

# WORC

*Western Organization of Resource Councils*

**Testimony of Ellen Pfister**

**before the**

**House Natural Resources Committee**

**The Surface Mining Control and Reclamation Act of 1977: A 30<sup>th</sup> Anniversary Review**

**July 25, 2007  
Washington, D. C.**

I am Ellen Pfister, a rancher from the Bull Mountains North of Shepherd, Montana. I own property that is the subject of an ongoing coal mining permit. I am testifying today for the Northern Plains Resource Council and the Western Organization of Resource Councils. Northern Plains is a grassroots conservation and family agriculture group that organizes Montana citizens to protect our water quality, family farms and ranches, and unique quality of life. WORC is a regional network of seven grassroots community organizations, including Northern Plains, which have 9,500 members and 45 local chapters in seven states, including the coal-mining states of Montana, Wyoming, Colorado, and North Dakota.

In the early 1970s, huge energy corporations threatened the homes and livelihoods of ranch families near Colstrip and in the Bull Mountains. Those families and other Montanans formed Northern Plains in 1972. Northern Plains' early efforts led to passage of a state strip mine law, and Northern Plains was also a national leader in securing passage of the historic federal strip mine law in 1977.

I first testified before this committee in September 1972 in support of Representative Kenneth Heckler's bill for a temporary ban on strip mining. Little did I know that I was about to get involved with a sideline project that would occupy the rest of my life. At that time, strip mining was proposed for the north end of our ranch. There were no safeguards for the surface property owner at all. On the third attempt at passage, the Surface Mining Control and Reclamation Act of 1977 was passed by Congress and signed by President Carter.

## **30 Years of SMCRA**

SMCRA is a good law as far as it goes. It has resulted in the regrading of a great many spoils areas and revegetation of those areas with varying degrees of success. There has been little success in reforesting areas which were previously hardwood forests. Most of the mountaintop removal areas are denuded of trees. The western prairies have vegetation ranging all the way from weed patches to some pretty good looking mixed grasslands. The spoils are being regraded to approximate original contour to a greater or lesser extent.

The three biggest failures in SMCRA are the failure to include the reclamation of the surface effects of longwall mining beyond the mine adit areas, the failure to anticipate the expansion of mountaintop removal and the failure to reclaim underground water resources. The first two are omissions from the law, and the third is a failure to adequately enforce the law.

Underground coal mining, whether room and pillar or longwall or any other kind of underground extraction, should be included within the purview of SMCRA. When the strippable coal is gone the coal industry will turn to other methods for coal recovery. The surface damages and damage to water will not abate with a change in the method of mining. These surface impacts of underground mining should be clearly included.

When it passed SMCRA, Congress did not foresee the damages that large scale longwall mining can do or the potential for explosion in size of mountaintop removal. In the West, surface mining removes the underground water aquifer – the coal seam. All of these mining methods are extremely damaging to water regimes. All of these damage the surface, but in different ways. Mountaintop removal is like beheading a person, and longwall mining and surface mining are like dying of liver or pancreatic cancer. Beheading is much more spectacular and visual, but one is just as dead from cancer.

OSM has permitted the States to approve permits that I believe violate mandates within SMCRA itself, such as the standard for reclamation to follow behind mining as contemporaneously as possible. Permits that allow a mine to wait 20 years before beginning regrading and other reclamation procedures certainly have no element of contemporaneous reclamation. SMCRA is bent to the mine operator's complete convenience. Certain pits that are left open for years on the chance that the mine may need that coal to blend fall short of contemporaneous reclamation as well.

The practice seems to be that the terms of permits will be enforced even if the permit does not comply with SMCRA, as long as the permit is complete by dealing with every section of the state regulations. Granting the permit gives an easy out on enforcement of the standards of SMCRA to the permittee and the agencies.

As a subject and participant in the permitting process in Montana, I have come to the conclusion that it can be summed up as "Promise her anything, but give her Arpege"... or maybe, dime store perfume. Any remediation in the permit can be relaxed or voided if the permittee cries economic hardship. As someone who will suffer economic harm if remediation measures are not enforced and successfully implemented, I really do not know what the final remediation will look like. I suspect the permittee's economic hardship will trump my economic hardship. The permit is supposed to be a promise of reclamation and repair by the State to its citizens, because the State approved the reclamation plan and accepted the promise from the permittee. I have grave doubts as to how binding that promise is on the permittee.

### **Speculative Mine Permitting**

From my personal experience, application of SMCRA's mine permitting procedures by state and federal agencies does not deter application for permits by speculative ventures. I hope that what I have dealt with for the last 18 years is not common nationwide.

Like many others who fought for passage of SMCRA, I was naïve enough to believe the law would be enforced, and that I could go about my life. Coal entered my life again at Christmas 1988, when two boys from Pikeville, Kentucky, came around wanting to start a coal mine that

would affect the north end of our place. Then a bigger fish, Burlington Resources, came around with the idea of a longwall mine and a proposal to trade Federal coal for some of their land. It would be a large block of coal and would support a 3 million ton a year mine. I knew Burlington Resources would never mine a lump of coal on their own. Their ambition was to be gentlemen royalty collectors, but the permitting process began, and regardless of how speculative a mine plan is, a landowner or party adjacent to a mine cannot afford to ignore it. The permitting process grinds on regardless of the economic feasibility of a project. This speculative mine has occupied my time and the Montana Coal Program's time for 18 years with no sign of economic success for the mine.

Burlington Resources put the permit on the market as soon as it was issued in 1992 and finally found a buyer in John Bauges, Jr. of Tennessee in 1995. He began mining then, but in 1998, the permit was permanently revoked for mining with a pattern of violations, and the bond forfeited. Two years later the state of Montana had barely begun to clean up Bauges' mess, when John Bauges showed up again, striking a deal with the State of Montana to reduce his fines by about two-thirds and requesting that the State of Montana resurrect the permanently revoked permit. OSMRE was brought in to rule on whether a permanently revoked permit could be resurrected. OSMRE ruled that there was one precedent for doing so from West Virginia; however, no permit number or mine name or location was ever cited. No one that I met from West Virginia had ever heard of it. OSMRE enabled the resurrection of a mine that is a pure speculation.

Once the permit was resurrected in 2000, Bauges et al came back with a bigger and better plan to mine 12 million tons a year, which would take out the whole coal reserve in our area in 30 years and leave the entire heart of the Bull Mountain recharge area with deeply damaged water. In addition to the mine, the Bauges consortium proposed a 700 MW merchant power plant, which has now morphed into a 300 MW power plant and a 22,000 barrel a day coal to liquid fuels plant, which in turn needs an additional 150 million tons of strippable coal to be even remotely feasible.

The Bull Mountain Mine shut down again in March 2007, as it was being sued in foreclosure by bond holders, North Carolina and Florida churches and retirees, who were promised 11% return on their investment bonds. While Bauges et al were defaulting on their bonds, they were running around our country trying to buy ranches, some of which they lost their earnest money on, not being able to make the final payment.

In January 2007, Montana DEQ finally approved the permit amendment to the Bull Mountain Mine, which takes in the north end of our place. They claim our high springs will not be damaged. Our springs are in the vicinity of 500 feet above the coal. Aside from the property owned by the coal company, our ranch will be the second property to be damaged when the second longwall panel begins operation. I am not optimistic about the future of our water; "no damage" does not jibe with what I have seen in other areas of the country. The primary authority relied upon by the state is a consultant paid by the permittee in 1992, who cited no specific instances in western longwall mining similar to the geologic conditions in the Bull Mountains in finding that there would be little or no damage to our water.

Since the mine was first permitted in 1992, it has never operated on the schedule shown on the permit. They are months and years behind schedule. The mine would eventually take out a subdivision in the Bull Mountains, if it proceeds as planned. Those homeowners are hoping the threat will go away, and don't want to face the problem of what and when will something happen to their property. The town of Roundup no longer holds its breath with anticipation when the mine makes an announcement promising jobs and economic development, and payment terms in

Roundup are cash only for the mine. The permit is the only thing that holds this speculation together.

### **Longwall Mining**

Most of the longwall mines in the West are under public lands; the people are gone. The effects are hidden underground, known only to the regulators and the mining companies. Since the U.S. Bureau of Mines was closed in 1996, there have been and still are no studies being done on the effects of longwall mining. The only studies I could find were scientists putting their sensors down well holes in the east, and bemoaning the fact that after the longwall machine passed, they couldn't get anymore readings on where the water went. They had no money to pursue the information, and probably no way to access legally the land that was mined. That is a failure in SMCRA. The entire area in an underground permit should be included in SMCRA, because the affects of longwall coal removal go to the surface miles away from the adits and processing plants. Unless there is jurisdiction through government action, there is no way for follow-up studies to be done of water damage in longwall mine areas, and no one with the resources to find the lost water.

Since 1989 when longwall mining came to the Bull Mountains, I have tried to find out what has happened in longwall areas across the country. The water buffalo – a plastic above-ground cistern, usually set on the road in front of a house, which mining companies use to deliver replacement water to homes and farms – is the indicator species for the health of water in longwall areas. Where has the original water gone that was once in wells and springs? No one seems to know, and landowners are powerless to force a search. I cannot think that water stored for home use in water buffaloes is healthy for families.

I met a dairyman in Western Pennsylvania whose farm dated back to 1795 who was ultimately forced out of dairying because the water hauled to his cows was chlorinated, and they could not thrive on it. I have been visiting by e-mail with a farmer, Floyd Simpson, in Southeastern Ohio whose land lies about 500 feet over the coal seam being longwalled, who lost springs going back to the late 1700's, and old wells. It took about three weeks for the water to fail after undermining. The coal company has been very slow to deal with the promises it made him prior to undermining. He has had trouble with water haulers after undermining, and his historic farm buildings were severely damaged. He has a website, [www.countrymilefarm.com](http://www.countrymilefarm.com), with a diary of the damage that occurred when he was undermined in late 2003. He does not know where his water went. He knows he does not have the water he had.

Southwestern Pennsylvania has been devastated by longwall mining; it is a land of leaning chimneys, damaged homes, and water buffaloes. Interstate highways as well as county roads have been undermined. I have seen half a county road slipped 40 feet down the hill from where it had been, thanks to subsidence.

### **Acid Mine Drainage**

Permits that allow acid mine drainage are still being issued. I do not find that a failure in the law, but in the administration of the law. Acid mine drainage from Eastern mines seems to be the norm. Save Our Cumberland Mountains fought for 10 years to get Fall Creek Falls State Park in Tennessee declared unfit for mining due to the certainty that mining in that watershed would cause acid mine drainage over the falls. I doubt if many permits have been denied on the grounds that mining would cause acid mine drainage. Although SMCRA allows the designation of areas unsuitable for mining, very few areas have that designation, and it is difficult to get.

Save Our Cumberland Mountains did a study in 1989 on acid mine drainage on reclaimed sites in Tennessee and found a lot of it, despite the promise we saw in SMCRA to end it. I have watched over the years as OSMRE tried different things to mitigate the improvidently granted mine permits that were discharging acid mine drainage. There was the Appalachian Clean Streams Initiative that tried to dip into USDA funds to help out, as well as waylay any other money that could be found. There was AMD and ART, which was an attempt to show how acid mine drainage treatment areas could be turned into a community enhancement. That, too, used funds other than funds from the party who caused the damage in the first place. OSMRE has not had the guts to face down the companies to make them internalize the costs of their actions, and fix the damage that is occurring on permitted mine sites.

Since the passage of SMCRA in 1977 the size of Eastern mines, particularly longwall and mountaintop removal, is increasing and beginning to approach the size of some Western mines. The Eighty-four longwall mine at Washington PA was permitted to undermine 22,000 suburban acres initially. The mountaintop removal mines are up to 5,000 acres and above. The mountaintop removal mines are depopulating the towns and settlements that are unlucky enough to reside below them.

The Western mines depopulate areas as well. The practice has been to buy out the rancher and give them an option to buy back at some time in the future. If the mine is on public lands, the public is excluded from the mining area. Both East and West are depopulating coal bearing areas. If one becomes a tenant of the company when he had previously been a landowner, he is no longer independent or in a position to speak his own mind. The company regards the permit as being between the company and the agency and no one else should have anything to say. If the people are gone, there is no one to see or to tell how badly the mines reclaim the mined lands.

### **Water Damage**

We don't have mountaintop removal in the West, but we have aquifer removal. The mining companies and regulatory agencies regard water in the western mines as fair game for damage and diminution. Water from disrupted aquifers comes into the pit, with no attempt to insulate the water from contact with the spoils materials. Experimental practices have been suggested from outside the agencies and industry, but those practices would take planning at the permit issuance stage. That has not been done in the past, and there are no plans to do it in the future. Some of the Western mines are dry in the pit, but others have quite a lot of water that pours into the pit. The flushing that does occur within the pit is unpredictable and uncontrolled. Now, to add insult to injury, OSMRE is considering a new regulation that would allow the dumping of fly ash in the strip pits in the East. I do not believe that Congress meant to allow the dumping of industrial wastes in surface mining pits when it passed SMCRA.

The Colstrip, Montana, electric generating plants offer a good preview of what can happen when fly ash is mixed with water. The fly ash pond at Colstrip was constructed in about 1974 to a depth of eighty feet, but only the top 40 feet were lined with impermeable material. Water began leaking from the bottom of the fly ash pond shortly after, contaminating the wells on the Kluver Ranch downstream. Thirty years later, the pollution has advanced downstream to contaminate the wells on the McRae Ranch. The ranch wells were drilled deeper to get below the pollution, but there is nothing to keep the pollution from eventually reaching the deeper water as well. The company has been pumping the surface water from the toe of the pond back into the pond, but the water keeps traveling underground. I do not think OSMRE has the will to enforce anything that

might approach safe storage of fly ash underground in a wet mine, and I know the State of Montana does not.

Recently the Rosebud Mine at Colstrip cut into an area called Lee Coulee, which was a new mining area. They hit a tremendous vein of water which they pumped on down the coulee, ruining 90 acres of hay land. It drained the springs above the mine cut. They are no more. Don Bailey's hay ground is ruined, and the water is gone. He had to sue the mine to recover his damages. The waste of water from Lee Coulee is an act of extravagance like lighting cigars with thousand dollar bills.

The Rosebud mine also had a twenty mile highwall open for a number of years – 10 miles on the north side of the hill, and 10 miles on the south side of the hill, and the mine is moving in a direction which has the potential to create even longer highwalls. The mine was keeping the mine road at the base of the highwall open to have a loop road on which to haul coal.

The State of North Dakota issued a permit to turn Kenney and Gwen Thompson's farm land into a dump for an adjacent mine that was mining on the farm. The farm couple didn't know about it until diesel fuel turned up in the well at their house. OSMRE was no help to them. They eventually sold to the mine due to the farmer's ill health. Miners at the mine told the couple about all the hazardous waste the mine dumped in the mine pit on their land.

Now there is a lawsuit filed in Denver over dumping fly ash in the Navajo Mine in New Mexico and leaving it open, blowing ash in the wind. OSMRE is responsible for mining on Indian lands. OSMRE allows dumping fly ash in the mine pit, which is not clearly authorized by SMCRA. The mine operator is not even covering it in a prompt manner, which should be required even if SMCRA authorized dumping fly ash in a mine. I saw fly ash being dumped in that mine in a flyover in 1992. There is a lot more fly ash there now.

When we were in the permitting stage of the initial Bull Mountain Mine, we were told by state agency personnel that water replacement would be "opportunistic". This means that the mine operator would develop sources of replacement water when they run across them, in the course of mining – as opposed to having a plan for replacing the water up-front, in the permit, before mining begins. A Colstrip area rancher watched one of the mines bury a spring that could have been developed with a little care – so much for opportunistic development.

The Jacobs Ranch Mine in Wyoming is finally putting in for bond release on the areas against the Rochelle Hills, which were mined about 1980 when the mine opened, because water is finally beginning to infiltrate into the mine areas from the undisturbed areas toward the hills, starting to re-establish the groundwater that was there before mining. As it advances west, the mine is also dewatering the coal in advance of its mining area to get the coalbed methane out before it removes the coal. The combination of surface mining and coalbed methane development may result in an area devoid of any water for a very long time.

Water loss in the East is typically dealt with by either a water buffalo or connecting people to a pipeline from somewhere else. I have always wondered what will happen when that "somewhere else" is also damaged by coal mining, and that water disappears as well.

### **The Citizen: Regulation and the Law: State and Federal**

To the ordinary person, of the 4 sets of documents that can govern coal mine reclamation, SMCRA is the plainest to read and understand. The language is generally set in terms of "shall"

and “will”, which most people understand, whether they like it or not. Going back about the last 25 years at least, OSM has been in the business of putting out regulations to bend “shall” and “will” into something else, if possible. I don’t know of any proposals to strengthen SMCRA regulations during that time.

Neither the states nor OSMRE have any programs to educate citizens about their rights under SMCRA, the law’s citizen enforcement provisions, or the standards of reclamation established by SMCRA on other than an ad hoc basis. There is no easy reading document for citizens. The text of SMCRA itself is the plainest of the materials available.

The federal regulations are long and a lawyer’s joy. When the state laws and regulations are added on top of that, which is the case when a state has primacy, the amount of material to digest becomes nearly overwhelming. Montana’s education for citizens about what the law says was to give them a copy of the state regulations, but even that seems to have gone by the wayside in recent years.

The Montana law has gone from a law which said “shall” and “will” to one which says “may” and “should” to favor the newly fashionable tenses in legal writing. “Shall” and “will” are clearly defined in court cases and English classes. The Department of Environmental Quality, acting at the direction of the Montana legislature, is attempting to conceal the mandatory effect of SMCRA, and OSMRE has gone right along with this, although SMCRA requires state programs to be no less effective than the federal program. Essentially, OSMRE inspection personnel should act as constables on patrol, and if a State has primacy their inspectors have the same mandate. Montana is trying to obscure that mandate and to remove the sense of immediacy of enforcement under the law changes of 2003 and 2005. OSMRE tried to obscure the sense of immediacy with its Reg. 8.

Reg 8, in its latest, 1999 incarnation, is an internal OSMRE directive that has functionally eroded the independence and ability of the agency’s field staff in overseeing state programs. Much like “Catch-22”, Reg 8 effectively allows state agencies a veto over what part of their programs can be evaluated and corrected by OSMRE, and prohibits evaluation of off-site impacts by OSMRE if the state program doesn’t define them as off-site impacts.

It takes years for OSMRE to approve or disapprove changes to Montana’s law and regulations. In the meantime, the Montana agency enforces changes made by the legislature to the law and its own changes to implementing regulations, regardless of whether they comply with SMCRA or have been approved by OSMRE. I wonder what happens when Montana approves actions under its law while waiting for OSMRE to rule, and later it is found that the approved action was not in compliance with SMCRA.

OSMRE’s budget for “environmental protection,” which includes funding for state program evaluation, fell by almost 18 percent, adjusted for inflation, between 1997 and 2005. The number of state program evaluation staff also fell. This may explain why OSMRE is so slow in processing regulatory packages. It takes so long, that if one has commented on a package, by the time the ruling comes out, one has almost forgotten about it. If the non-compliant action is ensconced in the permit, will Montana enforce that rather than an action which would comply with SMCRA?

## **Regulation and Money: State and Federal Relationship**

OSMRE was a victim of the Clinton balanced budget drives. The first people cut were the inspectors, and the first of those to go were women and minorities. The cuts have not slowed down under subsequent administrations. It is no wonder that now, as its personnel ages and retirees, OSMRE is running into a shortfall of qualified people to move up.

The inspectors are the face of OSMRE and the states. They protect the citizens from the effects of coal mining. OSMRE has tried to withdraw itself from direct enforcement and contact with possible on the ground enforcement. SMCRA was well-drawn with two enforcement agencies, state and federal, because it is all too easy to co-opt one or the other. It is a little harder to co-opt both, although I am now beginning to wonder. OSMRE has further tried to reduce its presence by refusing to consider offsite impacts from mining unless the states report the offsite damage in state statistics.

The Western Area Office of OSMRE is not even listed as tenant in the Denver office building in which it is located on the 33<sup>rd</sup> floor. Not only has OSMRE tried to withdraw from direct enforcement by way of Regulation 8, but apparently the Western District Office of OSMRE is trying to physically hide.

In passing SMCRA, Congress intended that the regulating agency keep a presence in the coalfields and that the permits be available for inspection in the coal fields. Montana is just barely in compliance with SMCRA on that point, with the Billings Office having only a generalist and a secretary. The generalist employee is also an inspector. All the other inspectors in Helena are also specialists in other fields, and every specialist is an inspector. The question is whether academic specialists also have the temperament to make the kinds of decisions that an inspector must make. Billings is about 90 miles from the closest big surface mine. The rest are hundreds of miles further. Helena is 250 miles from Billings. Inspecting from Helena will be difficult, and I think the amount of travel time will render the coal program less effective.

The Montana Coal Program has been losing employees, and the money to hire replacement employees has been declining, especially from Federal sources. The Federal Government was obligated to fund the Western States to the extent that the coal in the state belonged to the United States. The Western Interstate Energy Board says that the Federal Government is saving money with the states accepting primacy, because the state pay levels are so much lower. Yet the Federal Government still keeps cutting real dollars from OSMRE and state budgets.

Montana has been saving money by paying wages for people with advanced degrees that are significantly below what they could earn in industry. Either the people who chose to work for Montana are dedicated to something other than top dollar, or they are short on competence, or they have reached a certain age in industry where industry no longer wants to hire them. I do know that the State has been a revolving door for hydrologists of all types. They get a little experience from the State to show on their resume, and then move on. The Montana Coal Program has been defunded and short changed on personnel, and it is no wonder it is teetering on the brink of someone requesting a 731 – asking OSMRE to take over a state program because of the state's failure to meet the requirements of SMCRA. . The Montana legislature found \$250,000 additional temporary funding this year, but now it appears that only part of the money will be available to alleviate the employment problems at DEQ.

If there is not better funding forthcoming, it is possible that the United States will have to pick up the tab for regulating the damage that will come from its appetite for coal. Funding less today will cost you more tomorrow.



## **Bond Release**

OSMRE data shows that 22,905 acres have been reclaimed and achieved final (Phase III) bond release in the West over the last ten years; meanwhile, 400,000 acres were disturbed by new mining. I think there are several reasons for this low level of bond release (about six percent as much acreage reclaimed as mined).

The first is the way the permit mine plans were approved by the agencies. Decker and Spring Creek in

Montana were allowed to mine for years before treating any appreciable acreages for regrading, let alone revegetation. We believe the permits which allowed that were granted in violation of SMCRA's standard that reclamation be as contemporaneous as possible. Twenty years does not meet that standard. The State of Montana should not have allowed it, and OSMRE should have held the state responsible. This situation presents a good opportunity for further oversight by Congress.

The second reason is that some companies do not want to comply with the revegetation standards. Westmoreland has been head butting Montana over that for some years now. Westmoreland lobbied successfully for significant changes to revegetation and postmining land use standards in the 2003 Montana legislature – just as another mine in the state showed that it was possible to meet Montana's the previous, standard for revegetation. The difference was the attitude of company management. The mine which did a good job was a Rio Tinto mine, and its company managers had decided it was cheaper to comply with environmental laws than to constantly be hauled into court. The attitude of the managers was reflected in the quality of reclamation on the ground.

Revegetation is possible in most of the northern high plains, given the right company attitudes, but water resource reclamation is much more problematic, and is the third reason why final bond release is low. Water resource reclamation has had the lowest priority in the permitting and reclamation process. There are promises in the permits to replace individual water resources, but it is unclear whether and how those promises have been kept. Replacing individual resources depends on having a resource that can be found and depended upon to be potable, at the very least. I don't know how the states are going to meet the standard of not degrading and diminishing the water resource in the mine area. The practice today – leaving up to time and fate to clean up water quality and quantity – is not satisfactory to those of us who live in the coal fields. There is no research in the area, and the regulators are accepting time and fate instead of requiring specific actions to restore pre-mining hydrology.

Until the water is reclaimed, there should not be bond release. The States and OSMRE are coupled in ignoring this problem. If the States and OSMRE accept any more permits or permit amendments that ignore reclamation of the total water resource, a fine would be in order again.

Montana has been doing what is called rolling bond release, which is a fourth reason why final bond release is so low. In Montana, Stage IV bond release is the final stage indicating that the water resource has been reclaimed, and the state retains a small amount of bond money until Stage IV release. 9/11 raised the costs of bonds across many industries, including coal. The Stage IV bond money is now mounting up, and there are fears that if large amounts of acreage are suddenly up for bond release, there will be great pressure on the state to release, regardless of quality of reclamation, because if something should cause a bond forfeiture, there would not be enough money left to fix the problem.

Self bonding is allowed in some states. The State of Colorado allowed the Mid-Continent Mine to self bond with a limestone plant as collateral. The sole market for the limestone plant was Mid-Continent mine. Korea cancelled its marketing agreement with Mid-Continent. The mine closed. The bond was forfeited, the limestone plant now a worthless property that had lost its market. Meanwhile, the family that owned Mid-Continent had invested in Colorado mountain real estate. OSMRE had the authority to pursue that money, but did not with any vigor. The taxpayers have picked up the tab for what reclamation has been done on the Forest Service land where Mid-Continent operated.

### **Citizen Action**

Citizens can file complaints in writing under SMCRA, but there are informal ways to make one's voice heard. The regulators see industry people on a regular basis. They develop a familiarity with each other. They drink beer together in the hotel bar, if they are at an away meeting. If there is a regulatory office in a reasonably convenient location, citizens should stop by when they don't have a complaint. If there is a basis of familiarity, perhaps relations would be a little better. Such visits also help inform the citizens about conditions within their regulatory agency.

In Montana, it would be helpful if more of the state regulatory agency were closer to the mines. Because of the travel distances involved, most of the contact between the Montana state agency and citizens near the Eastern Montana mines consists of more formal meetings, and because of the turnover of regulatory personnel in sensitive areas, frequently the sacrificial agency lamb at such meetings is the newest and most inexperienced of Montana personnel.

The Casper Field Office of OSMRE, which regulates the highest producing coal area in the United States, has the most area to cover, and probably the fewest inspectors. Distance operates against a citizen getting a clear idea of how that office operates. It is 379 miles from Casper to Billings, 629 miles from Casper to Helena, and God knows how far to North Dakota. For quite a while last year, the Casper Office operated without a field office director. The Field Office Director from Albuquerque filled in. I would say that is hardly effective administration. Getting acquainted with the regulators will not solve all the problems relating to SMCRA enforcement, but it is a small step that citizens can take.

### **Conclusion: Congress' Responsibility for the Enforcement of SMCRA**

Some of the agency actions are in effect, actions in contempt of Congress, as evidenced by Congress' intention expressed in SMCRA. I do not believe there is anything especially wrong with SMCRA, with the exception of not covering longwall mining and not coping with mountaintop removal, but I do believe that as an agency OSMRE has long been lacking intent to enforce SMCRA as it should be enforced. The agency has been a great hand to not want to take action on something unless it is immediately hazardous to human life. That is a judgment call, and the agency is not prescient. The process to pass SMCRA began with the disaster at Buffalo Creek, WVA. Fortunately, a similar tragedy for human life has not happened again, but how much luck was involved with the Kentucky River flood through Louisa, KY or the water break out at the AEP mine in Ohio? There are a number of sludge ponds throughout the East that are known by the agency to be unstable, but they remain unremediated, and the locations are not known to the public. Is OSMRE prescient as to which one will break first? Where are the states and OSMRE on this? Both are negligent and trying to hide out from that unpleasant policeman's task.

Congress could pass more laws and see them twisted and ignored. It is better to seek enforcement of the law you have. When the agency charged with enforcing laws you have passed attempts to withdraw from enforcement and hide from the public who believed in the law you have passed, the agency causes the public – both industry and citizens – to hold the law in contempt.

Mr. Chairman and members of the Committee, you should be angry that SMCRA is being administered in that fashion. We appreciate your action in holding this hearing, but you need to do closer oversight on OSMRE. We respectfully suggest you hold more such hearings both here and in the field, to hold OSMRE accountable for its enforcement of the Act, for adopting regulations and policies consistent with the intent of Congress, and for ensuring that state agencies do likewise.

We also suggest that you demand improved reporting from OSMRE. You also have the power to issue contempt citations, and I believe that you should seriously consider doing so. If you cannot get OSMRE to respect and enforce the law which it is paid to administer, then perhaps you should consider housecleaning in the agency.

We urge Congress to provide more funds to OSMRE and state agencies. The agencies can do a much better job with the amount of money they have, but it is also clear that lack of funds and personnel is part of the problem.

OSMRE and the states should require vastly improved reclamation at all phases, from regrading to water resource reclamation, revegetation, and final bond release. The percentage of mined acres reclaimed in the West is abysmal, and does not meet any definition of “contemporaneous reclamation,” as the Act requires. A critical first step is for OSMRE to *define* contemporaneous reclamation, a job that has been pending for years now. OSMRE should also make clear in its regulations that mine permits will not be issued for areas in which a mine plan does not allow for and require contemporaneous reclamation, and consider increasing bond amounts to provide an adequate incentive for companies to apply for bond release, but also to do better reclamation in the first place. We urge you to use your oversight authority to impress upon OSMRE the importance of addressing these problems, with special attention to reclamation of the water resource within mine-permitted areas – whether the issue is acid mine drainage, the impacts of mountaintop removal and long wall mining, or the routine aquifer removal we see in Western strip mines.

Finally, OSMRE should adopt a policy prohibiting the issuance of new mine permits or expansions in areas where stripmined land remains unreclaimed after more than ten years.