



## Chapter 11

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# The Surface Mining Control and Reclamation Act of 1977: New Era of Federal-State Cooperation or Prologue to Future Controversy?

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### § 11.01. Introduction.

The journey of the Surface Mining Control and Reclamation Act<sup>2</sup> (SMCRA) from bill to statute was nothing short of turbulent, marked by years of debate, both in the halls of Congress and in the Nation's coalfields, before President Jimmy Carter finally signed the bill into law on August 3, 1977. Earlier, in 1974 and 1975, Congress sent two bills<sup>3</sup> to President Gerald R. Ford who vetoed both because he believed that the legislation's potential to adversely affect coal production and costs, and correspondingly, to contribute to rising inflation, outweighed the environmental protection afforded by the bills at a time when the United States was still feeling the shock of the Arab oil embargo.<sup>4</sup>

Now, nearly two decades after SMCRA's passage, the issues underlying the statute still ignite passion in those who find themselves on opposite sides of the Act's allocation of power to the states and the federal government, as well as in those coal mine operators and coalfield citizens

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<sup>2</sup> 30 U.S.C. § 1201 *et seq.*

<sup>3</sup> S. 425, 93rd Cong., 2d Sess., 120 *Cong. Rec.* 40,054 (1974); H.R. 25, 94th Cong., 1st Sess., 121 *Cong. Rec.* 13,385-86 (1975). SMCRA has an extensive legislative history. For a concise recitation of that history, see Anthony Pye, "The Supreme Court Rejects Constitutional Challenges to the Surface Mining Control and Reclamation Act of 1977," 48 *Brook. L. Rev.* 137, n.40 (1981). For a more detailed account, see Comment, "The Surface Mining Control and Reclamation Act of 1977, 9 *St. Mary's L.J.* 863 (1978). See also Comment, "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.* 775 (1979).

It is also noteworthy that interest in federal regulation of surface coal mining existed as early as 1940, when Senator Everett Dirksen of Illinois introduced a bill that proposed to require restoration of mined land to its approximate original contour. See Uday Desai, "The Politics of Federal-State Relations: The Case of Surface Mining Regulation," 31 *Nat. Resources J.* 785, 787, n.7 and accompanying text (1991) [hereinafter "Desai"]. See also "Regulation of Strip Mining: Hearings Before the Subcomm. on Mines and Mining of the Comm. on Interior and Insular Affairs, House of Representatives, on H.R. 60 and Related Bills," 92nd Cong., 1st Sess. (1971).

<sup>4</sup> Indeed, one of the authors (then serving as surface mining counsel to Interior Secretary Rogers C.B. Morton) vividly recalls sitting in the Senate gallery watching the debate on S. 425 on October 9, 1973. Interrupting normal business, senator after senator rose to express concern about the growing energy crisis. After exhausting themselves on that topic, senators returned to debate of the surface mining bill and (despite predictions of lost coal production from the industry) the Senate promptly passed S. 425 by a large margin — 82 to 8. 119 *Cong. Rec.* 33,333 (1973).

who often appear to be caught in the middle. In these times of growing interest in reducing the federal government's power in favor of returning that power to the states, SMCRA provides an interesting case study of how federal and state governments respect each other in the face of a Congressional mandate to cooperate.

To paraphrase Lord Byron, the best prophet of the future is the past.<sup>5</sup> Thus, this chapter will briefly examine the events leading to the enactment of SMCRA and its implementation by Presidents Carter, Reagan, Bush, and Clinton with the goal of illuminating the road ahead for what remains a controversial and contentious statute.

### § 11.02. Prelude to SMCRA.

The first state to regulate surface mining<sup>6</sup> was West Virginia, which enacted such legislation in 1939.<sup>7</sup> A handful of states followed suit but the resulting legislation has been characterized as "mild" and merely an attempt by the mining industry to convince localities with surface mining within their borders that steps were being taken to safeguard the environment from the effects of mining.<sup>8</sup> The states themselves had an economic disincentive to pass such legislation, preferring instead to protect

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<sup>5</sup> George Noel Gordon, Lord Byron, "[t]he best of prophets of the future is the past." *Journal*, January 28, 1821.

<sup>6</sup> The authors use the term "surface mining" as a short description for the definition of "surface coal mining operations" found at § 701(28) of SMCRA, 30 U.S.C. § 1291(28), which includes "surface mining operations and surface impacts incident to" underground coal mines.

<sup>7</sup> 1939 W. Va. Acts, ch. 84 (repealed 1965).

<sup>8</sup> See, e.g., 1954 Ky. Acts, ch. 8; 1947 Ohio Laws, 730; Pa. Laws 1198. See also John D. Edgcomb, "Cooperative Federalism and Environmental Protection: The Surface Mining Control and Reclamation Act of 1977," 58 *Tul. L. Rev.* 299, 305-308 (1983) [hereinafter "Edgcomb"]. As an example of the coal industry's successful lobbying to defeat conservation-minded state regulation, the author cites the Virginia General Assembly's enactment in 1972 of legislation "essentially drafted by the Virginia coal industry" which created a regulatory agency, the Division of Mined Land Reclamation (DMLR), within the Department of Conservation and Economic Development. The new agency was charged with the authority to implement and enforce regulations promulgated by the Department. Because DMLR received no appropriations from the general revenue fund, it was forced to exist on permit fees which were insufficient for the agency to carry out its mission. *Id.* at 307.