



COALEX STATE INQUIRY REPORT - 200

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Lowell P. Braxton
Associate Director, Mining
Utah Department of Natural Resources
Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

TOPIC: PHC/CHIA DATA COLLECTION ON PUBLIC ROADS (Includes COALEX Reports Nos. 152 & 178)

INQUIRY: Is there any case law or other material on the need for PHC/CHIA data collection on public roads being upgraded in conjunction with initiation of coal mining activities? Does the public road constitute an "adjacent area" for purposes of data collection?

SEARCH RESULTS: The COALEX Library and other materials available in LEXIS and prior State Inquiry Reports were researched for this Inquiry. No materials were located which specifically address the Inquiry topic; however, research in elements of the topic retrieved relevant cases and Federal Register preambles. Related topics researched include: roads, CHIAs, definition of "adjacent area" and "affected area" and data collection.

The retrieved material is discussed below. Copies of these items are attached.

PRIOR COALEX REPORTS

1. COALEX STATE INQUIRY REPORT No. 152, "Challenges to CHIAs", March, 1990.

This Report includes Interior administrative decisions and state and federal opinions that address the adequacy and completeness of CHIAs.

2. COALEX STATE INQUIRY REPORT No. 178, "Permitting of a temporary public road", May, 1991.

The decisions in this Report discuss the general issue of when a road is subject to the regulations of SMCRA.

INTERIOR ADMINISTRATIVE CASES



The following Interior administrative cases discuss various aspects of maintaining haul and access roads not addressed in the cases included in COALEX Report 178:

3. PEGASUS MINING CORP. v OSM, Docket No. CH 9-37-R (1979).

In answer to the question of when does a "haul road" actually become a haul road, the ALJ stated:

"A haul road or access road therefore is neither a haul road nor an access road within the meaning of the Act until construction has been completed to the degree necessary for its designed use."

4. ISLAND CREEK COAL CO., 1 IBSMA 275, IBSMA 79-31 (1979).

Island Creek failed to maintain its haul road "in a manner that would prevent adverse impacts on the hydrologic balance in general and additional contributions of suspended solids to streamflow or to runoff outside the permit area in particular."

5. BELVA COAL CO. v OSM, Docket No. CH 0-17-P (1980).

The ALJ stated that OSM failed to prove that the presence of a muddy road amounted to a violation. The inspectors did not determine whether the road was properly constructed or if the runoff was likely to effect the hydrologic balance off the permit property.

6. NATIONAL MINES CORP. v OSM, 104 IBLA 331, IBLA 87-57 (1988).

The Board affirmed the ALJ's ruling that National's access road "was not maintained so as to prevent additional contributions of suspended solids to streamflow".

7. PACIFICORP v OSM, Docket No. DV 91-1-PR (1991).

The Board determined that access roads fall within the definition of "surface mining operations" and are also included under the definition of "affected area".

FEDERAL SMCRA CASES

These decisions are included for background.

8. NATIONAL WILDLIFE FEDERATION v LUJAN, 1990 U.S. Dist. LEXIS 11541 (D DC August 30, 1990).

See Section VIII. Probable Hydrologic Consequences.

9. IN RE PERMANENT SURFACE MINING REGULATION LITIGATION, 620 F Supp 1519 (D DC July 15, 1985).



See Sections I. Hydrology and Geology Permitting and XI. Definitions (discussion of "affected area").

10. NATIONAL WILDLIFE FEDERATION v HODEL, 839 F 2d 694 (DC Cir 1988).

See the court's discussion of "Cumulative Hydrologic Assessment -- What is 'Anticipated Mining'?". Section III-E-5.

REGULATORY HISTORY

Relevant Federal Register preambles were identified, generally, under these topics: (1) the definition of "affected area"; (2) roads; and (3) hydrology permitting. The enclosed notices are listed in chronological order.

11. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble - Final Rule. [Excerpts]

12. 47 FR 27712 (JUNE 25, 1982). Proposed rules. Hydrology Permitting and Performance Standards. [Excerpts]

13. 47 FR 33424 (AUGUST 2, 1982). Final rule. Two-Acre Exemption. [Excerpts]

14. 48 FR 14814 (APRIL 5, 1983). Final rule. Definitions and Terminology.

15. 48 FR 22110 (MAY 16, 1983). Final rules. Roads. [Excerpts]

16. 48 FR 43956 (SEPTEMBER 26, 1983). Final rules.

17. 51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension.

18. 52 FR 32764 (AUGUST 28, 1987). Proposed rule. Permit Applications.

19. 52 FR 47352 (DECEMBER 11, 1987). Final rule. Fish and Wildlife Resources Information. [Excerpt]

20. 53 FR 36394 (SEPTEMBER 19, 1988). Final rule. Probable Hydrologic Consequences Determination.

Also see 53 FR 45190 (NOVEMBER 8, 1988) sent with Report 178.

ATTACHMENTS

1. COALEX STATE INQUIRY REPORT No. 152, "Challenges to CHIAs", March, 1990.
 - A. NATURAL RESOURCES DEFENSE COUNCIL, INC. (NRDC), et al. v OSM, 4 IBSMA 4, IBSMA 81-83 (1982).



- B. NATURAL RESOURCES DEFENSE COUNCIL, INC. (NRDC), et al. v OSM, ATLANTIC RICHFIELD CO. AND STATE OF COLORADO, 89 IBLA 1, IBLA 83-757 (IBSMA 81-83) (September 27, 1985, as amended by November 18, 1986 decision).
- C. NATURAL RESOURCES DEFENSE COUNCIL, INC., et al. v OSM and WEST ELK COAL CO., 94 IBLA 269, IBLA 83-757 [IBSMA 81-83] (November 18, 1986, amends September 27, 1985 decision).
- D. THE HOPI TRIBE v OSM AND PEABODY COAL CO., Docket No. TU 6-3-PR (1986).
- E. FRANK STEBLY v OSM, Docket No. DV 7-2-PR (1987).
- F. CITIZENS ORGANIZED AGAINST LONGWALLING v OHIO DEPT. OF NATURAL RESOURCES, 41 Ohio App 3d 290, 535 NE 2d 687 (Ohio Ct App 1987).
- G. VILLAGE OF PLEASANT CITY v DIV. OF RECLAMATION, No. CA-835, slip op (Ohio Ct App 1987).
- H. OOTEN, et al. v FAERBER, AS COMMISSIONER, WEST VIRGINIA DEPT. OF ENERGY, AND MAGNET COAL, INC, 383 SE 2d 774 (W Va 1989).
- I. Excerpts from NATIONAL WILDLIFE FEDERATION (NWF), et al. v HODEL, 839 F 2d 694 (DC Cir 1988).
- J. LOUISIANA ENVIRONMENTAL SOCIETY (LES) v BRINEGAR, SECRETARY, DEPT. OF TRANSPORTATION, 407 F Supp 1309 (WD La 1976).
- K. MINNESOTA PUBLIC INTEREST RESEARCH GROUP v BUTZ, 541 F 2d 1292 (8th Cir 1976).
- L. ENVIRONMENTAL DEFENSE FUND, INC. v COSTLE, 439 F Supp 980 (ED NY 1977).
- M. STATE OF MISSOURI, ex rel. v DEPT. OF THE ARMY, CORPS OF ENGINEERS, 526 F Supp 660 (WD Mo 1980).
- N. CITIZENS COUNCIL OF DELAWARE COUNTY v BRINEGAR, 619 F Supp 52 (ED Pa 1985).
- O. OREGON NATURAL RESOURCES COUNCIL (ONRC), v LYNG, 1988 U.S. Dist LEXIS 17264, 18 ELR 21503 (D Or 1988).
- 2. COALEX STATE INQUIRY REPORT - 178, "Permitting of a temporary public road", May, 1991.
 - A. SNYDER v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES (DER) AND ED MIKEL COAL CO., PERMITTEE, EHB Docket No. 88-277-F, 1989 Pa Envirn LEXIS 93 (1989).
 - B. TRINITY COAL CORP. v OSM, Docket No. CH 1-127-R (1982).
 - C. ZAPATA COAL CORP., 2 IBSMA 9, IBSMA 79-20, 79-32 (1980).
 - D. S.M.A. COAL CO. v OSM, Docket No. CH 1-34-R (1981).
 - E. PREECE, MCCLANAHAN & BELCHER COAL CO. v OSM, Docket No. CH 0-261-R (1980).
 - F. KNOX CREEK COAL CORP. v OSM, Docket Nos. CH 1-214-P, CH 0-329-R (1981).
 - G. SMITH COAL CORP. v OSM, Docket No. Ch 1-53 R (1984).



- H. WAR FORK COAL CORP. v OSM, Docket No. CH 0-89-R (1984).
- I. JEWELL SMOKELESS COAL CORP., 4 IBSMA 51, IBSMA 81-39, 81-47 (1982).
- J. FETTEROLF MINING SALES, INC., 4 IBSMA 29, IBSMA 81-58 (1982).
- K. M & J COAL CO., v OSM, Docket No. CH 1-39-P (1981).
- L. RAYLE COAL CO., 3 IBSMA 111, IBSMA 80-88 (1981).
- M. RAPOCA ENERGY CO. v OSM, 89 IBLA 195, IBLA 85-61 (1985).
- N. HARMAN MINING CORP. v OSM, 87 IBLA 369, IBLA 84-279 (1985).
- O. HARMAN MINING CORP. v OSM, 110 IBLA 98, IBLA 86-1505, 86-1544 (1989).
- P. HARMAN MINING CORP. v OSM, 659 F Supp 806 (WD Va 1987).
- Q. HARMAN MINING CORP. v Hodel, 662 F Supp 629 (WD Va 1987).
- R. IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION, 620 F Supp 1519 (D DC July 15, 1985). [Excerpts]
- S. 53 FR 45190 (NOVEMBER 8, 1988). Final rule. Roads.
- 3. PEGASUS MINING CORP. v OSM, Docket No. CH 9-37-R (1979).
- 4. ISLAND CREEK COAL CO., 1 IBSMA 275, IBSMA 79-31 (1979).
- 5. BELVA COAL CO. v OSM, Docket No. CH 0-17-P (1980).
- 6. NATIONAL MINES CORP. v OSM, 104 IBLA 331, IBLA 87-57 (1988).
- 7. PACIFICORP v OSM, Docket No. DV 91-1-PR (1991).
- 8. NATIONAL WILDLIFE FEDERATION v LUJAN, 1990 U.S. Dist. LEXIS 11541 (D DC August 30, 1990).
- 9. IN RE PERMANENT SURFACE MINING REGULATION LITIGATION, 620 F Supp 1519 (D DC July 15, 1985).
- 10. NATIONAL WILDLIFE FEDERATION v HODEL, 839 F 2d 694 (DC Cir 1988).
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- 16. 48 FR 43956 (SEPTEMBER 26, 1983). Final rules.
- 17. 51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension.
- 18. 52 FR 32764 (AUGUST 28, 1987). Proposed rule. Permit Applications.
- 19. 52 FR 47352 (DECEMBER 11, 1987). Final rule. Fish and Wildlife Resources Information. [Excerpt]
- 20. 53 FR 36394 (SEPTEMBER 19, 1988). Final rule. Probable Hydrologic Consequences Determination.

UPDATES TO CASES SENT AS PART OF COALEX STATE INQUIRY REPORT 200



VILLAGE OF PLEASANT CITY v KIZER, CHIEF DIV. OF RECLAMATION, OHIO DEPT. OF NATURAL RESOURCES, 1992 Ohio App LEXIS 2197, Case No. 91-CA-10 (Ohio Ct App 1992).

VILLAGE OF PLEASANT CITY v KIZER, CHIEF DIV. OF RECLAMATION, OHIO DEPT. OF NATURAL RESOURCES, 1992 Ohio App LEXIS 2198, Case No. 91-CA-09 (Ohio Ct App 1992).

TRUSTEES FOR ALASKA et al. v GORSUCH, COMMISSIONER, AND ALASKA DEPT. OF NATURAL RESOURCES, 835 P 2d 1239 (Alaska 1992).

[NOTE: Copies of the COALEX and LEXIS research requests and excerpts of the Interior administrative decisions they retrieved are included as an attachment. The materials are excerpts of those decisions which are not discussed above.]

58 FR 50174 (SEPTEMBER 24, 1993). Proposed rule. Underground mining permit application and performance standards.