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Chapter 7
SMCRA Enforcement in Bankruptcy:
Regulatory Powers Revisited

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§ 7.01. Introduction.

Recent years have seen several large coal companies experience extreme financial distress, and for the least fortunate, enter the uncertain waters of

bankruptcy. While the recent surge in crude oil prices offers the promise of a revitalized coal industry, an industry-wide permanent recovery is far from certain as interest rates rise and financial capital becomes increasingly scarce. This is particularly true in light of the continuing paucity of available sureties to satisfy state bonding requirements.

In such times, federal and state regulators will keep a watchful eye on coal operations to ensure operators comply with environmental laws. Given the extensive authority granted to regulators under state and federal schemes, the regulators have a significant advantage in the balance of power between them and coal operators. However, once the financial condition of the coal operator becomes dire enough that a bankruptcy petition is filed, the powers and protection afforded a bankruptcy debtor shift that balance radically in favor of the bankrupt coal company. Indeed, the inability to comply with long-term environmental obligations is often the precipitating factor in the filing of a bankruptcy petition. Once the petition is filed, the debtor is immediately entitled to an automatic stay of certain enforcement activities by the regulators.

But the government is not powerless to enforce its laws and regulations against the bankrupt. The ability of state and federal regulators to enforce statutes and regulations against a coal company in bankruptcy is the subject of this chapter. The Bankruptcy Code and other provisions of federal law require a coal company in bankruptcy to continue to follow applicable laws and regulations, and give regulators the power to force compliance in many instances. The bankruptcy court, however, has the authority to curtail such enforcement in certain instances where needed to prevent the collapse of the struggling debtor.

This chapter begins with a discussion of the surface mining regulations that coal operators must abide by in the ordinary course of their business, followed by an overview of federal laws that relate to the ability of federal and state regulators to enforce laws generally upon a company in bankruptcy. The chapter then provides a survey of the cases applying these provisions in a variety of contexts, and continues with an analysis of cases that relate specifically to environmental regulations in the energy and coal industries. The chapter concludes with some insight into the way the law is developing in this area.