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Enforcement or Negotiation: Constructing a Regulatory Bureaucracy

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ENFORCEMENT OR NEGOTIATION

Constructing a Regulatory Bureaucracy

Neal Shover, Donald A. Clelland, and John Lynxwiler.
Albany: State University of New York Press, 1986.
Pp. 193 + xi. \$12.95.

The United States Office of Surface Mining Reclamation and Enforcement [OSM] has been surrounded by controversy since its inception due to the agency's origin, its mission, and the manner in which OSM personnel chose to carry out that mission. That manner, or the "style" of the OSM bureaucracy from its founding in 1977 through the onset of the Reagan Era in 1981, forms the subject matter of this book. The information forming the body of the book comes from a study of OSM procedures conducted by the authors.

The OSM was founded in 1977, as provided for in the statutes of Public Law 95-87, the Surface Mining Control and Reclamation Act [SMCRA]. The agency's initial task was to develop and to enforce national regulations implementing the most detailed and comprehensive environmental legislation ever imposed upon an industry previously unregulated at the federal level—coal surface mining. Eventually, the regulatory and enforcement program was turned over to the individual states, as they developed their own programs to apply SMCRA to local mining conditions, with OSM maintaining oversight responsibilities.

The authors' purpose for study was to gain a conceptual understanding of the manner in which a federal regulatory agency takes shape during its early years. Their orientation is theoretical: their interest in OSM is the light thrown by the details of its development and early functions upon theories of regulation and state. Nonetheless, within the main body of the text, the focus of the discussion is the agency's early history, including a wealth of details and information that resulted from the authors' inquiries.

The authors' thesis is that OSM developed an "enforced compliance" style of regulation and enforcement, as opposed to the more-lenient "negotiated compliance" alternative. They are critical of OSM in this regard, contending its continuing difficulties are a direct result of this early choice of style. That choice is attributed to an overdependence by agency technical personnel upon the opinions of lawyers and environmentalists during the initial rule-making process. However, that criticism is presented with recognition of the constraints under which OSM was operating: the prescriptive nature of the enabling legislation, budgetary problems, congressionally-imposed timetables, the perceived "mandate" to "get tough" on the industry, and the "seige mentality" resulting from confrontations with industry and the states.

The introductory chapter develops the competing theories of regulations, and is followed by a brief summary of surface mining technology, a history of the development of the legislation which led to SMCRA from 1968 to 1977, and chapters detailing the origins of the agency, the development of the initial regulations, the enforcement program, and the external pressures on the agency and resulting changes in orientation. The final chapter sums up by tying the theories to the details discussed; it is followed by a Coda describing changes in OSM structure and procedures subsequent to 1981.

To the reader who desires an understanding of the history behind the surface mining industry's present relationship to its regulatory agencies, this book is a must. In this reader's experience, that history remains essential to the interpersonal dynamics within today's industry-state-federal regulatory tangle. Thus, this book will be valuable to persons attempting to operate within the current regulatory environment.

This book is also recommended for those with an interest in theories of regulation and the state. Although not a deep theoretical investigation, it is a detailed investigation of a case study performed as a theoretical inquiry. The theoretical underpinnings are presented briefly but clearly at outset with extensive references, while the closing chapter sums up adequately.

However, this book is not recommended for those whose objective is an insight into the development of the rules themselves, as applied to the technology of surface mining and reclamation. The description of mining technology is brief and simplified, and individual regulations are not discussed except to illustrate the theoretical points. Herein lies the book's major fault, from this reader's perspective: the authors seem to lack recognition of the sheer enormity of the task faced by the OSM rule-makers, from a technical standpoint. SMCRA a tremendously detailed piece of legislation for which the rulemakers had to develop standards that could be applied nationally. Some of the standards of SMCRA remain difficult to achieve, in practice, in spite of accumulated experience and research. Perhaps OSM's real problem has been SMCRA itself? The authors never address this issue.

The above criticism withstanding, this is an excellent book, a highly-readable account of the origins and development of OSM, with a theoretical orientation that is clearly presented but does not overwhelm so as to discourage the reader whose primary interest is the agency.

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