



COALEX STATE INQUIRY REPORT - 20

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TOPIC: (1) INTERVENTION/HEARINGS AND APPEALS; (2) INTEREST RATE OF CIVIL PENALTY REIMBURSEMENT

INQUIRY: This inquiry has two parts. First, under 43 CFR Sec. 4.1110, intervention during an OHA proceeding is granted because of (i) statutory right or (ii) "an interest which is or may be adversely affected by the outcome of the proceeding". Have there been any instances of intervention where the petitioner qualified under the second criteria of "adversely affected interest"?

Second, in SMCRA Sec. 518(c), the interest rate or reimbursed civil penalty escrow deposits is set at "the rate of 6 percent, or at the prevailing Department of Treasury rate, whichever is greater". To our knowledge, there are several Department of Treasury rates, depending on the financial vehicle. Has there been any clarification of which treasury rate is meant by the "prevailing Department of the Treasury rate"?

SEARCH RESULTS:

INTERVENTION/HEARINGS AND APPEALS

A search of COALEX identified several Interior Board of Surface Mining Appeals (IBSMA)* decisions involving petitions to intervene. In each case, the petition was granted without an explanation as to whether the petitioner qualified under 43 CFR Sec. 4.1110 subsection (c)(1) or subsection (c)(2). The only specific reference to intervenor guidelines was found in DEAN TRUCKING CO., 1 IBSMA 105 (1979) where 43 CFR 4.1110 guidelines were described as "generous intervention provisions".

*The Administrative Law Judges (ALJ) and IBSMA decisions are presently being updated by OSM and may not be complete.

A further search of LEXIS failed to identify any case referencing 43 CFR 4.1110 specifically. In OKLAHOMA v FEDERAL ENERGY REGULATORY COMMISSION, 494 US 636 (1980), the issue of an intervenor's standing is addressed in terms of a "showing of injury in fact, economic or otherwise". A copy is attached.

INTEREST RATE OF CIVIL PENALTY REIMBURSEMENT

A search of COALEX was conducted for clarification of the phrase "prevailing Department of Treasury rate". The phrase appears in SMCRA Sec. 518(c), 30 CFR Secs. 723.20(e), 845.20(c), and 43 CFR Sec. 4.1157. No specific definition of the phrase was identified. Some state regulatory programs, such as Colorado, have interpreted the interest rate as being the same as the rate which is "prevailing in the escrow account" in which the penalty fee has been deposited.



(Rules and Regs. of Colorado Mined Land Reclamation Board Pursuant to the Colorado Surface Coal Mining Reclamation Act, Secs. 34-33-101 et seq., Sec. 5.04.4 and also as amended through the 1983 legislative session, Sec. 34-33-123(g))

ATTACHMENTS:

INTERVENTION/HEARINGS AND APPEALS

1. 43 CFR Sec. 4.1110
2. Excerpt from DEAN TRUCKING CO., 1 IBSMA 105 (1979).
3. Excerpt from OKLAHOMA v FEDERAL ENERGY REGULATORY COMMISSION, 494 US 636 1980).

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4. Excerpt from Rules and Regs. of Colorado Mined Land Reclamation Board Pursuant to the Colorado Surface Coal Mining Reclamation Act, Secs. 34-33-101 et seq., Sec. 5.04.4 Public Hearings on Penalties.
5. Excerpt from Colorado Surface Coal Mining Reclamation Act, Secs. 34-33-101 et seq., CRS 1973 as amended; Department of Natural Resources; Mined Land Reclamation Division; Statute printed as amended through the 1983 legislative session (Rev 5/83); Sec. 34-33-123 Enforcement - Civil and Criminal Penalties.