

As to surface mining, the establishment of guidelines or standards is especially difficult because every mining operation is to some extent unique, and what would be consistent with good mining practices in the desert country of the sparsely settled areas of the West might be unacceptable in the East where rainfall and the nature of alternative land uses create far different conditions. Indeed, subsection 3(d) of S. 3132 recognizes that "because of the diversity of terrain, climate, biologic, chemical, and other physical conditions in mining areas, the establishment on a nationwide basis of uniform regulations for surface mining operations and for the reclamation of surface-mined areas is not feasible."

This recitation adds weight to the point that Federal standards would have to be defined in very general terms. Although S. 3132 provides that regulatory plans should "promote an appropriate relationship between the extent of regulation and reclamation that is required and the need to preserve and protect the environment," it does not require that, in determining whether such an appropriate relationship exists, such factors, for example, as technical and engineering requirements, economic feasibility, and the relationship between costs and benefits should be considered.

S. 3132 demands that State plans "provide adequate measures for enforcement" including criminal and civil penalties for failure to comply with applicable State laws and regulations. This is wielding a big stick. Why?

Of the 15 States which have enacted surface mining laws to date, two-thirds of them rely on civil procedures. The bill also calls for criminal and civil penalties in States where direct Federal regulation is in force. It is significant to note that the Federal air and water pollution statutes rely on injunction suits, which are far better suited for the enforcement of this type of legislation.

In a suit for injunction, the requirements of the law as applied to a particular operation are spelled out in the injunction issued by the court after a full hearing. This places the burden of establishing the inadequacy of existing practices with the enforcing agency where it should be.

S. 3132, while purporting to engage the cooperation of the States, in our judgment, would place substantially all authority in the Secretary of the Interior. Section 7 provides for State regulatory plans which must have Federal approval. If the Federal Government does not approve a State plan (and the States are given no opportunity for judicial review of the Secretary's decision), the bill then provides under section 8 for direct Federal regulations.

In essence the Secretary would decide what requirements to impose, irrespective of whether these regulations are issued under a State or Federal label.

All of this, of course, is incompatible with any notion that the States will have an individualistic role to play in such a Federal-State cooperative scheme. Indeed, subsection 3(c) provides that regulation will in fact be "by the Secretary" and cooperation by the States as contemplated by the act will be merely the extension of the regulatory arm of the Federal Government.

This approach reflects one of the mistaken assumptions upon which S. 3132 is based. If the Secretary establishes the regulations and if