



## COALEX STATE INQUIRY REPORT - 205

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### TOPIC: PERMITTING OF RAILROAD SIDINGS AND SPUR LINES

**INQUIRY:** Are railroad sidings and spur lines located at loading facilities and preparation plants required to be permitted? Please locate any relevant material which discusses this topic.

**SEARCH RESULTS:** Using the COALEX Library and other materials available in LEXIS, a number of items were retrieved that discuss the regulation of railroads under SMCRA. Relevant regulatory material, case law and administrative case law are listed below. Copies are attached.

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### REGULATORY HISTORY

#### 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule. 701.5 Definitions.

##### d. ADJACENT AREA.

"(6) Several commenters recommended that the definition of 'adjacent area' be expanded to include land impacted by mine-mouth facilities and railroad loops or spurs specifically serving mining facilities. OSM believes that the definitions of 'adjacent area,' 'permit area' and 'affected area,' through references to the term 'surface coal mining and reclamation operations,' already cover all of the effects incidental to mining operations. See Section 701(27) of the Act. Therefore, it was unnecessary to specify the facilities identified by the commenter in the definition of 'adjacent area.'"

Also see the attached preambles to:

1. 780.37 Transportation facilities
2. 816.180 Other transportation facilities

**NATIONAL WILDLIFE FEDERATION v HODEL, 839 F 2d 694 (DC Cir January 29, 1988).**



The court of appeals affirmed the Secretary's incorporation of a consideration of proximity in the 1983 definition of support facilities.

### III. Merits; D. Residual Issues; 3. Jurisdiction Over Processing and Support Facilities

"n80 The Secretary has also interpreted Sec. 701(28)(B) to authorize extending SMCRA requirements to a number of 'support facilities' 'resulting from or incident to' mining activities that are not specifically mentioned in the statute. 30 CFR Sec. 701.5 (1984). Industry objects to the Secretary's inclusion of railroads as a support facility. The district court upheld the Secretary. Industry's argument is basically that (1) there is nothing specific in the statute about railroads, and (2) it is difficult for mine operators to control environmental impacts from railroads since they typically do not operate railroads. As for the first point, the broad language of Sec. 701(28)(B) clearly permits the Secretary to regulate railroads, provided, of course, that they are 'resulting from or incident to' mining activities. The second point is an argument for Congress; the statute does not make 'control' the operative test for regulation. We affirm the district court's rejection of Industry's challenge to the regulation of railroads."

Also see the prior district court case and preambles to the federal regulations:

1. 50 FR 28180 (JULY 10, 1985). Interim final rule. (The definition of "support facilities" was suspended.)
2. IN RE: PERMANENT SURFACE MINING REGULATIONS LITIGATION, 21 ERC (BNA) 1193, 14 ELR 20617 (DDC July 6, 1984). (The court found that a limitation based solely on proximity could not stand.)
3. 48 FR 20392 (MAY 5, 1983). Final rule. Support facilities and coal preparation plants. Interpretation of "resulting from or incident to": Facilities regulated as support facilities were to be determined, in part, based upon their location relative to a regulated activity.)
4. 47 FR 27688 (JUNE 25, 1982). Proposed rule. Support facilities, other transportation facilities, utility installations and coal processing plants. (Includes correction information from June 29, 1982.)
5. 48 FR 22110 (MAY 16, 1983). Final rule. Roads.
6. 47 FR 16592 (APRIL 16, 1982). Proposed rules. Roads. [Excerpt].

### **53 FR 47378 (NOVEMBER 22, 1988). Final rule. Support facilities.**

OSM removed the definition of support facilities from its regulations because "a definition is not needed in order to ensure that such facilities are regulated under [SMCRA]. OSMRE has determined that the identification of facilities that support surface coal mining operations has been conducted in a manner consistent with the intent of SMCRA during those periods when there has been no definition of Federal regulations (prior to the 1983 introduction of a definition and since the 1985 suspension of the definition)."

Also see:



1. NATIONAL WILDLIFE FEDERATION v LUJAN, 1990 U.S. Dist. LEXIS 11541, 31 ERC (BNA) 2034, 21 ELR 20125 (DDC August 30, 1990). (The court remanded the explanation of Sections 785.21 and 827.1 insofar as it makes proximity to a mine site the limiting factor in deciding whether to regulate an off-site coal processing facility.)
2. 53 FR 21764 (JUNE 9, 1988). Reinstatement of suspended rules.
3. 53 FR 23522 (JUNE 22, 1988). Proposed rule. Support facilities.
4. 56 FR 48714 (SEPTEMBER 25, 1991). Proposed rule. Coal preparation plants.

The list of Federal Register notices (preambles) for coal preparation plants and support facilities rules are also included.

### **APPROVAL OR STATE PROGRAM AMENDMENTS**

Three Federal Register notices were identified that specifically discuss the permitting of railroads. One notice is quoted below; excerpts from the other notices are attached.

#### **46 FR 5915 (JANUARY 21, 1981). Conditional approval of West Virginia program.**

"14.6 Under 30 CFR 780.37 and 784.24, each permit application must describe each road, conveyor, or rail system in the permit area. State Regulation Section 4A.01 requires the same information, but subsection b. provides that it shall include only railroads over which the applicant has a reasonable opportunity to exercise control, and defines when such an opportunity will be considered to exist.

...

"West Virginia's provision is as stringent as the federal provision because the Secretary does not interpret 30 CFR 780.37 to require that an operator submit information for portions of a railroad over which the operator could not possibly exercise any control. Such areas are not required to be within the permit area and need not be bonded. These areas are subject to the jurisdiction of other governmental agencies."

Also see:

1. 51 FR 42209 (November 24, 1986). Wyoming program.
2. 45 FR 71590 (OCTOBER 29, 1980). Kentucky program.

### **INTERIOR ADMINISTRATIVE CASES**

The following is a sample of cases in which railroad spurs, loops, etc. are part of the fact situation. No cases were identified that specifically determine the need to include railroad spurs, etc. as part of a permitted area.

#### **TIPPLE SERVICE, INC. v OSM, Docket No. NX 91-28-R (1991).**

The consent decision concerns an NOV which involved "coal deposits along the spur track, not within the permit area".



**THE PITTSBURG & MIDWAY COAL MINING CO. v OSM, Docket No. TU 7-44-R (1988).**

P&M was cited for failing to control sediment problems near its haulroad embankments and railroad loop. The Haulroad-Railroad Runoff Control Plan had been agreed to as part of the permit under which P&M operated.

**SOUTH EAST COAL CO. v OSM, Docket No. NX 2-18-R (1984).**

The facility, which processed coal by crushing it, washing it, blending it and loading it onto railroad cars, was determined to be a "coal processing plant" and therefore had to meet the requirements of SMCRA and its regulations.

**BLACKFOX MINING & DEVELOPMENT CORP. v OSM, Docket No. CH 1-103-R (1984).**

Using the "at or near" criteria, the ALJ ruled that the tipple area, used as a "trans-shipment point whereby the coal from nearby mines was loaded onto railroad cars", was not a "surface coal mining operation".

**BROOKS RUN COAL CO. v OSM, Docket Nos. CH 0-362-R, CH 1-23-P (1981).**

The fact situation in this decision, which determined the validity of an NOV issued for failure to monitor ground water systems, involved the construction of a permitted preparation facility and associated railroad spur.

**ATTACHMENTS**

- A. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule.
  1. 701.5 Definitions.
  2. 780.37 Transportation facilities
  3. 816.180 Other transportation facilities
- B. NATIONAL WILDLIFE FEDERATION v HODEL, 839 F 2d 694 (DC Cir January 29, 1988).
- C. 50 FR 28180 (JULY 10, 1985). Interim final rule.
- D. IN RE: PERMANENT SURFACE MINING REGULATIONS LITIGATION, 21 ERC (BNA) 1193, 14 ELR 20617 (DDC July 6, 1984).
- E. 48 FR 20392 (MAY 5, 1983). Final rule. Support facilities and coal preparation plants.
- F. 47 FR 27688 (JUNE 25, 1982). Proposed rule. Support facilities, other transportation facilities, utility installations and coal processing plants.
- G. 48 FR 22110 (MAY 16, 1983). Final rule. Roads.
- H. 47 FR 16592 (APRIL 16, 1982). Proposed rules. Roads. [Excerpt].
- I. 53 FR 47378 (NOVEMBER 22, 1988). Final rule. Support facilities.
- J. NATIONAL WILDLIFE FEDERATION v LUJAN, 1990 U.S. Dist. LEXIS 11541, 31 ERC (BNA) 2034, 21 ELR 20125 (DDC August 30, 1990).



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- K. 53 FR 21764 (JUNE 9, 1988). Reinstatement of suspended rules.
- L. 53 FR 23522 (JUNE 22, 1988). Proposed rule. Support facilities.
- M. 56 FR 48714 (SEPTEMBER 25, 1991). Proposed rule. Coal preparation plants.
- N. List of Federal Register notices (preambles) for coal preparation plants and support facilities rules.
- O. 46 FR 5915 (JANUARY 21, 1981). Conditional approval of West Virginia program.
- P. 51 FR 42209 (NOVEMBER 24, 1986). Wyoming program.
- Q. 45 FR 71590 (OCTOBER 29, 1980). Kentucky program.
- R. TIPPLE SERVICE, INC. v OSM, Docket No. NX 91-28-R (1991).
- S. THE PITTSBURG & MIDWAY COAL MINING CO. v OSM, Docket No. TU 7-44-R (1988).
- T. SOUTH EAST COAL CO. v OSM, Docket No. NX 2-18-R (1984).
- U. BLACKFOX MINING & DEVELOPMENT CORP. v OSM, Docket No. CH 1-103-R (1984).
- V. BROOKS RUN COAL CO. v OSM, Docket Nos. CH 0-362-R, CH 1-23-P (1981).