



COALEX STATE INQUIRY REPORT - 119
July 13, 1989

Gary L. Merritt, Director
Department of Environmental Resources
Office of Environmental Protection
P.O. Box 2063
Harrisburg, Pennsylvania 17120

TOPIC: BONDING - LEGISLATIVE HISTORY

INQUIRY:

In the legislative history of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), is there any discussion of the requirement for a bond, other than a performance bond, for water discharge or treatment [water quality]?

SEARCH RESULTS:

Research was conducted using the COALEX Library on LEXIS. Results of the research are discussed below. Relevant excerpts from the materials identified as a result of the research are attached.

Review of committee prints, hearings, congressional reports and Congressional Record entries indicates that protection of water quality was consistently included in permit, reclamation plan and bond sections of proposed surface mining legislation. Excerpts from relevant sections of the Act follow.

-
1. Application Requirements. Information on the stream into which "drainage will be discharged" and "probable hydrologic consequences of mining...operations, both on and off the mine site" are required as part of the application process. [SMCRA Sec. 507(b)] The reclamation plan must include "a plan for the control of surface water drainage...." [SMCRA Sec. 508(a)(5)]
 2. Permit Approval or Renewal of Permit. [SMCRA Sec. 510] Permit approval includes an assessment of the impact of mining on the "hydrologic balance" [510(b)(3)] and the assurance that the quality and quantity of "water systems that supply [alluvial] valley floors" are not damaged [SMCRA Sec. 510(b)(5)].
 3. Renewal of a permit is contingent upon compliance with the state or federal program. [SMCRA Sec. 510(a)]
 4. Bonding. "Hydrology", a reclamation requirement, is a "factor" to be considered in setting the amount of performance bond required for a permit area. [SMCRA Sec. 509(a)] The whole or part of the bond may be released when "backfilling, regrading, and drainage control" is completed "in accordance with [the] reclamation plan". [SMCRA



Sec. 519(c)(1)]

See the attached excerpts from H.R. Rep. No. 94-1445, 94th Cong., 2nd Sess. (1976), for congressional explanation on the importance of water quality information as part of the reclamation plan, permit renewal process and bond release process.

The requirement for posting a bond in addition to a performance bond as security against damages to the "surface estate" appears in conjunction with discussions of surface owner rights when the surface owner is not the owner of the mineral rights. There are three relevant SMCRA sections:

- o Sec. 714 Surface Owner Protection
- o Sec. 715 Federal Lessee Protection
- o Sec. 717 Water Rights and Replacement

[Written consent is part of the permit approval process, SMCRA Sec. 510(b)(6)]

In cases where the federal government owns the mineral rights, the "written consent" of the surface owner or the "lessee of the surface lands" must be obtained before mining operations can begin. In the case of the "lessee of the surface lands", a bond may be substituted for written consent. The mine operator must provide a substitute water supply when the surface owner's water supply is affected by the mine operations.

In an earlier version of the surface mining legislation, the requirement for an additional bond applied to all instances where the surface owner was not the owner of the mineral estate. [S. 425, 93rd Cong., 1st Sess. (1973)] This was explained as follows:

5. "When the surface estate and the mineral estate are separate, primacy has frequently been accorded to the rights of the mineral owner over those of the surface owner. But given the adverse nature of the impacts of coal surface mining it is the intent of the [Senate Interior and Insular Affairs] Committee that the rights of the surface owner be protected as well....This provision applies to all cases involving separate estates, whether the mineral rights are held by the Federal Government or whether the mineral and the surface rights are both privately owned. It follows the rule used for many years where the Federal Government owns the minerals". [S. Rep. 93-402, 93rd Cong., 1st Sess. (1973), 47]
The bill introduced by the House during the second session of the 93rd Congress (1974), set requirements closer to those passed in the Act. H.R.11500 required an additional bond as an alternative only in cases of a federal coal lease and included the requirement of substituting a water supply to compensate surface owners. [H.R. 11500, 93rd Cong., 2nd Sess. (1974)] The House Interior and Insular Affairs Committee weighed mine operator and surface owner rights and determined that the requirement for written consent from the surface owner prior to the commencement of mining operations would provide the surface owner with "complete protection". [H.R. Rep. 93-1072, 93rd Cong., 2nd Sess. (1974), 111]
6. Excerpts from other legislative history materials which relate to these sections are attached.



ATTACHMENTS

- A. H.R. Rep. 94-1445, 94th Cong., 2nd Sess. (1976).
- B. S. 425, 93rd Cong., 1st Sess. (1973).
- C. S. Rep. 93-402, 93rd Cong., 1st Sess. (1973).
- D. H.R. 11500, 93rd Cong., 2nd Sess. (1974).
- E. H.R. Rep. 93-1072, 93rd Cong., 2nd Sess. (1974).
- F. "Surface Mining Veto Briefing Justification", 94th Cong., 1st Sess. 206-207 (1975)
(memorandum from the Director, Bureau of Mines).
- G. "Surface Mining Control and Reclamation Act of 1977", 95th Cong., 1st Sess. 319 (1977)
(statement of John C. Doyle, Jr., Environmental Policy Institute).
- H. H.R. Rep. 95-218, 95th Cong., 1st Sess. (1977).
- I. H.R. Rep. 95-493, 95th Cong., 1st Sess. (1977).