

104TH CONGRESS
1ST SESSION

S. 1401

To amend the Surface Mining Control and Reclamation Act of 1977 to minimize duplication in regulatory programs and to give States exclusive responsibility under approved States program for permitting and enforcement of the provisions of that Act with respect to surface coal mining and reclamation operations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1995

Mr. BENNETT (for himself, Mr. THOMAS, Mr. SIMPSON, Mr. WARNER, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Surface Mining Control and Reclamation Act of 1977 to minimize duplication in regulatory programs and to give States exclusive responsibility under approved States program for permitting and enforcement of the provisions of that Act with respect to surface coal mining and reclamation operations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Surface Mining Con-
5 trol and Reclamation Amendments Act of 1995”.

1 **SEC. 2. STATEMENT OF FINDINGS AND POLICY.**

2 Section 101 of the Surface Mining Control and Rec-
3 lamation Act of 1977 (30 U.S.C. 1201) is amended—

4 (1) by striking “and” at the end of paragraph
5 (j);

6 (2) by striking the period at the end of para-
7 graph (k) and inserting “; and”; and

8 (3) by adding at the end the following:

9 “(l) a majority of the coal-producing States
10 have developed programs that regulate surface and
11 underground coal mining operations within their
12 borders in an environmentally sound manner, taking
13 into account the diversity in terrain, climate, chemi-
14 cal, and other physical conditions in areas subject to
15 mining operations; and

16 “(m) duplication in regulatory programs should
17 be avoided and States assume the exclusive respon-
18 sibility under approved State programs for permit-
19 ting and enforcement of the provision of this Act
20 with respect to surface coal mining and reclamation
21 operations within the States.”.

22 **SEC. 3. FUNCTIONS OF OFFICE OF SURFACE MINING REC-**
23 **LAMATION AND ENFORCEMENT.**

24 Section 201(c)(1) of the Surface Mining Control and
25 Reclamation Act of 1977 (30 U.S.C. 1211(c)) is amended
26 to read as follows:

1 “(1)(A) administer the programs for controlling
2 surface coal mining operations which are required by
3 this Act;

4 “(B) review and approve or disapprove State
5 programs for controlling surface coal mining oper-
6 ations and reclaiming abandoned mine lands;

7 “(C) except in a State with an approved State
8 program—

9 “(i) make those investigations and inspec-
10 tions necessary to ensure compliance with this
11 Act,

12 “(ii) conduct hearings, administer oaths,
13 issue subpoenas, and compel the attendance of
14 witnesses and production of written or printed
15 material, and

16 “(iii) review and vacate or modify or ap-
17 prove orders and decisions, and order the sus-
18 pension, revocation, or withholding of any per-
19 mit for failure to comply with any of the provi-
20 sions of this Act or any rules and regulations
21 adopted pursuant thereto;”.

22 **SEC. 4. STATE PROGRAMS.**

23 Section 503 of the Surface Mining Control and Rec-
24 lamation Act of 1977 (30 U.S.C. 1253) is amended by
25 adding at the end the following:

1 “(e) With respect to a State with an approved State
2 program—

3 “(1) the State program shall apply in lieu of
4 this Act to surface coal mining and reclamation op-
5 erations in the State; and

6 “(2) the provisions of this Act and the regula-
7 tions promulgated by the Secretary pursuant to this
8 Act shall not become effective with respect to sur-
9 face coal mining and reclamation operations within
10 a State with an approved State program until such
11 time as the State has amended its approved State
12 program and the permittee has been provided a rea-
13 sonable time (as determined by the regulatory au-
14 thority) to conform ongoing surface coal mining and
15 reclamation operations to any revised or additional
16 requirements under such amended State program.”.

17 **SEC. 5. FEDERAL PROGRAMS.**

18 Section 504(b) of the Surface Mining Control and
19 Reclamation Act of 1977 (30 U.S.C. 1254(b)) is amended
20 by striking “section 521” and inserting “section 521(b)”.

21 **SEC. 6. PERMITS.**

22 Section 506 of the Surface Mining Control and Rec-
23 lamation Act of 1977 (30 U.S.C. 1256) is amended by
24 adding at the end the following:

1 “(e) A surface coal mining and reclamation operation
2 that is in compliance with the terms and conditions of a
3 permit issued pursuant to this Act shall be deemed to be
4 in compliance with the environmental protection standards
5 of this Act and the approved State program or Federal
6 program or Federal lands program pursuant to this Act,
7 except that the regulatory authority may, pursuant to sec-
8 tion 511(c) of this Act, require reasonable revisions of a
9 permit to ensure compliance with this Act and regulatory
10 program.”.

11 **SEC. 7. ENFORCEMENT.**

12 (a) NOTICE FOR ABATEMENT.—Section 521(a)(3) of
13 such Act (30 U.S.C. 1271(a)(3)) is amended by striking
14 “or section 504(b)”.

15 (b) SUSPENSION AND REVOCATION ORDER.—Section
16 521(a)(4) of such Act (30 U.S.C. 1271(a)(4)) is amended
17 by striking “or section 504”.

18 (c) STATE RESPONSIBILITY.—Section 521(a) (30
19 U.S.C. 1271(a)) is amended by adding at the end the fol-
20 lowing:

21 “(6)(A) Except as provided in subparagraph (B) and
22 paragraph (2) of this subsection, the regulatory authority
23 shall have the sole responsibility for issuance of a notice
24 to the permittee or his agent of a violation of any require-
25 ment of this Act or any permit condition required by this

1 Act, and the suspension or revocation of any permit issued
2 pursuant to a State program, which determination by the
3 State regulatory authority shall be subject to administra-
4 tive and judicial review in accordance with State law.

5 “(B) The responsibility for enforcement at any sur-
6 face coal mining and reclamation operation of any provi-
7 sion of the Federal Water Pollution Control Act or any
8 State law enacted pursuant thereto, or other Federal laws
9 relating to preservation of water quality, including (but
10 not limited to) compliance with effluent limitations and
11 water quality standards shall rest with the regulatory au-
12 thority approved by the United State Environmental Pro-
13 tection Agency under such water quality laws.”.

14 **SEC. 8. JUDICIAL REVIEW.**

15 (a) ORDER OF ALJ.—Section 526(a) of the Surface
16 Mining Control and Reclamation Act of 1977 (30 U.S.C.
17 1276) is amended by adding at the end the following:

18 “(3) For the purposes of this section, an order of an
19 administrative law judge in a proceeding conducted pursu-
20 ant to section 554 of title 5, United States Code, shall
21 be deemed a final decision of the Secretary subject to judi-
22 cial review in accordance with this section.”.

23 (b) ACTIONS RELATING TO STATE PROGRAM.—Sec-
24 tion 526 of such Act (30 U.S.C. 1276) is amended by
25 striking subsection (e) and inserting the following:

1 “(e) Action of the State regulatory authority pursu-
2 ant to an approved State program shall be subject to judi-
3 cial review by a court of competent jurisdiction in accord-
4 ance with State law.

5 “(f) Where there is an approved State program, any
6 action of the Secretary pursuant to section 521(b) shall
7 be subject to judicial review by the United States district
8 court for the district which includes the capital of the
9 State whose program is at issue.”.

10 **SEC. 9. TIME LIMITATION.**

11 (a) IN GENERAL.—Title VII of the Surface Mining
12 Control and Reclamation Act of 1977 (30 U.S.C. 1291
13 and following) is amended by adding the following new
14 section at the end thereof:

15 **“SEC. 722. TIME LIMITATION.**

16 “An action, suit, or any other proceeding under this
17 Act for the enforcement of any violation, fine, penalty, or
18 forfeiture, pecuniary or otherwise, shall be barred unless
19 commenced within three years from the date on which the
20 violation first occurs.”.

21 (b) TECHNICAL AMENDMENT.—The table of contents
22 in the first section of the Surface Mining Control and Rec-
23 lamation Act of 1977 (30 U.S.C. prec. 1201) is amended
24 by inserting after the item for section 719 the following:

“Sec. 720. Subsidence.

“Sec. 721. Research.

“Sec. 722. Time limitation.”.

1 **SEC. 10. DEFINITIONS.**

2 Section 701(28) of the Surface Mining Control and
3 Reclamation Act of 1977 (30 U.S.C. 1291(28)) is amend-
4 ed to read as follows:

5 “(28) ‘surface coal mining operation’—

6 “(A)(i) means an activity conducted on the
7 surface of land in connection with a surface
8 coal mine or, subject to the requirements of sec-
9 tion 516, surface operations of an underground
10 coal mine, the products of which enter com-
11 merce or the operations of which directly or in-
12 directly affect interstate commerce; and

13 “(ii) includes excavation for the purpose of
14 obtaining coal by such common methods as—

15 “(I) contour, strip, auger, mountain-
16 top removal, box, cut, open pit, and area
17 mining;

18 “(II) the use of explosives and blast-
19 ing, in situ distillation or retorting, leach-
20 ing or other chemical or physical process-
21 ing; and

22 “(III) the cleaning, concentrating,
23 other processing or preparation, or loading
24 of coal for interstate commerce at or near
25 the mine site; but

1 “(iii) does not include the extraction of
2 coal incidental to the extraction of other min-
3 erals where coal does not exceed $16\frac{2}{3}$ percent
4 of the tonnage of minerals removed for pur-
5 poses of commercial use or sale or coal explo-
6 rations subject to section 512; and

7 “(B)(i) means the land on which such an
8 activity occurs or where such an activity dis-
9 turbs the natural land surface; and

10 “(ii) includes land adjacent to land de-
11 scribed in clause (i) the use of which is inciden-
12 tal to any such activity, land affected by the
13 construction of new roads to gain access to the
14 site of such an activity and for haulage, and ex-
15 cavations, workings, impoundments, dams, ven-
16 tilation shafts, entryways, refuse banks, dumps,
17 stockpiles, overburden piles, spoil banks, culm
18 banks, tailings, holes or depressions, repair
19 areas, storage areas, processing areas, shipping
20 areas, and other areas on which are sited struc-
21 tures, facilities, or other property or materials
22 on the surface, resulting from or incident to
23 such an activity; but

24 “(C) does not include the construction, im-
25 provement, or use of a road that is—

1 “(i)(I) designated as a public road
2 under the law of the jurisdiction in which
3 the road is located; or
4 “(II) maintained under the authority
5 of a governmental entity; and
6 “(ii) constructed in a manner similar
7 to or better than the construction of other
8 roads that are of the same classification in
9 the jurisdiction and are open to public
10 use.”.

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