

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.

I. Coordination among Federal agencies and problems of conflicting Federal and State authority

S. 3126 is to be administered by the Secretary of Agriculture and the Secretary of the Interior. Although there are some areas where specific responsibilities are assigned to the Secretary of Agriculture and other specific responsibilities are assigned to the Secretary of the Interior, generally speaking the matters pertaining to the promulgation and enforcement of federal standards and mining and reclamation requirements are under the joint control of the two secretaries. Such dual control by the two departments is almost sure to lead to conflicts resulting in a situation where a person would not know what instructions to abide by. Apparently the mining operator would have to have the approval of both secretaries as to the activities which he would have to perform pursuant to the regulations. Thus, one Secretary could effectively block action approved by the other. Also, an adverse decision would have to be appealed through the organizations for both secretaries.

Section 16 of S. 3132 allows the Secretary of the Interior, or the heads of other federal agencies to include in federal leases, permits, contracts, etc. such conditions as they feel necessary to regulate surface mining operations and to reclaim surface mined areas under their jurisdiction. Thus, an operator would be subject to the provisions of his lease and also any regulations promulgated pursuant to S. 3132. This again would lead to conflicts. It would seem appropriate to provide that the authority of the federal agencies is limited to the regulations which they may promulgate pursuant to this act—thus avoiding the conflicts which would otherwise occur.

It should be noted that other federal and state agencies have overlapping authority which could lead to conflicts. For example, the control of water pollution is largely a state activity.

The U.S. Geologic Survey has also historically performed certain conservation responsibilities with respect to surface mining.

Any legislation should contain provisions for avoiding conflicts among the various federal and state agencies.

J. Right of appeal

S. 3132, while specifically granting to the Secretary of the Interior the authority to instigate judicial action as noted above, contains no provision allowing a person to challenge the action of the Secretary in the courts. Also, there is no provision in the bill for appeals within the Department.

S. 3126 provides for appeals within the departments and also for the judicial review of final decisions of the secretaries. With respect to interdepartmental appeals, section 102(c) provides:

"Any person or operator whose application for a license or permit has been denied by the Secretaries, or whose bond has been ordered forfeited by the Secretaries, or who has otherwise been aggrieved by an action of the Secretaries, pursuant to the provisions of this Act, may appeal to the Secretaries for annulment or revision of such order or action, and the Secretaries shall issue regulations for such appeals which shall include due notice and opportunity for a hearing."