

June 1979

## A Summary of the Legislative History of the Surface Mining Control and Reclamation Act of 1977 and the Relevant Legal Periodical Literature

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### Recommended Citation

Robert A. Waters, *A Summary of the Legislative History of the Surface Mining Control and Reclamation Act of 1977 and the Relevant Legal Periodical Literature*, 81 W. Va. L. Rev. (1979).

Available at: <https://researchrepository.wvu.edu/wvlr/vol81/iss4/11>

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## A SUMMARY OF THE LEGISLATIVE HISTORY OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 AND THE RELEVANT LEGAL PERIODICAL LITERATURE

This legislative history seeks to serve as a bibliography of the passage of the Surface Mining Control and Reclamation Act of 1977. Government publications, journal reports and comments pertaining to the Act contained in contemporary law review articles are used to point out sources available to understand the issues raised, debated and resolved during the passage of the Act.

### I. EARLY STIRRINGS AND THE 92ND CONGRESS

A federal surface mining control and reclamation act saw its first serious discussion at the outset of this decade in testimony taken before a House Interior Subcommittee in 1971. The Nixon Administration had proposed indirect federal regulation through state regulatory apparatus.<sup>1</sup> The need for<sup>2</sup> and effectiveness<sup>3</sup> of regulations controlling strip mining and reclamation were the subject of much debate. Both the economic effects<sup>4</sup> and the effectiveness of current regulation were considered.<sup>5</sup> The initial legislative effort resulted in approval by the House Interior and Insular Affairs Committee, the Senate Interior Committee Subcommittee on Minerals and Fuel Provisions and the House of Representatives as a whole.<sup>6</sup> However, the bill went no further and died at the close of 1972.

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<sup>1</sup> [1971] 2 ENVIR. REP. (BNA) 610, 918.

<sup>2</sup> Bosselman, *The Control of Surface Mining: An Exercise in Creative Federalism*, 9 NAT. RESOURCES J. 137 (1969). This article examines the environmental effects of surface mining, the phases of the mining process which are susceptible to control, the effect of regulation on the industry, and the division of regulatory powers among the federal, state and local governments.

<sup>3</sup> Reitze, *Old King Coal and the Merry Rapists of Appalachia*, 22 CASE W. RES. L. REV. 650 (1971). Despite its relative antiquity, the article provides a valuable description of the basic and timeless problems caused by an ineffectively regulated surface mining industry.

<sup>4</sup> Howard, *A Measurement of the External Diseconomies Associated with Bituminous Coal Surface Mining, Eastern Kentucky, 1962-1967*, 11 NAT. RESOURCES J. 76 (1972).

<sup>5</sup> Olsen, *Surface Reclamation Regulations on Federal and Indian Mineral Leases and Premits*, 17 ROCKY MTN. MIN. L. INST. 149 (1972).

<sup>6</sup> [1972] 3 ENVIR. REP. (BNA) 272, 414, 463, 522, 589, 712.

## II. DEVELOPMENTS IN THE 93RD CONGRESS

The real legislative push began in the 93rd Congress when bills were introduced providing for restoration of all strip mined lands, prevention of surface mine operations on public lands and deep mining in national forests. Another bill was introduced to end all strip mining within eighteen months.<sup>7</sup> On April 9, 1973, joint hearings were held before the Subcommittee on Environment and the Subcommittee on Mines and Mining concerning ten bills relating to surface mining regulations.<sup>8</sup> Over the next month, additional hearings were held focusing on five of those bills.<sup>9</sup> Following these hearings the House Committee reported out H.R. 1500, the Surface Mining Control and Regulation Act of 1974, on May 30, 1974.<sup>10</sup>

Senate hearings were held in March, 1973, concerning S. 425, the Surface Mining Act of 1973, which was designed to provide for cooperation between the states and the Secretary of the Interior with respect to the regulation of surface mining operations and the acquisition and reclamation of abandoned mines. The hearings also included testimony and discussion of S. 923, the Administration Area Protection Act of 1973, designed to provide for cooperation between the federal and the state governments with respect to environmental regulations for mining operations. The hearings were concluded on March 15 and 16, 1973.<sup>11</sup>

On September 21, 1973, the Senate Committee on Interior and Insular Affairs recommended passage of S. 425. In addition to provisions for control, regulation and cooperation, the reported bill contained provisions for two studies covering mining, resources recovery, reclamation, and recycling technologies, and required that a study be made by the Interior Department to determine the feasibility of applying the bill's provisions to Indian lands.<sup>12</sup> On December 5, 1974, a conference committee of House and Senate

<sup>7</sup> [1973] 3 ENVIR. REP. (BNA) 1057, 1098, 1236, 1409.

<sup>8</sup> *Regulation of Surface Mining: Hearings on H.R. 1500 and Nine Other Bills Before the House Committee on Interior and Insular Affairs*, 93d Cong., 1st Sess. (April 9, 1973).

<sup>9</sup> *Regulation of Surface Mining: Hearings on H.R. 1500 and Nine Other Bills Before the House Committee on Interior and Insular Affairs, Part II*, 93d Cong., 1st Sess. (April 9, 10, 16, 17 and May 14, 15, 1973).

<sup>10</sup> H.R. REP. NO. 93-1072, 93d Cong., 2d Sess. (1974).

<sup>11</sup> *Regulation of Surface Mining Operations, Part I and Part II: Hearings on H.R. 425 and H.R. 923 Before the Senate Committee on Interior and Insular Affairs*, 93d Cong., 1st Sess. (1973). The hearings are contained in 1410 pages.

<sup>12</sup> S. REP. NO. 93-402, 93d Cong., 1st Sess. (1973).

members reported the bill to the House.<sup>13</sup> However, the bill was pocket vetoed by the President.

During this session, the staff of the Senate Committee prepared a print on the surface mining problem. In March of 1973, the Council on Economic Quality reported in a 143 page document its study of coal surface mining, including the state of the art of mining and reclamation technology. The report reviewed the regulatory programs of sixteen states, studying the social, economic and environmental impacts on localities, especially in Appalachia.<sup>14</sup>

During this initial legislative period there were extensive academic discussions of efforts to regulate strip mining. Two states' laws, West Virginia<sup>15</sup> and North Dakota,<sup>16</sup> were discussed in law review articles. Missouri's approach to strip mine regulation was compared with the proposed federal approach.<sup>17</sup> The changing concepts and attitudes toward the use of real property as related to the efforts to regulate surface mining were the subject of another leading article.<sup>18</sup> Finally, a proposal for a statute and regulatory scheme was made in a *Pittsburgh Law Review* article.<sup>19</sup>

### III. PASSAGE AND VETO IN THE 94TH CONGRESS

In February of 1975, the Senate Committee on Insular Affairs held a hearing on administration objections to S. 425, the 93rd Congress strip mining bill, which was reintroduced in the 94th

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<sup>13</sup> H.R. REP. NO. 93-1522, 93d Cong., 2d Sess. (1974).

<sup>14</sup> SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, 93D CONG., 1ST SESS., COAL SURFACE MINING AND ECONOMIC ASSESSMENT OF ALTERNATIVES (Comm. Print 1973).

<sup>15</sup> Cardi, *Strip Mining and the 1971 West Virginia Surface Mining and Reclamation Act*, 75 W. VA. L. REV. 319 (1973). The thrust of the article is the cost of surface mining to society and to people individually through direct damage to people, property and the environment. The strip mining process, its resultant damage, and the coverage of the Act are discussed.

<sup>16</sup> Hagen, *North Dakota's Surface Mining and Reclamation Law: Will Our Wealth Make Us Poor?* 50 N.D.L. REV. 437 (1974). The article discusses the legislative history of the law which became effective in 1970, the provisions, and the administration of that law. The article also proposes reforms of the law.

<sup>17</sup> Note, *Strip Mine Reclamation Regulation*, 39 MO. L. REV. 429 (1974). The Missouri approach to regulation is interpreted as prescribing minimum requirements for mine operators. The author anticipates changes in the legislation if the federal legislation is adopted.

<sup>18</sup> Moran, *Changing Concepts Relative to Land Use Controls and the Mineral Extractive Industries*, 7 NAT. RESOURCES LAW 1 (1974).

<sup>19</sup> Binder, *A Novel Approach to Reasonable Regulation of Strip Mining*, 34 U. PITT. L. REV. 339 (1973).

Congress as S. 7 and H.R. 25. The testimony and proceedings took up 232 pages consisting largely of the administration's view expressed by Jack Carlson, Assistant Secretary for Energy and Minerals in the Interior Department.<sup>20</sup> On March 5, 1975, the Senate Committee on Interior and Insular Affairs recommended passage of S. 7, the Surface Mining Control and Reclamation Act of 1975.<sup>21</sup>

On March 6, 1975, the House Committee on Interior and Insular Affairs recommended passage of H.R. 25. The bill would have established an Office of Surface Mining Reclamation and Enforcement in the Interior Department. The bill would also have authorized matching grants to provide for state mining and mineral resources and research institutes. It would have regulated surface mining operations and controlled the surface effects of underground mining. The bill also provided for reclamation of abandoned mines and adjacent lands. A study would have been authorized to examine surface mining in Alaska, as well as a study of surface mining on Indian lands. Finally, the bill would have given authority and provided a regulatory framework to minimize harmful effects of coal mining.<sup>22</sup>

The Senate and House bills went to conference committee, and on May 2, 1975, the conference committee reported the bill out to both houses.<sup>23</sup> The provisions were similar to those approved by Congress in 1974.

On May 20, 1975, the bill was vetoed by President Ford, who cited the loss of jobs and reduction in coal production as his reasons for the veto.<sup>24</sup> On June 3, 1975, a joint hearing of the Subcommittee on Environment and on Mines and Mining was held to investigate the Presidential veto of H.R. 25. Administration officials testified to the projected impact of the bill on unemployment, utility bills and coal production. The probable effects of the bill on mining in alluvial valley floors and on steep slopes was a point of inquiry. Testimony was also taken on the effect of the bill on

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<sup>20</sup> *Surface Mining Briefing: Hearings on Executive Department Objections to S. 7*, 94th Cong., 1st Sess. (1975).

<sup>21</sup> S. REP. NO. 94-28, 94th Cong., 1st Sess. (1975).

<sup>22</sup> H.R. REP. NO. 94-45, 94th Cong., 1st Sess. (1975). The bill is identical to H.R. 26, H.R. 27, H.R. 28 and H.R. 2062 in the 94th Congress and S. 425 and H.R. 1500 in the 93d Congress.

<sup>23</sup> H.R. REP. NO. 94-189, 94th Cong., 1st Sess. (1975); S. REP. NO. 94-101, 94th Cong., 1st Sess. (1975). The report covers 91 pages.

<sup>24</sup> [1975] 6 ENVIR. REP. (BNA), 70, 75, 142, 195, 303, 332 (1975).

small mining operators. The administration presented an alternative proposal, and the estimates upon which it was based were considered.<sup>25</sup> The legislative history of the Surface Mining Control and Reclamation Act of 1975 is thoroughly examined in a *Rocky Mountain Mineral Law Institute* article written in 1975.<sup>26</sup> Another article examines the legislative history of this bill and then makes a compromise proposal which seeks to balance the interests of the surface owners against the interests of lessees and owners of underlying mineral estates.<sup>27</sup>

In the second session of the 94th Congress, the House attempted to revive the vetoed bill, when the House Committee on Interior and Insular Affairs recommended passage of the Surface Mining Control and Reclamation Act of 1976, H.R. 9725. House Report 9725 provided for: a preliminary study for a program under which Indian tribes might assume full regulatory authority over coal mining operations on Indian lands; establishment of a new Office of Surface Mining Reclamation and Enforcement; establishment of a federal grant-in-aid program to the states for state mining and mineral research institutes; and establishment of programs for the reclamation of previously mined and inadequately reclaimed land, for designating areas unsuitable for surface coal mining, and for mining other minerals. Finally, the bill provided for the establishment of procedures for public review of enforcement and administrative programs. The public would also have the right to sue for damages and noncompliance with the Reclamation Act. The bill recognized the rights of surface owners and off-site users.<sup>28</sup>

On August 31, 1976, the House Committee recommended passage of H.R. 13950, which is virtually the same as H.R. 9725.<sup>29</sup> Moreover, during this session the House Committee put out a print on March 15, 1976 containing a list of then current mining laws and an analysis of the developments in federal mining policy,

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<sup>25</sup> *Surface Mining Veto Justification: Joint Hearings of Subcommittees on Energy and Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs*, 94th Cong., 1st Sess. 168, 230, 252 (1975).

<sup>26</sup> Dunlap, *An Analysis of the Legislative History of the Surface Mining Control and Reclamation Act of 1975*, 21 *ROCKY MTN. MIN. L. INST.* 11 (1975).

<sup>27</sup> Note, *Between a Rock and a Hard Place: Surface Mining on the Severed Estate, A Legislative Proposal*, 17 *WM. & MARY L. REV.* 140 (1975).

<sup>28</sup> H.R. REP. NO. 94-896, 94th Cong., 2d Sess. (1976).

<sup>29</sup> H.R. REP. NO. 94-1445, 94th Cong., 2d Sess. (1976).

as well as a compilation prepared by the Subcommittee on Mines and Mining assisted by Larry McDonnell.<sup>30</sup>

The composition of the bill to this point was reviewed in the *St. Mary's Law Journal*, which found the Texas statute to be more stringent than the federal proposal.<sup>31</sup> Another article presented a cost-benefit analysis of the relationship between strip mining and the various social values connected with it.<sup>32</sup>

The status of federal land under state and federal regulations was discussed and, as will be seen later, continues to be an area of extensive comment.<sup>33</sup> Writers were also concerned about protection of surface owners and the duties owed them by mine owners.<sup>34</sup>

#### IV. THE 95TH CONGRESS—THE ACT BECOMES LAW

In the 95th Congress, the bill was immediately reintroduced. On February 7 and March 1-3, 1977, the Senate Subcommittee on Public Lands and Resources of the Senate Committee on Energy and Natural Resources held hearings on S. 7, the Surface Mining Control and Reclamation Act of 1977. Testimony was taken from federal and state officials, coal company and association representatives, lawyers, architects, scientists, union officials, and affected landowners.<sup>35</sup>

Meanwhile, the House Committee on Interior and Insular Affairs held hearings on H.R. 2. On January 10 and 12, 1977, the Subcommittee on Energy and Environment met to receive testimony on the need for federal regulation of surface coal mining and reclamation practices in preparation for the hearings. Then, on February 8, 16, and 22, 1977, the Subcommittee held hearings in which the testimony focused on the requirements for public hear-

<sup>30</sup> HOUSE COMM. ON INTERIOR AND INSULAR AFFAIRS, 94TH CONG., 2D SESS., CURRENT MINERAL LAWS OF THE U.S. (Comm. Print #13 1976).

<sup>31</sup> *Texas Surface Mining and Reclamation Act—New Hope for Protection of Texas Resources*, 7 ST. MARY'S L.J. 850 (1976).

<sup>32</sup> Mintz, *Strip Mining: A Policy Evaluation*, 5 ECOLOGY L.Q. 461 (1976).

<sup>33</sup> Barry, *Reclamation of Strip-Mined Federal Land: Preemptive Capability of Federal Standards Over State Controls*, 18 ARIZ. L. REV. 385 (1976).

<sup>34</sup> Haughey and Gallinger, *Legislative Protection of the Surface Owner in the Surface Mining of Coal Reserved by the United States*, 22 ROCKY MTN. MIN. L. INST. 145 (1976); Lacy, *Conflicting Surface Interests: Shotgun Diplomacy Revisited*, 22 ROCKY MTN. MIN. L. INST. 731 (1976).

<sup>35</sup> *Surface Mining and Reclamation Act of 1977: Hearings on H.R. 7 Before the Subcommittee on Public Lands and Resources of the Senate Committee on Energy and Natural Resources*, 95th Cong., 1st Sess. (1977).

ings on applications for surface mining permits and mandatory studies by coal producers of potential hydrological and other environmental impacts of proposed mining operations. Also, requirements for restoration of mine sites to approximate original contours, including elimination of highwalls and restrictions on mountaintop removal mining and restrictions on mining near alluvial valley floors were discussed. The prohibition of mining federally owned coal deposits located beneath private land without consent of surface owners was also considered. The hearings concluded on February 24 and 25, 1977.<sup>36</sup>

On April 22, 1977, the House Committee on Interior and Insular Affairs recommended passage of H.R. 2, the Surface Mining Act of 1977, to provide for cooperation between the Interior Department and the state with respect to regulation of surface mining operations and the acquisition and reclamation of abandoned mines. H.R. 2 also provided for: the establishment of an Office of Surface Mining Reclamation and Enforcement within the Interior Department; federal aid to states for mining and mineral research institutes; a preliminary study for a program under which Indian tribes may elect to assume full regulatory authority over coal mining operations on Indian lands; recognition of rights of surface mine owners and off-site water users; procedures for review of administrative and enforcement programs and for public rights to sue for damages resulting from noncompliance with the Act; reclamation of previously mined and inadequately reclaimed lands; and designation of areas unsuited for surface coal mining.<sup>37</sup> The Senate Committee on Energy Resources reported S. 7 out on May 10, 1977.<sup>38</sup> H.R. 2 and S. 7 were identical in all essential aspects.

The bill was passed in both houses and went to the conferees. After a compromise was adopted by the conferees,<sup>39</sup> they reported the bill out on July 12, 1977.<sup>40</sup> The bill was then passed and signed by President Carter.<sup>41</sup>

During the session, in June, 1977, the Senate Committee on

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<sup>36</sup> *Reclamation Practices and Environmental Problems, Parts I, II and III: Hearings on H.R. 2 Before the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs, 95th Cong., 1st Sess. (1977).*

<sup>37</sup> H.R. REP. NO. 95-218, 95th Cong., 1st Sess. (1977).

<sup>38</sup> S. REP. NO. 95-128, 95th Cong., 1st Sess. (1977).

<sup>39</sup> [1977] 8 ENVIR. REP. (BNA) 6, 275, 317, 345, 405-06, 507, 545.

<sup>40</sup> H.R. REP. NO. 95-493, 95th Cong., 1st Sess. (1977).

<sup>41</sup> [1977] 8 ENVIR. REP. (BNA), 6, 275, 317, 345, 405-06, 507, 545.



Energy and Resources released a paper on the scope and effectiveness of state surface mining laws.<sup>42</sup> In 1978, an article appeared in the *West Virginia Law Review* dealing with the West Virginia Surface Mining and Reclamation Act of 1971. The act established authority in the State Department of Natural Resources to prohibit surface mining in areas where it might cause harm to public interests in soil conservation, agriculture, recreation, controlling pollution, as well as aesthetic beauty. Citizens were given a limited power to oversee the provisions of the act.<sup>43</sup>

Many law review articles dealt with specific problems or provisions of legislation regulating surface mining. One law review article compared and contrasted the Texas and federal laws.<sup>44</sup> Another article explored the implications both of these laws had on the Texas coal and lignite industries.<sup>45</sup>

A comparison of federal and state conflicts was made in a *Rocky Mountain Mineral Law Institute* article.<sup>46</sup> The article pointed out that the federal government owns much of the strip minable land in the nation. It also pointed out that under the federal act, states could have more stringent regulations than the federal government. In another article, the future of surface mining on federal lands was discussed.<sup>47</sup> Still another article dealt with the specific problem of mining in national parks and forests.<sup>48</sup> In others

<sup>42</sup> SEANTE COMM. ON ENERGY AND NATURAL RESOURCES, 95TH CONG., 1ST SESS., STATE SURFACE MINING LAWS: A SURVEY, A COMPARISON WITH THE PROPOSED FEDERAL LEGISLATION AND BACKGROUND INFORMATION (Comm. Print 1977). A bibliography of strip mining is included in this print.

<sup>43</sup> McGinley, *Prohibition of Surface Mining in West Virginia*, 78 W. VA. L. REV. 445 (1976). This article also gave substantial attention to the constitutionality of the Act.

<sup>44</sup> Newton and Sherman, *Evolution of Control of Surface Mining of Coal and Uranium in Texas*, 29 BAYLOR L. REV. 847 (1977). After discussing the history of both acts, the Texas Surface Mining and Reclamation Act and the Surface Mining Control and Reclamation Act of 1977, the article concludes that the overriding issue was who should bear the cost of the sacrifices necessitated by the energy crisis and which governmental entity should control the process of cost allocation.

<sup>45</sup> Stayton, *Recent Developments on Surface Mining of Coal and Lignite*, 29 OIL AND GAS INSTITUTE 125, 151-58 (1978).

<sup>46</sup> Hubbard, *Dredge Mining and Wild Burros—A Tale of Two Cases and the Issue of State Versus Federal Regulation of Mineral Development on Public Domain Lands*, 23 ROCKY MTN. MIN. L. INST. 71 (1971).

<sup>47</sup> Hoff, *Operational Difficulties Relating to Coal Regulations and the Federal Coal Leasing Amendments Act of 1975*, 23 ROCKY MTN. MIN. L. INST. 219 (1977).

<sup>48</sup> Miller, *Recordation and Surface Management Regulations Affecting Mining in the National Forests, and National Park System, and on the Public Domain*, 23

attention was drawn to special problems affecting reclamation in the West,<sup>49</sup> particularly those problems dealing with western wildlife.<sup>50</sup> Elsewhere, it was noted that the federal act requires some type of consent by surface owners.<sup>51</sup>

Since the passage of the act, several general articles have detailed the provisions of the new Surface Mining Control and Reclamation Act of 1977.<sup>52</sup> The continuing discussion of the Act and its provisions evidences a continuing evolutionary process in the development, interpretation and enforcement of surface mining regulations in the United States.

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ROCKY MTN. MIN. L. INST. 841 (1977). Within the national park system all permits were revoked as of May 27, 1977. New permits were tied to filing a comprehensive plan of operations and meeting various reclamation requirements.

<sup>49</sup> Binder, *Strip Mining, the West and the Nation*, 12 LAND & WATER L. REV. 1 (1977).

<sup>50</sup> Beck, *Surface Coal Mining Law in the Western United States: How Does It Provide For Wildlife?*, 54 N.D.L. REV. 337 (1978).

<sup>51</sup> Beck, *Surface Owner Consent Laws, the Agricultural Enterprise Versus Surface Mining For Coal*, 1977 So. ILL. U.L.J. 303 (1977).

<sup>52</sup> Glover, *Digesting the Federal Strip Mine Act*, 42 KY. BENCH & B. 25 (1978); Note, *Designating Areas Unsuitable For Surface Coal Mining*, 1978 UTAH. L. REV. 321; Note, *The Surface Mining Control and Reclamation Act of 1977*, 9 ST. MARY'S L.J. 863 (1978); Kite, *Surface Mining Control and Reclamation Act of 1977, An Overview of Reclamation Requirements and Implementation*, 13 LAND & WATER L. REV. 703 (1978); Ferguson, *Impact of New Legislation Relating to Federal Coal Resources*, 4 J. CONTEMP. L. 255 (1978).

