

may preclude any effective judicial review of these actions. Examples are as follows:

Section 5(c) makes any payments by the federal government to the state contingent upon the administration of the state program "in the manner which the Secretary deems adequate." Section 7(a)(1) provides that the Secretary may approve a state plan if he determines that "in his judgment" the plan includes laws and regulations which meet certain requirements.

Section 7(b)(1) allows the Secretary to issue federal regulations if a state "in his judgment" has not taken adequate measures to correct any failures on the part of the state.

Section 8(b) provides that any proposed federal regulations shall first be published in the Federal Register and be subject to comment. Thereafter, the Secretary may issue the regulations with "such modifications, if any, as he deems appropriate."

Section 8(c) provides for a public hearing on objections, but there is no limitation on the authority of the Secretary to approve or disapprove any proposals that are discussed during the public hearing.

Section 11 allows the Secretary to issue such regulations as are "deemed necessary" to carry out the purposes of the act.

Section 101 of S. 3126 grants very broad powers to the Secretaries of Agriculture and Interior to establish federal standards and mining and reclamation requirements for the regulation of surface and strip mining operations.

In the past, the Department of the Interior, for example, has taken the position (which has in some instances been upheld by the courts) that certain action of the Secretary are not subject to judicial review. Furthermore, when judicial review was permitted, statements in legislation or regulations pertaining thereto which granted the Secretary the authority to act based solely on his judgment made the reversal of any such actions almost impossible to obtain. Legislation on the matter should specifically provide that any action of a Secretary is subject to judicial review and that the judgment of the Secretary is not to be the sole criteria in determining whether or not he has acted properly.

F. Advisory committees

Section 6(a) of S. 3126 apparently allows each Secretary to establish his own regional advisory committee. It would seem that one advisory committee should be ample to serve both secretaries. All proceedings of the advisory committees should be open to the public. The conclusions and recommendations and the reasons therefor should be a matter of public record and available for consideration in the event that any action of the Agriculture or Interior Department is challenged.

G. Control of mining methods

Both bills not only stipulate that certain reclamation activities will be required, but also provide for the regulation and control of the extraction or mining methods as well. (S. 3132 § 7(a)(1)(B); S. 3126 §§ 101(b), 101(b)(5)). The Phosphate Lands Conference asserts that adequate reclamation of western phosphate lands can be achieved without outside interference with extraction methods. Due to the peculiarities of western phosphate beds extraction plans often have to be changed with practically no notice. Delays and other problems incumbent in submitting and obtaining approval of extracting methods would create an onerous and unnecessary burden on the person engaging in the mining activity.

Overburden and ore must be removed as part of the mining operation. In western phosphate mining the method used in doing this is irrelevant from the standpoint of reclamation of the land. The economics of the operation and the variations in mining conditions require that the operator be allowed to utilize the extraction methods dictated by these conditions and not by a party having no economic responsibility for the success of the operation.

H. 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 provable damages resulting from a violation