



# Chapter 9

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## Regulation of Oil and Gas Operations When They Occur on a SMCRA Permit Site

**Sandra B. Riggs**  
*Assistant Attorney General*  
*Commonwealth of Virginia*  
Big Stone Gap, Virginia

**Marshall S. Peace**  
*Attorney at Law*  
Lexington, Kentucky

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### § 9.01. Introduction.

Oil and gas exploration and production many times coexist on active surface coal mining operations which are subject to a permit issued under the Surface Mining Control and Reclamation Act (SMCRA).<sup>1</sup> Over the

<sup>1</sup> Public Law 95-87, Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 -1328(c)(1994)*et. seq.* (1977).

life of the development of the two reserves — from the permit applications to begin development, active production, exhaustion of reserves and completion of reclamation — numerous conflicts arise between competing interests of the oil and gas operator and the coal operator.<sup>2</sup> Ultimately, those conflicts must be resolved or the development of both reserves will be impaired.

This chapter first examines the conflicting development objectives of the oil and gas operator and the coal operator and the property rights issues that naturally result from such co-existence on the same tract. The property rights conflicts may arise during the permit application phase, the active operational phase or the reclamation phase of the SMCRA permit. The resolution of these conflicts influences and, in turn, is influenced by other issues more directly related to the SMCRA permit.

As an overlay to the property conflicts and the more direct SMCRA permit issues, some consideration must be given to the impact of regulation on both oil and gas and coal operations under statutes other than SMCRA. This chapter provides an overview of the regulatory scheme in Virginia and the interplay between SMCRA and other federal and Virginia statutes and regulations affecting the oil and gas operator and the coal operator. Regulation of oil and gas and coal operations in other states may vary considerably from the Commonwealth of Virginia.

This chapter focuses on the regulatory impact on the oil and gas operator and the coal operator when oil and gas operations are conducted on active surface mining property subject to a SMCRA permit: i) the impact on the SMCRA permittee of third party surface disturbance, specifically surface disturbance by the oil and gas operator, and ii) issues of post-mining land use revisions and bond release, as they affect both the coal and the oil and gas operator.

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<sup>2</sup> References are made to a singular mineral tract for convenience, however, such phrase is intended to include a single tract or multiple tracts of oil and gas reserves and coal reserves developed within a SMCRA permit area.