



COALEX STATE INQUIRY REPORT - 190

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TOPIC: VARIANCE FROM AOC FOR PARTIAL MOUNTAINTOP REMOVAL

INQUIRY: An operator received a variance from AOC for mountaintop removal. After mining halfway through the seam, the operator switched to contour mining. Is the operator entitled to keep the variance now that the method of mining has changed and the entire seam will not be taken? Please locate legislative history material which discusses this issue.

SEARCH RESULTS: Research was conducted using the COALEX Library, other materials available in LEXIS and existing COALEX Reports. One Interior Administrative Law Judge decision was identified which addressed the question of a change in mining method by an operator conducting mountaintop removal; however, the issue of keeping or losing a variance did not arise in the case.

In addition to the ALJ decision mention above, several COALEX Reports and Federal Register notices are attached. These materials provide general background on the issues of AOC and variances as well as some specific information on mountaintop removal.

BILLY P. EVANS v OSM, Docket No. NX 89-8-R (1990).

Evans was issued a violation for failing to mine in accordance with the approved mining and reclamation plan: cross ridge mountaintop removal was planned; Evans used the contour method. The violation required Evans to submit a permit revision changing to a contour type mine.

The justification used for the revision was the fact that Evans had encountered a fault in the coal seam that required an adjustment in the mining process. The revision was promptly allowed.

COALEX STATE INQUIRY REPORT - 56, "Approximate original contour" (September, 1985).

This Report identifies the Federal court and Interior Office of Hearing and Appeal decisions which define "approximate original contour". Includes Report No. 16, described below.



COALEX STATE INQUIRY REPORT - 16, "Approximate original contour" (September, 1984).

The Report provides the legislative history of the phrase "approximate original contour" and includes Report No. 1 on the elimination of highwalls, a closely related topic.

IMCC SIGNIFICANT ISSUE REPORT NO. 1, "Elimination of Highwalls".

52 FR 9640 (MARCH 25, 1987). Proposed rule. Part 785: Requirements for permits for special categories of mining -- Mountaintop removal mining.

The proposed rule is included for background.

52 FR 39182 (OCTOBER 20, 1987). Final rule. Part 785: Requirements for permits for special categories of mining -- Mountaintop removal mining.

"The revised regulation corrects an inadvertent error made during previous rulemaking which omitted certain statutorily required provisions concerning mountaintop removal mining. The omitted provisions included a requirement that the applicant present specific plans for the proposed postmining land use and assurances that such use will meet certain conditions for a variance prior to a regulatory authority's granting of a permit to mine."

The revision of 30 CFR 785.14 was undertaken to comply with the District Court for the District of Columbia's July 15, 1985 ruling.

53 FR 43970 (OCTOBER 31, 1988). Proposed rule. AOC variances.

The proposed rule " would revise regulations governing permits incorporating variances from AOC restoration requirements to limit their application to steep slope mining."

ATTACHMENTS

- A. BILLY P. EVANS v OSM, Docket No. NX 89-8-R (1990).
- B. COALEX STATE INQUIRY REPORT - 56, "Approximate original contour" (September, 1985).
- C. COALEX STATE INQUIRY REPORT - 16, "Approximate original contour" (September, 1984).
- D. IMCC SIGNIFICANT ISSUE REPORT NO. 1, "Elimination of Highwalls".
- E. 52 FR 9640 (MARCH 25, 1987). Proposed rule. Part 785: Requirements for permits for special categories of mining -- Mountaintop removal mining.
- F. 52 FR 39182 (OCTOBER 20, 1987). Final rule. Part 785: Requirements for permits for special categories of mining -- Mountaintop removal mining.
- G. 53 FR 43970 (OCTOBER 31, 1988). Proposed rule. AOC variances.