

## **Richard Grossman Letter to Joan Mulhern**

co-founder, Program on Corporations, Law & Democracy (POCLAD)

**22 April 2002, Earth Day**

The following letter is reproduced with permission of the author.

---

**Richard Grossman**  
**Program on Corporations, Law & Democracy**  
email: [people@poclad.org](mailto:people@poclad.org)

22 April 2002  
Earth Day

Joan Mulhern  
Earthjustice  
1625 Massachusetts Avenue, # 702  
Washington DC 20036

Dear Joan Mulhern,

Your interview in the 15 April Corporate Crime Reporter provoked some thoughts.

You told how environmental groups are now invoking the Surface Mining Control & Reclamation Act [SMCRA] and the Clean Water Act [CWA] to stop mountain top removal. You urge: "... the mining companies should change their practices to conform to the law, which should be maintained and enforced."

We have 25 years of SMCRA under our belts, and even more experience with CWA. From the perspective of Appalachia, these two laws haven't been the cat's pajamas. (You yourself mentioned the Fourth Circuit ruling that the courts lacked jurisdiction to hear citizen suits under SMCRA, and that the Corps of Engineers has from In The Beginning been approving 99% of all corporate permit applications under the CWA.)

You stated: "[coal corporations] should never have been allowed to build these gigantic mines in the first place and would not have if the law had been enforced."

But hasn't SMCRA been enforced? Haven't public officials wielded SIVICRA against communities, people, mountains, streams, and diverse species? Against democracy?

The law has worked, as has CWA. Both laws enabled polluting and ruling corporations to legalize their destructions; to block the public from using democratic processes to stop corporate assaults upon life, liberty and property; from advocating people's visions and agendas. Such laws should be maintained?

These laws have channeled people (including dedicated lawyers) into endless

regulatory and juridical struggles over definitions and minutiae, struggles which conceded corporations' right to govern communities and devour the Earth. These laws have diverted passionate and creative minds away from strategies and tactics that empower local jurisdictions to prevent their eviscerations by absentee corporations and politicians for hire.

I was working in Washington DC when SMCRA was enacted and during the many debates about the nature of the Army Corps of Engineers. In those days, there were people who advocated expunging the Corps from the face of the Earth, There were people who understood that there could never be sane strip-mining in Appalachia's ridges and hollows.

Alas, Washington DC environmental groups joined with corporate lobbyists and politicians to establish rules under which coal corporations could strip-mine for ever and ever. They betrayed the folks from the ridges and hollows whom Save Our Cumberland Mountains (SOCM) had brought together over the previous decade in a valiant effort to ban strip-mining.

Appalachians knew that SMCRA stripped their communities of the little power they had left after generations of corporate-plus-government assault. SOCM and friends of SOCM, boycotting the bill signing and the "victory" party at the Carter White House, accurately predicted that the corporate operatives who wrote SMCRA would use the rule of law to plunder and usurp.

If the quarter century investment in SMCRA or CWA had gone instead to challenging corporations' ability to use law (*and* the Constitution, *and* our governments) against people, communities, mountains, rivers and species, and into asserting the people's authority to govern, there'd be no mountain top removal today.

Before young activists and lawyers throw themselves into another twenty five years of trying to make corporate rights laws work to people's and the Earth's advantage, wouldn't it make sense to explore the nation's experience with regulatory laws? With corporations? With the Constitution?

Shouldn't today's dedicated activists and idealistic lawyers seek organizing strategies which strip governing authority from corporate managers? Which contest public officials who have been denying people's fundamental rights? This is what food and farm organizers are doing in Vermont, California and Pennsylvania.

I would be pleased to discuss these matters with you. Enclosed are a few items you might find provocative.

In Solidarity,

Richard Grossman,

cc: Russell Mokhiber,  
Corporate Crime Reporter

<http://www.ratical.org/corporations/RG2JM.html>