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THE FEDERAL STRIP MINING ACT: ENVIRONMENTAL PROTECTION COMES TO THE COALFIELDS OF VIRGINIA

*Edward Shawn Grandis

"I have never seen such utter devastation, exploitation and destruction of the land as I saw in Wise County [Virginia]."


I. INTRODUCTION

Strip mining,1 for those of us who are touched by it, either as residents of areas affected by the mining or as professionals or bureaucrats concerned with the legal or technical issues involved, conjures up vivid images of land devastation, offsite property damage and high profits with little risk involved for the operator.

In Virginia, the debate on strip mining began in the late 1940's. Wise County was the site of the first strip coal mine in the state. However, strip mining did not have a significant impact on coal production or on environmental degradation until the late 1960's and the oil embargo of 1973 was the watershed that provided the psychological and economic impetus for the present boom in strip mining. Today, in southwestern Virginia, the major coal area of the state, the debate on strip mining has become the most significant social issue since brother fought brother during the Civil War, the most significant labor issue since the United Mine Workers of America began organizing in the area, and the most significant economic issue since the collapse of the deep mining industry of the 1950's.

This article does not focus on the debate concerning the pros and cons of federal regulation of strip mining.\(^2\) This debate has persisted ad nauseum. With the passage of the "Surface Mining Control and Reclamation Act of 1977" (hereinafter the Federal Act), attention must now be turned towards compliance with the new federal requirements. The intent of this article is to compare and contrast salient sections of the federal Act with the Virginia law in effect at the time of its passage.

A. Background for the Federal Act

Prior to the passage of the Federal Act in 1977,\(^3\) the majority of the coal producing states each had some regulatory program covering strip mining activities. However, there was little uniformity and, in many instances, the programs were either inadequate, under-financed, or improperly enforced.\(^4\) The laxity of the state programs is evidenced by the tremendous social, economic, and environmental problems caused by strip mining.

Particularly, the Appalachian coalfields have been severely impacted.\(^5\) It has been estimated that over 600,000 acres of land have been left unreclaimed nationwide.\(^6\) Over 11,500 miles of streams have been polluted by excess sediment, ore tailings, or acid.\(^7\) By 1977, approximately 1,000 acres of land per week were being disturbed due to strip mining for coal.\(^8\)

The continued erosion from these inadequately reclaimed areas has caused severe water pollution and exacerbated the flooding in the steep-slope terrain of central Appalachia.\(^9\) Strip mining has pro-

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2. For a more thorough discussion, see Harvey, Paradise Regained? Surface Mining Control and Reclamation Act of 1977, 15 Houston L. Rev. 1147 (1979); Binder, Strip Mining, the West and the Nation, 12 Land and Water L. Rev. 1 (1977).
7. Harvey, supra note 2, at 1170.
8. Id. at 1148.
9. Strip Mining and the Flooding in Appalachia: Hearing before a Subcomm. of the House
duced millions of tons of spoil and slag material which have been improperly disposed of, causing fill and slope failures. Another major problem is a loss in the quality and quantity of water due to the disruption of aquifers which are associated with coal seams. Highwalls, associated with contour and area mining, have also contributed to sedimentation and water pollution. Also, the usually unstable highwalls deteriorate and crumble, thereby affecting drainage patterns. Not only are they a hazard to the public, but also the creation of highwalls destroys wildlife trails and habitats.

Inadequate controls regulating the surface effects of deep mining have allowed coal refuse piles to be established which are highly unstable and combustible, causing fires to burn out of control. Subsidence, which is the settling of the ground, and gravity drainage of polluted effluents, have also increased due to inadequate controls applicable to deep mining.

The results of poorly engineered mining technologies and inadequate reclamation have led to an intolerable and degrading quality of life in southwestern Virginia as well as in other mining communities throughout the nation. Deterioration of aesthetics has not been the principal reason for local residents to become activists in fighting this continued abuse; rather it has been caused by the economic and social impacts resulting from safety hazards and environmental degradation. Either the Commonwealth and the local municipalities have been indifferent or, even worse, government officials have balanced the needs of coal companies against the needs of the affected residents. The result in either case has been that the residents have lost.

This inaction on the part of the government has led to ruined water resources, increased flooding, severe private property loss from blasting, and loss of fish and wildlife habitats. Additionally, in the steep-slope areas of central Appalachia, principally southwestern Virginia, contour mining has been performed by pushing

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Comm. on Governmental Operations, 95th Cong., 1st Sess. 1 (1977). For a more thorough discussion on the following textual material, see Hearing on H.R.2 Before the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs, House of Representatives, 95th Cong. 1st Sess., 4 parts (1977) [hereinafter HEARINGS]. In these hearings, especially note the statements of Frank Kilgore, Director of the Virginia Citizens for Better Reclamation, at Part 1, p. 2-11. [hereinafter VCBR].
spoil, loose overburden, over the mountainside. Such "shoot and shove" operations have directly affected residents and communities by causing landslides and the additional erosion and desedimentation of streams and river channels. This constant abuse of our environment has led to the continuing damage to off-site property and is jeopardizing the health and safety of those living within such areas.\footnote{10}

By 1971 when the 92nd Congress was in session, it had become evident that the mining industry was not policing itself and that the states, individually, were incapable of setting adequate standards or of properly enforcing any standards. Existing state programs were extremely varied, and so, the mining industry applied a different set of standards and priorities for mining and reclamation in each state. Thus, the need for minimum environmental standards which would be uniformly enforced nationwide was recognized. While several states were considered to have strong standards and good enforcement records, Virginia's record was viewed as entirely inadequate: "[I]n my judgment, the State that has furthest to go, the State that has made the least progress toward coming into modern methods of mining coal, is the State of Virginia."\footnote{11}

Another concern expressed by Congress focused on the tremendous economic impact placed upon the residents and municipalities of the coal areas. Judging from disturbed lands, subsidence, extensive blasting-related property damage, and private and municipal water and pollution loss, Congress recognized that the technological level of mining and reclamation needed to be improved significantly. These costs, it was decided, should be shifted from those affected to the industry and consumer. It also should be noted at this juncture that studies have been compiled which conclude that

\footnote{10. While it is the intent of this article to focus upon the effects of eastern mining practices, severe problems occur in the other coal regions of the country. In the mid-west, much of the coal is overlaid by agricultural lands. Congress recognized the importance of protecting such use of the land, particularly prime farmland and the need to insure the return to full productivity. The arid and semi-arid areas of the West also have been severely impacted by the environmental effects of strip mining. Air quality, hydrology, and soil erosion are particularly affected by the dry and, in some areas, harsh climate. Adequate revegetation is extremely difficult to obtain. See Binder, supra note 2, at 5.}

adequate reclamation can be achieved without significantly decreasing coal production.\textsuperscript{12}

Another serious flaw with most state programs was the paucity of legal mechanisms insuring citizen involvement with the implementation and enforcement of the regulatory program. Even those programs with strong environmental standards were deficient in citizen rights, while many states provided no role whatsoever for citizens.\textsuperscript{13} As Congress became cognizant that the states had not adequately protected the environment or the health and safety of those living in the affected areas, a determination was made that for a strip mining regulatory program to be successful, strong citizen support and active participation were essential.

To guarantee citizens an active role, Congress codified such participation by establishing specific rights and remedies.\textsuperscript{14} This di-

\begin{itemize}
\item \textsuperscript{12} Harvey, supra note 2, at 1150.
\item \textsuperscript{13} Doyle Report, note 4 supra.
\item \textsuperscript{14} It is apparent that Congress has intended to afford citizens broad rights of participation in the enforcement of this Act:
\begin{enumerate}
\item Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter—
\begin{enumerate}
\item against the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter; or
\item 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 chapter which is not discretionary with the Secretary or with the appropriate State regulatory authority.
\end{enumerate}
\end{enumerate}
\item The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties. 30 U.S.C.A. § 1270(a) (Cum. Supp. 1978).
\item It should also be noted that Congress has specifically retained all common law and statutory rights of action, further emphasizing its concern for citizen participation:
\begin{enumerate}
\item 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 chapter and the regulations thereunder, or to seek any other relief (including relief against the Secretary or the appropriate State regulatory authority).
\item Any person who is injured in his person or property through the violation by any operator of any rule, regulation, order, or permit issued pursuant to this chapter 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
mension of the Federal Act provides a model which should, if successful, be incorporated in future state and federal environmental legislation. Active public participation is one of the cornerstones on which the Federal Act is constructed. Its strength will determine the success of the Congressional effort to minimize the abuses of strip mining.

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 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 other 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 citizens access to administrative appellate procedures and the courts is a practical and legitimate method of assuring the regulatory authority’s compliance with the requirements of the act. Thus in imposing several provisions which contemplate active citizen involvement, the committee is carrying out its conviction that the participation of private citizens is a vital factor in the regulatory program as established by the act.15

With the passage of the Federal Act on August 3, 1977, Congress intended to “strike a balance between protection of the environment and agricultural productivity and the Nation’s need for coal as an essential source of energy.”16 Concerns were raised that in order to balance these interests and “protect society and the environment from the adverse effects of surface coal mining operations,”17 there

of is located. Nothing in this subsection shall affect the rights established by or limits imposed under State Workmen’s Compensation laws. 30 U.S.C.A. § 1270(e), (f) (Cum. Supp. 1978).
was a need to create an independent agency. To this end the Federal Act established the Office of Surface Mining, Reclamation and Enforcement (hereinafter the Office of Surface Mining) which was placed within the Department of Interior. This agency is structured in such a way that its functions are distinct and separate from other agencies which develop and promote the use of coal.18

The remainder of this article will focus on the initial regulatory program in Title V of the Federal Act19 and how it affects and interfaces with the strip mining reclamation program in Virginia.

B. Background for Virginia's Regulatory Scheme

While strip mining coal operations began in Virginia in the late 1940's, it was not until 1966 that an agency was created by the Commonwealth to monitor the increasing land, air, and water abuse caused by irresponsible mining practices.20 From 1966 to 1972, the sole function of this agency was to issue permits to strip mining operations. No mechanism was provided to handle the serious environmental and public safety problems arising from abandoned lands. In fact, no system was even developed to determine the number of acres disturbed and left unreclaimed. This has been primarily responsible for the multiplicity of problems associated with this land-destructive activity. Also, the agency had no authority to adopt regulations for existing or new mines, nor did it have any enforcement powers. In short, the agency was a permit filing office and nothing more. It did not have statutory authority to shut down

19. The Surface Mining Control and Reclamation Act of 1977 contains nine titles:
   TITLE I - STATEMENT OF FINDINGS AND POLICY
   TITLE II - OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
   TITLE III - STATE MINING AND MINERAL RESOURCES AND RESEARCH INSTITUTES
   TITLE IV - ABANDONED MINE RECLAMATION
   TITLE V - CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING
   TITLE VI - DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING
   TITLE VII - ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS
   TITLE VIII - UNIVERSITY COAL RESEARCH LABORATORIES
   TITLE IX - ENERGY RESOURCE GRADUATE FELLOWSHIPS
operations without permits and no funding from general revenues was provided for the program.

In 1972, the General Assembly passed legislation, essentially drafted by the Virginia coal industry, creating a regulatory agency within the Department of Conservation and Economic Development. The Division of Mined Land Reclamation (hereinafter the Division) was granted authority to implement and enforce regulations passed by the Department of Conservation and Economic Development Board. Still, no funds were provided the agency from general revenues. The only financial support came from permit fees which were insufficient. No additional significant authority was conferred upon the Division until after the passage of the Federal Act.

A comparison of the regulations and enforcement activities with those of neighboring coal field states further underscores the inadequacy of the former Virginia program. But, due to the passage of the Federal Act in 1977, the 1978 General Assembly of Virginia upgraded the state's program. This event occurred in order for the state to maintain the authority for regulating strip mining during the federal interim program and insured the state of much-needed federal funds.

The following sections will discuss the salient administrative requirements of the Act, obligations of mine operators, citizen involvement, and environmental protection standards provided by the Act during the interim program.

III. THE INITIAL REGULATORY PROGRAM

A. The Administrative Framework

Congress recognized that for the federal legislation to be successfully implemented a gradual start-up process would be necessary. The states and the coal industry would need time to adjust to, and comply with, the administrative and technical requirements of the Federal Act. Therefore, a two-tier system was envisioned. Within

ninety days after passage of the Federal Act, regulations covering the “initial” program were to be promulgated.\textsuperscript{24} Within one year from enactment, “regulations covering a permanent regulatory” program were to be promulgated.\textsuperscript{25} However, it was recognized that certain mining situations existed at the time of passage that created either an “imminent danger to the health and safety of the public,” or “significant, imminent environmental harm to land, air or water resources” which would require immediate federal authority. Such power was authorized to be effective with passage of the Federal Act.\textsuperscript{26}

Under the interim regulatory program a joint federal/state venture was anticipated.\textsuperscript{27} While the federal government, through the Office of Surface Mining, would have certain enforcement responsibilities, those state agencies that had the duty to carry out regulatory responsibilities would retain their authority. In fact, in those states that have adopted the standards of the interim program, additional financial assistance has been provided if they elect to enforce such standards.\textsuperscript{28} Instead, in many states, including Virginia, a disjointed dual program has been instituted. The Commonwealth has received federal funds for “developing, implementing, and enforcing” the interim program. Yet, while certain functions have been carried out by the Division, the state has refused to take certain enforcement responsibilities, including adequately responding to citizen complaints.\textsuperscript{29}

The dual programs are the outgrowth of inaction by the state in adopting specific aspects of the federal interim program. Thus, the Office of Surface Mining has been required to take on certain func-

\begin{footnotesize}
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\item \textsuperscript{29} As per the citizen information process of 30 U.S.C.A. § 1271 (Cum. Supp. 1978).
\end{enumerate}
\end{footnotesize}
tions for which the Commonwealth received financial assistance. In several other states that have received such grants, concerns have been raised that the states have not fully carried out their legal obligations under the federal Act, interim regulations or grant agreement.

B. Inspections and Enforcement

The interim regulatory program has two components. In those states with a strip mining regulatory program, certain obligations are required. To assist the states in the anticipated additional administrative and enforcement responsibilities, a federal enforcement program is established which is to "remain in effect in each State" until the state has received approval for its permanent regulatory program or until a permanent federal regulatory program has been implemented.

This federal enforcement scheme is designed to be a back-up program for those states which had their own regulatory program as of February 3, 1977. Congress determined that existing mines be given nine months, until May 3, 1978, to comply with the Federal Act. However, it was essential that new mining operations commencing "pursuant to a permit issued on or after six months from the date of enactment," February 3, 1978, comply with the new standards.

The Federal Act is explicit as to the requirements of the enforcement scheme during the interim program. Among other criteria, inspections of mining sites are to be made at a minimum of one inspection every six months "without advance notice to the mine operator." Additional inspections shall be required upon "receipt of inspection reports" indicating a violation "during not less than two consecutive State inspections or upon receipt . . . of information which would give rise to reasonable belief that such standards

30. 30 U.S.C.A. §§ 1295(a) and 1302(a), (c), (d) (Cum. Supp. 1978).
are being violated." If the inspection is made upon the basis of an individual's request, such "person" shall be notified when the inspection will occur and "shall be allowed to accompany the inspector during the inspection."

While the Commonwealth has, in the past, responded to citizen complaints and has allowed the individual to accompany the state inspector onto the mine site, such citizen rights were not codified and were left to the arbitrary decision of the Division. Now as a requirement, the Division is insulated from industry and political pressures and guarantees the interested individual a higher degree of involvement in the enforcement of the interim program.

When it is determined that a mining operation in some way violates a requirement of the Federal Act, a notice of violation "fixing a reasonable time but not more than ninety days for the abatement of the violation" shall be issued. An opportunity for a public hearing must be provided to the mine operator. If the violation is not abated within the prescribed time, or within any time extensions up to ninety days, a cessation order shall be issued. A cessation order shall also be issued if it is determined by the inspector "that any condition or practices or . . . violation" 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 cessation order may cover either the entire surface coal mining and reclamation operation or the portion thereof relevant to the condition, practice, or violation and shall remain in effect until the condition, practice, or violation is abated. Affirmative actions shall also be imposed upon the mine operator requiring specific measures deemed necessary to "abate [the] condition, practice, or violation." Furthermore, all cessation orders shall expire within thirty days of actual notice unless a public hearing is held.

37. Id.
39. Id.
41. Id.
42. Id.
43. Id.
When the Office of Surface Mining "determines that a pattern of violations . . . exists or has existed . . . and . . . such violations are caused by the unwarranted failure" of the mine operator "to comply with any requirements of [the Federal Act], . . . or that such violations are willfully caused," an order shall be issued requiring the mine operator to show cause why the operating permit should not be suspended or revoked.\textsuperscript{45} An opportunity for a public hearing on the "show cause" order shall be made available to the mine operator.\textsuperscript{46}

To coincide with the issuance of a notice of violation, the mine operator "may be assessed a civil penalty,"\textsuperscript{47} but such is mandatory upon issuance of a cessation order.\textsuperscript{48} Criteria used to establish the amount of the penalty includes the mine operator's history of previous violations at the particular mine site, the seriousness of the violation, negligence, and the speed for compliance after notification of the violation. This penalty cannot exceed $5,000 for each violation, but each day of continuing violation may be deemed a separate violation in determining the penalty assessments.\textsuperscript{49} Also, an opportunity for a public hearing shall be made available to the mine operator.\textsuperscript{50}

Criminal sanctions are provided for any mine operator who "willfully and knowingly violates a condition of a permit issued pursuant" to the applicable standards of the Federal Act or refusal to comply with any applicable enforcement or judicial order. Upon conviction, the violator may be fined an amount not to exceed $10,000 or imprisoned for up to one year, or both.\textsuperscript{51} These same penalties extend to "any director, officer, or agent," of an offending mining company, who "willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal" to comply.\textsuperscript{52} Additionally, a minimum daily $750 civil penalty shall be assessed

\begin{itemize}
\item \textsuperscript{46} Id.
\item \textsuperscript{48} Id.
\item \textsuperscript{50} 30 U.S.C.A. § 1268(b) (Cum. Supp. 1978).
\end{itemize}
against any mine operator who fails to correct the violation within the permitted time period.\(^{53}\)

The Office of Surface Mining may initiate a civil action in the district court of the United States for the district in which the coal mining operation is located or in which the mine operator has his principal office. Such action may be taken against any operation for non-compliance with orders, or interfering with responsibilities of the Office of Surface Mining, including refusal of admittance to, or inspection of, a mine site.\(^{54}\)

In contrast to the federal program, the Commonwealth has a woefully deficient and ineffective inspection and enforcement program, complimenting the state’s inadequate environmental and public safety standards. While inspections are part of the program, they were not mandatory upon issuance of the mining permit.\(^{55}\) Short of legal action, the enforcement actions which are provided lack the mechanisms for obtaining compliance.\(^{56}\) The special orders and notice of compliance issued usually result in months of delay and frustration for the Division and affected off-site landowners. After much paperwork and hours of on-site "visits," the state usually is left with acres of raped land and perhaps a forfeited bond which will not even cover the cost of reseeding, much less the adequate reclamation that is required to eliminate off-site environmental, public health and safety problems. Additionally, no civil penalty system is provided. The inspection, enforcement, and civil and criminal penalty provisions provided by the Federal Act add a new dimension to the regulation of strip mining in Virginia which will significantly minimize the historic abuses that have reached epidemic proportions.

The above discussion of the federal enforcement program underscores the seriousness of Congress in controlling the environmental and social impacts of strip mining. If the Commonwealth anticipates regaining primacy over this activity, a new attitude, both legislative\(^{57}\) and philosophical, must be exhibited. Without the nec-

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necessary mandatory enforcement provisions to insulate the Commonwealth from mining industry pressures, and a commitment to enforce the program, the abuses that are all too familiar to the residents living in the hollows of southwestern Virginia will continue.

C. Mine Operator Rights and Responsibilities

Under the envisioned framework, Congress placed additional responsibilities upon the coal industry but, at the same time, guaranteed rights and remedies to prevent abuse and protect the mining industry from unreasonable harassment or intimidation by the regulatory authority. Furthermore, it was recognized that the coal industry would need time for making the required adjustments in its mining and reclamation technologies in order to comply with the more stringent environmental and public safety protection standards. To enhance the effectiveness of the program, and in recognition of the increased burdens placed upon the coal industry, two time tables for compliance with the initial program were created. Existing coal mining operations on lands subject to state regulation were required to comply with the interim program by May 3, 1978, e.g., nine months from the passage of the Federal Act.\(^{58}\) On the other hand, new coal mining operations "which commence operations pursuant to a permit issued on or after six months from the date of enactment of this Act [February 3, 1978] shall comply, and such permits shall contain terms requiring compliance with, the provisions" of the interim regulations.\(^{59}\)

In order to accommodate the desires of certain eastern coalfield representatives and senators, a broad exemption from compliance with the interim program was granted to operators producing no more than one hundred thousand (100,000) tons of coal annually. This provision exempted the small operator from compliance with all but one environmental protection standard until January 1, 1979.\(^{60}\) So, recognizing the extensive problems caused by excessive erosion, all mining operators, including the small operators, are required to "[i]nsure 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.”  

It should be acknowledged that this one requirement, if complied with, will have a very positive environmental impact in southwestern Virginia. The Commonwealth has neither publically recognized, nor attempted to adequately control, the abuse caused by the allowance of spoil and other loose material to be dumped over the mountainside during mining activities.

The remainder of this section will examine the environmental and public health and safety standards that are applicable under the interim program of the Federal Act.

1. Restoration of Land to Prior Use

The Federal Act requires the restoration of “land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses.” In comparison, the Director under the Virginia program is only required to encourage more productive postmining land use. No authority is granted to him to make such considerations mandatory. While no extensive study has been conducted in Virginia to determine the acreage returned to its prior condition, a brief inspection of the reports filed with the Division indicate that the overwhelming majority of operations meet only the minimum legal requirements to obtain bond release and an end to legal responsibility for the site.

2. Approximate Original Contour

This controversial provision of the Federal Act mandates reconstruction of the surface area disturbed to the “approximate original contour” with all highwalls, spoil piles, and depressions eliminated. There is no comparable provision under the Virginia pro-

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62. VCBR, note 9 supra.
65. This conclusion is based upon the monitoring of the state program by the Virginia Citizens for Better Reclamation, Inc.
gram. Many coal industry and state officials critical of this provision claimed that the only benefit would be an aesthetic one. Their argument is too simplistic. In fact, this provision, if implemented properly, will drastically reduce erosion, and minimize water pollution, thereby protecting off-site residences and re-establishing wildlife habitats and trails that are vital to the area's ecosystem.\textsuperscript{67}

3. Topsoil

Federal law requires that the topsoil from the mining operation be segregated, protected, and replaced.\textsuperscript{68} No comparable provision under the Virginia program exists. The only concern under Virginia law is for the covering of toxic materials and the requirement that non-toxic materials be used for backfilling of pit areas.\textsuperscript{69} This requirement in the interim program is essential if adequate long-term revegetation of disturbed mined areas is to be achieved.\textsuperscript{70} The Commonwealth not only ignores this scientific reality, but also permits the operator to leave large rocks and other debris on the surface which further inhibits adequate revegetation.\textsuperscript{71}

4. Hydrologic Balance

The Federal Act requires the minimization of “disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and, too, the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation.”\textsuperscript{72}

While the Commonwealth has improved its program to protect the hydrologic integrity of the disturbed and affected area, the requirements are not as stringent or mandatory as is necessary.\textsuperscript{73} For instance, no requirement was provided for the reconstruction of the “recharge capacity of the mined area to approximate premining

\textsuperscript{69} Va. Code Ann. § 45.1-203(c) (Repl. Vol. 1974); Virginia Coal Surface Mining Rules and Regulations, Department of Conservation and Economic Development, Division of Mined Land Reclamation, § 8.05 (1972) [hereinafter cited as Mine Regs.].
\textsuperscript{71} VCBR, note 9 supra.
\textsuperscript{73} Mine Regs., supra note 69, at §§ 9.01 and 9.07.
conditions.\textsuperscript{74} Without such protection, the area may not be suitable for postmining land use or may economically injure a nearby residence or farming operation. Without adequate protection, the mined area will become desolate and impotent — not fit for human or animal habitat.\textsuperscript{75}

5. Wastes

By the Federal Act, all mine wastes must be controlled in existing or new dams or embankments.\textsuperscript{76} The Commonwealth, however, has limited authority to so regulate such wastes.\textsuperscript{77}

6. Blasting Procedures

Adequate blasting procedure under the Federal Act\textsuperscript{78} requires that a pre-blast survey be made of man-made structures if such a request is made by a resident or owner within one-half mile of the mining site.\textsuperscript{79} Advance written notice must be given to local governments and residents (within one-half mile) prior to such activity. This requirement is satisfied by publication of the planned blasting schedule and daily notification of the blasting to area resident/occupiers.\textsuperscript{80} Also, the type, size, time, and frequency of the blasting operation must be limited so as to prevent off-site property damage and water disturbance.\textsuperscript{81} Finally, such blasting operations may only be conducted by certified personnel.\textsuperscript{82}

While the Commonwealth has promulgated blasting regulations as to size and timing of charges and the distances to occupied structures, the power granted the Division of Mines and Quarries of the Department of Labor and Industry is discretionary, not mandatory, and is rarely exercised to limit the use of explosives.\textsuperscript{83} In southwest-

\textsuperscript{83} Virginia Rules and Regulations Governing Surface Mining Operations, Department of
ern Virginia, the improper use of explosives associated with strip mining has caused extensive damage to private property, including homes, water wells and ponds. This provision, if properly implemented, should significantly reduce the blasting problems. A preblasting survey, responsibly executed, should give the mining operator the additional information he needs in designing a better blasting plan for the operation, thereby minimizing the possibility of off-site damages. The state regulatory authority should consider exercising its authority to require such a survey and provide the local governmental units with this authority. The Federal Act requires that the area of the survey be decided by the regulatory authority. This concept provides that once a request has been made by at least one resident or owner within one-half mile of the permitted area, the regulating authority could expand the size of the survey area. This would be beneficial in areas with unique geological features, utilities, or other public facilities, or that are densely populated.

While the coal industry and several states have been less than enthusiastic in carrying out this provision, once a uniform and reasonable survey is designed its use should minimize future blasting-related damages, and also be a valuable tool in determining if a blast caused the alleged damage.

7. Vegetative Cover

Under the Federal Act, a mine operator must establish "a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area . . . and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area. [But,] introduced species may be used . . . where . . . necessary to achieve the approval of postmining land use plan."88

Although the Commonwealth requires seventy-five percent cover with perennials and the planting of tree and shrub seedlings, no steps are taken to insure that adequate ground cover will be
achieved or maintained. The heavily mulched and densely stocked seedlings grow for a season or two, then with sheet erosion on the outslope or lack of nutrient topsoil on the bench, the vegetative growth dies, leaving a barren, unproductive and severely eroding landscape. Hence, the Virginia regulations result in little more than painting lipstick on a corpse.\footnote{88} 

Along with the general environmental protection standards set out above, additional protection beyond that afforded by the Commonwealth is provided for the following methods of mining.\footnote{89}

8. Mountaintop Removal

Additional requirements are set forth for this mining method.\footnote{90} Certain "appropriate assurances" are required of the mining operation by restricting this method to "where an industrial, commercial, agricultural, residential, or public facility is proposed" and approved as the postmining land use for the area.\footnote{91}

Many Appalachian citizen organizations are skeptical of this mining technology.\footnote{92} The coal industry has promoted mountaintop removal as the solution to the flat land "problem" in central Appalachia. Congress addressed the issue in a mixed way. While it endorsed the mining method as appropriate in certain specific situations (i.e., for certain postmining land use purposes), concerns were raised as to what long-term effect such areas would have on the hydrologic integrity of the watershed since large volumes of spoil material are produced and large tracts of land disturbed.

Another concern raised dealt with the construction of head-of-hollow and valley fills using large volumes of loose spoil material. These fills will be necessary storage areas for the excess spoil material created from decapitating the mountain. Will they be stable? Will they have a negative impact on the watershed? Can sedimenta-

\footnote{88. VCBR, note 9 supra.}
\footnote{89. Another provision provides additional protection to alluvial valley floors. As defined in 30 U.S.C.A. § 1260(b)(5) (Cum. Supp. 1978), this provision applies only to western coalfields.}
\footnote{90. 30 U.S.C.A. § 1265(c) (Cum. Supp. 1978).}
\footnote{92. See comments filed with the Office of Surface Mining on proposed interim regulations, November 2, 1977.}
tion and erosion be adequately controlled? The technologies involved are too new for realistic long-term answers. Even with the stringent guidelines set forth in the Federal Act, without the regulatory authority exercising reasonable restraint in issuing a mountain-top removal permit and strictly enforcing the applicable regulations, dire consequences to the affected watersheds and communities are anticipated.  

9. Steep-slope Mining

An important need for federal intervention in regulating the strip mining industry is the tremendous environmental and private property damages occurring from irresponsible strip mining practices in the steep-slope, coal-laden, central Appalachian region. As mining became more intensive, disturbing thousands of new acres a year, it became apparent that the affected states were either unable or unwilling to adequately protect the public health and safety or the environment. So, Congress determined that the steep-slope areas of the coal regions needed additional protection beyond the general requirements. In other words, these standards “shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required.”

Soil erosion is significantly greater on slopes steeper than 20 degrees and revegetation on such slopes has been grossly inadequate. The Federal Act responded to this problem by prohibiting placement of “debris, abandoned or disabled equipment, spoil material, or waste material” on the slope below the area mined; by requiring “[c]omplete backfilling with spoil material” as to “cover completely the highwall and return the site to the approximate original contour;” and by requiring that the land above the highwall shall not be disturbed unless “necessary to facilitate” compliance with the Federal Act.

94. See letters pertaining to notice of intent to sue, note 31 supra.
95. Doyle Report, supra note 4, at 58.
10. The Mine Operator's Right to Review

As stated previously, these standards, if properly implemented and enforced, will lead Virginia out of the dark ages in strip mining and reclamation technologies. During the interim program, all mining operations disturbing land after May 3, 1978, (January 1, 1979 if the company received a small operator exemption) must comply with the above standards as explained in the regulations published December 18, 1977. It is the responsibility of the states with regulatory programs to require compliance by the coal industry of these standards. To insure that such compliance is met, the Federal Act implements "a Federal enforcement program which shall remain in effect in each State . . . until the [permanent] State program has been approved . . . or until a Federal [regulatory] program has been implemented. . . ." To protect the coal industry against unwarranted harassment and to insure fairness, due process and equal protection in the implementation of the Federal Act, a substantial number of rights have been guaranteed. All enforcement actions are counterbalanced with administrative and judicial procedures available to the mine operator to challenge the action's validity. As previously noted, a cessation order will expire within thirty days unless a "public hearing is held at the [mine] site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing."

One of the remedies available to the aggrieved mine operator is the right to review, including rights for a public hearing, if any enforcement action is taken against his operation. Such request must be filed within thirty days of receipt of the notice of violation or cessation order; however, if such action is "modified, vacated, or terminated" the thirty-day period runs from that occurrence. But, it should be noted that if a civil penalty has been charged it must

99. See note 24 supra.
100. See authorizing letter filed by Governor Godwin with the Office of Surface Mining, Oct., 1977.
105. Id.
either be paid or forwarded to the Secretary of the Interior for placement in an escrow account. This must occur within thirty days from the time the penalty was imposed or the right to challenge the enforcement action is lost. 105 Before a decision is made on the review to modify, vacate, or terminate, temporary relief may be requested. 107 There are also administrative procedures, including a public hearing, for challenging a "show cause" order to suspend or revoke a permit. 108

Any person who participates in any federal administrative proceeding (or judicial review of the agency's action) relating to an enforcement action taken under the Federal Act, may request that reasonable costs and expenses, including attorneys fees, be assessed against the other party. 109 Additionally, judicial review of any such enforcement action is provided.

Besides the availability of the citizen suit provision, 110 an enforcement decision issued by the Secretary of the Interior is subject to judicial review within thirty days from the date of the decision. 111 Petition for review must be filed with the United States District Court for the district in which the coal mining operation is located. 112 As in the case of administrative review, temporary relief may be provided the aggrieved party if the court deems such is appropriate. 113

D. Citizen Rights and Participation

As discussed in the introduction, a significant role has been built into the Federal Act for interested citizens to actively participate in the implementation and enforcement of the interim and permanent regulatory programs. Citizen involvement is woven into every cloth that is sewn together to create the federal scheme in order to "assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations,

112. Id.
standards, reclamation plans, or programs established by the Secretary [of Interior] or any State under the Act.\textsuperscript{114}

Under the permanent program the interested citizen will be able to participate in every aspect of the decision-making process of the regulating authority. Participation is included in processes such as: the granting of a mining permit;\textsuperscript{115} involvement throughout the mining and reclamation process, including final bond release;\textsuperscript{116} surface-owner protection,\textsuperscript{117} including water rights and replacement;\textsuperscript{118} petitioning to have certain areas designated unsuitable for mining;\textsuperscript{119} and, formal rulemakings (regulations) are guaranteed once a permanent program has been established by the state or the Secretary of the Interior.

However, during the interim phase citizen participation is not as pervasive because such participation is shaped by the dual system of a state regulatory program, which may include enforcement authority, and the federal enforcement program. Regardless of the complications incurred with the start-up of the interim program, certain rights and remedies are guaranteed.

The Office of Surface Mining is required to involve the public in any rulemaking it initiates under the Federal Act. This has included the process of drafting and amending the regulations for the interim\textsuperscript{123} and permanent\textsuperscript{121} regulatory programs.\textsuperscript{122} Also, after a set of regulations has been adopted, "any person may petition the Director [of the Office of Surface Mining] to initiate a proceeding for the issuance, amendment, or repeal of a rule” under the Federal Act.\textsuperscript{123}

Furthermore, the public is provided the opportunity to actively participate in the approval/disapproval process of their permanent state program. Active participation during this process will better

insure that the state program more adequately meets the Federal Act and, accordingly, provides a greater role for the public in all aspects of the program.

In the actual mining operation, the public has a modified role under the interim program. While prior notification of an intent to mine is not required until the permanent program is implemented,\textsuperscript{124} those living near a mine will receive early warning through the requirement that blasting schedules are to be published in advance in local newspapers and mailed to residents living within one-half mile of the proposed blasting site.\textsuperscript{125} This notification does not permit the concerned individual to challenge the request to mine. However, it will assist those living within the area to protect their safety and property because the permittee must conduct a pre-blasting survey upon the request of a "resident or owner of a man-made dwelling or structure [including wells and ponds] within one-half mile of any portion of the permitted area ...."\textsuperscript{126} Then the regulatory authority is to decide the area of the survey and shall promulgate such provisions as deemed necessary.\textsuperscript{127}

The survey provides the legal tool requiring the mine operator to be aware of structures that may be affected by the blasting activity. While the burden is upon the individual to request a survey, the regulatory authority should be encouraged to exercise its authority and expand the scope of the survey to cover other critical areas within the vicinity of the mine. Such areas should include other residences, private facilities such as water wells, public utilities, schools and hospitals, and unique geological and archaeological features. Furthermore, the applicability of the survey is not limited to new mines, but rather to any use of explosives related to mining. Hence, a pre-blasting survey may be requested at existing operations as well. The mine operator will also benefit from having such a survey conducted because with the additional information he can design a more adequate blasting plan. If damages are alleged, in the future the survey should be of great assistance in determining the legitimacy of the claim.

\begin{footnotes}
\item[127.] \textit{Id.}
\end{footnotes}
Another tool available to the public is the statutory right to request an inspection of a mining operation. If the Office of Surface Mining fails to act upon such a request, the individual can seek administrative and judicial relief. If an inspection is carried out, the person making the request must "be allowed to accompany the inspector during the inspection." 

In the preceding section the rights and responsibilities of the mine operator were set forth, including a discussion of the administrative and judicial remedies that are available. The public can exercise these same rights and can participate in hearings initiated by the mine operator. This includes challenges filed by the mine operator of a notice of violation or cessation order, or in the "show cause" hearings for suspension or revocation of a permit.

An additional provision that will assist the interested citizen during the interim program in obtaining government and industry compliance with the federal standards is the citizen suit. Prior to the federal legislation, few states provided the public with this statutory option. If a state standard was being violated there was little relief available to the public. Only when monetary damages were incurred could a legal challenge be brought. Often such challenges were not viable due to vague and overbroad state statutes and regulations. In states similar to Virginia, little remedy was available to the aggrieved party except the common law. The Federal Act now provides the means for the individual to challenge the federal government or the state for not carrying out the Federal Act or against the mine for damages resulting from a violation.

III. THE PERMANENT REGULATORY PROGRAM

A. The Administrative Framework

While the primary focus of this article is to explain the major

134. DOYLE REPORT, supra note 4, at 82.
components of the initial regulatory program and compare and contrast each with the regulatory program in Virginia, a brief discussion follows of the major additional requirements of the permanent regulatory program. The Federal Act allows for the states to assume "exclusive jurisdiction" of the regulatory program. However, if a state fails to receive approval by June, 1980, a federal regulatory program will be implemented for that state by the Secretary of the Interior.  

1. State Program

By August, 1979, the states must submit a proposal of their permanent programs to the Secretary of the Interior for approval. If modification is required, such must be accomplished or a federal regulatory program will be instituted in June, 1980. An instituted federal program will remain in effect until a proposed permanent program submitted by the state is approved.

To be eligible to obtain exclusive jurisdiction, a state program must demonstrate the "capacity of carrying out the provisions" of [the Federal Act] and meet 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 chapter;
(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 chapter, 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 chapter;

(4) a State law which provides for the effective implementations, maintenance, and enforcement of a permit system, meeting the requirements of this title for the regulations 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 1272 . . . provided that the designation of Federal lands unsuitable for mining shall be performed exclusively by the Secretary after consultation with the State;
(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;
(7) rules and regulations consistent with regulations issued by the Secretary pursuant to this chapter; and
(8) 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.\textsuperscript{141}

One area that the Commonwealth may have difficulty resolving is the conflict-of-interest dilemma with the Conservation and Economic Development Board. The Board is responsible for setting policy and adopting rules and regulations which implement the strip mining regulatory program in the Commonwealth. Congress intended that no individual charged with "performing any function or duty under [the Federal] Act shall have a direct or indirect financial interest in underground or surface coal mining operations."\textsuperscript{142} Traditionally, representatives of the coal industry have served on this Board and no policy has been instituted to correct the potential abuse that results from such membership.\textsuperscript{143}

2. Federal Program

If a state fails to obtain approval of a permanent regulatory program by June, 1980, the Secretary of the Interior will implement a Federal program for that state.\textsuperscript{144} But, on federal lands the Secretary

\begin{itemize}
\item \textsuperscript{141} 30 U.S.C.A. §§ 1202(i), 1253(a) (Cum. Supp. 1978).
\item \textsuperscript{142} 30 U.S.C.A. § 1267(g) (Cum. Supp. 1978).
\item \textsuperscript{143} In direct disregard to the federal prohibition, the 1979 Virginia General Assembly codified an exemption to the conflict of interest provision. See supra note 22, at § 45.1-232.
\item \textsuperscript{144} 30 U.S.C.A. § 1254(a) (Cum. Supp. 1978).
\end{itemize}
of the Interior shall implement its own program.\textsuperscript{145} At a minimum, this program shall incorporate all of the requirements of the Federal Act and, if the state has an approved permanent program, the requirements of that program shall also be included.\textsuperscript{146} These standards shall be applicable to any federal mineral "lease, permit, or contract" on such lands.\textsuperscript{147} Also, any state with an approved program, "may elect to enter into a cooperative agreement" which will allow the state to regulate mining on federal lands located within that state.\textsuperscript{148}

Several judicial and administrative mechanisms are provided by the Federal Act to handle the situation where a state, upon receiving exclusive jurisdiction, does not carry out its legal responsibilities.\textsuperscript{149} This was in response to documented examples of where states had failed to adequately carry out their programs and the citizens affected had no legal means to force a mining company to comply or make the state live up to its responsibilities.\textsuperscript{150} Likewise, these provisions provide for citizen participation.

Recognizing that it is going to be extremely difficult, both administratively and politically, for the Secretary of the Interior to revoke a state program once granted, provisions are provided for partial revocation and for the setting up of a dual enforcement system similar to the design of the interim program.\textsuperscript{151} These stringent provisions and the possibility of loss of much-needed federal subsidies to implement the program should prove adequate incentive for even the most recalcitrant state to make a good-faith effort to carry out its responsibilities.

B. \textit{Other Administrative Programs}

Two additional programs must be incorporated within a program before a state can obtain exclusive jurisdiction over mining. Although only briefly discussed in this article, each program deserves

\textsuperscript{146} \textit{Id.}
\textsuperscript{150} \textit{See} \textit{Hearings}, note 9 \textit{supra}.
close examination for they are unique and will be major factors in protecting the environment and the public health and safety. It should be noted that the Commonwealth has neither program.\textsuperscript{152}

One is the Abandon Mine Reclamation Program.\textsuperscript{153} The Congressional hearings underscored the seriousness of past abuses by documenting the hundreds of thousands of areas scarred and thousands of miles of streams and rivers polluted over the past several decades from coal mining activity. A decision was reached that the coal industry should bear the major responsibility in the clean-up of these areas.\textsuperscript{154} Also, a process is provided for farmers to obtain funds to reconstruct abandoned lands and thereby make them more agriculturally productive.\textsuperscript{155} While this program will not be fully implemented until a permanent regulatory program has been instituted in a state, emergency funds have been made available to assist areas where the threat to the public health or safety or environment is imminent.\textsuperscript{156} The Commonwealth was one of the first states to benefit from this program when the town of St. Charles, in Lee County, was designated to receive federal assistance to correct severe erosion and flooding problems caused to its watershed due to intensive mining over the last several decades.\textsuperscript{157}

The other program requires each state to set up a process for designating areas unsuitable for coal mining.\textsuperscript{158} A similar process for federal lands is required to be implemented by the Secretary of the Interior.\textsuperscript{159} Congress determined that there are areas where coal mining is inconsistent with the present land use or that adequate reclamation, using present technologies, is not possible. These areas shall be off-limits to future mining.\textsuperscript{160} Additionally, there are other areas

\textsuperscript{152} While the state had an abandoned lands program, it never received funding from the State General Assembly.
\textsuperscript{157} Office of Surface Mining news release, May 17, 1978. The cooperative agreement was signed with the Commonwealth on Sept. 15, 1978.
where mining may be judged incompatible. The primary responsibility for exercising this process in the states will rest on the public because to have an area designated unsuitable requires an individual to file a petition with the regulatory authority.

C. Mine Operator Rights and Responsibilities

In addition to the standards provided by the interim program, a number of other requirements are implemented under the permanent regulatory program. The basis of these additional requirements are careful preplanning and more optimal post-mining land use. By involving the public in the decision-making process and enforcement of permits, there would be less likelihood of off-site damages.

Therefore, stringent permit application requirements are set forth requiring highly technical engineering and scientific skills. Adequate bonds and public liability insurance is required. The burden of proof is upon the mining applicant to show that he can comply with these standards. This is a marked improvement over the present permitting process in Virginia. Furthermore, any additional required environmental protection standards must be monitored and sophisticated records kept by the mine operator for public inspection on request. Not only will this plan assist the state in seeing that operators comply with the regulations, but also the public will be better served, for these provisions create a statutory right for citizen involvement.

D. Citizen Participation

The role of the interested citizen is greatly expanded under the permanent regulatory scheme. Similar to the interim program, all the additional tools are new concepts to the Commonwealth. These administrative requirements may prove to be the impediments to

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163. See Harvey, supra note 2, at 1157.
the Commonwealth's ability to receive approval of a permanent program due to the state's traditional avoidance of such involvement. Beyond the rights bestowed upon the public under the interim program, there is created a concrete role for the public throughout the administrative process of the permanent regulatory program. Not only is the public guaranteed a role in decision-making, but also citizens may assert themselves in the granting of mining permits, inspections, and bond releases.

As stated previously, the public has a well-defined role in the development and approval/disapproval process of its state permanent regulatory program and land use decisions, including the right to petition for lands to be designated unsuitable for mining.

E. Mining Operations Exempt from the Act and Variances

The Federal Act is not applicable 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 as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority.

Also, Congress recognized the need to allow the mining industry limited flexibility and the opportunity to implement new technologies. If the mine operator can show to the regulatory authority that another mining method has the potential for improved environmental safeguards and will increase coal production, he may receive a variance from certain performance standards of the Federal Act.

If the strip mining activity is in conjunction with a planned underground mining operation, certain reclamation procedures may be

postponed. Additionally, to provide for legitimate postmining land use, mountaintop mining and variances to the steep-slope mining procedures are allowed. These provisions are strictly limited to specified land uses and are not intended to provide loopholes for the operator who is attempting to circumvent the public safety and environmental safeguards provided in the Federal Act. In many instances meeting the requirements in obtaining a variance may prove more costly and time-consuming than compliance with the general standards.

IV. Conclusion

The Federal Act is perhaps the most comprehensive environmental legislation yet to be enacted. Virginia is a fertile testing ground to determine if the intent of Congress will be met. Success in Virginia will mean success elsewhere.

While the Commonwealth may have the statutory power to obtain exclusive jurisdiction for strip mining regulatory authority, major adjustments will have to be made. Beyond the adoption of the necessary legislative and regulatory provisions, the Commonwealth must restructure its ingrown policy against citizen involvement. The past practice of business regulating itself is over.

Additionally, the strip mining industry in Virginia is going to have to learn that reasonable regulations are necessary. The days where the industry and legislators draft laws and make promises behind closed doors must end.

Requirements of the Federal Act are tough, but reasonable. Both the Commonwealth and the mining industry are going to shoulder additional burdens. Additional costs incurred must be borne by the industry and those who benefit from the use of the coal. The abuses of the past must end and stripped lands be reconstructed. The residents of Virginia’s mining region are entitled to at least this environmental and safety protection.