



COALEX STATE INQUIRY REPORT - 56
September 17, 1985

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TOPIC: "APPROXIMATE ORIGINAL CONTOUR" (AOC)

INQUIRY: Identify all Federal District Court and Office of Hearing and Appeals Decisions which define "approximate original contour".

SEARCH RESULTS: A COALEX search was conducted of the pertinent files to identify the relevant cases. These cases do not specifically define approximate original contour (AOC), since a definition appears at 30 CFR Sec. 701.5 and Sec. 701(2) of SMCRA (30 U.S.C. 1291(2)):

"Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with Sec. 715.17."

The cases have interpreted this definition and the implementing regulations. A brief summary of each case identified follows.

IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, No. 79-1144 (slip op.) (DDC July 15, 1985).

In this case, Judge Flannery remanded 30 CFR Sec. 816.49(a)(9) and Sec. 817.49(a)(9), which permitted the retention of highwalls in permanent impoundments. The Secretary argued that because the specific provision relating to impoundments does not require highwall elimination, removal was not required. The court noted that the performance standards of SMCRA expressly require the elimination of all highwalls, and that legislative history reflected a Congressional intent that all highwalls be eliminated, even in the case of express variances from AOC.

IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, No. 79-1144, slip op. (DDC May 16, 1980).

The Secretary asserted that the federal regulations required mining operators to restore to AOC surface mining areas affected by underground mines. The court ruled that, while SMCRA requires the restoration of mined lands to AOC, it also directs the Secretary to make modifications to accommodate the differences between surface and underground coal mining



Judge Flannery ruled that it was "duplicitous to require the removal of previously settled and revegetated land only to achieve the purpose of a second revegetation", since a great deal of time may lapse between the beginning and end of an underground mining operation. Therefore, the court remanded 30 CFR Sec. 817.101.

CITIZENS FOR RESPONSIBLE RESOURCE DEVELOPMENT v WATT, 579 F SUPP 431 (1983).

The court upheld an Alabama Regulation giving the Alabama regulatory authority limited power to exempt underground operations from the requirement of redistributing spoil, based on Judge Flannery's decision.

WAYNE YARNELL, 3 IBSMA 188 (July 15, 1981).

This Interior administrative decision involved a citizen's suit. This suit alleged that the previous miner of the land in question had failed to reclaim a highwall before covering it with a permanent water impoundment. This impoundment was part of the approved postmining land use. The Board noted that 30 CFR Sec. 715.14(e) provides that land be returned to an appropriate contour when a permanent water impoundment is to be the postmining land use. While the Board declined to define "appropriate contour," they held it was not synonymous with "approximate original contour" and dismissed the violation.

LITTLE SANDY COAL SALES, 2 IBSMA 25 (February 19, 1980), which upheld a notice of violation for failure to eliminate a highwall and return the area to AOC. The operator argued that the highwall had been "pretty well eliminated" and the NOV should be vacated. The Board upheld the violation because (1) the state inspector felt the highwall had not been eliminated and (2) the area had not been adequately backfilled and graded.

CEDAR COAL COMPANY v OSM, No. CH 8-17-R (November 17, 1978).

An operator was cited for failure to restore an area to AOC and eliminate the highwall. However, the highwall in question had been abandoned for 10 years when the operator began mining. Inadequate spoil remained at the site to completely restore the area to AOC, and the operator had not disturbed the orphan highwall. After discussing the legislative history of SMCRA, ALJ Allen found that there was no explicit requirement in SMCRA for the complete recovery of abandoned highwalls. ALJ Allen defined a "disturbance" of an existing highwall as "the cutting into that highwall to such an extent that it renders the highwall a threat in some manner to the public or to the environment, or that the highwall is attempted to be restructured or resloped to a different degree in order to facilitate mining". Thus, the operator was only required to use the existing spoil to return the area to AOC, since there had been no disturbance of the orphan highwall.

The legislative history of the phrase "Approximate Original Contour" was examined in COALEX STATE INQUIRY REPORT - 16. Other issues pertaining specifically to the requirement to eliminate highwalls were discussed in COALEX SIGNIFICANT ISSUE REPORT - 38, "Elimination of Highwalls".



ATTACHMENTS

- A. Excerpt, IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, No. 79-1144 slip op. (DDC July 15, 1985).
- B. Excerpt, In RE: PERMANENT SURFACE MINING REGULATION LITIGATION, No. 79-1144, slip op. (DDC May 16, 1980).
- C. Excerpt, CITIZENS FOR RESPONSIBLE RESOURCE DEVELOPMENT v WATT, 579 F Supp 431 (1983).
- D. WAYNE YARNELL, 3 IBSMA 28 (July 15, 1981).
- E. LITTLE SANDY COAL SALES, 2 IBSMA 25 (February 19, 1980).
- F. CEDAR COAL CO. v OSM, No. CH 8-17-R (November 17, 1978).
- G. COALEX STATE INQUIRY REPORT - 16, "Approximate Original Contour", (1984).
- H. COALEX SIGNIFICANT ISSUE REPORT - 38, "Elimination of Highwalls" (formerly named SIGNIFICANT ISSUE REPORT - 1).