



**COALEX STATE INQUIRY REPORT - 110**  
**October 19, 1989**

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**TOPIC:** EXTENSION OF THE 90-DAY ABATEMENT PERIOD FOR "GOOD CAUSE SHOWN"

**INQUIRY:** 30 CFR Sec. 843.12(f) lists five specific circumstances under which an operator may be entitled to an abatement period beyond 90 days for correcting a violation. 30 U.S.C. Sec. 521(a)(3) provides that an abatement period may be "subsequently extended for good cause shown". Are the five specific circumstances which may justify an extension beyond 90 days exclusive or can such extensions be granted on the basis of other "good cause shown"? Locate any state or federal administrative or judicial decisions that may construe the regulations or any legislative history or comments that may suggest an answer to the question posed.

**SEARCH RESULTS:** Research was conducted using the COALEX Library, the state and federal case law files and the Federal Register available on LEXIS, and an earlier State Inquiry Report.

Two Interior Office of Hearings and Appeals (OHA) decisions were identified which ruled on the extension of the 90-day abatement period question. One district court case addresses the "for good cause shown" language; however, no materials were identified which specifically discuss the "for good cause shown" language in relation to the five specific extension circumstances enumerated in 30 CFR Sec. 843.12(f).

OHA and federal cases, legislative history material, comments and Federal Register items and STATE INQUIRY REPORT - 11 identified during the research are discussed below. Copies are attached.

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## **OHA DECISIONS**

**PINEVILLE PROPERTIES CORP. v OSMRE, 104 IBLA 258, IBLA 85-735 (September 13, 1988).**

"Under section 521(a)(3) of SMCRA and 30 CFR 722.12(d) [and 30 CFR 823.12(c)], [the OSM inspector] lacked authority to extend the abatement period beyond [90 days], in the absence of circumstances warranting an extension as set forth in 30 CFR 722.12(e) [30 CFR 823.12(f)]."



"Upon expiration of the 90-day period, OSMRE properly issues a [Cessation Order] if the permittee has taken no action to abate the violation."

**UNIVERSAL COAL CO., 3 IBSMA 218, IBSMA 81-43 (July 28, 1981).**

The court concluded that SMCRA Sec. 521(a)(3) and 30 CFR 722.12(d) establish clearly that the "total time for abatement...shall not exceed 90 days" and that OSM has no "authority to extend the abatement period in a notice of violation beyond 90 days."

**OLD HOME MANOR, INC., 3 IBSMA 241, IBSMA 81-29 (August 13, 1981).**

"Where OSM provides the maximum time allowable under 30 CFR 722.12(d) for the abatement of a violation, an Administrative Law Judge may not effectively extend this time by granting temporary relief from the abatement requirement."

"Under present regulations a permittee's inability to comply with a proper abatement requirement cannot be the basis for extending the abatement period beyond 90 days."

**FEDERAL COURT DECISIONS**

(Copies of these cases are included as part of STATE INQUIRY REPORT - 11)

**IN RE: SURFACE MINING REGULATION LITIGATION, 456 F.Supp 1301 (D.D.C. August 24, 1978).**

The court determined that "[b]oth the House and Senate Reports support the Secretary's interpretation of SMCRA Sec. 521(a)(3)."

[NOTE: No passages from these reports were included in the ruling; however, an excerpt from S. Rep. 95-128, 95th Cong., 1st Sess. 91 (May 10, 1977) is attached at the end of the case.]

"In addition to being ambiguous on its face, reading the provision in question in accordance with the statute as a whole, the court cannot accept plaintiffs' view" that the language of the provision permitted extensions beyond the 90-day maximum period for abatement.

**PENNSYLVANIA COAL MINING ASSOC. v WATT, 562 F.Supp 741 (M.D.Pa 1983).**

The court upheld the Secretary's determination that the Pennsylvania regulation which stated that additional time beyond the 90 day abatement period may granted "for the achievement of the standards of environmental protection" was too general.

"The federal regulation is quite specific and it can be seen that there is little if any room for subjective determination. Five circumstances are outlined in which extensions may be considered and we have no difficulty in concluding that Pennsylvania's broad regulation exceeded the scope of the federal provision."

**LEGISLATIVE HISTORY**



**STATE INQUIRY REPORT - 11** which discusses the legislative history is attached.

## COMMENTS

Comments on the proposed permanent program regulations from industry and environmental groups are attached.

## FEDERAL REGISTER ENTRIES

### **47 FR 35620 (AUGUST 16, 1982) Final Rules and 46 FR 58464 (DECEMBER 1, 1981) Proposed Rules.**

The revision of 30 CFR Sec. 843.12(d) "removes the mandatory issuance of a cessation order to a permittee who fails to meet an interim abatement step imposed in a notice of violation."

### **46 FR 41702 (AUGUST 17, 1981) Final Rules and 46 FR 22902 (APRIL 22, 1981) Proposed Rules.**

[NOTE: 46 FR 41701 is part of SIR -11]

"These revisions identify those limited circumstances where abatement times in excess of 90 days will be permitted and set forth the conditions that will apply to these situations."

## ATTACHMENTS

- A. PINEVILLE PROPERTIES CORP. v OSMRE, 104 IBLA 258, IBLA 85-735 (September 13, 1988).
- B. UNIVERSAL COAL CO., 3 IBSMA 218, IBSMA 81-43 (July 28, 1981).
- C. OLD HOME MANOR, INC., 3 IBSMA 241, IBSMA 81-29 (August 13, 1981).
- D. STATE INQUIRY REPORT - 11 which includes:
  1. Excerpts from hearing before Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources, United States Senate (1977).
  2. 46 FR 41702 (AUGUST 17, 1981).
  3. Excerpts from IN RE: SURFACE MINING REGULATION LITIGATION, 456 F.Supp. 1301 (August 24, 1978) and S. Rep. 95-128, 95th Cong., 1st Sess. 91 (May 10, 1977).
  4. PENNSYLVANIA COAL MINING ASSOC. v WATT, 562 F.Supp 741 (M.D.Pa 1983).
- E. Comments on the proposed permanent program regulations.
- F. 47 FR 35620 (AUGUST 16, 1982) Final Rules.
- G. 46 FR 58464 (DECEMBER 1, 1981) Proposed Rules.
- H. 46 FR 41702 (AUGUST 17, 1981) Final Rules