

Undermined Promise:

Reclamation and Enforcement of the Surface Mining Control and Reclamation Act

A report of the Natural Resources Defense Council
and the Western Organization of Resource Councils
on the 30th Anniversary of the Act
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Findings

- Coal mining causes extraordinary environmental devastation that varies according to the method of extraction and site-specific factors including topography, species richness and diversity, and underlying geology. Strip mining and mountaintop removal are especially destructive because they completely obliterate the areas in which they occur.
- In recognition of these and other impacts of coal mining, Congress passed the Surface Mining Control and Reclamation Act (SMCRA) in 1977. Though SMCRA established critical standards for protecting society and the natural environment, coal producers have exploited loopholes in the legislation, while the states and the Office of Surface Mining (OSM) have failed to properly enforce key provisions of the statute.
- Due to the declining number of departmental employees, reduced funding, and a paradoxical culture that promotes both policing and protecting the mining industry, the inspection and enforcement capabilities of OSM and the various state agencies have deteriorated over the past 10 years. According to OSM's own reporting, the minimum inspection standards established by SMCRA are not being met.
- OSM reporting fails to include critically important data in its published reports.
- State regulatory agencies in five Western states failed to conduct the number of complete or partial mine inspections, or both, required each year by SMCRA 80 percent of the time. It is virtually certain that violations were missed as the result of these missed inspections.
- Regulatory staff numbers have declined at the same time that regulatory demands have increased. Between 1996 and 2005, federal grants to the state regulatory programs have fallen by just over 7 percent (adjusted for inflation).
- Wyoming, with its 350,000 permitted acres of coal mining, had the highest number of missed inspections.
- North Dakota's state regulators issued only nine notices of violation in the last 10 years, the fewest of the five states.
- The rate of reclamation occurring today in the West is shockingly slow. The reclamation that does occur is frequently inadequate and fails to mitigate environmental damage.
- During the 10-year period covered by this report, 22,905.54 acres were released from all 3 phases of bonding, achieving successful reclamation as set out in SMCRA. That is just under 6% as much land as was disturbed by mining during the same period, roughly 400,000 acres.

- Successful reclamation of Western range and farmland requires both re-establishing vegetation on the surface and replacement and restoration of pre-mining water resources. Unfortunately, western ranchers working with OSM and state regulatory agencies report a policy of benign neglect towards enforcing the water protection, replacement and restoration requirements of SMCRA in Western mines. OSM tends to focus almost exclusively on revegetation.

Recommendations

- **Improve the bond release process.** OSM and/or state agencies should move to prevent mining companies from indefinitely delaying application for release of their reclamation bonds. Deadlines, especially if they were mandatory or waivable only under very limited circumstances, could provide a meaningful incentive to mining companies and help ensure that bond release is not delayed indefinitely. OSM could also raise bond amounts to a level that would be sufficient to motivate mining companies to reclaim mined land, unlike current levels.
- **Correct data problems.** The agency should, with public input, draw up a list of the types of information essential to evaluating SMCRA's implementation and commit to publishing all such information. It should put an end to the inconsistent reporting and publishing cycles that now exist, in order to improve the accuracy and utility of the information that is published.
- **Provide more funds to state agencies and OSM.** Unless federal funding is increased, the states will be forced to lay off employees or reduce their work hours. The quality of the people they will be able to attract to open positions will also likely be affected: If the states cannot offer competitive salaries or a reasonable standard of job security, top-tier talent will not join their regulatory programs.
- **Improve reclamation success.** OSM must set clear standards for reclamation benchmarks and penalize mine operators who fail to reclaim mined land, in order to fulfill Congress's reclamation goal embodied in SMCRA.
- **Adopt a regulatory definition of "contemporaneous" reclamation.** The definition is needed to provide a standard for evaluating and approving mine permit applications, for evaluating the effectiveness of the Act and its enforcement, and to fulfill the premier goal of SMCRA – prompt and effective reclamation of mined land.
- **Strengthen terms of mine permits.** Require that permit terms be written so as to ensure that companies can be held accountable for what they do or do not do with regard to reclamation.
- **OSM should stop issuing permits for new mines or mine expansions in areas where strip-mined land remains unreclaimed after more than 10 years.**
- **Require reclamation of water resources.** OSM should analyze mining practices, state and federal policies, and permitting and enforcement activities and identify changes needed to meet the Act's requirement to replace water supplies and restore the hydrologic balance at Western mines.