



COALEX STATE INQUIRY REPORT - 101
December 20, 1988

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TOPIC: PERMIT INFORMATION RE. THE RIGHT TO SUBSIDE

INQUIRY: To what extent do states require a permit applicant to submit information regarding the right to subside property in conjunction with a permit application for an underground mining operation where subsidence is anticipated?

SEARCH RESULTS: Given the nature of this request, several affected states were identified and agency personnel within each state were contacted by telephone to ascertain a general response to the inquiry. The states queried were Alabama, Illinois, Indiana, Kentucky, Maryland, Ohio, Pennsylvania and West Virginia. A listing of the state-by-state responses follows. In general, only a minority of states specifically require information concerning the right to subside property as part of the permit application. All of the states, however, require information or documentation concerning the right to mine as part of the "right of entry" section of the permit application. In some cases, information concerning the right to subside is garnered from the right of entry submittal. In other cases, information is required where subsidence is expected to cause damage to structures or material damage to the land surface, even though specific information regarding the right to subside is not mandated. In almost all cases, the states queried avoid adjudicating property rights, leaving such decisions to the parties themselves or the courts.

Since much of the current information on right to mine and "right to subside" is contained in either the right of entry or the subsidence control plan sections of state regulatory programs, copies of those sections for each of the affected states is attached. (Regulatory excerpts on right of entry for the state of West Virginia were unavailable from Coalex.)

STATE-BY-STATE ANALYSIS

ALABAMA

The state requires a permit applicant as part of the right of entry section to merely identify the document that provides the right to mine and that identifies the lands to be affected. (See Attachment A.) Pursuant to the subsidence control plan, an operator who will subside the surface must provide for rehabilitation or repair of any structures or purchase a public liability insurance policy. (See Attachment B.)



ILLINOIS

An applicant is required to provide a list of documents that establish the right to subside. Illinois law recognizes a right of subjacent support and thus before an operator may subside the surface, he must establish that the surface owner has waived the right of subjacent support or that the operator has bought that right. In summary, a permit applicant must demonstrate that he has a right to be on the surface, a right to mine the coal and a right to subside the surface. (See attachments C and D.)

INDIANA

An applicant is required to submit the deed or to describe the document that confers the right to mine. The division does not adjudicate disputes concerning surface or mineral rights, preferring to leave these issues for resolution by the courts or the parties themselves. (See Attachments E and F.)

KENTUCKY

As part of the right of entry section of the permit application, an operator must document the right to enter and mine the property by submitting information regarding the date of the deed or other document, the grantor and a description of the rights. No actual copy is required. (See Attachment G.) Applicants must also submit a subsidence control plan and, where subsidence is anticipated, a mitigation plan concerning repair or compensation. (See Attachment H.)

If an applicant proposes to deep mine, he must describe all resources and structures above the mine. If subsidence may occur, the applicant must provide a detailed description regarding the method of mining and measures to be taken to prevent material damage to land from the anticipated subsidence. Where structures are involved, the surface owner protection provisions in the regulations require the operator to restore, repair, replace, purchase or insure the structures.

MARYLAND

The state does not require information specifically with regard to the right to subside, only for the right to mine. Right to mine may be established by way of deed, landowner's consent form, or any court settlement or decree. This can be provided through appropriate reference to the legal document or by submitting a copy thereof. Information must also be submitted regarding any structures that may be affected by subsidence as the state provides that sufficient support must be in place to protect the structures unless waived by the owner of the structure. This "right of subjacent support" is provided by regulation only - not by statute. (See Attachments I and J.)

OHIO

The state does not ask for information regarding the right to subside. An applicant must establish the right to mine the coal via affidavit or copy of the deed. Many of the deeds in Ohio include a specific waiver of damage to the surface, which can raise problems depending upon the age of the deed. The state agency avoids adjudicating property rights as it is legally barred from doing so. (See Attachments K and L.)

PENNSYLVANIA

The requirements concerning right to subside in this state are dictated by the age of the affected



structure. If the structure existed prior to 1966 ("pre-1966 structure") it, by law, is entitled to a right of subjacent support. Post-1966 structures are not so protected, however an owner may purchase such support. The typical lease in Pennsylvania may or may not provide for support and may or may not refer to the type of mining (underground v. surface). As a result, an applicant must provide information in the application concerning the right of entry for any areas that will be disturbed.

Although copies of the leases/deeds are not required, the information must be certified. Specific information regarding structures above an underground mine is required. If those structures are pre-1966, support must be provided and described. For post-1966 structures, it is left up to the operator to resolve questions of land ownership and damage to structures where subsidence is anticipated. (See Attachments M and N).

WEST VIRGINIA

By agency policy, the state requires information on the right to subside. An operator cannot cause damage to structures by state statute. The right to mine thus embraces the right to subside and an applicant is required to file a copy of the deed or lease, which then must be interpreted by the agency regarding whether the deed/lease allows damage to the surface. (See Attachment O.)

ATTACHMENTS

- A. Alabama Right of Entry Regulation, Sec. 880-X-8D-.07
- B. Alabama Subsidence Control Plan Regulation, Sec. 880-X-8I-.10
- C. Illinois Right of Entry Regulation, Sec. 1778.15
- D. Illinois Subsidence Control Plan Regulation, Sec. 1784.20
- E. Indiana Right of Entry Regulation, Sec. 310 1AC 12-3-21
- F. Indiana Subsidence Control Plan Regulation, Sec. 310 IAC 12-3-87
- G. Kentucky Right of Entry Regulation, 405 KAR8:030-04, Sec. 4
- H. Kentucky Subsidence Control Plan Regulation, 405 KAR8:040-20, Sec. 26
- I. Maryland Right of Entry Statute, Sec. 7-6A-07
- J. Maryland Subsidence Control Plan Regulation, Sec. 08.13.02.13
- K. Ohio Right of Entry Regulation, Sec. 1501:13-4-03(c)
- L. Ohio Subsidence Control Plan Regulation, Sec. 1501:13-12-02
- M. Pennsylvania Right of Entry Regulation, 86.64
- N. Pennsylvania Subsidence Control Plan Regulation, 89.141
- O. West Virginia Subsidence Control Plan Regulation (Interpretive Rule), Order 0 HH Director; Reg. Sec. 7C.03