COALEX STATE INQUIRY REPORT - 350
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TOPIC: RESTORING THE LAND TO ITS PREMINING "CAPABILITY"

INQUIRY: The premining land use of a permitted area was cropland. Current plans call
for a wildlife habitat as the alternative postmining land use. Using the land as a wildlife
habitat requires replacing fewer inches of topsoil than would be required for cropland. Is
establishing a wildlife habitat considered a "higher or better use" of the land in this
instance? Is the permittee required to replace all of the topsoil, restoring the land to the
use it was "capable of supporting before mining", and then establish the land as a
wildlife habitat? [SMCRA 515(b)(2); 30 CFR 816.133] Please locate any relevant
information.

SEARCH RESULTS: Research was conducted using the COALEX Library and other
materials in LEXIS as well as existing COALEX REPORTS. Research identified a
number of existing COALEX REPORTS that discuss "higher or better use" of the land,
replacement of topsoil and AOC. However, these materials do not address the specific
questions of a wildlife habitat as a higher use of the land than cropland or the
requirement to replace topsoil to its premining depth when the alternative postmining
land use requires fewer inches of topsoil.

Copies of the relevant COALEX STATE INQUIRY REPORTS are listed below and are
included without their attachments. Three legislative history excerpts are enclosed for
background. Also attached are four WILLIAM H. PULLEN IBLA decisions. These
decisions, which are discussed in several of the attached COALEX REPORTS, provide
an excellent discussion some of the relevant issues.

COALEX STATE INQUIRY REPORT - 290, "Definition of higher and better use" (1994).

The legislative and regulatory history materials enclosed as part of this Report state
that there should be some flexibility in determining postmining land use. "Higher or
better land use" should be determined on a site-by-site basis by the landowner and the
regulatory authority. In proposing alternative postmining land use, the operator must
demonstrate in the plans that the proposed use is "economically viable and politically
acceptable", more beneficial, and is a "reasonable and environmentally sound
reclamation option." Copies of Interior administrative decisions provide discussions of
acceptable postmining land uses.
COALEX STATE INQUIRY REPORT - 209, "Replacement of topsoil; permit requirements more stringent than the regulations" (1992).

An operator reclaimed the mined area with 14 inches of topsoil, the premining topsoil depth. However, the reclamation plan called for 18 inches of topsoil. The Interior administrative decisions included in of the Report address the question of replacement topsoil depth as well as the question of permit conditions.


REPORT 176 provides Interior administrative decisions and Federal Register preambles discuss substituting alternative materials for topsoil. REPORT 267 provides legislative history materials that address the issue.

COALEX STATE INQUIRY REPORT - 341, "Approximate original contour" (1998).
COALEX STATE INQUIRY REPORT - 292, "Highwall elimination and AOC: blending in" (1994).

These REPORTS were enclosed for background.

CONGRESSIONAL RECORD, 120 Cong. Rec. 25009, 25012 (July 24, 1974).

Excerpts from these three Congressional Record entries are enclosed for background.


See these decisions for discussions of AOC, revegetation and topsoil replacement.

ATTACHMENTS

A. COALEX STATE INQUIRY REPORT - 290, "Definition of higher and better use" (1994).
B. COALEX STATE INQUIRY REPORT - 209, "Replacement of topsoil; permit requirements more stringent than the regulations" (1992)
E. COALEX STATE INQUIRY REPORT - 341, "Approximate original contour" (1998).
G. CONGRESSIONAL RECORD
   2. CONGRESSIONAL RECORD, 120 Cong. Rec. 25009, 25012 (July 24, 1974).
   3. CONGRESSIONAL RECORD, 120 Cong. Rec. 24450, 24608 (July 18, 1974).