



COALEX STATE INQUIRY REPORT - 193

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John Henriksen, Esquire
Illinois Department of Mines and Minerals
300 W. Jefferson Street, Suite 300
P.O. Box 10137
Springfield, Illinois 62791-0137

TOPIC: FAILURE TO MAINTAIN SEDIMENTATION PONDS (SILTATION STRUCTURES)

INQUIRY: An operator was cited for failing to maintain sedimentation ponds: the inspector found water running under the discharge pipe. Please locate any materials - case law, Federal Register preambles, legislative history - which discusses the requirement to maintain sedimentation ponds and spillways.

SEARCH RESULTS: Research was conducted using the COALEX Library and other materials available in LEXIS. Two Interior Administrative Law Judge (ALJ) decision were identified which have fact situations close to that described above (CARBONEX COAL and TWIN OAKS). The remaining ALJ and Interior Board of Land Appeals (IBLA) cases listed below address related issues. Several relevant Federal Register preambles are attached for background. Copies of the materials are attached unless otherwise indicated. A short description of the fact situation accompanies each decision.

ADMINISTRATIVE DECISIONS

CARBONEX COAL CO. v OSM, Docket No. TU 5-58-R (September 23, 1988). [February 10, 1989 Consent Decision excerpts are also attached.]

Carbonex was cited for failing to reconstruct the principal spillway to eliminate water flowing under the discharge pipe in violation of Oklahoma interim program regulation 715.17(e). The water flowing under the discharge pipe posed a potential threat to the structural integrity of the dam or embankment.

TWIN OAKS COAL CO. v OSM, Docket No. CH 9-156-R (February 21, 1980).

The OSM exhibits showed that the drain from the sedimentation pond was improperly installed, allowing water to leave the pond without going through the drain. The operator was cited with violating 715.17(f).



COAL ENERGY, INC. v OSM, 115 IBLA 114, IBLA 90-287 (June 27, 1990). COAL ENERGY, INC. v OSM, Docket Nos. NX 88-50-R, NX 88-51-R (February 6, 1990).

Coal Energy was cited for failure to construct and maintain diversion ditches in violation of 715.17(c)(3): the ditch was filled with silt and was not functioning properly to drain the site.

COAL ENERGY, INC. v OSM, 105 IBLA 385, IBLA 87-190 (November 29, 1988).

The NOV, here, was issued for failure to maintain diversion ditches to prevent suspended solids from running off the permit area, in violation of 715.17(c)(3). The Board found that there was a "'reasonable likelihood' that the blockage would allow contributions of solids to runoff outside the permit area."

LYNCO MINING v OSM, Docket No. NX 89-74-R (February 18, 1991). LYNCO MINING v OSM, Docket No. NX 89-29-R (May 31, 1990).

The first case involved a blocked spillway; the second, a blocked spillway pipe which resulted in water discharging through the emergency spillway. In both cases, the NOV was issued for violating 942.816.45(a).

SCARAB ENERGY CORP. v OSM, Docket Nos. NX 89-42-R, NX 89-43-R (May 31, 1990).

"The operator was cited with violating 717.17(f) [715.17?] for failure to maintain discharge structures to control discharges from sedimentation ponds to reduce erosion": the rock lining of the spillway was no longer controlling the discharge. The Inspector testified that if the spillway continued to erode, the embankment "might be breached."

AMAX COAL CO. v OSM, Docket Nos. IN 1-15-P, IN 1-28-P (November 1, 1983). AMAX COAL CO. v OSM, 74 IBLA 48, IBLA 83-614 (June 28, 1983). AMAX COAL CO. v OSM, Docket No. IN 0-40-P (January 14, 1981).

All three cases involve the erosion of the primary spillway in violation of 715.17(f).

ALPINE CONSTRUCTION CO. v OSM, 114 IBLA 232, IBLA 88-527 (April 27, 1990).

Alpine was cited for violating Oklahoma permanent regulations 816.49(e): eroded sedimentation inlets. The operator sought to excuse his failure stating that they used the "best technology currently available in the face of severe weather conditions" which prevented compliance. The validity of the NOV was upheld.

**TURNER BROTHERS, INC. v OSM, 103 IBLA 10, IBLA 86-191 (June 22, 1988).
TURNER BROTHERS, INC. v OSM, Docket No. TU 5-17-R (November 27, 1985).
TURNER BROTHERS, INC. v OSM, Docket Nos. TU 6-106-R, TU 7-27-R (July 10, 1987).
TURNER BROTHERS, INC. v OSM, Docket Nos. TU 6-49-R (April 13, 1987).**



These four cases involve, in part, citations for eroded spillways.

REGULATORY HISTORY

The following is a list of the Federal Register preambles discussing the final rule notices for 30 CFR sections 816.46 and 816.49. This listing constitutes the "regulatory history" for these sections. Also included is the 1991 proposed rule for impoundments and siltation structures.

816.46 Hydrologic balance: Siltation structures

1. 44 FR 14902 (MARCH 13, 1979). Permanent program final rule. [Excerpts]
2. 44 FR 49673 (AUGUST 24, 1979). [Not attached]
3. 44 FR 77439 (DECEMBER 31, 1979). [Not attached]
4. 48 FR 44032 (SEPTEMBER 26, 1983). Final rule. Siltation structures.
5. 51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension.
6. 53 FR 43584 (OCTOBER 27, 1988). Final rule. Impoundments.
7. 56 FR 29774 (JUNE 28, 1991). Proposed rule. Impoundments.
8. 56 FR 44049 (SEPTEMBER 6, 1991). Reopening of comment period. Impoundments.

816.49 Impoundments

1. 44 FR 14902 (MARCH 13, 1979). Permanent program final rule. [Excerpts]
2. 44 FR 49673 (AUGUST 24, 1979). [Not attached]
3. 45 FR 8240 (FEBRUARY 6, 1980). [Not attached]
4. 45 FR 25997 (APRIL 16, 1980). [Not attached]
5. 45 FR 44090 (JUNE 30, 1980). [Not attached]
6. 45 FR 54752 (AUGUST 18, 1980). [Not attached]
7. 46 FR 33980 (JUNE 30, 1981). [Not attached]
8. 48 FR 43994 (SEPTEMBER 26, 1983). Final rule. Impoundments.
9. 50 FR 16194 (APRIL 24, 1985). Final rule. Certification of the design of impoundments.
10. 51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension.
11. 53 FR 43584 (OCTOBER 27, 1988). Final rule. Impoundments.
12. 56 FR 29774 (JUNE 28, 1991). Proposed rule. Impoundments.
13. 56 FR 44049 (SEPTEMBER 6, 1991). Reopening of comment period. Impoundments.

ATTACHMENTS

- A. CARBONEX COAL CO. v OSM, Docket No. TU 5-58-R (September 23, 1988).
- B. CARBONEX COAL CO. v OSM, Docket Nos. TU 5-58-R et al. (February 10, 1989 Consent Decision excerpts).
- C. TWIN OAKS COAL CO. v OSM, Docket No. CH 9-156-R (February 21, 1980).
- D. COAL ENERGY, INC. v OSM, 115 IBLA 114, IBLA 90-287 (June 27, 1990).
- E. COAL ENERGY, INC. v OSM, Docket Nos. NX 88-50-R, NX 88-51-R (February 6, 1990).
- F. COAL ENERGY, INC. v OSM, 105 IBLA 385, IBLA 87-190 (November 29, 1988).



- G. LYNCO MINING v OSM, Docket No. NX 89-74-R (February 18, 1991).
- H. LYNCO MINING v OSM, Docket No. NX 89-29-R (May 31, 1990).
- I. SCARAB ENERGY CORP. v OSM, Docket Nos. NX 89-42-R, NX 89-43-R (May 31, 1990).
- J. AMAX COAL CO. v OSM, Docket Nos. IN 1-15-P, IN 1-28-P (November 1, 1983).
- K. AMAX COAL CO. v OSM, 74 IBLA 48, IBLA 83-614 (June 28, 1983).
- L. AMAX COAL CO. v OSM, Docket No. IN 0-40-P (January 14, 1981).
- M. ALPINE CONSTRUCTION CO. v OSM, 114 IBLA 232, IBLA 88-527 (April 27, 1990).
- N. TURNER BROTHERS, INC. v OSM, 103 IBLA 10, IBLA 86-191 (June 22, 1988).
- O. TURNER BROTHERS, INC. v OSM, Docket No. TU 5-17-R (November 27, 1985).
- P. TURNER BROTHERS, INC. v OSM, Docket Nos. TU 6-106-R, TU 7-27-R (July 10, 1987).
- Q. TURNER BROTHERS, INC. v OSM, Docket Nos. TU 6-49-R (April 13, 1987).
- R. 44 FR 14902 (MARCH 13, 1979). [Excerpts]
- S. 48 FR 43994 (SEPTEMBER 26, 1983). Final rule. Impoundments.
- T. 48 FR 44032 (SEPTEMBER 26, 1983). Final rule. Siltation structures.
- U. 50 FR 16194 (APRIL 24, 1985). Final rule. Certification of the design of impoundments.
- V. 51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension.
- W. 53 FR 43584 (OCTOBER 27, 1988). Final rule. Impoundments.
- X. 56 FR 29774 (JUNE 28, 1991). Proposed rule. Impoundments.
- Y. 56 FR 44049 (SEPTEMBER 6, 1991). Reopening of comment period. Impoundments.