand, was financed with \$127.5 million from the Colombian government and \$617.5 million from the American government, in the form of the Export-Import Bank. If all this leads you to wonder whether we aren't doing something very basically wrong as a nation, then you're on the right railroad track.

Wednesday the 5th — The National Labor Relations Board has ruled that the United Mine Workers had no right to picket a Samoyed Energy Co., Inc. mine in Pike County, Ky. three years ago. Though this revelation is of dubious value in 1986, it is noteworthy for some of its wording. Specifically, the NLRB has held that UMW District 30 did not, at the time, legally represent Samoyed employees, and therefore was not entitled to "coerce" employees to join the union. Is this merely a Freudian slip, or does someone in authority actually maintain that a union with legal rights of representation does have the right to coerce employees into membership?

Thursday the 6th — Tragedy strikes the coal industry with the deaths of five men in a silo accident at the Consol operations in Marion County. Killed were Joseph E. Dunn of Pittsburgh,

Joseph W. Leonard and Roger B. Alke of Monongalia County, Ronald E. Beel and David R. Kovach of Marion County. The accident raises the state's 1986 fatality total to six.

Friday the 7th — It is more than somewhat distasteful that the Governor of the State of West Virginia must depend on the caprices of Washington bureaucracy to bless his appointments, but at least it is behind us. Acting Energy Commission Ken Faerber has divested himself of his coal related interests and has been annointed by the federal Office of Surface Mining. Governor Arch Moore will now submit Faerber's name to the State Senate for formal confirmation. That, of course, will meet opposition from the same folks who were so concerned that OSM would not approve.

Sunday the 9th — Newspapers continue to treat the A.T. Massey-UMW struggle as if its going to end tomorrow. Today's paper reveals that "Monday is the final day for both sides to submit evidence in the injunction hearing." This is the injunction which seeks to compel, or prevent (it's hard to remember) Massey companies from bargaining as a single unit. Who out there believes everyone will turn in their evidence on Monday, and then a wise old judge will render a wise old decision and thereby, resolve the whole matter? If you are one of these, don't admit it in public.

Wednesday the 12th — The annual right-to-work "hearing" ritual is conducted in the West Virginia House of Delegates. This is the method by which the House and Senate pretend to consider a bill which would ban the unconstitutional practice of forcing any worker to join a union in order to hold a job. Setting aside for the moment the actual merits and demerits of right-to-work legislation, wouldn't it be nice if the legislators would quit wasting the taxpayers' money with this empty

hearing process. The hearings, in terms of committee members, are poorly attended and, in practice, have nothing to do with the legislative process. Testimony could be photocopied and mailed in annually, for all the new information it contains. The majority of legislators and other state officials continually duck the issue by saying it doesn't stand a chance of passage. They should all display the courage of Senator Bud Harmon and engage in some earnest and open floor debate. If right-to-work legislation is not the will of the Legislature, then let each Senator and Delegate stand up and say so, and let them tell us why.

Friday the 14th — The president of UMW Local 1803 threatens to return the local's charter if strike benefits are not forthcoming for 125 Mingo County miners. Union officials at District, national, and international levels have made much of their "strike fund" and the benefits paid therefrom to miners on selective strike against subsidiaries of the A.T. Massey Coal Co. But the members of Local 1803 were laid off from a Massey company prior to the strike. So, no strike benefits, even though the strike prevented any possible return to work for them. This is a scenario to remember the next time Richard Trumka pontificates about corporate exploitation of the working man.

Sunday the 16th — The *Charleston Gazette* runs its annual tribute in which surviving family members invoke memories of miners killed on the job over the previous year. Though, well done, it is not clear exactly why the *Gazette* chose to write about deceased coal miners. Perhaps it is because this statistical category provides a manageable number to work with, as opposed to, say, car accident victims.

Tuesday the 18th — And now, the Senate card is played. Unable to unseat Ken Faerber from the Department

of Energy through federal disapproval, opponents of the Governor's reconstituted DoE are now attacking Faerber's appointment through the Senate confirmation process. The latest pretense is that certain of the Senators are appalled at the idea of a political appointee having made political donations to the politician that hired him. That this political game is being played comes as no surprise, but it is somewhat shocking that Senators Boettner and Kaufman expect anyone to believe that they are truly concerned with the nominee's donations to the gubernatorial campaign. Worse still is that the state's largest newspapers dutifully report this process as straight news when a second year journalism student would recognize it for the sham it is.

Wednesday the 19th — By every measure of national rankings that has so far been revealed, West Virginia, as a business state, is the pits. Yet, many of our opinion makers toss aside this data as business community propaganda. And company after company considers, and rejects, bringing new business into the state. Now comes word from Beckley, "Fairchild International, the world's largest independently owned coal mining equipment manufacturer will move its manufacturing operations and most of its office operations to Glen Lyn, Va."

Wednesday the 26th — According to latest unemployment figures, 1986 has gotten off to a dubious start for West Virginia. Our nation leading percentage rose to 13.5 in January, up one percent over December.

March

Tuesday the 4th — The West Virginia Supreme Court votes unanimously to hear a United Mine Workers argument that West Virginia should require full roof bolting in mines using auger type continuous miners. It is

with alarming frequency that the words "UMW", "Supreme Court", and "agrees", are used in the same headline.

Wednesday the 5th — Diamond Shamrock Corp. announces the layoff of 5% of its workforce, some 600 people, in a move to streamline the company." It was not clear what effect the layoffs would have on the Dallas based company's West Virginia operations, which includes mines and a year old unit train loading facility in Logan County. Diamond Shamrock has revealed its intention to sell these holdings.

Thursday the 6th — According to the latest annual oversight report of the federal Office of Surface Mining, West Virginia's regulatory program "ensures that surface coal mining operations are conducted in an environmentally sound manner." But, like an IRS audit, the federal overseers would not consider their job completed if they didn't find some fault. Naturally, that list would be headed by what OSM characterizes as DoE's lack of adequate record keeping. Back when OSM was born, West Virginia had been regulating surface mining for 45 years. When OSM fledglings were looking at slides to see what a steep slope surface mine looks like, West Virginia regulatory officials were carrying out the nation's finest program, which, incidentally, became the basis for the federal program. At about that time West Virginia Reclamation Chief Pete Pitsenbarger observed that he had never yet seen an acre of ground reclaimed by pushing paper. Some things never change. Nine years later OSM commends the State for reclamation practice, and chides it for not pushing enough paper. Simultaneously, Tennessee Governor Lamar Alexander says his state has given up trying to regulate surface mining because, "we can't get the federal government out of

our hair."

Saturday the 8th — The gubernatorial appointment of West Virginia Energy Commissioner Kenneth Faerber is approved by the State Senate by a convincing margin of 28-6, presumably ending a nine month struggle to keep Faerber from doing his job.

Tuesday the 18th — Representatives of the coal and rail industries conclude two days of discussions, with the only concrete result being a determination to meet again in May.

Wednesday the 19th — Washington sources say that President Reagan will "fully endorse" a recommendation for a five year \$5 billion study of acid rain and its affect on the border between U.S. and Canada. Canada has previously demanded a specific timeable for sulphur emission reduction. The President's new cooperative attitude gives Canadian Prime Minister Brian Mulroney something hopeful to report to the voters back home. As for the President, well, let's see. A five year study and his administration retires in less than three years. You don't get to be president by being stupid.

Friday the 21st — Blaine Garrett Sugg of Logan County is killed in a rock fall, the state's seventh mining fatality of 1986.

Saturday the 22nd — The United Mine Workers announces a "major victory" with a federal court ruling that A.T. Massey Coal Co. must continue processing grievances filed by the union. In the 18 month battle between the two, the UMW has announced so many major victories that its a wonder poor Massey is still in business at all.

Sunday the 23rd — Add Delegate Tony Shepherd to the short list of West Virginia politicians with the

courage to seriously address the idea of right-to-work law. Speaking to the Charleston Rotary Club, Shepherd also accused fellow legislators of ducking controversial issues in general, which, if a little obvious, is something that needs to be repeated until the Legislature starts doing its job.

Wednesday the 26th — Win some, lose some. Governor Arch Moore signs into law the much needed trackage rights bill, which will help to loosen the iron grip that railroads have on coalfield shippers. At the same time, the Governor vetoed the overweight truck bill. Between legislative passage and governor's veto, this causes the *Charleston Gazette* to sputter and choke for a few days, so it wasn't a totally wasted effort.

Friday the 28th — New legislation is tightening standards for workers' compensation, so naturally the state office is being inundated with claims of injuries suffered just under the deadline. Just processing the claims will cost millions. If lawmakers needed any evidence that fraudmakers will climb into the system through any loophole, and that the system needs to be tight, well, there you go.

April

Thursday the 3rd — The current version of the U.S. Senate tax reform proposal is socking it to the coal industry in a big way. Among the business deductions on the chopping block in the plans of Senate Finance Chairman Robert Packwood is the excise tax. In other words, excise taxes paid to all levels of government would be treated as taxable income. This will hit the coal industry particularly hard, as coal is more susceptible to a variety of so-much-a-ton taxes from local, state, and federal governments. The Black Lung Trust alone represents \$3.5 billion that would no longer be deductible. This

translates to an actual cost of \$1.2 billion to the industry over a five year period.

Friday the 4th — Good news on the market front. Westmoreland Coal Co. has announced a 10 year contract to provide 12.2 million tons of metallurgical coal to the Finsider Group, an Italian steel maker.

Monday the 7th — Some 240 miners laid off just a week earlier from Westmoreland Coal's Imperial Smokeless complex in Raleigh County return to work at Lady H Coal Co. — same mine, new name.

Thursday the 10th — Administrative Law Judge Marion Ladwig comes down hard on the UMW and its failure to contain rank and file strike related violence. The case involved another A.T. Massey subsidiary, this one in Kentucky. Ladwig held the International UMW responsible for violence at Sidney Coal, and ordered the Union to print a notice in the UMW Journal of the promise to end all violent activity. The ALJ also took union leaders to task verbally saying, "the UMW still relies on bloodshed, dynamite and intimidation to coerce acceptance of the union's demands."

Monday the 14th — John "Si" Boettner is an incumbent state senator from Kanawha County, with a name recognition factor of 60%. He is concerned that his coal operator opponent, Charlie Jones, has put extensive campaign funds into television and billboard advertising in an attempt to raise his name recognition factor from 3%. Boettner calls this "buying the election." He would, of course, prefer to run strictly against unknowns with no chance to unseat him. Now comes the news that AT&T has asked the senator to remove from the radio, ads in which the company appears to support Boettner's past efforts. Boettner had taken a form thank

you letter written by AT&T to all legislative leaders, hired a resonant radio voice to read the letter as if it were written only to him, and came up with an ad that says, "Thanks, Si, we couldn't have done it without you." And this from a man who is concerned about the integrity of the elective process.

Tuesday the 15th — James Walter Owens of Raleigh County is killed in a coal car accident, the state's 8th mining fatality of 1986.

Wednesday the 16th — Coal operator Tracy Hylton, who filed his State Senate candidacy papers on the last day, has been ordered from the ballot by, who else, the West Virginia Supreme Court. It seems a postal worker neglected to postmark the envelope properly and the letter was marked February 2. The deadline was February 1. The post office admits its error. No matter. The Supreme Court, which often circumvents the letter of the law in order to conform to what the Court feels is its spirit, predictably chose to go the other way in this case. This despite the fact that Hylton's candidacy had been certified by Secretary of State Ken Hechler, purportedly West Virginia's "chief elections officer." Under the Supreme Court form of government which West Virginians must endure, nobody is in charge of anything save these five gentlemen who, as a group, continue the sham that they are applying the law fairly and evenly to all citizens. If the people of the 9th Senatorial District want Tracy Hylton to represent them in Charleston, they should be given the opportunity to say so. Period.

Thursday the 17th — Eastern Associated Coal Corp., West Virginia's second largest coal producer, is considering a move of its corporate offices to Charleston. Eastern is currently headquartered in Pittsburgh, but all of

its mining operations are in West Virginia, with 700 million tons of reserves. The move would allow Eastern to take advantage of a recently enacted state investment tax credit. Come on down.

Tuesday the 22nd — It is perhaps a sign of the times that Elk Run Coal Co. President Douglas Blackburn has announced his intention to take a leave of absence from his duties to attend Harvard Law School. In the past, it has normally been opponents of the coal industry who have turned to law school to better equip themselves to carry out the good fight. Blackburn's motivation is little different. He intends to return armed with a new leadership tool, that being his legal education. He has been a formidable spokesman for the industry. As such, he will be missed, but the entire industry will share in the benefits when he returns.

Thursday the 23rd — Fisticuffs break out between negotiators (one each) at UMW-A.T. Massey arbitration hearing in Washington. It is very tempting to suggest that all differences between these warring parties be settled similarly. You know, man-to-man, one on one. But, that would lead to hiring professional fighters, and the legal industry might not recover from the loss of business. Ahh, forget it!

Thursday the 30th — Tomorrow is the deadline for state governments to submit to a new form of OSM blackmail, namely to join the "applicator violator system" or lose half of their funds under the abandoned mine lands program. The applicator violator system is a computerized network which would identify coal operators with outstanding violations of federal or state regulations. Those states participating in the network would, of course, be expected to deny permits or permit renewals to the offending companies. Under what are supposed to be uniform

national standards, this is not a bad idea at first glance. But the concept has nothing whatever to do with abandoned mined lands. Funds for the AML program are collected directly from coal companies, tallied by the state, and are passed back to the state regulatory agencies under a formula nobody quite understands. In most coal states, the state agency has regulatory primacy, and OSM has an oversight position. It is doubtful that the federal agency has the legal right to withhold AML funds for failure to participate in what is supposed to be a voluntary program. It is clear that OSM has no moral right to do so. These funds are extracted forcibly from coal operators, with the intent of benefitting the environment of the state in which they originate. Enough — more than enough, of the money is lost in the paper push from state, to federal, and back again. Let OSM find other means to coerce the states into its program.

May

Friday the 2nd — Consolidation Coal announces the layoff of 41 miners at its Osage Mine in Monongalia County.

Saturday the 3rd — Prospective candidate Tracy Hylton seems to be out of options for next week's West Virginia primary election. Hylton is the Beckley coal operator who filed for the State Senate, but was removed from the ballot when a local post office snafu resulted in his papers being postmarked one day past the filing deadline. The West Virginia Supreme Court is legendary for bending the letter of the law in order to accomplish the philosophy of the majority of justices. This time, however, the Supremes elected to go strictly constructionist. Never mind that the post office admitted its error. Never mind that the complaint was brought by the incumbent's former campaign treasurer. Forget that the swing vote on the court lay with the brother of a for-

mer Hylton opponent. And to hell with letting Democratic voters decide whether Tracy Hylton should be their candidate for senator. If these five gentlemen continue to have the final say on all matters pertaining to West Virginia government, then maybe it really doesn't matter who the senator from Raleigh County is.

Monday the 5th — The primary election campaign is just full of coincidences. First, incumbent Senator Ted Stacy's former campaign treasurer filed the complaint which cost challenger Tracy Hylton his spot on the ballot. But hey, the Senator didn't know a thing about it. Now, it happens that incumbent Senator Si Boettner sent his state paid secretary to obtain a document from the Department of Employment Security. This same document found its way into the hands of a reporter for a Boettner supporting Charleston newspaper, who used it as the basis for another in a series of not-to-subtle attacks on Charlie Jones, who just happens to be the strongest opposition to Boettner in the upcoming primary election. But was Boettner trying to smear his opponent? Was the story "leaked" by Boettner or his people to the friendly reporter? Was the story timed just so, to do the most damage, close to the election, but with little time to respond? Naw, good ole Si was just acting on the request of a constituent. And how did the reporter get the scoop? Just good hard nosed reporting.

Tuesday the 6th — A "progress" report on the UMW-A.T. Massey struggle. They can't agree on who should hear the case. Right now the lawyers, who may retire off this case, are in the 4th U.S. Circuit Court of Appeals in Richmond. They've already been to District Court in Charleston. The UMW would like to go back to Charleston, where it thought it was winning. But, Massey Lawyers are quite content in Richmond, thank you,

for much the same reason. We can only be thankful, that in either way, the case has escaped the Never Never Land that is the West Virginia Supreme Court.

Tuesday the 13th — Voters go to the polls for the West Virginia primary election, and the results are not good for business backed candidates. Kanawha coal operator and businessman Charlie Jones is turned back in his bid to unseat Senate Majority Leader Si Boettner. Tracy Hylton, denied a spot on the ballot by the U.S. Post Office and the West Virginia Supreme Court watches the incumbent squeak to victory over little significant opposition. In the House stalwart incumbents Lee Feinberg, Pat Hamilton, K.O. Damron, and others are denied renomination. On the positive side, J.D. Brackenrich won the senate nomination in Greenbrier County, and appointed Senator Ned Jones retained his Cabell County seat. In all, 56 Democratic and 23 Republican incumbents in the House were renominated. Of the other 21, 15 chose not to run, or ran for another office, and six were defeated, including five Democrats and one Republican. On the Senate side, of 19 incumbents up for reelection, including two unexpired terms, 14 Democrats and 2 Republicans were winners, and three other Democrats retired from the Senate. No incumbent senator was defeated in the primary.

Tuesday the 20th — James Daniel Loftus of Boone County is killed in a roof fall, the state's 12th mining fatality of 1986.

Wednesday the 21st — U.S. Steel announces the indefinite closing of mines in layoff stricken McDowell County, idling some 225 miners. The company, citing poor conditions in the metallurgical coal market, simultaneously reduced its Wyoming County operations to a four day week, at least through the end of the month.

Wednesday the 28th — Occidental Petroleum announces the purchase of Diamond Shamrock' chemical operations. Diamond Shamrock, earlier this year, revealed its intentions to sell its chemical and coal holdings, which include several West Virginia facilities. No announcement was made regarding the coal properties, which include Amherst Coal Co., and a new unit train loading facility in Logan County.

Thursday the 29th — Dismal but perhaps misleading news from Dun & Bradstreet. Figures released by the Wall Street investment firm show West Virginia trailing the nation in new businesses. Nationally, new business openings are up 10.4% in January/February versus 1985. West Virginia was down 32.3% in the same period, the biggest drop of any state despite a real effort by the Legislature to attract new business. However, it would seem that the time period between the new legislation and the study period is not sufficient for these figures to provide a proper evaluation of the legislative package. Maybe next year.

Friday the 30th — A Kanawha County circuit Court judge has struck down a provision in West Virginia law which exempted two acre surface mining permits from reclamation requirements. The original suit was brought by a group of self appointed guardians of the people, who have now proclaimed "an important victory." There was no comment from those who desire two acre permits, perhaps because there have, to date, not been any such people.

June

Sunday the 1st — In a refreshing reversal of the usual process, a government run company is succeeding where private industry failed. The Great Plains Synthetic Fuels Plant of Buelah,

N.D. was the nation's first commercial scale synfuels plant before the consortium which built it defaulted on a government loan. The Department of Energy took over, and in a complete turnabout from usual government policy, streamlined the operation, including a 10% staff reduction. The plant is now running a full capacity, producing 137 million cubic feet of gas per day.

Monday the 2nd — It's a week for startling government news. Interior Secretary Donald P. Hodel tells the National Coal Council that federal surface mining regulatory policies may have been too strict to permit a viable industry. Hodel went on to say that it may be time to "take another run" at the Surface Mining Control and Reclamation Act. May wonders never cease.

Tuesday the 3rd — West Virginia in general, and Charleston in particular, got a much needed morale boost today with the announcement that Eastern Associated Coal Corp., the state's second largest coal producer, will move its headquarters from Pittsburgh to Charleston. Eastern's move is expected to create about 50 new jobs in the Charleston area, as well as bringing in 70-80 families on transfer from the Pittsburgh office.

Saturday the 7th — An unusual accident at Consolidation Coal Co.'s Blacksville No. 1 Mine resulted in no injuries, but damaged a hoisting system which has closed the mine and idled some 200 workers. Officials are unsure of when the mine can reopen.

Monday the 9th — Congratulations are in order today for McDonough Caperton Insurance Group which announced the achievement of its goal to doubling its revenues in the past four years. The Charleston based firm, prominent in the

coal industry, is now among the 20 largest insurance brokers in the nation.

Tuesday the 10th — William Land of McDowell County dies in a mining accident, the state's 13th fatality of 1986.

Wednesday the 11th — Utility officials warn a U.S. Senate panel that imposition of "acid rain" proposals now before Congress would divert funds from "clean coal" technology development to compliance with stricter emission standards through the use of relatively inefficient devices now in use. This is yet another indication that the worst solution to the sulphur emission issue would be knee jerk legislation.

Thursday the 12th — The annual Business Climate survey is out and West Virginia fared no better than last year, again ranking 45th among the 48 contiguous states. Although recent developments in the state's economic picture are somewhat encouraging, a sustained and concentrated effort will be required to transform West Virginia from what the study describes as a "dark spot in the region's overall bright picture."

Monday the 16th — Under the terminology "federal grant," the federal government returns 14.7 million West Virginia dollars to the State for the reclamation of 42 abandoned mine sites. Under requirements of the Surface Mining Control and Reclamation Act of 1977, the money is collected from coal operators on a per-ton basis, sent to Washington where much of it is squandered on bureaucratic nonsense, then parceled back to the state of its origin if it asks nicely, and otherwise remains in the good graces of the federal Office of Surface Mining.

Friday the 27th — U.S. Steel announces another round of layoffs in the hard hit community of Gary, in Mc-

Dowell County, this time idling 235 workers from its No. 4 mine.

Sunday the 29th — Tragedy strikes the High Power Energy mine at Drennan when lightning struck a dynamite charge, killing Randall Roop and Michael Roop, both of Nicholas County. The accident brought the state's mining industry fatality total to 15 in 1986.

July

Wednesday the 2nd — Latest reports out of Charleston indicate that coal production in West Virginia is running ahead of recent years, but all the other news is bad. Employment is down by 4000 jobs versus 1985, 8000 versus 1984. Prices are also down considerably, a fact that more than negates any positive effect of increased production.

Thursday the 3rd — Following the grand 20th Century American tradition of "sue first, ask questions later," the Association of American Railroads has filed in Charleston federal court, challenging the constitutionality of West Virginia's innovative new "trackage rights law." Trackage rights, signed into law March 5 by Governor Arch Moore, prevents railroads from imposing a de facto monopoly situation on shippers, by denying use of its tracks to competitive carriers. The AAR contends that the West Virginia law, first of its kind in the nation, is unconstitutional on the grounds that federal law prohibits states from regulating interstate rail commerce. That's what the suit says. The real grounds are that railroads just don't like to be ordered to share the trough before they've had their fill.

Thursday the 10th — Here's a catchy headline, "Supreme Court favors Union position." The *Charleston Gazette* could haul that one out every few months and save some typesetting

money. Once again the West Virginia Supremes have bent to the will of the UMW, this time over the Union petition to require full roof bolting in all auger mines, which happens to eliminate the thin seam mining machine which just happens to be manufactured by Fairchild International, which happens to be a non-union company.

Monday the 14th — Congratulations to the workers at Appalachian Power Co.'s Mountaineer plant at New Haven, which today became the first coal fired plant to operate continuously for a full year. During the past 365 days, Mountaineer has produced 8.4 billion kilowatt hours of electrical energy, burning up 3.13 million tons of coal in the process.

Wednesday the 16th — Contrary to a *Charleston Gazette* pronouncement of a day earlier, the West Virginia Department of Energy will not abandon its "one stop shopping" concept for obtaining mine permits, according to Commissioner Ken Faerber. There is, of course, no practical reason which should prevent the State from issuing all necessary mining permits from one regulatory agency. But when federal fingers get into the pie, practicality and logic go out the window. Faerber went to considerable effort and personal expense to satisfy the so-called conflict of interest requirements of the Office of Surface Mining. This involved divesting himself of several business interests. But the Environmental Protection Agency, which administers the National Pollution Discharge Elimination System (NPDES) wants Faerber to take some time off, say two years, from deriving coal related income, before he can administer the agency which the Governor of the State of West Virginia hired him to run. Coal mines need NPDES permits, thus EPA says no to the "one stop shopping" concept. Any agency or newspaper which thinks that's where it ends is un-

familiar with Faerber's track record.

Sunday the 20th — UMW leaders in southern West Virginia are saying that the strike against subsidiaries of A.T. Massey Coal Co. is not over. This possibly stems from the fact that many of them received letters of dismissal from the companies for "strike related misconduct." Apparently they haven't been keeping up with the newspapers. Union President Richard Trumka, borrowing a move from former U.S. President Richard Nixon, said last December that the strike was over. He simply declared that his side had won and withdrew his forces. More importantly, company President Morgan Massey said months before Trumka's pronouncement that the strike didn't matter any more, because the strike bound companies were sold, or effectively out of business. That's why a fired miner's threat to "stay out another 22 months" is sort of empty.

August

Saturday the 2nd — Reductions in the workforce at two Eastern Associated Coal Corp. operations idle 123 workers in Boone and McDowell Counties.

Tuesday the 5th — According to figures just released by the National Coal Association, U.S. coal exports rose to 91.4 million tons in 1985, an increase of nearly 13% over 1984. Italy, the Netherlands, and Taiwan were our best customers for steam coal. Projections for 1986 call for a decline back to 87 million tons, still better than the 81 million ton total for 1984.

Wednesday the 6th — Reclamation man Ed Williams of Summersville brings honor back to West Virginia again, as he becomes the first man in the 104 year history of the National Pistol Championships to win the civilian championship two years in a

row. Ed competed, despite an illness which affected his vision, making his winning marksmanship all the more remarkable. Congratulations, Ed.

Thursday the 7th — The West Virginia Mining and Reclamation Association will seek to intervene in a lawsuit filed against the Public Service Commission by the Association of American Railroads. The AAR suit seeks to set aside West Virginia's new trackage rights law, which allows the common use of rail lines, regardless of ownership, but subject to regulations to be issued by the PSC. The railroads are content, to say the least, with the status quo, which has allowed them a monopoly in setting rates. Federal legislation is pending, which would render the constitutional question moot. Meanwhile, other states considering the innovative West Virginia approach are watching the case closely. And that's why the railroads would like to nip this concept in the bud. They wouldn't want this dangerous idea of market competition to spread.

Friday the 8th — Energy Commissioner Ken Faerber and 24 coal companies file separate petitions, urging the West Virginia Supreme Court to reconsider its ruling that all thin seam coal mines using auger type continuous mining equipment be required to use full roof bolting. The coal companies contend the Court overstepped its authority in its ruling, which runs contrary to state mining law. Unfortunately, this Court has proven to be unfamiliar with the concept of overstepping its authority, and it is unlikely that it will recognize the possibility in this case.

Wednesday the 13th — Apparently the regional approach to handling mine permit applications is working. According to Tom Reishman, deputy commissioner of the West Virginia Department of Energy, the average permit approval time is now less than 100 days. That's down considerably from

the 280 day average under the old centralized system. The crux of the regional approach has been to put more expertise into field offices around the state, and to let them do their job, thus avoiding the time consuming process of shipping each application and modification up the same chain of command. It's a big step in the right direction.

Thursday the 14th — "Acid Rain" legislation has been sidetracked again, this time in the House Energy and Commerce Committee, as the current proposal was tabled at the end of Congress' summer session. The move greatly reduces the chance of any floor action on the bill before the elections in November.

Tuesday the 19th — To the surprise of absolutely no one, the West Virginia Supreme Court has declined to reconsider its ill advised July 10 decision to require full roof bolting on all thin seam auger operations. The same three justices who constituted the majority in the original decision turned a deaf ear to arguments 1) that the Court had overstepped its authority in contradicting state law, 2) that it was technically unqualified to render such an opinion, 3) that no evidence was offered to demonstrate that the ruling will favorably affect mine safety, and 4) that the decision will work undue hardship on the companies and miners involved. Perhaps the petitioners should move to the other side of the courtroom, where the UMW sits, and from where the hearing of the justices has proven to be demonstrably more acute.

Thursday the 21st — State Senator Ted Stacy of Raleigh County has asked that his name be withdrawn as a candidate for reelection. Stacy was the major benefactor of a post office snafu which kept the name of Tracy Hylton, also of Raleigh County, off the primary ballot. Stacy's withdrawal

leaves Hylton in a position to be named the official Democratic nominee by the 9th District Senatorial Committee.

Wednesday the 27th — The 9th District Senatorial Committee bypasses Tracy Hylton, and everyone else who ran in the primary, in filling the candidacy vacated by Sen. Ted Stacy. Instead the Committee chose Delegate William Wooten who, along with his wife, comprises half of the Committee. The other half of the Committee consists of the wife and son of long time Hylton political foe Warren McGraw. McGraw also happens to be the brother of Supreme Court Justice Darrell McGraw, who voted to throw Hylton off the primary ballot last spring on a technicality which developed through a clerical error at the post office. This is democracy?

Thursday the 28th — Consolidation Coal Co. lays off 140 miners, approximately two-thirds of the workforce at the Jenkinjones Mine in McDowell County.

September

Monday the 1st — Officials of the Top Hill Coal Co. are literally seeing how the other half lives. There unemployed miners from southern West Virginia started Top Hill last spring, leasing a deep mine and buying used equipment from closed down operations. The company founders are working in the mine alongside their employed workforce, which totals 13. They also receive four or five applications per day from other out-of-work miners. "A lot of them are good friends of ours," says one co-founder, "but you can only hire so many." Describing the situation for would-be coal entrepreneurs, the same man said, "It's rough," a sentiment which would doubtless be echoed by many who have been in, or out, of business much longer.

Tuesday the 2nd — More (Moore?) good news on the economic front. Governor Arch Moore has announced the expansion of two subsidiaries of Baker International Corp. which will open 338 new jobs within the state. Baker subsidiary EIMCO will more than double its workforce in Fairmont, from 173 to 367. Baker Mines Services in Bluefield will expand its employment from 205 to 349. The increased investment by Baker was generated as a result of favorable interest loans from the State Board of Investments. As an economic developer Governor Moore is either very lucky or very competent. Either way, he is very effective.

Wednesday the 3rd — Beckley Coal Mining Co., co-owned by two independent parent firms, is forced to cut production and lay off 200 workers, due to bankruptcy proceedings involving one of the parents.

Thursday the 4th — The protectors of the bugs and bunnies have come out of hibernation, this time demanding that the federal EPA sieze control of West Virginia's coal mine permit program. This is simply the latest in a series of legal maneuverings all aimed at rendering West Virginia Commissioner of Energy Ken Faerber powerless to fulfill his duties. In the turbulent 60's when malcontents expressed their misgivings with protest marches and building burnings, some well meaning but misguided souls urged them and convinced them to work "within the system." It is now apparent that it would be cheaper to let them burn an occasional building. Too many of them went to law school, and the cost of answering their countless and endless legal summons must be astronomical, if indeed it can be calculated at all.

Friday the 5th — The dispute between A.T. Massey Coal Co. and the United Mine Workers does not appear

to be any closer to resolution than it was a year ago. Lately the two sides cannot even agree on who has won a point whenever the latest judicial ruling is handed down. For those who are tired of hearing about it, and have no further sympathy for either side, here's a difference to consider between Massey's president and the UMW president. Morgan Massey has continued to make decisions based on what he perceives will best serve his company. Result, 14 of the 19 subsidiaries originally involved have been sold or closed. Richard Trumka has continued to make decisions based on what he perceives will best serve the current administration of his union. Result, 600 of his constituents are jobless. For Massey, the stakes in this courtroom/media poker game dwindle with each mine closing or selloff. For Trumka, the stakes continue to rise, his personal prestige increasingly at risk. Play this drama out to its logical conclusion, and what do you have? No Massie subsidiaries left for the union to bargain with, and more out-of-work miners. Massie will be left with its clean, efficient, safe, profitable union free operations, and Trumka can boast that he wasn't forced into negotiating with all those coal companies. If this is the proper role of a union administration, then thousands of miners have been misled for many decades.

Sunday the 7th — West Virginia Energy Commissioner Ken Faerber calls for a rewrite of the State's mine laws and regulations. Speaking to the Subcommittee on Coal Mining of the State Legislature, Faerber described the state and the coal industry as being "at a crossroads," from which a revision of existing regulation could position the industry for a more competitive future. As an example of streamlining, he cited DoE's record of cutting permit application turnaround time from an average of 220 days down to 70.

Wednesday the 10th — On a

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similar note, Steve Griles, U.S. Interior Department's assistant secretary for Lands and Minerals, says the time has come for a review of certain aspects of the nine year old federal surface mining law, particularly as regards valley fill criteria and reining standards. Better late than never.

Monday the 15th — A U.S. District Judge has ordered the Office of Surface Mining to pay over \$4,000 in legal fees to a West Virginia "citizens" group for illegally delaying the release of a government report under the Freedom of Information Act. A government lawyer screwed up and a private lawyer took advantage of it. Lawyers on both sides get their money in any case, and the ruling sticks taxpayers with the bill. And they say there is no justice.

Thursday the 18th — There's a lot of good news in a ruling handed down by Court of Appeals Judge Antonin Scalia. 1) the order terminated a suit brought by northeastern states against West Virginia and other coal producers which would have required EPA to mandate sulphur dioxide emissions in the coal states. 2) In writing his opinion, Judge Scalia declared the facts presented to be "within the agency's discretion and not subject to judicial compulsion." "Not subject to judicial compulsion" is a concept almost unheard of in West Virginia. 3) Judge Scalia is now Justice Scalia, the newest member of the United States Supreme Court.

Friday the 19th — Genoa Coal Co. announces plans to reopen the Keystone No. 2 Mine in McDowell County, returning some 130 miners to work within 30 days.

Saturday the 20th — Now acid rain has fingerprints, according to oceanographers at the University of Rhode Island. These guys say mid-western pollution has its own unique

characteristics which can be used to pinpoint the cause of so called acid rain in the northeast. EPA bought it — they gave URI \$192,000 for continued research.

October

Friday the 3rd — A strange headline appears in newspapers, "Interior Wants to Help Coal Industry." Actually, it may be true. The "help" would come in the form of facilitating the reduction of royalties on federal coal lands from the 12.5% stipulated by law to something closer to the 5 or 6% normal royalty charge. Such a change would relate much more to western coal fields, where the fed owns most of its coal, but even in the east, it is a refreshing concept to contemplate.

Monday the 6th — With the coming of the general election, the legislative session can't be far behind. Among many other things, this means a revival of last season's controversy concerning overweight coal trucks. Highway Commissioner Bill Ritchie, certainly the West Virginian with the best combined knowledge of the coal and highway businesses, concedes that 100% enforcement of the State's weight law would be disastrous for the coal industry. Should it be done? For you law-and-order types who answer without hesitation, consider this. What if lights flashed in your mirror every time you exceed the 55 MPH speed limit by so much as 1 mph? Remember, the law deprives you of your right to drive after so many speeding violations? Few dispute the fact that we have been handed a weight restriction that makes coal hauling by truck economically infeasible. A thoughtful legislature will construct a sensible solution. The fault is with the law, not with the "lawbreaker."

Thursday the 9th — Another big business has announced plans to expand operations into West Virginia. The

Environmental Defense Fund, a Washington based, 50,000 member, 19-year-old organization with a multi-million dollar budget, is flowing across the border from Virginia, where it first established a statewide office. A spokesman for the group said it has no "set agenda" in West Virginia, but plans to hire a lawyer anyway. That's hire, not rent. Despite this ominous beginning, the spokesman touts EDF as a problem solver. "We don't complain about a problem," he maintained, "unless we have a solution." Now, there's a quote worth filing away for future reference.

Thursday the 23rd — Once again lost in the controversy surrounding a coal mining death by roof fall is this simple fact. Coal mine safety is in the best economic interest of any coal operator. Stuck in the organizing rhetoric of a half century ago, UMW spokesmen and shrill media voices continue to attribute each and every fatality to a callous industry priority system which values profits above human life. The Nicholas County mine where this miner died is now closed — permanently. Where's the profit in that? Considering all the implications of inspections, fines, disability and death benefits, lost time and outright closure, it is simply not logical to argue that a coal operator benefits economically from unsafe working conditions. The days when disabled or fatally injured miners are cast aside and forgotten, and replaced by an endless supply of the economically helpless, have long since faded into history. Coal operations are arguably the most regulated business enterprises in American industry. There is no lack of law and regulation to protect the miner. There is no lack of recourse for a miner who might be ordered to work in unsafe conditions.

Friday the 24th — A task force composed of Common Cause, the

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West Virginia Chamber of Commerce, the West Virginia Citizens Action Group, and the League of Women voters is concerned with the dramatically increased cost of running for public office in West Virginia, particularly State Senate and statewide offices. One task force spokesman has expressed the concern that unchecked campaign spending will make public office the private domain of the wealthy. True enough, but, at the other end of the spending spectrum, there is the danger of making public office the private domain of the incumbent. It is sad but true that an incumbent running for reelection nearly always enjoys an enormous advantage due to the name recognition factor. This forces a relatively unknown challenger to spend disproportionate sums to simply get his or her name before the public. This is the same public which continually gripes about the proliferation of political advertising prior to an election. And this is the same public which continues to record the lowest voter turnout in the free world. All of these problems would go away if the American voter would devote a little time and effort to casting an intelligent vote based on the issues and the candidates positions. But that won't happen at any time soon, and all the task forces we can muster won't help at all.

Saturday the 25th — There are 640 acres in a square mile. The area West Virginia is 24,181 square miles. That's 15 million, 475 thousand, 840 acres. The U.S. Department of Justice has reached a settlement with Otter Creek Coal Co. by which the federal government will pay \$8 million for the company's mineral rights and certain other lands in Tucker and Randolph Counties. The reason for this is not the U.S. government's desire to get into the mining business, but rather, to keep these particular 20,000 acres of West Virginia out of the mining business. The Otter Creek area, now part of the

Monongahela National Forest, was designated a wilderness area in 1975. In a state that is 3/4 forested, the federal government has spent \$8 million to prevent a temporary land use, on land which could be returned to forest in a generation. Certainly, Otter Creek Coal Co. deserves to be compensated for the loss of its valid mining rights. No one can blame the company for accepting the money. It's a lot easier than undergoing the rigors of years of mining, and probably a lot more profitable. But consider the federal government's position. Can this be considered a wise use of our tax dollars?

Friday the 31st — It's a headline worthy of some newspaper's April Fool's edition. "UMW pension fund owns Shell stock." What? Are the Dallas Cowboys part owners of the Los Angeles Raiders? Does Lee Iacocca still hold stock in General Motors? Is President Reagan a closet Democrat? With a straight editorial face, the *Charleston Gazette* reveals that it has obtained records which show that the UMW 1974 Pension Fund owns 32,400 shares of stock in Shell Transport & Trading Ltd., a parent company of energy giant Royal Dutch/Shell. The Union has proclaimed its opposition to Shell long and loudly, more than partly because of its ownership of A.T. Massey Coal Co., The UMW sees Shell's South African investments, with its low paid miners, and Massey's persistent ability to run clean, safe, modern, and profitable coal mines without the Union, as part of the same dastardly plot to undo Appalachia. Massey disavows any connection with South African racial policies or pay scales. "No matter," says the union, "you are owned by Shell, and you are therefore equally guilty." So, what was the immediate reaction from the Union upon learning that the world has learned of its Shell holdings. "The pension fund is totally independent." Honest, that's what he said. After pressuring every institution in the

country to join its boycott, the UMW neglects to peek inside its own stock portfolio, and then says, "That doesn't count, that's independent." There is little doubt that the independent pension fund will sell off its Shell stock, now that the world knows about it. Perhaps they can use part of the proceeds to buy back some credibility for high Union officials.

Tuesday the 4th — The *Charleston Gazette* continues in a state of editorial shock over the revelation that an overnight stay at the Greenbrier Hotel is expensive. Subsequent information that a billing error was involved does not lessen the *Gazette's* endless outrage. The *Gazette* is similarly appalled that the Department of Energy covered the bill for several coal operators who attended the same meeting. For all its investigative reporting and editorial posturing, the *Gazette* has overlooked one very salient point. The "taxpayer's money", with which DoE is accused of being so frivolous, comes from the federal government. The federal government gets it from coal operators, in the form of a direct tax on every ton of coal produced. The same is true of the funding for the current renovation of DoE's Charleston headquarters. This is not money which comes from the taxpayer, nor is it money which can be utilized by any other governmental agency, for whatever purpose.

Wednesday the 5th — U.S. Mining Company drops the other shoe in McDowell County, with the announcement that it will permanently close its Alpheus operations, which involves five underground mines, a preparation plant, and some 1000 workers, most of them from Gary.

Thursday the 6th — The UMW's wrangle with the WV-Department of Energy is back in the WV Supreme Court, this time with Union lawyers seeking a contempt citation for DoE of-

ficials, in an attempt to speed implementation of the victory they won in July over full roof bolting in auger mines. As usual, the UMW brought busloads of the rank and file to crowd the courtroom, applaud its lawyers, and shout down those who presume to hold another position. It is nowhere written that the day is won in West Virginia's high court by the side with the greatest number of supporters in attendance, but considering the court's recent record, maybe that's the way it works after all.

Friday the 7th — A breath of fresh air for the mining industry and its safety directors and committeemen. Ted Tue of Amherst Coal Co. receives well deserved recognition for his clear thinking and prompt action, which saved several lives when lightning prematurely detonated an explosives charge last August. Alert to the danger of an approaching storm, the blasting foreman ordered his crew away from the area just minutes ahead of the blast. Two weeks later, the sequence repeated itself, this time with a few hours to spare. In a letter of recommendation, Assistant Labor Secretary David Zegeer called Tue's performance "a standard that the rest of the mining industry should proudly follow."

Friday the 14th — Word comes from the West Virginia Housing Development Fund that a project is well underway to relocate homes and small businesses in the Tug River Valley to sites above the 500 year flood plain. Good for them and the best of luck to all concerned. Meanwhile, whatever became of the dire predictions of frequent flooding which opponents of the surface mining industry foresaw in 1977. That was the year of a disastrous flood in the Tug Valley, and though the coal industry in southern West Virginia has undergone hard times, there have been no major alterations in surface mining practices in the nine floodless years since.

Tuesday the 18th — Labor unions win a court battle today when a federal judge rules that families cannot be denied food stamps solely because one family member is on strike. Of greater interest perhaps was the precise wording of the victory statement of UMW President Richard Trumka: "We need to actively challenge all laws that are unfair to working people and that discriminates against union members." Fair enough. By all means let's not have any laws that discriminate against union members. It is an American's right to join a labor union. But how about the first half of Trumka's statement? "... challenge ALL laws that are UNFAIR to working people." Isn't a law that says you must join a labor union unfair, even if a majority of your co-workers want you to? Isn't that just as unfair as a law which says you can't join a labor union, if your co-workers DON'T want you to? Won't you join a growing number of West Virginia legislators, President Trumka, in bringing down this law which is unfair to working people?

Wednesday the 19th — Equally instructive was the phraseology of the West Virginia Supreme Court in handing down its contempt order to WV-DoE Commissioner Ken Faerber, as per the request of the United Mine Workers. "While this court always requires that its orders be promptly obeyed," wrote Justice William Brotherton in the unanimous opinion, "this is even more true when the issue concerns the health or safety of the citizens of West Virginia." Well and good for the safety of West Virginia's citizens. But how did we get into the position of having to promptly obey the every utterance of these five black robed gentlemen, and their counterparts on other benches? Once upon a time, wasn't their constitutionally appointed job to interpret the law? When did we give them permission to start writing it? How can we get permission back from them?

Tuesday the 25th — Bad news. The coal boom has been delayed again. Six, 12, and 18 month projections for the coal market are invariably gloomy, but give a prognosticator a decade or so to work with, and things look considerably rosier. The mid-80's coal boom, which was predicted in the late 70's never materialized. We were supposed to have one, well maybe not a boom, but certainly better times, in the early to mid 1990's. Now comes word from a West Virginia coal consultant that the boom has been postponed to the year 2000. Must be the weather.

Thursday the 27th — Ralph Bloom of Holsopple, PA, after 37 years of dodging governmental bullets, has his hands in the air and the mine door closed at this one man coal operation. Water pollution is what's doing Bloom in. He won't submit to State regulation, says the polluted water flowing out of his mine flows in that way, and he just can't see laying out \$50,000 to get permission from the Commonwealth of Pennsylvania to continue mining coal. This is not Bloom's first go round with regulators. In the 70's he tangled with federal safety people. "Twice a month," he says, "I was to search myself for cigarettes and matches before I entered the mine. And I had to have two way communications in and out of the mine, but I'd have to run 3500 feet out of the mine to talk to myself." Despairing of such nonsense, Bloom went to court contending that he did not engage in interstate commerce, and so could not be regulated by the federal government. The judge agreed, but regulators pursued him so vigorously that he was not allowed to sell house coal to anyone who received state assistance, money which came ultimately from the federal government. Bloom doesn't intend being regulated in this case either. Back in court, he says, "If I lose, I'll close it down."

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