

B

July 22, 2007
Sunday Gazette-Mail
Charleston, West Virginia

Valley & State

30 years later, mine law's success debated

By Ken Ward Jr.
kward@wvgazette.com

On Aug. 3, 1977, President Carter sat at a small wooden desk in the White House rose garden and signed a bill called H.R. 2. After years of debate, and two vetoes by President Ford, federal legislation to regulate strip mining was law.

Strict standards would govern everything from blasting to water discharges. Stringent guidelines required mined lands to be reclaimed.

Coal companies would have to start obtaining permits before they mine. The public would get a chance to comment before permits were approved. Citizens could sue mine operators or regulators for ignoring environmental standards.

As the federal Surface Mining Control and Reclamation Act turns 30 next week, major questions remain about its effectiveness.

Across the Appalachian coalfields, citizens still complain about



LAWRENCE PIERCE/Sunday Gazette-Mail

At Kayford Mountain outside Charleston, an active strip mine can be seen through the haze. The spot has become popular for photographing and filming mountaintop removal because it can be easily reached from a public road.

strip mining. They say blasting rattles their homes and cracks foundations, mud and chemicals are dumped into streams, scalped forests and hills contribute to flooding and valley-fill waste piles

bury hundreds of miles of streams.

Even some longtime coal industry supporters and regulators are starting to wonder if the law, known as SMCRA, has not lived

up to its promise.

Ben Greene ran West Virginia's strip mine regulatory program in the late 1960s and early 1970s.

Please See LAW, Page 5B

LAW

Continued From Page 1B

Then, he spent 25 years lobbying for the state's strip mine operators. He said it's long past time for a comprehensive review of what parts of the federal law have worked, and what parts have failed.

"The uniform national standards that were set by SMCRA probably should have been reviewed 10 or 15 years ago, to be sure that the result intended was the result that was out there," Greene said.

Greene sees some parts of the law that just aren't working, or aren't being enforced. For example, he said most mountaintop removal jobs are exempted from the requirement that mine operators reclaim the land as they go. If that language were enforced, he said, it would be better for the environment and for the industry's public image.

"Most of the criticism I see leveled at mountaintop removal has to do with how big it is and how vast it is," Greene said. "There are just some operations that need to be more current with their reclamation."

When Greene joined the industry, David C. Callaghan took over the state's mining program for then-Gov. Jay Rockefeller.

Before and during his 1972 gubernatorial run, Rockefeller had favored a ban on strip mining. He lost. Rockefeller dropped his support for a ban, and then won the governor's race four years later.

Callaghan ran the state's program as it tried to ramp up to meet the new federal law in the late 1970s and early 1980s. Later, Callaghan returned to the post in 1991 under then-Gov. Gaston Caperton. During both stints in state government, Callaghan was constantly criticized by environmental groups as being too easy on the coal industry.

Today though, Callaghan isn't sure that all of the coal production is a good thing for West Virginia.

"I just look at Southern West Virginia in particular and you see just absolute environmental devastation and poverty and that's after 100 years of mining the very best quality coal on the North American continent, and the local communities just don't seem to have benefited from it," Callaghan said.

SMCRA itself was a compromise. It was aimed at least in



Photo courtesy of Ohio Valley Environmental Coalition and Southwings

An aerial view shows the huge slurry impoundment and mountaintop removal operation near Marsh Fork Elementary School at Sundial, Raleigh County. The school is not shown in this photo.

part, some critics say, at fending off a growing public push to ban strip mining altogether.

Ongoing battle

Chad Montrie, a Kentucky native who now teaches history at the University of Massachusetts, Lowell, wrote a 2003 book about the history of citizen opposition to strip mining.

Montrie says the ongoing battle over mountaintop removal shows SMCRA hasn't worked.

"It just doesn't protect people," Montrie said. "It doesn't protect the environment. And it doesn't protect anybody's job. The jobs are continuing to decline, and we're hitting record coal production."

Former Rep. Ken Hechler, D-W.Va., was among those who fought first to ban strip mining altogether, and then to try to include a ban on mountaintop removal in whatever federal regulatory bill was passed.

"It was a well-meaning law, but like so many pieces of legislation that pass, it was essentially a compromise law that included some loopholes that have been taken advantage of," Hechler said.

Under the law, Congress gave states the primary responsibility for

regulating strip mining within their borders. Lawmakers created a new agency within the Interior Department, the federal Office of Surface Mining Reclamation and Enforcement, to make sure states did a good job. State primacy, with federal oversight, was another compromise. It differed greatly from what Congress did when it passed the 1969 and 1977 mine safety laws. Those laws give the federal government its own authority to enforce safety standards, whether states do so or not.

When he signed the law, Carter worried it didn't go far enough.

"I'm concerned with some of the features that had to be watered down during this session to get it passed, but I think that this provides us a basis on which we can make improvements on the bill in years to come," Carter said.

But Carter lost the 1980 election to Ronald Reagan. Reagan immediately began to dismantle federal regulatory agencies, especially those aimed at environmental protection.

Regulatory relief

At OSM, enforcement went down. Interior Secretary James Watt told employees to look for

other work if they couldn't go along with the new policy of "regulatory relief."

"A complete turnover in OSM leadership was accomplished by drastic budget and personnel cuts aimed at the heart of the agency: the inspection and enforcement operations," said a 20th anniversary report on SMCRA, published in 1997 by the group Public Employees for Environmental Responsibility.

OSM must have retained some teeth. Callaghan recalls federal officials breathing down his neck when he rejoined the West Virginia agency in 1991. West Virginia was forced to hire more inspectors, and strip the old Department of Energy of its dual role of both promoting and regulating strip mining, or face an OSM takeover.

Since George W. Bush became president, critics say OSM has become even less vigilant.

During a major review of mountaintop removal, for example, Deputy Interior Secretary Steve Griles — a former mining lobbyist — ordered the study reworked to focus less on ways to more strictly regulate mining and more on speeding up permit ap-



Photo from U.S. Office of Surface Mining

On Aug. 3, 1977, President Carter signed the federal Surface Mining Control and Reclamation Act into law during a ceremony in the White House rose garden.

provals.

"SMCRA is influenced mightily by national elections — how tough it is and how thorough it is," Callaghan said.

"It's a set of checks and balances," Callaghan said of state regulation with federal oversight. "I think it's a positive thing.

"But I think [OSM] has just disappeared and the state is just doing whatever the industry wants it to do," Callaghan said.

OSM was little better during the Clinton administration, according to the PEER 20th anniversary report.

Clinton made former mining industry lawyer Robert Uram his first OSM director. When Uram left, he named Kathy Karpan to the post. Karpan left amid a scandal when she secretly applied for a job with the National Mining Association.

Also, Clinton greatly slashed OSM's budget. The limited inspection and enforcement staff was cut by one-third. Six OSM field offices were eliminated.

During most of the Clinton years, Republicans controlled Congress. GOP leaders did little, if anything, to investigate how well OSM was doing its job. Few questions were asked. No oversight hearings were held.

No one paid much attention to OSM. Even the furor over mountaintop removal mining that started in the late 1990s has focused mostly on how two other agencies — the U.S. Environmental Protection Agency and the federal Army Corps of Engineers — enforce the Clean Water Act.

Last year, SMCRA supporters did win one major victory. Congress extended for 14 years the coal industry tax that funds the Abandoned Mine Land pro-

gram to clean up old mine sites.

The move funnels hundreds of millions of dollars into coalfield cleanups. The legislation also fixed some, but not all, of the loopholes that allowed states to spend AML money on projects other than mine cleanups.

'Jarring consequences'

Environmental lawyer Tom FitzGerald has spent more than 25 years representing coalfield citizens in their fight with the coal industry.

In a speech last year, FitzGerald said SMCRA has eliminated "some of the more blatant abuses associated with surface coal mining." But he said the fight over mountaintop removal is another reminder of the "jarring consequences" that mining has on the environment.

The return to Democratic control in Congress this year "offers a perfect opportunity for a rededication to the principles of the 1977 mining law to 'protect society and the environment from the adverse effects of surface coal mining operations,'" FitzGerald said.

Rep. Nick J. Rahall, D-W.Va., has scheduled a Wednesday committee hearing to begin that process. In 1977, Rahall was a freshman congressman who served on the conference committee which wrote the final version of SMCRA. Today, he is chairman of the House Natural Resources Committee, which oversees OSM.

"It will be a fair hearing, with witnesses representing coalfield citizens, industry, labor and the states across the nation along with the Office of Surface Mining Reclamation and Enforcement," Rahall said.

To contact staff writer Ken Ward Jr., use e-mail or call 348-1702.