



**COALEX STATE COMPARISON REPORT – 144**  
**June 28, 1990**

William J. Grable, Commissioner  
Department for Surface Mining & Reclamation Enforcement  
No. 2 Hudson Hollow  
Frankfort, Kentucky 40601

**TOPICS: THIRD PARTY INTERFERENCE PREVENTING PHASE 3 BOND RELEASE**

**INQUIRY:** Kentucky operators have been experiencing problems achieving final bond release due to third party interference. Examples of interference include three or four wheel vehicles driving on revegetated areas, drilling by oil and gas exploration companies and landowners grazing their livestock on reclaimed areas. Have the other states been experiencing similar problems? How have the other states handled these problems?

**SEARCH RESULTS:** A telephone survey of IMCC member states was conducted. Thirteen states responded. The questions asked and a brief summary of the responses appear below. A table of the responses to the survey is attached.

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**QUESTIONS**

1. Is your state experiencing problems with interference from third parties on bond release sites, particularly phase 3 bond release sites, that are hindering an operator's ability to achieve bond release?
2. What types of problems are you experiencing?
3. How are you resolving these problems?
4. Have you ever exempted operators, or are you considering exempting operators, from the actions of third parties that are beyond the control and influence of the operator?
5. What other solutions, if any, have you considered?
6. Would you support a statutory or regulatory revision exempting operators from third party interference?

**A BRIEF SUMMARY OF RESPONSES**

Although not all of the states surveyed have had requests for final bond release, they all have experienced problems with third party interference on reclaimed areas similar to those experienced by Kentucky. All of the states require the damage from third party interference to be repaired; however, the states differ in their approaches to resolving interference problems:

1. Some states intervene on the operators's behalf in the following ways:

Search conducted by: Joyce Zweben Scall



- a. Some may make an initial attempt to force the third party to repair the damage before requiring the operator to repair damage to reclaimed areas.
  - b. Some states issue strongly worded letters to the third parties to stop the interference. This may be followed by the issuance of a NOV or CO.
  - c. Once an operator has begun court proceedings against a third party, some states will actively support them in court. (Some states can go this, but have not yet been requested by an operator to appear with them in court.)
2. Some states require the operators to repair the damage to reclaimed areas and do not intervene as actively on the operators's behalf to resolve problems with third parties.

The most frequent types of problems encountered and the typical actions taken are as follows:

1. Oil and gas drilling. Affected areas are transferred from a mine permit to an oil and gas permit.
2. Recreational vehicle damage. Repaired by the operators.
3. Landowners grazing livestock on reclaimed areas. Repaired by the operators.
4. Landowners changing the postmine land use. Revision to the postmine land use.
5. Operators, for a variety of reasons, do not adequately protect themselves in their lease agreements with landowners. One state is planning to write an article to help operators educate landowners to operator/landowner responsibilities under SMCRA.

More specific responses to all of the questions appear in the attached Table.

## **ATTACHMENTS**

- A. Table of Responses to the Survey.

## **RESPONSES TO THE SURVEY**

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### **STATE**

EXPERIENCING INTERFERENCE: Yes/No

TYPES OF PROBLEMS (OR SPECIFIC SITUATIONS)

RESOLUTIONS TO THE PROBLEMS

CONSIDERED EXEMPTING OPERATOR: Yes/No

UNDER WHAT CONDITIONS

SUPPORT REVISION OF THE RULES: Yes/No

UNDER WHAT CONDITIONS

### **ALABAMA**

Experiencing Interference: Yes

Types of Problems:



1. Oil and gas companies drilling for coal bed methane.  
Resolutions: Postmine land use is changed to industrial land use.
2. Landowners or lessees use reclaimed area for grazing livestock.  
Resolutions: Operators remain responsible for landowner's interference and must repair damage.
3. Occasional problems with dirt bikers disturbing revegetated areas.  
Resolutions: Operators remain responsible for vandalism and must repair damage.

Considered Exempting Operator: Yes.

Considered it a few years ago for an area which was small in relation to the permitted area. Did not exempt.

Support Revision of Rules: Yes.

Alabama would support if criteria for exemption is specific, e.g., for vandalism. Would not support exemption for landowner interference.

## **ARKANSAS**

Experiencing Interference: Yes

Types of Problems:

1. Landowners use permitted area for grazing livestock.  
Resolutions: Operators remain responsible for landowner's interference and must repair damage.
2. A landowner changed the postmine land use by placing the permitted area in a "soil bank" which requires the land to remain fallow. Operator has abandoned the site.  
Resolutions: Arkansas is holding the bond. The state could reclaim the few small problems without violating the regulations of the agricultural program the landowner is in.
3. A landowner refuses to allow an operator to reclaim the mined area. The landowners wants additional coal mined (by some other operator) before reclamation.  
Resolutions: The case is in federal court. The landowner was found in contempt.

Considered Exempting Operator: Yes.

If the landowner who was found in contempt will not allow the operator access to reclaim, Arkansas will consider releasing the bond if OSM is unable to help.

Support Revision of Rules: Yes.

Support under condition that reason for exemption could be clearly proven. No support for blanket exemption or landowner interference. Would prefer amendment to change Phase 3 bond release to 3 years instead of 5 years, especially in areas where rainfall exceeds 35-40 inches per year.

## **ILLINOIS**



Experiencing Interference: Yes

Types of Problems:

1. Landowners use the reclaimed land for grazing livestock.  
Resolutions: Operators remain responsible for landowner's interference and must repair damage. Operators may obtain court injunctions to prevent the landowners from grazing on the land until final bond release.
2. Oil and gas exploration.  
Resolutions: Oil operators are under different rules. No NOV has been issued to an operator because of oil operator-related SMCRA problems.

Considered Exempting Operator: No.  
Operators must comply with regulations.

Support Revision of Rules: No.  
Do not believe language of revision could be worded tightly enough to prevent significant loophole to operators looking for excuses not to comply.

## **INDIANA**

Experiencing Interference: Yes

Types of Problems:

1. A landowner built houses on the pasture land.  
Resolutions: Operator had no control over the landowner's interference but still had the liability. Operator will apply for a change in the postmine land use.
2. Operators need to protect themselves better in lease agreements.

Considered Exempting Operator: No.  
Indiana has a rule on the books (since 1983) allowing exemptions. Policy has been not to use it. Prefer postmine land use changes and other remedies.

Support Revision of Rules: No.  
Indiana has been considering removing exemption rule for some time; the exemption provides an "opportunity for abuse". OSM recently sent them a letter about the rule.

## **LOUISIANA**

Experiencing Interference: N/A

Types of Problems:



1. There have not yet been any final bond release requests on SMCRA permits; however, there have been some problems with development operations permits (exploration permits) for oil and gas drilling on mine permit areas.  
Resolutions: Recently, an order was issued which limits the number of new oil and gas permits on mine permit areas.
2. Bikers and truckers drove on active drilling areas, causing minor damage.  
Resolutions: Operators have responsibility to repair the damage (No NOV's were issued.)

Considered Exempting Operator: No.

There have been few problems with reclaimed areas and these have generally been minor.

Support Revision of Rules: Yes.

Louisiana would consider supporting revision provided it stated specific conditions for allowing exemption, e.g., nature and extent of damage.

## **MARYLAND**

Experiencing Interference: Yes

Types of Problems:

1. Landowners grazing livestock.  
Resolutions:
  - a. Operators have responsibility to repair the damage.
  - b. To assist the operators, the state passed an amendment prohibiting landowners from interfering with operators in the performance of their duties. This law is cited in "third party interference letters" from the Bur. of Mines or the Att'y General's Office.
  - c. Operators may obtain an injunction against the landowner; however, a solution is generally worked out between the operator and the landowner by, for example, (1) the operator buying the livestock, or (2) paying the landowner extra money.
2. One landowner built a sawmill on the permitted area; another used the permitted area as a car graveyard.  
Resolutions: Letters have been sent to the landowners. These situations are not yet resolved.
3. Operators do not protect themselves adequately in lease agreements.  
Resolutions: Operators will be landowners' cattle to prevent grazing problems or pay landowners additional fees.

Considered Exempting Operator: No.

Do not want to set a precedent.

Support Revision of Rules: Would abstain: not support/not object.

Maryland feels many problems have been caused by the lengthening of the bond release time from 2 years (in Pa.) To 5 years



## OHIO

Experiencing Interference: Yes

Types of Problems:

1. Oil and gas exploration on mine permit areas.  
Resolutions: Permits are revised; oil and gas exploration areas are transferred out of the mine permit areas.
2. Landowners cut crops before yields are taken.  
Resolutions: "Third party interference letters" are sent requesting the activities be stopped. Then, NOVs and failure-to-abate cessation orders are issued to the landowners. Recently, one landowner to whom NOVs and Cos had been issued, stopped cutting crops but has yet to pay the fines.
3. Dirt bikers drive on reclaimed areas.  
Resolutions: "Third party interference letters" are being sent to bike clubs.
4. Operators do not protect themselves adequately in lease agreements.  
Resolutions: In process is an article for operators which will assist the operators in educating landowners of prime farmland and cropland on the reclamation requirements of SMCRA.

Considered Exempting Operator: Yes.

Exempted operator in an instance of landowner interference. Recently received a 10-day notice.

Support Revision of Rules: Yes.

Ohio is in favor of having an exemption rule for cases where it can be proved that the operator is not at fault.

## OKLAHOMA

Experiencing Interference: Yes.

Minimum amount of problems.

Types of Problems:

1. Power lines were put up over reclaimed areas.  
Resolutions: The permit was revised.
2. Underground oil and gas pipelines were installed on reclaimed areas.  
Resolutions: The permit was revised.
3. Any landowner interference.  
Resolutions: Operator maintains liability. If operator goes to court for a restraining order, the state will "back them up".
4. There is an upcoming case involving landowners adjacent to the permitted area.  
Resolutions: Oklahoma will back the operator and the SMCRA regs.



Considered Exempting Operator: Yes.

No specific instance. However, Oklahoma would consider releasing bond if a judge were to rule in favor of a landowner instead of an operator.

Support Revision of Rules: Yes.

Oklahoma believes in ability to judge instances on a case-by-case basis.

## **PENNSYLVANIA**

Experiencing Interference: Yes.

Some problems. Generally, state attempts to get the responsible third party to repair the damage. Otherwise, operator remains responsible for repairing damage.

Types of Problems:

1. Oil and gas drilling.  
Resolutions: Areas are transferred out of mine permit areas and are then regulated by gas laws.
2. Bikers ride on reclaimed areas.  
Resolutions: Operators are responsible for repairing damage.
3. Farmer landowners who want to plow fields.  
Resolutions: Amend the postmining land use.

Considered Exempting Operator: No.

Do not believe Pennsylvania has the authority to exempt.

Support Revision of Rules: Yes.

Pennsylvania would support a revision to allow exemptions under certain conditions, i.e., where the landowner wants to make a legitimate change in the postmine land use.

## **TENNESSEE**

Experiencing Interference: Yes

(Tennessee has a federal program. Responses relate to pre-SMCRA sites regulated by the state and mineral mining problems.)

Types of Problems:

1. Landowners grazing on reclaimed sites.  
Resolutions: Operators are responsible for reseeding areas. If lease does not protect operators, they will have to keep reseeding. An operator took a landowner to court to restrain him from grazing. The case was thrown out of court.
2. Oil and gas drilling on reclaimed sites.  
Resolutions: Areas are transferred out of the mine permit areas and are governed by other laws.



3. Gas line transmission on reclaimed sites.  
Resolutions: Areas are transferred out of the mine permit areas and are governed by other laws.
4. Recreation vehicles driving on reclaimed sites.  
Resolutions: Operators remain responsible for repairing damage.

Considered Exempting Operator: No.

Support Revision of Rules: Not relevant - Tennessee is a federal program state.

## **TEXAS**

Experiencing Interference: Yes.  
Have problems with uranium mine sites.

Types of Problems:

1. Landowners graze livestock on reclaimed areas.  
Resolutions: Operators remain responsible for repairing damage. The legislature has given the state authority to assist the operator in restraining the landowner.
2. A problem is developing with one landowner (a generating company) which has used the reclaimed site of the operator (its wholly-owned subsidiary) for ash disposal.  
Resolutions: The postmine land use will be revised.

Considered Exempting Operator: No.  
SMCRA does not contemplate exemptions. Operators must repair damage or revise permit or postmine land use.

Support Revision of Rules: Yes.  
Texas would support revision to allow exemptions if specific conditions for exemptions could be specified.

## **VIRGINIA**

Experiencing Interference: Yes

Types of Problems:

1. Landowners graze livestock on reclaimed areas.  
Resolutions: Operators remain responsible for repairing damage.
2. Oil and gas drilling.  
Resolutions: Area is transferred to an oil and gas permit.

Considered Exempting Operator: No.



Support Revision of Rules: Yes.

Virginia would like the "flexibility" a rule which allowed exemptions would provide.

## **WEST VIRGINIA**

Experiencing Interference: Yes.

State has not had a final bond release problem yet; however, there have been some problems with reclaimed sites. Operators are responsible for meeting the standards of SMCRA. However, there are procedures for operators to leave roads or sedimentation ponds for landowners' use.

Types of Problems:

1. Oil and gas exploration. For example, one company wants to leave an area around a well; this will leave a highwall unreclaimed.  
Resolutions: The highwall has to be eliminated. West Virginia will make suggestions to the company on how to resolve the problem.
2. Four wheel drive vehicles.  
Resolutions: Operators must repair damage.
3. Landowners who want to "take over the land".  
Resolutions: Operators are responsible for taking appropriate steps to meet SMCRA standards. State will support operator.
4. Landowners who want a different postmine land use.  
Resolutions: Operators obtain postmine land use change.

Considered Exempting Operator: Exemptions may have occurred, e.g., for roads or sedimentation ponds left at the request of the landowner.

Support Revision of Rules: Do not know what position West Virginia will take - a new commissioner is in place.