

Small Miner Amendments to S. 145

RECOGNITION OF THE LIMIT OF THE RIGHT OF SELF-INITIATION UNDER THE 1872 MINING ACT AND THE PERMISSIVE (PERMIT) SYSTEM FOR PURPOSES OF REGULATORY CERTAINTY

(submitted by Public Lands for the People)

SECTION 101: IMPROVING REGULATORY ACCOUNTABILITY

Any federal unpatented mining claimant who prevails in a legal action shall be awarded his reasonable fees and expenses of attorneys, including any expert witness charges, to be paid as provided in sections 2414 and 2517 of title 28, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

In any other case involving the exercise of rights under the 1872 Mining Act, as amended, section 2412(d)(1)(A) of title 28 shall be applied without regard to the language beginning with the word “unless” or “substantially justified”.

SECTION 102: REMOVING OVERLAPPING AND DUPLICATIVE AUTHORITIES

(a) 16 U.S.C. § 478 is amended by:

(i) Adding, after “such rules and regulations as may be prescribed by the Secretary of Agriculture,” the phrase “provided, however, that neither the Secretary of Agriculture nor the Secretary of Interior may prohibit or materially restrict motorized access to federal mining claims over historical, visibly-existing or previously-existing trails and roads, or the reasonable restoration or maintenance of such trails and roads”; and

(ii) Striking “for all proper and lawful purposes, including that of” and striking “the rules and regulations covering such national forests” and inserting “the rules of the Department of Interior concerning mineral development”.

(b) 16 U.S.C. § 551 is amended by adding, after “to regulate their occupancy and use and to preserve the forests thereon from destruction” the phrase “provided, however, that the citation for violation of any such rules and regulations, civil or criminal, is subject to immediate appeal or petition as set forth in 30 U.S.C. § 612(d).”

(c) 16 U.S.C. § 1604 is amended by adding a new subsection (n):

“Renewable Energy” resource planning shall not extend to the development of mineral resources, and renewable resource planning shall be conducted to give full effect to federal mineral development policy as administered by the Secretary of Interior, the Bureau of Land Management.”

(d) 30 U.S.C. § 612 is amended by:

(i) adding at the end of subsection 612(b): “Provided further, that no state or political subdivision of a state shall have duplicative authority to regulate any prospecting, mining or processing operations upon federal lands.”

(ii) Adding a new subsection 612(d) as follows:

“Any federal unpatented mining claimant may petition the Bureau of Land Management that any member of the public or any state or federal agency action endangers or materially interferes with prospecting, mining or processing operations or uses reasonably incident thereto.”

SECTION 103: UNIFORM FEDERAL REGULATION

(a) 43 U.S.C. § 1702 is amended as follows:

(i) New subsections (q), (r) are added:

“(q) ‘mine operator’ means any person or entity exercising rights of or through the holder of a federal unpatented mining claim.

“(r) Generally ‘mining casual use’ means excavation and/or processing (including motorized excavation and processing) of less than 1,000 cubic yards of material annually per claim; or surface disturbance of less than five acres of ground; use, maintenance, or occupancy of visibly-existing or previously-existing roads, trails, tunnels, mill sites, refining sites, bridges, or existing mining-related buildings; staging, use or occupancy of portable or removable equipment; subsurface operations; or any combination of the foregoing or similarly-limited mineral development activities.”

(b) A new section is created at 43 U.S.C § 1748(c), titled: “Administration of Unpatented Mining Claims” with the following additions:

“(a) Federal unpatented mining claims are tracts of public land dedicated to the particular purpose of mineral development, and the exercise of the property rights in federal mining claims are to be managed exclusively in accordance with this section.”

“(b) Notices of Initiation (NOI) and Plans of Operation (POO)─”

“(i) Mine operators may proceed with mining casual use without notice to the Bureau of Land Management (BLM).”

“(ii) Mine operators must provide a Notice of Initiation (NOI) to the BLM thirty (30) days in advance of commencing mining operations beyond casual use. If BLM fails to respond to the NOI within thirty (30) days, the mine operator may commence operations, unless the operation involves a surface disturbance in excess of 100 acres but less than 1000 acres, in which case BLM shall have twelve (12) months to respond and mitigate impacts, after which the operation is approved by operation of law. All other operations exceeding 1000 acres shall be covered under a plan of operations and approved by operation of law within twenty-four (24) months”

“(c) Upon receipt of a NOI, BLM shall review the proposed operations for compliance with best management practices and issue a determination as to

what, if any, additional best management practices are required. NOIs may be of any duration specified by the mine operator, and the BLM's determination with respect to the NOI shall remain effective for so long as operations continue as specified in the NOI and may be assigned to future mine operators."

"(i) Final reclamation activity in general shall only be required if a mine operator and BLM geologist concur that an ore body is exhausted and that the reclamation will not impede future operations. Seasonal reclamation activity may be required if it will not materially interfere with future mining operations."

"(ii) Reclamation bonding shall only apply if surface disturbance exceeds 5 acres or 1000 cu. yards annually of processed material per claim. Haul roads, utility roads, temporary milling sites and portable structures, and any other pre-existing land disturbance shall not be included in the 5-acre calculation. Reclamation costs shall be based upon the average of 3 independent bids. BLM shall recognize and give effect to bonding pools through a memorandum of understanding to assist large and small mine operators in meeting the requirements of this section. The bids for bonds and reclamation costs may not be reviewed more often than once every 7 years. Reclamation bonds shall be refunded to the mining operator within one (1) year of completion of the reclamation, even if the site is subject to continuing monitoring."

"(d) Any personnel employed by BLM to review an NOI shall have qualifications of at least a bachelor's degree in mine engineering with a minimum of three (3) years or more experience in private sector commercial mining operations or over five (5) years production mining experience in lode, placer and milling operations."

"(e) If BLM determines that any mine operator is conducting operations beyond casual use without providing an NOI, or that any mine operator is conducting operations contrary to best management practices, BLM must provide formal, written notice to the mine operator through a Notice of Noncompliance. Such notice shall describe the noncompliance and shall specify the action to comply and the time within which such action is to be completed, generally not to exceed thirty (30) days, *provided, however*, that days during which the area of operations is inaccessible shall not be included when computing the number of days allowed for compliance. The requirements to issue a Notice of Non-compliance shall apply whether or not the operator has a submitted NOI on file with the BLM and shall not be used to shut down the entire mineral operation. Actual notice shall be presumed effective when mailed by certified mail, return receipt requested to the owner of the mining claim and operator of record as specified in BLM records, or personally served upon the mine operator. No enforcement action by any agency, civil or criminal, may be commenced until after delivery of such notice, and no adverse action may be taken against a mine operator until after a hearing with the protections of 5 U.S.C. § 554. No enforcement action shall halt compliant aspects of the operations that the operator qualifies under casual use activities."

“(f) Action with respect to any NOI shall not be ‘major federal action’ within the meaning of 42 U.S.C. § 4332 or ‘agency action’ within the meaning of 16 U.S.C. § 1536(a)(2).”

SECTION 104. MINE OPERATION EXEMPTIONS FROM THE CLEAN WATER ACT

(a) “Mining operations which do not add any chemicals to excavated aggregate or ore, other than water, and native materials, shall not be considered an “addition of any pollutant” within the meaning of 33 U.S.C. § 1362(12).”

(b) “Mining and processing discharges from mining and processing involving the use of biodegradable chemicals that have a Material Safety Data Sheet (MSDS) reading, “This product is not classified as dangerous for the environment,” “The risk of environmental effects is considered small”, or substantially equivalent language.”

(c) “Suction dredge and bucket excavation mining within the natural 100-year flood plain of a water body, or operations contained through artificial impoundments to reduce offsite sediment transport comprise incidental fallback and do not represent an “addition” or “discharge” within the meaning of 33 U.S.C. §§ 1341, 1342 or 1344.”

(i) “Incidental fallback” is defined as: native rock, sand, soil, or vegetative materials picked up, processed to remove or reclaim the mined metal or minerals, and then backfilled at or near the same excavation site. Offsite turbidity in connection with incidental fallback is also not an “addition” or “discharge” within the meaning of 33 U.S.C. §§ 1341, 1342 or 1344.”

SECTION 105: SMALL MINER EXEMPTION

30 U.S.C. § 803 is amended to add the following two items at the end of the section:

“Provided, however, that operations without any employees, or who hire other non-mining work personnel, are exempt from the provisions of this Chapter and any regulations promulgated thereunder.”

“The Mine Safety and Health Administration (MSHA) must provide formal, written due process notice to the mine operator through a Notice of Noncompliance prior to citation. Such notice shall describe the noncompliance and shall specify the action to comply and the time within which such action is to be completed, generally not to exceed thirty (30) days, *provided, however*, that days during which the area of operations is inaccessible shall not be included when computing the number of days allowed for compliance. The requirements to issue a citation shall apply only to visible violations that have not been complied with and shall not be used to shut down the entire mineral operation. Actual notice shall be presumed effective when mailed by certified mail, return receipt requested to the owner of the mining claim and operator of record as specified in MSHA records, or personally served upon the mine operator. No enforcement action by MSHA, civil or criminal, may commence until after delivery of such notice, and no adverse action may be

taken against a mine operator until after a hearing with the protections of 5 U.S.C. § 554, unless death or injury has resulted from the non-compliance.”

SECTION 106: REVIEW AND REVISE EXISTING FEDERAL REGULATIONS

The Secretary of Interior shall review and revise existing federal regulations, including but not limited to 36 C.F.R. Part 9 and 43 C.F.R. Parts 4 and 3800, to make them congruent with this Act. The Secretary of Agriculture shall review and revise existing federal regulations to make them congruent with this Act, including but not limited to the striking or repeal of 36 C.F.R. Part 228. The Secretary of Labor shall review and revise existing federal regulations to make them congruent with this Act, including but not limited to 30 C.F.R. Parts 1-199. The Administrator of the Environmental Protection Agency shall review and revise existing federal regulations to make them congruent with this Act, including but not limited to 40 C.F.R. Parts 1-50.

SECTION 107: FEDERAL CONSENT ON PUBLIC LANDS

No federal consent decree may be entered into or is binding which effects or affects mineral development upon federal lands without written concurrence those federal unpatented mining claimants affected to be heard in connection with entry of the decree.

SECTION 108: DISCRETION OF THE OWNER OR MINERAL OPERATOR

30 U.S.C. § 43 is amended by adding “Any patented mineral lands whereby the State has not declared its intent to regulate surface disturbances as required by provisions of this act; the land owner or mineral operator at his/her own discretion, may continue to be regulated exclusively under federal law and this part as to surface disturbance and environmental compliance. Duplicative permitting authority by any State agency or subdivision thereof shall be deemed waived by the State, at the discretion of the owner or mineral operator of the property, unless expressly disclosed in the mineral patent.”

SECTION 109: MINERAL WITHDRAWN LANDS

43 U.S.C. § 1712(e)(3) is amended by substituting for the phrase “public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318–2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 1714 of this title or other action pursuant to applicable law:” and substituting the phrases “no existing federal managed lands after 1976 shall be removed from operation of the Mining Law of 1872, as amended (R.S. 2318–2352; 30 U.S.C. 21 et seq.), except by Act of Congress. Public lands and federal managed lands reserved under other laws prior to 1976 that have been withdrawn from mineral entry shall be reopened upon petition showing of valuable metals, minerals, or rare earths, upon concurrence of a competent geologist within six (6) months, and upon submission to Congress.”