



COALEX STATE INQUIRY REPORT - 70
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TOPIC: MIDTERM PERMIT REVIEW

INQUIRY: Please research SMCRA Sec. 511 for the following: (1) Legislative history regarding midterm permit review; and (2) State-by-state procedures for handling midterm permit reviews.

SEARCH RESULTS: See below.

LEGISLATIVE HISTORY

A COALEX search was conducted to examine midterm permit review under SMCRA Sec. 511. Since the 93rd Congress, all versions of Sec. 511 have contained the same language, with only a few minor exceptions. The Senate Conference Report, from the 95th Congress, 1st Session clearly addressed these minor differences:

"The House Bill and the Senate amendment were quite similar and set forth procedures for revision of permits during the same term of the permit. H.R. 2 stipulated that the regulatory authority could require reasonable revision or modification of the permit during its term. The Senate amendment stipulated that the regulatory authority, within time units prescribed in regulations, review outstanding permits for identification of necessary revisions or modifications. The House receded with respect to this provision." (S. Rep. No. 337, 95th Cong., 1st Sess. (1977))

All subsequent Congressional reports that were examined contained identical language to that used by the 95th Congress with the enactment of SMCRA. The applicable section of the 95th Congressional Report No. 128 states:

"Section 411. Revision of Permits

"This section establishes a process for the revision of a permit during its term as well as review by either a State regulatory authority or the Secretary of existing permits issued prior to the assumption of regulatory jurisdiction by the current regulatory authority.



"An operator may submit an application for a permit revision to the regulatory authority and within a period of time established by that agency, the application shall be approved or disapproved. The regulatory authority is to establish guidelines for procedures which may vary depending upon the scale and extent of the proposed revision. In all events, however, the process will be subject to the Act's notice and hearing requirements and a proposed revision which would extend the area covered by existing permit (other than incidental boundary revision) is to be made through the normal permit application process.

"The regulatory authority may require revision of a permit during its term provided that it is based on a written finding and that it follows the State and Federal program's notice and hearing requirements." (S. Rep. No. 128, 95th Cong., 1st Sess. 79-80 (1977))

STATE REGULATIONS

A search was conducted which compared state regulatory programs for provisions concerning midterm permit review by the regulatory authority. This comparison revealed that the majority of the states have an identical regulation which provides:

- (1) The department shall review each permit issued during the term of the permit. This review shall occur not later than the middle of the permit term.
- (2) After this review, the department may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with the act and this subchapter.
- (3) The department shall send a copy of its decision to the permittee.
- (4) Any order of the department requiring revision or permits shall be based upon written finding and shall be subject to the provisions for administrative and judicial review.

The states which use this form of regulation are: Alabama, Illinois, Indiana, Montana, New Mexico, Texas, Utah, and Virginia. (See attached documents.)

Pennsylvania's regulation differs in that it does not require midterm permit review, but leaves review of active permits to the discretion of the department with the exception of steep slope mining. (Pennsylvania Department of Environmental Resources Coal Mining Regs., Sec. 86.51 (1982))

Oklahoma's regulation regarding midterm permit review differs slightly because the regulation contains no provision for review of permits that are effective for more than five years. (Oklahoma Department of Mines Permanent Regs., Sec. 788.11 (1982))

West Virginia's statutes also contain provisions for midterm permit review. (West Virginia Code Sec. 20-6-20 (1980))



ATTACHMENTS

- A. Alabama Surface Mining Commission Reg., Sec. 880-X-8M-.05 (1981).
- B. Illinois Surface Coal Mining Land Conservation and Reclamation Act, Sec. 1788.11 (1980).
- C. 310 Indiana Admin. Code. Sec. 120 (1982).
- D. Montana Admin. Rules, Sec. 26.4.408 (1980).
- E. New Mexico Surface Coal Mining Regs., Sec. 13-11 (1980).
- F. Texas Surface Coal Mining Regs., 051.07.04.225 (1980).
- G. Utah Surface Coal Mining Regs., 788.11, (1980).
- H. West Virginia Code Sec. 20-6-19 (1980).
- I. Virginia Permanent Mining Regs., Sec. V788.11 (1982).
- J. S. Rep. No. 337, 95th Cong., 1st Sess. 106 (1977).
- K. S. Rep. No. 128, 95th Cong., 1st Sess. 79 (1977).
- L. Pennsylvania Dept. of Environmental Resources Coal Mining Regs., Sec. 86.51 (1982).
- M. Oklahoma Dept. of Mines Permanent Regs., Sec. 788.11 (1982).