

MINING

Note: For statutes pertaining to mining on federal public lands, see the portion of this outline entitled "Public Lands."

Surface Mining Control and Reclamation Act* 30 U.S.C. §§1201-1211, 1231-1251, 1252-1328

Office of Surface Mining Reclamation and Enforcement

The Act establishes the Office of Surface Mining Reclamation and Enforcement in the Department of the Interior to administer the Act's programs. [SMCRA §201]

Abandoned mine reclamations

The Act establishes the **Abandoned Mine Reclamation Fund**, which is to be administered by the Secretary of the Interior. [SMCRA §401(a)] The Fund consists of reclamation fees paid by coal mining operators, user charges imposed on reclaimed land, donations, recovered monies, and interest. [SMCRA §401(b)]

The Act establishes the **objectives** of the Fund in order of importance, with protection of public health, safety, general welfare, and property given highest priority. [SMCRA §403(a)] The Act requires the Secretary to maintain an inventory of eligible lands and waters that meet the highest priority. [SMCRA §403(c)]

Monies in the Fund may be used to reclaim and restore land and water resources adversely affected by past mining; to seal and fill abandoned deep mine entries and voids; to control and treat water pollution caused by mine drainage; to prevent and control burning coal refuse; to prevent and control coal mine subsidence; to establish state-administered programs to insure private property against damage caused by land subsidence resulting from underground coal mining; and for other purposes. [SMCRA §401(c)]

At least 50 percent of the funds collected annually in any state or from any Native American reservation shall be allocated to the state or reservation, respectively, provided the state or reservation has an approved abandoned mine reclamation program. [SMCRA §402(g)(1)]

Coal mine operators are required to pay a quarterly **reclamation fee** and submit statements about their mining operations. [SMCRA §402(a)-(c)]

The Secretary shall conduct audits of coal production and fee payments to ensure full compliance. [SMCRA §402(d)(2)]

The Secretary shall promulgate regulations for implementing an abandoned mine reclamation program and establishing procedures for approval of **state programs**. [SMCRA §405]

The Secretary's representatives or representatives of an authorized state may **enter property** to conduct studies or exploratory work to determine whether land has been adversely affected by past mining. [SMCRA §407(b)] If the regulatory authority finds that reclamation of property adversely affected by past mining would be in the public interest and the owners of the land are **unavailable** or **refuse permission** for the government to enter the land, then the Secretary's representatives or the state may, subject to certain procedural requirements, enter and conduct all necessary and expedient activities. [SMCRA §407(a)]

The Act establishes the circumstances under which the Secretary or authorized state may **acquire land** that has been adversely affected by past mining and establishes the manner in which such lands may be transferred or used. [SMCRA §407(c)]

When governmental reclamation activities significantly increase the value of the property, the Secretary or authorized state may record a **lien** against the property for the money spent on reclamation. [SMCRA §408]

The Secretary, at the request of any state governor or authorized state authority, may fill voids and seal abandoned tunnels and shafts that could endanger life and property, constitute a public health hazard, or degrade the environment. [SMCRA §409]

When an **emergency** exists, the Secretary's representatives may enter property, spend fund monies, and do all things necessary and expedient to protect the public health, safety, or general welfare. [SMCRA §410]

Regulation of surface coal mining's environmental impacts

The Secretary shall establish procedures for setting surface coal mining and reclamation **performance standards** and shall establish procedures and require-

ments for the submission and approval of **state programs**. [SMCRA §501]

State programs shall include sufficient regulation of surface coal mining and reclamation operations, adequate sanctions for violations, adequate personnel and funding, and a permit system for surface mining and reclamation operations. [SMCRA §503(a)]

The Secretary shall prepare a **federal program** for any state that does not have an approved state program. Such federal program will **preempt** any state laws to the extent they interfere with the federal program. [SMCRA §504(a)] The Act does **not preempt** state laws that are not inconsistent with it. State laws that are more stringent than the federal requirements are not inconsistent with the Act. [SMCRA §505]

All **surface coal mining permits** shall mandate compliance with applicable environmental protection performance standards, including measures to minimize damage; shall include a reclamation plan; and shall meet other requirements enumerated in the Act. [SMCRA §§506-510, 515] The Act establishes procedures for **permit revisions**. [SMCRA §511]

Each state or federal program shall require that **coal exploration activities** that substantially disturb the natural land surface must be performed only after a notice of intent to explore is filed with the appropriate regulatory authority, and shall require reclamation in accordance with the Act's performance standards. [SMCRA §512(a)] No operator shall remove more than 250 tons of coal pursuant to an exploration permit without the regulatory authority's written approval. [SMCRA §512(d)]

State programs shall establish a planning process based on sound scientific data for **designating areas as unsuitable** for surface coal mining because of their historic, cultural, scientific, or aesthetic values; their water or plant resources; their susceptibility to natural hazards; or the mining operations' incompatibility with existing state or local land use plans. [SMCRA §§503(a)(5), 522(a)] The Secretary shall review federal lands for designation as unsuitable for surface mining. [SMCRA §522(b)]

The Secretary shall promulgate and implement a program applicable to all surface coal mining and reclamation operations on **federal lands**. [SMCRA §523] The Act prohibits surface coal mining operations on certain **protected federal lands**. [SMCRA §522(e)]

The Act requires the appropriate regulatory authority to establish separate requirements for certain special bituminous coal mines and anthracite coal surface mines. [SMCRA §§527, 529]

The Act exempts certain surface mining operations from its provisions. [SMCRA §528]

The Act requires the Secretary to promulgate regula-

tions regarding the surface effects of **underground coal mining operations**. [SMCRA §516(a)] Each state or federal permit for underground mining shall require the permit holder to implement measures to minimize subsidence, seal unused openings from underground, manage wastes, and restore the land. [SMCRA §516(b)] In cases of **imminent danger**, the appropriate regulatory authority shall suspend underground mining under settled areas or adjacent to certain buildings and water sources. [SMCRA §516(c)]

The Act contains provisions to **protect surface estate owners**, lessees, and permittees when the United States owns the underlying coal. [SMCRA §§714-715]

Inspections and monitoring

The Secretary's representatives are authorized to enter and inspect any surface coal mining and reclamation operations. [SMCRA §517(a)]

The appropriate regulatory authority shall require permittees to maintain records, submit reports, and conduct monitoring concerning their operations. [SMCRA §517(b)] This information shall be made immediately available to the public. [SMCRA §517(f)]

Enforcement

The Act establishes procedural and jurisdictional rules concerning **judicial review** of a regulatory authority's actions. [SMCRA §526]

The Act provides for **enforcement procedures**, including orders for immediate cessation of operations in cases of imminent danger to public health or safety and permit suspension or revocation in cases of unwarranted or willful violations absent a showing of good cause. [SMCRA §521]

The Act authorizes **civil and criminal penalties and imprisonment** for certain violations. [SMCRA §§402(d)(1), 518]

Any person with an adversely affected interest may commence a **citizen suit** against alleged violators or the Secretary to compel compliance with the Act. [SMCRA §520] Any person who is personally injured or whose property is injured may bring an action for damages, including reasonable attorneys fees and expert witness fees. [SMCRA §520(f)]

Other

The Secretary may assess whether federal lands are **unsuitable for noncoal mining** operations because of the operations' effect on residential areas, and under certain circumstances may withdraw unsuitable lands from mineral entry or leasing. The Secretary must perform these duties if requested by the governor of the state in which the lands are located. [SMCRA §601]

The appropriate regulatory authority shall promulgate regulations requiring the **training and certifica-**

tion of people engaging in or directly responsible for blasting or using explosives in surface coal mining operations. [SMCRA §719]

The Secretary of Agriculture may enter into agree-

ments with rural landowners providing for land stabilization, erosion and sediment control, and reclamation through conservation treatment. The Secretary of Agriculture may provide grants to carry out these measures. [SMCRA §406]