

2(e)), a careful reading reveals that it could be construed to apply to prior operations. Section 4 provides that the surface mined areas shall be subject to the act "after the effective date of the act." However, "surface mined area" is defined as "any area on which the operations of a surface mine are *concluded* after the effective date of a State plan or (the regulations issued by the Secretary), whichever is applicable." (section 2(e)).

A surface mine is defined as:

"(1) An area of land from which the minerals are extracted by surface mining methods, including auger mining,

"(2) Private ways and roads appurtenant to such area,

"(3) Land, excavations, workings, refuse banks, dumps, spoil banks, structures, facilities, equipment, machines, tools, or other property on the surface, resulting from, or used in, extracting minerals from their natural deposits by surface mining methods or the onsite processing of such minerals." (§ 2(d))

Thus, if operations are currently underway on a "surface mine" and these operations are concluded after the effective date of the state plan or regulation, the land affected comes within the definition of surface-mined area and would be subject to the regulations issued pursuant to this act for reclamation.

Furthermore, section 4 provides that a surface mine, the products of which enter commerce or the operations which affect commerce, shall be subject to the act. Under the standard operating procedures of the phosphate industry a given surface mine could include lands affected both before and after the effective date of the act. The act does not distinguish between those portions of the surface mine worked before the act is effective and those which are worked after the effective date of the act, and thus the whole mine could be included within the coverage of the act and the regulations promulgated pursuant thereto.

The definition of "surface mined area," in S. 3132 should provide that it includes only the area of a surface mine on which mining operations are commenced rather than concluded after the effective date of the state plan or federal regulations.

S. 3126 is broader in scope and approach in that it establishes programs for the reclamation of previously affected mined lands as well as lands affected in the future. As to future surface mining operations section 101 provides:

"The Secretary of Agriculture and the Secretary of the Interior shall develop or revise, after consultation with the national advisory committee appointed pursuant to section 6(a) of this act . . . (2) Federal standards, and mining-reclamation requirements for the administration and regulation of all future surface and strip mining operations in the United States * * * (b) in establishing Federal standards, and mining and reclamation requirements for the administration and regulation of future strip and surface mining operations in the United States, the Secretaries shall consider requirements which will reasonably assure the attainment of the following objectives:

"(1) The standards shall include, but not be limited to grading, drainage, backfilling, plantings, revegetation, and any other measures or practices deemed by the Secretaries, after consultation with appropriate advisory committees, to be necessary to carry out the purposes of this Act.

Nothing is said in the act as to whether or not the standards and requirements established pursuant to the act shall apply to land affected after the act becomes law and up to the time of the adoption and effective date of either federal or state regulations. However, the wording of the act is such that these requirements could be construed to apply during this period of time. Consequently, a person performing mining operations during this time would have to do so without knowing what reclamation he would be required to do and thus would be unable to determine the cost of his operations until the regulations were effective.

Both acts should stipulate that only those portions of a surface mine which are opened up and the waste disposal areas resulting therefrom after the effective date of the state plan or federal regulations would be subject to those regulations.

E. Broad discretion given to Secretaries

Several sections of S. 3132 allow the Secretary of the Interior to act or make determinations based solely on his judgment or based upon what the Secretary "deems necessary"—resulting in the Secretary having unfettered discretion which