
**SURFACE MINING CONTROL AND
RECLAMATION ACT OF 1977**

MAY 10 (legislative day, MAY 9), 1977.—Ordered to be printed

Mr. METCALF, from the Committee on Energy and Natural Resources,
submitted the following

REPORT
together with
ADDITIONAL AND MINORITY VIEWS

[To accompany S. 7]

The Committee on Energy and Natural Resources, to which was referred the bill, S. 7, to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes, having considered the same, reports favorably therein with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Surface Mining Control and Reclamation Act of 1977".

TABLE OF CONTENTS

TITLE I—STATEMENT OF FINDINGS AND POLICY

- Sec. 101. Findings.
 Sec. 102. Purposes.

TITLE II—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

- Sec. 201. Creation of the Office.

TITLE III—ABANDONED MINE RECLAMATION

- Sec. 301. Abandoned Mine Reclamation Fund.
 Sec. 302. Objectives of fund.
 Sec. 303. Eligible lands.
 Sec. 304. Reclamation of rural lands.
 Sec. 305. Acquisition and reclamation of abandoned and unreclaimed mined lands.
 Sec. 306. Filling voids and sealing tunnels.
 Sec. 307. Fund report.
 Sec. 308. Transfer of funds.

TITLE IV—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

- Sec. 401. Environmental protection standards.
 Sec. 402. Initial regulatory procedures.
 Sec. 403. State programs.
 Sec. 404. Federal programs.
 Sec. 405. State laws.
 Sec. 406. Permits.
 Sec. 407. Application requirements.
 Sec. 408. Reclamation plan requirements.
 Sec. 409. Performance bonds.
 Sec. 410. Permit approval or denial.
 Sec. 411. Revision of permits.
 Sec. 412. Coal exploration permits.
 Sec. 413. Public notice and public hearings.
 Sec. 414. Decisions of regulatory authority and appeals.
 Sec. 415. Environmental protection performance standards.
 Sec. 416. Surface effects of underground coal mining operations.
 Sec. 417. Inspections and monitoring.
 Sec. 418. Penalties.
 Sec. 419. Release of performance bonds or deposits.
 Sec. 420. Citizen suits.
 Sec. 421. Enforcement.
 Sec. 422. Designating areas unsuitable for surface coal mining.
 Sec. 423. Federal lands.
 Sec. 424. Public agencies, public utilities, and public corporations.
 Sec. 425. Review by Secretary.
 Sec. 426. Judicial review.
 Sec. 427. Special bituminous coal mines.
 Sec. 428. Surface mining operations not subject to this Act.

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

- Sec. 501. Definitions.
 Sec. 502. Other Federal laws.
 Sec. 503. Employee protection.
 Sec. 504. Protection of Government employees.
 Sec. 505. Grants to the States.
 Sec. 506. Annual report.
 Sec. 507. Severability.
 Sec. 508. Indian lands.
 Sec. 509. Study of reclamation standards for surface mining of other minerals.
 Sec. 510. Experimental practices.
 Sec. 511. Authorization of appropriations.
 Sec. 512. Federal lessee protection.
 Sec. 513. Alaska coal.
 Sec. 514. Water rights.
 Sec. 515. Surface owner protection.

TITLE I—STATEMENT OF FINDINGS AND POLICY

FINDINGS

Sec. 101. The Congress finds and declares that—

(a) extractions of coal and other minerals from the earth can be accomplished by various methods of mining, including surface mining;

(b) coal mining operations presently contribute significantly to the Nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of the Nation's coal reserves can only be extracted by underground mining methods, and it is, therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry;

(c) many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources;

(d) surface mining and reclamation technology are now developed so that effective and reasonable regulation of surface coal mining operations by the States and by the Federal Government in accordance with the requirements of this Act is an appropriate and necessary means to minimize so far as practicable the adverse social, economic, and environmental effects of such mining operations;

(e) because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States;

(f) there are a substantial number of acres of land throughout major regions of the United States disturbed by surface and underground coal mining, on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality;

(g) while there is a need to regulate surface mining operations for minerals other than coal, more data and analyses are needed to serve as a basis for effective and reasonable regulation of such operations;

(h) surface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner; and

(i) the cooperative effort established by this Act is necessary to prevent or mitigate adverse environmental effects of present and future surface coal mining operations.

PURPOSES

SEC. 102. It is the purpose of this Act to—

(a) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations;

(b) assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations;

(c) assure that surface mining operations are not conducted where reclamation as required by this Act is not feasible;

(d) assure that surface coal mining operations are so conducted as to protect the environment ;

(e) assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations ;

(f) assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy ;

(g) assist the States in developing and implementing a program to achieve the purposes of this Act ;

(h) promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this Act and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public ;

(i) assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act ;

(j) provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining operations for other minerals ; and

(k) wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.

TITLE II—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

CREATION OF THE OFFICE

SEC. 201. (a) There is established in the Department of the Interior, the Office of Surface Mining Reclamation and Enforcement (hereinafter referred to as the "Office").

(b) The Office shall have a Director who shall report directly to the Secretary and who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5 of the United States Code, and such other employees as may be required. The Director shall have the responsibilities provided under subsection (c) of this section and those duties and responsibilities relating to the functions of the office which the Secretary may assign, consistent with this Act. Employees of the Office shall be recruited on the basis of their professional competence and capacity to administer the provisions of this Act. No legal authority, program, or function in any Federal agency which has as its purpose promoting the development or use of coal or other mineral resources or regulating the health and safety of miners under provisions of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742), shall be transferred to the Office.

(c) The Secretary, acting through the Office, shall—

(1) administer the programs for controlling surface coal mining operations which are required by this Act ; review and approve or disapprove State programs for controlling surface coal mining operations and reclaiming abandoned mined lands ; make those investigations and inspections necessary to insure compliance with this Act ; conduct hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses and production of written or printed material as provided for in this Act ; issue cease-and-desist orders ; review and vacate or modify or approve orders and decisions ; and order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto ;

(2) publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act ;

(3) administer the State grant-in-aid program for the development of State programs for surface coal mining and reclamation operations provided for in title V of this Act ;

(4) administer in lieu of an approved State program the program for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to title III of this Act;

(5) administer the surface mining and reclamation research and demonstration project authority provided for in this Act;

(6) consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations and assist States, local governments, and other eligible agencies in the coordination of such programs;

(7) maintain a continuing study of surface mining and reclamation operations in the United States;

(8) develop and maintain an Information and Data Center on Surface Coal Mining, Reclamation, and Surface Impacts of Underground Mining, which will make such data available to the public and the Federal, regional, State, and local agencies conducting or concerned with land use planning and agencies concerned with surface and underground mining and reclamation operations;

(9) assist the States in the development of State programs for surface coal mining and reclamation operations which meet the requirements of the Act and, at the same time, reflect local requirements and local environmental and agricultural conditions;

(10) assist the States in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State to be designated unsuitable for all or certain types of surface coal mining pursuant to section 422;

(11) monitor all Federal and State research programs dealing with coal extraction and use and recommend to Congress the research and demonstration projects and necessary changes in public policy which are designated to (A) improve feasibility of underground coal mining, and (B) improve surface mining and reclamation techniques directed at eliminating adverse environmental and social impacts;

(12) cooperate with other Federal agencies and State regulatory authorities to minimize duplication of inspections, enforcement and administration of this Act; and

(13) perform such other duties as may be provided by law and relate to the purposes of this Act.

(d) The Director shall not use either permanently or temporarily any person charged with responsibility of inspecting coal mines under the Federal Coal Mine Health and Safety Act of 1969, unless he finds and publishes such finding in the Federal Register, that such activities would not interfere with such inspections under the 1969 Act.

(e) The Office shall be considered an independent Federal regulatory agency for the purposes of sections 3502 and 3512 of title 44 of the United States Code.

(f) No employee of the Office or any other Federal employee performing any function or duty under this Act shall have a direct or indirect financial interest in underground or surface coal mining operations. Whoever knowingly violates the provisions of the above sentence shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment for not more than one year, or both. The Director shall (1) within sixty days after enactment of this Act publish regulations, in accordance with section 553 of title 5, United States Code, to establish the methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning their financial interests which may be affected by this subsection, and (2) report to the Congress as part of the annual report (section 506) on the actions taken and not taken during the preceding calendar year under this subsection.

(g) (1) After the Secretary has adopted the regulations required by section 401 of this Act, any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of a rule under this Act.

(2) Such petitions shall be filed in the principal office of the Director and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a rule under this Act.

(3) The Director may hold a public hearing or may conduct such investigation or proceeding as the Director deems appropriate in order to determine whether or not such petition should be granted.

(4) Within 90 days after filing of a petition described in paragraph (1), the Director shall either grant or deny the petition. If the Director grants such petition, the Director shall promptly commence an appropriate proceeding in accordance with the provisions of this Act. If the Director denies such petition, the Director shall so notify the petitioner in writing setting forth the reasons for such denial.

TITLE III—ABANDONED MINE RECLAMATION

ABANDONED MINE RECLAMATION FUND

SEC. 301. (a) There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior.

(b) The fund shall consist of amounts deposited in the fund, from time to time, derived from—

(1) the sale, lease, or rental of land reclaimed pursuant to this title;

(2) any user charge imposed on or for land reclaimed pursuant to this title, after expenditures for maintenance have been deducted; and

(3) the reclamation fees levied under subsection (c) of this section.

(c) All operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that there shall be no reclamation fee for lignite coal. Such fee shall be paid no later than thirty days after the end of each calendar quarter beginning with the first calendar quarter occurring after January 1, 1977, and ending fifteen years after the date of enactment of this Act unless extended by an Act of Congress.

(d) Amounts covered into the fund shall be available for the acquisition and reclamation of land under section 305, administration of the fund and enforcement and collection of the fee as specified in subsection (d), acquisition and filling of voids and sealing of tunnels, shafts, and entryways under section 306, and for use under section 304, by the Secretary of Agriculture, of up to one-fifth of the money deposited in the fund annually and transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes. Such amounts shall be available for such purposes only when appropriated therefor; and such appropriations may be made without fiscal year limitations: *Provided*, That no new budget is authorized to be appropriated for fiscal year 1978.

(e) The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the program needs for the funds. Fifty per centum of the funds collected annually in any State or Indian reservation shall be expended in that State or Indian reservation by the Secretary or State regulatory authority pursuant to any approved State abandoned mine reclamation program to accomplish the purposes of this title after receiving and considering the recommendations of the Governor of that State or the head of the governing body of that tribe having jurisdiction over that reservation, as the case may be: *Provided, however*, That if such funds have not been expended within three years after being paid into the fund, they shall be available for expenditure in any area. The balance of funds collected on an annual basis may be expended in any State at the discretion of the Secretary in order to meet the purposes of this title.

OBJECTIVES OF FUND

SEC. 302. The primary objective for the obligation of funds is the reclamation of areas affected by previous mining; but other objectives shall reflect the following priorities in the order stated:

(a) the protection of health or safety of the public;

(b) protection of the environment from continued degradation and the conservation of land and water resources;

(c) the protection, construction, or enhancement of public facilities such as utilities, roads, recreation and conservation facilities and their use; and

(d) the improvement of lands and water to a suitable condition useful in the economic and social development of the area affected.

ELIGIBLE LANDS

SEC. 303. The only lands eligible for reclamation expenditures under this title are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the date of enactment of this Act, and for which there is no continuing reclamation responsibility under State or other Federal laws.

RECLAMATION OF RURAL LANDS

SEC. 304. (a) In order to provide for the control and prevention of erosion and sediment damages from unreclaimed mined lands, and to promote the conservation and development of soil and water resources of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements of not more than ten years with landowners (including owners of water rights), residents and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of soil, water (excluding stream channelization), woodland, wildlife, and recreation resources, and agricultural productivity of such lands. Such agreements shall be made by the Secretary with the owners, including owners of water rights, residents, or tenants (collectively or individually) of the lands in question.

(b) The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land uses and conservation treatment which shall be mutually agreed by the Secretary of Agriculture and the landowner, including owner of water rights, resident, or tenant to be needed on the lands for which the plan was prepared. In those instances where it is determined that the water rights or water supply of a tenant landowner, including owner of water rights, residents, or tenant have been adversely affected by a surface or underground coal mine operation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance, such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected landowners, including owner of water rights, residents, or tenants in consultation with appropriate State and Federal agencies.

(c) Such plan shall be incorporated in an agreement under which the landowner, including owner of water rights, resident, or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided for in such plan on the lands described in the agreement in accordance with the terms and conditions thereof.

(d) In return for such agreement by the landowner, including owner of water rights, resident, or tenant the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner, including owner of water rights, resident, or tenant in such amounts and subject to such conditions as the Secretary of Agriculture determines are appropriate in the public interest for carrying out the land use and conservation treatment set forth in the agreement. Grants made under this section, depending on the income-producing potential of the land after reclaiming, shall provide up to 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred and twenty acres of land occupied by such owner including water rights owners, resident, or tenant, or on not more than one hundred and twenty acres of land which has been purchased jointly by such landowners including water rights owners, residents, or tenants under an agreement for the enhancement of water quality or quantity or on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement; except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving offsite water quality, offsite esthetic values, or other offsite benefits, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program.

(e) The Secretary of Agriculture may terminate any agreement with a landowner including water rights owners, operator, or occupier by mutual agreement if the Secretary of Agriculture determines that such termination would be in the public interest, and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes

of this section or to facilitate the practical administration of the program authorized herein.

(f) Notwithstanding any other provision of law, the Secretary of Agriculture, to the extent he deems it desirable to carry out the purposes of this section, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop; or (2) surrender of any such history and allotments.

(g) The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section.

(h) In carrying out the provisions of this section, the Secretary of Agriculture shall utilize the services of the Soil Conservation Service.

(i) Funds shall be made available to the Secretary of Agriculture for the purposes of this section, as provided in section 301(c).

ACQUISITION AND RECLAMATION OF ABANDONED AND UNRECLAIMED MINED LANDS

SEC. 305. (a) (1) The Congress declares that the reclamation and, if necessary, acquisition of any interest in land or mineral rights in order to eliminate hazards to the environment or to the health or safety of the public from mined lands, or to construct, operate, or manage reclamation facilities and projects constitutes for the purposes of this title reclamation and, if necessary, acquisition for a public use or purpose, notwithstanding that the Secretary or State regulatory authority pursuant to an approved State abandoned mine reclamation program plans to hold the interest in land or mineral rights so reclaimed or acquired as an open space or for recreation, or to resell, if acquired, the land following completion of the reclamation facility or project.

(2) The Secretary or State regulatory authority pursuant to an approved State abandoned mine reclamation program may acquire by purchase, donation, or easement, or otherwise, land or any interest therein which has been affected by surface mining in accordance with section 303 hereof. Prior to making any acquisition of land under this section, the Secretary or State regulatory authority pursuant to an approved State abandoned mine reclamation program shall make a thorough study with respect to those tracts of land which are available for acquisition under this section and based upon those findings he shall select lands for purchase or acquiring easements according to the priorities established in section 302. Title to all lands or interests therein acquired by the Secretary shall be taken in the name of the United States. The price paid for land under this section shall take into account the unrestored condition of the land. Prior to any individual acquisition under this section, the Secretary or the State regulatory authority pursuant to an approved State abandoned mine reclamation program shall specifically determine the cost of such acquisition and reclamation and the benefits to the public to be gained therefrom.

(3) If the Secretary, or the appropriate regulatory authority pursuant to an approved State program, makes a finding of fact that (1) a mine fire, refuse bank fire, stream pollution, or subsidence resulting from coal mining operations is at a stage where, in the public interest, immediate action should be taken; and (2) the owner or owners of the property upon which entry must be made to combat the mine fire, refuse bank fire, stream pollution, or subsidence resulting from coal mining operations, are not known, are not readily available, or will not give permission for the Secretary or State regulatory authority, political subdivisions of the State or municipalities, their agents, employees, or contractors to enter upon such premises, then, upon giving notice by mail to the owner or owners, if known, or if not known, by posting notice upon the premises and advertising in a newspaper of general circulation in the area in which the land lies the Secretary, or State regulatory authority, political subdivision of the State or municipalities, their agents, employees, or contractors shall have a right to enter upon the premises and any other land in order to have access to the premises to combat the mine fire, refuse bank fire, stream pollution, or subsidence resulting from coal mining operations and do all things necessary and expedient to do so. Such entry shall not be construed as an act of condemnation of property or of trespass thereof. The moneys expended for such work and the benefits accruing to any such premises entered upon shall be chargeable against such lands and shall mitigate or offset any claim in or any action brought by

any owner of any interested in such premises for any alleged damages by virtue of such entry: *Provided, however,* That this provision is not intended to create new rights of action or eliminate existing immunities.

(4) The Secretary or the State regulatory authority pursuant to an approved abandoned mine reclamation program shall prepare specifications for the reclamation of lands to be reclaimed or acquired under this section. In preparing these specifications, the Secretary or State regulatory authority shall utilize the specialized knowledge or experience of any Federal or State department or agency which can assist him in the development or implementation of the reclamation program required under this title.

(5) In selecting lands to be acquired pursuant to this section and in formulating regulations for the making of grants to the States to acquire lands pursuant to this title, the Secretary shall give priority to lands in their unreclaimed state which will meet the objectives as stated in section 402 above when reclaimed. For those lands which are reclaimed for public recreational use, the revenue derived from such lands shall be used first to assure proper maintenance of such facilities thereon and any remaining moneys shall be deposited in the fund or an appropriate fund established by the State regulatory authority pursuant to an approved State abandoned mine reclamation program.

(6) Where land purchased and reclaimed pursuant to this section is deemed to be suitable for industrial, commercial, residential, or private recreational development, the Secretary or State regulatory authority pursuant to an approved State abandoned mine reclamation program may sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such other regulations as he may promulgate to insure that such lands are put to proper use, as determined by the Secretary or State regulatory authority. If any such land sold is not put to the use specified by the Secretary or State regulatory authority in the terms of the sales agreement, then all right, title, and interest in such land shall revert to the United States or appropriate State. Money received from such sale shall be deposited in the fund or State fund.

(7) The Secretary or State regulatory authority shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands purchased to be reclaimed pursuant to this title are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use of the lands once reclaimed.

(8) The Secretary shall utilize available data and information on reclamation needs and measures, including the data and information developed by the Corps of Engineers in conducting the National Strip Mine Study authorized by section 233 of the Flood Control Act of 1970. In connection therewith the Secretary may call on the Secretary of the Army, acting through the Chief of Engineers, to assist him or the State regulatory authority in conducting, operating, or managing reclamation facilities and projects, including demonstration facilities and projects conducted by the Secretary pursuant to this section.

(b) (1) The Secretary is authorized to use money in the fund to acquire, reclaim, and transfer land to any State, or any department, agency, or instrumentality of a State or of a political subdivision thereof, or to any person, firm, association, or corporation if he determines that such is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for persons employed in mines or work incidental thereto, persons disabled as the result of such employment, persons displaced by governmental action, or persons dislocated as the result of natural disasters or catastrophic failure from any cause. Such activities shall be accomplished under such terms and conditions as the Secretary shall require, which may include transfers of land with or without monetary consideration: *Provided, That,* to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such person, firm, association, or corporation.

(2) The Secretary may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State.

(3) The Secretary may provide, or contract with public and private organizations to provide information, advice, and technical assistance, including demonstrations, in furtherance of this subsection.

FILLING VOIDS AND SEALING TUNNELS

SEC. 306. (a) The Congress declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Secretary, at the request of the Governor of any State without an approved State program, or the chairman of any tribe, is authorized to fill such voids, seal such abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the Secretary determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment. State regulatory authorities are authorized to carry out such work pursuant to an approved abandoned mine reclamation program.

(b) Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be expended in the respective States or Indian reservations under the provisions of section 301 (e).

(c) The Secretary may make expenditures and carry out the purposes of this section without regard to provisions of section 303 in such States or Indian reservations where requests are made by the Governor or tribal chairman and only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.

(d) In those instances where mine waste piles are being reworked for coal conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purposes of this section.

(e) The Secretary may acquire by purchase, donation, easement, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

FUND REPORT

SEC. 307. Not later than January 1, 1979, and annually thereafter, the Secretary shall report to the Congress on operations under the fund together with his recommendations as to future uses of the fund.

TRANSFER OF FUNDS

SEC. 308. The Secretary of the Interior may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this title.

TITLE IV—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

ENVIRONMENTAL PROTECTION STANDARDS

SEC. 401. (a) Not later than the end of the ninety-day period immediately following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering an interim regulatory procedure for surface coal mining and reclamation operations setting mining and reclamation performance standards based on and incorporating the provisions of subsections 415(b) (2), 415(b) (3), 415(b) (5), 415(b) (10), 415(b) (13), 415(b) (15), 415(b) (19), and 415(d) of this Act. The issuance of the Interim regulations shall be deemed not to be a major Federal action within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332). Such regulations shall not be promulgated and published by the Secretary until he has—

(A) published proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than forty-five days after such publication to submit written comments thereon;

(B) obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to those regulations promulgated under this section which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

(C) held at least one public hearing on the proposed regulations.

The date, time, and place of any hearing held on the proposed regulations shall be set out in the publication of the proposed regulations. The Secretary shall consider all comments and relevant data presented at such hearing before full promulgation and publication of the regulations.

(b) Not later than one year after the enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards based on and incorporating the provisions of title IV and establishing procedures and requirements for preparation, submission, and approval of State programs and development and implementation of Federal programs under the title. The Secretary shall promulgate these regulations in accordance with the procedures in section 401(a).

INITIAL REGULATORY PROCEDURES

SEC. 402. (a) No person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands on which such operations are regulated by a State unless such person has obtained a permit from the State's regulatory authority.

(b) All surface coal mining operations on lands on which such operations are regulated by a State which commence operations pursuant to a permit issued after six months from the date of enactment of this Act shall comply, and such permits shall contain terms requiring compliance with, the provisions of subsections 415(b)(2), 415(b)(3), 415(b)(5), 415(b)(10), 415(b)(13), 415(b)(19), and 415(c) of this Act. Prior to final disapproval of a State program or prior to promulgation of a Federal program or a Federal lands program pursuant to this Act, a State may issue such permits.

(c) On or after nine months from the date of enactment of this Act, all surface coal mining operations on lands on which such operations are regulated by a State which are in operation pursuant to a permit issued before or within six months after the date of enactment of this Act shall comply with the provisions of subsections 415(b)(2), 415(b)(3), 415(b)(5), 415(b)(10), 415(b)(13), 415(b)(19), and 415(c) of this Act, with respect to lands from which overburden and the coal seam being mined have not been removed: *Provided, however,* That surface coal mining operations in operation pursuant to a permit issued by a State before the date of enactment of this Act and operated by a person whose annual production of coal from surface coal mining operations does not exceed two hundred thousand tons shall not be subject to the provisions of this subsection except with reference to the provision of subsection 415(c)(1) until thirty months from the date of enactment of this Act.

(d) Not later than two months following the approval of a State program pursuant to section 403 or the implementation of a Federal program pursuant to section 404, regardless of litigation contesting that approval or implementation, all operators of surface and coal mines who expect to operate such mines after the expiration of eight months from the approval of a State program or the implementation of a Federal program, shall file an application for a permit with the regulatory authority. Such application shall cover those lands to be mined after the expiration of eight months from the approval of a State program or the implementation of a Federal program. The regulatory authority shall process such applications and grant or deny a permit within eight months after the date of approval of the State program or the implementation of the Federal program unless specially enjoined by a court of competent jurisdiction, but in no case later than forty-two months from the date of enactment of this Act."

(e) Within six months after the date of enactment of this Act, the Secretary shall implement a Federal enforcement program which shall remain in effect in each State in which there is surface coal mining until the State program has been approved pursuant to this Act or until a Federal program has been implemented pursuant to this Act. The enforcement program shall—

- (1) include inspections of surface coal mine sites which shall be made on a random basis (but at least one inspection for every site every three months), without advance notice to the mine operator and for the purpose of ascertaining compliance with the standards of subsections (b) and (c) above. The Secretary shall order any necessary enforcement action to be implemented pursuant to the Federal enforcement provision of this title to correct violations identified at the inspections;

(2) provide that upon receipt of inspection reports indicating that any surface coal mining operation has been found in violation of subsections (b) and (c) above, during not less than two consecutive State inspections or upon receipt by the Secretary of information which would give rise to reasonable belief that such standards are being violated by any surface coal mining operation, the Secretary shall order the immediate inspection of such operation by Federal inspectors and the necessary enforcement actions, if any, to be implemented pursuant to the Federal enforcement provisions of this title. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection;

(3) for purposes of this section, the term "Federal inspector" means personnel of the Office of Surface Mining Reclamation and Enforcement and such additional personnel of the United States Geological Survey, Bureau of Land Management, or of the Mining Enforcement and Safety Administration so designated by the Secretary, or such other personnel of the Forest Service, Soil Conservation Service, or the Agricultural Stabilization and Conservation Service as arranged by appropriate agreement with the Secretary on a reimbursable or other basis;

(4) provide that the State regulatory agency file with the Secretary and with a designated Federal office centrally located in the county or area in which the inspected surface coal mine is located copies of inspection reports made;

(5) provide that moneys authorized by section 511 shall be available to the Secretary prior to the approval of a State program pursuant to this Act to reimburse the States for conducting those inspections in which the standards of this Act are enforced and for the administration of this section.

(f) Following the final disapproval of a State program, and prior to promulgation of a Federal program or a Federal lands program pursuant to this Act, including judicial review of such a program, existing surface coal mining operations may continue surface mining operations pursuant to the provisions of section 402 of this Act. During such period no new permits shall be issued by the State whose program has been disapproved. Permits which lapse during such period may continue in full force and effect until promulgation of a Federal program or a Federal lands program.

STATE PROGRAMS

SEC. 403. (a) Each State in which there are or may be conducted on lands within such State surface coal mining operations, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations on such lands, except as provided in section 421 and title III of this Act, shall submit to the Secretary, by the end of the eighteen-month period beginning on the date of enactment of this Act, a State program which demonstrates that such State has the capability of carrying out the provisions of this Act and meeting its purposes through—

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this Act, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this Act;

(4) A State law which provides for the effective implementation, maintenance, and enforcement of a permit system, meeting the requirements of this title for the regulation of surface coal mining and reclamation operations for coal on lands within the State;

(5) establishment of a process for the designation of areas as unsuitable for surface coal mining in accordance with section 422;

(6) establishment for the purposes of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations; and

(7) rules and regulations consistent with this Act.

(b) The Secretary shall not approve any State program submitted under this section until he has—

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

(2) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards.

The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date of such State program was submitted to him.

(c) If the Secretary disapproves any proposed State program in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program, or portion thereof. The Secretary shall approve or disapprove the resubmitted State program or portion thereof within sixty days from the date of resubmission.

(d) For the purposes of this section and section 404, the inability of a State to take any action the purpose of which is to prepare, submit, or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under titles III and V of this Act or in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to the injunction shall be conducted by the State pursuant to section 402 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of sections 403 and 404 shall again be fully applicable.

FEDERAL PROGRAMS

SEC. 404. (a) The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal program for a State no later than thirty months after the date of enactment of this Act if such State—

(1) fails to submit a State program covering surface and coal mining and reclamation operations by the end of the eighteen-month period beginning on the date of enactment of this Act;

(2) fails to resubmit an acceptable State program within sixty days of disapproval of a proposed State program: *Provided*, That the Secretary shall not implement a Federal program prior to the expiration of the initial period allowed for submission of a State program as provided for in clause (1) of this subsection; or

(3) fails to implement, enforce, or maintain its approved State program as provided for in this Act.

If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months. Promulgation and implementation of a Federal program vests the Secretary with exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within any State not in compliance with this Act. After promulgation and implementation of a Federal program the Secretary shall be the regulatory

authority. If a Federal program is implemented for a State, subsections 422 (a), (c), and (d) shall not apply for a period of one year following the date of such implementation. In promulgating and implementing a Federal program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, biological, chemical, and other relevant physical conditions.

(b) In the event that a State has a State program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, under the provisions of section 421, of that part of the State program not being enforced by such State.

(c) Prior to promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State.

(d) Permits issued pursuant to an approved State program shall be valid but reviewable under a Federal program. Immediately following promulgation of a Federal program, the Secretary shall undertake to review such permits to determine that the requirements of this Act are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this Act, he shall so advise the permittee and provide him an opportunity for hearing and a reasonable opportunity for submission of a new application and reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 401, to conform ongoing surface mining and reclamation operations to the requirements of the Federal program.

(e) A State which has failed to obtain the approval of a State program prior to implementation of a Federal program may submit a State program at any time after such implementation. Upon the submission of such a program, the Secretary shall follow the procedures set forth in section 403(b) and shall approve or disapprove the State program within six months after its submittal. Approval of a State program shall be based on the determination that the State has the capability of carrying out the provisions of this Act and meeting its purposes through the criteria set forth in section 403(a) (1) through (6). Until a State program is approved as provided under this section, the Federal program shall remain in effect and all actions taken by the Secretary pursuant to such Federal program, including the terms and conditions of any permit issued thereunder shall remain in effect.

(f) Permits issued pursuant to the Federal program shall be valid under any superseding State program: *Provided*, That the Federal permittee shall have the right to apply for a State permit to supersede his Federal permit. The State regulatory authority may review such permits to determine that the requirements of this Act and the approved State program are not violated. Should the State program contain additional requirements not contained in the Federal program, the permittee will be provided opportunity for hearing and a reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 401, to conform ongoing surface mining and reclamation operations to the additional State requirements.

(g) Whenever a Federal program is promulgated for a State pursuant to this Act, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to this Act shall be preempted and superseded by the Federal program. The Secretary shall set forth in rules and regulations any State law or regulation which is preempted and superseded by the Federal program.

(h) Any Federal program shall include a process for coordinating the review and issuance of permits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation.

STATE LAWS

SEC. 405. (a) No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this Act.

(b) Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface coal mining and reclamation operations than do the provisions of

this Act or any regulation issued pursuant thereto shall not be construed to be inconsistent with this Act. The Secretary shall set forth in the rules and regulations any State law or regulation which is construed to be inconsistent with this Act. Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.

PERMITS

SEC. 406. (a) On and after eight months from the date on which a State program is approved by the Secretary, pursuant to section 403 of this Act, or on and after eight months the date on which the Secretary has promulgated a Federal program for a State not having a State program pursuant to section 404 of this Act, no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State program or by the Secretary pursuant to a Federal program; except a person conducting surface coal mining operations under a permit from the State regulatory authority, issued in accordance with the provisions of section 402 of this Act, may conduct such operations beyond such period if an application for a permit has been filed in accordance with the provisions of this Act, but the initial administrative decision has not been rendered.

(b) All permits issued pursuant to the requirements of this Act shall be issued for a term not to exceed five years and shall be nontransferable: *Provided*, That a successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

(c) A permit shall terminate if the permittee has not commenced the surface coal mining and reclamation operations covered by such permit within three years of the issuance of the permit: *Provided*, That with respect to coal to be mined for use in a synthetic fuel facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel facility is initiated.

(d) (1) Any valid permit issued pursuant to this Act shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holder of the permit may apply for renewal and such renewal shall be issued, subsequent to public hearing, if requested, unless the regulatory authority finds in writing that—

(A) the terms and conditions of the existing permit are not being satisfactorily met; or

(B) the present surface coal mining and reclamation operation is not in full compliance with the environmental protection standards of this Act and the approved State plan or Federal program pursuant to this Act; or

(C) the renewal requested jeopardizes the operator's continuing responsibility on existing permit areas; or

(D) the operator has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the regulatory authority might require pursuant to section 409; or

(E) any additional revised or updated information required by the regulatory authority has not been provided. Prior to the approval of any renewal of permit the regulatory authority shall provide notice to the appropriate public authorities.

(2) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for revision of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this Act.

(3) Any permit renewal shall be for a term not to exceed the period of the original permit established by this Act. Application for permit renewal shall be made at least one hundred and twenty days prior to the expiration of the valid permit.

APPLICATION REQUIREMENTS

SEC. 407. (a) Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program under the provisions of this Act shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of receiving, administering and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

(b) The permit application shall be submitted in a manner satisfactory to the regulatory authority and shall contain, among other things—

(1) the names and addresses of (A) the permit applicant; (B) every legal owner of the property (surface and mineral), to be mined; (C) the holders of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the operator if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(2) the names and addresses of the owners of record of all surface and subsurface areas within five hundred feet of any part of the permit area;

(3) a statement of any current or previous surface coal mining permits in the United States held by the applicant and the permit identification;

(4) if the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning, of record or beneficially either alone or with associates, 10 per centum or more of any class of stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States;

(5) a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a Federal or State mining permit which subsequent to 1960 has been suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) a copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposal site at least once a week for four successive weeks, and which includes the ownership, a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation is readily locatable by local residents, and the location of where the application is available for public inspection;

(7) a description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used.

(8) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(9) a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation: *Provided*, That nothing in this Act shall be construed as vesting in the regulatory authority the jurisdiction to adjudicate property title disputes.

(10) the name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) a determination of the hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability: *Provided, however*, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency;

(12) when requested by the regulatory authority, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(13) an accurate map or plan to an appropriate scale clearly showing (A) the land to be affected as of the date of application and (B) all types of information set forth on topographical maps of the United States Geological Survey of a scale of 1:24000 or larger, including all manmade features and significant known archeological sites existing on the date of application. Such a map or plan shall, among other things specified by the regulatory authority, show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet of the permit area;

(14) cross-section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, with assistance from experts in related fields such as land surveying, landscape architecture, and geology, showing pertinent elevation and location of test borings or core samplings and depicting the following information; the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of "aquifers;" the estimated elevation of the water table; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(15) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, an analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined; and

(16) information pertaining to coal seams, test borings, or core samplings as required by this section shall be made available to any person with an interest which is or may be adversely affected: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(c) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United State certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other State or Federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of State law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(d) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a reclamation plan which shall meet the requirements of this Act.

(e) Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the court-

house of the county or an appropriate public office approved by the regulatory authority where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

RECLAMATION PLAN REQUIREMENTS

SEC. 408. (a) Each reclamation plan submitted as part of a permit application pursuant to any approved State program or a Federal program under the provisions of this Act shall include, in the degree of detail necessary to demonstrate that reclamation required by the State or Federal program can be accomplished, a statement of:

(1) the identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought;

(2) the condition of the land to be covered by the permit prior to any mining including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(3) the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, State, and local governments or agencies thereof which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(4) a detailed description of how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation; an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in section 415;

(6) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(7) the consideration which has been given to developing the reclamation plan in a manner consistent with local, physical environmental, and climatological conditions and current mining and reclamation technologies;

(8) the consideration which has been given to insuring the maximum economically practicable recovery of the mineral resource;

(9) a detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(10) the consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable State and local land use plans and programs;

(11) all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) the results of test borings which the applicant has made at the area to be covered by the permit, including the location of subsurface water, and an analysis of the chemical properties including acid-forming properties of the mineral and overburden: *Provided*, That information about the mineral shall be withheld by the regulatory authority if the applicant so requests;

(13) a detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to such water; and

(C) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured;

(14) such other requirements as the regulatory authority shall prescribe by regulation.

(b) Any information required by this section which is not on public file pursuant to State law shall be held in confidence by the regulatory authority.

PERFORMANCE BONDS

SEC. 409. (a) After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond for performance payable, as appropriate, to the United States or to the State, and conditional upon faithful performance of all the requirements of this Act and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit and shall be determined by the regulatory authority. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

(b) Liability under the bond shall be for the duration of the surface coal mining and reclamation operations and for a period coincident with operator's responsibility for vegetation requirements in section 415.

The bond shall be executed by the operator and a corporate surety licensed to do business in the State where such operation is located, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or such State, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

(c) The regulatory authority may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount.

(d) Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

(e) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

PERMIT APPROVAL OR DENIAL

SEC. 410. (a) Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this Act and pursuant to an approved State program or Federal program under the provisions of this Act, including public notification and an opportunity for a public hearing as required by section 413, the regulatory authority shall grant or deny the application for a permit and notify the applicant in writing no later than six months after submission of the complete mining and reclamation plan. Within ten days after the granting of a permit, the regulatory authority shall notify the local official who has the duty of collecting real estate taxes in the local political subdivisions in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

(b) No permit or revision application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that—

(1) all the requirements of this Act and the State or Federal program have been complied with ;

(2) the applicant has demonstrated that reclamation as required by this act and the State or Federal program can be accomplished under the reclamation plan contained in the permit application ;

(3) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 407(b) has been made by the regulatory authority and the proposed operation thereof has been designed to prevent significant irreparable offsite damage to hydrologic balance ;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 422 of this Act or is not within an area under study for such designation in an administrative proceeding commenced pursuant to section 422(a)(1)(D) or section 422(c) (unless in such an area as to which an administrative proceeding has commenced pursuant to such sections, the operator making the permit application demonstrates that, prior to the date of enactment of this Act, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit) ; and

(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not have a substantial adverse effect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of irrigated, flood irrigated, or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations if such operations are significant and economically feasible: *Provided*, That this subparagraph (5) shall not affect those surface coal mining operations which in the year preceding the enactment of this Act (1) produced coal in commercial quantities, and (2) were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors or for which substantial financial and legal commitments, as determined by the Secretary, had been made prior to January 1, 1977.

(c) The applicant shall file with his permit application a schedule listing any and all notices of violations of this Act and any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the one-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act or such other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation, and no permit shall be issued to an applicant after a finding by the regulatory authority, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern or willful violations of this Act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this Act.

REVISION OF PERMITS

SEC. 411. (a) (1) During the term of the permit the permittee may submit an application, together with a revised reclamation plan, to the regulatory authority for a revision of the permit.

(2) An application for a revision of a permit shall not be approved unless the regulatory authority finds that reclamation as required by this Act and the State or Federal program can be accomplished under the revised Reclamation Plan. The revision shall be approved or disapproved within a period of time established by the State or Federal program. The regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: *Provided*, That any revisions which propose a substantial change in the intended future use of the land or significant alterations in the Reclamation Plan shall, at a minimum be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the regulatory authority.

(c) The regulatory authority shall within a time limit prescribed in regulations promulgated by the regulatory authority, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit: *Provided*, That such revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the State or Federal program.

COAL EXPLORATION PERMITS

SEC. 412. (a) Each State or Federal program for a State shall include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration regulations issued by the regulatory authority. Such regulations shall include, at a minimum, (1) the requirement that prior to conducting any exploration under this section, any person must file with the regulatory authority notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration and (2) provisions for reclamation in accordance with the performance standards in section 415 of this Act of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(b) Information submitted to the regulatory authority pursuant to this subsection as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

(c) Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of section 418.

(d) Coal exploration on Federal lands shall be governed by section 4 of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1085).

PUBLIC NOTICE AND PUBLIC HEARINGS

SEC. 413. (a) At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit, pursuant to the provisions of this Act or an approved State program, the applicant shall submit to the regulatory authority a copy of his proposed advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission such approved advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. At the time of submission the regulatory authority shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies have obligation to submit written comments within thirty days of receipt of notification on the mining applications with respect to the effect of the proposed operation on the environment which are

within their area of responsibility. Such comments shall be made available to the public at the same locations as are the mining applications.

(b) Any person with a valid legal interest or the officer or head of any Federal, State, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the regulatory authority within thirty days after the first publication of the above notice. The regulatory authority shall provide the applicant with copies of all objections and the applicant shall have thirty days thereafter to file written response with the regulatory authority if he so desires. If written objections are filed and not considered frivolous by the regulatory authority and a hearing requested, the regulatory authority shall then hold a public hearing in the locality of the proposed mining or at the option of the objector at the State capital within thirty days of the receipt of such objections: *Provided*, That approval or denial of the applications shall be accomplished pursuant to section 410(a). The regulatory authority may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed mining area for the purpose of gathering information relevant to the proceeding. At this public hearing, the applicant for a permit shall have the burden of establishing that his application is in compliance with the applicable State and Federal laws. Not less than ten days prior to any proposed hearing, the regulatory authority shall respond to the written objections in writing. Such response shall include the regulatory authority's preliminary proposals as to the terms and conditions, and amount of bond of a possible permit for the area in question and answers to material factual questions presented in the written objections. The regulatory authority's responsibility under this subsection shall in any event be to make publicly available its estimate as to any other conditions of mining or reclamation which may be required or contained in the preliminary proposal. In the event all parties requesting the hearing stipulate agreement prior to the requested hearings, and withdraw their request, such hearings need not be held.

(c) Without prejudice to the rights of the objectors or responsibilities of the regulatory authority pursuant to this section, the regulatory authority may establish an informal conference procedure to resolve such written objection in lieu of holding a formal transcribed procedure.

(d) The procedures for conduct of hearings under the Act shall be established by the regulatory authority. The Secretary shall not prescribe such procedures as a condition for approval of a State program.

(e) For the purpose of such hearing, the regulatory authority may administer oaths, subpoena witnesses, or written or printed materials, compel attendance of the witnesses, or production of the materials, and take evidence including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this Act shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority.

(f) Where the lands included in an application for a permit are the subject of a Federal coal lease in connection with which hearings were held and determinations were made under sections 2(a) (3) (A), (B) and (C) of the Mineral Lands Leasing Act, as amended (30 U.S.C. 201a) (3) (A), (B) and (C), such hearings shall be deemed as to the matters covered to satisfy the requirements of this section and such determinations shall be deemed to be a part of the record and conclusive for purposes of section 410 and of this section.

DECISIONS OF REGULATORY AUTHORITY AND APPEALS

SEC. 414. (a) If a public hearing has been held pursuant to section 413(b), the regulatory authority shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the regulatory authority, granting or denying the permit in whole or in part and stating the reasons therefor, within thirty days of said hearings.

(b) If there has been no public hearing held pursuant to sections 413(b), the regulatory authority shall notify the applicant for a permit no later than six months after the date on which a complete application was filed, whether the application has been approved or disapproved. If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is

notified that the permit or any portion thereof has been denied, the applicant may request a hearing on the reasons for the said disapproval. The regulatory authority shall hold a hearing within thirty days of such request and provide notification to all interested parties at the time that the applicant is so notified. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant, and all persons who participated in the hearing pursuant to section 413(b) with the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

(c) Any applicant, or any other party to the administrative proceeding who filed written objections and participated in the hearing if one was held, and who is aggrieved by the decision or by the failure of the regulatory authority to act within the time limits specified in this section and in section 413 of this Act, shall have the right of appeal in accordance with sections 426 of this Act.

ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

SEC. 415. (a) Any permit issued under any approved State or Federal program pursuant to this Act to conduct surface coal mining operations shall require that such surface coal mining operations will meet all applicable performance standards of this Act, and such other requirements as the regulatory authority shall promulgate.

(b) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operator as a minimum to—

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered by using the best technology currently available so that re-affecting the land in the future through surface coal mining can be minimized;

(2) restore the land affected to a condition at least fully capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or degradation below water quality standards established pursuant to applicable Federal and State law and the permit applicants' declared proposed land use following reclamation is not deemed to be (i) impractical or unreasonable, (ii) inconsistent with applicable land use policies and plans, (iii) involving unreasonable delay in implementation, or (iv) violative of Federal, State, or local law;

(3) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act): *Provided, however,* That in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: *And provided further,* That in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover

all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Act: *And provided further*, That in surface coal mining where the mining operation will remove an entire coal seam or seams running through the upper section of a mountain, ridge or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no high walls remaining, and capable of supporting postmining agricultural, industrial, commercial, residential, or public facility uses, the requirements of this section with respect to restoration to approximate original contour with all high walls, spoil piles and depressions eliminated shall not be applicable.

(4) stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution;

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation;

(6) restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(8) create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that—

(A) the size of the impoundment is adequate for its intended purposes.

(B) the impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable Federal and State law in the receiving stream;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the regulatory authority determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety;

(10) minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses ;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface waters ;

(B) (i) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines ;

(ii) constructing any siltation structures pursuant to subparagraph (B) (i) of this subsection prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan ;

(C) removing temporary or large siltation structures from drainways after disturbed areas are revegetated and stabilized ;

(D) restoring recharge capacity of the mined area to approximate pre-mining conditions ;

(E) replacing the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately resulting from mining ;

(F) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country ; and

(G) such other actions as the regulatory authority may prescribe ;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this Act ;

(12) refrain from surface coal mining within five hundred feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners : *Provided*, That the regulatory authority shall permit an operator to mine closer to an abandoned underground mine : *Provided*, That this does not create hazards to the health and safety of miners ; or shall permit an operator to mine near, through or partially through an abandoned underground mine working where such mining through will achieve improved resources recovery, abatement of water pollution or elimination of public hazards and such mining shall be consistent with the provisions of the Act ;

(13) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to subsection (c) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments ;

(14) insure that all debris, acid forming materials, toxic materials, or materials constituting a fire hazard are buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion ;

(15) insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority, which shall include provisions to—

(A) provide adequate advance written notice by publication and/or posting of the planned blasting schedule to designated units of local governments and to residents who might be affected by the use of such explosives and maintain for a period of at least two years a log of the magnitudes and times of blasts which shall be available to the public ; and

(B) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area, (iii) adverse impacts on any underground mine, and (iv) change in the course, channel, or availability of ground or surface water outside the permit area ;

(C) require that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority.

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations: *Provided, however*, That where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resources, the regulatory authority may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation :

(A) if the regulatory authority finds in writing that :

(i) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations ;

(ii) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface ;

(iii) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority ;

(iv) the areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations ;

(v) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this Act ;

(vi) provisions for the off-site storage of spoil will comply with section 415(d) (1) ;

(B) if the Secretary has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subsection and section 401, and has imposed such additional requirements as he deems necessary ;

(C) if variances granted under the provisions of this subsection are to be reviewed by the regulatory authority not more than three years from the date of issuance of the permit ; and

(D) if liability under the bond filed by the applicant with the regulatory authority pursuant to section 409(b) shall be for the duration of the underground mining operations and until the requirements of sections 415(b) and 419 have been fully complied with.

(17) insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property to the extent that the operator retains legal control of the access roads in question: *Provided*, That the regulatory authority may permit the retention after mining of certain access roads where consistent with State and local land use plans and programs and where necessary may permit a limited exception to the restoration of approximate original contour for that purpose :

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water ;

(19) establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area ; except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan ;

(20) assume the responsibility for successful revegetation, as required by paragraph (19) above, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with paragraph (19) above, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work: *Provided*, That when the regulatory authority approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural postmining land use: *Provided further*, That when the regulatory authority issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the authority may grant exception to the provisions of paragraph (19) above;

(21) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the regulatory authority shall determine shall be retained in place as a barrier to slides and erosion; and

(22) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site.

(c) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section: *Provided, however*, That the provisions of this subsection (d) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or, except for provisions of subparagraph (1) of this subsection, to those situations where the mining operation will remove an entire coal seam or seams running through the upper section of a mountain, ridge or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and in granting a permit for such a mining operation the regulatory authority shall require that—

(A) the toe of the lowest coal seam mined and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau of rolling contour drains inward from the out-slopes except at specified points;

(D) no damage will be done to natural water courses;

(E) all excess spoil material not retained on the mountaintop be placed in a valley fill utilizing french rock drains constructed through the complete height of the fill to insure maximum drainage control unless the operator demonstrates that more advanced techniques achieving an equal or higher level of drainage control are feasible;

(F) all other requirements of this Act will be met; and

(G) the regulatory authority shall promulgate specific regulations to govern the granting of permits and may impose such additional requirements as he deems to be necessary.

(1) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut, except that where necessary soil or spoil material from the initial block or short linear cut of earth necessary to obtain initial access to the coal seam in a new surface coal mining operation can be placed on a limited and specified area of the downslope below the initial cut if the permittee demonstrates that such soil or spoil material will not slide and that the other requirements of this subsection can still be met: *Provided*, That spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of paragraph 415(b)(3) or 415(c)(2) or excess spoil from a surface coal mining operation granted a permit under subsection 415(c) may be permanently stored at such offsite spoil storage areas in such a manner as to assure that—

(A) spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(C) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(D) the disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the regulatory authority, the spoil could be placed in compliance with all the requirements of this Act, and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

(F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed;

(G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(I) all other provisions of this Act are met.

(2) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the approximate original contour, which material will maintain stability following mining and reclamation.

(3) The operator may not disturb land above the top of the highwall unless the regulatory authority finds that such disturbance will facilitate compliance with the environmental protection standards of this section: *Provided, however*, That the land disturbed above the highway shall be limited to that amount necessary to facilitate said compliance.

(4) For the purposes of this section, the term "steep slope" is any slope above twenty degrees or such lesser slope as may be defined by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State.

(d) The Secretary, with the written concurrence of the Chief of Engineers, shall establish within one hundred and thirty-five days from the date of enactment, standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal mine waste piles referred to in section 415(b) (13) and section 415(b) (5). Such standards and criteria shall conform to the standards and criteria used by the Chief of Engineers to insure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other technical specifications the standards and criteria developed pursuant to this subsection must include provisions for: review and approval of plans and specifications prior to construction, enlargement, modification, removal, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices for required remedial or maintenance work.

SURFACE EFFECTS OF UNDERGROUND COAL MINING OPERATIONS

SEC. 416. (a) The Secretary shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations, embodying the following requirements and in accordance with the procedures established under section 401 of this Act: *Provided, however*, That in adopting any rules and regulations the Secretary shall consider the distinct difference between surface coal mining and underground coal mining. Such rules and regulations shall not conflict with nor supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 nor any regulation issued pursuant thereto, and shall not be promulgated until the Secretary has obtained the written concurrence of the head of the department which administers such Act.

(b) Each permit issued under any approved State or Federal program pursuant to this Act and relating to underground coal mining shall require the operator to—

(1) adopt measures consistent with known technology in order to prevent subsidence to the extent technologically and economically feasible, maximize

mine stability, and maintain the value and use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided*, That nothing in this subsection shall be construed to prohibit the standard methods of room and pillar continuous or conventional mining;

(2) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

(3) fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations;

(4) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure that the leachate will not degrade below water quality standards established pursuant to applicable Federal and State law surface or ground waters and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to section 415(e), all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(6) establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area;

(7) protect offsite areas from damages which may result from such mining operations;

(8) eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface ground water systems both during and after coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and

(B) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(10) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

(11) with respect to other surface impacts not specified in this subsection including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to such activities operate in accordance

with the standards established under section 415 of this title for such effects which result from surface coal mining operations: *Provided*, That the Secretary shall make such modifications in the requirements imposed by this subparagraph as are necessary to accommodate the distinct difference between surface and underground coal mining;

(12) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the regulatory authority shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(d) The provisions of title IV of this Act relating to State and Federal programs, permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permits application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The Secretary shall promulgate such modifications in accordance with the rulemaking procedure established in section 401 of this Act.

INSPECTIONS AND MONITORING

Sec. 417. (a) The Secretary shall cause to be made such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of approved State programs, or to develop or enforce any Federal program, and for such purposes authorized representatives of the Secretary shall have a right of entry to, upon, or through any surface coal mining and reclamation operations.

(b) For the purpose of developing or assisting in the development, administration, and enforcement of any approved State or Federal program under this Act or in the administration and enforcement of any permit under this Act or of determining whether any person is in violation of any requirement of any such State or Federal program or any other requirement of this Act—

(1) the regulatory authority shall require any permittee to (A) establish and maintain appropriate records, (B) make monthly reports to the regulatory authority, (C) install, use, and maintain any necessary monitoring equipment or methods, (D) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as a regulatory authority shall prescribe, and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary;

(2) for those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the regulatory authority shall specify those—

(A) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(B) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lower most (deepest) coal seam to be mined;

(C) records of well logs and borehole data to be maintained; and

(D) monitoring sites to record precipitation.

The monitoring data collection, and analysis required by this section shall be conducted according to standards and procedures set forth by the regulatory authority in order to assure their reliability and validity; and

(3) the authorized representatives of the regulatory authority, with or without advance notice and upon presentation of appropriate credentials (A) shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (B) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act.

(c) The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one inspection per month for the surface coal mining and reclamation operations covered by each permit; (2) occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and (3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act and the regulatory authority shall make copies of such inspection reports immediately and freely available to the public at a central location in the pertinent geographic area of mining. The Secretary or regulatory authority shall establish a system of continual rotation of inspectors so that the same inspector does not consistently visit the same operations.

(d) Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(e) Each inspector, upon detection of each violation of any requirement of any State or Federal program or of this Act, shall forthwith inform the operator in writing, and shall report in writing any such violation to the regulatory authority.

(f) Copies of any records, reports, inspection materials, or information obtained under this title by the regulatory authority shall be made immediately available to the public at central and sufficient locations in the county, multi-county, and State area of mining so that they are conveniently available to residents in the areas of mining.

(g) No employee of the State regulatory authority performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both. The Secretary shall (1) within sixty days after enactment of this Act, publish in the Federal Register, in accordance with section 553 of title 5, United States Code, regulations to establish methods by which the provisions of this subsection will be monitored and enforced by the Secretary and such State regulatory authority, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning any financial interest which may be affected by this subsection, and (2) report to the Congress as part of the Annual Report (section 506) on actions taken and not taken during the preceding year under this subsection.

(h) (1) Any person who is or may be adversely affected by a surface mining operation may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which he has reason to believe exists at the surface mining site. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation. The Secretary shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(2) The Secretary shall also, by regulation, establish procedures to insure that adequate and complete inspections are made. Any such person may notify the Secretary of any failure to make such inspections, after which the Secretary shall determine whether adequate and complete inspections have been made. The Secretary shall furnish such persons a written statement of the reasons for the Secretary's determination that adequate and complete inspections have or have not been conducted.

PENALTIES

SEC. 418. (a) In the enforcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to section 402 or during Federal enforcement of a State program pursuant to section 421 of this Act, any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 421, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at

the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

(b) (1) A civil penalty shall be assessed by the Secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the Secretary shall make findings of fact, and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Secretary shall consolidate such hearings with other proceedings under section 42 of this Act. Any hearing under this section shall be of record and shall be subject to section 554 of title 5 of the United States Code. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Secretary after the Secretary has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

(2) Any person who requested a hearing respecting the assessment of a civil penalty or who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for any circuit in which the surface coal mining operation is located. Such a petition may only be filed within the thirty-day period beginning on the date the order making such assessment was issued.

(c) If no complaint, as provided in this section, is filed within thirty days from the date of the final order or decision issued by the Secretary under subsection (b) of this section, such order and decision shall be conclusive.

(d) Upon the issuance of a notice or order charging that a violation of the Act has occurred, the Secretary shall inform the operator within thirty days of the proposed amount of said penalty. The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Secretary shall within thirty days remit the appropriate amount to the person, with interest at the rate of 6 per cent, or at the prevailing Department of the Treasury rate, whichever is greater. Failure to forward the money to the Secretary within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(e) Civil penalties owed under this Act, either pursuant to subsection (c) of this section or pursuant to enforcement order entered under section 421 of this Act, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district court of the United States or by the State regulatory authority in a court of competent jurisdiction.

(f) Any person who willfully and knowingly violates a condition of a permit issued pursuant to a Federal program, a Federal lands program, or Federal enforcement pursuant to section 402 or during Federal enforcement of a State program pursuant to section 421 of this Act or fails or refuses to comply with any order issued under section 425 or section 426 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act, except an order incorporated in a decision issued under subsection (b) of this section or section 504 of this Act, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

(g) Whenever a corporate permittee violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 402 or Federal enforcement of a State program pursuant to section 421 of this Act or fails or refuses to comply with any order issued under section 421 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act except an order incorporated in a decision issued under subsection (b) of this section or section 504 of this Act, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (f) of this section.

(h) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to a Federal program or a Federal lands program or any order or decision issued by the Secretary under this Act, shall, upon conviction be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

(i) Any operator who fails to correct a violation for which a citation has been issued under section 421(a) within the period permitted for its correction (which period shall not end until the entry of a final order by the Secretary, in the case of any review proceedings under section 425 initiated by the operator wherein the Secretary orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under section 426 initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation), shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation continues.

(j) As a condition of approval of any State program submitted pursuant to section 403 of this Act, the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement right or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.

RELEASE OF PERFORMANCE BONDS OR DEPOSITS

Sec. 419 (a) The permittee may file a request with the regulatory authority for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit number and the date approved, the amount of the bond filed and the portion sought to be released, and the type and the approximate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

(b) Upon receipt of the notification and request, the regulatory authority shall within thirty days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution. The regulatory authority shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty days from the filing of the request, if no public hearing is held pursuant to section 419(f), and if there has been a public hearing held pursuant to section 419(f), within thirty days thereafter.

(c) The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this Act according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of 60 per centum of the bond or collateral for the applicable permit area;

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section 415 of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining and as set forth in the permit. Where a silt dam is to be retained as a permanent impoundment pursuant to section 415(b)(8), the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(3) When the operator has completed successfully all surface coal mining and reclamation activities, but not before the expiration of the period specified for operator responsibility in section 415:

Provided, however, That no bond shall be fully released until all reclamation requirements of this Act are fully met.

(d) If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

(e) With any application for total or partial bond release filed with the regulatory authority, the regulatory authority shall notify the municipality in which a surface coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid interest which might be adversely affected by release of the bond or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release from bond to the regulatory authority within thirty days after the last publication of the above notice. If written objections are filed, and a hearing requested, the regulatory authority shall inform all the parties, of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release or at the State capital at the option of the objector, within thirty days of the request for such hearing.

(g) Without prejudice to the rights of the objectors and applicant or the responsibilities of the regulatory authority pursuant to this paragraph, the regulatory authority may establish an informal conference procedure to resolve such written objections in lieu of holding a formal transcribed hearing.

(h) For the purpose of such hearing the regulatory authority shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this Act shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority.

CITIZEN SUITS

SEC. 420. (a) Except as provided in subsection (b) of this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this Act—

(1) against—

(A) the United States,

(B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution who is alleged to be in violation of the provisions of this Act or the regulations promulgated thereunder, or order issued by the regulatory authority; or

(C) any other person who is alleged to be in violation of any rule, regulation, order, or permit issued pursuant to this Act; or

(2) against the Secretary or the appropriate State regulatory authority to the extent permitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this Act which is not discretionary with the Secretary or with the appropriate State regulatory authority.

(b) No action may be commenced—

(1) under subsection (a) (1) of this section—

(A) prior to sixty days after the plaintiff has given notice in writing under oath of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator; or

(B) if the Secretary or his authorized representative or the State regulatory authority has issued a notice or order with respect to such alleged violation in accordance with section 421 or an approved State program, or has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this Act, or any rule, regulation, order, or permit issued pursuant to this Act, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right; or

(2) under subsection (a) (2) of this section prior to sixty days after the plaintiff has given notice in writing under oath of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) (1) Any action pursuant to this section may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In such action under this section, the Secretary, or the State regulatory authority, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation, including reasonable attorney and expert witness fees to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in sufficient amount to compensate for any losses or damages suffered in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief (including relief against the Secretary or the appropriate State regulatory authority).

(f) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district in which the surface coal mining operation complained of is located.

SEC. 421. (a) (1) Whenever, on the basis of any information available to him, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists. If no such State authority exists or the State regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order Federal inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the Secretary is a result of a previous Federal inspection of such surface coal mining operation. The ten-day notification period shall be waived when the person informing the Secretary provides ade-

quate proof that an imminent danger or significant environmental harm exists and that the State has failed to take appropriate action. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

(2) When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or his authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a) (5) of this section. Where the Secretary finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the Secretary shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the Secretary deems necessary to abate the imminent danger or the significant environmental harm.

(3) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 402, or section 404(b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, but such violation does not create an imminent danger to the health or safety of the public, or cause can be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the Secretary or his authorized representative, the Secretary or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a) (5) of this section.

(4) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 402 or section 402(b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the Secretary or his authorized representative also find that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this Act or any permit conditions, or that such violations are willfully caused by the permittee, the Secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the Secretary shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Secretary or his authorized representative shall forthwith suspend or revoke the permit.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required,

the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs.

(b) Whenever on the basis of information available to him, the Secretary has reason to believe that violations of all or any part of an approved State program result from a failure of the State to enforce such State program or any part thereof effectively, he shall after public notice and notice to the State, hold a hearing thereon in the State within thirty days of such notice. If as a result of said hearing the Secretary finds that there are violations and such violations result from a failure of the State to enforce all or any part of the State program effectively, and if he further finds that the State has not adequately demonstrated its capability and intent to enforce such State program, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce this Act, the Secretary shall enforce, in the manner provided by this Act, any permit condition required under this Act, shall issue new or revised permits in accordance with requirements of this Act, and may issue such notices and orders as are necessary for compliance therewith: *Provided*, That in the case of a State permittee who has met his obligations under such permit and who did not willfully secure the issuance of such permit through fraud or collusion, the Secretary shall give the permittee a reasonable time to conform ongoing surface mining and reclamation to the requirements of this Act before suspending or revoking the State permit.

(c) The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal office, whenever such permittee or his agent (A) violates or fails or refuses to comply with any order or decision issued by the Secretary under this Act, or (B) interferes with, hinders, or delays the Secretary or his authorized representatives in carrying out the provisions of this Act, or (C) refuses to admit such authorized representative to the mine, or (D) refuses to permit inspection of the mine by such authorized representative, or (E) refuses to furnish any information or report requested by the Secretary in furtherance of the provisions of this Act, or (F) refuses to permit access to, and copying of, such records as the Secretary determines necessary in carrying out the provisions of this Act. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended. Any relief granted by the court to enforce an order under clause (A) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

(d) As a condition of approval of any State program submitted pursuant to section 403 of this Act, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.

DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

SEC. 422. (a) (1) To be eligible to assume primary regulatory authority pursuant to section 403, each State shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in para-

graphs (2) and (3) of this subsection but such designation shall not prevent the mineral exploration pursuant to the Act of any area so designated.

(2) Upon petition pursuant to subsection (c) of this section, the State regulatory authority shall designate an area as unsuitable for all or certain types of surface coal mining operations if the State regulatory authority determines that reclamation pursuant to the requirements of this Act is not technologically and economically feasible.

(3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will—

(A) be incompatible with existing State land use plans or programs; or

(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(4) To comply with this section, a State must demonstrate it has developed or is developing a process which includes—

(A) a State agency responsible for surface mining lands review; or

(B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of surface coal mining operations; or

(C) a method or methods for implementing land use planning decisions concerning surface coal mining operations; and

(D) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(5) Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels.

(6) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on the date of enactment of this Act or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in such operations are in existence prior to the date of the enactment of this Act.

(b) The Secretary shall conduct a review of the Federal lands to determine, pursuant to the standards set forth in paragraphs (2) and (3) of subsection (a) of this section, whether there are areas on Federal lands which are unsuitable for all or certain types of surface coal mining operations: *Provided, however,* That the Secretary may permit surface coal mining on Federal lands prior to the completion of this review. Subject to valid existing rights, when the Secretary determines an area on Federal lands to be unsuitable for all or certain types of surface coal mining operations he shall withdraw such area or condition any mineral leasing or mineral entries in a manner so as to limit surface coal mining operations on such area. Where a Federal program has been implemented in a State pursuant to section 404, the Secretary shall implement a process for designation of areas unsuitable for surface coal mining for non-Federal lands within such State and such process shall incorporate the standards and procedures of this section.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority shall hold a public hearing in the locality of the affected area after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations.

Within sixty days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

(d) Prior to designating pursuant to this section any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement on (i) the potential coal resource of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

(e) Subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted—

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;

(2) On any Federal lands within the boundaries of any National Forest: *Provided, however,* That surface coal mining operations may be permitted on such lands which do not have significant forest cover within those National Forests west of the one hundredth meridian if the Secretary of Agriculture finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and where the Secretary of Agriculture determines that surface mining is in compliance with the Multiple-Use Sustained-Yield Act of 1960, and the National Forest Management Act of 1976, and the Secretary determines that such mining is consistent with the Federal Coal Leasing Amendment Act of 1975 and the provisions of this Act: *And provided further,* That no surface coal mining operations may be permitted within the boundaries of (1) the Custer National Forest and (2) any national forest in Alaska;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

FEDERAL LANDS

SEC. 423. (a) No later than one year after the date of enactment of this Act, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: *Provided,* That except as provided in section 508 the provisions of this Act shall not be applicable to Indian lands. The Federal lands program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program: *Provided,* That the Secretary shall retain his duties under sections 2(a), (2)(B) and 2(a)(3) of the Federal Mineral Leasing Act, as amended, and shall continue to be responsible for designation of Federal lands as unsuitable for mining in accordance with section 422(b) of this title.

(b) The requirements of this Act and the Federal lands program or the approved State program, whichever is applicable, shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued

by the Secretary which may involve surface coal mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to subsequently issue new regulations, revise the Federal lands program to deal with changing conditions or changed technology, and to require any surface mining and reclamation operations to conform with the requirements of this Act and the regulations issued pursuant to this Act.

(c) Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State: *Provided*, That the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provisions of this Act. States with cooperative agreements existing on the date of enactment of this Act, may elect to continue regulation on Federal lands within the State, prior to approval by the Secretary of the State program, or imposition of a Federal program: *Provided*, That such an existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in section 402 of this Act. Nothing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands, to designate certain Federal lands as unsuitable for surface coal mining pursuant to section 422 of this Act, or to regulate other activities taking place on Federal lands.

PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS

SEC. 424. Any agency, unit, or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this Act shall comply with the provisions of title IV.

REVIEW BY SECRETARY

SEC. 425. (a) (1) A permittee issued a notice or order by the Secretary pursuant to the provisions of subparagraphs (a) (2) or (a) (3) of section 421 of this title, or pursuant to a Federal program or the Federal lands program or any person having an interest which is or may be adversely acted by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Secretary for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

(2) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be held within thirty days after requested and shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(b) Upon receiving the report of such investigation and hearings, the Secretary shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate his findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of subparagraph (a) (2) or (a) (3) of section 421 of this title, the Secretary shall issue the written decision within thirty days of the receipt of the application for review, unless temporary relief has been granted by the Secretary pursuant to subparagraph (c) of this section or by the court pursuant to subparagraph (c) of section 425 of this title.

(c) Pending completion of the investigation and hearing required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any notice or order issued under section 421 of this title, a Federal program or the Federal lands program together with a de-

tailed statement giving reasons for granting such relief. The Secretary shall issue an order or decision granting or denying such relief expeditiously: *Provided*, That where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to subparagraph (a) (2) or (a) (3) of section 421 of this title, the order or decision on such a request shall be issued within five days of its receipt. The Secretary may grant such relief, under such conditions as he may prescribe, if—

(1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to him; and

(3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(d) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to section 421, the Secretary shall hold a public hearing after giving written notice of the time, place, and date thereof. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Within sixty days following the public hearing, the Secretary shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the Secretary revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the Secretary, or the Secretary shall declare as forfeited the performance bonds for the operation.

JUDICIAL REVIEW

SEC. 426. (a) (1) Any action of the Secretary to approve or disapprove a State program or to prepare or promulgate a Federal program pursuant to this Act shall be subject to judicial review only by the United States Court of Appeals for the circuit which contains the State whose program is at issue. Any action by the Secretary promulgating standards pursuant to sections 401, 415, and 423 shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia. All other orders or decisions issued by the Secretary shall be subject to judicial review only by the United States Court of Appeals for the circuit in which the surface coal mine operation is located. A petition for review of such action shall be filed in the appropriate court of appeals within sixty days from the date of such action, or after such date if the petition is based solely on grounds arising after the sixtieth day. Any such application may be made by any person who participated in the administrative proceedings and who is aggrieved by the action of the Secretary.

(2) In the case of a proceeding to review an order or decision issued by the Secretary under the penalty section of this Act, the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment. The availability of review established in this subsection shall not be construed to limit the operation of the rights established in section 420 except as provided therein.

(b) The court shall hear such petition or complaint solely on the record made before the Secretary. The findings of the Secretary if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the Secretary under this Act, including an order or decision issued pursuant to subparagraph (c) or (d) of section 425 of this title pertaining to any order issued under subparagraph (a) (2), (a) (3), or (a) (4) of section 421 of this title for cessation of coal mining and reclamation operations, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if—

(1) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(3) such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(d) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the Secretary.

(e) Action of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law, but the availability of such review shall not be construed to limit the operation of the rights established in section 420 except as provided therein.

SPECIAL BITUMINOUS COAL MINES

SEC. 427. The regulatory authority is authorized to and shall issue separate regulations for those special bituminous coal surface mines located west of the one hundredth meridian west longitude which meet the following criteria:

(a) the excavation of the specific mine pit takes place on the same relatively limited site for an extended period of time;

(b) the excavation of the specific mine pit follows a coal seam having an inclination of fifteen degrees or more from the horizontal, and continues in the same area proceeding downward with lateral expansion of the pit necessary to maintain stability or as necessary to accommodate the orderly expansion of the total mining operation;

(c) the excavation of the specific mine pit involves the mining of more than one coal seam and mining has been initiated on the deepest coal seam contemplated to be mined in the current operation;

(d) the amount of material removed is large in proportion to the surface area disturbed;

(e) there is no practicable alternative method of mining the coal involved;

(f) there is no practicable method to reclaim the land in the manner required by this Act; and

(g) the specific mine pit has been actually producing coal since January 1, 1972, in such manner as to meet the criteria set forth in this section, and, because of past duration of mining, is substantially committed to a mode of operation which warrants exceptions to some provisions of this title. Such alternative regulations shall pertain only to the standards governing on-site handling of spoils, elimination of depressions capable of collecting water, creation of impoundments, and regarding to the approximate original contour and shall specify that remaining highwalls are stable. All other performance standards in this title shall apply to such mines.

SURFACE MINING OPERATIONS NOT SUBJECT TO THIS ACT

SEC. 428. The provisions of this Act shall not apply to any of the following activities:

(1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(2) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less; and

(3) the extraction of coal when done solely in the process of Federal and State highway construction, and such other construction under regulations established by the regulatory authority.

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

DEFINITIONS

SEC. 501. For the purposes of this Act—

(1) "Secretary" means the Secretary of the Interior, except where otherwise described;

(2) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(3) "Office" means the Office of Surface Mining, Reclamation, and Enforcement established pursuant to title II;

(4) "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and

any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce ;

(5) "surface coal mining operations" means—

(A) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 416, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: *Provided, however,* That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 18% per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to section 412 of this Act ; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities ;

(6) "surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations after date of enactment of this, Act ;

(7) "lands within any State" or "lands within such State" means all lands within a State other than Federal lands and Indian lands ;

(8) "Federal lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands ;

(9) "Indian lands" means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by any Indian tribe ;

(10) "Indian tribe" means any Indian tribe, band, group, or community having a governing body recognized by the Secretary ;

(11) "State program" means a program established by a State pursuant to section 403 to regulate surface coal mining and reclamation operations, on lands within such State in accord with the requirements of this Act and regulations issued by the Secretary pursuant to this Act ;

(12) "Federal program" means a program established by the Secretary pursuant to section 404 to regulate surface coal mining and reclamation operations on lands within a State in accordance with the requirements of this Act ;

(13) "Federal lands program" means a program established by the Secretary pursuant to section 423 to regulate surface coal mining and reclamation operations on Federal lands ;

(14) "reclamation plan" means a plan submitted by an applicant for a permit under a State program or Federal program which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to section 408 ;

(15) "State regulatory authority" means the department or agency in each State which has primary responsibility at the State level for administering this Act ;

(16) "regulatory authority" means the State regulatory authority where the State is administering this Act under an approved State program or the Secretary where the Secretary is administering this Act under a Federal program ;

(17) "person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(18) "permit" means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program;

(19) "permit applicant" or "applicant" means a person applying for a permit;

(20) "permittee" means a person holding a permit;

(21) "fund" means the Abandoned Mine Reclamation Fund established pursuant to section 301;

(22) "other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;

(23) "approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated except that water impoundments may be permitted where the regulatory authority determines that they are in compliance with section 415(b) (8) of this Act;

(24) "operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred and fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in any one location;

(25) "permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by section 409 of this Act and shall be readily identifiable by appropriate markers on the site;

(26) "unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care;

(27) "alluvial valley floor" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities;

(28) "Imminent danger to the health or safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before condition, practice, or violation can be abated;

(29) "lignite coal" means consolidated lignitic coal having less than 8,300 British thermal units per pound, moist and mineral matter free.

OTHER FEDERAL LAWS

SEC. 502. (a) Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to—

(1) The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721-740).

(2) The Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742).

(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended (33 U.S.C. 1151-1175) the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.

(4) The Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(5) The Solid Waste Disposal Act (42 U.S.C. 3251-3259).

(6) The Refuse Act of 1899 (33 U.S.C. 407).

(7) The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661-666c).

(8) The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

(b) Nothing in this Act shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations on land under their jurisdiction.

(c) To the greatest extent practicable each Federal agency shall cooperate with the Secretary and the States in carrying out the provisions of this Act.

(d) Approval of the State programs, pursuant to section 403 (b), promulgation of Federal programs, pursuant to section 404, and implementation of the Federal lands programs, pursuant to section 423 of this Act, shall not constitute a major action within the meaning of section 102(2) (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Adoption of regulations under section 401 (b) shall constitute a major action within the meaning of section 102(2) (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

EMPLOYEE PROTECTION

SEC. 503. (a) No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he had been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary for a review of such firing or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 555 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that a violation did occur, he shall issue a decision incorporating therein and his findings in an order requiring the party committing the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no violation, he shall issue a finding. Orders issued by the Secretary under this subsection shall be subject to judicial review in the same manner as orders and decisions of the Secretary are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate any violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the persons committing the violation.

PROTECTION OF GOVERNMENT EMPLOYEES

SEC. 504. Section 1114 of title 18, United States Code, is hereby amended by adding the words "or" of the Department of the Interior" after the words "Department of Labor" contained in that section. Any person who shall willfully resist, prevent, impede, or interfere with the Secretary or any of his agents in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

GRANTS TO THE STATES

SEC. 505. (a) The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing, administering, and enforcing State programs under this Act. Except as provided in subsection (c) of this

section, such grants shall not exceed 80 per centum of the total costs incurred during the first year, 60 per centum of total costs incurred during the second year, and 50 per centum of the total costs incurred during each year thereafter.

(b) The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State programs. Such cooperation and assistance shall include—

(1) technical assistance and training including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State programs; and

(2) assistance in preparing and maintaining a continuing inventory of information on surface coal mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface coal mining and reclamation operations and to the development, administration, and enforcement of State programs concerning such operations.

(c) If, in accordance with section 423(d) of this Act, a State elects to regulate surface coal mining and reclamation operations on Federal lands, the Secretary may increase the amount of the annual grants under subsection (a) of this section by an amount which he determines is approximately equal to the amount the Federal Government would have expended for such regulation if the State had not made such election.

ANNUAL REPORT

SEC. 506. The Secretary shall submit annually to the President and the Congress a report concerning activities conducted by him, the Federal Government, and the States pursuant to this Act. Among other matters, the Secretary shall include in such report recommendations for additional administrative or legislative action as he deems necessary and desirable to accomplish the purposes of this Act.

SEVERABILITY

SEC. 507. If any provision of this Act or the applicability thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

INDIAN LANDS

SEC. 508. (a) The Secretary is directed to study the question of the regulation of surface mining on Indian lands which will achieve the purpose of this Act and recognize the special jurisdictional status of these lands. In carrying out this study the Secretary shall consult with Indian tribes. The study report shall include proposed legislation designed to allow Indian tribes to elect to assume full regulatory authority over the administration and enforcement of coal mined lands reclamation on Indian lands within the exterior boundaries of any Federal Indian reservation.

(b) The study report required by subsection (a) together with drafts of proposed legislation and the view of each Indian tribe which would be affected shall be submitted to the Congress as soon as possible but not later than January 1, 1979. The preparation of this study shall in no event preclude the Secretary from approving any coal leases on Indian lands prior to the completion of the study.

(c) On and after one hundred and thirty-five days from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections 415(b)(2), 415(b)(3), 415(b)(5), 415(b)(10), 415(b)(13), 415(b)(19), and 415c of this Act and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

(d) On and after thirty months from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by sections 407, 408, 409, 410, 415, 416, 417, and 419 of this Act and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

(e) With respect to leases issued after the date of enactment of this Act on Indian lands within the exterior boundaries of a Federal Indian reservation,

the Secretary shall include and enforce terms and conditions in addition to those required by subsections (c) and (d) as may be requested by the Indian tribe in such leases.

(f) Any change required by subsection (c) or (d) of this section in the terms and conditions of any coal lease on Indian lands existing on the date of enactment of this Act, shall require the approval of the Secretary: Provided, That if the coal lease requiring changes has already been the subject of an environmental impact statement, if the mining and reclamation plan for the proposed coal surface mining operation thereon also has been the subject of an environmental impact statement, the secretarial approval of these changes shall not constitute major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(g) The Secretary shall provide for adequate participation by the various Indian tribes affected in the study authorized in this section and not more than \$700,000 of the funds authorized in section 511(a) shall be reserved for this purpose.

STUDY OF RECLAMATION STANDARDS FOR SURFACE MINING OF OTHER MINERALS

SEC. 509. (a) The Chairman of the Council on Environmental Quality is directed to contract with the National Academy of Sciences-National Academy of Engineering, other Government agencies or private groups as appropriate, for an in-depth study of current and developing technology for surface and open pit mining and reclamation for minerals other than coal designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation for minerals other than coal. The study shall—

(1) assess the degree to which the requirements of this Act can be met by such technology and the costs involved;

(2) identify areas where the requirements of this Act cannot be met by current and developing technology;

(3) in those instances described requirements most comparable to those of this Act which could be met, the costs involved, and the differences in reclamation results between these requirements and those of this Act; and

(4) discuss alternative regulatory mechanisms designed to insure the achievement of the most beneficial postmining land use for areas affected by surface and open pit mining.

(b) The study together with specific legislative recommendations shall be submitted to the President and the Congress no later than eighteen months after the date of enactment of this Act: *Provided*, That, with respect to surface or open pit mining for sand and gravel the study shall be submitted no later than twelve months after the date of enactment of this Act: *Provided further*, That with respect to mining for oil shale and tar sands that a preliminary report shall be submitted no later than twelve months after the date of enactment of this Act.

(c) There are hereby authorized to be appropriated for the purpose of this section \$500,000.

EXPERIMENTAL PRACTICES

SEC. 510 In order to encourage advances in mining and reclamation practices, the regulatory authority may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 415 and 416 of this Act. Such departures may be authorized if (i) the experimental practices are potentially more or at least environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining operation is no larger than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

AUTHORIZATION OF APPROPRIATIONS

SEC. 511. There is authorized to be appropriated to the Secretary for the purposes of this Act the following sums; and all such funds appropriated shall remain available until expended:

(a) The Secretary is authorized to enter into contracts implementing sections 402, 423, 305(b)(3), and 508 in such amounts as are provided in appropriations

Acts, but not to exceed \$10,000,000 per annum in each of the three fiscal years 1977, 1978, and 1979.

(b) For administrative and other purposes of this Act, except as otherwise provided for in this Act, authorization is provided for the sum of \$10,000,000 for the fiscal year ending June 30, 1978, for each of the two succeeding fiscal years the sums of \$20,000,000 and \$30,000,000 for each fiscal year thereafter.

FEDERAL LESSEE PROTECTION

SEC. 512. In those instances where the coal proposed to be mined by surface coal mining operations is owned by the Federal Government and the surface is subject to a lease or a permit issued by the Federal Government, the application for a permit shall include either:

(1) the written consent of the permittee or lessee of the surface lands involved to enter and commence surface coal mining operations on such land, or in lieu thereof;

(2) evidence of the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the permittee or lessee of the surface lands involved to secure payment of any damages to the surface estate which the operations will cause to the crops, or to the tangible improvements of the permittee or lessee of the surface lands as may be determined by the parties involved, or as determined and fixed in an action brought against the operator or upon the bond in a court of competent jurisdiction. This bond is in addition to the performance bond required for reclamation under this Act.

ALASKA COAL

SEC. 513. Nothing in this Act shall be construed as increasing or diminishing the rights of any owner of coal in Alaska to conduct or authorize surface coal mining operations for coal which has been or is hereafter conveyed out of Federal ownership to the State of Alaska or pursuant to the Alaska Native Claims Settlement Act: *Provided*, That such surface coal mining operations meet the requirements of the Act.

WATER RIGHTS

SEC. 514. Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.

SURFACE OWNER PROTECTION

SEC. 515. (a) The provisions of this section shall apply where coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques.

(b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Lands Leasing Act of 1920, as amended.

(c) The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent. Valid written consent given by any surface owner prior to the enactment of this Act shall be deemed sufficient for the purposes of complying with this section.

(d) In order to minimize disturbance to surface owners from surface coal mining of Federal coal deposits and to assist in the preparation of comprehensive land-use plans required by section 2(a) of the Mineral Lands Leasing Act of 1920, as amended, the Secretary shall consult with any surface owner whose land is proposed to be included in a leasing trace and shall ask the surface owner to state his preference for or against the offering of the deposit under his land for lease. The Secretary shall, in his discretion but to the maximum extent practicable, refrain from leasing coal deposits for development by methods other than underground mining techniques in those areas where a significant number of surface owners have stated a preference against the offering of the deposits for lease.

(e) For the purpose of this section the term "surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who—

- (1) hold legal or equitable title to the land surface;
- (2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations; and
- (3) have met the conditions of paragraphs (1) and (2) for a period of at least three years prior to the granting of the consent.

In computing the three-year period the Secretary may include periods during which title was owned by a relative of such person by blood or marriage during which period such relative would have met the requirements of this subsection.

(f) This section shall not apply where the surface owner is an Indian tribe or title to the land surface is held in trust for or by an Indian tribe.

(g) Nothing in this section shall be construed as increasing or diminishing any property rights by the United States or by any other landowner.

I. PURPOSE

The purpose of S. 7, the "Surface Mining Reclamation Act of 1975", is to establish an environmentally strong and administratively realistic program for the regulation of coal surface mining activities and the reclamation of coal mined lands. More specifically, the purposes of S. 7 as reported by the Committee, are to assure that surface coal mining operations—including exploration activities and the surface effects of underground mining—are conducted so as to prevent or minimize degradation to the environment, and that such surface coal mining operations are not conducted where reclamation is not feasible according to the terms and conditions of the Act.

Federal legislation regulating surface mining—and particularly surface mining for coal—is needed now. While a number of States do have surface mining reclamation programs, regulation of surface coal mining is not uniform, and in many instances is inadequate. S. 7 as reported by the Committee would provide minimum Federal standards for surface coal mining and reclamation activities to be administered and enforced by the States, and by the Secretary of the Interior on public lands. S. 7 would provide assistance to the States to improve their regulatory and enforcement programs and authorizes funding to the States for that purpose. In the event that a State fails to comply with the Act, the bill provides for Federal enforcement of the State Program, or for establishment of a Federal Program under the authority of the Secretary of the Interior.

The bill also provides for an abandoned mine land reclamation fund for the reparation of past damages.

II. NEED

In recent years the coal industry has experienced a significant shift in technology from predominantly underground mining. Although strip mining first started before World War II, it did not become a significant technology for mining coal until the early 1960's when, for the first time, over 30 percent of the country's coal was produced in surface mines. In 1976, over 60 percent of the coal produced came from surface mines.

Each week some 1,000 acres of land are disturbed by the surface mining for coal. As of January 1, 1972 there were 4 million acres of land disturbed by surface mining, of which 1.7 million acres (43 percent) were disturbed by surface mining for coal, 1.3 million of these acres in the Eastern coalfields. Only about half these lands have been reclaimed.

Federal legislation to regulate surface coal mining is long overdue. The coal industry can afford the cost of reclaiming surface mined land. What it cannot afford is the continuing uncertainty created by failure to resolve this issue. Enactment of this Surface Mining Control and Reclamation Act will enable the coal industry to proceed with development of our Nation's vast coal resources in a manner which will assure that the other natural resources of our country will not be unnecessarily damaged.

Congress has been actively considering surface coal mining legislation for the past 6 years. During the 93d Congress the Senate passed a bill in October of 1973 by a vote of 82 to 8. The House passed its amendment to the Senate bill in July of 1974 by a vote of 291 to 81. The conference committee met almost 30 times for over 100 hours to resolve the differences between the Senate and House versions of the bill.

In May 1975, after 4 years of intensive congressional debate, Congress believed that it had resolved the surface mining issue by sending to the President a bill, H.R. 25 (which passed the Senate by a vote of 84-13). Unfortunately, the end product of all this intensive study and debate did not become law because the President vetoed that bill and the House failed by a margin of 3 votes to override the President's veto.

It is also worth recalling today that industry has in the past fought strip mining bills having far less stringent measures than the legislation before Congress today. The delay in enacting legislation, caused largely by industry's opposition, has brought the nature and scope of the strip mining problem more sharply into focus. The need for strong regulation of strip mining practices is more apparent—to more people—than ever before.

President Carter and members of his Administration have repeatedly stressed the need for early passage of a strong strip mine bill.

Surface coal mining activities have imposed large social and environmental costs on the public at large in many areas of the country in the form of unreclaimed lands, water pollution, erosion, floods, slope failures, loss of fish and wildlife resources, and a decline in natural beauty. Uncontrolled surface coal mining in many regions has effected a stark, unjustifiable, and intolerable degradation in the quality of life in local communities.

If surface mining and reclamation are not done carefully, significant environmental damage can result. In addition, unreclaimed or improperly reclaimed surface coal mines pose a continuing threat to the environment, and at times are a danger to public health and safety, public or private property. Similar hazards also occur from the surface effects of underground coal mining, including the dumping of coal waste piles, subsidence and mine fires.

Erosion and siltation of streams occur as a result of surface mining. In the Eastern coalfields, where spoil is pushed downslope of mountain mines, landslides, erosion, sedimentation and flooding are common hazards of mountain surface mining. Unstable highwalls are a hazard to life and property. Highwalls that crumble and erode from weathering ruin drainage patterns and significantly add to water pollution. Material falling off the highwall can retard surface water flow. Erosion increases dramatically when the protective vegetative cover is removed and the soil is not stabilized. Suspended sediment concentration in small Appalachian streams draining strip mined areas can be increased 100 times over that in forest lands. Over 2,000 miles of streams have been affected by surface run-off from coal stripping operations.

In the Western coalfields, many of which are in arid or semi-arid areas, the environmental problems associated with surface mining are somewhat different. Erosion rates on Western range lands are among the highest in the United States for upland areas not under cultivation. The arid climate does not provide sufficient moisture for a protective vegetal cover. Once this fragile vegetative cover has been disturbed by mining, erosion increases dramatically. More important, in areas with little rainfall, restoration of vegetative cover is virtually impossible without irrigation. Furthermore, in most of the Western coalfields the coal beds that lie close to the surface are also aquifers. (For example, the strippable coal seams in the Gillette, Wyoming, area serve as an aquifer.) Removal of the coal by surface mining operations would intersect such aquifers that are the source of water for many wells. Flow patterns in such aquifers would be changed and some parts undoubtedly would be dewatered, resulting in reduced availability of water for other uses.

There are also areas where surface coal mining is totally inappropriate, such as wilderness areas, areas of historical importance, parks, and wildlife refuges. In other areas, it may be desirable to prohibit surface mining because it would be incompatible with existing or planned land use patterns. Of course, under the provisions of the Act, no surface mining may take place in an area which cannot be properly reclaimed.

Because mining conditions, climate, and terrain vary so greatly among the different coalfields, administration of a coal surface mining regulation and reclamation program is more properly done by the States. For example, a program geared to insure proper mining and reclamation in the mountains of Appalachia must understandably be different from one suited to regulating these activities in the arid and semi-arid areas of the West. (Similarly, these regional differences must be reflected in Federal standards promulgated for surface mining and reclamation on Federal lands.)

While many States already do have laws regulating surface coal mining operations, in many instances these laws are inadequate, or are not fully enforced. Most existing State laws and Federal regulations for surface mining and reclamation are inadequate in that they are tailored to suit ongoing mining practices, rather than requiring modification of mining practices to meet established environmental

standards. A recent study completed by the Congressional Research Service reviewing the stringency of State surface mining regulation has documented a number of areas of inadequacy both regarding laws and regulations and enforcement capability. It is the purpose of this Act to effect changes in those mining practices which result in unacceptable or permanent environmental damage, and to eliminate those mining operations which cannot be properly reclaimed.

Regardless of the adequacy of a State's mining and reclamation laws, and assuming good faith on the part of the regulatory agency, problems of enforcing such laws frequently stem from a lack of funding and manpower to adequately insure compliance. As a result, violations of the law and regulations are frequent.

Uniform minimum Federal standards are therefore needed to establish minimum criteria for regulating surface mining and reclamation activities throughout the country, on both public and private lands, and to assure adequate environmental protection from the environmental impacts of surface mining in all States.

In order to assure appropriate local administration of these Federal requirements by the various States, adequate funding and manpower in the State regulatory agencies are essential. For this reason, financial assistance and guidelines are needed for the design and enforcement of State surface mining and reclamation programs in conformance with Federal criteria. It is the purpose of the bill to provide this necessary assistance.

The Committee recognizes that there is an urgent need to balance our growing demand for energy resources with the increasing stress we place on the environment in satisfying that demand.

Much emphasis is being placed today on greater utilization of our domestic coal resources as a means for achieving greater energy self-sufficiency. President Carter, in his April 20 energy message to the Congress called for increasing coal production by two-thirds by 1985.

The essential requirement for an adequate supply of domestic energy resources to support the Nation's social and economic well-being is thus being increasingly recognized as a major national issue. It is clear, particularly in the case of coal, that we have ample reserves. By all estimates our physical coal reserves are sufficient to meet our needs, even at greatly increased rates of consumption, for hundreds of years. We have an abundance of coal in the ground. Simply stated, the crux of the problem is how to get it out of the ground and use it in environmentally acceptable ways and on an economically competitive basis.

Federal legislation to regulate coal surface mining and reclamation is a crucial measure to insure an adequate energy supply while preserving and maintaining a satisfactory level of environmental quality.

The Committee is aware that representatives of the coal industry and the previous Administration have expressed great concern about possible "production losses" which enactment of S. 7 might cause. The figures given vary so widely as to render them basically meaningless. For example, the Ford Administration has at various times, indicated "losses" ranging from 14-141 million tons per year.

The Ford Administration's estimates are based on four assumptions

- (1) Coal prices would not increase.
- (2) Mining technology would remain at its present state.

(3) New mining areas would not be opened in the West.

(4) Capital investments would not increase in mining and related industries.

It is important to note that the Ford Administration expressly stated that "If the reverse of any of the above assumptions occurred, the overall coal production could increase." When President Ford vetoed H.R. 25 on May 20, 1975, he claimed that it would restrict coal production, increase dependence on mid-East oil, raise consumer prices and increase unemployment. However, a report issued by the General Accounting Office has found serious deficiencies in the methodology used by the Bureau of Mines to support the coal production loss claims. There is little reason to accept either the credibility of this hasty and ill-conceived study by the Bureau or the claims that were based upon it.

In view of the rapid and continuing increase in coal prices and the large number of proposed new coal mines in the West, it appears very unlikely that there would be any significant losses of production.

The fact is that at current production levels, this country has more than 500 years of coal reserves. It is ridiculous to talk about a diminution in production at present prices, must less those anticipated in the future, and it is even more ridiculous, given the massive amount of our coal reserves, to refuse to assume the relocation of mining operations, for example, to areas which can be prudently mined—in estimating the impact of this bill.

The purpose of this bill is to effect the internalization of mining and reclamation costs, which are now being borne by society in the form of ravaged land, polluted water, and other adverse effects, of coal surface mining. The Committee believes that this can be done without significant losses in coal production, under the provisions of S. 7.

III. MAJOR PROVISIONS

(1) SURFACE MINING AND RECLAMATION STANDARDS

The informational and environmental requirements of this bill are its most vital provisions. The purpose of the bill is to end the present environmental degradation from surface coal mining and to prevent it in the future. To this end the bill sets forth a series of minimum uniform requirements for all coal surface mining operations on both federal and state lands. These standards deal with three basic issues: pre-planning, mining practices, and post-mining reclamation. The first requires that an operator applying for a permit has done certain research regarding adjacent land uses, the characteristics of the coal and the overburden, and hydrologic conditions. He must include in his application the planned methodology and timetable for the operation in a reclamation plan. The second set of requirements provide that mining methods be used which will minimize or obviate environmental damage or injuries to public health and safety. These include restrictions on the placement of overburden, blasting regulations, water pollution control requirements, and waste disposal standards. The third group of standards regard reclamation and restoration of the mined land to its pre-mined condition. These requirements include backfilling and regrading to approximate original contour, restoration of water qual-

ity and quantity, revegetation to pre-mining conditions and elimination of erosion and sedimentation.

It is the Committee's understanding that certain States may wish to impose more stringent requirements than those minimum standards set forth in the bill. Some States in fact are already contemplating such measures. However, it was felt that some minimum uniform floor had to be established for the protection of the environment at a time when the growth of surface coal mining is projected to double over the next decade, often in environmentally delicate areas.

(2) PROTECTION OF WATER RESOURCES

There are a number of provisions in this bill which are designed to protect the quality and quantity of water in areas where surface coal mining operations are being conducted. While coal is in abundant supply in the United States in certain areas, water is frequently a scarce or precious commodity which must be protected during the course of mining. Of course, the Committee recognizes that hydrology conditions vary from region to region. In the East, for example, heavy rainfall or high sulfur content of the coal in certain areas result respectively in heavy sedimentation and acid mine drainage. In the West, where coal seams are frequently aquifers, and rainfall is infrequent, mining results in loss of water sources and requires years, perhaps decades, for proper reclamation.

In addition, where water is so scarce, competing land uses can complicate the regulatory agency's decision to allow mining. For example, at a time when the world is facing an acute food shortage, some of the coal in the West underlays alluvial valley floors, which are the only arable lands in such areas.

For these reasons, the bill incorporates a number of carefully drawn provisions for the protection of any area to be mined. The provisions are not restrictive, but they are fully intended to protect the hydrological integrity of any area to be surface coal mined or impacted by such mining. The Committee fully recognizes that there is likely to be some temporary disturbance to water quality and quantity during the actual mining process, and the language of the bill reflects this understanding. Thus, the permit application requirements, reclamation standards, and provisions for designation of areas unsuitable for mining provide for the protection of scarce and vital water resources.

(3) DESIGNATION OF AREAS UNSUITABLE FOR MINING

A decision to permit the surface mining of coal is a land use decision, and as such may at times conflict with other demands on scarce or valued land resources. For this reason the bill provides for a mechanism—on both State and Federal lands—for citizens to petition that certain areas be designated as unsuitable for surface coal mining. Such designation is always subject to review and revision, but it is designed to minimize land use conflicts with regard to surface coal mining. However, in order to prevent a state regulatory authority from conducting an indefinite review, and thus locking up production needlessly, the bill requires a one year deadline on all decisions as to designation.

In addition to this designation process, the Committee has made a judgment that certain lands simply should not be subject to new surface coal mining operations. These include primarily and most emphatically those lands which cannot be reclaimed under the standards of this Act and the following areas dedicated by the Congress in trust for the recreation and enjoyment of the American people: lands within the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the Wild and Scenic Rivers System, National Recreation Areas, National Forests with certain exceptions, and areas which would adversely affect parks or National Register of Historic Sites.

In addition, for reasons of public health and safety, surface coal mining will not be allowed within one hundred feet of a public road (except to provide access for a haul road), within 300 feet of an occupied building or within 500 feet of an active underground mine.

Since mining has traditionally been accorded primary consideration as a land use there have been instances in which the potential for other equally or more desirable land uses has been destroyed. The provisions discussed in this section were specifically designed and incorporated in the bill in order to restore more balance to Federal land use decisions regarding mining.

(4) VARIANCES

The Committee was adamant that there should be no broad exceptions to the vital mining and reclamation standards of this bill. To provide for unlimited exceptions would render the bill meaningless, since it would then be likely that the exceptions would become the rule. On the other hand, the Committee did recognize that there are some valid and important reasons for allowing limited variances to the prescribed standards of the bill, where such variances provide equal or better protection to the environment, and result in a higher post-mining land use. For this reason, there are two provisions in the bill which permit variances to the mining-reclamation standards of the bill. One variance would allow surface mine operators to postpone reclamation of limited segments of his mined area where he can prove to the regulatory authority that such segments are necessary to the operation of a planned underground coal mine. The committee believes an allowance of this sort will ensure maximum recovery of the coal resource and reduce the total surface disturbance so long as the stringent conditions attached to the granting of the variance are strictly adhered to.

The second permits variances from any of the mining and reclamation standards of the Act, at the Secretary's discretion, for experimental practices that show potential for improved environmental protection over prescribed or currently accepted practices.

Mountaintop removal operations would not require a variance. However, the regulatory authority must attach certain stringent performance standards to the permit. These are intended to ensure against the possible failure of massive valley fills associated with such operations. In addition, new regulations are to be promulgated. The Committee is aware that the experts are not in agreement as to the best method of stabilizing these spoil placement areas; this experience gained should

be reflected in new requirements. A study of valley fill engineering standards currently being required by West Virginia and Kentucky, done by the consulting firm of Skelly and Loy for the Environmental Protection Agency, emphasized the fact that long-term stability of valley fills under those standards has by no means been conclusively established. The study recommends certain changes, some of which have been incorporated in the Act.

(5) PROTECTION OF SURFACE OWNER RIGHTS

Since the mining of coal became a profitable enterprise, there have been numerous instances in which the mineral estate and the surface estate were separated, both on public and private lands. State laws govern the resolution of any disputes about property rights which might arise from such separations, and this Act does not attempt to tamper with such State laws. The Committee firmly believes that all valid existing property rights must be preserved, and has no intention whatsoever, by any provision of this bill, to change such rights.

However, with regard to lands where the Federal government owns the coal, but not the surface estate, the bill does provide for some departure from existing practice.

When vast areas of public lands were transferred to private interests in the early part of this century, the mineral rights were withheld for the people of the United States, as a then revolutionary conservation measure. Over time and aggravated by the current wish to develop Western coal, this situation has led to a serious land use confrontation between surface users such as farmers and ranchers and federal coal lessees. In an effort to mitigate such rivalries the bill provides for limited and circumscribed surface owner consent as a condition of issuing a *new* Federal coal lease. (Existing leases are not affected by this provision.)

(6) ABANDONED LAND RECLAMATION

This bill provides for a fund to be used to reclaim "orphaned" or abandoned mined lands. The fund is to be derived from a reclamation fee to be levied on every ton of coal mined: 35 cents/ton for surface mined coal and 15 cents/ton for all coal mined by underground methods, or 10 percent of the value of the coal at the mine, whichever is less. The reclamation fee would not apply to lignite coal, however, since the Committee is aware of no orphan lands resulting from the mining of lignite.

It is estimated that a million and a half acres of land have been directly disturbed by all coal mining and over 11,500 of streams polluted by sedimentation or acidity from surface or underground mines.

Estimates for the cost of repairing these continuing damages run from \$6-\$25 billion.

Although some feel that today's operators should not be required to pay for their precursor's damages, the Committee strongly believes

that the burden of paying for this reclamation is rightfully assessed against the coal industry, and, by extension, the consumers of coal. Furthermore, the use of the fund is not limited to past damages. The bill provides that 50 percent of all fees collected in any one state be returned to that State. Provisions are made in this title for the rehabilitation of both publicly acquired and private lands, under the jurisdiction of the States, the Secretary of the Interior, or the Secretary of Agriculture.

(7) FEDERAL-STATE RELATIONSHIP

The role of the Federal government has been carefully delineated in this bill, particularly in regard to its activities in those situations where the State is the prime regulatory authority. During the interim period, section 402(e) provides that beginning no later than six months from the date of enactment and continuing until a State program has been approved or a federal program has been implemented, the Secretary is required to carry out a federal enforcement program which includes inspections and enforcement actions in accordance with the provisions of section 421. The intent of this provision is to place the Secretary in the role of assuring compliance with the interim standards during the time of the initial regulatory procedure. The Committee recognizes that this may to some extent duplicate State activity, however it is the view of the Committee that this sort of federal presence at the most crucial time of the administration of this Act will result in uniform, equitable enforcement of the interim standards and will assure that the requirements of the Act get off to a good start. *The Committee firmly believes that there is no adequate substitute for the Secretary's oversight role, because of the wide variation in the ability of existing State regulatory authorities to enforce compliance with the interim environmental protection performance standards.* A recent study by the Congressional Research Service has documented State regulatory deficiencies in this regard.

Since practically all surface coal mining operations covered by the initial regulatory procedure are presently regulated by existing State regulatory authorities (the major exception being operations on federal and Indian lands), it is not the purpose of this interim federal enforcement program to place the Secretary of the Interior in the business of issuing mining permits for operations on lands within the jurisdiction of the States. The bill imposes a duty upon the States to review and revise existing permits to insure compliance with the interim standards of section 402, and obliges the States to issue new permits in accordance with those standards. It is the view of the Committee, however, that the Secretary would be required to assure State performance of these duties and obligations, pursuant to the federal inspection and enforcement provisions of section 402(e).

(8) ENFORCEMENT

S. 7 contains comprehensive provisions for inspections, enforcement notices and orders, administrative and judicial review, and penalties.

These requirements are of equal importance to the provisions of the bill regarding mining and reclamation performance standards since experience with state surface mining reclamation laws has amply demonstrated that the most effective reclamation occurs when sound performance standards go hand in hand with strong, equitable enforcement mechanisms.

Generally the enforcement provisions of this bill have been modeled after the similar provisions of the Federal Coal Mine Health and Safety Act of 1969. Where the enforcement provisions of this bill depart of the 1969 Health and Safety Law, they do so either to improve enforcement or to accommodate the fact that this bill encourages the states to retain or develop regulatory authority over surface coal mining and reclamation operations, and seeks to protect the environment and the public health and safety as opposed to the protection afforded the coal miner on coal mine property by the Coal Mine Health and Safety Act.

Judicial Review.—Section 526 of the bill established specific provisions for judicial review of Secretarial actions. Because of the thoroughness and degree of due process afforded judicially reviewable actions by the Secretary, judicial review is to be based on the record made before the Secretary. The courts should render their decisions on the basis of whether or not the Secretary's decision was arbitrary and capricious or supported by the record. Testimony relief from Secretarial decisions may be granted only under the same kind of narrowly prescribed circumstances as discussed above in the context of administrative review.

Penalties.—Where the Secretary is the regulatory authority or a Federal inspection is being conducted pursuant to section 402, 404(b) or subsection (b) of section 421, section 418 of the Act provides that civil penalties will be mandatory for violations leading to a cessation order under section 421 or a cessation order entered by a court pursuant to section 418. The Secretary has discretionary authority to assess civil penalties for other violations.

The Secretary is required to make findings of fact and issue a written decision as to the occurrence of a violation and the amount of the penalty which is warranted only where the person charged has availed himself of the opportunity for a public hearing and the hearing has, in fact, been held. The Act also provides that approved State programs must contain criminal and civil penalties no less stringent than the Federal provisions with the same or similar procedural requirements relating thereto.

This section also requires the operator (or permittee) to pay the proposed penalty within thirty days after he has been assessed a penalty for violation of the Act or permit. If the permittee wishes to contest either the fact of violation or the amount of the penalty, he shall so notify the Secretary when making the remittance. Upon receipt of a payment from a permittee the Secretary shall place it in an escrow account and should the permittee's challenge be sustained, the payment is to be returned to the permittee with interest. The Com-

mittee is of the belief that this procedure will avoid the problem of non-collection of fines.

(9) CITIZEN PARTICIPATION

The success or failure of a national coal surface mining regulation program will depend, to a significant extent, on the role played by citizens in the regulatory process. The State regulatory authority or Department of Interior can employ only so many inspectors, only a limited number of inspections can be made on a regular basis and only a limited amount of information can be required in a permit or bond release application or elicited at a hearing. Moreover, a number of decisions to be made by the regulatory authority in the designation and variance processes under the Act are contingent on the outcome of land use issues which require an analysis of various local and regional considerations. While citizen participation is not, and cannot be, a substitute for governmental authority, citizen involvement in all phases of the regulatory scheme will help insure that the decisions and actions of the regulatory authority are grounded upon complete and full information. In addition, providing citizen access to administrative appellate procedures and the courts is a practical and legitimate method of assuring the regulatory authority's compliance with the requirement of the Act.

In many, if not most, cases in both the administrative and judicial forum, the citizen who sues to enforce the law, or participates in administrative proceedings to enforce the law, will have little or no money with which to hire a lawyer. If private citizens are to be able to assert the rights granted them by this bill, and if those who violate this bill's requirements are not to proceed with impunity, then citizens must have the opportunity to recover the attorneys' fees necessary to vindicate their rights. Attorneys' fees may be awarded to the permittee or government when the suit or participation is brought in bad faith.

IV. LEGISLATIVE HISTORY

Surface mining has been the subject of legislation for several years. The first hearings were held by the Committee on Interior and Insular Affairs in the 90th Congress. No bills were reported during the 90th and 91st Congresses. During the 92d Congress, the Subcommittee on Minerals, Materials and Fuels held 4 days of hearings. The Committee unanimously reported a bill (S. 630) in September 1972 with the understanding that Committee members reserved the option to offer amendments on the Senate floor.

The House of Representatives passed a bill (H.R. 6482) in October 1972. The 92d Congress adjourned before the Senate considered either bill.

The 93d Congress gave intensive consideration to surface coal mining legislation. The Interior Committee held hearings on bills then before it on March 13, 14, 15, and 16. On April 30 the Subcommittee

on Minerals, Materials and Fuels held a hearing on the report prepared by the Council on Environmental Quality entitled "Coal Surface Mining and Reclamation—An Environmental and Economic Assessment of Alternatives."

In addition, as part of the study of National Fuels and Energy Policy, the Full Committee and ex-official members held 3 days of hearings on coal policy issues, which included discussions of the potential impact of Federal surface mining legislation on coal development.

The Committee met in public mark-up session for 10 days to consider amendments to S. 425. On September 10, 1973, the Committee completed action on the bill and ordered S. 425 favorably reported to the Senate with the recommendation that the bill as amended be passed. After 2 days of debate S. 425 was passed by the Senate on October 18, 1973, by a vote of 82-8. The bill as amended passed the House on July 25 by a vote of 291-81.

Conferees met for more than 100 hours to reconcile the differences between the House and Senate revisions of S. 425. On December 5, 1974, they reported a conference report to their respective houses, which was approved by both bodies. However, the President pocket vetoed the bill, after the Congress had adjourned, thus precluding the opportunity for an override.

S. 7 as introduced was identical to the conference report on S. 425. Despite the fact that the Committee had already scrutinized exhaustively the provisions of the bill, on February 19, 1975, the Committee heard Administration witnesses discuss proposed changes in S. 7.

S. 7 passed the Senate on March 7, by a vote of 84-13. The Senate passed H.R. 25, amending it to contain the language of S. 7, and upon the disagreement by the House, the bill went to conference on April 18, 1975.

On May 5, 1975, the Senate agreed to the conference report on H.R. 25. President Ford vetoed H.R. 25 on May 20, 1975 and the House subsequently sustained the veto by vote of 278-143, on June 10, 1975.

Reintroduced in the 95th Congress as S. 7, the Surface Mining Control and Reclamation Act of 1977 was identical to H.R. 25 except for the following major differences:

1. State mining and mineral resource institutes (old title III) was deleted.
2. Designation of lands unsuitable for non-coal mining (Old Title VI) was deleted.
3. Reclamation fee for orphan lands program was made to apply only to Federal coal.
4. State regulatory authorities were afforded greater access into the orphan lands program.
5. Special provisions for anthracite mines and Alaska mines were deleted.
6. Surface owner consent provision was deleted and replaced by the Mansfield amendment banning all strip mining of Federally-owned coal underlying non-Federal surface.
7. States were given the option of enforcing the Federal standards on Federal lands.
8. Coal exploration provisions for Federal coal lands were deleted as redundant.

Four days of hearings on S. 7 were held by the Subcommittee on Materials, Minerals and Fuels, on February 7 and March 1, 2 and 3, 1977. The newly constituted Subcommittee on Public Lands and Resources proceeded to mark up the bill on March 31, reporting it out on May 2, 1977.

Meanwhile the House passed H.R. 2, the companion bill, by a vote of 241 to 64, on April 29, 1977, and sent it to the Senate.

V. COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources recommends that S. 7, as amended, be approved by the Senate.

Pursuant to Section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the Committee during consideration of S. 7:

1. During the Committee's consideration of the Surface Mining and Reclamation Act of 1977 many voice votes and formal roll call votes were taken on amendments to the bill. These votes were taken in open public session and, because they were previously announced by the Committee in accord with the provisions of Section 133(b), it is not necessary that they be tabulated in the Committee Report.

2. S. 7, was ordered favorably reported to the Senate on a roll call vote of 14 yeas and 4 nays. The vote was as follows:

Jackson, Yea	Hansen, Yea
Church, Yea	Hatfield, Yea
Metcalf, Yea	McClure, Yea
Johnston, Nay	Bartlett, Nay
Abourezk, Yea	Weicker, Yea
Haskell, Yea	Domenici, Nay
Bumpers, Yea	Laxalt, Nay
Ford, Yea	
Durkin, Yea	
Metzenbaum, Yea	
Matsunaga, Yea	

VI. COMMITTEE AMENDMENTS

During the course of markup the Committee adopted approximately 200 amendments to S. 7. While many of these were technical, there were a number of significant changes. The most significant of these are outlined below.

1. *Surface owner consent.*—This amendment (Section 515) is explained under Major Provisions and in the section-by-section analysis portion of this report. It replaces the Mansfield Amendment, which would have banned all surface mining of coal on lands where the surface is under non-Federal ownership and the coal is owned by the Federal Government.

2. *Small and medium operators' 30-month exemption.*—This amendment is explained in section 402 of the section-by-section analysis.

Under the amendment, operators producing no more than 200,000 tons of coal annually would qualify for special treatment.

3. *Mountaintop removal.*—This amendment deletes the previous variance procedure, thus allowing mountaintop removal operations to proceed under regular permit, with stringent conditions attached. It is discussed under “Variances” in the Major Provisions, and under section 415 of the section-by-section analysis.

4. *Reclamation fee.*—This amendment places a special fee for reclamation of orphan lands upon all coal mined (except lignite), as opposed to the previous language which covered Federal coal only. It is discussed in Section 301 of the section-by-section analysis and also under “Abandoned Land Reclamation” in Major Provisions.

5. *Surface effects of underground mining.*—This amendment requires the Secretary to consider the “distinct difference” between surface and underground coal mining in his promulgation of regulations as discussed in section 416 of the section-by-section analysis.

6. *Alluvial valley floor grandfather clause.*—This amendment exempts certain operations from restrictions against mining on or near alluvial valley floors. It is described in section 410 of the section-by-section analysis.

7. *Timing of implementation.*—This amendment adopts a more rational timetable for bringing the Act into full implementation. Its main provisions are described in section 402, 403, and 404 of the section-by-section analysis.

8. *NEPA exemptions.*—This amendment waives the requirement for an environmental impact statement with respect to certain Secretarial actions. Section 505 of the section-by-section analysis contains an explanation.

9. *Federal Funding for State Programs.*—This amendment to Section 505 authorizes Federal grants for State programs on a continuing basis rather than for only four years. It also increases the Federal grant from 40 percent to 50 percent of State program cost from the third year on.

VII. SECTION-BY-SECTION ANALYSIS

TITLE I—STATEMENT ON FINDINGS AND PURPOSES

SECTION 101. FINDINGS

This section sets out congressional findings relating to surface mining of coal and other minerals. These include the fact that (1) surface mining is only one of various methods of mining; (2) surface and underground coal mining are significant activities in our national economy; (3) surface mining has numerous adverse economic, environmental and social effects; and (4) surface mining and reclamation technology are developing so that effective and reasonable regulation of surface coal mining is appropriate and necessary to minimize these adverse effects.

These findings conclude that (1) because of the diversity of terrain, climate, biologic, chemical, and other physical conditions, the States should have the primary responsibility for regulating surface mining and reclamation, but that a Federal-State cooperative effort is essential to the success of this program and (2) while there is a need to regulate surface mining operations for minerals other than coal, more data and analyses are needed to provide a basis for effective and reasonable regulation.

SECTION 102. PURPOSES

This section states that the purpose of Congress in passing this Act is to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations as well as the surface impact of underground coal mining operations. It sets out twelve specific purposes as steps toward achieving that goal. These recognize that, while all adverse effects of surface mining cannot be prevented immediately and that coal is an essential source of energy, a strong nationwide regulatory program based on minimum Federal standards should be implemented rapidly. This program would assure that surface coal mining operations are not conducted where reclamation which meets these minimum standards is not feasible. The Federal Government would assist the States in developing and implementing such a program. If and when a State manifests a lack of desire or an inability to participate in or implement that program and to meet the requirements of the Act, the Federal Government is to exercise the full reach of Federal constitutional powers to insure the effectiveness of that program.

Another significant purpose of the Act is to provide a means for development of the data and analyses necessary for Congress to decide in the future whether to establish effective and reasonable regulation of surface mining for all minerals other than coal.

S. 7 establishes procedures for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans or programs established by any regulatory authority under this Act. The bill also establishes a program for the rehabilitation of lands previously mined and left unreclaimed which continue to substantially degrade the quantity of the environment or endanger the health or safety of the public.

TITLE II—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

To insure administration of the program by an independent agency with neither a resource development (the promotion of mining, marketing, or use of minerals) or resource preservation (pollution control, wilderness, or wildlife management) bias or mission, this title establishes the Office of Reclamation and Enforcement in the Department of the Interior. This Office will be separate from any of the Department's existing bureaus or agencies. It is intended that the

Office exercise independent and objective judgment in implementing the Act.

To insure sufficient authority to administer the Act the Office will have a Director to be compensated at the rate provided for in level IV of the Executive Pay Schedule. Officers and employees of the Office are to be recruited on the basis of their professional competence and capacity to administer the Act objectively. The Act specifically states that there cannot be transferred to the Office any legal authority which has as its purpose promoting the development or use of coal or other minerals.

The duties of the Secretary, acting through the Office, include: Administering the various grant-in-aid programs provided in the Act; administering research and development projects provided in the Act; reviewing and approving State programs for surface mining and reclamation operations; developing and administering any Federal program for surface mining and reclamation operations for States which do not have or are not enforcing State Programs; maintaining a Surface Mining and Reclamation Information and Data Center; cooperating with States in dissemination of relevant data and in standardizing methods of collecting and classifying such data; providing technical assistance to the States to enable them to undertake responsibilities provided for in the Act; monitoring all Federal and State research programs dealing with coal extraction; and recommending research projects designed to improve the feasibility of underground coal mining or develop improved surface mining and reclamation techniques.

Concern has been expressed that the establishment of a new office at the Federal level implicitly requires a similar entity in every State in order to manage the State program. This is not the case. It should be noted that many States already have a particular governmental unit regulating surface coal mining industry. Some aspects of the regulatory program might be carried out on the State level by more than one agency, especially where States with surface coal mining agencies have another agency which regulates surface impacts of underground mines.

In fact, the Secretary, acting through the Director, is specifically instructed to cooperate with Federal and State authorities to minimize duplication of enforcement and administration of the Act.

TITLE III—ABANDONED MINE RECLAMATION

SECTION 301. ABANDONED MINE RECLAMATION FUND

This section establishes in the U.S. Treasury an Abandoned Mine Reclamation Fund which derives its dollars from: funds from the lease, sale, rental of lands reclaimed under this Act; user charges on

reclaimed lands; and from a reclamation fee collected over a period of 15 years of 35 cents/ton for surface mined coal and 15 cents/ton for all coal mined by underground methods, or 10 percent of the value of the coal at the mine, whichever is less.

The differential fee was adopted recognizing the differing costs in meeting various health and safety objectives mandated by law.

The purpose of the 10 percent provision is to prevent an undue economic burden on low cost, lower grade western coal. There is to be no fee imposed on lignite coal due to the low thermal value, and absence of any known orphan lands associated with lignite mining. The basis for calculation of the tonnage to which this fee applies shall be prescribed by the Secretary by regulation.

Estimated revenue yields from the reclamation fee as submitted by the Bureau of Mines is as follows:

ESTIMATED CUMULATIVE REVENUE GENERATED BY RECLAMATION FUND

(All coal excluding lignite)

3. Based on an income of \$0.15 per ton for underground coal and \$0.35 per ton for surface coal.

	<i>Millions</i>
5-year period.....	\$1, 090. 55
10-year period.....	2, 466. 45
15-year period.....	4, 082. 90
20-year period.....	5, 928. 85

The fee is quite small relative to the current prices of coal. When translated into power cost per kilowatt hour (assuming conservative figures of 10,000 BTU/lb and a conversion rate of 10,000 BTU/kwh) it is less than 0.015 cents per kwhr of electricity. For consumers utilizing from 250 to 750 kwhr per month, this represents an increase of 4-12 cents per month on their utility bill. Such a small increase would not be a burden on current coal consumers or inflationary in nature.

The Committee takes the position that the Federal government has a responsibility to remove this longstanding blight from regions which fueled the industrial growth of America prior to the advent of the internal combustion engine. The cost of rehabilitation is estimated at \$25 billion.

In all, it is estimated that a million and a half acres of land have been directly disturbed by all coal mining and over 11,500 miles of streams polluted by sedimentation or acidity from surface or underground mines.

Estimates of program costs for correcting these problems have been made by the Department of Interior totaling \$25 billion and are consolidated and summarized as follows:

SUMMARY OF EXTENT OF ABANDONED MINED LANDS AND ESTIMATED COST OF REHABILITATION—COAL

[Dollar amounts in millions]

	Abandoned lands		Subsidence		Waste banks		Waste bank fires		Mine fires		Total ¹	
	Acres	Amount	Acres	Amount	Acres	Amount	Acres	Amount	Number	Amount	Acres	Amount
East.....	344,900	\$1,379.6	385,500	\$11,565	164,650	\$1,399.6	2,953	\$244.13	64	\$69.5	898,003	\$14,675.8
West ²	38,300	153.2	32,800	984	9,480	80.5	267	21.73	197	6.03	80,847	1,245.4
Total.....	383,200	1,532.8	418,300	12,549	174,130	1,480.1	3,220	265.9	261	75.53	978,850	15,903.2

8

¹ Total dollars excludes \$10,000,000,000 estimated for acid mine drainage.

² West assumed to be those States west of the Mississippi.

These estimates provide a basis for identifying the order of magnitude of funds required to correct these problems.

The burden of paying for reclamation is rightfully assessed against the coal industry. The bill adopts the principle that the coal industry, and by extension the consumers of coal, must bear the responsibility for supporting special rehabilitation programs to recover and reclaim areas which have been severely impacted in the past by coal mining operations.

Fifty percent of the revenues derived from a county, school district or lands of an Indian tribe are to be returned to that county, school district or Indian tribe for use in accomplishing the purposes of this title.

The Act specifies that the Secretary of Interior must use the money in the Fund for certain purposes and must make available to the Secretary of Agriculture up to one-fifth of the Fund for purposes set forth under section 305.

SECTION 302. OBJECTIVES OF FUND

The primary objective of the Fund is reclamation of previously mined areas. However, this section does provide for other objectives which are to be given a priority on the following basis: (1) protection of health or safety of the public; (2) protection of the environment from continuing degradation and conservation of land and water; (3) the protection, construction, and or enhancement of public facilities and their use; and (4) improvements of lands and waters to a suitable condition useful in the economic and social development of the area affected.

SECTION 303. ELIGIBLE LANDS

This section specifies that only those lands which were mined for coal or affected by such mining, waste banks, coal processing or other mining processes and abandoned or left in an inadequate reclamation condition prior to the enactment of this Act are eligible for expenditures under the Fund. In addition, there must be no continuing responsibility for reclamation under State or other Federal laws for such lands to be eligible.

The inclusion of lands "affected by" coal mining means that in various areas the fund could be used to repair public facilities which have been damaged by activity relating to coal mining. In Eastern Kentucky, for example, public roads have suffered extensive damage from coal-hauling. This is especially true of roads which serve mines that are otherwise inaccessible.

SECTION 304. RECLAMATION OF RURAL LANDS

This section establishes a program to provide small rural landowners technical and financial resources to reclaim lands affected by coal surface mining operations which were left unreclaimed or inadequately reclaimed.

Any one landowner (including owner of water rights), resident, or tenant is limited to a total of 100 acres of land on which reclamation can be conducted under this section, and the Federal share of such

work shall not exceed 80% of the costs. The Secretary has discretionary authority to increase the Federal share where he determines that (1) the main benefits from the project are related to off-site water quality or other off-site benefits, and (2) the landowner cannot participate in the program if required to put up 20% of the cost.

This program is administered by the Secretary of Agriculture and the reclamation work is to be accomplished according to a mutually-agreed-upon plan through contracts with the landowner, for periods of not more than ten years, to accomplish the land stabilization conservation work required in order to reclaim the affected lands. This program is to be implemented through the Soil Conservation Service. While the Soil Conservation Service may want to integrate such projects on a watershed or drainage area basis in order to enhance program effectiveness, it is not intended that such an approach and its planning process slow down reclamation or deny work in those areas or instances where the landowners are willing to participate but the watershed planning is not completed. It is also intended that the rural lands program will be coordinated with the reclamation program implemented by the Department of Interior.

Up to one-fifth of the money available in the Abandoned Mine Reclamation Fund during any one year shall be made available to the Secretary of Agriculture for the purposes of this section.

SECTION 305. ACQUISITION AND RECLAMATION OF ABANDONED AND UNRECLAIMED MINED LANDS

This section establishes a program, administered by the Secretary of Interior or by the State regulatory authority pursuant to an approved State abandoned mine reclamation program, for the reclamation of abandoned mine lands or lands affected by surface coal mining operations which are large tracts, or lands to be developed for specific purposes such as commercial, industrial, residential, and other intensive land uses. This program complements the rural lands program provided in Section 304.

Four basic steps are required under this program: land identification, land acquisition, land reclamation, and post-reclamation land use including disposition.

Prior to initiating reclamation programs on particular tracts of land, the Secretary or the State shall make a thorough study of the areas involved, identifying those lands needing reclamation and establishing projects according to the priorities established in Section 302 above and with costs and benefits computed.

Land acquisitions for those parcels on which work will be done can be accomplished by either the Secretary of Interior or the States involved. If a State acquires such land and transfers it to the Federal Government, up to 90 percent of the acquisition costs may be Federally funded. For those projects which because of public health or safety or environmental damages require quick and easy acquisition, specific authorities for condemnation and quick land and mineral acquisition are provided to the Secretary of Interior.

The reclamation of these acquired lands is to be conducted under Federal control. Contracts for reclamation are to be entered into on a

competitive basis. Costs of reclamation are to be borne entirely by the fund.

The Secretary of the Interior is given authority to reclaim lands to be used for the purposes of housing for miners, mining related employees or persons displaced by natural disasters or catastrophic failures.

After reclamation, land may be retained in Federal ownership, made available to States or local governments, or disposed of to parties in the private sector. If such land was originally made available to the Federal Government through State acquisition, such State may have a preference to purchase lands after reclamation. The Secretary has the authority to sell land to State or local governments at a price less than fair market value, providing that it is used for valid public purpose and that the cost to the State and local governments shall be no less than the cost to the Fund for the purchase and reclamation of the land.

Disposition of the land to the private sector is allowed in those instances for industrial, commercial, residential, or other intensive private uses. States have the option of exercising the authority to acquire and reclaim orphan lands, under this section, if the Secretary has approved their abandoned mine reclamation program.

SECTION 306. FILLING VOIDS AND SEALING TUNNELS

This section specifically establishes programs for subsidence control and sealing those tunnel shafts and entryways resulting from mining which constitute a hazard for public health or safety. The Secretary is to acquire such interest in lands as he determines necessary to carry out provisions of this section. State regulatory authorities are authorized to carry out such work pursuant to an approved abandoned mine reclamation program.

SECTION 307. FUND REPORT

This section requires the Secretary to make an annual report to Congress beginning on January 1, 1979 on reclamation activities accomplished and underway which are supported by the Fund along with recommendations as to future uses of the Fund.

SECTION 308. TRANSFER OF FUNDS

This section authorizes the Secretary of the Interior to transfer funds to other Federal agencies to accomplish the purposes of this title. It was recognized that this authority might be desirable since such agencies have appropriate program responsibilities and expertise, such as reducing sediment and other pollution from entering reservoirs, navigable waterways as well as in acid mine drainage control.

TITLE IV—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

SECTION 401. ENVIRONMENTAL PROTECTION STANDARDS

This section requires that within 90 days of the date of enactment of the Act, after due notice, upon concurrence of the Administrator

of EPA, and public hearings, the Secretary promulgate and publish in the Federal Register interim regulations for the establishment of State and Federal programs for the implementation of this Act.

Interim regulations should make compliance with the interim performance standards of the Act by the operator easier and more enforceable. Promulgation of these regulations would not require filing of an environmental impact statement, in view of the need for timely issuance and the eventual compliance with requirements for an environmental impact statement upon promulgation of the permanent regulations (within 12 months).

SECTION 402. INITIAL REGULATORY PROCEDURES

Subsection 402(a) requires that, after the date of enactment of this Act, no person shall conduct any surface mining operations on non-Federal lands without a permit from the appropriate State regulatory agency.

Subsection 402(b) requires that, after six months from the date of enactment of this Act, all new mines must be required to comply with 7 key environmental standards.

One of these standards pertains to the use of mine waste impoundments to dispose of wastes from both underground and surface mines and coal processing plants. The balance of the standards represent other key provisions of the permanent program pertaining to surface coal mining operations: post-mining land use objectives, regrading to approximate original contour, steep slope requirements including limitation of spoil placement on downslopes, segregation and preservation of topsoil, protection of the hydrologic balance and revegetation requirements. Nine months after enactment of this Act, subsection 402(c) applies these same standards to mines in operation pursuant to a permit issued prior to six months after the date of enactment of this Act. The standards are applicable to lands from which overburden and the coal seam being mined have not been removed. Operations in operation under a State permit issued before date of enactment and producing at least 200,000 tons annually are specifically exempted for a period of 30 months except for the prohibition against placing spoil on the downslope.

The application of these standards to existing mining operations will remedy much of the environmental degradation resulting from current coal surface mining practices and provide a fair basis for transition into the full range of requirements in the program. This appears to the committee to be a practical mechanism for assuring compliance without raising the possibility of unwarranted hardship on the operator.

Subsection 402(d) requires all operators to file for such permits under an anticipated approved State program no later than two months following the approval of a State program or the implementation of a Federal program. Such permits must be granted or denied within 8 months of the approval of a State program, but in no case later than 42 months from the date of enactment of this Act.

Subsection 402(e) requires, within 6 months of the date of enactment of this Act, the establishment of a Federal enforcement program to

carry out inspections and enforce the provisions of the Act, until such time as an approved State program or a Federal program has been established. Under this oversight function, Federal inspectors shall have the authority to order correction of violations.

Subsection 402(b) allows existing operations to continue in the interval between disapproval of a State program and implementation of a Federal program.

All surface coal mining operations, which include, by definition surface impacts incident to underground coal mines, are subject to the initial regulation procedures of section 402 of this bill, but only to the extent that they are located on lands on which operations are regulated by a State. Surface coal mining operations located in the two States (Alaska and Arizona) which presently have no regulatory programs directed toward the environmental control of surface coal mining operations are not subject to section 402. Neither are the surface effects of underground coal mining operations subject to section 402, unless the existing State regulatory program is directed at the effects of these operations. This policy is entirely consistent with the State-lead philosophy of this legislation. However, it should be noted that States which do not have a regulatory program established by statute may still participate in the interim program through administrative action of a suitable State agency. Certification of this fact by the Governor of a State to the Secretary of the Interior is sufficient to qualify that State for the interim funding provided in section 402.

SECTION 403. STATE PROGRAMS

In order for any State to assume exclusive state jurisdiction in administering surface mining regulation on non-Federal lands, this section requires submission to the Secretary of Interior, within 18 months after the passage of the Act, of a State program which demonstrates that the State has legal, financial, and administrative capability for carrying out the provisions of the Act under regulations of the Secretary.

The State program must specifically show that the State has a law providing for the regulation of surface mining and reclamation in accordance with all provisions of the Act and subsequent regulations. The State program must provide for sanctions or penalties for all violations of State laws, regulations, or conditions of permits concerning surface mining, must meet the minimum requirements of this Act, must provide sufficient administrative and technical personnel with funding to fully implement and enforce provisions of this Act, must show that a process for designating areas unsuitable for surface coal mining has been established and that a process exists for coordinating review of any mine permit with any other Federal or State permit issued under this Act.

The Secretary of the Interior is directed to approve or disapprove each State program in whole or in part within 6 months after submission. Prior to such decision he must hold at least one public hearing within the State on the program, disclose views of all Federal agencies having special expertise pertinent to the proposed State program, obtain the written concurrence of the Administrator of the Environ-

mental Protection Agency for those aspects of the State program relating to federal air and water quality laws.

If the Secretary disapproves a State program in whole or in part, the State shall have sixty days to resubmit a revised State program or appropriate portion thereof. The Secretary must approve or disapprove a resubmitted State program within 60 days of its resubmittal but in no case later than 42 months after enactment of the Act (Sec. 402). It is the intention of the committee that any notification of disapproval be in writing and contain the reasons for disapproval. It is intended that the Secretary's notification be very specific. Only with such specificity will a State know how best to revise its State programs so it will meet with the Secretary's approval.

Subsection (d) provides that States that are prevented from preparing, submitting, or enforcing a State program because of a court injunction remain eligible for financial assistance under the Act.

This subsection further provides that, despite the provision of Section 402, no Federal program shall be initiated for a State under these circumstances. This bar on imposition of a Federal program ends when the injunction terminates or after 1 year, whichever comes first. The Committee did not want to penalize States which were making a good faith effort to comply with the Act but were prevented from doing so by court action. On the other hand, the Committee does not want to have any undue delay in establishment of a regulatory program which meets the requirements of the Act.

SECTION 404. FEDERAL PROGRAMS

This section provides for Federal regulation of surface mining and reclamation operations in any State which proves unwilling or unable to do the job itself. In accord with the purposes and findings in Title I, Federal regulation is to occur only if a particular State wishes to forgo or fails to assume primary responsibility for regulating surface mining operations within its boundaries.

Subsection (a) directs the Secretary to prepare, promulgate, and implement no later than 30 months after enactment of this Act, a Federal program covering surface mining and reclamation operations for any State which (a) fails to submit a State program within 18 months after enactment, (b) fails to resubmit an acceptable revised State program after the Secretary's disapproval of the original submission, or (c) fails to enforce all or any part of its approved State program.

Promulgation of a Federal program gives the Secretary *exclusive jurisdiction* for regulation of surface mining operations in the State in those areas not being adequately enforced by the State. Surface mine operators need to know which regulations—Federal or State—they must follow at any given point in time. The Committee fully intends that under subsection 404(b) the Secretary will use the enforcement authority granted him under subsections 421(a) (1) through (4), if a State with an approved State program fails to enforce against an operator who is violating the Act.

In preparing and implementing a Federal program, the Secretary is directed to take into account the affected State's terrain, climate, and other physical conditions.

If an Act of the State legislature is required to enable the State to comply with the Act, the Secretary is authorized to extend the deadline for submission of a State program up to an additional 6 months.

Subsection (c) requires that a public hearing must be held in the affected State prior to promulgation of the Federal program.

Subsection (d) provides that all permits issued under an approved State program remain valid after implementation of a Federal program. However, the Secretary is directed to undertake a review of such permits and where such permits fail to meet the requirements of the Act, to afford the permittee reasonable time to conform his operations with those requirements or to submit a new permit application.

Subsection (e) provides procedures and timetables for the lifting of the Federal program in any State when a new State program receives the Secretary's approval.

Subsection (f) provides that permits issued under the Federal program remain valid under the State program, subject to review and revision by this State regulatory authority and subject to the imposition of additional requirements if the State deems necessary and if the permittee is given time to comply.

Subsection (g) further provides that any State laws or regulations regulating surface mining are preempted by the Federal program. This preemption is designed to make it clear to surface mine operators which laws and regulations they must comply with. Other State laws applicable to the operation, such as those relating to air and water quality would not be affected. The Secretary is required to set forth in his rules and regulations those State laws and regulations, if any, which in his judgment are superseded and preempted by the Federal program.

Subsection (h) provides that any Federal program shall contain a process for coordinating issuance of permits with any other applicable Federal or State permit process.

The assumption of regulatory authority over surface mining operations in any State by the Secretary through promulgation of a Federal program for that State is regarded by the Committee as a "last resort" measure. For this reason, no Federal program shall include a process for designation of non-Federal lands as unsuitable for surface mining for 1 year after imposition of a Federal program. The Committee hopes this will be an incentive to the States to develop acceptable programs. It is certainly preferable that the State regulate such operations through State programs which meet the requirements of the Act. The Committee hopes and expects that the States, in good faith, will develop and implement strong State programs. However, if they fail to do so, the purpose of the Act and this section in particular is to insure that the full reach of the Federal constitutional powers will be exercised to achieve the purposes of the Act.

SECTION 405. STATE LAWS

This section contains the standard savings clauses protecting the States rights to have or develop laws and regulations providing more stringent or different controls of surface mining and reclamation operations. The Secretary is required by the provisions of this section

to set forth in rules and regulations State laws and regulations, if any, which he determines to be inconsistent with the Act. This is intended to insure against any confusion as to which statutes in a State would be applicable and enforceable and which would not.

SECTION 406. PERMITS

This section provides a timetable for obtaining permits to conduct surface mining and reclamation operations pursuant to the Act from either the State regulatory authority under a State program or the Secretary under a Federal program. (Hereafter, the words "regulatory authority" will be used to mean the State regulatory authority where the State is administering the Act under State programs or the Secretary where the Secretary is administering the Act under Federal programs.)

Under subsection (a) no person can engage in surface mining without a valid permit under an approved State program or a Federal program after 8 months after approval of a State program or implementation of a Federal program. There is one exception to this rule. Where there is an approved State program or a Federal program an operation with a valid permit from the State regulatory authority may continue operations if a permit application has been filed but the initial administrative decision has not been rendered. Conscious of the need for increased coal production, the Committee did not want to force current operations to shut down simply because of administrative delay. However, the Committee believes that a firm deadline must be established to serve as an incentive to the Secretary, the States and the operators to comply with the Act.

This deadline provides the States with a reasonable period of time after the Secretary promulgates his regulations to prepare their State programs. (Federal interim regulations are due 3 months after enactment, State programs are due 18 months after enactment date, and the Secretary must approve or disapprove a State program within 6 months after its submission.) The Committee urges the States to develop acceptable programs as rapidly as possible to avoid a hiatus after the deadline. It also expects the Secretary to issue regulations rapidly and actively assist the States to develop acceptable programs.

The exception for operations with valid permits recognizes that there may be delays in the processing of applications which are not the fault of the applicant and for which he should not be penalized. The applicant would be subject to the requirements of the State or Federal program during this period.

Subsection (b) provides that the term of permits or permit renewals or extensions issued under State programs shall not exceed 5 years. The Committee believes that 5 years is a reasonable time period but since many States have 1- or 2-year permits it wishes to allow these to continue.

To assure that no one will be locked into outdated reclamation requirements because permits are taken out and renewed without operations being undertaken, subsection (c) provides that permits will terminate if the permittee has not begun operations within 3 years of the issuance of the permit unless otherwise provided in the permit.

This flexibility recognizes the longer start-up times required for coal liquefaction and gasification projects.

Under Subsection (d), a valid permit includes the right to successive renewals if the permittee has complied with all the requirements of the State or Federal program and has notified the regulatory agency at least 120 days prior to the expiration of his valid permit. As part of the renewal process the regulatory authority may hold a public hearing and may require new conditions or requirements needed to deal with changing conditions. Any application for renewal beyond the original permit boundary areas must be considered as a new permit application. It is the intention of the Committee that the renewal shall be granted unless the regulatory authority specifically finds in writing that the operator in some way has failed to comply with the Act.

SECTION 407. APPLICATION REQUIREMENTS

Subsection (a) requires payment of an application fee which may be sufficient to cover the actual or anticipated cost of reviewing, administering, and enforcing the permit. The Committee, however, intends to allow the regulatory authority complete latitude to set the fee at a nominal rate if it so desires, making up the balance of its expenses from other sources of revenue. The cost of the fee may be paid over the term of the permit.

Subsection (b) lists the basic information required in the permit application. The information required here is a key element of the operator's affirmative demonstration that the environmental protection provisions of the Act can be met and includes:

(1) identification of all parties, corporations (with their major stockholders), and officials involved to allow identification of parties ultimately responsible for the operation as well as to cross-check the mining application with other applications in the same State and other States;

(2) names and addresses of adjacent surface owners;

(3) summary listing of past mining and reclamation permits including those suspended or revoked;

(4) a copy of the applicant's advertisement published in a local newspaper;

(5) a plan for the entire mining operation for the life of the mine including identification of the subareas anticipated to be included on a permit by permit basis, their sequencing, and mining and reclamation activities and a description of method of mining, starting dates, location, termination dates and schedule of activities;

(6) evidence of the applicant's legal right to mine;

(7) a full description of the on- and off-site hydrologic consequences of mining and reclamation, including the impact on the quality and quantity of water in ground and surface water systems; and

(8) maps and data sufficient to fully describe the surface and sub-surface features of the area to be mined, the chemical and physical properties and geologic setting, so that basic information is available to the regulatory authority in order to determine the impact of the mining operation and to be able to verify the conclusions reached

by the operator with respect to the environmental protection measures proposed in the mining and reclamation plan. Such information shall also include all relevant legal documents, test borings, keyed to the appropriate maps, and independent laboratory analysis of such borings (with certain data regarding the coal seam to be held confidential). The Committee does not mean to require the applicant to assess the probable cumulative impacts of all anticipated mining in the area, recognizing that this responsibility is properly the regulatory authority's.

Subsection (c) requires the applicant to submit either a certificate issued by an insurance company certifying that he has a public liability insurance policy for the proposed surface mining and reclamation operations or appropriate evidence that he has satisfied other State or Federal self-insurance requirements which meet the requirements of the regulations promulgated pursuant to the Act. Damage caused by the operator's use of explosives is to be included in the insurance coverage.

This insurance must be maintained in full force and effect during the term of the permit and all renewals until reclamation operations are complete.

Subsection (d) makes the reclamation plan an integral part of the application.

Under subsection (e) the applicant must file a complete copy of the application with the local court house of the county in which mining is proposed at the time of submission to the State, so that this application will be available for public review.

SECTION 408. RECLAMATION PLAN REQUIREMENTS

There is general agreement that since careful preplanning is the key to successful reclamation, submission of a reclamation plan prior to issuance of a mining permit is an essential element of effective regulation. This subsection enumerates the minimum items of information required in any reclamation plan submitted by an applicant for a permit to conduct surface mining operations. A reclamation plan is required as part of the permit application. The plan is the basis by which the regulatory authority determines the feasibility and adequacy of reclamation which is proposed to be done by the applicant under the terms of his permit. It also provides that information provided in the reclamation plan be in the degree of detail necessary to demonstrate that reclamation can be accomplished. The burden of proof is on the applicant. The following specific items of information are required.

408(a) (1) and (2). A description of the condition of the land area which will be effected by the proposed mining and reclamation must be provided together with the size, sequence and timing of the subareas to be mined. This description is intended to include general topography, vegetative cover, the cultural development. If the area has been previously mined, the description should cover both the uses of the land existing at the time of the application and those which existed prior to any mining at the site. The description must also include an evaluation of the capability of the site to support a variety of uses prior to any mining disturbance. This description should give con-

sideration to soil and foundation characteristics, topography, and vegetative cover.

The description is to serve as a benchmark against which the adequacy of reclamation and the degradation resulting from the proposed mining may be measured. It is important that the potential utility which the land had for a variety of uses be the benchmark rather than any single, possibly low value, use which by circumstances may have existed at the time mining began.

408(a)(3). A similar description is also required of the use to which the land affected by the proposed mining is to be put following reclamation and its capacity to support a variety of alternative uses. The relationship of the proposed use to land use policies and plans existing at the time the reclamation plan is filed must also be prescribed. The comparison of this description with that required by 408(a)(1) will provide an evaluation of the net impact which the proposed mining and reclamation will have upon the usefulness of the area affected.

408(a)(5). This section also requires a statement of the techniques and equipment which will be used in the mining and reclamation operations. This should be a complete statement adequate to insure that the reclamation proposed to be accomplished is capable of achievement and that each of the requirements set forth in subsection 415(b) and any regulations promulgated pursuant to that subsection can be complied with.

The techniques and procedures which will be used by the applicant to insure compliance with all applicable air and water quality laws and regulations, and health and safety standards must be described in sufficient detail to permit an evaluation of their adequacy and probable effectiveness.

The reclamation plan must also set forth a description of the particular considerations which have been given to the conditions found at each site: for example, the effect of precipitation, temperatures, wind, and soil characteristics upon revegetation at the site. Furthermore, there must be a statement of the consideration which has been given to new or alternative reclamation technologies.

There must be a discussion of the potential economically practicable recovery of the mineral resources of the site to be mined. To the extent that any portion of the resource will not be recovered, the reasons and justification for nonrecovery shall be set forth.

A detailed time schedule for the completion of the reclamation which is being proposed is to be provided.

A statement is required demonstrating that the permittee has considered all applicable State and local land use plans and programs including the desires of the owner of the surface with regard to post-mining land uses; and disclosure to the regulatory authority of all rights and interest in lands held by the applicant which are contiguous to the lands covered by the permit application is required. The purpose of this disclosure is to provide the regulatory authority with information on the prospective long-term plans of the applicant in the immediate vicinity. The bill would not require public disclosure of this information; however, it does not preclude State law from requiring disclosure of part or all of it.

A disclosure to the regulatory authority of the results of test borings made by the applicant in the area covered by the permit and the results of chemical analyses of the coal or other minerals and overburden is required. This information is essential for the critical evaluation of the adequacy of the reclamation plan by the regulatory authority and the interested public. Because of its proprietary nature, information about the mineral (but not the overburden) will be kept confidential if requested by the applicant.

SECTION 409. PERFORMANCE BONDS

This section sets out the requirements for one of the most important aspects of any program to regulate surface mining and reclamation—the performance bond. The requirements of this section will apply to interim permits as well as State and Federal programs inasmuch as all permits issued prior to approval of a State program or implementation of a Federal program must comply with provisions of this section.

Subsection (a) provides that once an application is approved a performance bond must be filed before a permit is issued. The amount of bond must be sufficient to assure completion of the reclamation plan if the work had to be performed by the regulatory authority at no expense to the public. The regulatory authority sets the amount of the bond.

The bond must cover the entire area to be mined during the initial term of the permit. As additional land is mined the bond is increased proportionately for succeeding permit renewals.

Subsection (b) requires that bond liability extend for a period coincident with the operator's liability (5 years after completion of reclamation including revegetation or for 10 years in areas where the average annual rainfall is 26 inches or less). This extension is necessary to assure that the bond will be available if revegetation or other reclamation measures fail after initial accomplishment. The longer time period for liability in arid areas recognizes that permanent reclamation, particularly revegetation, is more difficult and uncertain in such areas. This subsection also permits the deposit of cash and negotiable Government bonds or certificates of deposit in lieu of posting a bond. These meet the objectives of the bond, i.e., having a fund available to accomplish reclamation, just as effectively as a bond.

Subsection (c) recognizes that some applicants can satisfy the objectives of the bond requirement through self-insurance or bonding.

Subsection (e) provides that the bond or deposit may be adjusted at any time if as a result of experience or changed circumstances, it is determined to be inadequate.

SECTION 410. PERMIT APPROVAL OR DENIAL

This section provides for the basic requirements for a permit application, outlines the guidelines for permit approval and denial. The section requires that the regulatory authority make a written finding prior to approving a permit, that the following conditions have been met:

- (a) all conditions of this Act have been met;
- (b) reclamation will be accomplished according to this Act;

(c) assessment of the probable cumulative impacts of all anticipated mining in the area has been made by the regulatory authority and all hydrology requirements have been adhered to;

(d) the area is not incorporated in an area designated unsuitable for mining;

(e) the operation would not adversely affect farming or ranching operations on alluvial valley floors west of the 100th meridian, with a grandfather proviso allowing the continuation of operations which during the year preceding enactment of the Act (1) produced commercial quantities of coal, having been located on or adjacent to alluvial valley floors; or (2) having obtained State approval of a permit to so locate, or (3) in addition, those operations which are prospective but have undertaken substantial financial and legal commitments. The Secretary will define this term in his regulations.

Subsection 410(c) requires that any applicant for a permit file with the regulatory agency a schedule of any violations of Federal law for 1 year prior to the application, and a showing of corrections of such violations. The regulatory authority is barred from issuing a permit where it is not convinced that the applicant has satisfied the requirements of the agency involved or where it has determined there is a pattern of willful violation of the Act with irreparable environmental damage resulting.

This subsection prohibits issuance of a mining permit if the application indicated the applicant to be in violation of the Act or a wide range of other environmental requirements. It is not the intention of the Committee that an operator who is charged with the types of violations described in section 410(c) be collaterally penalized through denial of a mining permit if he is availing himself, in good faith, of whatever administrative and judicial remedies may be available to him for the purpose of challenging the validity of violations charged against him. However, the Committee also does not intend that a permit applicant can avoid the purpose of section 410(c) simply by filing an administrative or judicial appeal. It is expected that the regulatory authority will carefully examine those situations where an administrative or judicial appeal is pending in order to insure to the fullest extent possible that such appeals are not merely frivolous efforts to avoid the requirements of section 410(c).

SECTION 411. REVISION OF PERMITS

This section establishes a process for the revision of a permit during its term as well as review by either a State regulatory authority or the Secretary of existing permits issued prior to the assumption of regulatory jurisdiction by the current regulatory authority.

An operator may submit an application for a permit revision to the regulatory authority and within a period of time established by that agency, the application shall be approved or disapproved. The regulatory authority is to establish guidelines for procedures which may vary depending upon the scale and extent of the proposed revision. In all events, however, the process will be subject to the Act's notice and hearing requirements and a proposed revision which would extend

the area covered by existing permit (other than incidental boundary revisions) is to be made through the normal permit application process.

The regulatory authority may require revision of a permit during its term provided that it is based on a written finding and that it follows the State or Federal program's notice and hearing requirements.

SECTION 412. COAL EXPLORATION PERMITS

This section requires that all coal exploration operations be subject to regulation under a State or Federal program and be required to obtain a permit prior to the beginning of exploration activities, by submitting an application similar to, but simpler than, that for a mining operation, which application is to be accompanied by a fee.

SECTION 413. PUBLIC NOTICE AND PUBLIC HEARINGS

This section assigns the responsibility for giving public notice, holding hearings and submitting comments to the mining permit applicant, the regulatory authority, and interested third parties.

The applicant is required to:

(a) place an advertisement approved by the regulatory authority identifying the ownership, precise location, and boundaries of the land to be affected in a local newspaper of general circulation in the locality of the proposed new surface mine. This advertisement must appear at least once a week for 4 consecutive weeks.

(b) submit, along with the mining permit application, a copy of this advertisement;

(c) cooperate with the regulatory authority concerning the inspection of the proposed mine area;

(d) assume, if a public hearing is held, the burden of proving that the application is in compliance with State and Federal laws (including provisions of this Act).

The regulatory authority must:

(a) receive, and make available to the public, comments on the application from local agencies, in the same manner and at the same location as are copies of the mining application;

(b) notify, upon receipt of the application for a mining permit various local governmental bodies whose functions might be affected by the mining operation, informing them of the intention to surface mine, indicating the application's permit number and where a copy of the mining and reclamation plan may be inspected;

(c) provide for non-adjudiciary public hearing upon any request not considered to be frivolous, within 30 days; the hearing may be held at the locality of the mining operation or at the State capitol. An informal conference can substitute for the hearing.

(d) respond in writing to written objections on the mining application received from any party not less than 10 days prior to any proposed hearing. Such response shall include (1) the regulatory authority's preliminary assessment of the mining application; (2) proposals as to the terms and conditions of the permit to mine; (3) the amount of bond to be set for the operation; and

(4) answers to material factual questions presented in the written objections;

(e) make available to the public prior to or at the time of the hearing the regulatory authority's estimate as to any other conditions of mining or reclamation which may be required or contained in the preliminary proposal.

For the purpose of such hearings, the regulatory authority may administer oaths; subpoena witnesses and written or printed materials; compel attendance of witnesses or production of materials; take evidence, including site inspection of the land to be affected or other mining operations carried on by the applicant: arrange with the applicant for access to the proposed mining areas and keep a complete record of each public hearing. The applicant is to receive an opportunity to answer the objections which have been raised, having 30 days to file his response.

Interested citizens may:

(a) review mining applications at specific locations:

(b) file written objections and request hearings concerning mining applications;

(c) request inspection of the proposed mining area relative to the hearing and accompany the inspection tour;

(d) review the regulatory authority's written response to the objections submitted;

(e) appear at public hearings and present views and comments with respect to mining application.

This section is intended to give the Secretary discretion to provide for a hearing procedure which is less formal than an adjudicatory hearing as long as it complies with the provisions of subsection (e) while barring the Secretary from prescribing State regulatory hearing procedures beyond the requirements of subsection (e).

Generally speaking, only where 5 U.S.C. Sec. 554 is involved would the Secretary be required to adopt formal adjudicatory proceedings under the Administrative Procedure Act.

SECTION 414. DECISIONS OF THE REGULATORY AUTHORITY AND APPEALS

If hearings on the mining application have been held, within 30 days after their completion, the regulatory authority shall provide to the applicant and all parties to the administrative proceeding its written findings granting or denying the permit in whole or in part and stating its reasons.

In instances where no hearings have been held, the regulatory authority is to notify the applicant in writing of its decision. If the application has been denied in whole or in part, specific reasons for denial must be included. This response must be given within 6 months after submission of the permit application.

Approval of the application results in the issuance of the mining permit. If, however, the permit is denied, then: (a) within 30 days of denial the applicant may request a hearing on the disapproval; (b) upon such a request the regulatory authority will hold the hearing within 30 days notifying all interested parties and following the procedure outlined above.

Any applicant or any person who has participated in the administrative proceedings and has filed written objections shall have the right of judicial review.

SECTION 415. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

This section sets forth the minimum criteria which must be required by State or Federal programs, the Federal Lands Program, and the interim permit programs regulating surface mining and reclamation operations for coal.

These criteria are as follows:

- (1) maximize coal utilization;
- (2) restore the land to a condition at least fully capable of supporting prior-to-mining land uses;
- (3) restore all mined lands to approximate original contour, except where the operation removes the top of a mountain, ridge or hill;
- (4) stabilize all spoil piles;
- (5) segregate topsoil for ultimate replacement;
- (6) restore topsoil;
- (7) prevent offsite damages;
- (8) create, if necessary, appropriate impoundments within the definitions of this Act, if authorized in the approved permit;
- (9) seal all auger holes;
- (10) minimize the disturbances to the prevailing hydrologic balance of the minesite and associated offsite areas and construct siltation structures certified by a qualified engineer;
- (11) stabilize all waste piles;
- (12) refrain from mining within 500 feet of an underground mine;
- (13) provide for safe mine waste impoundments with respect to both engineering specifications and location;
- (14) prevent hazards to waters from acid-forming materials or fire hazards;
- (15) insure that the use of explosives be carried out by certified blasting personnel after proper notice and precautions;
- (16) assure that reclamation efforts proceed as contemporaneously as possible with the mining operation;
- (17) insure that the maintenance of haul roads will prevent erosion and siltation;
- (18) no alteration of water flow;
- (19) revegetation of natural species following mining;
- (20) operator responsibility for reclamation for five years in areas where rainfall is more than 26 inches a year, and 10 years where rainfall is less than 26 inches a year;
- (21) leave an undisturbed natural barrier to prevent slide and erosions.
- (22) any other criterion which the Secretary deems necessary for the implementation of the purposes of this Act.

Permits may be granted with exemptions from performance standards which require the restoration of the approximate original contour, the covering of all highwalls, and elimination of spoil piles and in cases

of mountaintop removal where industrial, commercial, residential, or public facility development is possible for post-mining land use. Special requirements for treatment of the mountaintop mined area and for the placement and stabilization of excess spoil not retained on the mountaintop are to be conditions imposed upon the permit.

Variations from the requirement that the reclamation proceed as contemporaneously as possible may be granted, thus allowing the provisional retention of highwalls and benches in limited and specific areas where underground mine openings or facilities are planned in conjunction with a surface mining operation. The Committee does not regard this authority to postpone reclamation and restoration of a mined area as justifiable for any reason except facilitating maximum recovery of the coal resource by underground mining.

The Committee recognizes that any spoil which is placed upon a steep slope will require planning and certification by a qualified engineer to insure long-term stability, and that in the case of head-of-hollow or valley fill associated with mountaintop removal operations the large mass of unconsolidated material can pose a serious threat to downstream areas if failure should occur. It is therefore fully intended that the Secretary or the regulatory authority, as the case may be, will impose additional requirements and performance standards upon the operator as further experience and research may dictate.

Subsection (c) sets forth certain other performance standards designed to protect the environment, and applying only to steep slope surface coal mining (which term is not to include mining operations on flat or gently rolling terrain which will leave a plain or predominantly flat area or operations which remove the entire top of a mountain, ridge or hill) as follows:

(1) spoil or waste materials may not be placed on the slope below the bench or cut, except where temporarily necessary to gain access to the coal seam and then only under specified conditions to prevent slides, erosion and water pollution;

(2) the site must be returned to the approximate original contour by covering highwalls completely and limiting disturbance above the highwall;

(3) "steep slope" is defined as any slope above 20 degrees or a lesser slope as determined by the regulatory authority after due consideration of the soil, climate and other environmental characteristics of a region or State.

One of the key environmental protection standards of S. 7 is the requirement to return a mine site to its "approximate original contour". There has been considerable misunderstanding of this concept and exaggerated descriptions of its impact.

Some coal industry concern seems to be focused on two aspects of the definition: (1) the need to regrade the mined site so that it "closely resembles" prior surface configuration and "blends into" surrounding terrain and (2) the need to generally "eliminate depressions." Confusion has existed as to whether or not it will be possible under this definition of approximate original contour to conduct area mining of thick seams covered by a relatively thin layer of overburden.

A great deal of misunderstanding has occurred regarding the performance standard relating to the construction and location of water

impoundments. The provisions of S. 7 require that both new and existing impoundments must be located in such a manner that they "will not endanger *public health and safety* should failure occur." It has been argued that this provision could prohibit the use of impoundments throughout the coal-mining industry since under even the best circumstances a minimal risk of danger to one or more individuals will always occur if an impoundment should fail. This argument is based on a patently unreasonable interpretation of the statutory language.

The Committee does not intend to prohibit all impoundments. The Committee does intend to require not only that impoundments be built in accordance with stringent construction standards, but also that mining companies be required to design their mining plans so as to avoid locating impoundments in areas where failure would cause entire towns to be wiped out. Impoundments are to be constructed only in safe locations. If they cannot be located safely, then they should not be built.

SECTION 416. SURFACE EFFECTS OF UNDERGROUND COAL MINING OPERATIONS

Certain of the environmental protection standards for surface mining operations also apply to underground mines. In this section, the Secretary is required to incorporate in his regulations the following key provisions concerning the control of surface effects from underground mining:

Underground mining is to be conducted in such a way as to assure appropriate permanent support to prevent surface subsidence of land and the value and use of surface lands, except in those instances where the mining technology approved by the regulatory authority at the outset results in planned subsidence. Thus, operators may use underground mining techniques, such as long-wall mining, which completely extract the coal and which result in predictable and controllable subsidence.

Portals, entryways, shafts or accidental breakthroughs between the surface and underground mine workings must be sealed when they are no longer needed for the conduct of the mining operation.

Environmental standards controlling the surface disposal of mine wastes, including the use of impoundments, are the same as those discussed in the previous section.

The Secretary is specifically required to consider the distinct difference between surface and underground mining in promulgating his regulations and with respect to surface impacts from repair, haulage, processing and similar facilities, to accommodate the difference in establishing requirements for minimizing such impacts.

After surface operations or other mining impacts are complete at a particular site, the area must be regraded and a diverse and permanent vegetative cover established.

Offsite damages must be prevented, fire hazards eliminated, and disturbances to the hydrologic balance minimized both on-site and in associate offsite areas.

In order to prevent the creation of additional subsidence hazards from underground mining in developing areas, subsection (c) pro-

vides permissive authority to the regulatory agency to prohibit underground coal mining in urbanized areas, cities, towns, and communities and under and adjacent to industrial buildings, major impoundments, or permanent streams.

Subsection (d) provides that all other provisions of the Act and regulations pertaining to State and Federal programs, permits, bonds, inspection and enforcement, public review and administrative and judicial review are applicable to underground mines with such modifications to the application requirements, permit approval and denial procedures and bond requirements deemed necessary by the Secretary in order to accommodate differences between surface and underground mines.

The Committee does not intend to allow any conflict between the overriding importance of ensuring the safety and welfare of mine workers and the protection of environmental quality. Consequently, the Secretary must obtain the written concurrence of the head of the agency administering the Coal Mine Health and Safety Act before issuing any regulations under this section.

SECTION 417. INSPECTIONS AND MONITORING

For the purpose of administering and enforcing any approved State or Federal program under this Act, every permittee must establish and maintain appropriate records, make monthly reports to the regulatory authority, install, use and maintain any necessary monitoring equipment or method, evaluate the results of such monitoring in accordance with the procedures established by the regulatory authority, and provide such other information relative to surface mining as the regulatory authority deems reasonable and necessary.

Special additional monitoring and data analysis are specified for those mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance or water use either on or off the mining site. Access to the mine site, monitoring equipment, areas of monitoring, and records of such monitoring and analysis must be provided promptly to authorized representatives of the regulatory authority with or without advance notice and upon request.

A clearly visible sign must be maintained at the mine entrance.

This section instructs the regulatory authority to carry out inspection of each mining operation according to the following criteria:

- (1) averaging not less than one per month for each operation;
- (2) occurring without prior notice to the operator except for necessary onsite meetings with the permittee;
- (3) including filing of reports adequate to insure the enforcement of the requirements under this Act;
- (4) rotating inspectors at adequate intervals.

After each inspection, the inspector shall notify the operator and the regulatory authority of each violation of any requirement of the Act. Copies of all inspection reports are to be made available to the affected and interested public at central locations.

Section 417(h) provides that any person who is or may be adversely affected by an inspection of a surface mining operation shall have a

right to obtain informal review of the failure of the Secretary or his authorized representative to issue a citation or order under the Act, or conduct an adequate and complete inspection of a surface mining operation. The Secretary shall establish by regulation procedures for such review and shall supply a written statement of the reasons why a citation or order was not issued, or why an adequate complete inspection was not made. The Committee intends that the informal review be conducted by a neutral person and not be an immediate supervisor of the inspector whose actions are being reviewed

The provision is intended to provide a speedy, efficient means for citizens who are or may be affected by a surface mining operation to obtain review of a failure to issue a notice or order or to conduct an adequate and complete inspection. This provision could be very useful in avoiding litigation.

SECTION 418. PENALTIES

Any permittee who violates any permit condition or who violates any other provisions of this title may be assessed a civil penalty by the Secretary not to exceed \$5,000 for each violation according to this section, with each day of violation deemed a separate violation. The amount of the penalty shall depend on the criteria of the Act.

Under Subsection (d) the permittee must forward the amount of the proposed penalty to the Secretary within 30 days of receipt of the notice of proposed penalty. If the permittee wishes to contest the penalty, the payment will be placed in an escrow account until the matter is finally decided. The Secretary may collect unpaid civil penalties by asking the Attorney General to institute an action in the appropriate District Court.

A civil penalty shall become final only after an opportunity for a public hearing has been afforded the person charged with a violation, and the hearing has been held, or waived by act or by operation of law.

Any person who willfully and knowingly violates a condition of a permit, or fails or refuses to comply with an order issued by the Secretary under this Act, shall be fined not more than \$10,000, or imprisoned for not longer than 1 year, or both.

Under Subsection (i) the Secretary shall assess a minimum mandatory penalty of no less than \$750 for each day an operator fails to correct a violation within the period permitted for its correction.

Appeals from final civil penalty assessments of the Secretary may be taken to the United States Court of Appeals where the surface mine is located by any person who is aggrieved by the order.

Subsection (g) provides that the same penalties apply to the officers of a corporation which violates the provisions of this Act, as to an individual.

Under subsection (h), any person who knowingly makes a false statement, representation, or certification with respect to any application, record, report, plan or other document filed or required to be maintained under this Act shall be fined not more than \$10,000, or imprisoned for not longer than 1 year, or both.

SECTION 419. RELEASE OF PERFORMANCE BONDS OR DEPOSITS

This section provides that a permittee may obtain the release of all or part of his performance bond upon request, after public notification and an inspection by the regulatory authority. Sixty percent of the bond may be released when backfilling, regrading and drainage control are completed. The remaining 40 percent is released after revegetation has been accomplished, to the extent that no abnormal suspended solids are further contributed to streamflow or runoff outside the permit area; and the operator's responsibility for reclamation has expired. If a silt dam is to become a permanent impoundment, the regulatory authority may only totally release the bond if arrangements have been made for future maintenance by the landowner.

Under subsection (d), if an application for bond release is denied, the permittee is to be notified in writing of the reasons therefor.

This section also provides that any person with a valid legal interest which might be adversely affected may file written objections to a proposed bond release, in which case a public hearing must be held after appropriate public notice. Governmental agencies having special legal responsibilities regarding the operation must also receive an opportunity to file written objections to the bond release.

In lieu of holding a formal hearing, the regulatory authority may institute an informal conference to deal with such objections, in the interest of expediting the decision on the matter.

SECTION 420. CITIZEN SUITS

Section 420 permits any person having a valid legal interest which is or may be adversely affected to commence a civil action in a United States District Court against (1) the United States, or any other governmental instrumentality or agency alleged to be in violation of any provision of the Act or regulations promulgated thereunder or order issued by the regulatory authority or any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to the Act; or (2) a regulatory authority where there is a failure to perform any act or duty under this Act excepting discretionary actions, including the Secretary. This section does not affect any rights including the right to bring suit or remedies that the person bringing the suit may have under any other law. It is the intent of the Committee that the phrase "any person having a valid legal interest which is or may be adversely affected" shall be construed to be coterminous with the broadest standing requirements enunciated by the United States Supreme Court.

Any resident of the United States injured in any manner through failure of any operator to comply with the provisions of this Act, regulations issued thereto, orders, or permits issued by the Secretary, may bring an action for damages in U.S. District Court.

Citizen suits in most instances may not be commenced before the expiration of 60 days after an operator is notified of the alleged violation, or, if the Secretary or State has commenced and is diligently prosecuting a civil or criminal action to require compliance with a mining permit, orders, or provisions of the Act. However, in such instances, the person may intervene as a matter of right.

Subsection (d) provides that the court in issuing any final order may award litigation costs which may include reasonable attorney and expert witness fees to any party whenever appropriate. This is intended to allow the courts to provide the traditional remedy of reasonable counsel fee awards to private citizens who bring meritorious suits to insure that the Act's requirements are being met. The provision is not meant to deter citizens from bringing good faith actions to insure the Act is being enforced by the prospect of having to pay their opponent's counsel fees should they lose. Under this section, a defendant can be awarded reasonable fees from the citizen only if he can show that the citizen brought the action in "bad faith." This is similar to other citizen suits provisions involving the award of attorney's fees.

Subsection (d) also provides that the court may require a bond where a temporary restraining order or preliminary injunction is sought. It is the Committee's intent that the courts will carefully consider the circumstances and probable outcome of litigation in deciding whether to require a bond. This will minimize the possibility that this section might be subject to misuse either by the commencement of frivolous actions against environmentally sound operations or as a substitute for other provisions of this bill which impose more precise requirements for citizen participation in the permit application and performance bond release proceedings.

This section is not intended to override the specific provisions of this bill which provide more precise requirements for citizen participation in the permit application and performance bond release proceedings, or to limit access to remedy for damages under any other statute. It does not limit any person's right under Federal or State law to seek legal or equitable relief; neither does it convey the right for a citizen to sue the Government for costs of litigation.

The Committee believes that citizen suits can play an important role in assuring that regulatory agencies and surface operators comply with the requirements of the Act and approved regulatory programs. The possibility of a citizen suit should help to keep program administrators "on their toes."

SECTION 421. FEDERAL ENFORCEMENT

The Federal enforcement system contained in this section, while predicated upon the States taking the lead with respect to program enforcement, at the same time provides sufficient Federal backup to reinforce and strengthen State regulation as necessary. Federal standards are to be enforced by the Secretary on a mine-by-mine basis for all or part of the State as necessary without a finding that the State regulatory program should be superseded by a Federal permit and enforcement program.

Subsection (a) sets forth a number of specific characteristics for the Federal enforcement program.

(1) The Secretary may receive information with respect to violations of provisions of this Act from any source, such as State inspection reports filed with the Secretary, or information from interested citizens.

(2) Upon receiving such information, the Secretary must notify the State on such violations and within ten days the State must take action to have the violations corrected. If this does not occur, the Secretary shall order Federal inspection of the operation. If the inspection is based on data from a third party, that party shall be afforded the opportunity to accompany the Federal inspector. The 10-day notification does not apply if the State has failed to act to avoid imminent harm or environmental damage.

(3) If on the basis of inspection, the Secretary determines that a violation has occurred, which creates an imminent danger to public health or safety or can cause imminent significant environmental harm, he shall immediately order cessation of the operation or a relevant portion thereof, until the violation is abated or the order modified by the Secretary. If the cessation order does not abate the imminent danger or environmental harm, the Secretary shall order the permittee to take whatever steps the Secretary deems necessary to abate the danger as quickly as possible.

(4) In the case of a violation which does not cause such imminent danger, the Secretary must issue a notice setting a period of no more than 90 days for abatement of the violation.

If the permittee does not abate the violation within the time permitted, the Secretary or his authorized representative must issue a cessation order, and establish the steps necessary to abate the violation. The Committee intends that this order will place an affirmative obligation on the operator or permittee to abate the violation in the manner prescribed by the Secretary.

Whenever the Secretary or his authorized representative determines that a pattern of violations of any requirements of the Act or any permit conditions, and the violations were caused by the unwarranted failure of the permittee, or were willfully caused, the Secretary must issue an order to show cause why the permit should not be suspended or revoked.

A pattern of violations occurs whenever the permittee violates the same or a related requirement of the Act or permit several times, or when the permittee violates different requirements of the Act or permit at a rate above the national norm.

(5) All orders issued by the Secretary take effect immediately and all orders shall be specific and substantive with respect to the nature of the violation, the remedial action required, time for compliance and seriousness of the violation.

Under Subsection (b), if violations occurring under an approved State program appear to result from the failure of the State to enforce the program effectively, the Secretary shall so inform the State. The Secretary shall give public notice of his finding with respect to the State program and 30 days after giving public notice shall hold a hearing in the State. If as a result of the hearing, the Secretary finds the State is failing to enforce its program effectively, he shall give public notice of his finding. Until the State satisfies the Secretary that it will enforce all provisions of the Act, the Secretary of Interior shall enforce any permit condition required by this Act, shall issue new or renewed permits for surface mining operations, and issue other orders as necessary for compliance with the provisions of this Act.

Subsection (c) provides that upon request of the Secretary, the Attorney General of the United States may enforce such Secretarial orders for various actions in a district court of the United States.

The Secretary may request the Attorney General to apply for injunctive relief whenever a permittee violates an order of the Secretary, hinders implementation of the Act, refuses permit inspection of the mine, or refuses to furnish information.

Efficient enforcement is central to the success for the surface mining control program contemplated by S. 7. For a number of predictable reasons—including insufficient funding and the tendency for State agencies to be protective of local industry—State enforcement has in the past often fallen short of the vigor necessary to assure adequate protection of the environment. The Committee believes, however, that the implementation of minimal Federal standards, the availability of Federal funds, and the assistance of the experts in the Office of Surface Mining Reclamation and Enforcement in the Department of Interior, will combine to greatly increase the effectiveness of State enforcement programs operating under the Act. While it is confident that the delegation of primary regulatory authority to the States will result in adequate State enforcement, the Committee is also of the belief that a limited Federal oversight role as well as increased opportunity for citizens to participate in the enforcement program are necessary to assure that the old patterns of minimal enforcement are not repeated.

Once State programs or Federal programs replace the interim regulatory procedure, section 417 requires that Federal inspections must be made for purposes of developing, administering, or enforcing any Federal programs, and assisting or evaluating the development, administration, or enforcement of any State program.

By mandating primary enforcement authority to field inspectors, this bill recognizes, as does federal mine health and safety legislation, that inspectors are in the best position to recognize and control compliance problems. The bill establishes three strong but flexible enforcement mechanisms which provide inspectors with the tools necessary to respond to the most minor and the most serious violations.

Cessation Order (Section 421(a)(2))

During any Federal inspection, if the inspector determines that any violation of the Act or permit condition or any other condition or practice exists which creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the inspector must order a cessation of the mining operation causing or contributing to the danger or harm. The cessation order may apply to all or a portion of the surface coal mining and reclamation operation in question. The imminent danger or environmental harm closure provision is so critical that the Federal inspector is required to act even if the inspection is being made for purposes of monitoring a State regulatory authority's performance. To provide otherwise would be to perpetuate the possibility of tragedies such as the Buffalo Creek Flood, which can be at least partially attributed to the sad fact that government regulation of the collapsed mine waste banks

fell between the cracks of the not quite meshed functions of various State and Federal agencies.

The inspector shall issue an imminent danger order whenever he has a reasonable expectation that death or serious physical harm can occur before the condition or practice is likely to be abated. The Committee intends that an imminent danger order should be issued whenever a rational person would not expose himself or herself to the danger during the period it takes to correct the danger. Miners or those affected by the mining activity should not be subjected to greater dangers because of their occupation or the location of their homes than the dangers faced by the average American worker or citizen.

The inspector is also given the duty to order the permittee to take affirmative steps to abate the danger in the most expeditious manner possible whenever merely ceasing mining operations does not remove the danger.

When determining a significant, imminent, environmental harm, the fact that the hazard to the environment is physically capable of being repaired should not preclude a cessation order. Rather, the degree of difficulty with which the damage may be undone should be considered along with the significance of the damage. Imminent is to be construed for the purposes of environmental harm to mean a harm that could occur if the condition is not abated within a reasonable time. The term "significant" should be construed to include factors other than whether environmental damage to land, air or water resources can be repaired. A "significant" effect could be the product of one or more such factors as the geographic scope, intensity, or long lasting effects of the damage.

Since neither the Congress nor any regulatory authority can totally predict the public and environmental hazards arising from such a complex endeavor as surface coal mining, the bill does not restrict the closure authority of section 421(a)(2) to violations of the Act or permit. Instead any condition or practice giving rise to imminent danger or environmental harm is sufficient to invoke the authority.

Notice of Violation (Section 420(a)(3))

Where the Secretary is the regulatory authority or a Federal inspection is being conducted pursuant to sections 402, 404(b) or subsection (b) of section 421, and a Federal inspector determines that a permittee is violating the Act or his permit but that the violation is not causing imminent danger to the health or safety of the public or significant, imminent environmental harm, then the inspector must issue a notice to the permittee setting a time within which to correct the violation. The inspector can extend this initial period for up to ninety days, but the total abatement period cannot exceed ninety days. If the violation has not been corrected within the established time, in the opinion of the inspector, the inspector must immediately order a cessation of the mining operation or the portion relevant to the violation. The inspector when issuing a cessation order under this section shall determine what measures are necessary to abate the violation in the most expeditious manner possible. The inspector shall include the necessary steps in the order of cessation.

The enforcement mechanism of section 420(a)(3) will be utilized by the inspector in the great majority of compliance problems. It not only enables the inspector to gain immediate control of the problem, but also provides him with essential flexibility to appropriately deal with minor as well as major violations.

In order to prevent federal-state overlap, the federal inspector is only to use his authority under section 421(a)(3) where the Secretary is the regulatory authority. However in other circumstances the Secretary must insure, in accordance with the provisions of section 421(a)(1), that the State is notified of the compliance problem so that it may act under the terms of the approved state program.

Show Cause Order (section 421(a)(4).—Where the Secretary is the regulatory authority and a federal inspector determines that a *pattern* of violations of the Act or permit exists or has existed and that such violations are caused by the *unwarranted failure* of the permittee to comply or are *willfully* caused by the permittee, the inspector must issue an order to the permittee to show cause as to why his permit should not be suspended or revoked. If the permittee fails to show cause as to why the permit should not be suspended or revoked, the inspector must immediately suspend or revoke the permit.

This provision requires that suspension or revocation of a mining permit be preconditioned upon conduct which demonstrably fails to meet the standards of care and diligence which are to be expected of permittees who seek to comply with the law. This is a sound approach particularly in light of the stringency of the closure authority previously discussed.

While the bill grants a great deal of authority to federal inspectors, it is important to remember that adequate protection must be afforded the regulated parties against the possibility of abuse of this authority. To this end, formal internal administrative review and judicial review of inspectors' decisions are permitted by sections 425 and 426 respectively. Furthermore section 421(a)(5) insures that due process will begin at the field level and provides the opportunity to modify, vacate, or terminate a clearly erroneous notice or order without the burden of more formal administrative review.

Finally it should be noted that while section 421 speaks in terms of federal enforcement, section 421(d) provides that as a condition of approval of any state program submitted pursuant to section 403 of this Act, the enforcement provisions thereof shall at a minimum incorporate sanctions no less stringent than those set forth in section 421 and shall contain the same or similar procedural requirements relating thereto. The Committee expects that the Secretary will use the format of section 421 as the basis for measuring whether state enforcement mechanisms are sufficiently strong and flexible to warrant approval of that portion of submitted state programs.

Administrative Review.—In order to assure expeditious review and due process for persons seeking administrative relief of enforcement decisions of Federal inspectors under the provisions of section 421, section 425 of the bill establishes clear, definitive administrative review procedures. Those persons having standing to request such administrative review include permittees against whom notices and orders have been issued pursuant to section 421 and persons having an interest

which is or may be adversely affected by such notice or order. Any person with standing may request a public hearing which must be of record and subject to the Administrative Procedure Act. The person seeking review shall have the ultimate burden of proof in proceedings to review notices and orders issued under Section 421. Pending review the order or notice complained of will remain in effect, except that in narrowly prescribed circumstances temporary relief may be granted from a notice or order issued under section 421(a)(3). In no case, however, will temporary relief be granted if the health or safety of the public will be adversely affected or if significant, imminent environmental harm will be caused. This provision will insure that the mining and reclamation performance standards will continue to protect the public health and safety or the environment during any administrative proceeding in which their validity is challenged, until the issue is determined on the merits.

In all cases where a section 421(a)(4) show cause order has been issued a public hearing must be held. The Secretary must issue a decision within sixty days following the completion of the hearing as to whether or not to suspend or revoke the permit. Pending this decision, the permittee may continue to operate if he is otherwise in compliance with the Act or his permit. The alternatives of suspension or revocation are within the discretion of the Secretary. It is expected that the degree of seriousness of the types of violations and kinds of conduct giving rise to the show cause order will be the dominant factor considered by the Secretary in making his decision. These factors should also be considered by the Secretary in his determination of the lengths of suspension periods. On the other hand, in determining the period following revocation within which reclamation must be completed, weight should also be given to the practicalities of the reclamation which needs to be performed. The Committee also expects that the Secretary will give highest priority to administrative review of section 421(a)(4) show cause orders.

SECTION 422. DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

As a condition of having a State program approved by the Secretary of Interior, subsection (a) requires States to establish a planning process enabling decisions on the unsuitability of lands for all or any type of surface coal mining but not for exploration.

Lands must be so designated if reclamation as required by this Act is not economically or physically possible.

Lands may be so designated if: (1) Surface coal mining would be incompatible with existing State land use plans; (2) the area is a fragile or historic land area; (3) the area is in "renewable resource lands"—those lands where uncontrolled or incompatible development could result in loss or reduction of long-range productivity, and could include watershed lands, aquifer recharge areas, significant agricultural or grazing areas; (4) the area is in "natural hazard lands"—those lands where development could endanger life and property, such as unstable geological areas.

Each study for designation is made only on a case by case basis upon specific petition. In addition, S. 7 contains specific requirements for

petition. The Secretary is intended to issue regulations defining those petitions to be considered valid, to preclude frivolous requests. Also this section does not apply to lands on which surface coal mining operations were being conducted on the date of enactment of this Act or for which substantial legal and financial commitments had been made prior to January 1, 1977. Section 410(b) provides that surface coal mining permits will not be issued for lands being considered for designation as unsuitable for surface coal mining. In order to prevent moratoria caused by administrative delay, Section 422(a) requires the regulatory authority to issue a decision on any designation petition within 12 months. If a decision is not issued within that time, surface coal mining permits may be issued.

In complying with this section, a State must have established an appropriate agency, data base and inventory system, methods for implementing land use planning decisions and affording adequate public review.

With regard to Federal lands, Section 422(b) requires the Secretary to conduct a review of all Federal lands to determine areas unsuitable for mining. But in order to avoid locking up Federal coal in the case of a protracted study (such as the wilderness study), there is no moratorium on leasing during the period of review under the provisions of this subsection.

Under subsection (c), any person having an interest which may be adversely affected may petition either the State or Federal Government to have an area so designated based on the above criteria or to have a designation terminated. Public hearings on any area to be so designated must be held.

In addition, prior to the designation of any area as unsuitable for mining, the regulatory authority must prepare from existing and available information a statement on the potential coal resources in the area affected, the overall demand for coal, and the impact of the designation on the environment, the area's economy and the supply of coal.

In addition to the prohibition of surface mining which may result from the operation of the designation process, subsection (e) provides for certain outright prohibitions on surface coal mining. This subsection would prohibit new surface coal mining operations on lands within the National Park System, the National Wildlife Refuge Systems, the National Wilderness Preservation System, the Wild and Scenic Rivers System, National Recreation Areas, National Forests, in areas which would adversely affect parks or National Register of Historic Sites, within one hundred feet of a public road (except where mine access or haul roads join the right-of-way), within 300 feet of an occupied building or one hundred feet from a cemetery.

All of these bans listed in subsection (e) are subject to valid existing rights. This language is intended to make clear that the prohibition of strip mining on the national forests is subject to previous state court interpretation of valid existing rights. The language of 422(e) is in no way intended to affect or abrogate any previous state court decisions. The party claiming such rights must show usage or custom at the time and place where the contract is to be executed and must show that such rights were contemplated by the parties. The phrase

“subject to valid existing rights” is thus in no way intended to open up national forest lands to strip mining where previous legal precedents have prohibited stripping.

The prohibition against strip mining in the National forests is not to apply to those lands with no significant forest cover west of the 100th meridian where the Secretary of Agriculture and the Secretary of Interior have found there are not significant surface values relative to the value of the coal to be mined. The prohibition would, however, apply to Custer National Forest and to Alaska national forests.

SECTION 423. FEDERAL LANDS

This section requires the Federal Government to “put its own house in order” at the same time that, through this legislation, it requires the States to establish strong regulatory programs.

Subsection (a) requires the Secretary of the Interior to promulgate and implement a Federal Lands Program applicable to all surface mining and reclamation operations taking place pursuant to any Federal law on any Federal lands no later than one year after enactment of the Act. The Federal Lands Program must, at a minimum, incorporate all of the Act’s requirements and where the Federal lands are in a State with an approved State program, the requirements imposed by the States. Thus, while the Secretary could, for example, impose more stringent reclamation requirements on Federal lands than were required on non-Federal lands in the State, he could not permit less stringent requirements.

Subsection (b) provides that the requirements of the Act and the Federal Lands Program are to be incorporated in all Federal mineral leases, permits, or contracts issued by the Secretary involving surface mining and reclamation operations.

Subsection (c) provides that any State with an approved State program may choose to enter into a cooperative agreement with the Secretary for State regulation of surface mining operations on Federal lands within that State, if the Secretary determines the State has the necessary capability. Existing cooperative agreements may continue in effect pending approval of the States’ program. The purpose of this provision is to alleviate a significant problem in Western mining. Where Federal and non-Federal lands are checkerboarded, mining operators could find themselves working under two separate permits, two separate bonds, and two entirely different regulatory systems—Federal and State. The cooperative agreement should allow the operator to conduct his operation under a single regulatory system.

Except as provided in subsection (c) the Secretary is not to delegate to the States his primary authority or jurisdiction to regulate other activities on the Federal lands, or to designate lands unsuitable for mining.

The Committee feels very strongly that stringent reclamation requirements must be developed before any new or expanded coal surface mining operations are permitted on Federal lands. The Committee expects the Secretary to meet the 12 month deadline for implementation of this program established by subsection (a).

SECTION 424. PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS

This section applies the requirements contained in the Act to public corporations, public agencies, and publicly owned utilities, including, for example, the Tennessee Valley Authority, which engage in surface mining.

SECTION 425. REVIEW BY THE SECRETARY

This section provides for administrative review of any order or notice issued by the Secretary or his authorized representative under Section 421. Under this section, any permittee who is issued a notice or order under section 421, or any person who is or may be affected by such notice or order, may apply to the Secretary for review of the order or notice, or review of the termination of the order or notice within 30 days of the issuance or termination of the notice or order. Upon receipt of such an application, the Secretary shall conduct an appropriate investigation, including public hearings, and grant or deny relief expeditiously.

This section also provides for the Secretary to hold a public hearing following the issuance of an order to show cause why a permit should not be revoked or suspended pursuant to section 421. At the hearing the permittee shall have the burden of proof to show why his permit should not be suspended or revoked. Any person who has an interest which is or may be affected by a suspension or revocation of the permit shall be allowed to participate.

SECTION 426. JUDICIAL REVIEW

Any decision of the Secretary approving or disapproving a State program under section 403 or preparing and promulgating a Federal program under section 404 may be reviewed in the United States Court of Appeals for the circuit which contains the State whose program is at issue by a petition filed within 60 days of such decision by a person who participated in the administrative proceedings and who was aggrieved by such decision, according to this section. Action of the Secretary promulgating standards pursuant to sections 401, 415 and 423 may be appealed only in the United States Court of Appeals for the District of Columbia Circuit.

All other decisions or orders of the Secretary shall be reviewable in the appropriate United States Court of Appeals for the circuit in which the surface coal mining operation is located. Commencement of a proceeding under this section shall not operate as a stay of action by the Secretary unless so ordered by the court. Orders and decisions of the Secretary in enforcement proceedings expressly required to be conducted under 5 U.S.C. 554 (1970) are to be reviewed on the basis of the traditional substantial evidence test. However, all other orders, decisions, and actions of the Secretary are to be reviewed for rationality because they will be largely policy determinations made after a legislative-type hearing where affected persons will have an opportunity to present information and their views. It is expected that the Secretary will require supplementation of a verbatim transcript of legislative-type hearing with any other information he may have considered in order to establish the record for review.

SECTION 427. SPECIAL BITUMINOUS COAL MINES

Section 427 provides for the adjustment of several environmental standards for a limited number of existing mine pits in the United States. There are probably a few "open-pit" type coal mines in the Western States which would be unduly burdened by meeting all of the environmental standards as proposed in the bill. In particular, this special provision has been included in the bill to allow special regulations to be applicable to the "big-pit" mine pit at the Kemmerer mine. However, this section would also be applicable to other mines which have the very unusual characteristics of the "big-pit" at Kemmerer.

In this provision, "special bituminous coal mines" are defined as operations that would result in excess of 900 feet deep according to existing mine plans, were in existence at least 10 years prior to the date of enactment and met several other criteria. Such mines are not exempted from the Act, but the Secretary is authorized to allow appropriate variation from certain requirements dealing with spoil handling, regrading to approximate original contours, elimination of depressions capable of collecting water, and creation of impoundments. It is thought that some mine pits, because of their setting, design and duration of existing operation are sufficiently committed to a mode of operation which makes adjustment to the basic standards in the act difficult. A judgment was made that in these limited cases, such pits could continue with their basic mode of operation, meeting the special requirements of this section and all other requirements of the act.

The language of this section has been carefully drawn to apply to pits which were operational prior to January 1, 1972. New mine pits, those opened or re-started after January 1, 1972, must be designed or adjusted to meet the basic environmental standards of the Act. This applies even in those same settings where existing pits may be determined eligible for the special standards. In other words, only specific pits, not entire operations which may cover thousands of acres, are eligible under this section. Similarly, in determining the practicability of existing pits to adjust to meet the basic environmental standards of the Act, the Secretary should ascertain that the long-range plan of the pit is such that adjustment cannot be made to bring the operation in conformance with the Act. In some instances, it would seem probable that the reworking of old pits or combination of existing pits on a mined site would provide an opportunity for a mining operation adjustment to meet the basic provisions of the Act and the eligibility for exceptions should be so conditioned.

Eligibility is carefully defined under this section so that eligibility for exceptions under this section would not become the rule rather than the exception and so that it specifically applies only to existing mine pits which have been producing coal in commercial quantities since January 1, 1972.

SECTION 428. SURFACE MINING OPERATIONS NOT SUBJECT TO THIS ACT

This section provides specific exemptions for three types of coal surface mining which would otherwise be subject to the Act.

These are (1) the extraction of coal by a landowner for his own non-commercial use from land owned or leased by him, (2) the extraction

of coal where surface mining affects 2 acres or less, and (3) extraction of coal in the process of highways or other construction.

The Committee felt that these three classes of surface mining cause very little environmental damage and that regulation of them would place a heavy burden on both the miner and the regulatory authority. The exemption for "noncommercial" use does not include coal surface mining done by one unit of an integrated company which uses all of the coal in its own manufacturing plants (e.g., surface mining of metallurgical coal owned by a steel company for use in the company's steel mills, or surface mining for coal owned by an electric utility for use in its own powerplants).

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SECTION 501. DEFINITIONS

This section contains 29 definitions: Secretary; State; Office; commerce; surface coal mining operations; surface mining and reclamation operations; lands within any State; Federal lands; Indian lands; Indian tribe; State program; Federal program; Federal lands program; reclamation plan; State regulatory authority; regulatory authority; person; permit; permit applicant; permittee; fund; other minerals; approximate original contour; operator; permit area; unwarranted failure to comply; and alluvial valley floors.

Of importance to this analysis are "surface mining operations," "Indian lands," "lands within any State," "other minerals," "backfilling to approximate contour," and "alluvial valley floors" and imminent danger to the health or safety of the public.

"Surface mining operations" is so defined to include not only traditionally regarded coal surface mining activities but also surface operations incident to underground coal mining, and exploration activities. The effect of this definition is that coal surface mining and surface impacts of underground coal mining are subject to regulation under the Act. Activities included are excavation to obtain coal by contour, strip, auger, dredging, in situ distillation or retorting and leaching or any other form of mining except open pit mining; and the cleaning, or other processing or preparation and loading for interstate commerce of coal at or near the mine site. Activities not included are the extraction of coal in a liquid or gaseous state by means of wells, or pipes unless the process includes in situ distillation or retorting and the extraction of coal incidental to extraction of other minerals where coal does not exceed 16 $\frac{2}{3}$ percent of the tonnage removed. The last exception is designed to exclude operations, such as limestone quarries, where coal is found but is not the mineral being sought. "Surface mining operations" also includes all areas upon which occur surface mining activities and surface activities incident to underground mining. It also includes all roads, facilities structures, property, and materials on the surface resulting from or incident to such activities, such as refuse banks, dumps, culm banks, impoundments and processing wastes.

"Indian lands" is defined to mean all lands within the exterior boundaries of Indian reservations, and all lands held in trust for or supervised by any Indian tribe.

“Land within any State” is so defined and used throughout the Act so as to insure that the States, through their State programs, will not assert any additional authority over Federal lands or Indian lands, other than that authority delegated to them by the Secretary under a cooperative agreement pursuant to Section 423.

“Other minerals” is defined to include clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

“Approximate original contour” is defined so as to bar depressions capable of collecting water except where retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes.

SECTION 502. OTHER FEDERAL LAWS

This section contains the standard savings clauses concerning existing State or Federal mine health and safety, and air and water quality laws, and the mining responsibilities of the Secretary and heads of other Federal agencies for lands under their jurisdiction.

Specifically, it disclaims any conflict between the Act or any State regulations approved pursuant to it, and the Federal Metal and Non-metallic Mine Safety Act, the Federal Coal Mine Health and Safety Act, the Federal Water Pollution Control Act, the Clean Air Act as amended, the Solid Waste Disposal Act, the Refuse Act, and the Fish and Wildlife Coordination Act.

This section also specifies that adoption of regulations of the Secretary under section 401(b) must be considered as “major Federal action” for the purpose of Section 102(2)(c) of the National Environmental Policy Act of 1969. At the same time, three other actions of the Secretary are declared not to be major Federal actions and therefore would not require preparation of an environmental impact statement: approval of State programs, promulgation of Federal programs and implementation of a Federal lands program. These are considered by the Committee to require only a yes-or-no decision by the Secretary without consideration of a wide range of options contemplated by Congress when it enacted the National Environmental Policy Act. A similar exemption applies to EPA’s approval of State air and water quality plans.

SECTION 503. EMPLOYEE PROTECTION

Section 503 makes unlawful the discharge or discrimination against any person who has filed a suit or testified under provisions of the Act, and gives such person recourse to review by the Secretary of Labor. After opportunity for public hearing, the Secretary is to make findings of fact and issue orders where a violation has occurred, for reinstatement of the employee with compensation. The Secretary’s orders are subject to judicial review. The applicant in a successful pleading is to be reimbursed for his costs, including attorney fees. The Secretary is required to evaluate the effects of enforcement of the Act on employ-

ment, to investigate complaints, and hold public hearings concerning alleged discharges and layoffs. His subsequent report and any recommendations are to be made public.

The Committee considers an example of instituting a proceeding in subsection (a) to be notifying the regulatory authority or the foreman of the operation of a possible violation of the Act.

SECTION 504. PROTECTION OF GOVERNMENT EMPLOYEES

This section extends to surface coal mine inspectors the same rights and protections accorded to other Federal inspectors in the course of their duties.

SECTION 505. GRANTS TO THE STATES

This section authorizes the Secretary to cooperate with and to make annual grants to States for administering State programs under the Act, disbursed at the rate of 80 percent of cost during a year prior to program approval for the purpose of developing and submitting a proposed program, 60 percent of total costs during the first year of program operation following approval, and 50 percent of total program costs during each year thereafter. Subsection (c) gives authority to increase these grants where a State is regulating surface mining of Federal coal. The increase would equal the amount the Federal government would have spent. Technical assistance, training, instructional material and a continuing inventory of information for evaluating the effectiveness of State programs are among the types of assistance to be rendered by the Secretary. All Federal departments and agencies having relevant data are to assist as well.

SECTION 506. ANNUAL REPORT

This section requires the Secretary to submit to the President and the Congress an annual report on Federal and State activities pursuant to the Act and recommendations for appropriate administrative or legislative action.

SECTION 507. SEVERABILITY

This section contains a standard severability clause.

SECTION 508. INDIAN LANDS

Section 508 directs the Secretary of the Interior to study the question of regulation of surface mining on Indian lands which will achieve the purposes of the Act and recognize the special jurisdictional status of Indian lands within the exterior boundaries of Federal Indian reservations. The Secretary is directed to consult with Indian tribes and to report to Congress as soon as possible but no later than January 1, 1979.

In the interim, this section also provides that surface coal mining operations on Indian lands meet certain environmental standards at least as stringent as those in this Act, and requires the Secretary to incorporate such standards in all leases.

**SECTION 509. STUDY OF RECLAMATION STANDARDS FOR SURFACE MINING
OF OTHER MINERALS**

Section 509 is designed to meet short-term needs for information. It directs the Chairman of the Council on Environmental Quality to contract with the National Academy of Sciences—National Academy of Engineering, and such other government agencies or private groups as may be needed, for an indepth study of current and developing technology for surface mining of minerals other than coal and of open pit mining. This study is to be designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation.

The decision by past Congresses to limit the scope of surface mining legislation to coal surface mining was based on several factors. One of these was that it did not have sufficient information about the nature and characteristics of surface mining for other minerals and about open pit mining.

Surface mining of coal is the most immediate and pressing problem. It accounts for 43 percent of the total land disturbed in the United States by all forms of surface mining. However, the Committee recognizes the need to regulate surface mining for other minerals, particularly sand and gravel which accounts for 25 percent of the total surface area disturbed by surface mining. Thus, subsection 509(b) requires that the study together with specific legislative recommendations shall be submitted to the Congress and the President within 18 months after enactment of the Act. The study and recommendations with respect to surface and open pit mining for sand and gravel and oil shale and tar sands is to be submitted within one year.

SECTION 510. EXPERIMENTAL PRACTICES

In order to encourage advances in mining and reclamation practices, this section permits the regulatory authority to authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under this Act.

SECTION 511. AUTHORIZATION OF APPROPRIATIONS

This section authorizes appropriations for the purposes of this Act in the following sums; subsection (a) provides contract authority to the Secretary, to be modified by appropriation Acts, up to \$10 million each for fiscal years 1977, 1978 and 1979; subsection (b) provides \$10 million for the fiscal year ending June 30, 1978; \$20 million for each of the two succeeding fiscal years; and \$30 million for each of the succeeding fiscal years thereafter.

SECTION 512. FEDERAL LESSEE PROTECTION

This section requires that any application for a permit for surface coal mining of Federal coal must include either the written consent of the permittee or lessee of the surface lands to be affected, *or* evidence of the execution of a bond to secure payment for all damages to the surface estate resulting from the mining operations.

SECTION 513. ALASKA COAL

This section protects the rights of owners of coal in Alaska.

SECTION 514. WATER RIGHTS

This section protects water rights affected by surface mining operations.

SECTION 515. SURFACE OWNER PROTECTION

Special problems arise where coal deposits have been reserved to the United States but title to the surface has been conveyed to private individuals. This section establishes as Federal coal leasing policy a requirement that the Secretary of the Interior not lease for surface mining, without the consent of the surface owner, Federal coal deposits underlying land owned by a person who has his principal place of residence on the land, or personally farms or ranches the land affected by the mining operation, or receives directly a "significant portion" of his income from such farming. The Committee does not intend by this to impose an arbitrary or mechanical formula for determining what is "significant." This should be construed in terms of the importance of the amount to the surface owner's income. Significant is not intended to be measured by a fixed percentage of income. For example, where a person's gross income is relatively small, a loss of but a fraction thereof may be significant. By so defining "surface owner," the bill should prevent speculators purchasing land only in the hope of reaping a windfall profit simply because Federal coal deposits lie underneath the land.

At the same time, so that there will not be any undue locking up of Federal coal, no stipulation has been placed upon the amount and manner of negotiation between the prospective lessee and the surface owner.

This section will insure that the valuable agricultural lands under which lie deposits of Federal coal will not be unduly disturbed by surface mining. By allowing direct negotiations between the lessee of the coal and the surface owner, individual safeguards can be agreed upon to benefit the land on a case by case basis, making it more likely that the surface owner will be able to remain on the land. It is anticipated that negotiations will take place after the bids are opened, but before the lease is issued by the Secretary.

The Committee is aware that many surface owners have already entered into agreements with coal companies which intend to attempt to obtain Federal coal leases. Section 515 is not intended to apply retroactively so as to require new consents and payments to the surface owner where written consents have already been negotiated.

The requirement that coal deposits subject to Section 515 be offered for lease by competitive bidding is not intended to override any rights which the holder of a Federal prospecting permit may have to a coal lease. If such a permittee has a property right, it is protected under Section 515(g) which provides that nothing in Section 515 enlarges or diminishes any property rights held by the United States or any other land owner.

Section 515 establishes as one criterion for Federal coal leasing "that the Secretary shall, in his discretion but to the maximum extent

practicable" refrain from leasing Federal coal underlying lands held by surface owners. In implementing this policy, the Secretary should consider economic as well as physical conditions in determining what is "practicable."

Section 515 is not intended to override any rights which the holder of a federal coal prospecting permit may have to a coal lease under Section 2(b) of the Mineral Lands Leasing Act prior to its amendment by Section 4 of the Federal Coal Leasing Amendments Act of 1975. In repealing the prospecting permit system for the acquisition of federal coal leases, Section 4 of the Federal Coal Leasing Amendments Act of 1975 specifically preserved "valid existing rights." If the holder of a federal coal prospecting permit has a property right to the issuance of a lease as a "valid existing right," this section leaves that right unaffected.

VIII: COST ESTIMATE PURSUANT TO SECTION 252 OF THE LEGISLATIVE REORGANIZATION ACT OF 1970

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-150, 91st Congress) the Committee provides the following estimate of the cost.

A. ADMINISTRATION OF THE ACT

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., May 10, 1977.

HON. HENRY M. JACKSON,
*Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 7, the Surface Mining Control and Reclamation Act of 1977.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill No.: S. 7
2. Bill title: Surface Mining Control and Reclamation Act of 1977
3. Bill status: As reported by the Senate Committee on Energy and Natural Resources
4. Purpose of bill: The bill is designed to control the environmental impacts of surface coal mining at the state and federal level. It would create and specify the responsibilities for an Office of Surface Mining Reclamation and Enforcement in the Department of the Interior. The bill would also establish an Abandoned Mine Reclamation Fund and specify the purposes and maximum amounts of disbursements from the Fund. In addition, it would provide for the federal government to make annual grants to states for the purpose of assisting in

developing, administering and enforcing state programs. This is an authorization bill which requires appropriations action.

5. Cost estimate:

(In millions of dollars, fiscal years)

	1977	1978	1979	1980	1981	1982
Authorization level.....	10.5	20	30	20	30	30
Estimated net costs:						
Added costs.....	2	16	186	186	253	260
Less: additional revenue.....	0	-292	-210	-223	-235	-250
Estimated net cost.....	2	-276	-24	-37	18	10

The costs of this bill fall within budget function 300.

6. Basis of estimate:

Title III—Abandoned Mine Reclamation Fund

The primary revenue source assumed for the Abandoned Mine Reclamation Fund is the reclamation fee levied on coal production of 35 cents per ton on surface coal and 15 cents per ton on underground coal. No fees are assumed to be collected on lignite coal. While these reclamation fees will accrue in fiscal year 1977, the actual collection will begin in fiscal year 1978. Other possible sources of revenue are not likely to be of significance in the five-year time frame of this cost estimate—these sources are the sale, lease, or rental of reclaimed land, and user charges collected for land usage. It should be noted, though, that the federal government may eventually sell the reclaimed land acquired under Title III at not less than fair market value.

The disbursement of the funds collected is specified under certain sections of Title III. For this estimate, it was assumed that the bill would be enacted in June 1977, but no budget authority from this fund would be appropriated until fiscal year 1979 (pursuant to Section 301 (d) of the bill). Twenty percent of the fund is assumed to be transferred to the Department of Agriculture for the rural lands program.

In addition, fifty percent of the funds collected in each state are assumed to be reserved for expenditure in that state. Because of the time required for the development and approval of state plans, funds for this purpose are assumed to be appropriated beginning in fiscal year 1980.

The remaining funds are assumed to be used for administration and collection costs (beginning in fiscal year 1979), and the acquisition and reclamation programs specified in Section 305 (beginning in fiscal year 1979). In addition, there would be an estimated \$1 million in fiscal year 1977 and \$3 million in fiscal year 1978 in administrative costs to initiate the process of collecting the reclamation fees.

It should be noted that the Bureau of Mines has estimated the total cost of reclaiming mined areas at over \$24 billion. This figure includes costs for reclamation of abandoned lands, subsidence, waste banks, waste bank fires, mine fires, and acid mine drainage. The cost for just reclaiming abandoned mines is estimated at \$2.3 billion. Therefore, while the fund is projected to show a net income during the initial years of the program, costs are likely to exceed income in later years, since obligations and expenditures will increase as the plans are gradually implemented.

[In millions of dollars; fiscal years]

	1977	1978	1979	1980	1981	1982
TITLE III						
Estimated revenues.....	0	292	210	223	235	250
Estimated costs:						
Transferred to Department of Agriculture (sec. 304).....	0	0	100	45	47	50
Reserved for State of origin (sec. 301).....	0	0	0	50	106	113
Acquisition and reclamation (sec. 305).....	0	0	53	57	60	63
Administration and collection.....	1	3	3	4	4	4
Estimated net costs.....	1	-289	-54	-67	-18	-20

Title V—Administrative and Miscellaneous Provisions:

Section 505, Grants-to-the-States.—This section allows the Secretary to make annual grants to the states for the purpose of assisting them in developing, administering and enforcing state programs. No funds are explicitly authorized in the bill for this section. However, it is estimated that \$20–30 million per year would be required for this purpose.

Section 509, Study of Reclamation Mining.—This section would transfer \$500,000 to the Chairman of the Council on Environmental Quality to contract with the National Academy of Sciences, and other agencies or groups where appropriate, for a study of current and developing mining and reclamation technology. Costs were estimated by using historical disbursement rates for similar studies.

Section 511a.—This section authorizes to be appropriated contract funds needed for the initial regulatory procedures, the federal lands program, certain technical assistance, and an Indian lands study. The authorization level is that stated in the bill; and outlays were projected using historical disbursement rates for similar programs of the Department of the Interior.

Section 511b.—This section authorizes to be appropriated funds for administrative and other purposes. These funds are assumed to be used primarily for expenses of the Office of Surface Mining and Enforcement. None of these funds are expected to be available for Section 505 grants-to-the-states. Although no funds are authorized to be appropriated in FY 1977, it is estimated that \$1 million will be needed to hire the necessary personnel. The authorization level is that stated in the bill, and outlays were projected using historical disbursement rates for similar programs.

[In millions of dollars; fiscal years]

	1977	1978	1979	1980	1981	1982
TITLE V						
Authorization level.....	10.5	20.0	30.0	20.0	30.0	30.0
Estimated costs:						
Study of reclamation mining (sec. 509).....	.1	.2	.2	0	0	0
Initial regulatory procedures, Federal lands program, technical assistance Indian land study (sec. 511a).....	.2	3.3	10.0	9.7	6.8	0
Administrative (sec. 511b).....	1.0	9.0	19.0	20.0	29.0	30.0
Estimated costs.....	1.3	12.5	29.2	29.7	35.8	30.0

Revenue Loss.—The reclamation fees, \$.35/ton of surface mined coal and \$.15/ton of underground mined coal, together with an estimated \$.85/ton of surface mined coal for compliance with mandated reclamation standards, could affect federal revenues. The increased cost per ton of coal could cause the mining companies which lease federal lands to reduce bonus bid payments to the Department of the Interior. The magnitude and timing of such revenue loss would be determined by such speculative factors as the number of leases negotiated per year, the size of tracts used, the depth of seams, and mining company cash flow statistics. However, estimating trends in bonus bid payments is difficult since no lands have been leased since 1971, and the Bureau of Land Management has not yet determined when new coal lease bids will be accepted. If few new tracts are leased, the revenue loss would be expected to be small. For example, if the 1968-71 bonus payment trend is projected and the reclamation fees are assumed to reduce payments to the government by 5 percent of bonus payments, the total loss of revenue would be less than \$300,000 in fiscal year 1978, increasing to less than \$400,000 in fiscal year 1982. If, however, the level of bonus payments increases substantially as new bidding procedures are adopted, the revenue loss under the same assumption could rise significantly.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 20, 1976, CBO prepared a cost estimate for H.R. 2, a similar bill reported by the House Committee on Interior and Insular Affairs.

9. Estimate prepared by: Leslie Wilson (225-7760).

10. Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

B. STUDIES

For a study of reclamation standards for surface mining of minerals other than coal, the sum of \$500,000 is authorized to be spent over a period of 18 months after enactment of this Act;

IX. REGULATORY IMPACT EVALUATION

In compliance with the Standing Rules of the Senate as amended by S. Res. 4 to require that all Committee reports contain an "evaluation of the regulatory impact which would be incurred in carrying out the bill or joint resolution," the following statement is made:

With the exception of two coal-producing States, Arizona and Alaska, all surface mining of coal and underground coal mining are regulated under State permits or under leases and permits issued by the Secretary of the Interior for Federal coal lands and Indian lands. The amount of coal being mined in Arizona and Alaska is not significant in the overall national coal production picture (7.6 and 0.7 million tons respectively in 1976, out of a total 671 million tons). S. 7 will involve some increase in State regulatory activity depending upon the stringency of existing State laws and regulations. The initial implementation period of up to 48 months in the bill will allow a more or less gradual adaptation to the requirements of S. 7 for States with regulatory programs in place. The Secretary will provide financial

and technical assistance to ensure the orderly development of approved State regulatory programs and to facilitate the enforcement of interim performance standards. Due to the wide range of regulatory capability of the States, a detailed evaluation of the regulatory impact of S. 7 is not practicable.

X. EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the committee from the Executive Office of the President, the Office of Management and Budget, the Department of the Interior and the Department of Justice setting forth Executive agency recommendations relating to S. 7 are set forth below:

THE WHITE HOUSE,
Washington, February 15, 1977.

HON. HENRY M. JACKSON,
*Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: From the perspective of energy policy, I should like to express the position of the Administration regarding the strip mining legislation before you. We urge expeditious passage of the legislation which your Committee has so effectively developed.

This nation cannot expect to increase its reliance on coal unless the mining and burning can be done in a healthful and environmentally sound manner. The passage of clear and effective strip mining legislation is therefore a prerequisite to greater use of coal as part of a sound energy policy.

Negative arguments have characterized the strip mining debate for too long. Adequate safeguards of the land are not in conflict with a policy of expanded coal production. The nation's coal resource is quite large and the portion of that resource made unavailable by this legislation is extremely small—less than 1 percent of the resource base and no more than 5 percent of total reserves. The modest costs of reclamation should not noticeably inflate fuel prices. It is money well spent in terms of benefits to the nation. And, with expanded deep mining and more intensive reclamation efforts, more, not fewer, jobs will result.

Years of controversy over this legislation have increased the uncertainties facing the coal industry and the prospects for relying on more coal in this country. One particular reason I am eager to see the bill pass is finally to create a sense of certainty about the rules by which coal strip mining can take place.

Fortunately, the great abundance of coal in this country allows us to declare certain areas off limits to strip mining because of their greater value for competing purposes. Protection of alluvial valley floors in the West, and prime agricultural land should be considered on the basis of the most valuable use of those lands to the nation. It is wise planning to utilize land that is more productive for agriculture for that purpose.

In conclusion, let me emphasize that the energy agencies and the Department of the Interior and the Environmental Protection Agency see eye-to-eye on this legislation. Last year's arguments about this bill

need not be reargued. I support your efforts to pass an effective bill, so that we can get about the business of developing a rational coal policy based on safeguarding the land from the abuses of strip mining.

Sincerely,

JAMES R. SCHLESINGER,
Assistant to the President.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 4, 1977.

HON. HENRY M. JACKSON,
*Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department concerning S. 7, the "Surface Mining Control and Reclamation Act of 1977".

We strongly support enactment of such legislation. A new law to control surface mining of coal and provide for reclamation of mined lands is badly needed and the legislation your Committee has before it is well conceived to meet that need. Its expeditious passage is a high priority of President Carter.

S. 7 would provide for a cooperative surface coal mining regulatory program with responsibility for implementation being shared between the States and the Secretary of the Interior. Strong reclamation performance standards and permit requirements would assure that both State and Federal mined land would be fully reclaimed and that the environment would be protected. On the other hand, under mechanisms provided by the bill, the production of needed coal could continue under national standards in a reasonable manner. Public participation in decisions about surface coal mining would be provided for. Full development of needed information would be required or encouraged to serve as a basis for effective and reasonable regulation of surface mining operations. Through S. 7's bonding and enforcement provisions, actual compliance with the standards and requirements would be assured.

In addition to the reclamation regulatory program, the bill provides for reclamation of lands already damaged by past mining. Financed in S. 7 through a fee levied against Federal coal, the bill provides both for reclamation of rural lands through the Department of Agriculture and for acquisition and reclamation of abandoned and unreclaimed mined lands and for alleviation of problems related to mining.

The effects of inadequately controlled surface coal mining are well known. Among them are destruction or diminution of the utility of land, erosion and land slide, flooding, water pollution, destruction of fish and wildlife habitat, loss of natural beauty, property damage, health and safety hazards, and adverse social impacts.

Increasingly in the future, the Nation's energy needs will depend on coal mining. Current trends indicate that more and more of this mining will be by surface methods. Federal and other western lands will be called on to supply surface-mined coal, in many instances for the first time. Against this background, the need for legislation such as S. 7 is urgent.

In developing and carrying out an effective and efficient surface coal mining control and reclamation law, the Department will work closely with the Congress. President Carter has indicated that he would have signed the surface mining legislation passed by the last Congress, but vetoed. The President is prepared to approve similar legislation and has directed us to work with Congress in resolving remaining major issues and developing whatever changes in introduced bills may appear advisable to improve them.

Protection of surface owners of land where the Federal Government owns and proposes to lease coal was a particularly difficult issue for the last Congress. Section 423(e) of S. 7 changes the surface owner consent provision finally developed and included in the vetoed bill. That provision afforded a right to consent to specified individuals and limited the amount that could be obtained by such an individual if he does consent. The amount specified had three components to be determined by appointed appraisers: (1) the fair market value of "the surface estate," (2) certain specified losses and damages, and (3) an additional reasonable amount limited to the lesser of the item (2) losses or \$100 per acre. If this provision were adopted, the language of item (1) should be clarified so that it would apply to the fair market value of the "surface estate based on its use for agricultural purposes and exclusive of the value of minerals or the right to consent under this section." Clarified in this way, that type of provision is preferable to Section 423(e) of S. 7 which prohibits surface mining of Federal coal where the surface is owned by a non-Federal party.

The bill will place on small mine operators a heavy administrative and operating burden. Several changes may be desirable to limit this burden, including:

- directing the regulatory authority to undertake the development of some of the information required to obtain a mining permit

- financing this work in part from the reclamation fee collected pursuant to section 301(b)(3)

- permitting reduced application fees

- omission of certain permit application data as determined by the regulatory authority and in some instances requiring less data

- modifying the bond release administrative provisions by limiting the scope of the notice to be given and providing an informal procedure for release.

Departmental staff can work with your Committee in providing specific amendments to accomplish these changes.

A related matter concerns the schedule provided by the bill for implementation of the program. We recommend application of performance standards to new mines beginning six months after enactment and to existing mines beginning after one year. In addition, it appears desirable to have applications for permanent permits made only after a State or Federal program is approved. The regulatory authority's determination whether to issue a permit could not be delayed longer than six months after application is made (or a specified time after enactment of the bill). Tying the permanent permit application pro-

cedure to approval of a State or Federal program in this fashion is administratively preferable to provisions of S. 7 which require permit applications twenty months after enactment, whether or not a program has been approved.

A related matter concerns the requirement of Federal inspections of non-Federal mines beginning 135 days after enactment. While we recognize the desirability of Federal "back-up" enforcement of reclamation requirements principally intended to be a State responsibility, we are concerned that State incentives to carry out that responsibility not be weakened. A full program of regular Federal inspections might weaken those incentives and encourage States to withdraw from the regulatory program. To reduce this possibility, we suggest that Federal "back-up" inspections be provided only where there is an indication of specific need—that is, when the Secretary receives information giving reason to believe that there are violations of the Act's requirements.

With respect to the abandoned land reclamation program set forth in Title III, we recommend that the fees assessed against currently mined coal be made applicable to all coal—not merely coal derived from Federal land and should be in addition to royalties now received from Federal land. In addition, the Administration would like to work further with the Congress to determine whether the provisions of section 305 relating to secondary impacts of mining are best suited to meeting problems posed by abandoned mine lands. It is important that resources of the abandoned land reclamation program be directed to matters of highest priority and that past environmental damage be remedied effectively and expeditiously. To this end, consideration of the requirement that fifty percent of the fees collected for the fund be initially allocated to the State from which they are derived may warrant modification to allow more flexibility in directing resources to areas of greatest need.

An important purpose of this legislation is to protect fish, wildlife and other ecological values. In developing and implementing this program we intend to assure that these values are appropriately recognized.

Section 410(b)(5) recognizes the need for special protection of alluvial valley floors. These areas are essential to the agricultural base of the Nation and the economic life of many parts of the West. We support this protection. Some modification appears desirable, however, to clarify the provision and to provide for the continued operation of mines currently producing coal. To accomplish this we recommend amending section 410(b)(5) to read:

(5) the proposed surface coal mining operations, if located west of the one hundredth meridian west longitude would—

(A) not interrupt, discontinue, or prevent farming on alluvial valley floors that are irrigated or naturally sub-irrigated but, excluding undeveloped rangelands which are not significant to farming on said alluvial valley floors and those lands that the regulatory authority finds that if the farming that will be interrupted, discontinued, or prevented is of such small acreage as to be of

negligible impact on the farm's agricultural production,
or,

(B) not adversely affect the quantity or quality of water in surface or underground water systems that supply these valley floors in (A) of subsection (b) (5) :

Provided, this paragraph (5) shall not affect those surface coal mining operations which in the year preceeding the enactment of this Act (1) produced coal in commercial quantities, and (2) were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors.

We believe that administration of provisions of S. 7 relating to judicial matters may also be improved. With respect to citizen suits seeking to compel the Secretary or a regulatory authority to perform any act or duty under the Act which is not discretionary, it may be appropriate to specify that the citizen suit provision shall constitute the exclusive remedy to assure that the Secretary or regulatory authority will receive sixty days notice except for situations involving an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff. This will allow the Secretary opportunity to remedy any failure that may in fact exist without the necessity for suit. In addition, a provision of the Clean Air Act similar to section 426(a) (1) of S. 7 has been the subject of much needless litigation concerning the specification of "the appropriate" United States Court of Appeals. We recommend that this be clarified by providing that review of actions relating to State programs for a State shall be by the Court of Appeals for the Circuit in which the State is located. Review of orders or decisions of national scope under section 426(a) (2) should be in the U.S. Court of Appeals for the District of Columbia.

Finally, we endorse the provision of section 423(d) which contemplates the application of State programs to Federal lands. This should, however, be carried out by agreement between the States and the Secretary of the Interior rather than at the sole election of a state. To this end, several changes appear desirable. It should be clarified that States with cooperative agreements will be permitted to retain their regulatory function, with appropriate modification, prior to the approval of a State program, that the Department retain its statutory duty to receive and approve mining plans, and that the designation of lands unsuitable for mining will continue to be an Interior responsibility. It should also be specified that the election of the State will be subject to the Department's review and approval as are other aspects of the State program.

This Administration is firmly committed to the prompt enactment of good surface mining control and reclamation legislation. To accomplish this we are prepared to work closely with the Congress, both with respect to the modifications outlined above and to other improvements that may appear advisable as the Congress acts on the measure. More importantly we will continue that close relationship

in implementing an effective program. The harm left in the wake of past surface mining must be ended promptly. Enactment of legislation such as S. 7 in the near future is a high priority both of President Carter's energy policy and his environmental policy.

The Office of Management and Budget has advised that enactment of legislation conforming to the views set forth above would be in accord with the program of the President and it has no objection to the presentation of this report.

Sincerely,

CECIL D. ANDRUS,
Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY.
Washington, D.C., April 1, 1977.

HON. HENRY M. JACKSON,
*Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter supplements the Administration's views set forth in our letter of February 4, 1977, on S. 7, the "Surface Mining Control and Reclamation Act of 1977."

We strongly support your efforts to provide sound strip mine legislation. S. 7 provides a framework for administering a comprehensive, workable, surface mining and reclamation program. We would like to present our views and to offer some amendments in addition to those previously sent which we believe will strengthen the bill.

TITLE II—OFFICE OF SURFACE MINING AND RECLAMATION

This Administration strongly supports the creation of an independent Office within the Department of the Interior. In anticipation of passage of the strip mine bill, the Department has begun to work toward smooth implementation of the bill's provisions and to establish the new Office. To allow for the best overall management arrangements, however, we recommend that the statute not require the Office to report directly to the Secretary and that it be clearly authorized to use the personnel of other agencies to carry out the program.

TITLE III—ABANDONED MINE RECLAMATION

We suggest provisions to establish State managed abandoned land programs. We recommend that until a State's full regulatory program is approved, allocation of its 50 percent share of funds not be made and that there be no funding of any State abandoned land program. Until such approval is given, the Secretary should also have authority to withhold expenditures for the Federal abandoned land program for a state under section 305. This would encourage the States to obtain approval for a strong State regulatory program rather than allowing a Federal program to be established for that State. The Secretary should not be prevented, however, from expending unearmarked funds within a State where there was not an approved regulatory program; thus in cases where reclamation work would be urgently needed it could be accomplished.

In order to assure that reclamation is accomplished on abandoned lands as quickly as possible, section 305 should be changed to insure that the first two objectives of the fund specified in section 302, the protection of public health and safety and the prevention of continued environmental harm, be accomplished before money could be spent on public facilities, except for emergency situations.

The program under section 304, Reclamation of Rural Lands, should be preserved. This program will benefit many communities by assuring that the expertise of the Department of Agriculture in reclaiming disturbed lands is put to good use.

Allocating the reclamation fee money in slightly different proportions would provide increased money for areas where there are the most severely disturbed lands. We recommend providing financial assistance for obtaining hydrological data for permit applications of mines producing under 100,000 tons per year, but doing so on a cost-sharing basis with the operator providing 25 percent of the amount necessary for data and analysis. The reclamation fee money would provide the other 75 percent. Additionally we recommend adding a provision for cost recovery in cases where a permit application is not made after the hydrological data financed from the Fund have been collected and analyzed.

We also are of the view that the 50 percent share reserved for expenditure in the State or Indian lands where collected should be determined after 10 percent is allocated for hydrological studies and 20 percent for the Rural Lands Program. This would provide further funds for States having the largest amount of abandoned coal mined lands. Funds reserved to the State or Indian land where collected should be available also for non-coal mine reclamation.

TITLE IV—CONTROL OF THE ENVIRONMENTAL IMPACTS OF COAL SURFACE MINING

We support a timetable for implementing the performance standards which provides that Interior regulations are to be issued three months after enactment; new mines must comply six months after enactment and existing mines must comply nine months after enactment. The permanent regulatory program regulations must be promulgated within a year after enactment. This timetable is contingent, however, upon express provision that no environmental impact statement be required for the Interim program regulations. For consistency, the Federal and Indian lands program should also be slated for implementation one year after enactment.

Although the Department does not foresee having to intervene in State regulatory programs often, the bill currently provides no method of intervention in cases where the State program may be faltering in only one or two areas short of State program revocation. In these instances the Department needs the authority to review selected permits. We recommend adding a provision which would permit limited intervention without withdrawing approval of a State regulatory program.

Large mining operations often need several years to get mining equipment and other ancillary requirements in place. The regulatory authority needs to evaluate the proposed mining operation before site

development begins, but at the same time must be in a position to give the mine operator a permit for a time period adequate for developing a site and obtaining financing. We recommend that the time of the first permit be not more than five years after the first removal of overburden and that removal of overburden must begin within six years after issuance of the permit. If, however, overburden removal does not begin within three years after issuance, one year prior to scheduled overburden removal the regulatory authority should be required to obtain such information as is necessary to determine whether modifications of the permit pursuant to section 411(c) or otherwise are needed.

The Administration supports strong protection for surface owners; surface owner consent should be required for the entire area covered by a permit application. For Federal lands this consent should be written, given before leasing, and available only to the limited class of persons specified in H.R. 25 in the 94th Congress. We also recommended that with regard to the compensation formula provided herein, that fair market value be defined to exclude the value of the coal resource, as mentioned in our earlier report.

Alluvial valley floors will require strong protection if these important areas are to maintain their hydrological integrity and usefulness for farming and range use. In view of this, we believe our proposed section 410(b) (5) should be revised so as not to exempt undeveloped range lands or small areas where mining would have a negligible impact on agricultural or livestock production. Because information about effects of mining in alluvial valley floors is relatively embryonic and the administrative determination of where these exemptions would apply may be particularly difficult, it appears preferable to clearly exclude mining from the alluvial valley floor without land use exception. The Administration supports "grandfathering" only those mines which are located in alluvial valley floors and in commercial production, as specified in our February 4, 1977, letter.

Section 422 relating to the designation of areas unsuitable for surface coal mining, contains a grandfather exemption to be granted for those operations which have "substantial legal and financial commitments." We believe the term should be further defined or eliminated from the statute. The grandfather clause as written could undermine the integrity of the designation process and be subject to abuse.

We continue to support the bill's designation of national forests as unsuitable for mining. We would also favor authorizing the Secretary to designate critical areas adjacent to the mandatory designation areas under section 422 in order to protect the integrity of these areas. In the case of Federal lands in critical adjacent areas, designation as unsuitable would be mandatory. In the case of private or State lands in the critical areas, the Federal government would petition the State to designate these areas as unsuitable for strip mining, and further, there would be required consultation between the State and the Secretary for any permit within the critical adjacent area.

Prime agricultural lands have recently become the subject of considerable attention. The loss of such agricultural areas as a source of future food production is of as much concern as the possible loss of coal production resulting from prohibiting mining of these lands. We therefore favor an amendment to require restoration of soil produc-

tivity for prime agricultural lands. In addition, we recommend a five year moratorium on surface mining in prime farmlands in order to provide an opportunity to determine the ability to restore the productivity of these valuable lands. An appropriate grandfather exception would also be provided. An amendment for prime agricultural lands protection will be furnished shortly.

Several concerns for essential features of the performance standards set forth in section 415 of the bill deserve emphasis.

We strongly support the principle of return to approximate original contour. We believe this concept as defined in section 501(23) properly embraces use of terracing as an appropriate reclamation technique, whether or not expressly referred to. Such terracing must, however, be for drainage purposes only and designed for the best overall environmental results. Highwalls cannot be permitted under any circumstances.

With respect to siltation structures, we are concerned that maintenance responsibility continue as long as such structures present the possibility of harm. We therefore support an amendment strengthening section 415(b)(10)(C).

We would oppose deleting safety protections provided by the bill. Blasting limitations are particularly important but further information is needed to ascertain whether additional measures beyond those provided in section 415(b)(15) are needed. We believe a study of blasting requirements should be undertaken.

S. 7 allows a variance from specified performance standards for mountaintop mining where certain post-mining land uses will obtain. The most critical feature of mountaintop mining relates to spoil placement. Mountaintop mining which retains spoil on top of the mountain does not require special treatment. Serious problems are presented, however, by operations using head-of-the-hollow or valley fill. For such operations, it is uncertain whether spoil can be placed in an environmentally sound manner. Some evidence exists that technology in which spoil is placed in lifts to create a series of stair stepbenches and french rock drains are used may provide satisfactory protection. In any event, we believe that placement of spoil on the downslope should be limited to the minimum and that strong spoil placement standards are needed to insure that there will be no offsite damages.

We support provisions to strengthen the administrative, judicial, and enforcement provisions of the bill. Among these are provisions relating to citizen suits and we support elimination of the amount-in-controversy and diversity of citizenship requirements of these provisions. We also believe that attorney's fees should be awarded in the discretion of the court against any party. For administrative proceedings, discretionary award of attorneys' fees is appropriate against a losing party (not the United States). In addition, for the permanent enforcement program, we favor a requirement of monthly partial inspections and full inspections once each quarter. We will further review the need for further improvement and updating of the administrative, judicial and enforcement provisions.

Enactment of this legislation will correct a major deficiency in our overall policy of environmental protection. Benefits will directly follow its enactment for protection and enhancement of water quality, fish and wildlife values and for improved land use, among others.

We attach suggested amendments to deal with the problems outlined and certain other matters, including those contained in our February 4, 1977, letter to the Committee on S. 7.

Early passage of strong surface mining legislation remains among the highest priorities of this Administration. We will be prepared to work with the Committee to achieve this goal.

The Office of Management and Budget has advised that enactment of legislation conforming to the views set forth above would be in accord with the program of the President and it has no objection to the presentation of this report.

Sincerely,

CECIL D. ANDRUS,
Secretary.

Enclosure.*

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 22, 1977.

HON. HENRY M. JACKSON,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: In my April 1, 1977, letter to you concerning S. 7, the "Surface Mining Reclamation and Enforcement Act of 1977," I stated that I would forward a proposed amendment to the bill to carry out our recommendation for the imposition of a five-year moratorium on surface mining of prime agricultural lands, subject to certain "grandfather" exceptions.

Enclosed is that amendment. It would preclude issuance or renewal of any surface mining permit for a five-year period after enactment of the bill unless the applicant demonstrates that prime agricultural farmland comprises not more than ten percent of the surface area to be disturbed. The moratorium would not apply to permits issued prior to April 1, 1977, or to revisions or renewals thereof, including those authorizing contiguous expansions. In addition, the appropriate surface mining regulatory authority could grant an exception to the moratorium where the operator demonstrates that he can restore the land affected to a condition at least fully capable of supporting the uses which it was capable of supporting prior to mining. To accomplish one of the moratorium's main purposes—development of more adequate information about the restorability of prime agricultural land—the amendment would also direct the Secretary of Agriculture to investigate and make recommendations within four years after enactment concerning whether, and with what reclamation procedures, prime farmlands should be made available for surface mining.

It has become increasingly clear that we lack information about how successfully strip mined lands can be reclaimed. This problem is particularly acute with respect to the rich prime farmlands of the Nation. As these lands are more and more subjected to coal development, it becomes essential to assure that they can be fully reclaimed and their long-term productive capability will not be lost.

This Nation has abundant coal resources and we can afford to be selective in deciding how they are used. Time and study are needed to

*Enclosure has been retained in the committee files.

find out whether and how strip mining of prime farmland should be permitted. I therefore strongly urge Congress to incorporate as a feature of the Surface Mining Reclamation and Control Act of 1977 a five-year prime farmland moratorium as set out in the enclosed proposed amendment.

The Office of Management and Budget has advised that enactment of legislation conforming to the views set forth above would be in accord with the program of the President and it has no objection to the presentation of this report.

Sincerely,

CECIL D. ANDRUS,
Secretary.

Enclosure.

PROPOSED ADMINISTRATION AMENDMENT ESTABLISHING A 5-YEAR
MORATORIUM ON STRIP MINING ON PRIME FARMLANDS

SECTION 410

(d) (1) For five years following the date of enactment, no application for a permit or revision thereof shall be approved unless the applicant demonstrates that prime farmland does not comprise more than 10% of the surface area to be disturbed pursuant to an applicant's mining plan. Such demonstration shall be based upon soils maps and data verified for accuracy by the Secretary of Agriculture; provided that nothing in this subparagraph shall apply to any permit issued prior to April 1, 1977, or to any revisions or renewals thereof including those authorizing contiguous expansion of such permitted areas.

(d) (2) The regulatory authority may, after consultation with the Secretary of Agriculture, and pursuant to regulations issued hereunder by the Secretary of the Interior with the concurrence of the Secretary of Agriculture, grant a variance from subparagraph (d) (1) if the operator demonstrates and the regulatory authority finds on the basis of data relating to prime farmlands comparable to those covered by the permit application that the operator can restore the land affected to a condition at least fully capable of supporting the uses which it was capable of supporting prior to any mining.

(d) (3) Within 60 days of the date of enactment, the Secretary of Agriculture shall publish a definition of "prime farmland" and a notification of methods for the determination thereof.

(d) (4) Within four years of the date of enactment, the Secretary of Agriculture shall conduct such research, experimentation and studies as are necessary to determine whether, and with what reclamation procedures, prime farmlands should be made available for surface mining operations and based thereon make appropriate recommendations to the President.

DEPARTMENT OF JUSTICE,
Washington, D.C., February 10, 1977.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: The Department of Justice desires to take this opportunity to express its views on H.R. 2 and S. 7, bills to provide for the cooperation between the Secretary of the Interior and the

States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

The proposed bills would authorize the Secretary of the Interior to regulate all phases of surface mining and reclamation including inter alia, site clearing and preparation, blasting, erosion control, maintenance of water and air quality, backfilling and grading, and site closing.

In order to improve the regulatory program which would be authorized by these bills, it may be useful to harmonize the requirements of the instant bills with other statutory authority which affects surface mining operations. One area where there would be substantial overlapping of authority is the regulation of water pollution. Under the Federal Water Pollution Control Act Amendments of 1972, discharges from point sources, which includes discernible pipes, ditches, and channels, are to be abated by application of best practicable control technology currently available by July 1, 1977, and by application of best available technology economically achievable by July 1, 1983. More stringent limitations may be imposed to meet water quality standards. The Federal Water Pollution Control Act also directs the Administrator to study non-point sources of pollution including surface mining operations, and to inform the States and Federal agencies of processes and procedures for controlling same. Section 304(e), 33 U.S.C. sec. 314(e). Also, the Administrator has promulgated effluent limitations guidelines for the Coal Mining Point Source Category. 41 Fed. Reg. 19831-40 (May 13, 1976). An additional provision in the Federal Water Pollution Control Act which may affect surface mining operations is Section 404, 33 U.S.C. 1344(a), which authorizes the Secretary of the Army to issue permits for the discharge of dredged or fill material into the navigable waters of the United States. The term "navigable waters" is broadly defined in regulations promulgated by the Secretary. 40 Fed. Reg. 31320 et seq. (July 25, 1975).

One means of harmonizing these bills with the aforementioned statutory authority would be to add a provision that compliance with a permit issued pursuant to a State or Federal program under the surface mining law shall be deemed compliance with the Federal Water Pollution Control Act. Alternatively, the bills could be amended to require the Secretary of the Interior to include in surface mining permits conditions required by the Administrator of the Environmental Protection Agency and Secretary of the Army acting pursuant to their regulatory authority. See 16 U.S.C. Section 804.

We suggest that the bills make clear that the powers to be exercised by the Secretary or State Authority in diverting streams, to the extent that they may be applied to physical changes in the courses of navigable waters, are to be subject to the approval of the Secretary of the Army, acting through the Chief of Engineers, in conformity with the provisions of Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

Additionally, consideration should be given to excluding from the requirements of NEPA certain of the environmental protective provisions of the bills, such as, for example, the promulgation of environ-

mental protection standards pursuant to section 501 of H.R. 2 or the issuance of permits for new or existing operations pursuant to a Federal program. Precedent for such an exclusion is provided by section 511 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1371(c) (1).

Moreover, the citizen suit and judicial review provisions should be modified in certain respects. Section 520(e) of H.R. 2 and Section 420 (e) of S. 7, the so-called citizen suit provision, should be changed to read as follows:

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under this or any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief, except that this section shall be the sole basis of jurisdiction for suits under subsection (a) (2) of this section and failure to comply with the notice requirement of subsection (b) (2) shall require dismissal of the action.

This change is in accordance with the recommendation of the Administrative Conference of the United States for amendments to the Clean Air Act and the Federal Water Pollution Control Act, both of which contain citizen suit provisions. 41 Fed. Reg. 56767 (December 30, 1976). The effect of the proposed modification would be to make the above-mentioned sections the exclusive jurisdictional base for suits seeking to compel the Secretary to perform mandatory duties.

The first sentences of Section 526(a) (1) of H.R. 2 and Section 426 (a) (1) of S. 7, both of which deal with judicial review of agency action, should be changed to read as follows:

Any action of the Secretary to approve or disapprove a State program or to prepare or promulgate a Federal program pursuant to this Act shall be subject to judicial review only by the United States Court of Appeals for the circuit which contains the state whose program is at issue; any action by the Secretary promulgating standards pursuant to Sections 501, 515(e), 516 and 523 [401, 415(e), 416 and 423 in S. 7] shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia. A petition for review of such action shall be filed in the appropriate court of appeals within sixty days from the date of such action, or after such date if the petition is based solely on grounds arising after the 60th day. Any such application may be made by any person who participated in the administrative proceedings and who is aggrieved by the action of the Secretary.

These changes are again in accordance with the recommendations of the Administrative Conference, *supra*, and will resolve confusion over which circuit court is "appropriate," as well as provide for judicial review of standards of national applicability in the Court of Appeals for the District of Columbia Circuit only.

The Department further recommends that the technical changes on the attached errata sheet be made.

Whether this legislation should be enacted involves policy considerations as to which the Department of Justice defers to the Secretary of the Interior.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

HUGH M. DURHAM,
Legislative Counsel.

XI. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF SENATOR CLIFFORD P. HANSEN

This bill follows along the path typical of legislation passed by the Congress in recent years removing from the jurisdiction of the states governmental functions that can be at best exercised on a local level. Particularly in the area of land use regulation, local control is essential. We live in very diverse lands, from deserts to mountains, from plains to prairies. Each of these diverse localities requires land use regulation on an individual case by case basis. Yet this bill proposes one set of environmental standards that are theoretically to govern the entire nation.

Land use controls are political decisions that should be kept as close or as near to the people as possible. Reclamation standards and reclamation decisions should be set at the local level, not the federal level. This bill prevents the states who much more clearly respect the views of the people from exercising this discretion.

Proponents of this bill will point out the sections of this bill that allow state control. These sections are ineffective if state control is their purpose. State administration of this Act will require state enforcement of federally mandated standards under cumbersome federally mandated procedures. Nowhere does this bill provide a mechanism for the local governments to make any policy decisions. The preservation of the state programs negotiated individually with the Department of Interior is the only bright spot for state control under this bill.

While I endorse the concept of S. 7 and do believe that a federal reclamation law is necessary, I feel that the state control provisions in this Act are not adequate, and I will support an amendment to return that control to the local level.

The defects in this bill are readily apparent. I endorse many of the concepts espoused in the Minority Views of my colleagues. However, we are often faced with bills with which we do not entirely agree. On balance, this is as good a bill as we can expect to pass this session, and I will support its passage.

CLIFFORD P. HANSEN.

XII. MINORITY VIEWS

MINORITY VIEWS OF SENATOR J. BENNETT JOHNSTON

The source of much of my opposition to S. 7, as reported by the Committee, is the inclusion in Section 515 of the so-called "surface owner consent" provision.

The situation addressed by the "surface owner consent" provision concerns those lands where private persons own the surface, but the federal government owns the coal deposits which underlie the surface. The situation occurs for many reasons, but usually because the surface was originally conveyed from the government to homesteaders. No one argues that the conveyances from the government clearly stated that the federal government retained ownership of the coal. Nevertheless, the Committee has adopted a provision which prohibits the mining of the federally-owned coal unless the surface owner has first given his consent to the mining operations.

The surface owner consent provision cannot be justified. The provision will allow some land owners to block forever the production of the government's coal. Other land owners will, in effect, be permitted to sell the government's coal, thus reaping enormous windfall profits. Much of this land is worth only about \$100 per acre. However, Mr. Henry A. Burgess, an attorney in Sheridan, Wyoming, recently estimated the money a surface owner could receive on a 30 foot vein of coal underlying his land as follows:

If the coal is owned by the landowner and he is paid the current royalty rate of fifty cents per ton, his royalties would amount to \$25,000 an acre. On 640 acres, a section, royalties would be \$16,320 per acre. If the coal company will pay a surface owner royalty at the rate of five cents a ton *on the coal leased by the coal miner from the United States*, the landowner would receive \$2,500 an acre or \$1,632,000 a section (p. 461 of the proceedings of the Twenty-second Annual Rocky Mountain Mineral Law Institute; paper entitled "Representing the Landowner in a Mineral or Surface Lease or Sales Transactions"). [Emphasis added.]

It should be noted, as a matter of equity, that the surface owner consent provision confers on certain surface owners a right which is not extended to owners whose land overlies privately owned coal.

I am not totally unsympathetic to the situation of the surface owner, however. In Committee, I offered an amendment which would treat him generously. Under my proposal he would receive the full fair market value of his land, the net income he would lose due to the mining operation, his costs of relocation, and any other damage he would sustain due to the mining and reclamation operations. In addition, the surface owners would retain ownership of the surface which,

under the reclamation regulations provided in this Act, should be quite usable following the mining operation. My amendment, which I intend to offer on the floor of the Senate, is printed in the Report following my comments.

SURFACE OWNER COMPENSATION AMENDMENT

Substitute the following for Section 515:

Section 515. (a) The provisions and procedures specified in this section shall apply where coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques.

(b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Leasing Act of 1920 (30 U.S.C. 201a), except that no award shall be made by any method other than competitive bidding.

(c) Prior to placing any deposit subject to this section in a leasing tract, the Secretary shall give to any surface owner whose land is to be included in the proposed leasing tract actual written notice of his intention to place such deposits under such land in a leasing tract.

(d) The Secretary shall not approve any mining plan pursuant to this Act until the appraised value of the surface owner's interest has been tendered in accordance with the provisions of subsection (e). Upon such tender and upon approval of the mining plan, the lessee may enter and commence mining operations whether or not the determination of value of the surface owner's interest is subject to judicial review as provided in this section.

(e) Tender of the appraised value of the surface owner's interest shall occur when:

(1) The lessee and the surface owner agree on an amount and method of compensation for the surface owner's interest, whether or not the amount of compensation is fixed in accordance with the provisions of subsection (f), and the surface owner has given the Secretary written consent for the lessee to enter and commence surface mining operations; or

(2) The lessee has deposited the appraised value of the surface owner's interest in the United States district court for the locality in which the leasing tract is located. At any time after the appraised value of the surface owner's interest is deposited in the court and upon execution by the surface owner and the lessee of a final settlement of their rights under this section, the surface owner shall be entitled to withdraw from the registry of the court the full amount of the deposit.

(f) For purposes of this section, the term "appraised value of the surface owner's interest" means the value of the surface owner's interest fixed by the Secretary based on appraisals made by three appraisers. One such appraiser shall

be appointed by the Secretary, one appointed by the surface owner concerned, and one appointed jointly by the appraiser named by the Secretary and such surface owner. In computing the value of the surface owner's interest, the appraisers shall fix and determine:

(1) the fair market value of the surface estate subject to the lease without reference to or consideration of the value of the coal under the said surface estate;

(2) the net income the surface owner can be expected to lose as a result of the surface mining operation during the two years immediately following approval of the mining plan;

(3) the cost to the surface owner for relocation or dislocation during the mining and reclamation process; and

(4) any other damage to the surface caused or reasonably anticipated to be caused by the surface mining and reclamation operations.

(g) For the purpose of this section the term "surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who:

(1) hold legal or equitable title to the land surface; and

(2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations.

(h) The United States district court for the locality in which the leasing tract is located shall have exclusive jurisdiction to review the determination of the value of the surface owner's interest made pursuant to this section.

(i) This section shall not apply to Indian lands."

J. BENNETT JOHNSTON.

MINORITY VIEWS OF SENATORS BARTLETT, DOMENICI, AND
LAXALT

For more than five years now, arguments have echoed through the halls of Congress debating the pros and cons of surface mining for coal. The environmental thrust of the late 1960's and early 1970's, which made all of us feel ashamed for the rape and pillage of our lands from time immemorial, is just now catching up to coal strip mining. The fervor and intensity of the emotional environmental arguments have now captured and will retard surface mining for coal as retribution for many of the environmental crimes committed since the early 1900's. If all the problems of the real world could be ignored—such as the fact that we are in a life and death struggle to bail ourselves out of our national energy crisis—we might be persuaded to allow the economic cost of prohibiting surface mining. However, in this day, in this era, in this crisis, we cannot afford to be blind to the stark realities of the potentially disastrous energy shortages which we face. For these reasons, we must look at S. 7 as it is reported by the Committee and measure its purported goals against the regulatory barriers which the bill erects.

President Carter, like President Ford before him, has identified coal as a vital element in our energy policy. Both of these Presidents recognized that while coal accounts for only 19% of our present energy needs, it represents 90% of our total energy reserves. The calls for increased coal production go back to 1973 and the Project Independence proposal to double production by 1985. And now, this Administration has nominated coal as the principal replacement fuel for a massive conversion effort from gas and oil. Yet, the Congressional response to this dilemma is a woefully misdirected surface mining bill which will:

- (1) Severely restrict the acceleration of coal production;
- (2) Scrap every state law, regulation, and administrative procedure that is in place that could be used to expand coal production; and
- (3) Impose restrictions which have no relevance to insuring adequate reclamation.

It is unthinkable to us that the Congress in its first response to the call for greater coal utilization would enact a measure which would accomplish the very opposite result. We feel that it was irresponsible to rush through a surface mining measure which was essentially drafted in the energy environment of 1972 and 1973. The Committee's activities focused on very few of the substantive deficiencies which have existed in this bill since it was initially put forward four years ago. Rather, the Committee spent its time with cosmetic amendments which do nothing to remedy the inherent infirmities in this bill. Unfortunately, the authors and proponents of this measure mistakenly

believe that the language, which was drafted for an energy situation which existed in 1972 through 1974, is still apropos in 1977.

This Committee has ignored the most significant factual finding revealed during four years of hearings—that the individual states are fully competent and presently equipped to regulate surface mining and reclamation within their borders.

The practical effectiveness of surface mining under state regulation is clearly shown by the fact that over 50 percent of all coal produced in 1975 was obtained by this technique, and this percentage without consideration of this bill was projected to increase to over 60 percent by 1985. Thirty-eight states now have strict surface mining and reclamation laws in effect which are achieving coal production in an effective and environmentally sound manner. Furthermore, this is being done within the contexts of each state's unique geological and climatological characteristics.

We find it extremely significant that not one witness before this Committee has challenged or even questioned the effectiveness of any of these state programs on environmental protection, reclamation, or any other grounds. And yet, as the bill is written, a state will either have to choose to have a "Federal" program regulating all surface mining within a state, or a "State" program which is drafted pursuant to the rules and regulations promulgated by the Secretary of Interior. State participation in this regulatory process is illusory since the state would not have the flexibility to influence the substance. The state would merely stand in the shoes of the federal government and act as its agent in performing the myriad responsibilities required by the Act. Moreover, this will still necessitate the revision of existing state surface mining laws and regulations to comport with the federal requirements.

The Exclusive State Regulation amendment would have offered a third option to a state: a state could simply adopt in state law the two core provisions of the bill, the Reclamation Standards set down in Sections 415 and 416. Once these strict, federally-dictated environmental performance standards were adopted as State law, the existing state regulatory machinery—which has been carefully tailored to deal with local requirements—would be used to continue the regulatory job that is being done today. The role of the federal government then would be to monitor the effectiveness of state enforcement of those laws.

We felt that this amendment represented a more appropriate approach considering our desire to have sound National Reclamation Performance Standards adopted in all the states, but at the same time, insuring that the national goal of increased coal production would be met at the earliest possible time. However, the Committee, with only cursory discussion, refused to recognize the desirability or suitability of this option even though the amendment would have adopted the essence of this bill—the environmental performance standards. Such action reflects an inherent distrust of state enforcement and state regulation. The Committee acted without one scintilla of evidence that the states are not performing an adequate job of enforcing environmental protection standards. This gives credence to our belief that the true goal of proponents of this bill is to prevent surface mining in as many places as possible—why else force anything more

on the states than National Environmental Performance Standards unless the remainder of the provisions also ban or limit this type of mining. As a result, this Committee has preempted all state effort and heavily handedly imposed a federal surface mining law which contains the following examples of provisions which will frustrate increased surface coal production.

In the first place there is little subtlety to the bill's clear preferences for underground mining and its repeatedly imposed barriers to surface mining. In Section 104(b), a principal finding posed in support of S. 7 is that "the overwhelming percentage of the nation's coal reserve can only be extracted by underground methods, and it is therefore essential to the national interest to improve the existence of an expanding and economically healthy underground coal mining industry." To contribute to the "economic health" of underground mining, S. 7 would impose only a 15 cent per ton reclamation funding fee for underground mining while charging surface running operators 35 cents per ton. Furthermore, beyond addressing the "surface effects" of underground mining, none of the other restrictive and burdensome provisions of this bill are made applicable to underground operation. As a result, S. 7 reflects a decided Congressional hospitality toward conventional sub-surface mining techniques at the great expense of surface mining.

Beyond these preferences for underground mining, greater utilization of surface recovery techniques are impeded by extremely stringent permit application procedures, environmental protection requirements, and reclamation standards that require returning mined areas to their approximate original contour and to a usable condition that equals or exceeds pre-mining levels of production. Although there is scant disagreement with the general principle that surface-mined lands should not be abandoned until they are made useful, attractive and productive again, these are expensive and time-consuming requirements not required of other recovery methods.

Secondly, in addition to the underground mining preferences, the bill contains a cornucopia of requirements which effectively eliminate prospects for surface mining on what is probably the majority of strip-pable coal lands. Section 422 of S. 7 flatly bans "all" surface mining—through the rubric of designating certain areas "unsuitable" for mining—whenever such operations will:

(A) Be incompatible with existing land use plans or programs; or

(B) Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural system; or

(C) Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(D) Affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

This same section also specifically precludes surface mining operations in National Parks, National Wildlife Refuges, National Systems of Trails, National Wilderness Preservation Systems, Wild and Scenic River Systems and any National Recreation Area designated by an Act of Congress. We have little quarrel with most of these areas, but it is the cumulative effect of these prohibitions that is dangerous. Furthermore, no such mining may be undertaken within 100 feet of the outside right of way line of any public road, or within 300 feet of any occupied dwelling, public building, school, church or public park, or within 500 feet of an operating or abandoned underground mine.

Even this plethora of statutorily "unsuitable" surface mining areas—which, incidentally are so designated without regard to the potential of such lands to be reclaimed—becomes insignificant when compared to the effectiveness of the ban imposed by the so-called Alluvial Valley protection requirements found in Section 410(b)(5). This provision benignly states that no mining permits or revisions shall be issued unless the applicant affirmatively demonstrates that:

(5) the proposed surface coal mining operation, if located west of the 100th meridian west longitude, would not have a substantial adverse effect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of irrigated, flood irrigated, or naturally subirrigated hay meadows or other crop lands (excluding undeveloped rangelands), where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations, if such operations are significant and economically feasible.

There must be no mistake about what this restriction does. First, by its very terms it subjects the entire western half of the United States—beyond the 100th meridian—to reclamation treatment different from that accorded the rest of the country. Second, it precludes surface mining in these alluvial valleys even when such operations would only temporarily alter hydrological balance as interpreted by the regulatory authority. Finally, it issues this surface mining prohibition not because the required reclamation cannot be achieved, but because Congress prefers farming or ranching operations as a land use in apparent disregard to the impact of this policy on national energy supplies.

The full extent to which this provision alone will impede the development and ultimate production of low sulphur western coal cannot be accurately measured. This is so because there has been no inclusive definition of "alluvial valleys". What is clear is that over one-third of our demonstrated national coal reserves are recoverable only by surface mining techniques, and of these reserves, three-fourths—103 billion tons out of 137 billion tons—are located in our western states. The alluvial valley "protection" clause will absolutely bar access to these vast supplies.

Finally S. 7, in the unfortunate fashion of modern federal legislation, creates a veritable maze of administrative requirements which will add years to the time required to begin surface coal mining, and increase operators' administrative costs immensely, which will force

consumers to pay more. All future surface mining operations will require application for an issuance of a permit, and the specifics of this procedure are set forth in Sections 406-410 which cover 15 pages of the Committee print. The horrible thought is that a Secretary of Interior will add hundreds of requirements interpreting what the Congress intended. Required before a permit may be issued are filing fees and performance bonds, highly detailed notice and hearing requirements, five separate findings of fact by the regulatory authority, and thirty individual informational requirements ranging from cross sectional maps of the proposed mining area to a determination of the hydrological and climatological consequences of the mining operations. The potential for administrative delay in dealing with these requirements is made clear by the fact that Section 402 of the bill specifically allows up to forty-two months for permit processing. Added to the delays of processing applications are the opportunities for litigation which could actually stop this process in its tracks. The potential for attacks on the adequacy of environmental impact statements is so well established as not to require comment. However, the citizen suit provisions of Section 420 provide yet another avenue for interfering with surface mining activities from the application process throughout the mining and reclamation procedures whenever "any act or duty under this act is not performed". Section 419 requires continuation of performance bonds for periods of up to ten years after mining operations are completed—and even then, release may be made the subject of public hearings. Thus, the opportunity for litigation is unlimited.

In summary, the consistent thread that runs throughout this bill is the clear attempt to discourage rather than to encourage the increase of coal recovery by surface mining techniques. Ironically, in March of 1975, Senators Paul Fannin and Dewey F. Bartlett in minority views to the Surface Mining Control and Reclamation Act of 1975 asked the question—is the land not really being reclaimed under state enforcement? Where is the evil? What necessitates a federal law? Again, these questions have gone unanswered and undocumented, and this Committee continues to thrust forward a preemption law. Like S. 7 of the 94th Congress, the S. 7 of the 95th Congress is a bill which bans surface mining under the guise of being a "reclamation bill".

We can only lament the fact that this struggle to prevent a federal surface mining and reclamation act is about at an end. Frankly, the Members of the Congress are obviously weary and tired of the issue. Those who believe there should be little or no surface mining have won. But the country has lost. We predict that the goal of increasing coal production to over 1 billion tons a year by 1985 will not be reached and that the goal of greater coal utilization will be frustrated because of the action which this Committee and this Congress have and will take with respect to this bill. We predict that future Congresses will have to pass remedial legislation or that the Act and its environmental standards will be partially or totally ignored because of the weight and necessity of getting to the most abundant domestic fossil fuel that we have to rely upon. It may be that less regard will be paid to our environment and if so, the country will lose on both accounts.

In our opinion, the federal government in the last few years has taken unto itself more and more of the decision making responsibility for every facet of American life. This bill epitomizes that phenomenon. On the floor of the Senate, we hope our colleagues will join us in repudiating this most recent attempt to wrest decision making responsibilities away from the level of government most competent to make day-to-day decisions. Support for our Exclusive State Regulations amendment will help stop this unwarranted trend toward federal intervention into areas of state responsibility.

DEWEY F. BARTLETT.
PETE V. DOMENICI.
PAUL LAXALT.

XIII. CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, S. 7, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

SECTION 1114, TITLE 18, UNITED STATES CODE

§ 1114. *Protection of officers and employers of the United States*

Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Bureau of Narcotics and Dangerous Drugs, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty, in the field service of the Bureau of Land Management, any employee of the Bureau of Animal Industry of the Department of Agriculture, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare or of the Department of Labor or *the Department of the Interior* assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his

official duties, or an account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title. (June 25, 1958, ch. 645, 62 Stat. 756; May 24, 1949, ch. 139, § 24, 63 Stat. 93; Oct. 31, 1951, ch. 655, § 28, 65 Stat. 721; June 27, 1952, ch. 477, title 57, § 402(c), 66 Stat. 276; July 29, 1958, Pub. L. 85-568, title III, § 304(d), 72 Stat. 434; July 2, 1962, Pub. L. 87-518, § 10, 76 Stat. 132; Aug. 27, 1964, Pub. L. 88-493, § 3, 78 Stat. 610; July 15, 1965, Pub. L. 89-74, § 8(b), 79 Stat. 234; Aug. 2, 1968, Pub. L. 90-449, § 2, 82 Stat. 611; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(9), 84 Stat. 777; Oct. 27, 1970, Pub. L. 91-513, title II, § 701(i)(1), 84 Stat. 1282; Dec. 29, 1970, Pub. L. 91-596, § 17(h)(1), 84 Stat. 1607.)

