



COALEX STATE INQUIRY REPORT - 4

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Natural Resources and Environmental Protection Cabinet
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TOPIC: CORPORATE OFFICER LIABILITY

INQUIRY: Under SMCRA, when a corporate permittee is in violation, the corporate officers can be held liable. When should the regulatory authority send an assessment to the corporate officer and how much due process is he entitled to? (SMCRA Sec. 518(f), 30 USC 1268(f); Kentucky - 350: 990 subpar. 9)

SEARCH RESULTS:

A search of the COALEX Library pertaining to implementation of the provisions of Sec. 518(f) of SMCRA was conducted. The basic procedural requirements for state program implementation of Sec. 518(f) are set forth in 30 CFR Sec. 840.13. This section provides that the state procedural requirements shall be "the same as or similar to those provided in Sections 518 and 521 of the Act...and consistent with Parts 843 and 845 and Subchapters G and J" of the federal regulations. Paragraph (d) of Sec. 840.13 also provides that:

"Nothing in the Act or this part shall be construed as eliminating any additional enforcement rights or procedures which are available under State law to a State regulatory authority, but which are not specifically enumerated in Sections 518 and 521 of the Act.."

OSM has indicated reliance on Sec. 518(i) of the Act to require state programs to include penalties and procedures of Sec. 518 of SMCRA. (47 FR 35624 (AUGUST 16, 1982)) Federal procedures for assessment of civil penalties are contained in 30 CFR Secs. 845.17 through 845.20.

The federal regulations do not clearly indicate the procedures for initiating an action against a corporate officer for a violation under Sec. 518(f). Presumably, the regulatory authority would issue a separate Notice of Violation to the corporate officer for such violations. Sec. 845.17 of the federal regulations provides for the subsequent issuance of a proposed assessment within 30 days. The impact of a failure to issue such an assessment within 30 days is covered under 30 CFR Sec. 845.17(b)(2).

A COALEX search was previously conducted of cases where the administrative agency failed to issue the proposed assessment within 30 days. COALEX STATE INQUIRY REPORT - 2, attached, contains the results of this search.

An additional search was conducted of the COALEX Library for documents relating to legislative intent of Sec. 518(f) of SMCRA and the conflict between corporate law protection and SMCRA liability of corporate officers. No documents were identified specifically relating to this issue.



Two documents were found that may be tangentially useful in analysis of these provisions. These documents are from the Subcommittee Hearings on Bills leading to the passage of P.L. 95-87. The first is testimony before the House Subcommittee on Energy and the Environment on February 28, 1977. The second is similar testimony before the Senate Subcommittee on Public Lands and Resources. Copies of these documents are attached for reference.

ATTACHMENTS:

- A. Excerpt from Hearing conducted by the House Subcommittee on Energy and the Environment (FEBRUARY 28, 1977).
- B. Excerpt from Hearing conducted by the Senate Subcommittee on Public Lands and Resources.
- C. COALEX STATE INQUIRY REPORT - 2.