



COALEX STATE INQUIRY REPORT - 88
July 30, 1987

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Surface Mining & Reclamation Division
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TOPIC: PRE-EXISTING STRUCTURES

INQUIRY: (1) What is the definition of pre-existing structures? (2) Would a stream that was diverted from its original channel prior to enactment of SMCRA be considered a pre-existing structure? (3) Locate any cases, legislative history, etc. on pre-existing structures.

SEARCH RESULTS: Pre-existing structures are discussed in the applicability section of 30 CFR Sec. 710.11(d). This discussion is in connection with the initial regulatory program and bringing these pre-existing, nonconforming structures or facilities up to standards and into compliance with interim program regulations. (30 CFR Sec. 710.11(d)(2)). The scope of this section appears to cover only those structures that are pre-existing, nonconforming and used to facilitate mining on or after the date set by the regulatory authority. Structures used on or after this date, even though classified pre-existing must have been modified to meet interim program standards.

Four cases were found that relate to pre-existing structures. Most relate to litigation over whether the particular structure met appropriate compliance standards, and generally did not define a "pre-existing" structure.

ATTACHMENTS

- A. Excerpt, 30 CFR Sec. 710.11.
- B. JOSEPHINE COAL CO. v OSM, No. CH 0-52-R, NX 5-18-P (1986).
- C. BELVA COAL CO., INC. v OSM, No. CH 0-17-P (1980).
- D. N&G CONSTRUCTION v OSM, No. CH 9-15-R (1980).
- E. ZAPATA COAL CORP., 2 IBSMA 9 (1980).