



Chapter 5

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Potential Liability of Regulators and Inspectors of Mining and Processing Facilities¹

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¹ Professor Binder expresses his appreciation to Richard (Ric) Tilley for his assistance in researching state sovereign immunity. Sections of this chapter dealing with the Federal Torts Claims Act are edited sections of a much larger article being prepared by Professor Binder.

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§ 5.01. Introduction.

Success has many a proud parent, but tragedy is an orphan. Rarely does a party step forward to take responsibility even though plenty of fault can go around.

Underground mining has historically been a highly dangerous occupation² — so hazardous that it has been extensively regulated. So pervasive are the regulations that the industry has no reasonable expectancy of privacy to protect mine operators against warrantless safety inspections.³ In spite of the extensive regulation, tragic accidents occur. No human activity is risk free — certainly not underground mining.⁴

In a mining accident, the culpable parties may include the owner or operator, government regulators, government and private inspectors, the union, and the miners themselves.

This chapter will look to the potential liability of the respective parties.

§ 5.02. Unions.

Collective bargaining agreements often include a safety provision in which the employer and union agree to work together to maximize workplace safety at the facility, such as through a joint labor-management safety task force or council. The injured employee may claim in the case of an accident that the union owed a duty pursuant to the contract, and that this duty was breached, causing the accident.

² The two major short term hazards are cave-ins and methane gas explosion. The major long term risk is silicosis, commonly referred to as black lung disease. Congress has enacted a special compensation statute for the miners suffering from “pneumoconiosis.”

³ See, e.g., *Donovan v. Dewey*, 452 U.S. 594 (1981)(stone quarries).

⁴ We think of underground mining as being predominantly coal mining, but problems have also occurred with uranium mines (*See Barnson v. United States*, 816 F.2d 549 (10th Cir. 1987) and salt mines (*See Collins v. United States*, 783 F. 2d 1225 (5th Cir. 1986).