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## APPENDIX

### Mountain Top Mining: New Challenges and New Opportunities<sup>1</sup>

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<sup>1</sup> Editor’s Note: Presented at the 24th Annual Institute, 2003.

**§ MTM.01. Introduction.**

The mining industry in the Appalachian region has suffered through numerous challenges in recent years. Not only has it been rocked by economic hardship caused by an influx of cheap western coal into eastern markets, but it has also been forced to respond to complex litigation and regulatory developments that threaten to impose new and expensive environmental requirements on the coal mining industry. Judge Haden's recent court decision in *Kentuckians for the Commonwealth, Inc. v. Rivenburgh*,<sup>2</sup> though reversed on appeal, heralds a sea of change in environmental requirements that is gaining momentum and forcing fundamental changes in well accepted practices that have been in place for decades. Further, the generic Mountain Top Mining Valley Fill Environmental Impact Statement (MTM EIS) to be finalized in 2004 by state and federal agencies, outlines an ambitious environmental regulatory program that ultimately will change the way surface mining is conducted. Given these new developments, it is incumbent on the mining industry to take a fresh look at the changing regulatory scheme, look to relevant practices in other industries and identify proactive approaches that will allow the coal mining industry to survive and thrive in the swiftly changing regulatory climate. This article reviews some of the recent regulatory and legal developments affecting the mining industry and focuses on how these initiatives can be used not only to add value, but also serve as the catalyst for prosperity and growth.

Drawing from projects performed for coal companies and other industries, this article explores how positive environmental initiatives and other recognized land use planning concepts can be added to a coal mining development project to provide added economic value and tangible "social benefits" to the project sponsors and surrounding communities that not only meet Haden type tests, but will also satisfy evolving regulatory requirements.

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<sup>2</sup> *Kentuckians for the Commonwealth, Inc. v. Rivenburgh*, 204 F. Supp. 2d 927, 946 (S.D.W. Va. 2002).