



## COALEX STATE INQUIRY REPORT - 264

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Division of Reclamation  
402 West Washington Street  
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**TOPIC:** MINING WITHIN 300 FEET OF A PUBLIC BUILDING

**INQUIRY:** Does the prohibition against mining within 300 feet of a public building refer to the building itself or the property line? Please locate any materials that discuss this issue.

**SEARCH RESULTS:** Research was conducted using the COALEX Library and other materials available in LEXIS. No materials were identified that specifically discussed the issue in question. A few items were retrieved that have some relevance to the topic. These are listed below and copies are attached.

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### REGULATION HISTORY

**REGULATION OF SURFACE MINING: HEARINGS on H.R. 3 Before Subcommittee on the Environment and Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs, 93rd Cong., 1st Sess. 838 (April 9, 1973)(Statement of Penn. Rep. John P. Saylor).**

From H.R. 5988. Section-by-Section-Analysis. Section 214 Permit Approval. "This section lists the eight findings which the regulatory authority must make before it can grant a surface mining and reclamation permit. Among the findings which shall be made are .... (3) that the land affected is not within 300 feet of the outside property line of an occupied dwelling; within 300 feet of a public building, park or cemetery; nor within 100 feet of the outside line of any public road right-of-way".

### INTERIOR ADMINISTRATIVE DECISIONS

**DONALD B. PETERSON v OSM, Docket No. DV 7-1-PR (1987).**

Peterson contended that the permit boundary for Palmer Coking Coal Co.'s McKay Preparation Plant was within 300 feet of a public building (a grocery store) and several



houses along a state road. The ALJ ruled that "there [was] no evidence to support his allegation since no measurements [had] been made."

**L & E TRUCKING, INC. v OSM, Docket Nos. CH 1-160-R, CH 2-24-P, CH 2-25-R (1981).**

The ALJ affirmed the issuance of the violation for conducting surface coal mining within 300 feet of a public park finding that L & E should have known the "true ownership of the adjoining land". However, only the minimum number of points were assigned for extent of potential or actual damage as the ALJ found that work the applicant performed for the landowner "resulted in the removal of many physical hazards and will...ultimately improve the area."

**PENNSYLVANIA ADMINISTRATIVE DECISIONS**

**KERRY COAL CO. v COMMONWEALTH OF PENN., DEPT. OF ENVIRONMENTAL RESOURCES, 425 A 2d 46 (PA Commw Ct 1981).**

In discussing the construction of 52 P.S. Sec. 1396.4b(c) which states, in part,

"No operator shall open any pit for surface mining operations...within three hundred feet of any occupied dwelling house, unless released by the owner thereof, or any public building, school, park or community or institutional building...." \* the court agreed with Kerry Coal that the word "park" be read as an adjective modifying the word "building", providing statutory protection to "park buildings".

"We believe that the legislature has shown its intention in this section to apply the restriction limitation of 100 feet when it refers to property or geographic lines, i.e., right of way of public highway, cemetery, or bank of any stream. On the other hand, the restriction is 300 feet when applied to structures, i.e., occupied dwelling house, any public building, school, park or community or institutional building. It is of further significance that the structures are grouped together."

\*NOTE: The language of this section was subsequently changed. Refer to the revised statute section attached to this decision.

**BOARD OF SUPERVISORS OF CHARTIERS TOWNSHIP v QUARTURE AND T/D/B/A VICTOR DOSSE CONTRACTING, 603 A 2d 295 (PA Commw Ct 1992).**

The issue on appeal was whether the common pleas court had jurisdiction to modify an earlier order. The facts of the case relate to which set of conditions were to be imposed on a strip mine permit: no mining closer than 300 feet of any building or structure versus no mining closer than 300 feet of any property line.

**MISC.**



Excerpts from a variety of materials that mention the 300 feet rule are enclosed for review.

## **ATTACHMENTS**

- A. REGULATION OF SURFACE MINING: HEARINGS on H.R. 3 Before Subcommittee on the Environment and Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs, 93rd Cong., 1st Sess. 838 (April 9, 1973)(Statement of Penn. Rep. John P. Saylor).
- B. DONALD B. PETERSON v OSM, Docket No. DV 7-1-PR (1987).
- C. L & E TRUCKING, INC. v OSM, Docket Nos. CH 1-160-R, CH 2-24-P, CH 2-25-R (1981).
- D. KERRY COAL CO. v COMMONWEALTH OF PENN., DEPT. OF ENVIRONMENTAL RESOURCES, 425 A 2d 46 (PA Commw Ct 1981).
- E. BOARD OF SUPERVISORS OF CHARTIERS TOWNSHIP v QUARTURE AND T/D/B/A VICTOR DOSSE CONTRACTING, 603 A 2d 295 (PA Commw Ct 1992).
- F. Misc. Excerpts from a variety of materials that mention the 300 feet rule.