



COALEX STATE COMPARISON REPORT - 246

February 1993

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TOPIC: PRIME FARMLAND CONVERSION

INQUIRY: The Illinois Department of Transportation (IDOT) intends to route a state road through prime farmland owned by a coal company. The prime farmland has been mined and revegetation has been established; however, productivity requirements have not yet been met. IDOT intends to purchase the land from the coal company rather than use its eminent domain powers. Does the state's purchase of the prime farmland and subsequent conversion of the land to some use other than farmland relieve the coal company from the prohibition against decreasing aggregate prime farmland acreage? Or, is the coal company obligated to make up for the "converted" farmland by constructing it elsewhere on the permit area? Has any IMCC member state dealt with this or similar issues?

SEARCH RESULTS: A survey of seven IMCC member states was conducted by telephone. None of the states contacted has experienced this situation. Responses can be divided into four categories. These are as follows:

SURVEY QUESTIONS AND RESPONSES

1. State's purchase of the land releases the coal company from the prime farmland requirements.

1. ALABAMA
2. INDIANA*

2. Coal company should request a change of the postmining land use to highway.

1. *INDIANA: A land use change would facilitate bond release.



2. PENNSYLVANIA: If the land use is changed to highway, the operator would not have to meet the prime farmland productivity standards. Bond could be released once construction began on the highway.
3. VIRGINIA: Change the postmining land use to state road; make sure EIS and other required studies are conducted.
4. WEST VIRGINIA: Revise the land use for the entire permit or only the section required for the road, as needed.

3. Revise the permit to delete the proposed road acreage; release the bond for the area deleted.

1. KENTUCKY: There should be cooperation, not competition, between branches of state government, especially since IDOT could use its powers of eminent domain to acquire the right-of-way for the road.

4. Acquire the land by eminent domain.

1. OHIO: This would be the clearest way to address the problem if restoring other areas on or adjacent to the permit is not an option. If something less than eminent domain is used, clear documentation would be required that the state took action beyond the control of the coal company.

ADDITIONAL INFORMATION

Those surveyed stated that one of SMCRA's aims is to prevent the reduction of prime farmland because of mining. Nothing in SMCRA would prevent a state from reducing prime farmland by building a highway after successful productivity standards are met.

One federal decision, *EAGLE FOUNDATION, INC. v DOLE*, 813 F2d 798 (7th Cir 1987), is enclosed. The court found that the routing of a limited access highway running through a county conservation area was reasonable where there was proper planning to minimize harm and there were no other feasible alternatives.

ATTACHMENTS

1. *EAGLE FOUNDATION, INC. v DOLE*, 813 F2d 798 (7th Cir 1987).