



## COALEX STATE INQUIRY REPORT - 25

December 7, 1984

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### TOPIC: PLANNED SUBSIDENCE

**INQUIRY:** SMCRA Sec. 516(b)(1) includes, under the permit requirements, that the operator: "adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands." An exception is provided for "instances where the technology used requires planned subsidence in a predictable and controlled manner."

1. What is the legislative history of the above?
2. Is there any specific legislative history on the exception provided for planned subsidence?
3. Are there any OSM administrative case law decisions on this provision?
4. Are there any case law decisions involving this statute?

### SEARCH RESULTS:

#### Legislative History

In a search of COALEX, 64 documents were identified referencing planned subsidence or longwall mining (document list attached).

S. Rep. No 95-128 stated that:

"Certain of the environmental protection standards for surface mining operations also apply to underground mines. In this section, the Secretary is required to incorporate in his regulations the following key provisions concerning the control of surface effects from underground mining: Underground mining is to be conducted in such a way as to assure appropriate permanent support to prevent surface subsidence of land and the value and use of surface lands, except in those instances where the mining technology approved by the regulatory authority at the outset results in planned subsidence. Thus, operators may use underground mining techniques, such as long wall mining, which completely extract the coal and which result in predicable and controllable subsidence." (S. Rep. No. 95-128, 95th Cong., 1st Sess. 84 (1977))

H. Rep. 95-218, following a discussion of the destructive effects of subsidence and its singular problem of unpredictability, stated its intent to:

"provide the Secretary with the authority to require the design and conduct of underground mining methods to control subsidence to the extent technologically and economically feasible in order to protect the value and use of surface lands. Some of the measures available for subsidence control include: (1) leaving sufficient original mineral for support; (2) refraining from



mining under certain areas except allowing headings to be driven for access to adjacent mining areas; or (3) causing subsidence to occur at a predictable time and in a relatively uniform and predictable manner. This specifically allows for the uses of long wall and other mining techniques which completely remove the coal. (4) Back stowing or returning mine wastes underground to provide some measure of direct roof support and shoring up pillars left for support provided that such operations are consistent with assuring the health and safety of miners." (H. Rep. 95-218, 95th Cong., 1st Sess. 126 (1977))

### Litigation

No ALJ or IBSMA decisions concerning Sec. 516(b)(1) were identified in COALEX. These files are being updated by OSM and may not be complete.

IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, No. 79-1144 (DDC February 26, 1980) addressed the issued of whether, given the Sec. 516(b)(1) exemption, if a subsidence control plan could be required for planned subsidence. The U.S. District Court upheld the requirement, stating that: "it is only through the filing of a subsidence control plan that the regulatory authority can determine eligibility for the use of mining methods that allow mine collapse." (14 Envir. Rep. Cas. at 1097)

SMCRA Sec. 516(b)(1) is also discussed tangentially in Judge Flannery's ROUND II decision concerning the requirement to restore subsided land. The basis for OSM's regulation concerning subsided land restoration rests on SMCRA Sec. 516(b)(10) which refers to "other surface impacts not specified in this subsection." Judge Flannery stated that Sec. (516(b)(1) addresses specifically the requirement that "industry take all feasible steps to prevent subsidence, but it does not address the question of what happens if subsidence does occur." Secs. 526(b)(10) and consequently Sec. 515(b)(2) were, therefore, found to be applicable; and the requirement to restore land materially damaged by subsidence upheld. (IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, 79-1144, at 3-6 (DDC October 1, 1984))

## **ATTACHMENTS**

### Legislative History

- A. COALEX Document Listing: Items identified in legislative history referencing planned subsidence and long wall mining.
- B. Excerpt from S. Rep. 95-128, 95th Cong., 1st Sess. 84 (1977).
- C. Excerpts from H. Rep. 95-218, 95th Cong., 1st Sess. 67-68, 84-86, 92-93, 126-127, 175 (1977).
- D. Excerpts from H. Rep. No. 94-45, 94th Cong., 1st Sess. (1976).
- E. Excerpts from H. Rep. No. 94-896, 94th Cong., 2d Sess. (1976).
- F. Excerpts from H. Rep. No. 1445, 94th Cong., 2d Sess. (1976).
- G. Excerpts from Senate Comm. on Interior and Insular Affairs, 93rd Cong., 1st Sess., "Coal Surface Mining and Reclamation: An Environmental and Economic Assessment of Alternatives" (Comm. Print 1973).

### Litigation

- H. IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, No. 79-1144 (DDC February 26, 1980); 14 Envir. Rep. Cas. 1083-1111.



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
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- I. Excerpt from IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, 79-1144, at 3-6 (DDC October 1, 1984).
- J. 48 FR 24638-24652 (1983) Preamble to Final Rule; 30 CFR Parts 784, 785, 816, 817 and 818.