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**Chapter 6**  
***“You Have No Idea”***  
**Environmental Regulation**  
**of the Coal Industry Today**

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**§ 6.01. Introduction.**

Mountaintop coal mining is the worst example of what human beings can do to their environment when they behave irresponsibly.<sup>1</sup>

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<sup>1</sup> Robert F. Kennedy, Jr., Chief Prosecuting Attorney, *Riverkeeper, Inc.* (remarks during a visit to Charleston, West Virginia, as reported in the *Charleston Gazette*, October 19, 2001).

Coal has gone in 25 years from essentially unregulated to very heavily regulated. Critics of coal who regard it as a dirty, anachronistic fuel with little role in the post-industrial society have underestimated the industry's ability to meet the competition through low delivered price, and its ability to respond to and operate in compliance with environmental demands.<sup>2</sup>

Who's right? Is it possible to responsibly engage in coal mining operations on the mountaintops and the steep slope areas of Appalachia? Do current laws impose any meaningful degree of control on the environmental effects of coal mining operations? Is coal mining any more regulated today than it was 25 years ago?

Though there has been considerable publicity surrounding recent court challenges to various coal mining practices, media reports tend to emphasize the rhetoric of the parties on the opposite sides of a debate and rarely attempt to inform the public about the nature and scope of the regulatory programs as a whole. Hence, the title of this chapter is only partially facetious; in talking with friends and neighbors with "newspaper knowledge" of the coal industry about the detail that lies behind some of the headlines, the authors have indeed often heard the phrase: "I had no idea."

This chapter is intended to help fill the gaps in the understanding of exactly what environmental laws and regulations apply to the coal mining industry today. Though most all of the environmental regulatory programs discussed herein are administered in the major coal producing states by state agencies pursuant to a delegation of authority from a federal department, this discussion is focused on the federal laws and regulations governing the environmental aspects of coal mining operations which essentially establish the floor for state regulatory efforts. More particularly, this chapter addresses the federal laws, regulations and policies that establish permitting programs and performance standards for the purpose

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<sup>2</sup> *Sustainable Environmental Law – Integrating Natural Resource and Pollution Abatement Law from Resources to Recovery* (ELI, 1993; Campbell-Mohn, Breen, and Futrell, ed.), p. 1075.

of minimizing the environmental effects of coal mining operations; it does not address those parts of the statutes and programs directed towards forcing remediation of past contamination at abandoned sites.<sup>3</sup>

**§ 6.02. Major Environmental Protection Requirements  
Applicable to Coal Mining Operations.**

**[1] — Federal Surface Mining Control and Reclamation  
Act of 1977.**

The federal Surface Mining Control and Reclamation Act of 1977<sup>4</sup> (SMCRA) establishes a “nationwide program to protect society and the environment from the adverse effects of surface coal mining operations . . . .”<sup>5</sup> Through its permitting, bonding, environmental protection standards, reclamation requirements, and the thousands of pages of regulations which flesh out this statutory structure, SMCRA provides for the comprehensive regulation of coal mining operations from the first shovel of dirt to the successful revegetation of the reclaimed mine site. Moreover, unlike other environmental laws enacted in the 1970s, SMCRA is a multi-media environmental control statute, aimed at limiting the effects of mining operations on the land, air, and water on and off permitted mine sites.

Set forth below is a summary of the key parts of the SMCRA regulatory program, and recent developments in each.

**[a] — Activities that Require SMCRA Permits.**

Under SMCRA, no person may engage in “surface mining operations” without first obtaining a permit from either the U.S. Department of Interior’s Office of Surface Mining Reclamation and Enforcement (OSM)

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<sup>3</sup> Note: The scope of this chapter also does not encompass the substantial body of environmental laws regulating the end-users of coal. *See, e.g.*, Timmons, Lindsay, Keller, Gorton, “Legal Considerations Pertaining to Use and Disposal of Coal Combustion By-Products,” 20 *Energy & Min. L. Inst.*, ch. 11 (2000); Field, Lerner, Elliott, “What EPA’s Emerging Series of Clean Air Act Regulations Tells the Coal Industry: You’re Not Paranoid –We’re Really After You!,” 20 *Energy & Min. L. Inst.*, ch. 1 (2000).

<sup>4</sup> 30 U.S.C. §§ 1201-1328 (2004).

<sup>5</sup> 30 U.S.C. § 1202(a).