



COALEX STATE INQUIRY REPORT – 78
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TOPIC: COAL EXPLORATION: DRILLING

INQUIRY: Please conduct a search of the Federal Register to determine what sort of permitting or notice requirement is necessary for a coal exploration operation which involves only drilling. What do some of the other states require in this area?

SEARCH RESULTS: Sec. 512 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires every state or federal program to "include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration regulations issued by the regulatory authority." The Act then mandates certain types of information which must be included in these regulations: "(1) the requirement that prior to conducting any exploration under this section, any person must file with the regulatory authority notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration and (2) provisions for reclamation in accordance with the performance standards in section 515 of this Act of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment." (SMCRA Sec. 512(a) (1986)) OSM's 1979 regulations expanded upon the Act's requirements and dictated that all coal exploration operations file a notice of intent to explore. Operations that "substantially disturb" the land surface were further required to reclaim the area in accordance with the performance standards at 30 CFR Sec. 815. (44 FR 15351-15352 (1979); 30 CFR Sec. 776.11 (1979))

In its 1978 proposed regulations, OSM announced its intention to define "substantially disturb", since it was not defined in the Act. The basis for this definition was the list found at the end of Sec. 512(a) of the Act, with the addition of blasting and disposal of earth or other debris. (43 FR 41661, 41669 (1978)) This definition was adopted by OSM in 1979 and read as follows:

"Substantially disturb means, for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes and wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of the land." (44 FR 15311, 15321 (1979))



In 1983, OSM issued revised rules limiting the requirement for filing notice to only those operations that "may substantially disturb" the land. A permit requirement was established for exploration operations where over 250 tons of coal are to be removed; and the definition of "substantially disturb" was revised by deleting drilling from the list of activities mentioned. In addition, the coal exploration requirements were moved to Sec. 772. (48 FR 40625 (1983))

OSM noted in the preamble to its 1983 rules that even though OSM had eliminated the notice requirement for operations that did not substantially disturb the land, the states could still require such a notice. (Id.) Further, OSM explained that the revision of the definition of "substantially disturb" did not necessarily mean that drilling was completely exempted from the coal exploration requirements; rather, the determination was to be made on a site-specific basis. As OSM explained in the preamble to the revised regulations:

"[D]rilling may, but need not in every case, result in a substantial disturbance to the natural land surface. Therefore, while it is not included specifically as a listed activity, the definition as revised is broad enough to encompass drilling when it does result in such a disturbance. Usually, such a substantial disturbance would occur when drilling is combined with= other activities (e.g., drilling alongside existing roads versus construction of roads to a drilling site, or the removal of vegetation and topsoil for the drill pad, in addition to the drilling itself). Whether such activities result in a substantial disturbance will be determined by the regulatory authorities either on a case-by-case basis or through guidelines supplementing the State program." (48 FR 40624 (1983))

OSM's 1983 rules which failed to require notice for all coal exploration operations were challenged by the National Wildlife Federation in *IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION II, ROUND III*. In that case, Judge Flannery remanded to OSM the rule that did not require all coal exploration to be preceded by the filing of a notice. Judge Flannery also remanded the rule that did not require a narrative description to be included in the notice. (*IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION II, ROUND III* (slip op.) At 135-140 (DDC July 15, 1985)) As a result of this decision by Judge Flannery, OSM suspended Sec. 772.11(a) insofar as it limited the responsibility to submit a notice of intent to explore to those persons who substantially disturb the natural land surface. Thus, all persons conducting coal exploration operations are required to file a notice of intent to explore. (51 FR 41952 (1986))

STATE REGULATIONS

A COALEX search was conducted of six state programs (Illinois, Indiana, Kentucky, Pennsylvania, Virginia and West Virginia) to compare the ways in which the states handle exploration notices for drilling. All six states require that some sort of notice be filed with the state before drilling operations may be conducted. Except where noted below, most states' laws are similar to the pre-1983 OSM regulations, and thus include drilling in the definition of "substantially disturb" and require that the requisite notice be filed, whether or not there is a substantial disturbance.



Illinois requires that, in addition to the notice of intent to explore, any person intending to utilize drilling techniques file "a fully executed Notice of Intent and Application for Blanket Authorization to Drill Coal Test Holes' or Notice of Intent and Application for Individual Authorization to Drill a Coal Test Hole". These documents are forwarded to the Oil and Gas Division of the Illinois regulatory authority. (Ill. Surface Coal Mining Land Conservation and Reclamation Act, Rules and Regs., Sec. 1776.11(b)(5) (1982))

In a conversation with Mr. Kenes C. Bowling,= Executive Director of the Interstate Mining Compact, Mr. George Miller, Field Director of OSM in Tennessee, outlined the requirements of the Tennessee federal program. Mr. Miller noted that the operator must file a notice of intent with OSM for any kind of exploration operation, including drilling. If any equipment other than a drill is used, or if more than two acres is disturbed or more than 250 tons of coal is removed, the operator must file for a permit.

ATTACHMENTS

- A. 43 FR 41661, 41669 (1978).
- B. 44 FR 15311, 15321 (1979).
- C. 48 FR 49624 (2983).
- D. Excerpt, IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION II, ROUND III (slip op.) At 135-140 (DDC July 15, 1985).
- E. 51 FR 441952 (1986).
- F. Illinois Surface Coal Mining Land Conservation and Reclamation Act, Rules and Regulations Sec. 1776.11 (1982).
- G. 310 Indiana Admin. Code 12-3-11, 12-5-1 (1982).
- H. 405 Kentucky Admin. Regs. Sec. 8:020 (1982).
- I. Pennsylvania Dept. of Environmental Resources Coal Mining Regs. Sec. 86.131 (1982).
- J. Virginia Coal Surface Mining Reclamation Reg. Part V776 (1983).
- K. West Virginia Surface Mining Reclamation Regs. Sec. 5 (1983).