



COALEX STATE COMPARISON REPORT - 168

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TOPIC: CONFIDENTIALITY OF COAL OWNERSHIP INFORMATION IN PERMIT APPLICATIONS

INQUIRY: Several Illinois coal operators have requested that coal ownership information, which they provide to the state regulatory authority (RA) as part of the permit application, be considered confidential information and not made available to the public. The coal operators are concerned about easy access to information on areas where they have future mine interests but don't yet own the coal rights. The federal program does not provide for confidentiality of such information. Do other states, such as Ohio or Kentucky, have provisions for keeping information confidential?

SEARCH RESULTS: Research was conducted using the COALEX Library in LEXIS and a telephone survey to Ohio and Kentucky. Findings are discussed below. Copies of identified items are attached, as indicated.

FEDERAL REGULATIONS

The relevant federal language is as follows (copies of the entire sections are attached):

30 CFR 772.15 REQUIREMENTS FOR COAL EXPLORATION; PUBLIC AVAILABILITY OF INFORMATION.

"(b) The [RA] shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration."

773.13 REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING; PUBLIC PARTICIPATION IN PERMIT PROCESSING.

"(d) Public availability of permit applications.

...



(3) Confidentiality. The [RA] shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to--

- (i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;
- (ii) Information required under Section 508 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;
- (iii) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979...."

778.13 Permit applications -- Minimum requirements for legal, financial, compliance and related information; identification of interest.

"(h) A statement of all lands, interest in lands, options of pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by the Paragraph which is not on public file pursuant to State law shall be held in confidence by the [RA], as provided under Section 773.13(d)(3)(ii) of this Chapter."

Also see 840.14 State [RA] inspection and enforcement; availability of records.

STATE SURVEY

Using COALEX, the only state identified as having a STATUTE allowing confidentiality of any ownership information is Indiana. Section 13-4.1-3-4 (text attached) reads as follows:

"(a)Each reclamation plan...shall include the following...:

(13) With respect to land contiguous to the area to be covered by the permit, a description of that land, interests in that land, or options on interests in that land held by the applicant or pending bids on interests in that land by the applicant. This information is confidential and not a matter of public record."

The following states were identified as having REGULATIONS that are identical or substantially similar to the federal regulations. (Copies of the statute and regulation sections for three additional states are attached for review.)

1. Alabama
2. Arkansas
3. Colorado
4. Indiana
5. Kansas
6. Kentucky
7. Louisiana



8. Maryland
9. Ohio
10. Oklahoma
11. Pennsylvania
12. Virginia
13. West Virginia

ADDITIONAL STATE INFORMATION

Two states were contacted by phone for additional information.

1. KENTUCKY

The state regulations require public participation in the permit application process. In practice, the only information kept confidential, when it is requested, is trade secret or other information relating to competitive rights of operators conducting coal exploration.

2. OHIO

Competitive information for coal exploration operations may be kept confidential. For non-exploration permits, only information on archeological resources may be kept confidential. Although the analyses of the physical properties of the coal to be mined may be kept confidential, in practice, this information is usually made public because of the toxic nature of components of the coal.

OSM DIRECTIVE

Subject No. REG-15, Transmittal No. 548, Subject: Policy and Procedures for Maintaining Confidentiality of Permit Application Information (Issued: 6/14/89).

This directive outlines the procedures to be followed by OSM employees in processing confidential information submitted as a part of an application for an exploration or mining permit, permit revision or permit renewal for operations under OSM's jurisdiction. The DEFINITIONS section includes language from all three sections above. (The Directive is attached.)

ATTACHMENTS

A. FEDERAL REGULATIONS:

1. 772.15 REQUIREMENTS FOR COAL EXPLORATION; PUBLIC AVAILABILITY OF INFORMATION.
2. 773.13 REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING; PUBLIC PARTICIPATION IN PERMIT PROCESSING.



3. 778.13 PERMIT APPLICATIONS -- MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION; IDENTIFICATION OF INTEREST.
 4. 840.14 STATE REGULATORY AUTHORITY INSPECTION AND ENFORCEMENT; AVAILABILITY OF RECORDS.
- B. STATE REGULATIONS
1. INDIANA: Ind. Admin. Code title 13, Sec. 13-4.1-3-4 (1986). Reclamation plan; contents; confidentiality.
 2. ARKANSAS: Ark. Surface Coal Mining and Reclamation Code; Dept. of Pollution Control and Ecology, Sec. 786.16 (1986). Protection of confidential information.
 3. MARYLAND: Md. Ann. Code art. 76A, Sec. 3 (1978). Custodian to allow inspection of public records.
 4. PENNSYLVANIA: Surface Mining Conservation and Reclamation Act, as amended October 12, 1984 (PL 916, No. 181), Sec. 4. Mining permit; reclamation plan; bond.
- C. OSM DIRECTIVE: Subject No. REG-15, Transmittal No. 548, Subject: Policy and Procedures for Maintaining Confidentiality of Permit Application Information (Issued: 6/14/89).