



COALEX STATE INQUIRY REPORT - 196

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TOPIC: TRANSFER OF A PERMIT

INQUIRY: Please locate administrative decisions which address problems a coal company may have transferring a permit. What happens when one of the parties has outstanding violations?

The fact situation in this case is as follows: Company "A", which owed outstanding fees, proposed to transfer its permit to Company "B" but then A withdrew the transfer. B contested the withdrawal of the transfer. Before this issued was adjudicated, A proposed to transfer its permit to Company "C". The court ordered A to transfer its permit to B. As a result, A withdrew its proposed transfer to C in order to resubmit the permit transfer to B. C contested the withdrawal of the A's proposed transfer to it.

SEARCH RESULTS: Research was conducted using the COALEX Library and other material available in LEXIS. Few relevant materials were identified. The administrative decisions listed below address some aspects of the fact situation described above. In addition to the Interior opinions, preambles to two sets of final rules, an OSM directive and a prior COALEX Report on ownership and control are attached to provide background information.

CARBONEX COAL CO. v OSM, Docket Nos. TU 5-58-R et al. (1989).

In this consent decision, Carbonex agreed to fulfill its reclamation requirements and pay its assessed penalties. The decision included conditions for the transfer of Carbonex's permit to another company.

CLARK COAL CO. v OSM, 102 IBLA 93, IBLA 86-627 & 87-348 (1988). Clark Coal Co. v OSM, Docket No. NX 6-60-R (1987).

Headnotes: "[A] permittee may not transfer, assign, or sell rights granted under any permit without the written approval of the regulatory authority. Hence, a purported assignment of the permittee's rights under the permit to a third party will not suffice to relieve the permittee of liability for violations of the Act in the absence of an approved assignment."



Included for background information are these materials:

44 FR 14902 (MARCH 13, 1979). Excerpts from the permanent program final rules. Transfer, sale and assignment of permit rights.

48 FR 44343 (SEPTEMBER 28, 1983). Final rule. Permitting.

OSM DIRECTIVE, Subject No. INE-33, Transmittal No. 636, "510(c) Permit review procedures for federal permit applications" (Issued 9/18/90).

COALEX STATE INQUIRY REPORT - 148, "Contractor liability for violations; ownership and control of operations" (1990).

ATTACHMENTS

- A. CARBONEX COAL CO. v OSM, Docket Nos. TU 5-58-R et al. (1989).
- B. CLARK COAL CO. v OSM, 102 IBLA 93, IBLA 86-627 & 87-348 (1988)/
- C. CLARK COAL CO. v OSM, Docket No. NX 6-60-R (1987).
- D. 44 FR 14902 (MARCH 13, 1979). Excerpts from the permanent program final rules. Transfer, sale and assignment of permit rights.
- E. 48 FR 44343 (SEPTEMBER 28, 1983). Final rule. Permitting.
- F. OSM DIRECTIVE, Subject No. INE-33, Transmittal No. 636, "510(c) Permit review procedures for federal permit applications" (Issued 9/18/90).
- G. COALEX STATE INQUIRY REPORT - 148, "Contractor liability for violations; ownership and control of operations" (1990).