

Environment & Natural Resources Group:

Mining

The extraction of coal and minerals, as well as reclamation activities, often pose unique legal issues and challenges that our lawyers are eminently qualified to handle. Crowell & Moring has a deep understanding of the challenges and regulatory pressures that are particular to the mining industry.

For decades we have counseled our clients to help shape the regulatory infrastructure based on our experience in and outside of federal and state government, and we have assisted clients in making sound business-based decisions for their companies under a variety of circumstances, including federal litigation and practice before administrative bodies. Our lawyers have also worked on Capitol Hill and have key insights into the ebb and flow of the federal legislative processes.

Mining and Reclamation

We have assisted mineral resource companies in acquiring and exercising rights to federally owned minerals and conducting mineral exploration and development operations on public lands. We advise and defend companies on issues arising under natural resource, environmental, endangered species, and historic preservation laws. Our diverse experience in these areas includes:

- Representing a gold mining company in a major environmental controversy regarding the reclamation standards applicable to an open pit mine on federal and private lands in Montana.
- Winning reversal of a Ninth Circuit decision before the U.S. Supreme Court, establishing

that sand and gravel were not reserved to the federal government as “valuable minerals” in certain Nevada land patents. *BedRoc Limited LLC v. United States*, 541 U.S. 176 (2004).

- Securing dismissal on behalf of 18 major mining companies of a *qui tam* action seeking billions of dollars in damages based on allegations that “foreign controlled” companies were unlawfully mining gold, silver, and other minerals from public lands.
- Resolving problems associated with the Department of the Interior’s Applicant Violator System, including enjoining and overturning permit blocks, assisting in ownership and control determinations, and representing the National Mining Association in litigation that set aside the implementing regulations. See *National Mining Association v. U.S. Department of the Interior*, 105 F.3d 691 (D.C. Cir. 1997) and 177 F.3d 1 (D.C. Cir. 1999).
- Challenging a regulation imposing an unlawful interest rate on federal coal lease royalties in *Amax v. Quarterman*, 181 F.3d 1356 (D.C. Cir. 1999).
- Representing major coal and other mineral companies in litigation and arbitration proceedings involving coal and mineral supply agreements, lease agreements, competing severed mineral interests, and similar mineral-related disputes as well as providing contract drafting and negotiation advice.



Miner Safety and Health

There is no more important area of the day-to-day operation of a mine than ensuring the health and safety of a company's human resources. For nearly 40 years, we have represented mining industry clients with operations regulated by the Federal Mine Safety and Health Act. Our clients in this specialized area include large and small mining companies, industry trade associations, synfuel plants, coal consumers, and company officials subject to personal civil and criminal penalties for violations of the Act.

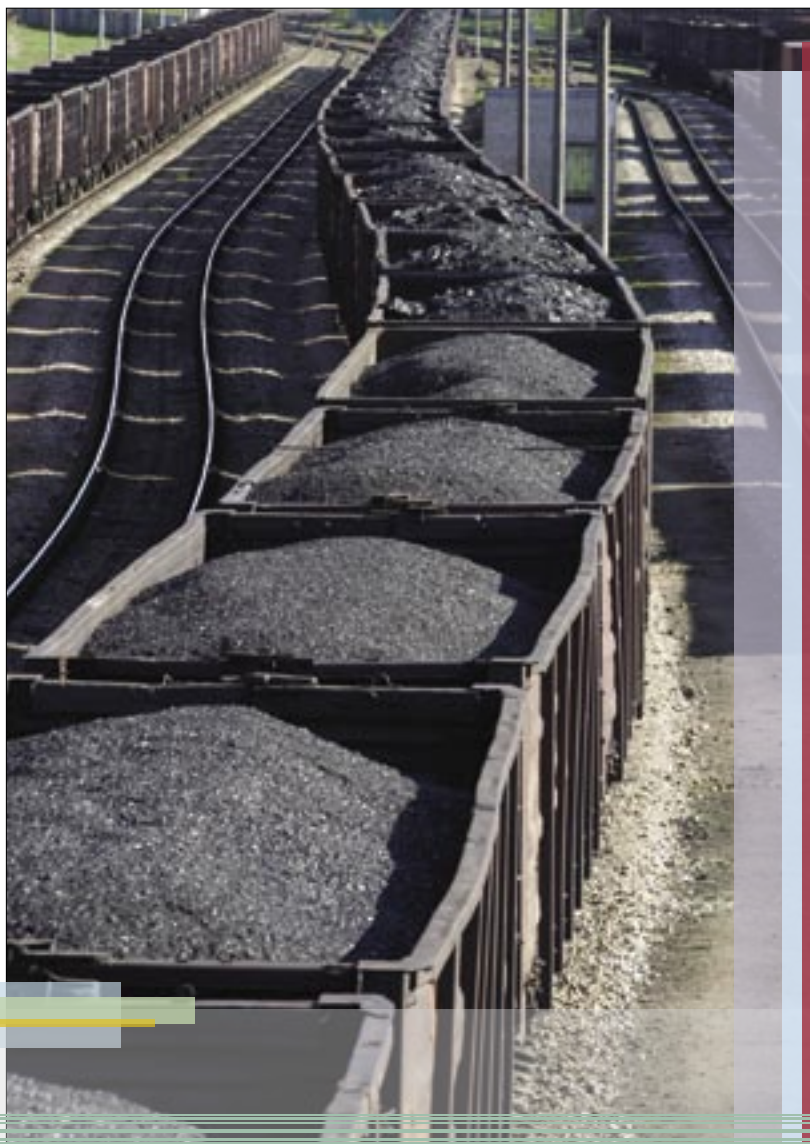
We have counseled and litigated for mining industry clients affected by every facet of this federal law, including:

- Government investigations and hearings following major mine accidents; civil and criminal investigations and prosecutions for “willful” or “knowing” violations; miner discrimination and compensation claims; disputes about citations and orders of withdrawal affecting mine operations; civil penalty assessments; petitions for modification; and mine plan disputes.
- Industry and individual company comments to proposed regulations, and challenges to final regulations in the U.S. Courts of Appeals.
- Safety and health program audits at mines, and training for miners and their supervisors to help them fulfill their responsibilities under the federal safety and health law and protect their interests and those of the mine operator during MSHA inspections and enforcement actions.

Mine Development Permitting

Crowell & Moring's lawyers are well-versed in the complex permitting requirements faced by the mining industry. Our experience with the U.S. Environmental Protection Agency, the Department of the Interior, and other federal and state agencies enables us to counsel clients through mining permitting structure. Our experience in this area includes:

- Counseling mining companies through the multi-faceted dimensions of permitting mine facilities on federal lands, including the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) implications of projects.
- Representing mining companies in federal land exchanges to facilitate mine development.
- Successfully defending mine permitting and land exchange actions in administrative and judicial appeal proceedings.



Environmental Management Systems and Compliance Auditing

We have counseled and represented companies and trade associations on a broad range of environmental, health, and safety (EHS) auditing projects and environmental management systems (EMS), including:

- Conducting EHS audits to evaluate compliance with applicable legal requirements, industry standards, and management practices.
- Conducting audits and site assessments as part of “due diligence” inquiries into the environmental liabilities of companies, and assisting in drafting related contractual documents.
- Evaluating, designing and implementing EHS management systems (including ISO 14001, alternative models, and SEC/Sarbanes-Oxley components) in connection with or to avoid federal and state enforcement proceedings and suspension/debarment actions.
- Developing and conducting training and awareness programs for EHS coordinators, plant personnel, and senior management, while developing risk analysis and management strategies with a focus on securing competitive advantage through cost-effective compliance and sustainable development policies.

Defense of Enforcement Actions

Mining is the most highly regulated natural resources-based industry. Crowell & Moring’s attorneys are familiar with all dimensions of what must be set into motion when the “knock on the door” occurs, based on our experience with federal and state government mining agencies. We understand the types of decisions that must be made throughout the spectrum of federal and state enforcement proceedings from the initial response, to negotiations with responsible agencies, to defense of violation notices and formal complaints. Crowell & Moring’s federal mine safety law and white collar criminal defense specialists’ experience in handling mining enforcement includes:

- Defending large mining companies against Clean Water Act and Superfund, cost recovery and natural resource damages claims as well as imposing liability on the federal government.
- Representing the operator of one of the deepest mines in enforcement actions by the U.S. Departments of Labor and Justice, as well as congressional (both Senate and House) investigations.

Surface Coal Mining

Since enactment of the Surface Mining Control and Reclamation Act (SMCRA) in 1977, Crowell & Moring attorneys have represented the industry trade associations in virtually all national rulemaking litigation springing from the U.S. Department of the Interior’s implementation of the statute, which comprehensively regulates coal mining operations with strict environmental protection and reclamation standards.

- Crowell & Moring attorneys are currently representing mining clients in two SMCRA rulemaking lawsuits in the U.S. District Court for the District of Columbia. In one lawsuit, our client is challenging Interior’s denial of a petition for rulemaking that sought to modify certain procedural rules governing administrative appeals of enforcement actions and permit modifications under SMCRA. In the other lawsuit, our client is an intervenor-defendant in support of substantive regulations concerning stream buffer zones and the creation and disposal of excess spoil and coal mine waste.



- Counseling on, and litigating, the major legal issues arising under SMCRA, such as state primacy, subsidence, valid existing rights, mountaintop mining, offsite support facilities, and hydrology. See, e.g., *Citizens Coal Council v. Norton*, 330 F.3d 478 (D.C. Cir. 2003) (addressing subsidence issues in surface coal mining).

Mining Litigation, Administrative Law Counseling, and Public Policy in the Federal and State Governments

All three branches of government affect the mining industry on a daily basis. From Capitol Hill, to navigating the fields of federal and state governments and seeking relief in the courts, Crowell & Moring is familiar with and prepared to represent the interests of its mining clients in all executive branch agencies, the offices of legislators, and before the bench. Our matters include:

- Counseling mining industry clients on the impact of new Clean Air Act rules and regulations addressing greenhouse gas emissions.
- Counseling a coalition of gold companies in the efforts to amend the General Mining Law of 1872 and a coalition of coal companies seeking legislation to resolve disputes between coal developers and oil and gas producers in the Powder River Basin of Wyoming and Montana.
- Representing the mining industry in litigation challenging rules governing the operation of the General Mining Law which allow companies to explore for and develop hardrock metallic and industrial minerals on federal lands through the location of mining claims and mill sites. The complaint raises issues under NEPA, the Federal Land Policy and Management Act of 1976, and the General Mining Law.

- Representing two of the nation's largest coal producers in judicial review proceedings involving conflicts between the Federal Energy Regulatory Commission's approval of new and expanded natural gas pipeline facilities and major underground coal mining operations located in Ohio and Pennsylvania.
- Crowell & Moring's lawyers are teaming with lawyers from our International Dispute Resolution group to represent a mining company in a claim under Chapter 10 of Central America Free Trade Agreement against the Republic of El Salvador. The investment dispute, which involves alleged expropriation and violations of fair and equitable treatment, is before an arbitration tribunal conducted at the International Centre for the Settlement of Investment Disputes at the World Bank.



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