



COALEX STATE INQUIRY REPORT - 1

August 1, 1984

Sue A. Shadley
Legal Analyst
Division of Reclamation
309 W. Washington Street
Indianapolis, Indiana 46204

TOPIC: INDIAN BURIAL GROUNDS; ARCHAEOLOGY

INQUIRY: In Indiana, the permit must identify any sites within the permit area that are of historical or archaeological significance. Although the state has an archaeologist who investigates proposed mining sites, generally the only protection a site may have would be if the public submitted a lands unsuitable petition.

SEARCH RESULTS:

A search of the state regulatory programs was conducted. The State of Wyoming was the only state located with a specific reference to archaeology under its environmental performance standards. Similar to the procedure described by Indiana, most states require identification of archaeological sites and Indian burial grounds in the permit application. Once identified, protection is accorded under the lands unsuitable petitioning process. The state regulatory languages mirror almost verbatim the federal regulations 30 CFR Secs. 772.12(b), 779.12(b), 779.24(j), 762.5 and 762.11(b)(2).

Special protection is accorded under the state regulatory programs, as required by the Act, to sites located on a publicly owned park or places included in the National Register of Historic Sites, subject to valid existing rights. Mining is prohibited unless joint agreement is reached by the regulatory authority and the federal, state, or local agency that has jurisdiction (SMCRA Sec. 522(e)(3))

Under permit review, the states of Wyoming and North Dakota include procedures that extend some protection to archaeological sites in addition to the lands unsuitable petition.

In Wyoming, "upon recommendation by a qualified archaeologist or a qualified paleontologist, the administrator may require an evaluation of the proposed permit area prior to the time that a permit or license is issued." (Wy, Chapter II Permit Application) Once mining has begun, Wyoming further requires, as a performance standard, that any significant archaeological discovery be reported within five days of its discovery. Considered an "unanticipated condition", the state regulations treat a significant archaeological discovery in the same manner as the uncovering of toxic material or an occurrence of a subsidence safety hazard. (Wy, Chapter IV Environmental Protection Performance Standards)

The North Dakota state program allows the regulatory authority, in its review of the permit application, to delete areas, require application revision, or reject an application if it finds that an archaeological site would be adversely affected by the proposed surface coal mining operation. Furthermore, "if mining is permitted, the commission, in consultation with the state historical society, shall establish procedures for the protection and preservation of such sites throughout



the surface coal mining operation." Once surface mining operations have begun in an area, the commission, upon finding that they may affect such sites, "may make such changes in the permit as it may deem necessary to avoid such described conditions." (ND, Permit Approval or Denial Standards)

Under 30 CFR 731.14(b), states are required to submit copies of other state laws that directly affect the regulation of surface coal mining. Utah included among its submitted documents, the Division of State History Act, under which the Division of State History is responsible for "the marking and preservation of historic sites, areas, and remains." (Utah, Division of State History - Duties and Objectives)

The Utah state act specifically addresses excavation and permit requirements for archaeological or paleontological work. It contains, however, criteria by which archaeological sites may be classified as "designated landmarks". Once designated a landmark, the sites receive special protection under the Division of State History Act:

ATTACHMENTS:

Excerpt from Wyoming Land Quality Division of the Department of Environmental Quality; Rules and Regs., Chapter II Permit Application; Sec. 2 General Application Content Requirements.

Excerpt from Wyoming Land Quality Division of the Department of Environmental Quality; Rules and Regs., Chapter IV Environmental Protection Performance Standards, Sec. 2 General Environmental Protection Performance Standards.

Excerpt from North Dakota Century Code; Surface Mining Reclamation Act; Sec. 38-14.1-21 Reclamation of Surface Mined Lands: Permit Approval or Denial Standards.

Excerpts from Utah Code Annotated 12/31/53 (e); Division of State History Act, Chapter 18 Division of State History Statute. Table of Contents

Sec. 63-18-3 Division of State History -- Duties & Objectives. Sec. 63-18-18 Legislative Intent Relating To Archaeological, Anthropological, and Paleontological Resources -- Purpose of Act.

Sec. 63-18-19 Antiquities -- Definition of Terms.

Sec. 63-18-21 Responsibilities of Antiquities Section.

Sec. 63-18-25 Permit Required For Archaeological or Paleontological Work -- Supervision of Archaeologist -- Rights and Duties of Permittee.

Sec. 63-18-26 Designation of "State Archaeologist, Anthropological or Paleontological Landmarks".

Sec. 63-18-27 Report of Discovery on State or Private Lands.