



COALEX STATE INQUIRY REPORT - 211

April 1992

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TOPIC: BUFFER ZONE FOR CEMETERIES

INQUIRY: Can the prohibition against mining within 100 feet of a cemetery be waived? Please locate any information which discusses this issue. [SMCRA 522(e)(5)].

SEARCH RESULTS: Using the COALEX Library and other materials available in LEXIS, several relevant Federal Register notices (preambles) and cases were identified. According to these materials, SMCRA does not authorize waivers for mining within 100 feet of a cemetery; Congress permitted waivers only for occupied dwellings. Copies of the items discussed below are attached.

44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble. Part 761 - Areas Designated by Act of Congress. Section 761.11 Areas where mining is prohibited or limited.[Excerpts.]

"Nothing in the Act prohibits relocation of cemeteries under existing procedures under State law, before an operator applies for a permit. OSM believes that a waiver for mining within 100 feet of a cemetery is not authorized by the Act because the prohibition against mining within 100 feet of a cemetery comes directly from Section 522(e)(5) of the Act. Congress has only permitted waivers for occupied dwellings and chose not to allow them for cemeteries."

45 FR 58576 (SEPTEMBER 4, 1980). Proposed rule. Partial approval/partial disapproval of Louisiana Permanent Regulatory Program. [Excerpts.]

Louisiana law added the phrase "unless waived by the proper authority or person" to the language of Section 522(e)(5). "The Secretary determined that such waivers are inconsistent with SMCRA".

HOLMES LIMESTONE CO. v ANDRUS, 655 F 2d 732 (6th Cir 1981), cert. denied 456 US 995 (1982).



The court ruled that the Act did not prohibit mining within 100 feet of private family burial grounds where the operator had obtained the owner's consent.

48 FR 41312 (SEPTEMBER 14, 1983). Final rules. Areas Unsuitable for Surface Coal Mining, etc.

OSM amended the definition of "cemetery" to exclude private family burial grounds in response to the HOLMES LIMESTONE decision. [See above.]

IN RE PERMANENT SURFACE MINING REGULATION LITIGATION, 620 F Supp 1519 (D DC July 15, 1985). [Excerpts.]

The court remanded the definition of "cemetery", finding that the Secretary's 1983 definition was inconsistent with the Act:

"[T]he plain meaning of the word cemetery admits of no distinction between public and private burial places."

51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension. Compliance with court order. [Excerpts.]

OSM suspended that part of the definition of "cemetery" which excluded private family burial grounds.

52 FR 4244 (February 10, 1987). Final rule. Protecting historic properties from surface coal mining. [Excerpts.]

These rules eliminated the exclusion for private family burial grounds from the definition of "cemetery".

ATTACHMENTS

- A. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble. Part 761 - Areas Designated by Act of Congress. Section 761.11 Areas where mining is prohibited or limited. [Excerpts.]
- B. 45 FR 58576 (SEPTEMBER 4, 1980). Proposed rule. Partial approval/partial disapproval of Louisiana Permanent Regulatory Program. [Excerpts.]
- C. HOLMES LIMESTONE CO. v ANDRUS, 655 F 2d 732 (6th Cir 1981), cert. denied 456 US 995 (1982).
- D. 48 FR 41312 (SEPTEMBER 14, 1983). Final rules. Areas Unsuitable for Surface Coal Mining, etc.
- E. IN RE PERMANENT SURFACE MINING REGULATION LITIGATION, 620 F Supp 1519 (D DC July 15, 1985). [Excerpts.]
- F. 51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension. Compliance with court order. [Excerpts.]



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G. 52 FR 4244 (FEBRUARY 10, 1987). Final rule. Protecting historic properties from surface coal mining. [Excerpts.]