

CIVIL AND CRIMINAL PENALTIES AND OTHER JUDICIAL REMEDIES

Both bills provide for criminal as well as civil penalties for failure to comply with regulations. In view of the day-to-day problems which often compel immediate changes in mining plans and in view of the extent of control over mining activities contemplated by the bills, the mining operator is placed in a very tenuous position when he cannot change his mining plans without being subject to criminal and civil penalties even if the change in plans results in no appreciable damage.

A civil penalty based on probable damages resulting from violation would be understandable. It is difficult to justify the assessing of civil and criminal penalties regardless of damage.

S. 3132, in addition to providing for civil and criminal penalties, also permits a civil action to be commenced in a Federal district court for a restraining order or injunction or other appropriate remedy to:

Prevent a person from engaging in surface mining operations without a permit from the Secretary, or in violation of the terms and conditions of such permit.

To prevent a person from placing in commerce the products of a surface mine produced in violation of an approved State plan.

Or to enforce a right of entry.

The remedy preventing a person from putting his products into commerce could result in the closing down of a total operation, including not just a mine but all the plants dependent upon the mine. No restriction is placed on the use of this power. It is available with respect to the slightest violation, regardless of whether or not any actual damage results or is apt to result from the prohibited action. If such a remedy is to be available at all, it should only be permitted when substantial irreparable harm is apt to occur.

We would like to direct our comment now to the problem of coordination among the Federal agencies and conflicting Federal and State authority.

S. 3126 is to be administered by the Secretary of Agriculture and the Secretary of the Interior. Both these Secretaries have equal authority. This creates a tremendous problem because one Secretary can countermand what the other Secretary says and if you have a problem and you want to challenge the decision you must appeal it through the agencies of both Secretaries.

To us this is an unreasonable and unrealistic approach to solving the problem of mined land reclamation. We would also like to note that S. 3132 does not have any provisions for appealing within the Department a decision, nor does it have any provision for appealing the decision of the Secretary of the Interior. We believe that it is only proper that there be provision for appeals in both respects.

Senator CHURCH. Do you think in the absence of language the Uniform Administrative Procedure Act would apply?

Mr. OLSEN. Well, I think, Senator, that it very probably would, but we know that in the past, in dealing with the Department, it has taken the view in many instances that its interdepartmental decisions and its final decisions are not subject to review. So, to obviate any possible upholding of this position, we think the bill should specifically provide for the review, and we have made some other comments relative to review which I will not read into the record at this time.