



COALEX STATE COMPARISON REPORT - 210

April 1992

INTERSTATE MINING COMPACT COMMISSION (IMCC)
Herndon, VA 20170

TOPIC:

1. DEFINITION OF OR TEST FOR "VALID EXISTING RIGHTS (VER)";
2. SUBSIDENCE: COMPENSATION FOR DAMAGED STRUCTURES AND WATER SUPPLY

INQUIRY: A survey was conducted of IMCC and non-IMCC members consisting of the following questions:

FOR ALL STATES SURVEYED: VER

1. What is your state program's definition of or test for VER, e.g., the "good faith/all permits" test or the "takings" test? Please include the state statute or regulation section number. [SMCRA sec. 522(e); 30 CFR 761.5]

FOR STATES WITH UNDERGROUND MINING: SUBSIDENCE

1. Does your state program contain regulations requiring compensation for or repair of structures (not land) damaged as a result of subsidence? Please include the state statute or regulation section number. [SMCRA sec. 516(b); 30 CFR 817.121(c)]
2. Does your state program contain regulations requiring the replacement of water supplies damaged as a result of subsidence? Please include the state statute or regulation section number. [SMCRA sec. 717(b)]

SEARCH RESULTS: The survey was conducted using a combination of telephoning and research in the COALEX Library. A summary of the survey follows; tables of responses to the three questions, copies of the state program sections and two related state cases are attached.

VER (21 states surveyed)

1. The regulations of seven (7) states require persons to have property rights created by a "legally binding conveyance", etc. and (1) to have made a "good faith" attempt to obtain "all permits" or (2) the coal is needed for/adjacent to an ongoing surface coal mine:
 1. Alabama
 2. Indiana



3. Iowa
 4. Kentucky
 5. Maryland
 6. North Dakota
 7. Oklahoma
2. Seven (7) states require the "legally binding conveyance" and have the "needed for/adjacent to" language but require the persons to have obtained "all permits" by August 3, 1977:
1. Arkansas
 2. Colorado
 3. Mississippi
 4. Missouri
 5. Montana
 6. Ohio
 7. Texas
3. Four (4) states use the "takings" test:
1. Illinois
 2. Virginia
 3. West Virginia
 4. Wyoming
4. Two (2) states had regulations which did not fit into these categories:
1. Pennsylvania requires a person to have "all permits" needed to mine as of August 3, 1977 or to have made a "complete application" by that date. They also do not include the "needed for/adjacent to" language.
 2. Utah regulations state that persons have VER if they demonstrate that property rights to the coal were acquired prior to August 3, 1977, the coal is needed for/adjacent to an ongoing mine.
5. Louisiana regulations provide VER only for haul roads.

SUBSIDENCE: REPAIR DAMAGE TO STRUCTURES (14 states surveyed)

1. Thirteen (13) states surveyed have regulations requiring restoration, rehabilitation, replacement of, or compensation for damage to structures as a result of subsidence:
 1. Alabama
 2. Colorado
 3. Illinois



4. Indiana
 5. Kentucky
 6. Maryland
 7. Ohio
 8. Oklahoma
 9. Texas
 10. Utah
 11. Virginia
 12. West Virginia
 13. Wyoming
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2. Pennsylvania law [Bituminous Mine Subsidence and Land Conservation Act of 1966] is stricter, requiring that mining may not cause any damage to those dwellings in place before April 27, 1966. Dwellings built after that date may purchase subsidence insurance from the state or buy coal support from the operator.

SUBSIDENCE: REPLACE WATER SUPPLY DAMAGED BY UNDERGROUND OPERATIONS (13 states surveyed)

1. Seven (7) states have regulations requiring underground coal operators to replace damaged water supplies:
 1. Colorado
 2. Indiana*
 3. Maryland
 4. Ohio
 5. Texas
 6. West Virginia
 7. Wyoming

*NOTE: In *WIGGINS v BRAZIL COAL & CLAY*, 452 NE 2d 958 (Ind 1983), a case involving the loss of water to the Wiggins' pit, the state Supreme Court found for the defendant, stating that there was no evidence "that the defendant's strip mining work was being done with a purpose or intent to injure plaintiffs."

2. Six (6) states do not have regulations in their programs requiring water supply replacement damaged by underground operations. Three states, noted by asterisks, have proposed or will proposed legislation to require water replacement for underground mining:
 1. Alabama
 2. Illinois



3. Kentucky*
4. Pennsylvania*
5. Utah
6. Virginia*

TABLE 1: VALID EXISTING RIGHTS

STATE	SECTION NO.	VER DEFINITION OR TESTS
ALABAMA	880-X-2A-.06 (1986)	Good faith/all permits; Legally binding conveyance; Needed for/adjacent to
ARKANSAS	761.5 (1987)	All permits; Legally binding conveyance; Needed for/adjacent to
COLORADO	1.04 (149)(1) (1989)	All permits; Legally binding conveyance; Needed for/adjacent to
ILLINOIS	62 IAC 1701 Appendix A (1991)	Prohibitions effect a takings of person's property
INDIANA	310 IAC 12-0.5-139 (1991 ?)	Good faith/all permits; Legally binding conveyance; Needed for/adjacent to
IOWA	4.1(2) eh(1) (1980)	Good faith/all permits; Legally binding conveyance; Needed for/adjacent to
KENTUCKY	405 KAR 24:001E Sec. 1(57) (1991 ?)	Good faith/all permits; Legally binding conveyance; Needed for/adjacent to
LOUISIANA	100.3(153) (1980)	VER regulations are for haul roads only.
MARYLAND	COMAR 08.13.09.10 (1980)	Good faith/all permits; Legally binding conveyance; Needed for/adjacent to
MISSISSIPPI	161.5 (1979)	All permits; Legally binding conveyance; Needed for/adjacent to
MISSOURI	10 CSR 40.5.010 (1989)	All permits; Legally binding conveyance; Needed for/adjacent to
MONTANA	26.4.1132 (1988)	All permits; Legally binding conveyance; Needed for/adjacent to
NORTH DAKOTA	69-05.2-01-02 (1988)	Good faith/all permits; Legally binding conveyance; Needed for/adjacent to
OHIO	1501:13-1-02 (1989)	All permits; Legally binding conveyance; Needed for/adjacent to
OKLAHOMA	761.5 (1982)	Good faith/all permits; Legally binding conveyance; Needed for/adjacent to
PENNSYLVANIA	86.1 (1989)	All permits or complete permit application; Legally binding conveyance
TEXAS	051.07.04.070 (1980)	All permits; Legally binding conveyance; Needed for/adjacent to
UTAH	UMC 614-100.200 (1990)	Property rights to coal; Needed



		for/adjacent to; Authorized coal mine exists on area; Legally binding conveyance
VIRGINIA	700.5 (1987)	Prohibitions effect a takings
WEST VIRGINIA	38 CSR 2.129 (1990)	Limitations result in unconstitutional taking
WYOMING	Chapter 1 Sec. 2(dc) (1989)	Prohibitions effect a takings

TABLE 2: SUBSIDENCE -- DAMAGED STRUCTURES

STATE	SECTION NO.	REPAIR/COMPENSATE FOR DAMAGED STRUCTURES: YES/NO
ALABAMA	800-X-10D-.58(3)(b) (1990)	YES. Compensation is determined by the property rights written into the severance deed.
COLORADO	4.20.3 (1982 E)	YES.
ILLINOIS	1817.121 (1986)	YES. This requirement has been in effect since the program began.
INDIANA	310 IAC 12-5-132 (1981)	YES.
KENTUCKY	405 KAR 8:040 Sec. 26 (1991)	YES.
MARYLAND	08.13.09.13(I) (1980)	YES.
OHIO	1501:13-12-03 (1983)	YES.
OKLAHOMA	817.124 (1982)	YES.
PENNSYLVANIA	Statute Sec. 4 (1982) 25 PA Chap. 89	YES. Stricter than SMCRA: operator may not cause damage to certain classes of structures. [According to the Bituminous Mine Subsidence and Land Conservation Act of 1966: (1) operator must not cause damage to pre 4/27/66 dwellings, all public buildings, etc. - 50% support must be left in place; (2) post 4/17/66 dwelling owners may obtain subsidence insurance from state or buy coal support from operator.]
TEXAS	051.07.04.564 (1979)	YES.
UTAH	UMC 614-301.500 (1990)	YES.
VIRGINIA	817.121(c) (1987)	YES.
WEST VIRGINIA	38 CSR 2 Sec. 16.2(c)(2) (1986)	YES.
WYOMING	Chap. VII Sec. 4(a) (1989)	YES.



TABLE 3: SUBSIDENCE -- REPLACE WATER SUPPLY (UNDERGROUND OPERATIONS)

STATE	SECTION NO.	REPLACE DAMAGED WATER SUPPLIES: YES/NO
ALABAMA	No section.	NO.
COLORADO	4.05.15 (1982 E)	YES. Requires water supply replacement for "surface or underground mining activities"
ILLINOIS	No section.	NO. A well is considered a structure. If it is damaged, it must be repaired, replaced or compensated for; however, this does not guarantee replacement of water.
INDIANA	310 IAC 12-5-94 (1991)	YES. However, state Supreme Court in a recent decision (WIGGINS v BRAZIL COAL & CLAY, 452 NE 2d 958 (Ind 1983) stated that operators of surface or underground mines do not have to replace water if damaged was "not malicious". [Case attached.]
KENTUCKY	No section.	NO. Bill proposed in recent legislative session was defeated.
MARYLAND	Ann Code of Md Sec. 7-5A-05.2 (1989)	YES. Requires operator of a deep mine to replace water supply.
OHIO	1513:162 (1982)	YES. Requires operator of "a coal mining operation" to replace water supply.
PENNSYLVANIA	No section.	NO. Bill is contemplated soon.
TEXAS	051.07.04.521 (1979)	YES. Requires person conducting underground mining activities to replace water supply.
UTAH	No section.	NO.
VIRGINIA	No section.	NO. Legislature has formed a committee to propose legislation for 1993 legislative session.
WEST VIRGINIA	Chap 22a Article 3 Sec. 24 (1984)	YES. State law, in effect since before SMCRA, requires "any operator" to replace water supply.
WYOMING	Chap. VII Sec. 2(a) (1989)	YES. State water rights regulations and broad interpretation of definition of "surface coal mining operations" require replacement of water affected by mining.