

1975 WL 28956 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 25, 1975

*1 The removal of 950,000 cubic feet of borrow material for the construction of dams to create the Monticello Reservoir is 'mining' within the meaning of the South Carolina Mining Act, unless considered on-site construction or conducted on Federal lands.

Murray Wood
Director
Department of Mining and Reclamation

QUESTION PRESENTED:

You have requested an opinion of this Office regarding the applicability of the South Carolina Mining Act to an announced plan by S.C.E.&G. to obtain 950,000 cubic yards of borrow material for the construction of dams to create the Monticello Reservoir (Parr Project No. 1894).

STATUTES INVOLVED:

The South Carolina Mining Act (Section 63-711, et seq. of 1962 Code of Laws of South Carolina, as amended) states: (a) 'Mining' means (1) the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of ores or mineral solids for sale or processing or consumption in the regular operation of a business, (2) removal of overburden lying above natural deposits of ore or mineral solids and removal of the mineral deposits thereby exposed, or by removal of ores or mineral solids from deposits lying exposed in their natural state. Removal of overburden and mining of limited amounts of any ores or mineral solids shall not be considered mining when done only for the purpose of determining location, quantity, or quality of a natural deposit, so long as no ores or mineral solids removed during exploratory excavation or mining are sold, processed for sale, or consumed in the regular operation of a business and provided the land affected does not exceed one acre in area. It shall not include plants engaged in processing minerals except as such plants are an integral on-site part of the removal of ores or mineral solids from natural deposits. It shall not include excavation or grading when conducted solely in aid of on-site farming or of on-site construction. It shall not include dredging operations where such operations are engaged in the harvesting of oysters, clams, or the removal of shells from coastal bottoms. (Emphasis added)

(p) 'Borrow pit' means an area from which soil or other unconsolidated materials are removed to be used, without further processing, for highway construction and maintenance.

The Mining Act, however, is not applicable to certain specified activities and areas, as stated in Section 63-731:

The provisions of this chapter shall not apply to those activities of the South Carolina State Highway Commission, nor of any person acting under contract with the Commission, on highway rights-of-way or borrow pits maintained solely in connection with the construction, repair, and maintenance of the public road systems of South Carolina; provided, that this exemption shall not become effective until the State Highway Commission shall have adopted reclamation standards applying to such activities and such standards have been approved by the Mining Council. The provisions of this chapter

shall not apply to mining on Federal lands under a valid permit from the U.S. Forest Service or the U.S. Bureau of Land Management. (Emphasis added)

DISCUSSION OF ISSUE:

*2 The definition of ‘mining’ referred to above, in my opinion, encompasses the proposed project to which you refer, unless that project can be considered to be ‘on-site construction,’ in which case it is specifically excluded from the operation of the act. The proposed project might likewise be exempt from the requirements of the act if it is conducted on Federal lands as provided in Section 63-731. However, absent such conditions as described above, it is certain that the proposed project is within the scope of intended regulation under the South Carolina Mining Act, as evidenced by the specific exception provided by the General Assembly in Section 63-731, above, for borrow pits involved in South Carolina Highway Department projects.

CONCLUSION:

Therefore, it is the opinion of this Office that, unless exempted as discussed above, the South Carolina Mining Act applies to the proposed project to which you refer.

Richard P. Wilson
Assistant Attorney General

1975 WL 28956 (S.C.A.G.)