

Submitter's Name/Association: Western Organization of Resource Councils\_  
Contact: \_Sara Kendall  
Email: \_dc@worc.org  
Phone: \_202-547-7040

### ***Executive Summary***

Many of WORC's members live and work in communities impacted by coal mining, and most are taxpayers in coal-producing states. We have worked for over 30 years to ensure that the benefits of natural resource extraction are shared with local people, and that federal coal management takes into account the needs of local people and communities to plan with certainty for their futures.

The U.S. coal mining industry has evolved dramatically in the years since surface mining of coal began in the West. WORC credits the 1977 passage of the federal Surface Mining Control and Reclamation Act (SMCRA) and numerous state laws with many of the positive changes that have taken place in the industry. SMCRA's requirements for surface owner consent before leasing and mandatory replacement of damaged water resources are just two examples of policies that have provided a framework for responsible coal mining and defused some of the controversies surrounding coal mining.

That said, WORC has a number of significant concerns with coal mining practices in the West, with policy proposals in the Congress, and with air pollution from coal mining and coal-fired power plants. WORC strongly believes that the federal government's role in oversight of coal mining and regulation of pollutants is critical, and should be expanded.

Our comments are focused on three areas:

- Air Quality – Prevention of Significant Deterioration
- Coal Leasing Amendments Proposed in the 108<sup>th</sup> Congress
- Coal Mine Reclamation and Bond Release

**Environmental:** What are the environmental and regulatory challenges associated with the future use of coal for power generation?

### *Air Quality – Prevention of Significant Deterioration*

Many coal-fired power plants operate without modern pollution controls. Air pollution from these plants, combined with pollution from over 100 new plants proposed nationwide as well as from existing coal mines and planned increases in coal mining, raises grave concerns about the impacts of coal power generation on air quality and public health. EPA studies show that air pollution from coal-fired power plants triggers asthma attacks, bronchitis, and heart disease, and contributes to about 30,000 premature deaths a year.

One mechanism for improving air quality is enforcement of federal standards for Prevention of Significant Deterioration (PSD). Passed in the 1977 Clean Air Act Amendments, PSD was meant to prevent industry from increasing pollution in areas that are in compliance with National Ambient Air Quality Standards by setting incremental caps on how much pollution concentrations can increase. In Class I areas such as national parks and wilderness areas, these incremental caps are more restrictive than in Class II areas.

North Dakota is the only state to have done comprehensive PSD modeling. The North Dakota modeling showed numerous sulfur dioxide violations in the state's Class I areas such as Theodore Roosevelt National Park. Results in North Dakota suggest that PSD violations in Class I areas are probably common in many areas, especially in the West.

WORC urges Congress to encourage the Environmental Policy Agency to use PSD modeling in the permitting of new power plants, and use PSD violations as a basis to call for State Implementation Plan revisions. This approach would undoubtedly result in the disclosure of many violations, forcing clean up of pollution from older coal-fired power plants "grandfathered" under the Clean Air Act and providing valuable information on the public health impacts of proposed new plants as permitting decisions are being made.

### *Coal Leasing Amendments*

Provisions in the energy bill from the last Congress would eliminate many of the requirements Congress placed on the federal coal leasing program to encourage a fair return to federal and state taxpayers for the use of public minerals, and promote the diligent development of those minerals. WORC is concerned that the broad changes proposed would result in a return to policies that allowed coal companies to amass control of large amounts of public land and coal, and hold them for indefinite periods without mining.

Although there may be specific cases where the requirements of current law are impeding further development, we do not believe that the case has been made that the overall program is not functioning well and that broad changes are needed. We are not opposed to allowing narrow exemptions for individual companies in specific cases where

burdensome problems can be alleviated, but we are concerned that the proposed amendments would return us to a day of speculation with public resources.

We have three specific concerns:

First, although the Mineral Leasing Act's requirement that lessees produce commercial quantities of coal within ten years would not be changed, a series of provisions in H.R. 6 as passed by the House-Senate conference committee would remove other important protections that currently ensure that coal leases are developed in a timely way, and that the leasing program is not misused to speculate with the people's coal. When the investment required to hold a lease is reduced below the fair market value, and the requirements for timely production are relaxed, a lessee is more free to hold a lease during the period when it can be economically mined, then terminate the lease and walk away.

H.R. 6 would:

- Eliminate the requirements of a surety bond or other financial assurance to guarantee cash bonus payments,
- Give the Secretary of Interior broad discretion to allow operators to mine "logical mining units" for longer than 40 years,
- Allow companies to stop producing coal for 20 years instead of ten, and pay advance royalties instead of production royalties during this period,
- Give the Secretary the discretion to reduce, suspend or forgive advance royalties during such periods of non-production, and
- Eliminate the requirement that operating and reclamation plans be submitted within three years of lease issuance.

The provision that would allow the waiving of advance royalties is particularly disturbing. There is no protection against uneven application of royalty waivers. The only way this provision, when implemented, could be viewed as anything other than a special favor for specific companies is if it is applied across the board to all lessees. Neither of these options is a desirable alternative.

In addition, Congress had the foresight to allow bonus payments to be deferred over a five-year period. In return, the lessee must secure a surety bond or other financial assurance mechanism to protect the government's interests. Requiring such financial assurance is a well-established business practice and entirely appropriate in this case. Bonus payments are part of the cost of securing a federal leasehold, and should not be forgiven if a lessee changes its business plan or the market changes.

WORC's second area of concern is about the impact many of these amendments would have on the states. Since bonus payments and royalties are shared equally with the states in which the coal is located, state as well as federal revenues would be impacted if:

- Raising the 160-acre limit on lease modifications to 1,280 acres results in reduced bonus payments,
- Deferred bonus payments are not paid in full due to lack of financial assurance,
- Advance royalty waivers are granted, and/or

- We see a return to speculation that reduces the overall development of federal coal resources.

Finally, we are concerned that raising the limit on lease modifications from 160 acres to 1,280 acres is too extreme. A reasonable acreage limit provides an incentive for lessees to design lease tracts that are big enough, and allow lease configurations that split deposits that would be competitive as a whole into a series of noncompetitive parcels that can be added later without undergoing the competitive bid process. In addition, a reasonable acreage limit helps ensure that the lease modification process is used as it was intended, for adjustments to borders, and that the lease by application process is used when the lessee needs more coal. Although the version of H.R. 6 passed by the House-Senate conference committee included some protections that attempt to ensure that lease modifications not be used to add acreage where there is a competitive interest, we remain concerned that an eight-fold increase in the acreage that can be added by lease modification creates potential for abuse that will result in the public's coal not being properly valued.

### ***Coal Mine Reclamation and Bond Release***

When surface mining of coal began in the West, mining operators did not have to reclaim the land, but simply mined the coal and moved their equipment to another location leaving the mined land unusable for agriculture. One of the central purposes of SMCRA is to “assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations.” Unfortunately, there are no clear standards for how quickly land must be reclaimed, and there are no requirements that coal operators ever apply for bond release.

WORC is concerned about the timely release of bonds for reclaimed lands. In placing permitted land under bond, mining operators enter into a relationship of trust with the public. Bond release hearings give the mines an opportunity to demonstrate to the public the success of their reclamation efforts. Mining operators incur their largest reclamation expenses during its early stages, when they return the land to its original contours, re-spread topsoil and re-establish vegetation. However, the most vital proofs of the success of reclamation are the productivity of agricultural lands and the replacement of water supplies affected by mining. Only at final bond release are the mining operators required to demonstrate publicly that they have met these standards.

Reclaiming land is a lengthy process. In those regions of the country where the annual average precipitation is twenty-six inches or less (including most parts of the West), federal law requires that mine operator's responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, or other related work. WORC's concern is that the number of acres still under bond, which have been through the full ten-year period, is growing steadily each year. Especially on active mines, final bond release applications simply have not been forthcoming.

### **Acreage Permitted, Disturbed and In Final Bond Release**

State, federal and Indian program permitting statistics.

Source: [www.osmre.gov/progpermit04.htm](http://www.osmre.gov/progpermit04.htm)

	<b>Total Acreage Permitted</b>	<b>Acreage Disturbed</b>	<b>Acreage of Phase III Bond Release</b>
Colorado	162,900	21,478	1,868
Montana	62,687	32,158	18
New Mexico	79,325	24,620	793
North Dakota	93,218	53,107	2,400
Wyoming	345,570	110,578	0
5-State Region	743,700	241,941	5,079
Nationwide	4,282,456	NA	50,084

Clarification from the Office of Surface Mining (OSM) on what is considered “contemporaneous reclamation” is long overdue. WORC urges Congress to encourage OSM to finalize rules in this area as soon as possible. In addition, we urge Congress to correct what we believe is an oversight by amending SMCRA to require that coal operators apply for bond release within a specific timeframe after reclamation is completed.