June 1979

The Enactment of the Surface Mining Control and Reclamation Act of 1977 in Retrospect

Morris K. Udall
United States House of Representatives

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Environmental Law Commons, and the Oil, Gas, and Mineral Law Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol81/iss4/2

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
THE ENACTMENT OF THE SURFACE MINING
CONTROL AND RECLAMATION ACT OF 1977 IN
RETROSPECT

THE HONORABLE MORRIS K. UDALL*

First, the fundamental question: Do we need a federal surface
mining reclamation law? I think the answer is an unqualified yes.
Throughout the Committee's hearings, legislative mark-ups and
field inspections, a repeated and clear phenomenon was perceived
in the pattern of state regulatory programs. The findings set forth
in Title I of the Act recognize that:

Surface mining and reclamation standards are essential in
order to insure that competition in interstate commerce among
sellers of coal produced in different States will not be used to
undermine the ability of the several States to improve and
maintain adequate standards on coal mining operations within
their borders.¹

In other words, we found that the legitimate and irresistible urge
on the part of a state to protect its coal industry from competitive
disadvantage, vis-a-vis coal producers in other states, usually over-
whelmed most² state legislatures' desire to impose sound reclama-
tion laws. Well motivated people on the state level did what they
could, but without federal standards political reality militates in
favor of loose controls.³

¹ SMCRA § 101(g), 30 U.S.C.A. § 1201(g) (West Supp. 1978).
² In states with strong reclamation laws prior to the passage of the Act, the
benefits of federal standards were recognized and supported. The Surface Mining
Control and Reclamation Act of 1977: Hearings on H.R. 2 Before the House Com-
mittee on Interior and Insular Affairs, 95th Cong., 1st Sess. 42-44 (Part II, 1977)
(testimony of Governor Milton Shapp, Commonwealth of Pennsylvania, Feb. 8,
1977). Id. at 164 (testimony of Ben E. Lusk, President, West Virginia Surface
Mining and Reclamation Ass'n).
CODE CONG. & AD. NEWS 596-98.
There are of course other reasons why the Congress should impose national standards. The fact that pollution, particularly siltation, acid and other toxic drainage, does not respect state boundaries; the decision that large western operations involving federal and non-federal lands should be subject to relatively uniform rules; and the not insignificant reality that major federal water projects are threatened by the effects of poor reclamation practices are among the reasons.

In short, surface coal mining (and the surface impacts of underground mining) is a national environmental problem in need of a national solution. The Surface Mining Control and Reclamation Act of 1977 was enacted to meet that need.

While the wisdom of putting a federal law on the books was obvious to me, to Representatives Patsy Mink and John Seiberling, Senators Lee Metcalf and Henry Jackson and to many other supporters, our judgment was questioned, to say the least, by some of our colleagues in the Congress. It took six years of tenacity and bitter debate to pass Public Law 95-87. The history of the Act would serve as a textbook for any national legislator desiring to thwart the clear will of the majority of the Congress. The full elaboration of that history is a subject beyond the purpose of these introductory comments. Let me say, however, that a legislative endeavor involving 183 days of hearings and legislative consideration, eighteen days of House action, three House-Senate Conferences and Reports, eleven Committee Reports, two Presidential vetoes, approximately fifty-two recorded votes in the House and Senate, and the machinations (and statesmen-like conduct) of three Presidents is an activity ripe for scholarly analysis, let alone the stuff for a pretty good novel.

---

4 Under section 505 of the Act, the states may impose more stringent standards than those mandated by the federal requirements. 30 U.S.C.A. § 1255 (West Supp. 1978).


6 That strong surface mining legislation enjoyed the broad support of both houses of the Congress is beyond dispute. In 1974, H.R. 11,500 passed in the House of Representatives by a vote of 291 to 81, and S. 425 passed in the Senate 82 to 8. 120 CONG. REC. H25,272, S33,333 (1974). In 1975, H.R. 25 passed in the House by a vote of 333 to 86, and S. 7 passed in the Senate 84 to 13. 121 CONG. REC. H1908, S37730 (1975). In 1977, the conference report on H.R. 2 and S. 7 was approved in the House by a vote of 325 to 68, and in the Senate 85 to 8. 123 CONG. REC. H7591, S12,444 (1977).
With the leadership of the House and Senate Committees committed to a national bill and the support of a Congress sensitive to environmental protection, we got down to work in 1972. We found the we faced some basic issues that were never resolved fully until the President approved the bill. From the outset of our deliberations, central questions and their nuances recurred: (1) What level of government, state or federal, should be entrusted with primary regulatory authority; (2) if the answer to the first question is the state (which it came to be), what is the appropriate role of the federal government to assure compliance with the Act; (3) what federal agency should administer the Act; (4) what is an appropriate definition of reclamation to assure attainment of environmental goals but allow the extraction of coal to continue and expand; (5) what land use values require mandatory preservation and what matters can be left to the discretion of the regulators; (6) how can citizens affected by strip mining protect their interest; and (7) how should the new standards and procedures be implemented to achieve maximum environmental protection with minimum disruption to the industry?

These and other important questions cannot be and were not addressed individually. The authors of the Act engaged in a balancing process, seeking acceptable and workable results. If we were to recognize the value of state regulatory primacy, then strong consideration must be given to mandatory features of the limited federal enforcement program\(^7\) as well as giving affected citizens an opportunity to assure that the law is carried out.\(^8\) Finally, tightly written primary performance standards and variance standards\(^9\) concluded that process.

It would be one matter to phase in a federal regulatory scheme preempting existing state laws. It is another problem to achieve compliance by continuing state authority while creating a federal presence. By opting for the latter choice we had to address the other questions of environmental protection, citizen involvement and federal enforcement in unavoidably more complex circumstances. The Act's so-called interim and final program is the im-

\(^7\) SMCRA §§ 502(e), 504(b), 521, 30 U.S.C.A. §§ 1252(e), 1254(b), 1271 (West Supp. 1978).
\(^8\) Id. §§ 102(i), 513, 520, 521, 30 U.S.C.A. §§ 1202(i), 1263, 1270, 1271 (West Supp. 1978).
perfect—yet I believe workable—result of the Congressional bal-
ancing act.

Along with the issues to be addressed by a sound reclamation
law, there were other problems that, while significant, were inap-
propriate in my view to consider in a debate over coal mine recla-
mation. Despite my efforts, at times these extraneous issues
worked their way into (and out of) the language of the Act. For
example, I understand and share the concern of many who fear
that the expansion of western coal mining will significantly under-
cut the Appalachian coal industry in its traditional market. On the
other hand, many believe that the Nation's future economic needs
are best served by greatly expanding western coal development. I
remained convinced that various amendments offered to the per-
formance standards or procedural provisions of the legislation were
motivated by a desire to tilt the balance in one direction or the
other, east or west. This was unacceptable to me. On the floor of
the House, I could only offer to my colleagues a reclamation bill,
not legislation purporting to be grounded in environmental con-
cern, but drafted with regional bias in mind. I made every effort
to judge all amendments by the same test: Would adoption of the
proposal at hand achieve the bill's goal of imposing sound and
workable reclamation requirements? I think in large part I was
successful. The eastern operator who is struggling with approxi-
mate original contour on steep slopes and sedimentation control
may perceive a conspiracy to drive the coal industry westward. I
would ask him to speak with the western operator who must wres-
tle with a ten-year revegetation requirement in arid areas and
proscriptions on the mining of alluvial valley floors. Written
against the history of strip mining and environmental desecration,
the bill is tough, but it is tough on everybody. I believe that every-
body who is willing to live with the new rules can prosper.

Inasmuch as the Act imposes requirements that operators and
some states would prefer to avoid, testing the law's constitution-
ality is irresistible. While arguments can be mustered on theories
of due process, federal legislative jurisdiction and particularly the
Fifth Amendment, I believe the Act will survive the attack.

Out of necessity the Act sets minimum standards that opera-
tors must meet using current or improved technology to extract the

---

10 As I am offering only historical comment, not scholarly analysis, I am taking
the liberty of offering this thought without citations.
economic benefit of the coal resource. The minimum requirements are justified by society's interest in the preservation of its mountains as mountains, its streams as streams, not allowing these resources to be destroyed or diminished significantly by a one-shot entrepreneural adventure. I admit some discomfort undertaking to write such a law with the admonitions of *Pennsylvania Coal Co. v. Mahon*\(^{11}\) echoing in my ears. The balancing of private economic interests and the public good in this exercise is tricky and constitutional questions abound. I believe, however, that the courts will be as mindful as the Congress of the obligations of a civilized people to themselves, the environment and the future. I believe the Act will be upheld.

Finally, I want to add a word for those who view the Surface Mining Control and Reclamation Act as just another treatise written by those who care more about trees than people. Such critics do not understand the problem. I do not believe I will ever forget the people—the citizens of Appalachian coal fields, the farmers of the Midwest or the ranchers of the Northern plains. They understand the nation's need to mine and burn coal, but they are not so sure the nation understands what bad mining practices can do to their communities and way of life. For six long years these people expended their limited resources again and again to come to Washington to tell their story. At every opportunity during our field investigations they met our delegations to point to the creek that once ran clear, to the mountain where they used to hunt or to the road once safe for a school bus. These people made an impact on the federal law, and those of us who came to know them believe that their influence should continue. I am not certain the United States Code contains another law that includes such a full role for citizen involvement as Public Law 95-87. I have faith that a panoply of rights granted to citizens who may be affected by the strip mining of coal will not be abused for those rights were granted in recognition of the fair and significant contribution people can make to coal mine regulation. While the statute's language regarding citizen suits, permit hearings and enforcement is unpoetic, it is, perhaps, the best tribute I can offer to the citizen of the coal region, to what he has endured and to the contribution he is yet to make.

\(^{11}\) 260 U.S. 393 (1922).