



COALEX STATE INQUIRY REPORT - 52
August 23, 1985

Ann Parker
Attorney General's Office
Capitol Complex
Charleston, West Virginia 25305

TOPIC: ABANDONED MINE LANDS/HEAVY EQUIPMENT

INQUIRY: Occasionally heavy equipment has been left on abandoned mine sites that are being reclaimed under AML funding. What legal recourse does the state have in disposal or sale of the abandoned equipment? Is there an incurred liability for damage to the equipment and must the previous owner of the equipment or the landowner be notified and/or reimbursed for its value? In some instances, identification of the equipment owner is not possible; in others, the landowner, while identified, can not be located.

SEARCH RESULTS: A COALEX search was made of the legislative history of the Act as well as of the state regulatory programs for reference to heavy equipment left on abandoned mine lands. No definitive answer to the inquiry was identified.

The need for established guidelines in relation to equipment on abandoned mine lands was presented before the 92nd Congress by John R. Quarles, Jr., Assistant Administrator for Enforcement and General Counsel, Environmental Protection Agency. Speaking before the House Subcommittee on Mines and Mining, Mr. Quarles stated: "More specific requirements for final reclamation should be provided, including . . . procedures for the disposal of toxic materials and abandoned structures and equipment." (Regulation of Strip Mining: Hearings on H.R. 60 and Related Bills Before the Subcommittee on Mines and Mining of the House of Representatives Committee on Interior and Insular Affairs, 92nd Cong., 1st Sess., Serial No. 92-26 (September 21, 1971) (statement of John R. Quarles, Assistant Administrator for Enforcement, EPA)

No additional reference was found in the COALEX library of legislative documents addressing the need for guidelines concerning abandoned equipment raised by Mr. Quarles.

Although the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) do not appear to specifically address abandoned equipment, they do reference facilities on abandoned mine sites. Sec. 407 of SMCRA, which deals with the notice requirements relating to acquisition and reclamation of land adversely affected by past coal mining practices, states that the Secretary, "may provide by regulation that money derived from the lease, rental, or user charges of such acquired land and facilities thereon will be deposited in [the Abandoned Mine Reclamation] fund."



Three tangentially related sections of state law were identified that may be of interest. * 30 CFR Sec. 731.14 requires that state program submittals under SMCRA must include copies of other state laws and regulations directly affecting the regulation of coal exploration and surface coal mining and reclamation operations. The COALEX library contains these ancillary documents submitted as part of each state's regulatory program.

* This report is based on the most recent documents identified in the COALEX file. A state may have additional or revised rules or procedures not yet entered into the COALEX file.

The Kansas regulatory program includes Kansas Statute Sec. 55-132a which references the removal of equipment from abandoned land under regulations pertaining to oil and gas wells. Under that statute "[l]eaving the surface of lands with a part of the operating structure or other equipment intact after abandoning oil or gas wells is against public policy, and constitutes a public nuisance" [Kansas Statute Sec. 55-132a, Chapter 55, Article 1] It is reasonable to assume that state legal recourses with regard to instances of "public nuisance" may therefore apply.

Under the Pennsylvania statute, the secretary is given general health and safety protection powers. If the state regulatory authority determines "that a condition caused by or related to surface mining constitutes a hazard to public health or safety", it may abate or remove the condition. State law governing the abatement of nuisances applies in these instances. The statute notes: "for the purposes of this section any condition which creates a risk of fire, landslide, subsidence, cave-in or other unsafe, dangerous or hazardous condition, including but not limited to any..... abandoned structure, equipment, machinery, tools or other property used in or resulting from surface mining operations . . . is hereby declared to be a nuisance. . ." under the state administrative code. Thus, Pennsylvania mining law seems to expressly provide for removal of abandoned equipment. (Pa. Surface Mining Conservation and Reclamation Act, Sec. 4.2(a)(1980)).

The Kentucky Surface Mining Law includes provisions for the disposal of mining equipment used in wildcat mining. Under the Kentucky Statute, the special investigations section of the Department and peace officers "shall seize and take possession of any and all instrumentalities willfully and knowingly used in the mining of coal without a permit . . . [or in] the removal of more than two hundred fifty (250) tons of coal during coal exploration."

Upon conviction, "the court shall order the machinery, trucks, and earth moving equipment, and materials used in furtherance of the crime forfeited and sold at public auction. Proceeds from such sale shall be deposited in the 'illegal mining reclamation fund'" established under the Kentucky Act. Monies in the fund may be used to reclaim lands mined without a permit or authorization that are not eligible for the abandoned mine lands reclamation fund as well as to defray expenses associated with the seizure, storing or sale of equipment used in the wildcat mining operations. (KRS Chapter 350, as revised by the 1982 General Assembly, Secs. 350.053 and 350.054)



ATTACHMENTS

- A. Excerpt, Regulation of Strip Mining: Hearings on H.R. 60 and Related Bills Before the Subcommittee on Mines and Mining of the House of Representatives Committee on Interior and Insular Affairs, 92nd Cong., 1st Sess. (September 21, 1971).
- B. Excerpt, Kansas Statute Sec. 55-132a, Chapter 55, Article 1.
- C. Excerpt, Pa. Surface Mining Conservation and Reclamation Act, Sec. 4.2(a) (1980).
- D. Kentucky Surface Mining Law, KRS Chapter 350, as revised by the 1982 General Assembly, Secs. 350.053 and 350.054.