

lation of surface mine operations and reclamation practices is a state responsibility.

This statement of belief, moreover, has been followed by action. Since the close of that conference regulatory programs have been expanded or established or are under consideration in Colorado, Iowa, Kentucky, Maryland, Oklahoma, Pennsylvania, Virginia, and West Virginia, among others. These developments, coupled with existing programs in Illinois, Indiana and Ohio plainly indicate that the states which are substantially affected by surface mining operations are undertaking to provide for effective regulation.

Stone producers have also been subjected to ever-increasing and more restrictive regulation by local governments. This has been caused by the fact that stone, because of its low value, high volume and heavy loading characteristics, must, in order to be competitive, be produced as close to the sites of construction activity which it intends to supply as possible. This has resulted in stone producing operations being concentrated in or near urban areas where in recent years particularly, they have been subjected to stringent municipal zoning ordinances and other restrictions. An indication of just how stringent these restrictions can be is to be found in the decision by the United States Supreme Court in *Goldblatt v. Town of Hempstead*.¹ In that case, the Court upheld the validity of a municipal ordinance notwithstanding that its effect was to force a very substantial and long-established sand and gravel producing operation out of business.

In light of this record of increasing state and local action, NCSA submits that the Federal regulatory scheme contained in these proposals is not only inappropriate, it is unnecessary.

Blanket regulation of operations ignores congressional intent

Notwithstanding its caption as a "Mined Land Reclamation Act," S. 3132 proposes nothing less than absolute, complete and detailed Federal regulation and control of each and every aspect of surface mine operations whether related in any way to reclamation requirements or not.

Mine operators, in order to commence operations at a new facility or, for that matter, to continue operations at an existing facility, would be required to secure a permit either from the Secretary of the Interior 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 requirements, the operator having first filed and secured the Secretary's or the State agency's 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 gives absolutely no guidance as to what would constitute such an "adequate mining plan" except to make clear that it would be separate, distinct and in addition to the reclamation plan which the operator would also be required to file and have approved before permission to commence or continue operations would be granted. Moreover, the bill places absolutely no restrictions on the Secretary's purely discretionary authority to pass judgment upon what sort of a plan would be adequate nor does it afford any opportunity for independent review of the Secretary's decisions in these respects.

Thus, by virtue of his absolute power to withhold approval of "mining plans," the Secretary would be able to effectively regulate and control each and every aspect of surface mining operations whether related in any way to reclamation or not. Operators, under threat of having permission to operate withheld or withdrawn would be forced 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 deposit or portions thereof at all!

The possibilities for purely arbitrary and, indeed, capricious action which would be created are limitless. We know of no system of such detailed governmental regulation of an industry which has ever been proposed without also 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 upon its investment.

These proposed powers on the part of the Secretary are even more startling when it is considered that, while S. 3132 is ostensibly designed to implement, in

¹ 369 U.S. 590 (1962).