



COALEX STATE INQUIRY REPORT – 128
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TOPIC: USE OF AML FUNDS TO RESTORE PUBLIC FACILITIES "ADVERSELY AFFECTED BY COAL MINING PRACTICES"

INQUIRY: Wyoming's Abandoned Mine Land ("AML") Program is beginning to inventory and evaluate public utilities, facilities and publicly owned land that may be "adversely affected by coal mining practices." Such projects may qualify for funding under Section 403 (5) and (6) of SMCRA. Are there any relevant court decisions which interpret this terminology or legislative history material which discuss congressional intent? In particular, can AML funds be used to "reclaim" or "restore" a historic structure located in a town (offsite)?

SEARCH RESULTS: Research was conducted using the COALEX Library and the court decisions files on LEXIS. Copies of the materials retrieved as a result of the research are attached.

No federal or state cases were identified which address the "adversely affected by" issue in relation to the use of AML funds.

In the legislative history material (House, Senate and Conference Reports, Committee Hearings and Prints, and the Congressional Record) the phrase "adversely affected by coal mining practices" is most often discussed in connection with the following issues:

1. Restoration of water resources. SMCRA Sec. 403(3), 30 U.S.C. 1233. See 123 Cong. Rec. H3726 (daily ed. April 28, 1977) (Statement of Rep. Meeds).
2. Citizen suits. SMCRA Sec. 520, 30 U.S.C. 1270.
3. Alluvial valley floors.

Only one attempt to define the meaning of the phrase in question was identified. The following paragraph appears in S. Rep. No. 28, 94th Cong., 1st Sess. 199 (March 5, 1975) and S. Rep. No. 95-128, 95th Cong., 1st Sess. 67 (May 10, 1977):

"The inclusion of lands 'affected by' coal mining means that in various areas the fund could be used to repair public facilities which have been damaged by activity relating to coal mining. In



Eastern Kentucky, for example, public roads have suffered extensive damage from coal-hauling. This is especially true of roads which serve mines that are otherwise inaccessible."

In the Section-By-Section chapter of H. Rep. 95-218, 95th Cong., 1st Sess. 169 (April 22, 1977), the objectives "for the reclamation program" are described. They include:

"...the protection or enhancement of public facilities as part of reclamation of land and water conservation projects; the improvement of lands and waters to a suitable condition useful in economic social development..."

The only other legislative history materials identified which may be relevant appear under the discussions of the Rural Abandoned Mine Program [RAMP](SMCRA Sec. 406, 30 U.S.C. 1236) and the "Acquisition and Reclamation of Land Adversely Affected by Past Coal Mining Practices" (SMCRA Sec. 407, 30 U.S.C. 1237):

1. **"Hearing on the Implementation of Public Law 95-87 Before the Subcomm. on Public Lands and Resources of the Senate Comm. on Energy and Natural Resources", 95th Cong., 2nd Sess. 79 and 89 (April 24, 1978) (Statement of Victor H. Barry, Jr., Deputy Administrator for Programs, Soil Conservation Service, U.S. Dept. of Agriculture).**

Mr. Barry states that reclamation provides both onsite and offsite benefits to rural communities: "Main offsite benefits are those values that accrue to the public outside the boundary of the eligible area as a result of the reclamation." p.79

In the RAMP Draft Environmental Impact Statement produced by the Soil Conservation Service and presented at the Hearing, the section on "Environmental Consequences" includes the following general consequence of a "'no action' alternative" to reclamation: "3. Numerous economic and environmental benefits would be foregone. These include more attractive landscapes, better wildlife habitat, increased agricultural production and improved tax base." p. 89.

2. **H. Rep 93-1522, 93rd Cong., 2nd Sess. 83-84 (December 5, 1974). (Also see S. Rep. No. 28, 94th Cong., 1st Sess. 200 (March 5, 1975).)**

Lands brought "into public ownership prior to reclamation" may be utilized for "various purposes": "The Secretary of the Interior is given authority to reclaim lands to be used for the purposes of housing for miners, mining related employees or persons displaced by natural disasters or catastrophic failures. Reclamation work in this instance includes the construction of on-and off-site public facilities necessary to support such housing. For the purposes of this section, the term public facilities includes those public works needed for supporting housing, education, health or other municipal facilities; supporting services and equipment required. Such facilities may be temporary or permanent."

Two retrieved items may be construed as providing evidence against the use of AML funds to "restore" the historic building in question:



1. A Congressional Record entry criticized SMCRA Sec. 406 as being too broad: "The abandoned mine reclamation fund is a neat idea but I am not convinced that we have sufficiently narrowed the shotgun approach of yesteryear. The provisions apply to all lands which were previously mined or were affected by such mining. The objective is to provide for the 'protection, recreation and conservation facilities, and their use.' The effect is to penalize unfairly the industry in general for the sins of a few, and to authorize the construction or utilization of almost anything for which any civic group or governmental body feels a current need." 123 Cong. Rec. H3744 (daily ed. April 28, 1977)(statement of Rep. Frenzel).
2. In the revision of the AML reclamation rules printed in 47 FR 28574 (June 30, 1982), the word "restoration" was deleted from the existing definition of "reclamation activity". As the preamble states: "OSM agrees [with one commenter] that, in context, 'restoration' gives the definition a meaning contrary to what was intended. Moreover, 'reclamation' is sufficiently descriptive to convey the intent of that particular provision."

ATTACHMENTS

- A. 123 CONG. REC. H3726 (daily ed. April 28, 1977) (Statement of Rep. Meeds).
- B. S. REP. No. 28, 94th Cong., 1st Sess. 199 (March 5, 1975).
- C. S. REP. No. 95-128, 95th Cong., 1st Sess. 67 (May 10, 1977).
- D. H. REP. 95-218, 95th Cong., 1st Sess. 169 (April 22, 1977).
- E. "Hearing on the Implementation of Public Law 95-87 Before the Subcomm. on Public Lands and Resources of the Senate Comm. on Energy and Natural Resources", 95th Cong., 2nd Sess. 79 and 89 (April 24, 1978) (Statement of Victor H. Barry, Jr., Deputy Administrator for Programs, Soil Conservation Service, U.S. Dept. of Agriculture).
- F. REP 93-1522, 93rd Cong., 2nd Sess. 83-84 (December 5, 1974).
- G. 123 CONG. REC. H3744 (daily ed. April 28, 1977)(statement of Rep. Frenzel).
- H. Excerpts from 47 FR 28574 (JUNE 30, 1982) and 46 FR 60778 (DECEMBER 11, 1981).