

CHAPTER 22

Redefining the Relationship Between the Surface Owner and the Mineral Developer

Ronald W. Polston

Professor of Law

Indiana University School of Law – Indianapolis
Indianapolis, Indiana

Synopsis

§ 22.01. Introduction.

§ 22.02. The New Surface Damage Acts.

[1]--The North Dakota Act.

[2]--Statutes Modeled on the North Dakota Act.

[3]--The Oklahoma Statute.

[4]--The Illinois/Kentucky Acts.

[5]--The Indiana Act.

§ 22.03. The Common Law Background.

[1]--The Implied Easement.

[2]--Doctrinal Theory of Implied Easement.

[3]--Deviations From Easement Doctrine.

§ 22.04. Constitutionality of Surface Damage Acts.

[1]--Retroactive Application of Acts.

[2]--Validity of Expectations of Mineral Developers.

[3]--Constitutional Analysis.

[4]--Decisions Upholding the Statutes.

§ 22.05. Conclusion.

§ 22.01. Introduction.⁽¹⁾

A number of states have adopted statutes in recent years imposing upon the mineral developer the obligation to pay surface damages. These statutes represent a departure from the rules developed by courts to cover this situation in that they apparently require the payment of damages regardless of whether or not the mineral developer's operations represent a reasonable use of the surface estate and whether or not these operations have been conducted in a negligent manner. In fact most of the statutes seem, if read literally, to require payment even if the right of the mineral developer to use the surface has been expressly created.⁽²⁾