



COALEX STATE INQUIRY REPORT - 89
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TOPIC: REQUIREMENTS OF SMCRA SEC. 522(a)(4)(B)

INQUIRY: SMCRA Section 522 describes the provisions of the Act for designating areas unsuitable for surface coal mining. Section (4)(B) requires that states develop a data base of information to support decisions regarding unsuitability. Is a state obligated to gather information that is currently not available, i.e., is the state required to make its own studies, etc., or may the state use only data that it has available?

SEARCH RESULTS: The pertinent portion of Sec. 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) states:

"(4) To comply with this section, a State must demonstrate it has developed or is developing a process which includes -
(A) a State agency responsible for surface coal mining lands review;
(B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of surface coal mining operations;
(C) a method or methods for implementing land use planning decisions concerning surface coal mining operations; and
(D) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation pursuant to this section." (Pub. L. No. 95-87, Sec. 522, 91 Stat. 508)

LEGISLATIVE HISTORY of SEC. 522 (a)(4)(B)

Two of the surface mining bills introduced in the House in the 93rd Congress provided a mechanism for designating land unsuitable for mining. These bills, H.R. 5988 and H.R. 6603, introduced by Senators Saylor and Dent of Pennsylvania, parallel the current version of SMCRA concerning the lands unsuitable database requirement. (Hearings Before the Subcommittee on the Environment and Subcommittee on Mines and Mining of the Committee on Interior and Insular Affairs on H.R. 3 and Related Bills, 93rd Cong., 1st Sess. 578, 652 (1973))



No analysis or explanation of the bills were provided to give any insight into the reasons behind including these provisions of their requirements. This language was carried forward through every surface mining bill introduced after this date.

FEDERAL REGULATIONS

The proposed rules published by OSM at 30 CFR Sec. 764.21 to implement the Act in September, 1978, give no helpful information in interpreting the requirement of SMCRA Sec. 522(a)(4)(B). OSM admitted in the preamble to the proposed regulations that it merely "restores the language of the Act." (43 FR 41685 (SEPTEMBER 18, 1978))

The final rules published in March, 1979, included responses to several comments received about the data base system. None of these comments, however, specifically addressed the requirements of data acquisition by the states (44 FR 41685 (MARCH 13, 1979))

Throughout both the proposed and final regulations of 30 CFR Sec. 764.21, the language used does not indicate that a state must produce information for this data base, only that it must include or add certain information as it is received or becomes available. Thus with no contrary legislative history found and no regulatory references that state otherwise, it would appear that a State is under no positive obligation on its own to produce information for its data base under SMCRA Sec. 522(a)(4)(B).

ATTACHMENTS

- A. Excerpt, Surface Mine Control and Reclamation Act of 1977, Pub. L. No. 95-87, Sec. 522, 91 Stat. 445, 507-509.
- B. Excerpt, Hearings Before the Subcommittee on the Environment and Subcommittee on mines and Mining of the Committee on Interior and Insular Affairs on H.R. 3 and Related Bills, 93rd Cong., 1st Sess. 577-78, 651-52 (1973).
- C. Excerpt, 43 FR 41685 (SEPTEMBER 18, 1978).
- D. Excerpt, 44 FR 41685 (MARCH 13, 1979).
- E. Excerpt, 30 CFR Sec. 764.21.