

Official Opinion No. 80-49, House Bill 1011 (S.L. 1980, Ch. 300)

July 18, 1980

Mr. John R. Frederickson
Program Director
Surface Mining
Anderson Building
Pierre, South Dakota 57501

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House Bill 1011 (S.L. 1980, Ch. 300)

Dear Mr. Frederickson:

You have requested an official opinion from this office in regard to the interpretation of Chapter 300 of the 1980 Session Laws (House Bill 1011). _Based upon this statute, you have asked the following question:

QUESTION:

Does House Bill 1011 require the Conservation Commission to regulate underground mining activities, the surface effects thereof, or both?

Section 1 of Chapter 300, 1980 Session Laws, amended SDCL 45-6A-2(1) to read as follows:

'Affected land,' land from which overburden is to be or has been removed and land upon which overburden, tailings, waste rock or mine spoil is to be or has been deposited, and shall include the land which is disturbed by reason of the building of access roads, railroad loops, roads, processing, milling or manufacturing facilities, warehouses, storage areas or other support facilities for the purpose of mining or exploration and shall include the land affected by surface effects caused by underground mine workings.

Section 1 also added a new section to SDCL 45-6A-2:

'Underground mining,' removal of minerals other than for exploration by means of entry through adits, tunnels, shafts, or other methods known of as underground workings.

Section 2 of House Bill 1011 (codified as SDCL 45-6A-2.2, 1980 Interim Supp.) reads as follows:

For the purposes of this chapter, the terms surface mining, underground mining, and mining are synonymous, unless the context clearly indicates otherwise.

House Bill 1011 also includes one other section which applies to your question: Section 8 (codified as SDCL 45-6A-2.4, 1980 Interim Supp.), which reads as follows:

All permitting, bonding and reclamation requirements of this chapter shall be equally applicable to underground mining and the surface affects [sic] thereof.

Each of these above sections indicates that the Legislature intended the entire underground mining operation to be permitted by the Conservation Commission. This intent is especially evident in Section 8: '. . . shall be equally applicable to underground mining and the surface affects [sic] thereof.'

SDCL 45-6A-8.1 indicates that the primary purpose of the bonding requirement is to ensure reclamation of the affected land of the mine. The bond required by the Commission in conjunction with the issuance of a permit for an underground mine would thus apply only to those lands described in the above-referenced definition of 'affected land.'

Therefore, the answer to your question is 'Both.' First, the statute requires the Commission to regulate underground mines. The issuance or denial _of a permit is to be based on the same requirements presently in effect for surface mines. Second, the bond and reclamation required by the Commission is to cover only the surface effects of the underground mine.

Respectfully submitted,

Mark V. Meierhenry
Attorney General