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SPRINGFIELD

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FILE NO. 91382

ENVIRONMENTAL PROTECTION:
Authority of Department of Mines
and Minerals to Administer
Surface Mining Control and
Reclamation Act of 1977

Honorable James R. Thompson
Governor
State House
Springfield, Illinois 62706

Dear Governor Thompson:

You have asked my opinion on the authority of the Illinois Department of Mines and Minerals to administer a certain program under a Federal statute, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201 et seq. (Supp. 1978)). This inquiry is prompted by a United States Department of the Interior regulation, 42 Fed. Reg. 62704, 62705 (1977) (to be codified in 30 C.F.R. § 725.15(c)(4)), requiring as a condition of Federal approval of certain grants that the State agency involved submit:

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"(4) An opinion of the State's chief legal officer as to whether and to what extent the State is authorized to enforce and administer the initial regulatory program."

It is my opinion that the Department of Mines and Minerals is given full authority to administer the Federal Act's initial regulatory program by Public Act 80-1342, which amends sections 2, 4.1 and 9 of, and adds section 17 to "The Surface-Mined Land Conservation and Reclamation Act". Ill. Rev. Stat. 1977, ch. 96 1/2, par. 4501 et seq.

The initial regulatory program is provided for primarily by section 502 of the Federal Act. (30 U.S.C.A. § 1252 (Supp. 1978)). In general, it provides for agencies of the States to administer and enforce an interim program for regulation of mining until more permanent programs provided for by the Act are begun. As to administration by the State of that section of the Federal Act, Public Act 80-1342 provides explicit authority. It adds section 17 to The Surface-Mined Land Conservation and Reclamation Act (to be codified in Ill. Rev. Stat., ch. 96 1/2, par. 4520). Subsection (a) states in part that:

"The Director and the Land Reclamation Division within the Department of Mines and Minerals shall have the power and duty to act as

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the regulatory authority for the State of Illinois, under the Surface Mining Control and Reclamation Act of 1977, * * * Section 502, and, to the extent required by * * * Section 510(d), with respect to the initial regulatory program * * * ."

Other aspects of the initial regulatory program are set forth in parts of the Federal Act not specifically mentioned by the State Act, such as subsections (a), (b) and (c) of section 510 and subsection (e) of section 522. (30 U.S.C. §§ 1260, 1272 (Supp. 1978)). However, subsection (b) of section 17 added by Public Act 90-1342 further authorizes the Department "otherwise to comply with and administer the initial regulatory program". Finally, subsection (c) of section 17 added by Public Act 90-1342 provides that:

"No person shall open, develop or operate a surface coal mining operation (including an underground operation) as defined in [the Federal Act], Section 701(28), without a permit from the regulatory authority. * * * "

Thus the Department has power through the permit-granting process to regulate all such mining operations.

It is my opinion that these provisions are broad enough to give the Department of Mines and Minerals full authority to enforce and administer the initial regulatory program provided by the Federal Act. In view of the State

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Act's provision that it take effect upon becoming a law, and the rule set forth in section 1 of "AN ACT in relation to the effective date of laws" (Ill. Rev. Stat. 1977, ch. 131, par. 21), such authority commenced with the signing of the Act.

Very truly yours,

A T T O R N E Y G E N E R A L
