



COALEX STATE INQUIRY REPORT - 47

August 13, 1985

Virgil Willett, Director
Alabama Surface Mining Commission
P.O. Box 2390
Jasper, Alabama 35502

TOPIC: 16 2/3 EXEMPTION

INQUIRY: Are there any recent or pending cases pertaining to the 16 2/3 exemption for the extraction of coal incidental to the extraction of other minerals found at 30 CFR Sec. 700.11(a)(4) and SMCRA Sec. 701(28)?

SEARCH RESULTS:

The 16 2/3 exemption was addressed in December, 1984, in COALEX STATE INQUIRY REPORT - 24 (Report and documentation attached). At that time no cases were identified nor have any cases been identified in the present follow-up search.

On June 11, Mr. Ed Bonekemper, Office of the Solicitor, was contacted by phone to determine if any actions were pending on the 16 2/3 exemption. He reported that two cases were pending: a collection case involving S & H Gravel in Indiana, and an enforcement case involving McNabb Coal Co. of Oklahoma. No decision has been reached in either case.

Mr. Bonekemper also noted that OSM has regulatory action on the exemption pending in the next few months and will be issuing a proposed rule. Issues likely to be addressed include:

- (1) a definition of "incidental";
 - (2) location of the coal seam in relation to other minerals;
 - (3) the percentage of coal involved;
 - (4) the two-prong test that the coal extraction be incidental as well as meeting the 16 2/3 criteria;
- and
- (5) the time period to which the 16 2/3 percent exemption applies.

ATTACHMENTS:

COALEX STATE INQUIRY REPORT - 24, December 3, 1984 with Documentation.