



COALEX STATE INQUIRY REPORT - 85
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TOPIC: LEGISLATIVE HISTORY OF SMCRA SEC. 522(a)(3)(A) and (B)

INQUIRY: SMCRA Sec. 522 describes the portion of the Act for designating areas unsuitable for surface coal mining. (1) What is the legislative history of "fragile or historic lands" as used in Sec. 522(a)(3)(B)? (2) What is the legislative history concerning "significant damage" to "important resources" as used in this section? (3) What is the legislative history of "State or local land use plans" as used in Sec. 522(a)(3)(A)?

SEARCH RESULTS: The pertinent portion of Sec. 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) states:

"(3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will --
(A) be incompatible with the existing State or local land use plans or programs; or
(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems...."

LEGISLATIVE HISTORY OF SEC. 522(a)(3)(B)

During the 92nd Congress, the Senate Subcommittee on Minerals, Materials and Fuels held four days of hearings on the subject of surface mining. The Committee on Interior and Insular Affairs then unanimously reported the first surface mine bill, S. 630, in September, 1972.

Contained in Title II, Sec. 203(b)(7) of this bill was the state forerunner of the Land Unsuitable section of the current law. It stated in part:

"[T]he regulatory authority shall deny issuance of a permit for mining operations...where an area of critical concern or significant historical or cultural value would be destroyed by the proposed operations." (S. Rep. No. 1162, 92nd Cong., 2d Sess. 5 (1972))

The Committee indicated that the authority of either a federal or state plan to prohibit mining operations in certain locations was one of several points that appeared in the hearings a number of times. The 92nd Congress, adjourned, however, before the full Senate considered the bill.



One item of interest in the Report involves two letters, one each from the Department of Interior and the Department of Agriculture. The letters were solicited by the Committee as comments on a related bill concerning the prospecting and exploring for minerals by means of bulldozers or other mechanical earthmoving equipment. Both letters expressed concern about "fragile soil conditions" and that disturbance "would cause irreparable surface damage." (Id. at 57) This indicates a possible origin for the work "fragile" as used in the Act.

On January 18, 1973, Senator Henry M. Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, introduced S. 425, the Surface Mining Reclamation Act of 1973. (S. 425, 93rd Cong., 1st Sess., 119 Cong. Rec. 1357 (1973)) He called the bill a "working document" to be considered in early hearings.

Section 215(a)(3) stated that "Areas may be designated unsuitable for surface mining operations...if the area is an area of critical environmental concern." The first definition of "areas of critical environmental concern" was given as:

"...areas where uncontrolled or unplanned development -- mining or otherwise -- could result in irreversible damage to important historic, cultural, environmental or esthetic values, or natural systems or processes, which are of more than local significance, or could unreasonably endanger life and property as a result of natural hazards of more than local significance." (Id. at 1372)

Senator Jackson, in discussing the major provisions of the bill, said it "draws heavily on the subcommittee work in the 92nd Congress, S. 630 and provisions of the better State laws." (Id. at 1359) This bill clearly expanded the scope of the lands unsuitable section, over the previous Senate bill 630.

In what is perhaps the key document concerning the origin of Sec. 522(a)(3)(B) of SMCRA, S. 425 as reported, included the same language of the lands unsuitable section as previously introduced, with the addition of four "areas" to be included under the definition of "areas of critical environmental concern." One of these areas was:

"(A) Fragile or historic lands' where uncontrolled or incompatible development could result in irreversible damage to important historic, cultural, scientific, or esthetic values or natural systems which are of more than local significance, such lands to include shorelands of rivers, lakes and streams; rare or valuable ecosystems and geological formations; significant wildlife habitats; and unique scenic or historic areas." (S. Rep. No. 402, 93rd Cong., 1st Sess., 19 (1973))

Even more significant, however, is the Committee's analysis of this section:

"The definition of areas of critical environmental concern' is identical to the definition in S. 268 - The Land Use Policy and Planning Assistance Act of 1973 -- as passed by the Senate earlier this year." (Id. at 68)

Thus, it appears that the Senate intended to adopt the already developed language of another Act to formulate the Sec. 522(a)(3)(B) criteria.



Of the fifteen surface mining bills introduced in the House in the 93rd Congress, only eight provided any mechanism of designating lands unsuitable for mining. Of these eight, only two resembled the Senate version. The bill sponsored by Senators Saylor and Dent of Pennsylvania would have allowed the regulatory authority to designate as unsuitable for surface mining "areas of critical concern." (H.R. 5988, 93rd Cong., 1st Sess., Sec. 213(a)(2)(C) (1973)) A bill introduced by Senator Foley of Washington included similar language with one modifier: "areas of critical environmental concern." (H.R. 6603, 93rd Cong., 1st Sess., Sec. 215(a)(2)(C) (1973)) No definition was given for either of these terms.

The fifteen separate bills were eventually molded into a single bill, H.R. 11500, which the Committee on Interior and Insular Affairs felt incorporated many features of the earlier bills and the results of many days of public hearings, testimony and extensive field trips. The final version of this bill concerning areas of critical concern was the same language used in the 1977 version of the Act. (H. Rep. 1072, 93rd Cong., 2d Sess., Sec. 206(a)(3)(B) (1974)) No reason was given in the House Report for the switch to the language used in the Senate version.

During the floor debate on H.R. 11500, an amendment was offered to temper any expansive interpretation of the "fragile or historic lands" section by balancing "the national interest in the production of coal." ([] Cong. Rec. 25009 (1974)) This amendment was rejected, thus signaling no Congressional intent to "balance" these lands against the national interest in coal production.

The final compromise version of these bills that was passed by Congress and sent to the President contained language identical to Sec. 522(a)(3)(B) of SMCRA as passed in 1977. (H. Rep. No. 1522, 93rd Cong., 2d Sess., Sec. 522(a)(3)(B) (1974)) It deleted the words "area of critical concern" and simply substituted a portion of the definition of these areas from S. 425. No further changes were made to this section after 1975, and no reason was given by the Committee for the change.

LEGISLATIVE HISTORY OF SEC. 522(a)(3)(A)

Although the first surface mine bill, S. 630, reported during the waning days of the 92nd Congress in 1972, contained a basic lands unsuitable provision, it made no reference to unsuitability due to conflicting land uses. It mentioned only "areas of critical concern or significant historical or cultural value." (S. Rep. No. 1162, 92nd Cong., 2d Sess. 5 (1972))

In contrast to S. 630, the Senate version of the surface mining bill introduced in the 93rd Congress was based on "land use policies". The analysis of Sec. 215 -- Designation of Lands Unsuitable for Surface Mining included this explanation:

"...no regulatory program can be truly effective unless it is conducted on a solid base of planning. As surface mining and reclamation operations are so intimately associated with the land resource, the proper planning base for regulation of such operations is land use planning. Therefore, section 215 mandates that each State develop a land use planning process upon which to anchor State Programs to control surface mining and reclamation operations." (S. 425, 93rd Cong., 1st Sess., 119 Cong. Rec. 1372 (1973))



In addition, the agency to be created to carry out the legislation was to be called the Office of Land Use Policy, Reclamation and Enforcement. (Id.)

The comments made by Senator Jackson in the introduction of the bill went on to say, "The Office...is in major respects a land use planning agency...." (Id. at 1368)

This bill was the first to tie surface mining regulation and land use together and in particular State land use planning.

The Senate later passed a version of this bill that read "...[the lands unsuitable designation] process shall be integrated as closely as possible with existing land use plans and programs." (S. Rep. No. 402, 93rd Cong., 1st Sess. 18 (1973)) The final version of this bill also included language that, with only slight modification, would remain throughout later versions, including the enacted 1977 law:

"(2) An area may be designated unsuitable for all or certain types of operations if --

(A)...

(B) surface mining operations in a particular area would be incompatible with existing land use plans and programs; or.... (Id.)

In its analysis of this section, the Committee on Interior and Insular Affairs, defines existing land use plans and programs as those "plans and programs in existence at the time the review takes place." (Id. at 68) The review discussed here is the review by the state of potential surface mining areas in its jurisdiction. Clearly, Congress intended at this point in the evolution of the surface mine bill to mandate a strong role for land use policies in the designation process of lands unsuitable for surface mining.

The House bill passes in the 93rd Congress contained slightly different language concerning the land use plan issue:

"(3) an area may be designated unsuitable for all or certain types of surface coal mining operations if such operations will --

(A)...

(B) be incompatible with Federal, State, or local plans to achieve essential governmental objectives; or...." (H. Rep. 1072, 93rd Cong., 2d Sess. 9 (1974))

The land use discussion in the report indicates that Congress felt surface mining was only one of many uses of the land and that it should give way to higher, more beneficial uses of the land. (Id. at 83)

The compromise version of the two bills adopted by a Conference Committee is almost identical to the current law. It borrowed from both the House and Senate bills and stated that areas may be designated unsuitable for surface coal mining operations if such operations will:



"(B) be incompatible with existing land use plans or programs; or...." (H. Rep. No. 1522, 93rd Cong., 2d Sess., Sec. 522(a)(3)(B) (1974))

No indication was given by the conferees as to why these changes were made. This bill was passed by Congress, but, was pocket vetoed by President Nixon.

During the 94th Congress, both the Senate and House passed new surface mine bills. They were, for the most part, slightly refined versions of the previously vetoed bill. Both versions, as well as the final compromise bill passed by Congress, included the identical "existing land use plans or programs" language. The House bill did, however, attempt to clarify this section by stating that these were "general planning concerns." (H. Rep. No. 45, 94th Cong., 1st Sess. 90-92 (1975)) the final version of these bills. H.R. 25, was vetoed by President Ford on May 20, 1975.

Both the House and Senate surface mine bills introduced in the 95th Congress contained slightly different wording and both were slightly different from the previous session vetoed bill.

The Senate version, S. 7, replaced the phrase "existing land use plans" with the phrase "existing State land use plans...." (S. Rep. No. 128, 95th Cong., 1st Sess. 39 (1977)) although it appears that Congress had state land use policies primarily in mind, the Committee on Energy and Natural Resources offered the following analysis of the section:

"[The lands unsuitable process] is designed to minimize land use conflicts with regard to surface coal mining. The provisions...were specifically designed...to restore more balance to Federal land use decisions regarding mining." (Id. at 54-55)

It may appear that there is some conflict between the analysis and the statute as proposed, but it should be noted that after 1974, there was little if any change in the analysis portion of these bills.

The House version, H.R. 2, also replaced the phrase "existing land use plans" with slightly different wording:

"(A) be incompatible with existing governmental land use plans or programs; or...." (H. Rep. No. 218, 95th Cong., 1st Sess. 42 (1977))

The analysis offered in this report was virtually identical to that contained in the House surface mine bill in the 93rd Congress. (Id at 93-95)

The House-Senate Conference Committee reconciled the two versions into the language now present in SMCRA of 1977. The Conference Reports are silent as to the reasons for the compromise other than to say the bills had "similar provisions pertaining to the designation of lands unsuitable for surface coal mining." (S. Rep. No. 337, 95th Cong., 1st Sess. 110 (1977))

Thus, there appears to be no clear reason why Congress chose the words it did or why the exact language of the section changed so frequently over the evolution of the various bills. It may be

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only a matter of semantics as to why the various modifiers were used. It does appear, however, the language was intended to mean almost any governmental land use policy be considered in the area to be reviewed for unsuitability for surface coal mining.

ATTACHMENTS

- A. Excerpt, S. Rep. No. 1162, 92nd Cong., 2d Sess. (1972).
- B. Excerpt, S. 425, 93rd Cong., 1st Sess., 119 Cong. Rec. 11372 (1973).
- C. Excerpt, S. Rep. No. 402, 93rd Cong., 1st Sess. (1973).
- D. Excerpt, H.R. 5988, 93rd Cong., 1st Sess., Sec. 213(a)(2) (1973).
- E. Excerpt, H.R. 6603, 93rd Cong., 1st Sess, Sec. 225(a)(2) (1973).
- F. Excerpt, H.R. 1072, 93rd Cong., 2d Sess., Sec. 206(a)(3)(B) (1974).
- G. [] Cong. Rec. 25009 (1974).
- H. Excerpt, H. Rep. No. 1522, 93rd Cong., 2d Sess., Sec. 522(a)(3)(B) (1974).
- I. Excerpt, H. Rep. No. 45, 94th Cong., 1st Sess. (1975).
- J. Excerpt, S. Rep. No. 128, 95th Cong., 1st Sess. (1977).
- K. Excerpt, H. Rep. 218, 95th Cong., 1st Sess. (1977).
- L. Excerpt, S. Rep. No. 337, 95th Cong., 1st Sess. (1977).