

§ 1299. Study of reclamation standards for surface mining of other minerals

(a) Contract with National Academy of Sciences-National Academy of Engineering; requirements

The Chairman of the Council on Environmental Quality is directed to contract to such extent or in such amounts as are provided in appropriation Acts with the National Academy of Sciences-National Academy of Engineering, other Government agencies or private groups as appropriate, for an in-depth study of current and developing technology for surface and open pit mining and reclamation for minerals other than coal designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation for minerals other than coal. The study shall—

- (1) assess the degree to which the requirements of this chapter can be met by such technology and the costs involved;
- (2) identify areas where the requirements of this chapter cannot be met by current and developing technology;
- (3) in those instances describe requirements most comparable to those of this chapter which could be met, the costs involved, and the differences in reclamation results between these requirements and those of this chapter; and
- (4) discuss alternative regulatory mechanisms designed to insure the achievement of the most beneficial postmining land use for areas affected by surface and open pit mining.

(b) Submittal of study with legislative recommendation to President and Congress

The study together with specific legislative recommendations shall be submitted to the President and the Congress no later than eighteen months after August 3, 1977: *Provided*, That, with respect to surface or open pit mining for sand and gravel the study shall be submitted no later than twelve months after August 3, 1977: *Provided further*, That with respect to mining for oil shale and tar sands that a preliminary report shall be submitted no later than twelve months after August 3, 1977.

(c) Authorization of appropriations

There are authorized to be appropriated for the purpose of this section \$500,000: *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

(Pub. L. 95-87, title VII, § 709, Aug. 3, 1977, 91 Stat. 522.)

§ 1300. Indian lands

(a) Study of regulation of surface mining; consultation with tribe; proposed legislation

The Secretary is directed to study the question of the regulation of surface mining on Indian lands which will achieve the purpose of this chapter and recognize the special jurisdictional status of these lands. In carrying out this study the Secretary shall consult with Indian tribes. The study report shall include proposed legislation designed to allow Indian tribes to elect to assume full regulatory authority over the administration and enforcement of regulation of surface mining of coal on Indian lands.

(b) Submittal of study to Congress

The study report required by subsection (a) of this section together with drafts of proposed legislation and the view of each Indian tribe which would be affected shall be submitted to the Congress as soon as possible but not later than January 1, 1978.

(c) Compliance with interim environmental protection standards of this chapter

On and after one hundred and thirty-five days from August 3, 1977, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections (b)(2), (b)(3), (b)(5), (b)(10), (b)(13), (b)(19), and (d) of section 1265 of this title and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

(d) Compliance with permanent environmental protection standards of this chapter

On and after thirty months from August 3, 1977, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by sections 1257, 1258, 1259, 1260, 1265, 1266, 1267, and 1269 of this title and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

(e) Inclusion and enforcement of terms and conditions of leases

With respect to leases issued after August 3, 1977, the Secretary shall include and enforce terms and conditions in addition to those required by subsections (c) and (d) of this section as may be requested by the Indian tribe in such leases.

(f) Approval of changes in terms and conditions of leases

Any change required by subsection (c) or (d) of this section in the terms and conditions of any coal lease on Indian lands existing on August 3, 1977, shall require the approval of the Secretary.

(g) Participation of tribes

The Secretary shall provide for adequate participation by the various Indian tribes affected in the study authorized in this section and not more than \$700,000 of the funds authorized in section 1302(a) of this title shall be reserved for this purpose.

(h) Jurisdictional status

The Secretary shall analyze and make recommendations regarding the jurisdictional status of Indian Lands¹ outside the exterior boundaries of Indian reservations: *Provided*, That nothing in this chapter shall change the existing jurisdictional status of Indian Lands.¹

(i) Grants

The Secretary shall make grants to the Navajo, Hopi, Northern Cheyenne, and Crow tribes to assist such tribes in developing regulations and programs for regulating surface coal mining and reclamation operations on Indian lands. Grants made under this subsection shall be used

¹ So in original. Probably should be "lands".

to establish an office of surface mining regulation for each such tribe. Each such office shall—

- (1) develop tribal regulations and program policies with respect to surface mining;
- (2) assist the Office of Surface Mining Reclamation and Enforcement established by section 1211 of this title in the inspection and enforcement of surface mining activities on Indian lands, including, but not limited to, permitting, mine plan review, and bond release; and
- (3) sponsor employment training and education in the area of mining and mineral resources.

(j) Tribal regulatory authority

(1) Tribal regulatory programs

(A) In general

Notwithstanding any other provision of law, an Indian tribe may apply for, and obtain the approval of, a tribal program under section 1253 of this title regulating in whole or in part surface coal mining and reclamation operations on reservation land under the jurisdiction of the Indian tribe using the procedures of section 1254(e) of this title.

(B) References to State

For purposes of this subsection and the implementation and administration of a tribal program under subchapter V, any reference to a “State” in this chapter shall be considered to be a reference to a “tribe”.

(2) Conflicts of interest

(A) In general

The fact that an individual is a member of an Indian tribe does not in itself constitute a violation of section 1211(f) of this title.

(B) Employees of tribal regulatory authority

Any employee of a tribal regulatory authority shall not be eligible for a per capita distribution of any proceeds from coal mining operations conducted on Indian reservation lands under this chapter.

(3) Sovereign immunity

To receive primary regulatory authority under section 1254(e) of this title, an Indian tribe shall waive sovereign immunity for purposes of section 1270 of this title and paragraph (4).

(4) Judicial review

(A) Civil actions

(i) In general

After exhausting all tribal remedies with respect to a civil action arising under a tribal program approved under section 1254(e) of this title, an interested party may file a petition for judicial review of the civil action in the United States circuit court for the circuit in which the surface coal mining operation named in the petition is located.

(ii) Scope of review

(I) Questions of law

The United States circuit court shall review de novo any questions of law under clause (i).

(II) Findings of fact

The United States circuit court shall review findings of fact under clause (i) using a clearly erroneous standard.

(B) Criminal actions

Any criminal action brought under section 1268 of this title with respect to surface coal mining or reclamation operations on Indian reservation lands shall be brought in—

- (i) the United States District Court for the District of Columbia; or
- (ii) the United States district court in which the criminal activity is alleged to have occurred.

(5) Grants

(A) In general

Except as provided in subparagraph (B), grants for developing, administering, and enforcing tribal programs approved in accordance with section 1254(e) of this title shall be provided to an Indian tribe in accordance with section 1295 of this title.

(B) Exception

Notwithstanding subparagraph (A), the Federal share of the costs of developing, administering, and enforcing an approved tribal program shall be 100 percent.

(6) Report

Not later than 18 months after the date on which a tribal program is approved under subsection (e) of section 1254 of this title, the Secretary shall submit to the appropriate committees of Congress a report, developed in cooperation with the applicable Indian tribe, on the tribal program that includes a recommendation of the Secretary on whether primary regulatory authority under that subsection should be expanded to include additional Indian lands.

(Pub. L. 95-87, title VII, §710, Aug. 3, 1977, 91 Stat. 523; Pub. L. 102-486, title XXV, §2514, Oct. 24, 1992, 106 Stat. 3112; Pub. L. 109-432, div. C, title II, §209, Dec. 20, 2006, 120 Stat. 3019.)

AMENDMENTS

2006—Subsec. (i). Pub. L. 109-432, §209(b), struck out “, except that nothing in this subsection may be construed as providing such tribes with the authorities set forth under section 1253 of this title” after “Indian lands” in introductory provisions.

Subsec. (j). Pub. L. 109-432, §209(a), added subsec. (j).
1992—Subsec. (i). Pub. L. 102-486 added subsec. (i).

§ 1301. Environmental practices

In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the regulatory authority with approval by the Secretary may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 1265 and 1266 of this title. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining