

no procedure whereby a State could appeal a final disapproval by the Secretary, and apparently his disapproval would become final without recourse to any review by any administrative or judicial tribunal.

The Secretary would not only be the lawmaker and administrator, but also would serve as policeman, prosecutor, and jury under S. 3132. Section 13 of the bill provides that if any person fails to comply with the Secretary's regulations within 15 days after notice, such person shall be liable for a civil penalty of \$100 per day, and that the Secretary may assess and collect any such penalty. Violation of the regulations would also be made a federal crime to be punished by a fine not exceeding \$2,500 or by imprisonment not exceeding one year, or by both. We believe there is no justification for imposing criminal penalties in connection with activities presently being carried out by mining companies in cooperation with State regulatory authorities.

The Secretary would have the right of entry to any surface mine or upon any surface mined area to make such inspections and investigations as he would deem appropriate to evaluate the administration of State plans or to develop or enforce federal regulations. The federal scheme of regulation would also involve a permit system. A federal permit system centrally administered from Washington would have a deadening effect on the dynamic characteristics of our mineral industries.

The broad discretion granted to the Secretary to disapprove a State plan may be seen by analysis of the provisions of Section 7. It is provided that he shall approve the State plan if "(1) He determines that, in his judgment, the plan includes laws and regulations which" do six things. The first of these is that they "promote an appropriate relationship between the extent of regulation and reclamation that is required and the need to preserve and protect the environment." Just what is an "appropriate relationship?" It is obvious that this is something on which reasonable men could differ, but the Secretary's decision would be final and without review by anyone.

The six items under determination (1) contain other similarly vague and general phrases, such as "adequate mining plan," "in a manner consistent with said mining plan," "reasonably prescribed time limits," "effectiveness of the requirements established," and "adequate measure for enforcement." The "laws and regulations" (presumably both) would have to contain criteria relating specifically to the control of erosion, flooding, and pollution of water; the isolation of toxic materials; the prevention of air pollution by dust or burning refuse piles or otherwise; the reclamation of surface mined areas by revegetation, replacement of soil, or other means; the maintenance of access through mined areas; the prevention of land or rockslides; the protection of fish and wildlife in their habitat; and the prevention of hazards to public health and safety.

There is also a requirement that "The Secretary determines that, in his judgment, the plan includes (A) adequate provision for State funds and personnel to assure the effective administration and enforcement of the plan and if needed, the establishment of training programs for operators, supervisors, and reclamation and enforcement officials in mining and reclamation practices and techniques; (B) provision for the making of such reports to the Secretary as he may require; and (C) authorization by State law and that it will be put into effect not later than sixty days after its approval by the Secretary."

It is also provided that, after approval of a plan, the Secretary can, after certain steps, withdraw his approval of the plan, and issue regulations for such State under Section 8 of the Act. He could also withdraw his approval of the plan and issue his own regulations for such State if the State did not adopt a revision which he deemed appropriate to effectuate the purposes of the Act.

It is apparent that what is proposed is one of the broadest delegations of legislative power ever considered. This would be a delegation of the legislative power of the Congress under which the Secretary of the Interior would be empowered to write a comprehensive surface mining law for the entire Nation. It would also constitute a delegation of the legislative power of each of the State Legislatures, subjecting their efforts in the field of conservation to a review by a federal official who could approve or veto as he saw fit, in whole or in part. If such a delegation of both State and national legislative powers is indeed permissible, under the various State and National Constitutions, it certainly is of dubious wisdom. We believe it is extremely undesirable and should be rejected.

Ironically, Section 3(d) of the Act sets forth a finding and declaration by the Congress "That, because of the diversity of terrain, climate, biologic, chemical, and other physical conditions in mining areas, the establishment on a nationwide basis of uniform regulations for surface mining operations and for the reclama-