TDEC & SMCRA Primacy

from concerned Tennesseans

OVERVIEW

In 1984, the State of Tennessee relinquished its authority to regulate coal mining and reclamation under the Surface Mining Control and Reclamation Act (SMCRA) to the federal Office of Surface Mining, Reclamation, and Enforcement (OSMRE), due to lack of adequate capacity to manage the program. After more than five years of concerted lobbying efforts by representatives of the TN coal industry, the TN legislature in 2018 passed a directive for the TN Department of Environment and Conservation (TDEC) to begin the process of reassuming regulatory primacy over coal mining.

TN LEGISLATURE REVERSING COURSE?

2018 bill requires the state-run program to be cost-neutral.

TDEC estimates provided to the Governor show that assuming SMCRA primacy will cost Tennessee taxpayers more than $2.5 million by 2025.

Industry advocates believe that a state-run program will reduce their regulatory burden when applying for permits as well as shorten permit processing times. Conservation-minded citizens are concerned that TDEC is not equipped to provide adequate regulatory oversight of mine permitting and enforcement of reclamation and clean-up requirements. They are further concerned that the annual cost to taxpayers of the program vastly exceeds any economic benefit that it would generate.

RECENT HISTORY

Since the passage of the 2018 legislation, TDEC has applied for and received $2,300,000 in federal grant funds to establish and develop the regulatory structure for the proposed new state program. TDEC also submitted a draft proposal to OSMRE for informal review. Final approval by OSMRE is required before the state can assume regulatory primacy. OSMRE has responded to the draft proposal, and **its critiques are so numerous and consequential that the state legislature will be required to pass "clean-up" legislation** to allow TDEC to design a program that addresses OSMRE's concerns. Consequently, TDEC drafted and filed a Caption Bill, House Bill 90, to remediate the deficiencies of the 2018 bill as detailed by OSMRE.

MAIN ISSUE

According to the original 2018 legislation, **the state-run program must be self-sustaining,** with costs not exceeding revenue generated by the program. TDEC's draft proposal creates three revenue sources: 1) administrative fees for such items as permit applications and renewals; 2) acreage fees of $40/acre for active mines and $20/acre reclaimed sites; and 3) severance taxes of $0.04/ton for underground coal and $0.09/ton for surface coal. New and continuing permit applications have dropped precipitously in recent years and TDEC estimates that they will handle an average of only one permit per year into the future. An analysis of this fee structure based on projected future permit activity shows that at the absolute maximum, program revenue will only cover 20% of program costs. TDEC has estimated that in order to maintain the program, they will require an annual allocation of over $870,000/year from the state budget. **Tennessee taxpayers will be asked to prop up an unneeded program that benefits a shockingly small number of companies and accrues no economic benefit to the state.**

OTHER ISSUES OF CONCERN

The new process will:

- remove the need for mining companies to go through NEPA and Endangered Species Act Sec 7 consultations, which removes a layer of regulatory oversight,
- reduce opportunities for the public to be engaged in commenting on proposed projects, and
- if mining companies skirt their reclamation duties by declaring bankruptcy, **the state will be left holding the bill for unfinished reclamation**.

If TDEC Assumes SMCRA Primacy:

Program Cost FY21-22:
$60,000
Program Cost FY22-23 and beyond:
$871,000/year

House Bill 90 is a caption bill that is expected to contain language to remove the contingency that the program be self-sufficient, because **there is no question that annual cost will exceed revenue.** That provision is not found in the caption to the bill; rather, it will likely be added surreptitiously as an amendment at the last minute. Remarkably, even though TDEC has notified the Governor that SMCRA primacy will cost Tennessee taxpayers millions of dollars, the HB90 Fiscal Note estimates the impact as "Not Significant." Look for amendments to that false claim.

THE TRUTH ABOUT COAL MINING IN TENNESSEE

Coal production in Tennessee dropped 91% from 2009 to 2018, so the number of beneficiaries of this legislation is dwarfed by the number of Tennesseans who will pay for it. Meanwhile there is a looming region-wide crisis of seriously inadequate funding to address mine reclamation and clean-up as mining companies skirt their responsibility for reclamation by declaring bankruptcy. Millions of federal tax dollars have already been spent in a good faith effort to assist TDEC in the development of its coal mining regulatory program, with the results so far being wholly unacceptable to OSMRE. There is no good economic reason for the State to continue to pursue this path, and the legislature should vote down any bill that removes the current requirement that the TDEC-run program be financially self-sufficient.