

iii. Department of Interior Land Use
Legislation

The Department of the Interior in the management of federal lands has a broad range of legislative power, important examples of which are described below, in which air quality considerations may or must be taken into account.

As a condition for the grant of the use of federal land (rights of way, leases, use permits) the Secretary of the Interior may include terms and conditions affecting federal lands related to air quality. Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.) Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)

Indian Reservations. Several Indian reservations are located near the U.S. - Canada border. Proposed actions. e.g., leases, rights-of-way, on those lands (including pollution emitting actions) must be approved by the Secretary of Interior, who could require environmental (air quality) stipulations.

Surface mining activities. The Secretary's regulations under the Surface Mining Act, which serve as guidelines to the state in developing state programs and which control activities on federal lands, require an operator to employ various air pollution control measures. These air quality regulations were recently challenged, and a U.S. district court found that they exceeded statutory authority. The district court found that the Secretary's authority was limited to the regulation of air pollution resulting from wind erosion of the land surface. The opinion noted, however, that the Act requires an operator to demonstrate an ability to comply with existing air quality laws. To date, the Secretary has not repromulgated new regulations.

Before an operator may begin surface mining, he must obtain a permit from the appropriate authority. The permit application submitted to the regulatory authority within the Department of Interior must be accompanied by an air pollution control plan. The regulatory authority must review the plan and either approve it or require the operator to employ additional control measures as a condition of permit approval. Disapproval of a permit application is also a possibility if the applicant has failed to demonstrate that the air quality requirements of the Act, the regulations and other federal and state laws can be feasibly accomplished under his mining and reclamation operations plan. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1258(a) (9).