



COALEX STATE COMPARISON REPORT - 240

December 1992 (Revised: February 1993)

Benny Wampler
Deputy Director for Mining
Department of Mines, Minerals and Energy
P.O. Drawer U
Big Stone Gap, Virginia 24219

TOPIC: PROTECTION OF MINERAL RESOURCES: LOCAL ZONING ORDINANCES

INQUIRY: Virginia is contemplating promulgating rules which would require localities to consider the economic viability and possible future mining of mineral resources when passing local zoning ordinances. Please conduct a survey of IMCC member states, requesting the following information:

1. Does your state currently have any such mineral resource protection provisions?
2. If your state has these regulations, please send a copy.

SEARCH RESULTS: Twelve states, including two non-coal states, responded to the questionnaire. Of these twelve, only Maryland responded that it has regulations to protect mineral resources; the name of the state contact person is provided below. Arkansas indicated that the City of Little Rock has a zoning ordinance which recognizes the importance of the mineral resources; a copy of the ordinance is attached. The summary of the results of the survey follows. Also attached are Pennsylvania state cases and a Pennsylvania Environmental Hearing Board (EHB) decision that discuss state provisions vs local zoning ordinances.

TABLE OF RESPONSES

STATE	DOES YOUR STATE HAVE MINERAL RESOURCE PROTECTION PROVISIONS?
ALABAMA	No
ARKANSAS	There are no state-wide regulations protecting mineral resources. However, the City of Little Rock has implemented a "Mining District" zoning ordinance that recognizes the importance of mining operations and mineral reserves. There are large bauxite pits and granite quarries adjacent to or within the city limits. (See attached ordinance.)
ILLINOIS	No
INDIANA	No
KENTUCKY	No



MARYLAND	Yes. (See attached sections of COMAR.) Contact: Office of State Planning; Mike Nortrup (410) 225-4550
MISSOURI	No
OHIO	No
NORTH CAROLINA	Mining does not supercede local zoning regulations
PENNSYLVANIA	Pennsylvania Municipalities Planning Code (PMPC) establishes authority for municipal land use controls. PMPC currently does not contain such provisions. Contact: Stephen Fehr Bureau of Community Planning Pa. Dept. of Community Affairs (717) 783-2459
SOUTH CAROLINA	No
VIRGINIA	No

PENNSYLVANIA STATE CASES

MILLER & SON PAVING, INC. v WRIGHTSTOWN TOWNSHIP, 499 Pa 80, 451 A 2d 1002 (Pa 1982).

The court affirmed that the local 200 foot setback requirement for quarries was not superseded by SMCRA's less stringent setback requirements because the ordinance became effective before SMCRA.

MCCLIMANS ET AL. v BOARD OF SUPERVISORS OF SHENANGO TOWNSHIP, 107 Pa Commw Ct 542, 529 A 2d 562 (Pa Commw Ct 1987).

The court, relying on MILLER & SON, determined that SMCRA did not supersede the challenged township zoning ordinance that regulated surface mining because the township enacted the ordinance before the effective date of SMCRA. NOTE: In BOARD OF SUPERVISORS OF SHENANGO TOWNSHIP V MCCLIMANS et al., 142 Pa Commw 470, 597 A 2d 738 (Pa Commw Ct 1991), the court affirmed the decision from Common Pleas (on remand) which found that the zoning ordinance prevented McClimans from gaining access to their subsurface property, "thus rendering the ordinance invalid as a taking without just compensation." The court noted that Shenango Township amended its zoning ordinance to allow surface mining on the subject property.

NALBONE v BOROUGH OF YOUNGSVILLE, 104 Pa Commonw Ct 623, 522 A 2d 1173 (Pa Commw Ct 1987).

A landowner challenged two amendments to existing ordinances that designated a district in the borough where oil and gas wells could be drilled and operated, asserting that these local efforts were preempted by the state's Oil and Gas Act. The court ruled



that both ordinances regulated land use, one of the primary purposes of zoning regulations.

WARNER CO. v ZONING HEARING BOARD OF TREDYFFRIN TOWNSHIP, 612 A 2d 578 (Pa Commw Ct 1992).

In this challenge of amendments, regulating quarrying operations, to existing zoning ordinances, the court ruled that the local setback requirements and "the designation of uses permitted by special exception are traditional land use regulations, those sections are not preempted by the [Noncoal] Act."

PENNSYLVANIA EHB DECISION

HILLTOWN TOWNSHIP BOARD OF SUPERVISORS v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES (DER) AND BUX-MONT REFUSE SERVICES, INC., 1988 Pa Envirn LEXIS 152, EHB Docket No. 87-201-W (1988).

From "Synopsis": DER "did not abuse its discretion by issuing a solid waste management permit for a trash transfer station where there were allegations that the facility did not comply with applicable municipal zoning and land development ordinances."

ATTACHMENTS

- A. CITY OF LITTLE ROCK, ARKANSAS, CODE Sec. 36-339 M mining district.
- B. MILLER & SON PAVING, INC. v WRIGHTSTOWN TOWNSHIP, 499 Pa 80, 451 A 2d 1002 (Pa 1982).
- C. MCCLIMANS ET AL. v BOARD OF SUPERVISORS OF SHENANGO TOWNSHIP, 107 Pa Commw Ct 542, 529 A 2d 562 (Pa Commw Ct 1987).
- D. BOARD OF SUPERVISORS OF SHENANGO TOWNSHIP v MCCLIMANS et al., 142 Pa Commw 470, 597 A 2d 738 (Pa Commw Ct 1991).
- E. NALBONE v BOROUGH OF YOUNGSVILLE, 104 Pa Commonw Ct 623, 522 A 2d 1173 (Pa Commw Ct 1987).
- F. WARNER CO. v ZONING HEARING BOARD OF TREDYFFRIN TOWNSHIP, 612 A 2d 578 (Pa Commw Ct 1992).
- G. HILLTOWN TOWNSHIP BOARD OF SUPERVISORS v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES (DER) AND BUX-MONT REFUSE SERVICES, INC., 1988 Pa Envirn LEXIS 152, EHB Docket No. 87-201-W (1988).
- H. COMAR Art. 66B Secs. 3.05, 3.06, 3.07 and 3.08.