

News

Committee on Interior & Insular Affairs

George Miller, CHAIRMAN
U.S. House of Representatives
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CONTACT: JIM ZOIA (202) 226-7761

RAHALL COMMENCES CONGRESSIONAL INQUIRY INTO FEDERAL OFFICE OF SURFACE MINING

WASHINGTON, D.C. -- U.S. Rep. Nick J. Rahall (D-WV) today said that he will commence a Congressional inquiry into the federal Office of Surface Mining Reclamation and Enforcement (OSMRE). Rahall is the chairman of the House Subcommittee on Mining and Natural Resources which has legislative and oversight jurisdiction over the agency.

"In light of the mounting frustrations over the Office of Surface Mining's inability to come to grips with the major unresolved issues in the implementation of the federal surface mining act, I believe it is incumbent upon Congress to conduct a full inquiry into the agency's activities," Rahall said. In a June 25, 1991, letter to OSMRE Director Harry Snyder, Rahall said he would schedule a Subcommittee hearing on the agency during the later part of the year.

In the letter, Rahall noted that in the past the agency has made a number of promises to the Congress that it has not followed through on, including in areas involving the issuance of regulations on valid existing rights, the Applicant/Violator System and subsidence. He also took issue with the manner by which OSM conducts its state oversight responsibilities.

"The inequitable approach OSMRE takes in reviewing state programs in its annual oversight reports, and the irregular nature of the level and magnitude of OSMRE response to real or perceived problems in state programs, causes me to question not only the efficacy but consistency of OSMRE oversight activities," Rahall wrote.

He added: "While illegal mining apparently still has a grip in Kentucky despite the so-called federal bail-out of that state's regulatory program, certain representatives of the Kentucky coal industry are now calling for that state to relinquish primacy to the federal government. I think this incongruent situation is well worth examining, especially in light of what is occurring in a neighboring state, West Virginia, which has no history of two-acre exemption abuses or any other type of illegal mining, where squadrons of OSMRE bureaucrats armed with threats of a federal take-over have been unleashed."

While OSMRE is charged with implementing the Surface Mining Control and Reclamation Act of 1977, the law is premised on the concept of state 'primacy': The states have the lead in regulating coal mining operations within their borders so long as they do so under laws that conform with the federal statute and regulations promulgated by the federal agency. In order to ensure compliance, OSMRE conducts oversight activities and can assume the regulatory program if a state substantially fails to fulfill its obligations.

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"State primacy is the linchpin in the federal surface mining act and I am fearful that a breakdown in the relationship between the coal states and the federal agency is brewing," Rahall stated. "If this is the case, it could have devastating consequences on the goals of the law, those being a viable coal industry coupled with the protection of the health, safety and environment of coalfield residents."

Rahall said that the agency's continued failure to resolve a number of major issues involving the law's implementation 14 years after its enactment creates an unstable environment for the coal industry. "It is extremely hard for the coal industry to comply with a moving target," Rahall said. "The agency owes it to the industry to let them know, once and for all, what the rules of the game will be."

In his letter to OSMRE Director Snyder, Rahall said that despite repeated promises made as early as the Interior Secretary's Senate confirmation hearing, as of this date, OSMRE has not even published a proposed rule defining what constitutes a valid existing right (VER) under the law. The 1977 law made a number of federally protected areas, such as national parks and forests, off-limits to surface coal mining unless there was a pre-existing right to mine. OSMRE has yet to provide a definition of this right.

In addition, while in January 1990 with great fanfare the Interior Department negotiated an out-of-court settlement with environmental plaintiffs on the Applicant Violator System (AVS)--which is supposed to identify gross violators of the law so that new mining permits are not issued to these entities until past abuses are addressed--Rahall said that there is little to indicate that the AVS is any more effective now than it was in 1989.

OSMRE has also repeatedly stated that it would proceed with a rulemaking to address a number of pressing issues relating to the effects on homes and other dwellings from subsidence caused by active underground coal mining operations. As of this date, no action has been taken.

"Please be assured that the shortcomings described in this letter are not meant to reflect upon your personal directorship of OSMRE," Rahall wrote in concluding his letter to Snyder. "In the past I have stated that you are one of the better, if not long-lived, OSMRE directors. And when the final chapter is closed on your tenure, it is still my hope that this will be the case. However, the fact of the matter is that you, and those whom you answer to in the Department are, and will be held, accountable by this Subcommittee and the general public."

Prior to scheduled the hearing, Rahall said that he will be sending a number of requests for detailed information on these matters to the agency. "The bottom line is that we are going to aggressively conduct oversight on the overseer," he stated.