

Therefore, the American Mining Congress believes that global Federal control is unnecessary, undesirable, and impractical. This is so because where the problem exists, the States, local communities, and industry are moving to correct it. Also, because State, local, and private effort should be encouraged—not discouraged—in meeting a problem which, by its very diversity, simply does not lend itself to any practical or sensible attempt at Federal regulation from Washington.

Let us look at the specific legislation before you. Mr. Chairman, I speak as a mining man and not as a constitutional lawyer. However, I sincerely believe that this legislation raises serious constitutional questions. The Department of Housing and Urban Affairs, in a recent appearance before the Public Land Law Review Commission, stated that "under the Constitution, control of the uses of land is rather clearly one of the residual powers that was left to the States * * *." The damage to privately owned or State lands and any impairment of their natural beauty by surface mining does not produce interstate effects as does the flow of water and the shifting of air. The enforcement of Federal controls over such land use would be a remarkable extension of Federal power.

Section 7 of S. 3132 requires all States, if their State plans are to be approved, to issue State permits before any surface mining operation may be commenced, or if now operating, may be continued. Such a permit system would be imposed by the Federal Government under section 8 if a State failed to adopt a plan or if a State plan was not approved.

No such vast power is contained in other Federal environmental quality statutes, such as the Air and Water Pollution Control Acts. Permit systems require the establishment of an administrative bureaucracy and place the power of absolute control in the hands of Government officials. A Federal permit system for private land use is an extraordinary assertion of Federal authority. Consistent with our tradition, it should require a very strong determination of the need for such a system before its creation is seriously considered.

We recognize that a number of the eastern coal States have adopted permit systems under the conditions prevailing in those States where particularly difficult operating and reclamation problems are present. However, this does not mean that such a system should be imposed in all other States. The risks of unacceptable environmental damage are by no means comparable, for example, in the desert States of the Southwest or in certain of the Eastern States where essentially the only surface mining concerns gravel and stone, most of which are already subject to county and municipal zoning requirements.

In such States, if any legislation can be justified at all, surely it should take the form of the enactment of statutory requirements, with enforcement left to injunction and abatement proceedings in the local courts. In this way, the burden of showing that a particular operation fails to meet the standards of sound mining practices declared in such a law would rest with the State.

S. 3132 would establish criteria upon which State controls or Federal controls would be based. The heart of any regulatory system is the definition of the standards to be applied. The American Mining Congress accepts the concept that surface mining should be carried on so as not unreasonably to damage other resource values on mineral lands. But what is reasonable and what is unreasonable?