

Chapter 8

SMCRA Primacy, Mining Permit Transfers, Ownership and Control, and Excess Reclamation Responsibilities: A Primer on Confusing Topics

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§ 8.01. Introduction.

The concepts of state primacy under the Federal Surface Mining Control and Reclamation Act of 1977¹ (SMCRA); the requirements for approval of mining permit transfers under SMCRA and delegated state programs; so-called ‘ownership and control’ and permit-blocking mechanisms under these mine regulatory schemes; and the potential for liability beyond the amount of a bond posted to secure completion of reclamation at a permitted site are all complicated issues in and of themselves. Bring them together in an unwarranted fashion, and this mix of regulatory concepts can create real havoc (and real liability). This chapter is intended to serve as a primer and update on these confusing topics. In addition, we provide a warning about how one state agency with primacy has attempted to meld together parts of these program elements in a convoluted effort to impose liability for excess reclamation costs on persons that would never have expected to be the target of such an action.

§ 8.02. The Surface Mining Control and Reclamation Act (SMCRA) and Cooperative Federalism.

[1] — State Primacy.

SMCRA contemplates that the responsibility for regulating surface coal mining in the United States will be shared between the U.S. Secretary of the Interior and state regulatory authorities.² This shared responsibility is a form of what is referred to as “cooperative federalism,”³ a critical aspect of the major federal environmental regulatory statutes that have been enacted by Congress since 1970. With SMCRA, such a principle finds expression in the approval of state programs that include the minimum requirements of

1 Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201, *et seq.*
 2 *Bragg v. W. Va. Coal Ass’n*, 248 F.3d 275, 288 (4th Cir. 2001).
 3 *Id.*