



COALEX STATE INQUIRY REPORT - 12

August 27, 1984

Donald A. Brown
Department of Environmental Resources
Bureau of Litigation
503 Executive House
P.O. Box 2357
Harrisburg, PA

TOPIC: \$750/DAY CIVIL PENALTY

INQUIRY: Has there been any case law interpreting the \$750/day civil penalty provision cited in P.L. 95-87, Sec. 518(h)?

SEARCH RESULTS:

The \$750/day civil penalty referred to under Sec. 518(h) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) is a penalty assessed when a failure-to-abate cessation order has been issued. Exceptions to the assessment of the civil penalty include temporary relief proceedings and review proceedings where the obligations to abate have been suspended by the court. (30 CFR Sec. 845.15(b))

Sec. 518(j) of the Act requires the state regulatory programs to incorporate a similar penalty provision. August 16, 1982, in a preamble to their 1982 modification of the enforcement regulations, the Office of Surface Mining (OSM) agreed with the position that the state program penalty requirements could differ in formate from the federal promulgated rules. They held, however, that with regard to failure-to-abate cessation orders, the minimum \$750/day civil penalty must be assessed. (47 FR 35623-24 (1982))

A search of COALEX for past Interior Board decisions* concerning the \$750/day penalty was conducted. In CRAVAT COAL CO., the Interior Board held that the \$750/day civil penalty was a mandatory assessment and that the Administrative Law Judge could not reduce the number of days for which the assessment was applied. (CRAVAT COAL CO., 2 IBSMA 249-260 (1980))

*OSM is currently updating the COALEX File of IBSMA decisions, and the file may not be complete.

A search of LEXIS was conducted for applicable case law. In SAVE OUR CUMBERLAND MOUNTAINS v JAMES G. WATT, the United States District Court for the District of Columbia found that the \$750/day assessment was mandatory -- not discretionary. Judge Parker in his memorandum, also addressed the enforcement measure to be taken following the assessment of a penalty (30 CFR Sec. 845.15(b)(2)) Based upon his finding that the \$750/day penalty was mandatory, he stated that "it follows that the enforcement measures under this regulation are also mandatory." (SAVE OUR CUMBERLAND MOUNTAINS, INC. v JAMES G. WATT, 550 F Supp 979 (DDC 1982))

Judge Parker's decision was subsequently reversed by the United States Court of Appeals on the basis of venue. In the Court of Appeals decision, the \$750/day issue was not addressed.



The Circuit Judge, in his opinion, however, did make note that appropriations granted under the Appropriations Act of 1984 were specifically earmarked "to enable the Department of the Interior to comply with the terms of the District Court's Order". He emphasized that with the reversal of the District Court's decision, he was not taking a "position regarding the impact, if any, of today's decision on Congress' action." Also, the decision did not preclude the District Court from transferring the case to an appropriate District Court. (SAVE OUR CUMBERLAND MOUNTAINS, INC. v JAMES G. WATT, 725 F 2d 1434 (DC Cir 1984))

No additional court cases interpreting the \$750/day civil penalty were located. A further search of LEXIS failed to locate the Congressional reports concerning the Appropriations Act of 1984, referenced in the Court of Appeals decision.

ATTACHMENTS:

- A. Excerpt, 47 FR 356232-24, preamble to Sec. 840.13 Enforcement Authority.
- B. Excerpt, CRAVAT COAL CO., 2 IBSMA 249-260 (1980).
- C. SAVE OUR CUMBERLAND MOUNTAINS, INC. v JAMES G. WATT, 550 F Supp 979 (DDC 1982).
- D. SAVE OUR CUMBERLAND MOUNTAINS, INC. v JAMES G. WATT, 725 F 2d 1434 (DC Cir 1984).