

1. BLANKET REGULATION OF OPERATIONS IGNORES CONGRESSIONAL INTENT

The legislation authorizing the conduct of the study upon which these proposals are ostensibly based limited the study to "reclamation and rehabilitation" matters.

It in no way contemplated the detailed regulation of aspects of surface mining operations which are in no way related to such matters. Moreover, the Secretary's report did not discuss nor did it recommend that such detailed regulation of the industry even be contemplated.

These proposals, however, would provide for nothing less than absolute, complete and detailed Federal regulation and control of each and every aspect of surface mine operations.

Thus, mine operators, in order to either begin new operations or to continue existing operations, would be required to secure a permit either from the Secretary or, where the Secretary has approved the State's program, from the State agency.

The issuance of the permit would be contingent upon, among other things, the operator first having filed and secured the approval of an adequate mining plan.

Thereafter, operations would have to be conducted in strict accordance with the approved plan lest the permission to operate be withdrawn.

The bill does not define nor would it place any restriction whatever upon the Secretary's discretionary authority to decide just what would constitute such an adequate mining plan which, we note, would be separate and distinct from the reclamation plan which the operation would also be required to file and have approved.

As a result, operators, under threat of having permission to operate withheld or withdrawn could be compelled to adhere to suggestions as to what type of equipment to use, the number and type of employees to be hired, the precise methods to be used in mining the deposit and, indeed, whether to mine the deposits or portions of it at all.

The possibilities for purely arbitrary and, indeed, capricious action which would be created are limitless. We would suggest that no system of such detailed governmental regulation of an industry has ever been seriously proposed without including, in addition to protection against arbitrary action, detailed provisions designed not only to protect the regulated industry against competition but also to either subsidize the industry or guarantee a specified minimum rate of return on its investment.

We would also suggest that these proposals would, by authorizing the Secretary to arbitrarily determine not only when and how mine operations are to be conducted but, indeed, whether they are to be conducted at all would plainly constitute a sufficient "taking" of the owners' property rights to at least give rise to serious constitutional questions.

Finally, we would also suggest that insofar as these proposals would require mine operations to be conducted so as to control air and water pollution, isolate toxic materials, prevent landslides, protect fish and wildlife, and prevent health and safety hazards, they would by and large be duplicative of existing State and Federal regulation.

Moreover, except possibly for air pollution, these are problems which simply do not arise in the operations of typical stone quarries.