



COALEX STATE INQUIRY REPORT - 267

November 1993

IMCC
459 B Carlisle Drive
Herndon, VA 22070

TOPIC: ALTERNATIVE TO TOPSOIL

INQUIRY: Expand COALEX Report No. 176, "Substituting alternative materials for topsoil" (April, 1991). Focusing on the legislative history of SMCRA, locate congressional reports that discuss the substitution of alternate materials for topsoil, in particular, discussions of the issue: "equal to or more suitable for sustaining vegetation than existing topsoil" which appears in 30 CFR 816.22(b) [See also SMCRA Sec. 515(b)(5) and (6)].

SEARCH RESULTS: Using the COALEX Library on LEXIS, little was retrieved directly on point. Several congressional reports items were identified which indicate that the most important criteria for determining which material is used in reclamation is its effectiveness for revegetation. Excerpts from these reports and a recent Indiana case are attached. Also enclosed is COALEX Report No. 176 which lists Interior administrative decisions and Federal Register preambles on the topic.

LEGISLATIVE HISTORY

S. REP. 93-402, 93rd Cong., 1st Sess. 58, S. 425 (September 21, 1973). "Section-by-section analysis". Section 213 Criteria for surface mining and reclamation operations.

213(b). Reclamation criteria. "In this subsection and elsewhere in the bill, the Committee has used the term 'practicable' to modify certain requirements. It is the intent of the Committee that this term not be considered solely in the context of economic feasibility. Profitability does not determine practicability, at least equal concerns here are those of technical feasibility and environmental protection."

213(b)(4). "The topsoil to be removed from the mined area is required to be segregated and preserved so that it will be available to be used for reclamation purposes. The topsoil need not be stored and replaced on the same area from which it was removed if it is replace on the top layer of another part of the mined are as part of an ongoing reclamation process."



"Other methods of soil conservation are permitted if the regulatory authority determines that another method of soil conservation would be at least equally effective for revegetation."

H.R. REP. 93-1072, 93rd Cong., 2nd Sess. 128, H.R. 11500 (May 30, 1974). "Section-by-section analysis". Section 201 Initial Regulatory Authority.

"Environmental protection standards incorporated into the initial regulatory program will require:

...

(3) segregating and preserving topsoil or suitable subsoil in order to aid in the establishment of the required diverse vegetative cover capable of self-regeneration and plant succession, on those lands which have been mined and regraded and including introduced species".

H.R. REP. 93-1072, 93rd Cong, 2nd Sess, H.R. 11500 (May 30, 1974). "Additional, dissenting, separate and supplemental views". Provisions of H.R. 12898 that would "balance" H.R. 11500: Sec. 201 Interim Regulatory Procedure.

201(c). "[T]he following interim surface coal mining and reclamation performance standards shall be applicable to surface coal mining operations on lands on which such operations are regulated by a state regulatory authority....

...

"(6) with respect to all surface coal mining operations, remove the topsoil in a separate layer, replace it simultaneously on a backfill area or segregate it in a separate pile from the subsoil and if the topsoil is not replace in a time short enough to avoid deterioration of topsoil, maintain a successful cover by quick growing vegetation or by other means so that the topsoil is protected from wind and water erosion, contamination from any acid or toxic material, and is in a usable condition for sustaining vegetation when replaced during reclamation, except if the topsoil is not capable of sustaining vegetation, or if another material from the mining cycle can be shown to be more suitable for vegetation requirements, then the operator shall so remove, segregate, and protect that material which is best able to support vegetation, unless the permittee demonstrates that another method of soil conservation would be at least equally effective for revegetation purposes".

H.R. REP. 93-1072, 93rd Cong, 2nd Sess, H.R. 11500 (May 30, 1974). "Additional, dissenting, separate and supplemental views". Sec. 213 Performance Standards.

"(b) The following general surface coal mining and reclamation performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the permittee to -

...

"(5) remove the topsoil from the land in a separate layer, replace it simultaneously on a backfill area or segregate it, and if the topsoil is not replaced on a backfill area within a



time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is protected from wind and water erosion, and contamination from any acid or toxic material, and is in a usable condition for sustaining vegetation, except that if the topsoil is not capable of sustaining vegetation or if another material from the mining cycle can be shown to be more suitable for vegetation requirements, then the permittee shall so remove, segregate, and protect that material which is best able to support vegetation, unless the permittee demonstrates in the reclamation plan that another method of soil conservation would be at least equally effective for revegetation purposes".

H.R. REP. 95-218, 95th Cong, 1st Sess, H.R. 2 (April 22, 1977). "Additional, concurring, separate and dissenting views".

Congressman James D. Santini listed the environmental protection performance standards of H.R. 2 that he found objectionable.

OTHER MATERIAL

COALEX STATE INQUIRY REPORT - 176, "Substituting alternative materials for topsoil" (April, 1991).

This Report includes Interior administrative cases from 1979 through 1983 and relevant Federal Register notices.

PEABODY COAL CO. v INDIANA DEPT. OF NATURAL RESOURCES, 606 NE 2d 1306 (Ind Ct App 1993).

The appeals court affirmed the trial court and ALJ rulings that Peabody was required to show what it considered the "best available material" for purposes of a proposed revision to the permit. The "best available material" had been approved for reclamation under the original permit. DNR believed that the "best available material" for the new location might be different than that for the original location.

ATTACHMENTS

1. S. REP. 93-402, 93rd Cong., 1st Sess. 58, S. 425 (September 21, 1973). "Section-by-section analysis".
2. H.R. REP. 93-1072, 93rd Cong., 2nd Sess. 128 & Additional views, H.R. 11500 (May 30, 1974).
 - A. "Section-by-section analysis".
 - B. "Additional, dissenting, separate and supplemental views".
 - C. "Additional, dissenting, separate and supplemental views".
3. H.R. REP. 95-218, 95th Cong, 1st Sess, H.R. 2 (April 22, 1977). "Additional, concurring, separate and dissenting views".



4. COALEX STATE INQUIRY REPORT - 176, "Substituting alternative materials for topsoil" (April, 1991).
 - A. CARBON FUEL CO. v OSM, 1 IBSMA 253, IBSMA 79-9 (1979).
 - B. BURGESS MINING AND CONSTRUCTION CORP., 1 IBSMA 293, IBSMA 79-28 (1979).
 - C. ALABAMA BY-PRODUCTS CORP., 2 IBSMA 298, IBSMA 80-44 (1980).
 - D. ALABAMA BY-PRODUCTS CORP. v OSM, Docket Nos. NX 8-26-R, NX 8-27-R (1980, amends 1979 decision).
 - E. ALABAMA BY-PRODUCTS CORP. v OSM, 1 IBSMA 239, IBSMA 79-16 (1979).
 - F. FALCON COAL CO. v OSM, Docket No. NX 0-198-R (1983).
 - G. FALCON COAL CO. v OSM, Docket No. NX O-124-4 (1983).
 - H. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble and Final Rule.
 - I. 47 FR 10742 (MARCH 11, 1982). Proposed rule.
 - J. 48 FR 22092 (MAY 16, 1983). Final rule.
5. PEABODY COAL CO. v INDIANA DEPT. OF NATURAL RESOURCES, 606 NE 2d 1306 (Ind Ct App 1993).