



COALEX STATE INQUIRY REPORT – 129
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TOPIC: LANDFILL AS A POSTMINING LAND USE

INQUIRY: Do landfills meet all of the criteria of the law as a postmining land use? Can a company change premining pasture land to a postmining landfill? The state regulatory authorities will allow such postmining use. Is there any OSM information available on this issue?

SEARCH RESULTS: Research was conducted using the COALEX Library and other materials available in LEXIS. No OSM, state or other federal materials were identified which specifically address landfill as a postmining land use. One federal court case and an Interior administrative decision were identified which discuss a related issue: the need for flexibility and control with regard to variances from approximate original contour (AOC). Both opinions cite to the legislative history of SMCRA and "Congressional intent". An excerpt from a Congressional debate is also included. Copies of the items discussed below are attached.

IN RE: SURFACE MINING REGULATION LITIGATION AMERICAN MINING CONGRESS, et al., 627 F.2d 1346 (D.C. Cir May 2, 1980).

In affirming the District Court's ruling "that the interim regulations were not required to contain a general variance mechanism", the Circuit Court cited to "Congressional intent": "The Committee was adamant that there should be no broad exceptions to the vital mining and reclamation standards of this bill. To provide for unlimited exceptions would render the bill meaningless, since it would then be likely that the exceptions would become the rule. On the other hand the committee did recognize that there are some valid and important reasons for allowing limited variances to the prescribed standards of the bill, where such variances provide equal or better protection to the environment and result in a higher post-mining land use. For this reason, there are two provisions in the bill which permit variances to the mining-reclamation standards of the bill. S. Rep. No. 128, 95th Cong., 1st Sess. 55 (1977)."

(Excerpts from the Congressional Reports quoted in the opinion are attached.)

123 CONG. REC. S8083 (daily ed. May 20, 1977) (statement of Sen. Ford).

Mr. Ford, the Senator from Kentucky, introduced an amendment to S. 7 "which would provide for a variance from the normal requirement to restore surface mined land to its approximate original contour." Ford felt that Congress "must allow for appropriate departure from the general rule wherever such a variance is desirable and in the public interest."



The issue of control was equally important: "We must guard against a flexible provision that would allow abuses. Obviously, we do not wish to encourage a situation that would allow variances to become the rule."

"As a control mechanism, the request for variance will be subject to certain standards of preparation and review...The regulatory authority would be required to promulgate regulations governing the granting of variances and follow-up evaluation in accordance with the provisions of this amendment and other requirements of this bill."

NICKEL PLATE MINING CO., INC. v OSMRE, Docket No. NX 5-112-R (1987).

The Administrative Law Judge (ALJ) ruled that the Notice of Violation issued for "failure to return to approximate original contour" was not validly issued. It was Congress's intent that the "AOC standard" be "a flexible standard which contemplates different mining circumstances." In applying Congressional intent to this case, the ALJ compared the "postmining general surface configuration to the premining configuration" and determined that the area was "suitable for its intended postmining use."

(The full text of the OSM Directive and Supreme Court case cited in the decision are included as attachments.)

ATTACHMENTS

- A. Excerpts from IN RE: SURFACE MINING REGULATION LITIGATION AMERICAN MINING CONGRESS, et al., 627 F.2d 1346 (D.C. Cir May 2, 1980).
- B. Excerpts from S. REP. No. 128, 95th Cong., 1st Sess. 55 (May 10, 1977).
- C. Excerpts from H.R. REP. No. 218, 95th Cong., 1st Sess. 115 (April 22, 1977).
- D. Excerpts from S. REP. No. 101, 94th Cong., 1st Sess. 90 (1975).
- E. Excerpts from Staff of Senate Comm. on Energy and Natural Resources, 95th Cong., 1st Sess., Report on State Surface Mining Laws: A Survey, A Comparison with the Proposed Federal Legislation, and Background Information 5 (Comm. Print June, 1977).
- F. Excerpts from 123 CONG. REC. S8083 (daily ed. May 20, 1977) (statement of Sen. Ford).
- G. NICKEL PLATE MINING CO., INC. v OSMRE, Docket No. NX 5-112-R (1987).
- H. OSM DIRECTIVE: "Approximate Original Contour", Transmittal No. 338, Subject No. INE-26 (May 26, 1987), also incorporates Directive Subject No. INE-26-1 (March 10, 1988).
- I. UDALL v TALLMAN, 380 U.S. 1 (1965).