

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **2001-08-03**  
SEC Accession No. **0000106455-01-500020**

([HTML Version](#) on [secdatabase.com](#))

### FILER

#### **WESTMORELAND COAL CO**

CIK: **106455** | IRS No.: **231128670** | State of Incorpor.: **DE** | Fiscal Year End: **1231**  
Type: **S-8** | Act: **33** | File No.: **333-66698** | Film No.: **1697344**  
SIC: **1220** Bituminous coal & lignite mining

Mailing Address  
2 N CASCADE AVE  
# 14THFL  
COLORADO SPRINGS CO  
80903-1614

Business Address  
2 NORTH CASCADE AVENUE  
14TH FLOOR  
COLORADO SPRINGE CO  
80903  
7194422600

**SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933**

**Westmoreland Coal Company**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of  
Incorporation or Organization)

**23-1128670**

(I.R.S. Employer  
Identification No.)

**14th Floor, 2 North Cascade Avenue  
Colorado Springs, Colorado**

**719-442-2600**

(Address of Principal Executive Offices)

**80903**

(Zip Code)

**Westmoreland Coal Company  
And  
Subsidiaries**

**Employees' Savings Plan**

(Full Title of the Plan)

**Paul W. Durham**

**Assistant General Counsel**

**14th Floor, 2 North Cascade Avenue**

**Colorado Springs, Colorado 80903**

(Name and Address of Agent For Service)

**719-448-5807**

(Telephone Number, Including Area Code, of Agent For Service)

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered (1)	Amount to be Registered	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, \$2.50	500,000 shares	\$14.945	\$7,472,500	\$1,868

par value per share  
(3)

Depository Shares, each representing one-quarter of a share of Series A Convertible Exchangeable Preferred Stock, par value \$1.00 per share	180,000 shares	\$32.50	\$5,850,000	\$1,463
---	----------------	---------	-------------	---------

- (1) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the registrant's Common Stock as reported on the American Stock Exchange on July 27, 2001, and based upon the average of the high and low prices of the registrant's Depository Shares as reported on the American Stock Exchange on July 31, 2001.
- (3) Each share of the registrant's Common Stock offered hereby will be accompanied by one Preferred Stock Purchase Right.

Page

**PART I**  
**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

The information required by Item 1 is included in documents sent or given to participants in the plan covered by this registration statement (the "Plan") pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Securities Act").

**Item 2. Registrant Information and Employee Plan Annual Information.**

The written statement required by Item 2 is included in documents sent or given to participants in the plans covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act.

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The registrant and the Plan are subject to the informational and reporting requirements of Sections 13(a), 14, and 15(d) of the Securities

Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). The following documents, which are on file with the Commission, are incorporated in this registration statement by reference:

(a) The registrant's latest annual report and the Plan's latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act or, in the case of the registrant, the latest prospectus filed pursuant to Rule 424(b) under the Securities Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed.

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the registrant's document referred to in (a) above.

(c) The description of the securities contained in the registrant's registration statement on Form 8-A and filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the registrant or the Plan pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Page

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Paul W. Durham is Vice President, Human Resources - and Assistant General Counsel of the registrant. As of August 1, 2001, Mr. Durham owned 833 shares of the registrant's Common Stock and had options to purchase 23,700 shares of Common Stock, of which 10,800 are exercisable.

**Item 6. Indemnification of Directors and Officers.**

The registrant's Restated Certificate of Incorporation limits the liability of directors to the extent permitted by Delaware law. Delaware law provides that a corporation's certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director for monetary damages for breach of their fiduciary duties as directors, except for liability (i) for any breach of their duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which

the director derived an improper personal benefit.

The registrant's Bylaws provide that it shall indemnify its directors, officers, supervisors and managers to the fullest extent permitted by law.

The registrant has entered into agreements to indemnify certain of its directors and officers in addition to the indemnification provided for in its Bylaws. These agreements, among other things, indemnify those directors and officers for certain expenses including attorney's fees, judgments, fines and settlement amounts incurred by any such person in any action or proceeding, including any action by or in the right of the registrant, arising out of such person's services as a director or officer of us, any subsidiary of us or any other company or enterprise to which the person provides services at the registrant's request.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

The Registrant hereby undertakes that it has submitted the Plan and any amendment thereto to the Internal Revenue Service ("IRS") in a timely manner and has made or will make all changes required by the IRS in order to qualify the Plan.

Page

**Item 9. Undertakings.**

1. *Item 512(a) of Regulation S-K.* The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. *Item 512(b) of Regulation S-K.* The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and each filing of the Plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. *Item 512(h) of Regulation S-K.* Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Page

#### SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Colorado Springs, State of Colorado, on this third day of August, 2001.

WESTMORELAND COAL COMPANY

By: -----

Ronald H. Beck  
Vice President of Finance  
and Treasurer

Pursuant to the requirements of the Securities Act of 1933, the Plan certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly

authorized, in the City of Colorado Springs, State of Colorado, on this third day of August, 2001.

Westmoreland Retirement  
Benefits Administrative Committee

-----  
Ronald H. Beck

-----  
Paul W. Durham

-----  
W. Michael Lepchitz

**POWER OF ATTORNEY AND SIGNATURES**

We, the undersigned officers and directors of Westmoreland Coal Company, hereby severally constitute Ronald H. Beck and Thomas S. Barta, and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below, the registration statement on Form S-8 filed herewith and any and all subsequent amendments to said registration statement, and generally to do all such things in our names and on our behalf in our capacities as officers and directors to enable Westmoreland Coal Company to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

Page

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
_____ Christopher K. Seglem	Chairman of the Board, President and Chief Executive Officer (Principal executive officer)	August 3, 2001
_____ Ronald H. Beck	Vice President of Finance and Treasurer (Principal financial officer)	August 3, 2001
_____ Thomas S. Barta	Controller (Principal accounting officer)	August 3, 2001
_____ Michael Armstrong	Director	August 3, 2001

_____ Thomas J. Coffey	Director	August 3, 2001
_____ Pemberton Hutchinson	Director	August 3, 2001
_____ Robert E. Killen	Director	August 3, 2001
_____ William R. Klaus	Director	August 3, 2001
_____ Thomas W. Ostrander	Director	August 3, 2001
_____ James W. Sight	Director	August 3, 2001
_____ William M. Stern	Director	August 3, 2001

Page

#### INDEX TO EXHIBITS

<u>Number</u>	<u>Description</u>
4.1 (1)	Restated Certificate of Incorporation of the Registrant.
4.2 (2)	By-Laws of the Registrant.
4.3 (3)	Rights Agreement, dated as of January 28, 1993, between Westmoreland Coal Company and the First Chicago Trust Company of New York.
5.1	Opinion of Paul W. Durham.
23.1(4)	Consent of Paul W. Durham.
23.2	Consent of KPMG LLP.
23.3	Consent of KPMG LLP.
24.1(5)	Power of attorney.
(1)	Previously filed with the Securities and Exchange Commission as an Exhibit to the Registrant's Annual Report on Form 10-K for the fiscal



year ended December 31, 1994 (File No. 001-11155) and incorporated herein by reference.

- (2) Previously filed with the Securities and Exchange Commission as an Exhibit to the Registrant's Current Report on Form 8-K dated June 21, 1999 (File No. 001-11155) and incorporated herein by reference.
- (3) Previously filed with the Securities and Exchange Commission as Exhibit 4 to the Registrant's Current Report on Form 8-K filed February 1, 1993 (File No. 001-11155) and incorporated herein by reference.
- (4) Included in Exhibit 5.1 to this Registration Statement.
- (5) Included on the signature pages of this Registration Statement.

Page

**Exhibit 5.1**

August 3, 2001

VIA ELECTRONIC SUBMISSION

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Judiciary Plaza  
Washington, DC 20549

Re: Westmoreland Coal Company  
Registration Statement on Form S-8

Ladies and Gentlemen:

Submitted herewith for filing on behalf of Westmoreland Coal Company (the "Company"), is a Registration Statement on Form S-8 relating to 500,000 shares of the Company's common stock (including the associated preferred stock purchase rights), \$2.50 par value per share, and 180,000 Depository Shares, each representing one-quarter of a share of Series A Convertible Exchangeable Preferred Stock, \$1.00 par value per share, issuable pursuant to the Westmoreland Coal Company And Subsidiaries Employees' Savings Plan.

This filing is being effected by direct transmission to the Commission's EDGAR System. The Company has previously wired \$3,331 to the Commission's account at the Mellon Bank in Pittsburgh in payment of the registration fee.

Please contact the undersigned at (719) 448-5807 with any questions or comments you may have regarding this filing.

Very truly yours,

Paul W. Durham

Enclosures

**Exhibit 23.2**

**Consent of Independent Auditors**

The Board of Directors

Westmoreland Coal Company and Subsidiaries:

We consent to the incorporation by reference in the registration statement on Form S-8 of Westmoreland Coal Company and subsidiaries relating to the registration of 500,000 shares of common stock (including the associated preferred stock purchase rights) and 180,000 Depository Shares under the Westmoreland Coal Company and Subsidiaries Employees' Savings Plan of our report dated February 23, 2001, except as to Notes 2 and 4, which are as of March 23, 2001, relating to the consolidated balance sheets of Westmoreland Coal Company and subsidiaries as of December 31, 2000 and 1999, and the related statements of operations, shareholders' equity and cash flows for each of the years in the three-year period ended December 31, 2000, which report appears in the December 31, 2000 Annual Report on Form 10-K of Westmoreland Coal Company and subsidiaries.

/s/ KPMG LLP

Denver, Colorado

August 2, 2001

**Exhibit 23.3**

**Consent of Independent Auditors**

The Westmoreland Retirement Benefits Administrative Committee

Westmoreland Coal Company and Subsidiaries:

We consent to the incorporation by reference in the registration statement on Form S-8 of Westmoreland Coal Company and subsidiaries relating to the registration of 500,000 shares of common stock (including the associated preferred stock purchase rights) and 180,000 Depository Shares under the Westmoreland Coal Company and Subsidiaries Employees' Savings Plan of our report dated February 1, 2001, relating to the statements of net assets available for distribution to participants of the Westmoreland Coal Company and Subsidiaries Employees' Savings Plan, (previously the Westmoreland Coal Company and Affiliated Companies Employees' Savings/Retirement Plan), as of August 31, 2000 and 1999, and the related statements of changes in net assets available for distribution to participants for the years then ended, which report appears in the August 31, 2000 Annual Report on Form 11-K of the Westmoreland Coal Company and Subsidiaries Employees' Savings Plan, (previously the Westmoreland Coal Company and Affiliated Companies Employees' Savings/Retirement Plan).

/s/ KPMG LLP

Denver, Colorado  
August 2, 2001