The Politics of Federal-State Relations: The Case of Surface Mining Regulations

Uday Desai

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ABSTRACT

The Surface Mining Control and Reclamation Act (SMCRA) of 19771 created a framework for a national regulatory program to prevent significant environmental damage from surface coal mining. The significant regional variations in the impacts of surface mining made federal-state partnership necessary. The major political issue throughout these years has been the appropriate role of the federal and state governments in regulating surface coal mining. The conflicting interests and intense battles of the coal industry, states, environmentalists, and federal officials are discussed and presented. The paper argues that fundamental conflicts of interest, such as, in this case, the substantial adverse economic impact of the Act on the coal industry vs. the deeply held environmental ethics of environmentalists vs. the states' interest in autonomy, are not likely to be settled by a policy enactment. Conflicts in federal-state relations arise as the battle over more fundamental economic and ideological conflicts among surface mining interests is fought.

INTRODUCTION

In a wide ranging review of American federalism, David Walker suggests that historically, in America, “the basic question of what constituted correct federal-state relations under the constitution dominated political debate over a range of issues.”2 This range included such major issues as slavery, reconstruction, national regulation of business, and grants-in-aid conditions. He argues that “the proper relationship between the national and state governments remained a vital political agenda item clear through to the mid-sixties.”3 However, Walker and others have argued, and it is now widely conceded, that nationalizing (centralizing) forces, at least since the mid-sixties have now reduced states to a subordinate

*Dept. of Political Science, Southern Illinois University, Carbondale, IL 62901.
**I would like to thank Mr. Steve Pollock for his research assistance.
3. Id. at 13.
position. Whether or not this has been so in general, there are certainly still areas of governance in which the tug-of-war continues. This paper presents the case of the Surface Mining Control and Reclamation Act, which shows the continuing political and administrative salience of what Woodrow Wilson called that "cardinal question of our constitutional system," our federal-state relations.

Surface mining is destructive to the environment, causing erosion and landslides, contributing to flooding, polluting water with acidic and toxic runoff, destroying fish and wildlife habitat, and impairing natural beauty. However, there are significant regional variations in its environmental impacts, depending upon the terrain, climate, geology, and biological, and chemical conditions of the mined area.

Environmentalists fought long and hard for stricter regulation of the coal industry. They favored federal regulation with strict nationwide standards. The industry was opposed to any further regulation, particularly federal level regulation with nationwide uniform standards. The result, after years of acrimonious debate in and out of congress and after two vetoes by Presidente Ford, was the Surface Mining Control and Reclamation Act (SMCRA) which was signed into law by President Jimmy Carter in August 1977. It created a framework for a national regulatory program, requiring federal-state partnership, to prevent significant environmental damage from surface coal mining.

Implementation of the Act, like the legislative battles before its enactment, has been highly conflictual. The conflicting interests and intense battles of the coal industry, states, environmentalists, and federal officials are presented and discussed in this paper. The major political issue throughout both the legislative and implementation stages of SMCRA has been the appropriate role of the federal and state governments in regulating surface coal mining.

The paper first discusses the conflicts and controversies in Congress which surrounded the enactment of a federal surface mining law. It shows that the major source of conflict was the very idea of federal involvement in regulating surface mining. The paper then discusses the conflicts in the federal-state relations in the implementation of the Act, contrasting the Carter and Reagan administrations. Once again, it shows that the conflict during implementation was predicated on the appropriate role of federal and state governments in regulating surface coal mining.

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**TABLE 1**
Surface Mining Regulations Introduced during the 92nd Congress

<table>
<thead>
<tr>
<th>Degree of Regulation</th>
<th>Principal Provisions</th>
<th>Industry Position</th>
<th>Environmental Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type I* Least Rigorous</td>
<td>States to submit plans for approval by the Secretary of Interior within two years.</td>
<td>Support with reservations by NCA, AMC**</td>
<td>Non-support or opposition by most groups</td>
</tr>
<tr>
<td>Type II Modest Controls</td>
<td>Secretary of Interior to promulgate and enforce uniform national standards for reclamation</td>
<td>Opposition</td>
<td>Limited support by some groups, opposition by others</td>
</tr>
<tr>
<td>Type III Strict Controls</td>
<td>EPA to promulgate and enforce strict uniform national standards for reclamation</td>
<td>Strong opposition</td>
<td>Support by most environmental groups</td>
</tr>
<tr>
<td>Type IV Abolition</td>
<td>Strict regulation leading to gradual abolition</td>
<td>Adamant opposition</td>
<td>Support by most environmental groups, opposition by a few</td>
</tr>
</tbody>
</table>

*Sponsors of bills:
Type I Henry Jackson (D-Wash.), Gordon Allot (R-Colo.), Robert Byrd (D-W.Va.), John Sherman Cooper (R-Ky.), John Saylor (R-Pa.), Craig Hosmer (R-Calif.), Nixon Administration
Type II Mike Gravel (D-Alaska), Wayne Hays (D-Ohio)
Type III Gaylord Nelson (D-Wisc.), George McGovern (D-S.Dak.), Edward Kennedy (D-Mass.)
Type IV Kenneth Hechler (D-W.Va.) and 88 co-sponsors.

**National Coal Association, American Mining Congress.
Source: Victor, 1980:89.

Paper also argues that the conflicts over federal-state relations provide the arena in which the battle over more fundamental economic and ideological conflicts among surface mining interests is fought.

**CONGRESS AND THE SURFACE MINING ACT**

Congressional interest in regulating surface mining dates back to 1940 when Senator Everett Dirksen of Illinois introduced a bill that would have required restoration of mined land to its approximate original contour. However, it was some thirty years later that serious sustained efforts to introduce federal regulation of surface mining began. In 1971, more than two dozen bills were introduced offering a wide range of options on important issues in the regulation of surface mining. One of these issues was the role of the federal government, if any, in regulating surface mining. Four main approaches to regulation are summarized in Table 1. Essentially, these approaches ranged from a weak federal role to a very strong federal role leading to the abolition of surface mining.

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Proponents of strong federal regulation argued that a uniform national policy was essential to assure proper reclamation nationally and to equalize competition among coal industries in the various states, and that the existing state regulations were weak, uneven, and largely ineffective. Proponents also argued that a problem of such proportion, which impacted interstate commerce so greatly, should certainly have a solution of national scope. In addition, most environmentalists and local anti-surface mining citizen groups were highly suspicious of the willingness or ability of states to regulate surface mining. They pushed for a strong federal regulatory role in the hope that it would be less susceptible to industry manipulation than would state regulatory programs.

Opponents of federal legislation were largely coal companies and coal and mining industry trade groups. They contended that most of the horrors of surface mining had occurred in the past, that affected states were currently doing an adequate job of regulation, and that the states should be given more time. The opponents argued that conditions such as topology, hydrology, and climate were so diverse throughout the nation that a uniform federal law applicable to all states would be inappropriate and nearly impossible to implement. They also argued that such sweeping legislation would probably be unconstitutional and would result in a considerable amount of costly litigation. They added that strict federal mining control would constrain the domestic supply of energy and thus was inconsistent with the long-range goals of a national energy policy.

Early in the 92nd Congress, battle lines between the proponents and opponents of federal surface mining legislation were clearly drawn. Perhaps the most contentious basic issue dividing the opposite sides was the appropriate role of federal versus state government. There was an intense effort to pass a surface mining control bill in 1972. The House passed a bill that provided for a strong federal role in regulating surface mining but did not go so far as to abolish it completely, as proposed by Representative Hechler. However, the Senate did not act, and the 92nd Congress ended without passing any surface mining bill.

Again, in early 1973, about two dozen bills on the subject were introduced. The measure that became the center of debate and compromise in the 93rd Congress was jointly introduced in the House by Representative Morris Udall (D-Ariz.) and Patsy Mink (D-Hawaii). In addition to the perennial issue of the appropriate roles of federal versus state government, environmentalists and the coal industry fought hard on three

other major issues. These were: (1) Representative John Seiberling's (D-Ohio) proposal for a $2.50/ton tax on coal that would have favored eastern deep-mined coal over western surface-mined coal, (2) provisions for declaring certain lands unsuitable for mining, and (3) a set of reclamation standards governing surface mining in alluvial valley floors and prime farmlands, mountaintop removal, restoration of approximate original contour, rights of surface owners, etcetera.

After lengthy and often acrimonious hearings, the Senate Interior Committee passed a weakened version of Senator Jackson's bill that had been weak to begin with. The full Senate passed the weak committee bill, adding an amendment by Senator Mike Mansfield (D-Mont.) that would have required the consent of the surface owner to mine the coal in cases where the federal government owned the coal but not the surface rights. The House passed a watered down version of the Udall-Mink bill which was still much stronger than the Senate bill. It took the conference committee four months and often very acrimonious debate finally to report out a bill, and that only after the Mansfield amendment, vehemently opposed by the coal industry, was dropped. Both houses of Congress approved the conference bill and sent it to President Ford in December 1974 only days before congressional recess.

The bill passed by Congress had accommodated most of the coal industry objections and had greatly watered down the Udall-Mink bill, itself rather moderate to begin with. It was certainly a far cry from the bill environmentalists wanted. Indeed, both the House and the Senate bills, both stronger than the final conference bill, were termed "totally unacceptable" by Louise Dunlap, the leading spokesperson for the environmental groups. However, the coal industry was unwilling to accept any federal legislation on surface coal mining. It asked President Ford to veto the measure. He did so on December 30, 1974, arguing that the bill would have increased unemployment and inflation and reduced domestic supply of a critical energy resource. Once again, in 1975, a bill identical to the one vetoed by President Ford was passed by Congress. President Ford once again vetoed it. There was no congressional action on surface mining in 1976.

While campaigning for the presidency in 1976, Jimmy Carter had promised to sign a surface mining bill like the one vetoed by Ford. On the opening day of the 95th Congress, in 1977, Chairman of the House Interior Committee, Morris Udall, introduced a surface mining control and reclamation bill. It was similar to the one that had been vetoed by Ford in 1975. It set minimum environmental standards that the states would be required to follow in their state programs. A federal program

10. N.Y. Times, May 15, 1974 at 13, col. 3.
would take effect if a state program failed to meet those minimum federal standards.

The coal interests argued that in the last several years, the states had enacted stringent surface mining legislation and improved their enforcement. Thus, there was no need for any federal surface mining legislation. The opponents also continued to argue, as they had done back in 1971, that federal legislation was inappropriate because: (1) surface mining regulation is appropriately the state’s prerogative, (2) conditions throughout the nation are highly diverse, and (3) it would create unnecessary red tape and delays. A small group of six Republican congressmen, strong opponents of the bill, declared: “This misguided legislation tramples states’ rights, destroys small business, invites endless litigation, increases federal bureaucratic power many times over, increases consumer costs, and, lastly, will cause a major reduction—yes a reduction—in our annual output of coal.”

Proponents of the federal legislation continued to point out the need for uniform national standards and the ineffectiveness and unevenness of existing state regulation. Supporters of the Carter administration fought hard on the House floor to strengthen several environmental provisions, but achieved limited success.

The Senate passed a version of the House bill in May, 1977, that was very close to the version the House had passed; however, it eased some of the more stringent environmental control provisions included in the House version. For example, the House bill banned mining on western alluvial valley floors and specified that only a minimal amount of soil could be taken from mountaintops during mountaintop removal operations in the east. Both these restrictions were eased in the Senate passed bill. The Carter administration and environmental groups preferred the House version. The coal interests fought hard to further weaken the House bill. They succeeded, in about two-thirds of the cases, in getting the conference committee to adopt the position most favorable to the industry. Even though this bill yielded to so many of the coal industry’s demands and was so much weaker than environmentalists had pushed for, the coal interests still refused to accept any federal surface mining legislation. In a last ditch effort, both the American Mining Congress and the National Coal Association urged the Senate and the House to reject the conference report. The conference report, however, was approved by both houses of the Congress. President Carter, though not fully satisfied with the bill and preferring a stricter one, signed it into law on August 3, 1977.

FEDERAL-STATE ROLE IN SMCRA

SMCRA created a national regulatory program to prevent significant environmental damage from surface coal mining. The Act gives to the

states the "primary governmental responsibility for the development, issuance, and enforcement of surface mining regulations."\textsuperscript{12} However, it also mandates federal standards for surface mining and reclamation. The Act created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior to administer programs required by the Act and to assist the states in developing state programs. The Act provides for OSM oversight of state programs to ensure that they control surface coal mining operations and reclaim abandoned mine lands.\textsuperscript{13}

OSM set national standards that were to be adapted, but not diluted, to variations in regional conditions. However, there is a "state window" which allows states flexibility to adapt and shape the federal Act and regulations to the specific topology, hydrology, soil characteristics, and other conditions in each state. Once they receive primacy, the states are expected to administer and enforce the regulatory programs. OSM's primary role then is to provide oversight. In essence OSM was to guide the states in developing regulatory programs which collectively would form a national program. The centerpiece of the arrangement is the development and approval of the state regulatory program and granting of "primacy" by OSM to the state to regulate surface coal mining within its boundaries.

\section*{POLITICS OF FEDERAL-STATE RELATIONS}

Over a decade after enactment, implementation of SMCRA remains controversial and conflict ridden. The major political issue all through these years has concerned the appropriate role of OSM and the states in the regulation of surface coal mining. This discussion of federal-state relations in SMCRA is conveniently divided into two phases, Carter years and Reagan years.

\section*{Carter Years}

In the months immediately following the passage of the Act, there was general support for OSM from all major groups. At 1978 House oversight hearings, a panel representing the National Governor's Association and consisting of state reclamation division officials from West Virginia, Colorado, Wyoming, Kentucky, and Maryland expressed full support for OSM and appreciation for the opportunity to participate in the OSM's drafting of regulations.\textsuperscript{14} The coal industry also generally praised and supported OSM efforts initially. The president of the Mining and Reclamation Council of America had "nothing but praise for the Office of

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\textsuperscript{13} § 201(c)(1), id. at 449.
Key members of the House committee with major oversight authority over OSM (such as Morris Udall (D-Ariz.), John Seiberling (D-Ohio), and Ken Hechler (D-W.Va.)) were also quite supportive of OSM and its new director, Walter Heine. 

However, support for OSM from the coal states and coal industry was short lived. The coal states and coal industry became bitter and persistent adversaries of OSM during the Carter years. As OSM moved to promulgate regulations, first interim and then permanent, and as it began to exercise its inspection and enforcement responsibilities, the coal states and coal industry became increasingly opposed to OSM's implementation strategy.

Initially, only five months after the Act's passage, both the coal states and coal industry complained that OSM had failed to meet the strict timetable set for it by the Act, while refusing to extend deadlines set for the states and industry. On the other hand, OSM and the environmentalists strongly objected to any extension of the statutory implementation timetable. After sustained and loud complaints from the states, OSM granted a six-month extension for program submission. A further extension of seven months was granted by a federal district court as a result of lawsuits filed by the industry and the states.

The struggle over the timetable, however, was only the beginning skirmish. In addition to lobbying the Congress and going to the courts to delay the implementation of the Act, the coal industry and several state governments also mounted a major challenge against the Act in the courts. Dozens of lawsuits were filed in 1978 in the federal district courts by coal industry associations and individual coal companies. The states of Indiana, Illinois, and Virginia also filed lawsuits against OSM during the Carter years.

Court challenges to the Act were broad. The constitutionality of the Act was challenged on the grounds that it violated the Commerce Clause and the Fifth and Tenth Amendments of the Constitution. The scope and manner of implementation was also challenged in numerous lawsuits throughout the Carter years. A suit filed by the American Mining Congress and the National Coal Association charged that the interim regu-
lations promulgated by OSM went far beyond the rule-making powers granted to it by the Act, and that the interim regulations were inadequately supported by administrative record and were, therefore, arbitrary and capricious and thus violated the Administrative Procedures Act.\textsuperscript{22}

Constitutional challenges to the Act were unsuccessful.\textsuperscript{23} However, court challenges to OSM's interpretation and implementation of the Act succeeded in creating considerable confusion and delay in the implementation of the Act.

The coal industry and the states insisted, often vociferously, that OSM regulations went far beyond the Act and the congressional intent, and that the Carter administration and its environmental allies were trying to do through regulations what they could not do through legislation.\textsuperscript{24} The coal industry accused OSM of being overzealous.\textsuperscript{25} A comment by a representative of the coal industry is typical of its attitude towards OSM: "in our view OSM to date has created a regulatory mechanism which is not consistent with the intent of Congress . . . ."\textsuperscript{26}

In September 1978, only about a year after SMCRA's passage, Governor Jay Rockefeller of West Virginia complained that his state had not obtained primacy because of "the manner in which the Office of Surface Mining has attempted to implement the Act."\textsuperscript{27} Six months later coal state governors were again complaining about OSM's implementation of the Act. Wyoming Governor Edward Herschler was blunt:

The Federal legislation does not contemplate state subservience to the Federal presence, but the Office of Surface Mining has proceeded for much of the past year on this assumption. Nothing short of a nationwide set of state level clones of the Office of Surface Mining, directly and immediately responsive to national and regional offices of the Federal Government, will satisfy the implicit demands of the Federal regulations and practices.\textsuperscript{28}

\textsuperscript{22.} In re Surface Mining Reg. Litig., 452 F.Supp. 327 (D.C. 1978).
\textsuperscript{27.} Senate Hearing supra note 24, at 35.
The states' dissatisfaction with OSM's implementation strategy came to a head in the fall of 1979 with the introduction of the Rockefeller amendment in the Congress, named after its proponent, Governor Jay Rockefeller. It would have diluted OSM's regulatory authority by calling for state programs to be consistent with the Act rather than OSM's rules and regulations. The amendment passed the Senate by a wide margin of 68 to 26, but died in the House.29

During the Carter years, the states charged OSM with promulgating permanent regulations far more stringent than called for by the Act. They accused OSM of attempting to grab regulatory responsibility away from the states, ignoring the intent of Congress. The states further charged that OSM was not utilizing the "state window" concept intended to allow flexibility in developing and enforcing state programs, but that instead OSM required the states to accept uniform standards.30

In the face of strong criticism and court challenges by the states and the industry, OSM strenuously defended its implementation of the Act.31 It characterized its permanent regulations as fair, workable, and protective of the environment. OSM argued that the uniform regulations it promulgated were needed to establish minimum standards for the regulation of surface coal mining throughout the nation. OSM maintained that it had allowed more than enough time for state input in developing regulations. OSM also maintained that its design criteria and standards were specific because the statutory standards set out by Congress were specific. In other words, OSM argued that it was following congressional intent.32

The environmental groups during the Carter years supported OSM's efforts. They felt that environmental protection would best be guaranteed by strongly activist OSM oversight of the states and uniform federal standards. Environmental groups argued that such standards were not overly stringent, since they allowed the "state window."33 In reaction to the Rockefeller amendment's challenge to the Act, the environmental groups emphasized the need for strict enforcement of SMCRA. The Environmental Policy Institute expressed a common view of the environmental groups that OSM was not enforcing its interim performance standards vigorously due to extreme political pressure from powerful coal state governors such as Carroll, Rockefeller, and Herschler,34 and the Sierra
Club expressed its hope that amendments to the Act would not be contemplated "even before it is in operation." 35

The success of the coal states in challenging and delaying OSM's efforts was a real concern to the environmental groups. They argued for: (1) continued federal inspection to protect federal lands, (2) correction of the misinterpretation of the grandfather clause by the Illinois Regulatory Authority which resulted in inadequate reclamation of prime farmland, and (3) reassessment by OSM of state efforts to comply with the Act before granting primacy. 36

OSM strategy during the Carter administration was based on the belief that the coal industry was unwilling to make a good faith effort to comply with SMCRA and that the states were unlikely to rigorously enforce surface mining regulations. This strategy resulted in a highly polarized and confrontational implementation process. The coal industry and the states opposed OSM virulently and did all they could to frustrate its implementation of the Act. Environmental groups and the Congress, particularly the Democratic majority in the House Committee on Interior and Insular Affairs and its chair, Morris Udall, generally supported OSM and defended the agency against state and industry attacks.

Reagan Years

With the election of Ronald Reagan to the White House, OSM's implementation strategy changed dramatically. Reagan had promised "regulatory relief," if elected. OSM was one of the agencies particularly singled out as an example of regulatory excesses in a transition report by the Heritage Foundation. 37 The report accused OSM of "zealotry" and promulgating regulations far in excess of the requirements of the Act. The report urged quick reduction in OSM enforcement staff and budget and recommended that states be given a major role in implementing the Act as early as possible. 38 The new administration appointed to the top OSM positions people who had opposed the agency during the Carter years. The top leadership of the Department of Interior, as well as of OSM, was then fully committed to a regulatory attitude diametrically opposed to that of Carter's OSM.

OSM strategy changed from OSM-led implementation under the Carter administration to state-led implementation under the Reagan administration. This change was clearly articulated early on by Reagan's first OSM director, James Harris: "Under my direction, state primacy will be a central theme guiding the direction of the OSM over the next four years.

35. Id. at 188.
38. Id. at 344-47.
This approach recognizes the basic framework established under SMCRA. 39

Regulatory reform at OSM, as at other regulatory agencies, involved three major changes: reorganization, budget and personnel cuts, and change of regulatory rules. 40 OSM was reorganized in order to increase the power of the states in regulating surface mining. Regional OSM offices were eliminated and replaced with state offices, field offices, and technical service centers. Also, the power of the national office over state and field offices was increased to prevent rigorous regulatory activities by field offices. The second change at OSM was a drastic reduction in both the agency budget and in the number of OSM employees, particularly inspection and enforcement personnel. In fiscal year 1984, Reagan proposed a forty percent budget cut and twenty-nine percent staff reduction for OSM. 41 The cuts in personnel affected both national and field offices and were made to reduce the OSM role. The third major change at OSM involved "regulatory relief." Starting in mid-1981, OSM targeted 89 rule sections for deletion, 329 sections for revision, 112 sections for combination with other sections, and 12 new sections for addition to the program. 42

The state window provision was revised to make it more flexible. It replaced the Carter OSM regulation requiring "state regulations to be 'no less stringent than' the federal regulations, with the requirement that they be 'no less effective than' the latter." 43 Design standards in the regulations were replaced by performance standards. OSM increased the pace of approving state regulatory programs and thus granting states primacy in regulating surface mining within a state. In the fall of 1982, there were only two fully approved state programs. By early 1983, nineteen state programs were fully approved 44 and OSM adopted a generally "hands-off" approach toward state enforcement. 45 The OSM enforcement style changed from one of confrontation and distrust of the states and coal industry to one of cooperation and gentle persuasion. The director of

41. Id. at 153.
43. N. Shover, supra note 8, at 62.
45. G. Eads, supra note 40, at 226.
OSM in President Reagan’s second term claimed that SMCRA was working because “the states are making it work” and argued that the appropriate role of OSM in implementation of SMCRA “is to help the states—not to dictate... or impose direct federal regulation.”

The states supported the OSM’s redirection. In 1981, a spokesman for the Interstate Mining Compact Commission representing governors of sixteen major coal producing states told a congressional committee that his group “would like to voice its support for this reorganization plan put forth by the secretary [James Watt]... the new state offices will allow OSM to maintain closer touch with the states and better enable it to carry out its changing mission of an agency lending support to the states rather than acting as the primary enforcer of the law,” and for increased deference to states by OSM.

Environmental groups became the major adversary of the Reagan OSM. Environmentalists worried that the Reagan administration was trying to gut SMCRA by emasculating OSM and by lax and ineffective implementation of the Act. They were forced into a defensive posture. Their efforts shifted from a push for a strong federal presence and strict state and industry compliance during the Carter years to the need for defending the regulations during the Reagan years. A summary statement of the environmentalists’ early apprehensions about Reagan’s OSM was voiced by Ed Grandis of the Environmental Policy Institute.

In conclusion, we are very concerned that the new direction of the Reagan administration is weakening the entire environmental regulatory provisions, in their attempts to fire and relocate excellent technical personnel and field inspector which this agency in such a fashion... cannot meet their regulatory responsibilities (sic).

Two years later environmentalists were still complaining about OSM’s enforcement of the law and regulations. Still later, by 1985, environmentalists were even more critical of OSM. They complained about “regulatory subversion” by OSM and called Reagan’s OSM implementation of SMCRA a continuing story of abuse. They even wondered whether SMCRA’s cooperative federalism was “Any Way to Run a Gov-

ernment." In a reversal of roles, during the Reagan years it was the environmentalists rather than the industry or states who increasingly resorted to the courts against OSM actions and non-actions.54

Congressional, especially House, oversight of OSM has been intense since SMCRA’s passage in 1977.55 During the Carter years, the House subcommittee on Energy and the Environment, particularly its Democrat members, generally supported the OSM in the face of intense state and industry criticism. On the other hand, the Senate committee on Energy and Natural Resources tended to be critical of OSM.

These roles were reversed during the Reagan years. Democrats in the House subcommittee vigorously questioned and prodded OSM officials, while Republican members remained generally silent. In the Republican controlled Senate, OSM generally received praise for its efforts from the Republicans at its oversight hearings. Democratic participation during Senate hearings was negligible. Democrats on the House subcommittee were fearful that all their hard work in getting the Act passed and its implementation under way was being undone by the Reagan OSM. Morris Udall, chair of the House subcommittee with oversight authority, warned OSM in 1981 that if its actions did not remain consistent with the law as written by Congress, it could anticipate problems from his subcommittee.56 A ranking Democrat on the subcommittee was puzzled about how the implementation of SCMRA had gotten “so much off track” in such a short period after the Reagan administration took office.57 And, Morris Udall publicly testified in 1985 that “I cannot recall any time in my entire congressional career when I have been faced with such overwhelming evidence of bureaucratic incompetence and dereliction of duty as I see at OSM today.”58 On the other hand, the Chair of the Senate subcommittee with oversight authority, John Warner, commended the Reagan administration for implementing SMCRA in the way Congress intended and accused the Carter OSM of violating the intent of Congress which was to give states maximum control.59 Reagan’s OSM largely

54. Save Our Cumberland Mountains, Inc. v. William P. Clark, 725 F.2d 1422 (D.C. Cir. 1984);
55. See U.S. House Oversight Hearings—January 19-20, 1978; March 5-6, 1979; March 27-28 and 31, 1980; July 16, August 5 and September 22, 1981; March 8 and September 9-10, 1982;
February 17, 1983; February 27, 1984; and House Comm. on Government Operations, 99th Cong.,
2nd Sess., 1986; U.S. Senate Hearings—April 24 and September 11, 1978; September 2, 1981;
57. Id. at 73.
followed through on the President’s promise of regulatory relief. It abandoned the strict oversight role adopted by its predecessor and instead worked closely with the states and the coal industry in the push for state primacy and a wide open “state window.” It was reluctant to play its oversight role and was generally unwilling to enforce the law even when the states engaged in, at best, questionable practices. Its anti-regulatory, anti-federal government ideology pleased the states and the coal industry and alienated the environmental interests. The Reagan OSM attempted to change the extent of control over surface mining and its environmental damage by adopting an implementation strategy diametrically opposed to that of the Carter administration. The Reagan administration and its supporters in Congress pointedly refused to amend the Act itself. They relied, instead, on a drastically changed implementation strategy to accomplish their anti-regulatory aims. The states and coal industry supported OSM while the environmental groups and the Democratic congressional supporters of the OSM of the Carter years became the strongest critics of the OSM of the Reagan years. OSM’s commitment under Reagan to regulatory relief and to maximum deference to the states in the implementation of SMCRA is not seriously challenged by the fact of OSM’s partial takeover of state regulatory programs in two states: Tennessee and Oklahoma. (In Oklahoma’s case, the takeover lasted only 3.5 years.) In both cases there was an embarrassing “lack of regulatory sophistication and . . . malfeasance on the part of the state regulatory bodies.” In both states, the “scofflaw attitude of miners was appalling and in need of correction.” And, perhaps, most importantly, in both states the surface coal mining industry was small and did not “have much political clout. . . .” Thus political repercussions of federal takeover “would be small compared to . . . in major coal producing states.” The takeovers were even perhaps necessary for OSM to maintain some credibility while under intense scrutiny and criticism from congressional Democrats and environmental and citizen groups.

CONCLUSION

SMCRA has been and continues to be a complex and bitter episode in environmental politics. SMCRA’s legislative history was characterized by bitter and protracted struggles between environmental interests and

60. N. Shover, supra note 8, at 63-64.
62. N. Shover, supra note 8; G. Eads, supra note 40.
64. Id. at 56.
65. Id. at 55.
the coal industry. The coal industry fought until the end to defeat SMCRA. Environmental groups and congressional supporters of the Act became convinced that the coal industry and the states could not be trusted to protect the land from abuse by surface coal mining. With the passage of the Act, conflicts surrounding the regulation of surface coal mining were not resolved; they were only transferred from a legislative (policy formation) arena to a primarily implementation arena. Even though the legislative arena through its oversight authority remained important, the courts and OSM became the major arenas during the implementation stage. And although Congress, particularly the House Interior and Insular Affairs Committee, remained a major actor, OSM and the states became the central players.

The conflicts and contentions focused on how vigorously the Act should be implemented. The coal industry, having lost its legislative battle to defeat the passage of the Act, concentrated on the implementation phase to delay and minimize federal regulatory efforts. The coal industry used the Act’s call for cooperation between federal and state governments to argue that the states must have the primary regulatory authority and full flexibility to write their own regulatory programs with a minimum of federal interference. The states naturally enough thought that they knew best as to what was needed in their states and therefore felt that they should be the ones to do the regulating.

The long history of environmental destruction by surface coal mining and the failure of the states to regulate the coal industry made environmentalists, in and out of Congress, deeply distrust both the willingness of the states to regulate the coal industry and the sincerity of the coal industry in controlling the environmental damage caused by surface coal mining. The environmentalists interpreted the Act as requiring a strong and continuing federal role both in setting regulatory standards and in enforcing those standards through rigorous oversight of state programs. They saw the Act’s primary purpose as setting up a nationally consistent regulatory program with the states doing the day-to-day monitoring under the watchful eye of OSM. The agency’s own interpretation of the federal-state role changed dramatically from the Carter years to the Reagan years, reflecting the conflict of ideological commitments of two administrations.

It is clear that statutory provisions for federal-state cooperation specified in the policy legislation have become one more weapon in the battle of the interests involved. In the case of SMCRA, the regulatory aims were specified in great detail in the Act; even the technical and procedural details and timetable for implementation were spelled out, and yet the

fundamental conflicts of interests remained. The conflicts caused by the coal industry's opposition to substantial adverse economic impact, the states' interest in autonomy, and the deeply held environmental ethics of environmentalists are not likely to be settled by a policy enactment. The interests and their conflicts invariably reappear in the implementation phase of a policy. Conflicts in federal-state relations appear to be the idiom in which the more fundamental conflicts, such as economic and ideological differences among surface coal mining interests, are fought.