



**COALEX STATE INQUIRY REPORT – 123**  
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**TOPIC: PREPAYMENT OF CIVIL PENALTIES**

**INQUIRY:** Are there any state or federal decisions which rule on an indigent mine operator's ability to appeal a violation without prepaying the civil penalty or posting an appeal bond? Is there anything in the legislative history of Sec. 518(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. Sec. 1268(c), which discusses the prepayment requirement?

**SEARCH RESULTS:** Research was conducted using the COALEX Library and the federal and state case law files on LEXIS. Opinions and legislative history materials retrieved as a result of the research are listed below. Copies of the opinions and excerpts from the legislative history documents are attached.

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**STATE DECISIONS**

**FRANKLIN v NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, No. 87-CA-2602-MR, 1989 Ky. App. LEXIS 46 (Ky. Ct. App. 1989).**

Franklin contended that "requiring an indigent to prepay fines before a formal hearing can be granted is a violation of due process and equal protection." The court disagreed. Citing *GOLDBERG v KELLY*, 397 U.S. 254, the court stated: "The basic requirement of due process is that the defendant be given an opportunity to be heard at a meaningful time and in a meaningful manner."

NOTE: After violations were issued to the company, of which Franklin was president and CEO, Franklin requested a hearing. As part of his request, Franklin asked "the Cabinet to waive the prepayment requirement on grounds of indigence." The request was denied.

**LYLE CONSTRUCTION, INC. V. OHIO DEPARTMENT OF NATURAL RESOURCES, 516 N.E.2d 209 (Ohio 1987). LYLE CONSTRUCTION, INC. v DIVISION OF RECLAMATION, No. 426, slip op. (Ohio Ct. App. 1986).**

In determining that the requirement of "penalty prepayment" did not deprive an insolvent coal mine operator of due process or equal protection, the court stated: "[T]he legislature may rationally decide to require the prepayment of penalty assessments as a means of insuring the collection of penalties and encouraging compliance with Ohio's scheme of coal mine reclamation."



**BOYLE LAND AND FUEL, CO. v COMMONWEALTH OF PENNSYLVANIA, 475 A.2d 928 (Pa. Commw. Ct. 1984).**

The court ruled against Boyle's request to declare unconstitutional SMCRA and Clean Streams Law (CSL) sections which require prepayment of civil penalties prior to an appeal. The court reasoned that the bond requirement was a "reasonable condition on Petitioner's right to appeal the assessment." The bond requirement was established by the legislature to ensure that "[T]he courts were not burdened with frivolous appeals and the public interest in certain appeals would be preserved. The objective of the SMCRA and the CSL is to promote the public interest by protecting our environment. The assessment of civil penalties is one way of achieving that objective."

Boyle failed to meet the "heavy burden" of overcoming the "presumption of [a statutory provision's] constitutionality."

**DRESSLER COAL CO. v DIVISION OF RECLAMATION, No. CA-88-1, 1988 Ohio App. LEXIS 5136 (Ohio App Ct. 1988).**

The judgment of the Ohio Reclamation Board of Review which dismissed Dressler's appeal for "lack of subject matter jurisdiction due to [Dressler's] failure to prepay the civil penalties" was upheld.

**TWELVE VEIN COAL CO. v COMMONWEALTH OF PENNSYLVANIA, No. 876 C.D. 1988, 1989 Pa. Commw. LEXIS 515 (Pa. Commw. Ct. 1988).**

This case was remanded back to the Pennsylvania Environmental Hearing Board for a hearing on Twelve Vein's financial ability "to comply with the [SMCRA] appeal procedure." [TWELVE VEIN is the subject of this inquiry. It is included here for reference.]

**FEDERAL DECISIONS**

**GRAHAM v OSMRE, 722 F.2d 1106 (3rd Cir. 1983).**

The court found "that the review procedures which were available to Graham without prepayment of the proposed penalty are more than sufficient to comply with due process requirements...."

Regarding Graham's contention that he "cannot afford to prepay" the penalty into escrow, the court held it may consider "only the constitutional ramifications of temporary deprivation of any monies...prepaid into escrow. We agree that the functional result may be to foreclose Graham from access to court review, but we cannot agree that this result is constitutionally impermissible."

**BLACKHAWK MINING CO. v ANDRUS, 711 F.2d 753 (6th Cir. 1983).**

In holding that the prepayment requirement did not violate due process, the court relied on the three factors enunciated in MATHEWS v ELDRIDGE, 424 U.S. 319 (1976) which are used to determine whether a "statutory scheme denies procedural due process":



1. The only private interest to be affected by official action is the "temporary deprivation of [Blackhawk's] money". The "degree of potential deprivation" is "slight....."
2. "The risk of an erroneous deprivation of Blackhawk's property interest is also slight" because of the "procedural safeguards" provided by SMCRA.
3. According to the legislative history, "the government's interest in prompt assessment and collection of civil penalties to ensure compliance with the Act is substantial. The prepayment requirement was adopted to avoid the problem of noncollection of fines and to discourage delay of the collection process through frivolous appeals." S. Rep. No. 95-128, 95th Cong., 1st Sess. 58-59 (1977).

**B & M COAL CORP. v OSMRE, 699 F.2d 381 (7th Cir. 1982).**

The court affirmed the district court's finding that "[g]iven the procedural and administrative safeguards provided by the Act and various regulations" there is "no constitutional deficiency in this prepayment requirement."

**JOHN WALTERS COAL CO. v WATT, 553 F. Supp. 838 (E.D.Ky. 1982).**

In concluding that the prepayment requirement of 518(c) was constitutional, the court looked to the "reasonableness of the statutory scheme construed as a whole" not just to the "challenged statutory section in the abstract". The court cited to the legislative history and, in particular, to the purpose of the Act as stated in Senate Report No. 95-128. See BLACKHAWK, above.

**U.S.A. v THOMPSON BROTHERS COAL CO., 532 F. Supp. 979 (W.D.Pa. 1982).**

The court ruled that the defendant had "ample, abundant, and adequate additional remedies which satisfy the criteria of reasonableness and due process." On the issue of equal protection, the court stated that "the statute does not establish any classification" between those who can and cannot afford to pay. "The penalty applies to all violations equally."

**U.S. v FINLEY, 835 F.2d 134 (6th Cir. 1987).**

The court affirmed the district court's determination that Finley failed "to exhaust administrative remedies, pursuant to 30 U.S.C. Sec. 1268(c)...."

**ANNOTATION, "Penalties Under 30 USCS Sec. 1268 for Violating Surface Mining Control and Reclamation Act", 82 A.L.R. Fed. 218 (1988).**

The Table of Cases and excerpts from the ANNOTATION are attached.

## **LEGISLATIVE HISTORY**

The earlier versions of the surface mining legislation called for the Secretary to determine that a violation occurred, set the amount of the penalty and then issue an order that the penalty be paid. Penalties not paid within 30 days of the issuance of a final order were subject to a six percent interest rate. See excerpts from Congressional reports from 1974 and 1975.

In 1974, Rep. Dingell called for civil penalty procedures to be "streamlined and aimed at assessing and collecting penalties promptly." 120 CONG REC 24,594 (July 23, 1974).



The Council of Southern Mountains presented testimony at subcommittee hearings, comparing the penalty provisions in the surface mining bill to those of the Mine Safety Act and describing the problems with the Mine Safety Act provisions: penalties were assessed to low, the collection rate was low and the amounts of the fines were arbitrary and inconsistent. As a result of these problems, the penalties of the Mine Safety Act failed to act as a deterrent. The Council proposed to make penalties mandatory, increase the penalties, particularly for repeat violators, and, finally, to add the requirement that the civil penalties be prepaid before they may be contested. Surface Mining Control and Reclamation Act of 1977: Hearings on S. 7 Before the Subcomm. on Public Lands and Resources of the Senate Comm. on Energy and Natural Resources, 95th Cong., 1st Sess. 1038 (1977) (statement of J. Davitt McAteer and L. Thomas Galloway, Council of the Southern Mountains, Inc.).

The 1977 versions of the legislation contained provisions for prepayments to be held in escrow. The Senate Report 95-128, 95th Cong., 1st Sess. 58 (1977) explains this new provision as a means of avoiding the "non-collection of fines".

## ATTACHMENTS

- A. FRANKLIN v NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, No. 87-CA-2602-MR, 1989 Ky. App. LEXIS 46 (Ky. Ct. App. 1989).
- B. LYLE CONSTRUCTION, INC. v OHIO DEPARTMENT OF NATURAL RESOURCES, 516 N.E.2d 209 (Ohio 1987).
- C. LYLE CONSTRUCTION, INC. v DIVISION OF RECLAMATION, No. 426, slip op. (Ohio Ct. App. 1986).
- D. BOYLE LAND AND FUEL, CO. v COMMONWEALTH OF PENNSYLVANIA, 475 A.2d 928 (Pa. Commw. Ct. 1984).
- E. DRESSLER COAL CO. v DIVISION OF RECLAMATION, No. CA-88-1, 1988 Ohio App. LEXIS 5136 (Ohio App Ct. 1988).
- F. TWELVE VEIN COAL CO. v COMMONWEALTH OF PENNSYLVANIA, No. 876 C.D. 1988, 1989 Pa. Commw. LEXIS 515 (Pa. Commw. Ct. 1988).
- G. GRAHAM v OSMRE, 722 F.2d 1106 (3rd Cir. 1983).
- H. BLACKHAWK MINING CO. v ANDRUS, 711 F.2d 753 (6th Cir. 1983).
- I. B & M COAL CORP. v OSMRE, 699 F.2d 381 (7th Cir. 1982).
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- K. U.S.A. v THOMPSON BROTHERS COAL CO., 532 F. Supp. 979 (W.D.Pa. 1982).
- L. U.S. v FINLEY, 835 F.2d 134 (6th Cir. 1987).
- M. ANNOTATION, "Penalties Under 30 USCS Sec. 1268 for Violating Surface Mining Control and Reclamation Act", 82 A.L.R. Fed. 218 (1988).
- N. H. REP. 93-1072, 93rd Cong., 2nd Sess. (1974).
- O. S. REP. 28, 94th Cong., 1st Sess. (1975).
- P. 120 CONG. REC. 24,594 (July 23, 1974).
- Q. Surface Mining Control and Reclamation Act of 1977: Hearings on S. 7 Before the Subcomm. on Public Lands and Resources of the Senate Comm. on Energy and Natural Resources, 95th Cong., 1st Sess. 1038 (1977) (statement of J. Davitt McAteer and L. Thomas Galloway, Council of the Southern Mountains, Inc.).



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- R. H.R. 2, 95th Cong., 1st Sess. 115-118 (1977).
- S. H. REP. 95-218, 95th Cong., 1st Sess. 68 (1977).
- T. S. REP. 95-128, 95th Cong., 1st Sess. 58 (1977).