



COALEX STATE COMPARISON REPORT - 113
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TOPIC: DEFINITIONS OF SOIL AND MINERAL

INQUIRY:

A permit is required for an operator to extract minerals from the earth. Is clay which is excavated from a borrow pit and used for fill dirt in construction considered a "mineral", requiring a permit, or "dirt" which would not require a permit, for removal? Locate state laws which define "minerals", "soil", or "dirt".

SEARCH RESULTS:

Research was conducted using the state code files on LEXIS. At the time the research was performed, codes for 32 states were available. Summaries of the identified state code sections are listed in table format below. Excerpts from the identified sections and the list of states searched on LEXIS are included as appendices.

Research was also conducted using the state and federal case law files on LEXIS. The decisions identified as a result of the research and the topics they discuss are listed below. Copies of the decisions are enclosed as appendices.

STATUTES AND CODES FINDINGS

1. Many mining- or natural resource-related sections include "clay" in the definition of "mineral". In some cases, the definition of mineral is qualified by the phrase "in this Act".
2. Many mining and natural resource sections use the words "soil" and "earth" almost interchangeably; the word "dirt" is virtually never used.
3. When used in state codes, the word "dirt" usually means "foreign substance", "filth", or "stain" and appears in codes dealing with food, agricultural products and dry cleaning. Some states use "dirt" and "soil" interchangeably in these sections.



**LIST OF STATE CODES AND STATUES RESEARCHED ON LEXIS
[ATTACHMENT A]**

Alabama Code	Alaska Code	Arkansas Code	California Code
Connecticut Code	Delaware Code	Florida Code	Idaho Code
Illinois Code	Indiana Code	Iowa Code	Kansas Code
Kentucky Code; Kentucky Statutes	Maryland Code	Minnesota Code	Missouri Code
Montana Code	Nebraska Code	Nevada Code	New Mexico Code
New York Code	North Carolina Code	Ohio Code	Oregon Code
Rhode Island Code	Tennessee Code	Texas Code	Virginia Code
Washington Code	West Virginia Code	Wisconsin Code	Wyoming Code

**STATE CODE SECTIONS THAT DEFINE "MINERAL" AND MENTION "CLAY"
[ATTACHMENT B]**

STATE	STATUTE	SECTION	TEXT
ALASKA	Coal Mining	27.21.988 Definitions	"Other Minerals": Includes clay; commercial value; solid form on or in earth
ARKANSAS	Mining & Reclamation	15-57-303 Definitions	Overburden = soil and other materials above mineral deposits, including clay
CONNECTICUT	Act 87-283	Mineral Interests; 3 (New) Definitions	Mineral interest = organic or inorganic includes clay
FLORIDA	Tax on Severance of Solid Minerals	211.30 Definitions	Solid mineral = clay
FLORIDA	Land Reclamation	378.403 Definitions	Fuller's earth clay; Overburden = soil and rock removed to gain access to resource
IDAHO	Mineral Rights in State Lands	47-701A Definitions	Salable minerals = value separate and apart from earth includes clay
IDAHO	Dredge Mining	47-1313 Definitions	Mineral = substance extracted from placer deposit; DOES NOT INCLUDE CLAY
IDAHO	Surface Mining	47-1503 Definitions	Mineral = solid material, including clay; substance of commercial value
ILLINOIS	Metal Mines	4201 Definitions	Mineral (in the Act) DOES NOT CLAY INCLUDE



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ILLINOIS	Surface-Mined Land	4503 Definitions	Overburden = earth and other materials which lie above natural deposits of clay and other minerals
INDIANA	Soil and Minerals; Strip Mining	13-4-6-2 Definitions	Overburden = soil and other materials which lie above a mineral deposit; Mineral = includes clay
INDIANA	WATER WELL DRILLERS	25-39-2-5 Definitions	Bentonite clay = commercial clay or mineral product clay
KENTUCKY	Mines and Minerals	351.010 Definitions	Commercial mine = mine coal or clay for sale, commercial use or exchange
KENTUCKY	Revenue and Tax.; Natural Resources	143A.010 Definitions	Natural Resource = all forms of minerals including clay; Severing = physical removal of natural resource from earth
MARYLAND	Mines and Mining; Surface Mining	7-6A-01 Definitions	Borrow pit = area from which soil is removed to be used, without further processing, as fill for construction; Minerals = solid material or aggregate substance of commercial value including clay; Overburden = strata or material overlying a mineral deposit
MONTANA	Minerals, Oil & Gas; Metal Mine Reclamation	82-4-303 Definitions	Mineral = includes clay taken from or below surface of earth for milling, refinement, manufacturing or other subsequent use or processing
MONTANA	Minerals, Oil & Gas; Opencut Mining	82-4-403 Definitions	Mineral = includes clay; Overburden = all of earth and other materials which lie above a natural deposit of minerals
NEW MEXICO	Surface Mining	69-25A-3 Definitions	Other minerals = includes clay; substances of commercial value excavated in solid form from natural deposits in or on earth
NEW YORK	Mineral Resources; Mined Land Reclamation	23-2705 Definitions	Mineral = includes clay; substance of commercial value found in natural deposits in or on earth
NORTH CAROLINA	Mines & Quarries	74-49 Definitions	Borrow pit = area from which soil is removed to be used, without further processing, for highway construction; Minerals = includes clay; substance of commercial value found in natural deposits on or in earth
OHIO	Natural Resources; Surface Mining	1514.01 Definitions	Minerals = substance of commercial value from natural deposits on or in earth, includes clay; Overburden = earth or other materials



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			which cover a natural deposit of minerals; also means materials after removal from natural state
OREGON	Mineral Resources; Reclamation of Mining Lands	517.750 Definitions	Minerals = includes clay; substance excavated for commercial, industrial or construction use from natural deposits within or upon lands; Overburden = soil, rock and similar materials that lie above natural deposits of minerals
TEXAS	Mines & Mining; Surface Mining	5920-11	Other minerals = includes clay; solid material or substances of commercial value; from natural deposits on or in earth
TENNESSEE	Mines & Mining; Strip & Open Pit Mines	59-8-202 Definitions	Mineral = includes clay; solid material or substance of commercial value; in natural deposits on or in earth
VIRGINIA	Mines & Mining; Surface Mining	45.1-229 Definitions	Other minerals = includes clay; solid material or substances of commercial value; from natural deposits on or in earth
WASHINGTON	Mines, Minerals & Petroleum; Surface Mining	78.44.030 Definitions	Minerals = includes clay; solid material or substance from natural deposits on or in earth for commercial, industrial or construction uses; Overburden = earth, rock and other materials that lie above a natural deposit of mineral
WEST VIRGINIA	Taxation; Severance Taxes	11-13A-2 Definitions	Natural resource = all forms of minerals, including clay
WEST VIRGINIA	Labor; Wage Payment & Collection	21-5-1 Definitions	Minerals = includes clay
WEST VIRGINIA	Mines & Minerals; Surface Coal Mining	22A-3-3 Definitions	Minerals = includes clay
WEST VIRGINIA	Mines & Minerals; Surface Mining (Not Coal)	22A-4-2 Definitions	Minerals = includes clay
WEST VIRGINIA	Mines & Minerals; Open-Pit Mines	22A-6-1 Definitions	Clay = natural material of mostly small fragments of...silicates
WYOMING	Public Health & Safety;	35-11-103 Definitions	Minerals = includes clay; material removed from earth for reuse or further processing;



	Environmental Quality		Overburden = all of earth and other materials which lie above mineral deposits; earth and other materials disturbed from natural state in process of mining
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STATE CODE SECTIONS THAT DEFINE "BORROW PIT" [ATTACHMENT C]

STATE	STATUTE	SECTION	TEXT
ARKANSAS	Natural Resources; Mining & Reclamation	15-57-303 Definitions	Borrow pit = excavated area where material has been removed for use as fill at another location
MARYLAND	Mines & Mining; Surface Mining	7-6A-01 Definitions	Borrow pit = area from which soil or other unconsolidated materials are removed to be used, without further processing, as fill for activities such as landscaping, building construction, or highway construction and maintenance
NORTH CAROLINA	Mines & Quarries; Mining Act of 1971	74-49 Definitions	Borrow pit = area from which soil or other unconsolidated materials are removed to be used, without further processing, for highway construction and maintenance

STATE CODE SECTIONS THAT DEFINE "SOIL" OR "DIRT" [ATTACHMENT D]

STATE	STATUTE	SECTION	TEXT
ALASKA	Public Health & Welfare; Food, Drugs & Cosmetics	20-59-201 Definitions	"Unlawful cream or milk" means cream or milk which contains dirt, filth...or other foreign matter....
ALASKA	Taxation; Severance Taxes	26-58-101 Definitions	"Natural resources" means all natural products of the soil...including clay.... "Sever" means...removed for commercial purposed from the soil....
CALIFORNIA	Food & Agricultural; Meat & Poultry Inspection	18948 Definitions	"Sanitary" means free from dirt, filth....
CALIFORNIA	Labor; Tunnel & Mine Safety	7951 Definitions	"Face" means the head of the tunnel where soil is being removed, or that area in a mine where digging is underway; "Muck" means excavated dirt, rock or other material
FLORIDA	Public Health; Pollution	403.265 Definitions	"Peat mining activity" means extraction of peat or peat soils for sale or consumption or



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	Control		the disturbance of vegetation or soils in anticipation of the extraction of peat or peat soils for sale or consumption. For the purposes of this part, the term "peat mining activity" does not include the removal of peat or peat soils for construction activities or the removal of overburden for other mining activities.
ILLINOIS	Natural Resources; Surface-Mined Land	4503 Definitions	"Darkened surface soil" means mineral horizons formed at or adjacent to the surface of the soil which are higher in organic matter content.... (Also see definition of "Mineral")
INDIANA	Environment; Soil & Minerals	13-4-3-3 Definitions	"Soil" means the surface layer of the earth which serves as a natural medium for the growth of plant life.
KANSAS	Criminal Code; Crimes Against Property	21-3756	Adding...foreign material to grain prohibited; "foreign material" means dirt, rock, sand....
MARYLAND	Natural Resources; Water Resources	8-1601 Definitions	"Spoil" means earth, rock, soil...or other material excavated or dredged from Balt. Harbor....
MINNESOTA	Taxation; Dry Cleaning	299I.01 Definitions	Dry cleaning shall mean the process of removing dirt...and other stains from wearing apparel....
NEBRASKA	Livestock; Commercial Feed	54-854	Adulterated commercial feed; An animal feed may be deemed to be contaminated with filth if not protected...from dust, dirt...and other foreign or injurious contamination.
NEW YORK	Agriculture & Markets; Trees & Plants	161 Definitions	The word "soil" means the commonly accepted medium or other medium in which plants are grown....
NEW YORK	Mineral Resources; Mined Land Reclamation	23-2705 Definitions	"Overburden" means all of the earth and other materials which lie above or alongside natural mineral deposits and includes all earth, soil, and other materials disturbed from their natural state....
NORTH CAROLINA	Mines & Quarries; Mining Act of 1971	74-49 Definitions	"Minerals" means oil, clay...found in natural deposits on or in the earth.
OHIO	Natural	1501	"Topsoil" means surface and upper surface



	Resources; Soil & Water		soils which are...ordinarily rich in organic matter....
OHIO	Taxation; Sales Tax	5739.01 Definitions	"Industrial laundry cleaning services" means removing soil or dirt from supplying towels....
OHIO	Dept of Health; Operation of Camps	3701-25	"Solid wastes" means such unwanted residual solid or semi-solid material as results from...commercial...and community operations, and includes garbage...street dirt, and debris.
TEXAS	Roads, Bridges & Ferries; Traffic Regulations	6701d-11	Regulating operation of vehicles on highways; "loose material" means dirt, sand...or other material that is capable of blowing or spilling from a vehicle....
TENNESSEE	Water, Waterways; Water Quality Control	69-3-103 Definitions	"Other wastes" means any...substances...including cellar dirt
WISCONSIN	Public Health; Water, Sewage, Refuse, Mining & Air Pollution; Mining	144.81 Definitions	"Merchantable by-product" means all waste soil, rock, mineral...directly resulting from or displaced by the mining, cleaning or preparation of minerals during mining operations which are determined by the dept to be marketable.

RETRIEVED STATE AND FEDERAL DECISIONS

Two cases were identified that most closely address the issues raised in the inquiry.

GINTER COAL CO. v ENVIRONMENTAL HEARING BD., 306 A.2d 416 (Pa. Commw. Ct. 1973), was an appeal from an order of the Pennsylvania Department of Environmental Resources (DER) which directed Ginter to stop removing anthracite coal from culm banks until "the necessary license, liability insurance and permit" were secured. The court relied on the definitions of "surface mining" and "mineral" found in SMCRA in ruling that "Ginter's operation is surface mining within the legislative intent of the SMCRA Act." Thus, "before commencing to operate", Ginter must obtain a license and a permit and "file certain securities and plans with DER."

In W.S. NEWELL, INC. v RANDALL, 373 So. 2d 1068 (Ala. 1979), the court ruled that the sand clay removed from the (Newell) corporation's property for use as fill dirt in construction of a highway was "ordinary soil", not a "mineral". Randall, the owner of the reserved mineral rights, was not entitled to royalties for the removed soil.



The additional decisions retrieved, like NEWELL, address mineral rights questions. The cases are included here because they contain courts attempts to determine whether a particular substance, e.g., sand, gravel, or limestone, was included in the definition of "mineral" in situations where one party sold or leased land but "reserved" certain "mineral rights" for themselves. What is included here are examples of court rulings on mineral definition questions; this does not purport to be a complete analysis of the issues.

1. DEFINITION OF "MINERAL"

The definition of "mineral" cannot be taken literally from a dictionary nor can it be taken from a strictly scientific standpoint, e.g., "a chemical element or compound occurring naturally as a product of inorganic processes." CUMBERLAND MINERAL CO., v U.S., 513 F.2d 1399 (1975).

One set of criteria for determining which substances may be considered "minerals" for "mineral rights" purposes comes from HEINATZ v ALLEN, 217 S.W.2d 994 (Tex. 1949): "[S]ubstances such as sand, gravel and limestone are not minerals within the ordinary and natural meaning of the word unless they are rare and exceptional in character or possess a peculiar property giving them special value, as for example sand that is valuable for making glass....Such substances, when they are useful only for building and road-making purposes, are not regarded as minerals in the ordinary and generally accepted meaning of the word." (Emphasis added.)

In WATT v WESTERN NUCLEAR, INC., 462 U.S. 36 (1983), the Court included in "mineral reservation" those "substances that...can be removed from the soil...."

Finding that caliche was not included in the mineral reservation, the court in POVERTY FLATS LAND & CATTLE CO. v U.S., 788 F.2d 676 (10th Cir. 1986) stated that: "[Caliche] has value as fill dirt and surfacing by reason of its geographical location to the road work where it is used.... Nothing can be extracted from it nor derived from it. It is used by reason of its physical characteristics only."

2. INTENT

In addition to the commercial value mentioned above, intent must be taken into account. Intent, itself, has several meanings.

Intention of the parties. In NEWELL (see above), the court stated: "[T]he meaning of the term [mineral] is to be ascertained from the language of the instrument and the surrounding circumstances evidencing the intention of the parties."

Legislative intent. "It is appropriate to look to the intended purpose [of a statute] and to the means of accomplishing it...." STATE LAND BD. v STATE, 408 P.2d 707 (Utah 1965). In WATT v WESTERN NUCLEAR, INC., the Court determined that gravel was a mineral reserved to the U.S. under the Stock-Raising Homestead Act of 1916. In STATE LAND BD., just cited, the court cited to the "coal and other minerals" provision in the Utah statutes and ruled that gravel was not a mineral; it reasoned that: "Under the...rules of statutory construction known as ejusdem generis (of the same kind)...the 'other



minerals' should be understood as something of the same general character as coal or minerals which are the subject of prospecting and mining...."

3. **MINERAL ESTATE v. SURFACE ESTATE**

In construing the meaning of a "reservation of minerals", some courts have ruled that:

"the parties [to the lease, grant, etc.] intended to create two distinct, co-existing, and individually valuable estates. Thus, the grantor retains ownership of all commercially valuable substances separate from the soil, while the grantee assumes ownership of a surface that has value in its use and enjoyment." *SPURLOCK V. SANTE FE PACIFIC RAILROAD CO.*, 694 P.2d 299 (1984).

The court, in *SPURLOCK*, went on to summarize relevant case law: "Many jurisdictions have recognized that the mineral owner's rights to develop his estate are limited when they infringe upon the surface owner's use and enjoyment of the land itself. Generally, courts solve this conflict by determining that the term minerals excludes substances whose extraction would destroy the surface."

ATTACHMENTS

- A. LIST OF STATE CODES AND STATUTES RESEARCHED IN LEXIS [See above]
- B. STATE CODE SECTIONS THAT DEFINE "MINERAL" AND MENTION "CLAY" [See above]
- C. STATE CODE SECTIONS THAT DEFINE "BORROW PIT" [See above]
- D. STATE CODE SECTIONS THAT DEFINE "SOIL" OR "DIRT" [See above]
- E. *GINTER COAL CO. v ENVIRONMENTAL HEARING BD.*, 306 A.2d 416 (Pa. Commw. Ct. 1973).
- F. *W.S. NEWELL, INC. v RANDALL*, 373 So. 2d 1068 (Ala. 1979).
- G. *CUMBERLAND MINERAL CO., v U.S.*, 513 F.2d 1399 (Ct. Cl. 1975).
- H. *HEINATZ v ALLEN*, 217 S.W.2d 994 (Tex. 1949).
- I. *POVERTY FLATS LAND & CATTLE CO. v U.S.*, 788 F.2d 676 (10th Cir. 1986).
- J. *WATT v WESTERN NUCLEAR, INC.*, 462 U.S. 36 (1983).
- K. *STATE LAND BD. v STATE*, 408 P.2d 707 (Utah 1965).
- L. *SPURLOCK v SANTE FE PACIFIC RAILROAD CO.*, 694 P.2d 299 (Ariz. Ct. App. 1984).

THESE CASES ARE RELEVANT BUT WERE NOT QUOTED IN THE REPORT:

- M. *NORTHERN PACIFIC RAILWAY CO. v SODERBERG*, 188 U.S. 526 (1903).
- N. *FARRELL v SAYRE*, 270 P.2d 190 (Colo. 1954).
- O. *HARPER v TALLADEGA COUNTY*, 185 So.2d 388 (Ala. 1966).
- P. *ACKER v GUINN*, 464 S.W.2d 348 (Tex. 1971).
- Q. *STORM ASSOC., INC. v TEXACO, INC.* 645 S.W.2d 579 (Tex. App. 1982).
- R. *PAYNE v HOOVER*, 486 So.2d 426 (Ala. 1986).



THESE CODE SECTIONS WERE NOT QUOTED IN THE REPORT BUT ARE PROVIDED FOR YOUR REVIEW:

- S. State Code Sections that define "overburden".