

the taking of the land in this manner would meet the requirements of due process of law.

C. Scope of the intent and purpose of the bills

In the absence of any specific standards limiting what may be required or prohibited, the provisions in the bills relative to purpose and intent become even more significant as the anticipated interpretation of the proposed acts in the courts and otherwise is contemplated.

S. 3132 is ambiguous as to the intent and purpose of the act with respect to what may be required of the mining operator in his mining and reclamation activities. Section 3(c) provides that the purpose of the act is to *prevent* and *eliminate* certain burdens and adverse affects. These burdens and adverse affects are set forth in section 3(b) as follows:

"(The) destroying or diminishing (of) the availability of land for commercial, industrial, recreational, agricultural, and forestry purposes, by causing erosion and land slides, by contributing to floods and pollution of waters, by destroying fish and wildlife habitat and impairing natural beauty, by counteracting efforts to conserve soil, water, and other natural resources, by destroying or impairing the property of citizens, and by creating hazards dangerous to life and property."

Section 3(c) indicates that these adverse affects are to be *prevented* or *eliminated* by controlling the mining operations and by specifying certain reclamation activities. The extent of the control over mining methods is nowhere defined, described, or limited.

Reclamation is defined as "reconditioning or restoration of an area of land or water, or both, that has been adversely affected by surface mining operation." (§ 2(b))

It would thus appear that anything which affected the above mentioned attributes of the land must be *prevented* and *eliminated*—implying either than an operator would not be allowed to conduct the activities which would create such burdens and adverse affects, or that if he did create such adverse affects he would have to restore completely the land to its previous state—regardless of the cost. There is no definition as to what constitutes an impairment of natural beauty. Furthermore, there is no allowance given for any slight amount of erosion or minor impairment of the various uses of the land. Section 3(c) simply states that it is the purpose of the act to *prevent* and *eliminate* these adverse affects.

On the other hand, section 3(f) seems to qualify the extent of the action required or prohibited in that it provides for a nationwide program "to prevent or substantially reduce the adverse effects to the environment from surface mining," but it goes on to state that the purpose is "to assure that adequate measures will be taken to reclaim surface mined areas after operations are completed."

The purpose clauses of S. 3126 also fail to furnish any limiting language. For example, section 2(b) states:

It is therefore the purpose of this Act to provide participation by the Federal Government with State and local governments, private individuals, and other interested parties in a long-range, comprehensive program to reclaim lands and waters damaged by surface and strip mining, to promote an effective continuing conservation land use and management program, and to prevent further detriment to the Nation from such mining operations through—

"(1) The establishment of criteria and standards for the reclamation, conservation and protection of surface and strip mined areas."

In S. 3126 the term "reclamation" is defined to mean "the reconditioning or restoration, when appropriate, of the area of land affected by surface or strip mining operations and such contiguous lands as may be necessary for an effective continuing use and management program, under a plan approved by the Secretaries."

The bills should state clearly that the purpose is to prevent where reasonably possible or to reduce the effects of mining but not to absolutely eliminate any alleged adverse effects. There should be no inconsistency or ambiguity in this regard.

D. Retroactive application

Under S. 3132, the federal or state regulations eventually promulgated could apply retroactively to the pits which were mined prior to the effective date of these regulations.

Although it would appear that it is the intent of S. 3132 to provide for reclamation only of lands affected after the effective date of the act (section 4)—and further even after the effective date of any state plan or federal regulation (section