



COALEX STATE INQUIRY REPORT - 2

July 26, 1984

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Office of General Counsel-E
305 W. Springdale Avenue
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TOPIC: PENALTY ASSESSMENT; ADMINISTRATIVE PROCEEDINGS

INQUIRY: If an administrative agency fails to notify a coal operator of a proposed penalty assessment within 30 days, are there any cases indicating that the reviewing Board must demonstrate prejudice prior to vacating the penalty? Are there any Board or ALJ decisions regarding this issue?

SEARCH RESULTS:

A COALEX search was conducted of the legislative history of the Act to determine whether Congress had considered this issue prior to the Act's passage. No legislative history directly dealing with this point was identified.

A follow-up search was conducted of OSM Federal Register notices. At 40 FR 14974 (APRIL 12, 1984), OSM discussed this case in the action substituting federal enforcement of portions of Oklahoma's permanent regulatory program. Finding Number 6 of that notice indicates that vacating proposed penalties during administrative hearings if the proposed assessments were not served within thirty days after the NOV or CO was issued is counter to established legal precedent. Cases cited are:

SHARA COAL CO., INC. v US, No. CV82-4335 (SD Ill January 5, 1984).

US v LOG MOUNTAIN MINING CO., Civil No. 3-81-30 (MD Tn July 21, 1982), appeal pending (6th Cir).

IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, 653 F 2d 514, 522 (DC Cir 1981), cert. denied, 454 US 822 (1981).

The COALEX Library does not contain the results of federal administrative actions. Therefore, a search of ALJ or BOARD decisions was not possible.

ATTACHMENTS:

Excerpts from 49 FR 14674 (APRIL 12, 1984).