



**COALEX STATE INQUIRY REPORT – 121**  
**July 20, 1989**

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Surface Mining Commission  
P.O. Box 2390  
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**TOPIC: COAL FINES**

**INQUIRY:** A coal mining company wishes to recover some previously mined coal fines from the surface of the ground. The recovery of these coal fines will not involve any actual excavation of overburden, dirt, etc. Is the act of merely recovering the coal fines considered surface coal mining under the Surface Mining Control and Reclamation Act of 1977 (SMCRA)?

**SEARCH RESULTS:** Research was conducted using the federal and state decisions on LEXIS. Copies of the relevant decisions are attached.

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Four relevant decisions were identified. All four courts determined that the removal of coal from refuse piles or culm banks or the removal of anthracite silt "when no below-surface activity occurs" constitutes "surface coal mining operations under SMCRA." Permits are required and the operators are liable for reclamation fees. U.S. v KENNEDY, 806 F.2d 111 (7th Cir. 1985).

**ATTACHMENTS**

- A. U.S. v KENNEDY, 806 F.2d 111 (7th Cir 1985).
- B. U.S. v TRI-NO ENTERPRISES, INC., 819 F.2d 154 (7th Cir. 1987).
- C. U.S. v DEVIL'S HOLE, INC., 747 F.2d 895 (3rd Cir. 1984).
- D. GINTER COAL CO. v ENVIRONMENTAL HEARING BOARD, 9 Pa. Commw. 263, 306 A.2d 416 (1973).