



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER
ATTORNEY GENERAL

September 28, 1978

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78- 304

Mr. G. T. Van Bebbler
Chairman
State Corporation Commission
4th Floor - State Office Building
Topeka, Kansas 66612

Re: Mined-Land Conservation and Reclamation Board--Powers-
-Regulations

Synopsis: The requirements of the federal Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*, and the regulations adopted thereunder, are adopted by reference by 1978 Senate Bill 879, and action is not required of the Kansas Mined-Land and Reclamation Board, created under K.S.A. 49-401 *et seq.*, to adopt such regulations in order to render them applicable to the State of Kansas, for the legislature has itself adopted by reference said regulations.

* * *

Dear Mr. Van Bebbler:

The question has once again been raised concerning the authority of the Mined-Land and Reclamation Board, created under K.S.A. 49-401 *et seq.*, to enforce requirements concerning mined land conservation and reclamation, which comply with the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201 *et seq.* The question has been addressed in two previous opinions from this office, nos. 78-220 and 78-296. Apparently, the question remains imperfectly resolved.

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Section 2(e) of 1978 Senate Bill No. 897 defines the term "operator" as

"any person engaged in surface types of mining who disturbs more than one-fourth acre or who removes or intends to remove more than one hundred (100) tons of minerals or who removes overburden for the purpose of producing minerals, and such person shall be subject to the mined-land conservation and reclamation act and to all the requirements of such act and rules and regulations which may be adopted pursuant thereto for the purpose of qualifying to administer the regulatory programs adopted by the United States department of interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto."

In addition, section 4 amends K.S.A. 49-405 to empower the agency

"(a) To adopt rules and regulations respecting the administration of this act and in conformity therewith and to adopt rules and regulations which may be necessary for the board to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto and may adopt and enforce all standards established by such federal rules and regulations."

In addition, it is authorized

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"(1) To perform such other duties and functions as may be required by the provisions of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto in order to qualify to administer the initial regulatory program adopted by the United States department of interior, office of surface mining reclamation and enforcement, pursuant to such act."

It is clear that under section 2(e) of this act, the legislature has adopted by direct reference all requirements of the National Surface Mining Control and Reclamation Act of 1977, as governing mining and reclamation operations in the State of Kansas and the rules and regulations which have been adopted pursuant thereto. By the statutory definition of the term "operator," such operators are by law subject to those requirements. More substantively, section 5 amends K.S.A. 49-406 to provide in pertinent part thus:

"All surface types of mining conducted under such permit shall comply with the requirements of the surface mining control and reclamation act of 1977 (public law 95-87) and the initial program regulations issued by the department of the interior, office of surface mining, on December 13, 1977, or as subsequently amended."

No further action by the Kansas Mined-Land Conservation and Reclamation Board is necessary to render the requirements of the federal act applicable to Kansas operators, for the legislature has made that decision. In addition, the legislature has adopted by reference all regulations of the Secretary of the Interior which have been promulgated under that Act and, once again, no further action is required by the Kansas Board to render those regulatory requirements of the interim regulatory phase applicable to this state. The Kansas Board may adopt further regulations in aid of its statutory authority, but no action by the Board is necessary to render the existing federal regulations applicable

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to Kansas, for they have been so applicable under Senate Bill 879, since its effective date, publication in the official state paper.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj