



## COALEX STATE INQUIRY REPORT - 320

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**TOPIC:** REGULATION OF SITES WITH OIL OR GAS OPERATIONS AND COAL MINING OPERATIONS

**INQUIRY:** Please locate material that discusses the application of SMCRA regulations, requirements and standards to sites where oil or gas operations exist. If the mining and oil/gas operations are regulated by different state agencies, which requirements and standards apply?

**SEARCH RESULTS:** Research was conducted using the COALEX Library and other materials available in LEXIS. Most of the cases retrieved during research addressed property rights (deeds, leases, mineral rights, easements) and zoning questions (between state and locality). Two state cases were identified that discuss the permitting of oil and gas operations in areas with active coal mining operations. These are listed below and copies are attached. Also included are a number of non-mining cases where the state courts ruled on questions of concurrent or overlapping jurisdiction between state agencies and excerpts from two Federal Register Notices.

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### PERMITTING OF OIL AND GAS OPERATIONS IN AREAS WITH ACTIVE COAL MINING OPERATIONS

**REDMAN v OHIO DEPT. OF INDUS. RELATIONS, 1994 Ohio App. LEXIS 3953 (Ohio Ct App 1994).**

Redman applied to the Ohio Department of Natural Resources for permits to drill oil and gas wells. The Division of Oil and Gas forwarded the applications to the Ohio Division of Mines (ODM) after determining that the wells were located "within a coal bearing township". ODM denied the applications for the wells, agreeing with the objections put forth by the Central Ohio Coal Co. that the proposed well sites would affect Central Ohio's mines. Redman appealed. Permit disapproval was affirmed.



"Initially, we note that the General Assembly has enacted R.C. 1509.08 to establish a procedure for the regulation of coal mining and oil and gas drilling when those natural resources exist within the same location. The statute further provides that in the event of a conflict, i.e., when a mining location would be affected by a proposed oil and gas well and the mine owner offers a well founded objection, the statute mandates that the drilling of oil and gas wells be deferred until such time as the mining location is no longer affected. It is well-settled that where different persons have conflicting interests in development of the same property, the state may legitimately exercise its police power to protect one interest over another if it considers the favored interest impaired."

"Furthermore, in addition to the state's interest in the health and safety of both oil and gas and coal workers, the state also has a legitimate interest in the efficient and effective development of Ohio coal reserves and the preservation of the state's natural resources."

**EINSING v PENNSYLVANIA MINES CORP. (PMC), 452 A 2d 558 (Pa Commw Ct 1982).**

The court reinstated Einsing's permit to drill for oil and gas despite PMC's objection to the "offset nature" of these wells, based on economic factors. DER construed the language of the statute "as indicative of a legislative intent that DER remain neutral in an economic dispute between a well-driller and a coal operator." In reversing the Environmental Hearing Board, the court determined that the evidence did "not support the conclusion that the well will unduly interfere with or endanger the mine."

**CONCURRENT OR OVERLAPPING JURISDICTION BETWEEN STATE AGENCIES**

The cases listed below address questions of concurrent or overlapping jurisdiction between state agencies. While the agencies involved and the fact situations are not identical to the inquiry here, the manner in which the courts discuss and resolve the jurisdictional issues may be useful.

**CITY OF HACKENSACK v WINNER, 410 A 2d 1146 (NJ 1980).**

This appeal arose as a result of conflicting decisions by two state agencies -- Civil Service Commission and Public Employment Relations Commission. The case originated as a dispute between the City of Hackensack and several of its firefighters after the firefighters claimed they were improperly denied promotions.

**HINFREY v MATAWAN REGIONAL BD. OF EDUC., 391 A 2d 899 (NJ 1978).**

The "ultimate question" to be answered here was which administrative agency, the Division on Civil Rights or the Commissioner of Education, should adjudicate complaints of "sex discrimination in courses of academic study and curricula in the public schools."



**LIPSEY v TEXAS DEPT. OF HEALTH, 727 SW 2d 61 (Tex Ct App 1987).**

Lipsey sued over the issuance of a permit authorizing North Texas Services to construct and operate a municipal solid-waste facility. Lipsey contended that the special conditions the State Department of Health put on the permit relating to access roads amounted to an "unlawful delegation" of functions to the county commissioners and the State Department of Highways and Public Transportation.

**IN RE HAWK MT. CORP., 542 A 2d 261 (Vt 1988).**

The court held the "the Environmental Board did not exceed its authority by requiring the appellants [developers wishing to expand a vacation home site] to obtain a water discharge permit...although the [Agency of Environmental Conservation] had waived this requirement.... The legislative scheme indicates that the legislature intended to confer upon the Board powers of a supervisory body in environmental matters."

**ENGLISH BAY ENTERPRISES v ISLAND CITY, 568 P 2d 783 (Wash 1977).**

The court found that the Department of Fisheries did not have exclusive authority over the harvesting of shellfish. Certain state statutes invested the Department of Ecology with responsibility over certain aspects of the harvesting operation.

**FEDERAL REGISTER NOTICES**

Excerpts from two Federal Register notices are also enclosed for background:

**44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final rule. Part 700. Definition of "person".**

"It is true that a potential for interstate or intrastate conflict exists where the genuine interests of separate agencies may be involved.... The Act mandates the involvement of and close coordination among many different agencies.... OSM believes the involvement of other State and local agencies, which the Act specifies, establishes an interest on the part of those agencies in actions taken by the regulatory authority under State programs, particularly actions relating to permits and designations. Therefore, OSM believes that inclusion of the government agencies in the definition of 'person', is justified. OSM does not intend by this to expand upon an agency's capacity to sue or be sued where the Act does not clearly indicate that the agency has an interest in the actions being taken. In such situations, existing principles of State or Federal law would govern."

**45 FR 72468 (OCTOBER 31, 1980). Proposed rule: partial approval and disapproval of the Illinois program.**



The Secretary found certain aspects of the Illinois program deficient. This included lack of information on the "coordination mechanisms to insure that interagency actions will be sufficient or timely" and the "specification of the decision authority in event of conflicts between agencies".

## ATTACHMENTS

- A. REDMAN v OHIO DEPT. OF INDUS. RELATIONS, 1994 Ohio App. LEXIS 3953 (Ohio Ct App 1994).
- B. EINSING v PENNSYLVANIA MINES CORP., 452 A 2d 558 (Pa Commw Ct 1982).
- C. CITY OF HACKENSACK v WINNER, 410 A 2d 1146 (NJ 1980).
- D. HINFREY v MATAWAN REGIONAL BD. OF EDUC., 391 A 2d 899 (NJ 1978).
- E. LIPSEY v TEXAS DEPT. OF HEALTH, 727 SW 2d 61 (Tex Ct App 1987).
- F. IN RE HAWK MT. CORP., 542 A 2d 261 (Vt 1988).
- G. ENGLISH BAY ENTERPRISES v ISLAND CITY, 568 P 2d 783 (Wash 1977).
- H. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final rule. Part 700. Definition of "person".
- I. 45 FR 72468 (OCTOBER 31, 1980). Proposed rule: partial approval and disapproval of the Illinois program.
- J. Outline of the proposed topic to be given at the Annual Institute of Eastern Mineral Law Foundation.