



## COALEX STATE INQUIRY REPORT - 350 February, 1999

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**TOPIC:** RESTORING THE LAND TO ITS PREMINING "CAPABILITY"

**INQUIRY:** The premining land use of a permitted area was cropland. Current plans call for a wildlife habitat as the alternative postmining land use. Using the land as a wildlife habitat requires replacing fewer inches of topsoil than would be required for cropland. Is establishing a wildlife habitat considered a "higher or better use" of the land in this instance? Is the permittee required to replace all of the topsoil, restoring the land to the use it was "capable of supporting before mining", and then establish the land as a wildlife habitat? [SMCRA 515(b)(2); 30 CFR 816.133] Please locate any relevant information.

**SEARCH RESULTS:** Research was conducted using the COALEX Library and other materials in LEXIS as well as existing COALEX REPORTS. Research identified a number of existing COALEX REPORTS that discuss "higher or better use" of the land, replacement of topsoil and AOC. However, these materials do not address the specific questions of a wildlife habitat as a higher use of the land than cropland or the requirement to replace topsoil to its premining depth when the alternative postmining land use requires fewer inches of topsoil.

Copies of the relevant COALEX STATE INQUIRY REPORTS are listed below and are included without their attachments. Three legislative history excerpts are enclosed for background. Also attached are four WILLIAM H. PULLEN IBLA decisions. These decisions, which are discussed in several of the attached COALEX REPORTS, provide an excellent discussion some of the relevant issues.

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COALEX STATE INQUIRY REPORT - 290, "Definition of higher and better use" (1994).

The legislative and regulatory history materials enclosed as part of this Report state that there should be some flexibility in determining postmining land use. "Higher or better land use" should be determined on a site-by-site basis by the landowner and the regulatory authority. In proposing alternative postmining land use, the operator must demonstrate in the plans that the proposed use is "economically viable and politically acceptable", more beneficial, and is a "reasonable and environmentally sound reclamation option." Copies of Interior administrative decisions provide discussions of acceptable postmining land uses.



COALEX STATE INQUIRY REPORT - 209, "Replacement of topsoil; permit requirements more stringent than the regulations" (1992).

An operator reclaimed the mined area with 14 inches of topsoil, the premining topsoil depth. However, the reclamation plan called for 18 inches of topsoil. The Interior administrative decisions included in of the Report address the question of replacement topsoil depth as well as the question of permit conditions.

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

COALEX STATE INQUIRY REPORT - 267, "Alternative to topsoil" (1993).

REPORT 176 provides Interior administrative decisions and Federal Register preambles discuss substituting alternative materials for topsoil. REPORT 267 provides legislative history materials that address the issue.

COALEX STATE INQUIRY REPORT - 341, "Approximate original contour" (1998).

COALEX STATE INQUIRY REPORT - 292, "Highwall elimination and AOC: blending in" (1994).

These REPORTS were enclosed for background.

CONGRESSIONAL RECORD, 123 Cong. Rec. S8083, S8111 (May 20, 1977).

CONGRESSIONAL RECORD, 120 Cong. Rec. 25009, 25012 (July 24, 1974).

CONGRESSIONAL RECORD, 120 Cong. Rec. 24450, 24608 (July 18, 1974).

Excerpts from these three Congressional Record entries are enclosed for background.

IN THE MATTER OF WILLIAM H. PULLEN, JR., et al., IBLA 88-452, 1992 IBLA LEXIS 124 (1992).

WILLIAM HELTON PULLEN, JR. et al., IBLA 88-452, 112 IBLA 218 (1989).

WILLIAM H. PULLEN, JR., et al., IBLA 92-335, 132 IBLA 224 (1995).

WILLIAM H. PULLEN, JR., et al., IBLA 94-838, 143 IBLA 149 (1998).

See these decisions for discussions of AOC, revegetation and topsoil replacement.

## **ATTACHMENTS**

- A. COALEX STATE INQUIRY REPORT - 290, "Definition of higher and better use" (1994).
- B. COALEX STATE INQUIRY REPORT - 209, "Replacement of topsoil; permit requirements more stringent than the regulations" (1992)
- C. COALEX STATE INQUIRY REPORT - 176, "Substituting alternative materials for topsoil" (1991).
- D. COALEX STATE INQUIRY REPORT - 267, "Alternative to topsoil" (1993).



- E. COALEX STATE INQUIRY REPORT - 341, "Approximate original contour" (1998).
- F. COALEX STATE INQUIRY REPORT - 292, "Highwall elimination and AOC: blending in" (1994).
- G. CONGRESSIONAL RECORD
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- J. WILLIAM H. PULLEN, JR., et al., IBLA 92-335, 132 IBLA 224 (1995).
- K. WILLIAM H. PULLEN, JR., et al., IBLA 94-838, 143 IBLA 149 (1998).