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The Politics of Implementation Design

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I. INTRODUCTION

Implementation studies examine impediments to effective policy implementation[1] and often identify why some policy legislation fails to be carried out in the way lawmakers had intended.[2] Two basic assumptions of such studies are that policymakers pay insufficient attention to the difficulties of implementation, and that policy design can benefit from implementation research.[3]

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1. This Article does not provide a detailed summary and evaluation of implementation literature. Such literature offers no real prescriptions because its advice is "strategically vague." Elmore, *Backward Mapping: Implementation Research and Policy Decisions*, 94 POL. SCI. Q. 601 (1979-80). Nor has such literature produced policy relevant knowledge. J. PRESSMAN & A. WILDAVSKY, IMPLEMENTATION 176 (1979) (quoting a letter by Alex Radian). The study of policy implementation is generally not useful in helping to understand the policy process or in providing guidance on avoiding or overcoming implementation problems. *See generally* Ingraham, *Toward More Systematic Consideration of Policy Design*, 15 POL'Y STUD. J. 611 (1987); S. Linder & B. Peters, A Design Perspective on Policy Implementation: The Fallacies of Misplaced Prescription (1985) (paper presented to the 1985 Annual Western Political Science Association, Las Vegas, Nevada).

2. D. MAZMANIAN & P. SABATIER, IMPLEMENTATION AND PUBLIC POLICY 5 (1983).

3. *See generally* Van Meter & Van Horn, *The Policy Implementation Process*, 6 ADMIN. & SOC'Y 445 (1975); E. BARDACH, THE IMPLEMENTATION GAME 36 (1977); R. NAKAMURA & F. SMALLWOOD, THE POLITICS OF POLICY IMPLEMENTATION 1 (1980); G. EDWARDS, IMPLEMENTING PUBLIC POLICY 5 (1980); D. MAZMANIAN, *supra* note 2, at 3.

Scholars have urged policymakers to rank and clearly and precisely define their policy objectives.[4] Such policy mandates should be "realistically" ambitious, clear in language, and specific in authorization so as to facilitate policy implementation. In the United States political system, however, ambiguity in policy mandates is not a matter of accident or oversight by policymakers. It is a method of enacting policy legislation.[5]

Some scholars recommend explicit and coherent structuring of the implementation process[6] in addition to the clear and precise policy mandates. Some scholars make a strong case for viewing implementation as an "evolution"[7] and for "matching, mixing, and switching" implementation strategies in response to changes in policy situations and the policy stage.[8] Those commentators generally assume that an explicit and well-articulated implementation design, as an integral part of the statutory policy design itself, rather than as an afterthought, would greatly aid the policy's implementation.[9]

Many independent variables significantly affect the policy implementation process. They include the characteristics of target groups, the availability of financial and personnel resources, the tractability of the problem, socioeconomic conditions,[10] communications, dispositions,

4. *See* Smith, *The Policy Implementation Process*, 4 POL'Y SCI. 197 (1973); Rein & Rabinovitz, *Implementation: A Theoretical Perspective*, in AMERICAN POLITICS AND PUBLIC POLICY (W. Burham & M. Weinberg eds. 1978); D. MAZMANIAN, *supra* note 2; Myrtle, *A Managerial View of Policy Implementation*, 17 AM. REV. OF PUB. ADMIN. 17 (1984).

5. *See* C. LINDBLOOM, THE POLICY-MAKING PROCESS 28 (1968); C. LINDBLOOM, THE INTELLIGENCE OF DEMOCRACY 87 (1965).

6. *See* D. MAZMANIAN, *supra* note 2, at 25; D. MAZMANIAN & P. SABATIER, EFFECTIVE POLICY IMPLEMENTATION (1981).

7. Majone & Wildavsky, *Implementation as Evolution*, in IMPLEMENTATION 177 (J. Pressman & A. Wildavksy eds. 1979).

8. Berman, *Thinking About Programmed and Adaptive Implementation: Matching Strategies to Situations*, in WHY POLICIES SUCCEED OR FAIL 205 (H. Ingram & D. Mann eds. 1980).

9. This Article makes a distinction between "policy design" and "implementation design." Policy design primarily concerns the causal theory, ends-means hypotheses connecting policy objectives with policy statutes. *See* D. MAZMANIAN, *supra* note 2, at 25-26; J. PRESSMAN & A. WILDAVSKY, *supra* note 1, at 147-62. Implementation design concerns the details of execution and the extent and complexity of joint action. *Id.* Defects in causal theory may cause policy failure. This is a failure of policy, not a failure of implementation design. In practice, policy and implementation design are usually interwoven in policy enactments. They are, however, conceptually distinct.

10. D. MAZMANIAN & P. SABATIER, *supra* note 2, at 24.

the bureaucratic structure,[11] presence of a "fixer,"[12] and sound causal theory.[13]

This Article argues that implementation design specified in policy legislation is potentially a major source of conflict and difficulties in the carrying out the legislative policy. Explicit and well-structured implementation design may sometimes help in the speedy and smooth implementation of policy, particularly under favorable conditions. Under one of the following circumstances, however, the statutory implementation design is likely to become itself a major source of conflict and difficulties: when policy legislation significantly and adversely affects the economic interests of large and well-organized business or industry group; when the policy becomes part of or engenders strong ideological conflicts; and when there is deep distrust between conflicting interests and groups. Regardless of the specificity of the implementation design, under these circumstances, the opposing ideologies and self-interests of important implementation actors engender conflict. These warring actors reforge implementation design into a weapon they wield to advance their interests and ideas. Interest and ideology seriously limit what a well-structured implementation design, solid causal theory, or clear policy mandates can do to smooth and speed policy implementation.

This Article focuses on the importance of interests and ideologies in policy implementation. The United States Surface Mining Control and Reclamation Act (SMCRA) of 1977 is an illustration. As with most social and political events, the conflicts and difficulties in the implementation of SMCRA are susceptible to widely varying interpretations.[14] The politics of statutory implementation design itself is an

11. G. EDWARDS, *supra* note 3, at 17, 89, 125.

12. A "fixer" tries to broker, arbitrate, cajole or otherwise try to "fix" matters so that execution of the statute proceeds smoothly. *See generally* E. BARDACH, *supra* note 3, at 268-83. Bardach argues that a fixer, preferably a legislator, should be part of the policy itself. *Id.* In the case of SMCRA, the House Subcommittee on Energy and Environment came close to being a fixer because of its members' knowledge of the environmental impact of surface mining, their commitment to the environment, and their continuous, direct oversight of the Act's implementation. For a fixer to be effective, however, certain conditions must exist, including having allies in the field; the subcommittee had none. Sharp conflicts among powerful interests and deep ideological divisions put strict limitations on the use of a fixer.

13. D. MAZMANIAN, *supra* note 2, at 25.

14. M. DERTHICK, NEW TOWNS IN-TOWN: WHY A FEDERAL PROGRAM FAILED 83 n.1 (1972).

explanation that seems most illuminating and mostly neglected.[15]

II. SMCRA: STATUTORY IMPLEMENTATION DESIGN

President Jimmy Carter signed SMCRA into law on August 3, 1977. The Act attempts to regulate the adverse environmental impacts of surface coal mining through highly technical provisions that address such concerns as blasting, acid runoff and sedimentation control, hydrological balance, restoration of original contour, and farmland productivity. The standards within the Act are clear and specific. The Act, for example, requires specific premining chemical analysis of overburden[16] and premining hydrological surveys. The Act expressly prohibits contamination of surface and ground waters from acids.[17]

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 development of state programs.[18] The Act calls for cooperation between the Secretary of the Interior and the states in the regulation of surface coal mining. The Act, recognizing that topology, hydrology and other factors that affect surface mining and reclamation vary widely among the states, gives the states primary responsibility for developing, issuing, and enforcing

15. It is possible, and arguably more appropriate, to interpret this case as a study in federalism. The importance of federalism in understanding implementation is securely established. *See* M. DERTHICK, *supra* note 13, at 83; Murphy, *Title I of ERISA: The Politics of Implementing Federal Education Reform*, 41 HARV. EDUC. REV. 35 (1971). Implementation design, as a source of implementation difficulties, has been largely neglected. Students of regulatory politics have considered statutory implementation design as an issue in regulatory policy making, generally arguing that detailed statutory implementation design results in lack of flexibility and leads to economic inefficiencies. They have not generally addressed the "politics" of statutory implementation design. *See* Marcus, *Environmental Protection Agency*, in THE POLITICS OF REGULATION 267 (J. Wilson ed. 1980).

16. Overburden is a technical term for topsoil and soil strata removed in strip mining to reach a coal seam.

17. Surface Mining Control and Land Reclamation Act § 101, 30 U.S.C. § 1201 (1982). Additionally, the Act requires premining chemical analysis of overburden and premining hydrological surveys; prohibits acid contamination of surface and groundwater; specifies disposal sites, deadlines for burial and treatment of overburden and plugging boreholes, shafts, wells, and auger holes; and restricts the disturbance, relocation, and diversion of streambeds, the allowable amounts of iron, manganese, and total suspended solids in water leaving mine sites. *Id.*

18. SMCRA § 201(b), 30 U.S.C. § 1211(b) (1982). The Act requires the Senate to confirm the OSM director, emphasizing legislative concern that OSM be autonomous of the Department of the Interior and able rigorously to enforce the Act. *Id.*

surface mining and land reclamation regulations.[19] To ensure state action meets federally mandated standards, the Act authorizes the Secretary of Interior, acting through OSM, to review state programs to determine if they effectively control surface mining operations and reclaim abandoned lands.[20] The OSM "assists" the states in developing programs to "meet the requirement of the Act."[21]

The Act directed the Secretary to implement, within six months of SMCRA's passage, a federal enforcement program that would be replaced by approved state programs or by a permanent federal program.[22] Each state considered for primacy had to submit a program for OSM review within eighteen months of enactment. The plan had to show the state's capability to carry out the Act, and state sanctions had to meet minimum requirements of SMCRA.[23] OSM could order a federal inspection of any site as a way to enforce the federal program and to evaluate the administration of approved state programs.[24] A state alleged to be inadequately enforcing the Act faces a public hearing called by the Secretary. A state has a reasonable time to conform to the Act before OSM can suspend or revoke the state program.[25]

Legislators clearly expected the coal states to develop regulatory programs in conformity with the Act and federal regulations. States desiring primacy were required to submit their programs to OSM for approval. Once approved, the states were expected to administer and enforce their programs. Essentially, OSM was to guide states in developing regulatory programs that would form a collective national program.[26] OSM set national standards that were to be adapted, without dilution, to varying regional conditions.

States were to be the primary regulatory authority, with OSM providing financial and technical help when necessary to bolster state regulatory and enforcement capabilities. A "state window" was to allow states to adapt the Act and federal regulations to specific topology, hydrology, soil characteristics and other conditions in each state. OSM,

19. SMCRA § 101(f), 30 U.S.C. § 1201(f) (1982).

20. SMCRA § 201(c)(1), 30 U.S.C. § 1211(c)(1) (1982).

21. SMCRA § 201(c)(9), 30 U.S.C. § 1211(c)(9) (1982).

22. SMCRA § 502(e), 30 U.S.C. § 1252(e) (1982).

23. SMCRA § 503(a)(2), 30 U.S.C. § 1253(a)(2) (1982).

24. SMCRA § 517(a), 30 U.S.C. 1267(a) (1982).

25. SMCRA § 521(b), 30 U.S.C. 1271(b) (1982).

26. Menzel, *Implementation of the Federal Surface Mining Control and Reclamation Act of 1977*, 41 PUB. ADMIN. REV. 212 (1981).

while leaving day-to-day inspection and enforcement to the state regulators, was to ensure through inspections and other oversight activities that the states were indeed enforcing the Act. OSM was also to receive and act on citizen allegations of regulatory violations by mine operators or the state regulatory authority.

A timetable for putting the Act into place was strict and explicit. Implementation was to proceed in three distinct but overlapping stages: interim federal regulations, permanent federal regulations, and state programs. Federal regulations were to be followed between the Act's passage and the approval of state programs. Both OSM and state

TABLE 1

	Statutory	Actual
Publish Interim Regulation	November 3, 1977	December 13, 1977
Publish Permanent Regulation	August 3, 1978	March 13, 1979
Submit State Program	February 3, 1979	March 3, 1980
Approve State Program or Implement Federal Program	June 3, 1980	January 3, 1981

regulatory authorities were responsible for implementing the federal regulatory program. Even after the approval of the state regulatory program, OSM retained the authority to investigate the states' implementation of the Act, to revoke a state's primacy, and to regulate directly surface mining in states that fail to implement the Act effectively. Table 1 illustrates the timetable specified in the Act and SMCRA's actual off-schedule implementation that occurred.[27]

In sum, the regulatory aims and implementation design were specified in great detail in the Act. Technical design standards, a strict timetable for implementation, and procedural details of enforcement, inspection, and oversight responsibilities of respective state and federal regulatory agencies were all spelled out.

III. IMPLEMENTING SMCRA

The major conflict surrounding SMCRA shifted from the legislative

27. Table compiled by author from SMCRA legislative history.

battle over its enactment to its implementation. While implementation of SMCRA remains controversial and conflict-ridden even now, the need for the federal legislation remains widely recognized. Even OSM appointees under Ronald Reagan opposed legislative amendments to SMCRA.[28] The implementation design specified in SMCRA (the appropriate roles of OSM and the states in the implementation of the Act) has been the center of the SMCRA controversy.

While fortunes and strategies of key actors changed substantially from the Carter administration to the Reagan years, SMCRA's implementation design remained a constant source of major conflict during the two administrations.

A. *The Carter Years*

OSM received general support from key interest groups in the months immediately following the Act's passage. Initially, the nation's governors and the coal industry generally praised and supported OSM's initial efforts.[29] Key members of the House committee with major oversight authority over OSM were supportive of the office and its director, Walter Heine.[30]

Coal states' and the coal industry's support for OSM was short lived. The coal states and coal industry officials became bitter and persistent adversaries of OSM during the Carter years. As OSM moved to promulgate regulations and exercise its inspection and enforcement responsibilities, the coal states and coal industry became increasingly opposed to OSM's implementation strategy.

Five months after the Act's passage, the coal states and the coal industry complained that OSM failed to meet the strict timetable set for it by the Act, yet refused to extend deadlines set for the states and industry. Coal state representatives argued that the timetable was unrealistic or impossible.[31] The coal industry was equally emphatic in

28. *Implementation of the Surface Mining Control and Reclamation Act of 1977: Hearing before the Senate Subcommittee on Energy and Mineral Resources of the Committee on Energy and Natural Resources*, 97th Cong., 1st Sess. 2 (1981) [hereinafter *1981 Senate Oversight Hearings*].

29. *Implementation of the Surface Mining Control and Reclamation Act of 1977: Oversight Hearings, 1978: Hearing Before the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs*, 95th Cong., 2d Sess. 29 (1978).

30. *Id.* at 7, 67.

31. *Id.* at 20-21, 50.

urging extension of the statutory implementation timetable. Coal industry associations and individual coal companies, including the National Independent Coal Operators Association and the Mining and Reclamation Council, urged extensions of six to twelve months.[32] On the other hand, OSM and environmentalists strongly objected to any extension of the implementation timetable.[33]

Although OSM was seven months late in promulgating permanent regulations that the states were to use in preparing their programs, OSM initially refused to extend any deadlines for state program submissions. After sustained complaints from the states, however, OSM granted a six-month extension for program submissions. A federal district court granted a further extension of seven months as a result of state and industry lawsuits.[34] The Solicitor General of the Department of the Interior extended the deadline for OSM approval or rejection of state programs. OSM's extension of deadlines came only after intense pressure and criticism from the states and the industry. Instead of facilitating implementation, the very specificity of the implementation timetable triggered the first of many political battles over implementation design.

The struggle over the timetable, however, was only an initial skirmish in the war over implementation of the Act. In addition to lobbying Congress and going to the courts to delay the implementation of the Act, the coal industry and several state governments mounted major court challenges to the Act in dozens of lawsuits filed in early 1978. Indiana, Illinois, and Virginia also filed lawsuits against OSM and its implementation of the Act.

The constitutionality of the Act was challenged[35] as well as its scope and manner of implementation.[36] Coal industry associations charged

32. *Id.* at 26-27, 30.

33. *Id.* at 5, 59.

34. *In re* Permanent Surface Mining Regulation Litigation, 653 F.2d 514, 527 (D.C. Cir. 1981) (en banc), *cert. denied*, 454 U.S. 822 (1981).

35. Virginia Surface Mining and Reclamation Assoc. v. Andrus, 604 F.2d 312, 314 (4th Cir. 1979) (challenge to enforcement of SMCRA under commerce clause and fifth and tenth amendments); Indiana v. Andrus, 501 F. Supp. 452 (S.D. Ind. 1980) (coal miners and operators challenged SMCRA provisions).

36. *See In re* Permanent Surface Mining Regulation Litigation, 653 F.2d at 514-17 (challenging the Act's information requirements and criticizing numerous individual regulations as beyond scope of Secretary of Interior's authority); Public Lands Inst. v. Andrus, 497 F. Supp. 482 (D.D.C. 1980) (challenging Secretary of Interior regulation amending 30 C.F.R. § 701.11 and § 741.11 which postponed operator compliance with a permanent program for regulation of surface coal mining until approval of a state

that OSM interim regulations exceeded the rulemaking powers granted to OSM by the Act.[37] Although constitutional challenges were unsuccessful,[38] challenges to OSM interpretation and implementation of the Act succeeded in creating considerable confusion and delay.

The coal industry and the states insisted, often vociferously, that OSM regulations went far beyond the Act and its congressional intent, and that the Carter administration and its environmental allies were trying to do through regulation what they could not do through legislation.[39] The coal industry accused OSM of being overzealous in its implementation of SMCRA.[40]

During the Carter years, the states charged that OSM promulgated permanent regulations far more stringent than called for by the Act. They accused OSM of defying congressional intent by attempting to grab regulatory responsibility away from the states. The states further charged that OSM was not utilizing the "state window" concept as intended by Congress, but instead was requiring the states to accept

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program or implementation of a federal program); Wilson Farms Coal Co. v. Andrus, 518 F. Supp. 295 (E.D. Ky. 1981) (challenging 30-day statute of limitations under the Act for judicial review of Secretary of Interior's determination in adjudicatory proceedings); Utah Int'l v. Andrus, 488 F. Supp. 962 (D. Utah 1979) (asking for declaratory relief, seeking writ of mandamus requiring Secretary of Interior to execute and deliver a preference right coal lease); *see also* D. Pearson, Public Policy and the Courts: An Assessment of the Failure in Implementing the Surface Mining and Reclamation Act of 1977 (1982) (unpublished research report available at Southern Illinois University, Carbondale).

37. *In re* Surface Mining Regulation Litigation, 452 F. Supp. 327 (D.D.C. 1978).

38. *See* Hodel v. Virginia Surface Mining and Reclamation Assoc., 452 U.S. 264 (1981) (action by Association of Coal Producers engaged in surface coal mining operations in Virginia held constitutional in context of facial challenges); Hodel v. Indiana 452 U.S. 314 (1981) (certain general provisions of SMCRA held not violative of commerce cause, fifth amendment, and tenth amendment).

39. *See Virginia Suit Against Strip-Mine Rules Nears End*, N.Y. Times, Apr. 22, 1979, at A19, col. 1; *Optimism on Strip-Mine Law*, N.Y. Times, Aug. 5, 1978, at 25-26; *Implementation of Public Law 95-87, The Surface Mining Control and Reclamation Act and Pending Legislation to Increase Authorization of Appropriations: Hearing Before Subcomm. on Public Lands and Resources of the Senate Comm. on Energy and Natural Resources*, 95th Cong., 2d Sess. (1978) [hereinafter *Implementation of Public Law 95-87*] (addressing federal agency regulation under SMCRA).

40. REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES, ISSUES SURROUNDING THE SURFACE MINING CONTROL & RECLAMATION ACT 12 (1979) [hereinafter COMPTROLLER GENERAL'S REPORT]; *see generally Oversight on the Surface Mining Control and Reclamation Act of 1977: Oversight Hearing Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs*, 96th Cong., 2d Sess. (1980) [hereinafter *1980 House Oversight Hearings*] (testimony of various state coal association and coal industry representatives).

uniform standards.[41]

Despite these charges and court challenges, OSM strenuously defended its implementation of the Act, characterizing the permanent regulations as fair, workable, and protective of the environment. The "state window" was included in the regulations. In order to use it, however, OSM required states to show that their proposed regulations were *no less stringent* than the Act and OSM permanent regulations, and that the proposed alternatives were necessary. OSM argued that uniform regulations were needed to establish minimum standards for national regulation of surface coal mining; that it had allowed sufficient time for state input in developing regulations; and that its design criteria and standards were specific because the statutory standards set out by Congress were specific. In short, OSM argued that it was following the Act's legislative intent.[42] Obviously, OSM's perspective on implementing SMCRA was far different from that of the states. Two implementation actors could not have been further apart in the way they looked at reality and assessed their positions.

Environmental groups during the Carter years supported OSM efforts. The groups believed environmental protection was essential and would best be guaranteed by activist OSM oversight of the states and by uniform federal standards. Environmental groups argued that such standards were not overly stringent because they allowed the "state window."[43] Congressional oversight hearings drew a large number of environmental groups representing a wide variety of national and regional concerns. They generally argued for strict enforcement of SMCRA and even accused OSM of not enforcing its interim performance standards vigorously due to extreme political pressure from powerful coal state governors.[44]

The success of the coal states in challenging and delaying OSM's efforts had become a real concern to environmental groups. They lob-

41. COMPTROLLER GENERAL'S REPORT, *supra* note 40, at 13-14; *see generally Implementation of Public Law 95-87, supra* note 39 (addressing problems and progress of federal agencies in fulfilling their responsibilities under SMCRA); *Implementation of the Surface Mining Control and Reclamation Act of 1977: Oversight Hearings Before the Subcomm. on Energy and the Environment of the House committee on Interior and Insular Affairs*, 96th Cong., 1st Sess. (1979) [hereinafter *1979 House Oversight Hearings*] (addressing impact of SMCRA on coal business).

42. COMPTROLLER GENERAL'S REPORT, *supra* note 40, at 12; *see Implementation of Public Law 95-87, supra* note 39; *1980 House Oversight Hearings, supra* note 40.

43. COMPTROLLER GENERAL'S REPORT, *supra* note 40, at 13-14.

44. *1979 House Oversight Hearings, supra* note 41, at 58.

bied for continued federal inspection to protect public lands, for correction of state misinterpretation of the grandfather clause, and for OSM reassessment of state efforts to comply with the Act before granting primacy.[45]

In sum, Carter's OSM followed "enforced compliance" implementation strategy.[46] Enforced compliance strategy is characterized by reliance on formal, precise, and specific rules; literal interpretation of rules; a quest for uniformity; and the distrust of and an adversarial orientation toward the regulated parties.[47] OSM strategy 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. They charged that OSM regulations were "too inflexible, exceeded congressional intent, were not cost effective, were influenced excessively by the agency's 'zealotry,'. . . and that the agency was bent on expanding its own payroll and responsibilities to ensure survival."[48] Environmental groups and the Congress, particularly the Democratic majority in the House Committee on Interior and Insular Affairs, generally supported OSM implementation strategy and defended the agency against state and industry attacks.

Explicit implementation design, far from smoothing the path of policy implementation, was used by both sides to challenge their opponent's motives. Each tried to shape the implementation process to its own advantage. The very implementation design became the battleground.

B. *The Reagan Years*

With the election of Ronald Reagan, OSM implementation strategy changed dramatically. OSM was one of the federal agencies singled out as an example of regulatory excesses in a transition report by the

45. *See generally 1979 House Oversight Hearings, supra* note 41 (addressing SMCRA's impact on coal business).

46. N. SHOVER, D. CLELLAND & J. SYNXWILER, DEVELOPING A REGULATORY BUREAUCRACY: THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT 78 (1983).

47. *Id.* at 29.

48. *Id.* at 55.

conservative Heritage Foundation.[49] The report accused OSM of "zealotry" and promulgating regulations far in excess of the requirements of the Act. The report recommended that states be given a major role in implementing the Act as soon as possible.[50] The new administration appointed people who had opposed the agency during the Carter years to the top positions within OSM.

OSM strategy changed from OSM-led implementation under Carter to state-led implementation under Reagan. This change was articulated 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. . . . This approach recognizes the basic framework established under SMCRA."[51]

Regulatory reform at OSM involved three major changes. OSM was reorganized to decentralize authority to state-level OSM offices and to increase the states' power in regulating surface mining. It replaced regional OSM offices with state offices, field offices, and technical service centers. OSM increased the power of the national office over state and field offices so that the national office could prevent state regulatory excesses. The second change at OSM was a drastic reduction in the number of OSM employees, particularly inspection and enforcement personnel. These cuts were made to reduce OSM's role in implementation and affected both national and field offices. The third major change at OSM involved "regulatory relief." In mid-1981, OSM targeted 89 rule sections for deletion, 329 sections for revision, and 112 sections for combination with other sections, while proposing 12 new sections.[52]

The "state window" provision became more flexible through revision. The Carter OSM regulation requiring state regulation to be "no less stringent than" the federal regulations was changed to read "no less effective than." Performance standards replaced design standards in the regulations. OSM increased the pace of approving state regulatory programs and thereby granted primacy in regulating surface min-

49. C. HEATHERLY, MANDATE FOR LEADERSHIP 344-47 (1981).

50. *Id.*

51. *Implementation of the Surface Mining Control and Reclamation Act of 1977: Oversight Hearings Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs*, 97th Cong., 1st Sess. 7 (1981) [hereinafter *1981 House Oversight Hearings*].

52. Menzel, *Redirecting the Implementation of a Law: The Reagan Administration and Coal Surface Mining Regulation*, 43 PUB. ADMIN. REV. 411 (1983).

ing to the states. In the fall of 1981, there were two fully approved state programs. By early 1983, nineteen state programs were fully approved.[53] OSM enforcement style changed from one of confrontation and distrust of the states and coal industry to one of cooperation and gentle persuasion.

The states supported OSM's redirection to a more cooperative and decentralized 'negotiated compliance' strategy.[54] The Interstate Mining Compact Commission, representing governors of sixteen major coal producing states, expressed its full support for the changes made by the Reagan OSM.[55] A state regulator reaffirmed this support a year later.[56]

The coal industry generally supported OSM efforts to shift implementation strategy. The coal industry's two major concerns — assuring rapid approval of state programs and eliminating specific design criteria — were fully addressed by the Reagan OSM, generally to the industry's satisfaction. If anything, the industry, particularly small operators, argued for further severe reduction in regulatory standards.[57]

Environmental groups became the major adversary of the Reagan OSM's implementation of the Act. Environmentalists worried that the Reagan OSM tried to gut SMCRA by emasculating OSM and by lax and ineffective implementation. Environmentalists were forced into a defensive posture, shifting their efforts from advocating a strong federal presence and strict state and industry compliance during the Carter years to merely defending the regulations during the Reagan years.[58] The environmentalist — rather than the coal industry or states — increasingly resorted to the courts to challenge OSM action and

53. *Implementation of the Surface Mining Control & Reclamation Act of 1977: Oversight Hearings Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs*, 98th Cong., 1st Sess. 3-14 (1983) [hereinafter *1983 House Oversight Hearings*].

54. *See* N. SHOVER, D. CLELLAND & J. LYNXWILER, *supra* note 46, at 62.

55. *Reorganization of the Office of Surface Mining: Oversight Hearings Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs*, 97th Cong., 1st Sess. 72-73 (1981).

56. *See generally Implementation of the Surface Mining Control and Reclamation Act of 1977: Oversight Hearing Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs*, 97th Cong., 2d Sess. (1982) (concerning strip mining reclamation).

57. *See generally 1983 House Oversight Hearings, supra* note 53 (discussing structure of state programs).

58. *Id.* at 37-43; *see also 1981 Oversight Hearings, supra* note 51, at 54-66.

inaction.[59]

Congressional oversight of OSM implementation strategy, particularly by members of the House of Representatives, has been intense since SMCRA's passage in 1977.[60] During the Carter years, the House Subcommittee on Energy and the Environment, particularly its Democratic members, generally supported OSM and its implementation strategy 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 generally were silent. In the Senate, Republicans generally praised OSM at oversight hearings.[61] Democrats' participation in Senate hearings was negligible. Democrats on the House subcommittee feared that their efforts to enact and implement the Act were being undone by the Reagan OSM.[62]

In brief, the Reagan OSM abandoned the strict oversight role of its predecessor and instead worked closely with the states and coal industry for state primacy and a wide-open "state window." OSM was reluctant to oversee the states to ensure implementation of the Act. It was generally unwilling to enforce the law even when the states had engaged in at best questionable practices.[63] 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

59. Save Our Cumberland Mountains, Inc. v. Clark, 725 F.2d 1434 (D.D.C. 1984) (two citizen environmental groups); Save Our Cumberland Mountains, Inc. v. Watt, 550 F. Supp. 979 (D.D.C. 1982) (two Appalachian-based nonprofit environmentalist organizations).

60. Congressional hearings on the implementation of SMCRA are relatively frequent and usually occur in both Houses. *See supra* notes 28, 29, 40, 41, 51, 53, 55, 56 and *infra* note 61 for specific oversight hearing references.

61. *See generally Implementation of the Surface Mining Control and Reclamation Act of 1977 in the Appalachian Coal Region: Hearing Before the Subcomm. on Energy and Mineral Resources of the Senate Comm. on Energy and Natural Resources*, 98th Cong., 2d Sess. (1984) (examining OSM implementation of SMCRA regulatory programs in the Appalachian region).

62. *See generally 1981 House Oversight Hearings, supra* note 51 (discussing whether the Reagan OSM reclamation program was consistent with SMCRA).

63. *See* N. SHOVER, D. CLELLAND, & J. LYNXWILER, *supra* note 46, at 63-64.

amend the Act[64] and instead relied on drastically changed implementation strategy to accomplish antiregulatory aims. The states and the coal industry supported OSM in congressional hearings; environmental groups and Democratic congressional supporters of the OSM in the Carter years increasingly became the strongest critics of OSM's implementation during the Reagan years.

IV. CONCLUSION

Implementation of SMCRA continues to be a complex and bitter episode in environmental politics. Bitter, protracted struggles between environmental interests and the coal industry characterized SMCRA's legislative history. The coal industry fought until the end to try to defeat SMCRA.[65] 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 abuses by surface coal mining. The Act's passage did not resolve the conflicts regarding surface coal mining but merely transferred the conflicts from the legislative arena to the implementation arena. Although legislative oversight authority remained important and the House Interior and Insular Affairs Committee remained a major actor, OSM and the states became the central players in the Act's implementation.

The politics of implementation centered on the implementation design itself as conflicts and contentions focused on how the Act should be carried out. The coal industry concentrated on the implementation phase to delay and minimize federal regulatory efforts. The coal industry had always preferred state regulatory programs to a federal program. The implementation design specified in the Act required a joint federal-state regulatory mechanism. The coal industry used this provision 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 generally agreed with that contention.

Environmentalists, on the other hand, deeply doubted whether the coal industry sincerely favored controls on environmental damage caused by surface mining and were suspicious of the states' willingness to regulate the coal industry. They interpreted the implementation de-

64. *1981 Senate Oversight Hearings*, *supra* note 28, at 2.

65. R. VIETOR, ENVIRONMENTAL POLITICS AND THE COAL COALITION 85 (1981); Wagner, *Congress Clears Strip Mining Control Bill*, CONG. Q. WEEKLY REP., July 23, 1977, at 1495-1500.

sign specified in the Act as requiring a strong and continuing federal role in setting regulatory standards and in enforcing those standards through inspections and sanctions. They saw the Act's design as setting up a nationally consistent regulatory program with the states doing the day-to-day enforcement under the watchful eye of OSM. The agency's own interpretation of the Act's design changed dramatically from the Carter years to the Reagan years, reflecting the ideological commitments of the two administrations.

It is clear that intense, protracted conflicts erupted over SMCRA's implementation design, even though the Act's regulatory aims and implementation methods were specified in great detail. The SMCRA experience seriously challengess the doctrine that clear mandates and well-articulated statutory implementation design assure smooth implementation of policy. Studies in other regulatory policy areas support that skepticism.[66]

Well-articulated implementation design may facilitate implementation under otherwise highly favorable circumstances — such as a lack of conflicting interests and ideology, general agreement among contending factions as to the appropriate legislative remedy and the mechanism for achieving it, and the absence of an intergovernmental agency network for policy implementation. Such favorable conditions are exceptions, however, rather than the general rule. When powerful interests who deeply distrust one another contend for significant stakes, clearly articulated statutory implementation design itself may become merely an additional obstacle.

A clear-cut implementation design, even when detailed in the policy legislation, is unlikely to make implementation smoother when a fundamental conflict of interests remains. The implementation design quite likely will become another weapon in the battle between the interests involved. The coal industry's concern with adverse economic impact, the state's interest in autonomy and its respective economy, and the environmentalists' concern for the well-being of the planet create severe conflicts that are not likely to be settled by a policy enactment. Such conflicts invariably reappear in the implementation phase of a

66. *See generally* K. MEIER, REGULATION: POLITICS, BUREAUCRACY AND ECONOMICS 18 (1985) (discussing the myths of regulation in various areas including consumer protection, agriculture, and environmental protection); Kleman, *Occupational Safety and Health Administration*, in THE POLITICS OF REGULATION 236 (1980); Schultz & Wei, *Regulatory Enforcement in a Federalist System*, 80 AM. POL. SCI. REV. 1249, 1264 (1986).

policy. The politics of implementation will remain despite explicit implementation design or clear, specific policy mandates. Further empirical studies must identify the conditions under which clear and specific statutory implementation design aids policy implementation.

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