



## COALEX STATE INQUIRY REPORT - 219

June 1992

Rhea Graham, Director  
Mining and Minerals Division  
Energy, Minerals and Natural Resources Department  
2040 S. Pacheco  
Santa Fe, New Mexico 87505

**TOPIC:** DEFINITION OF IMPOUNDMENT (Includes COALEX REPORT No. 143)

**INQUIRY:** Are there any administrative decisions that define what an impoundment is for regulatory purposes? In particular, is an impoundment not used for sediment control subject to SMCRA regulation?

**SEARCH RESULTS:** Research was conducted using the COALEX Library and other materials available in LEXIS. No Interior administrative decisions were identified that discuss when an impoundment qualifies for regulation under SMCRA. The Administrative Law Judge (ALJ), Interior Board of Lands Appeals (IBLA) and the earlier Interior Board of Surface Mining Appeals (IBSMA) decisions retrieved discuss the regulation of discharges from disturbed areas. Generally, Interior administrative decisions ruled that, regardless of the source, water discharged from an area disturbed by surface coal mining operations is subject to SMCRA water quality standards and effluent limitations. (See National Mines Corp. v OSM, below, for a discussion of the exception to this principle.)

The cases listed below are attached. A copy of COALEX REPORT No. 143, "Impoundments" (1990) is included (without attachments) for background.

---

### **THUNDERBIRD COAL CORP. v OSM, 1 IBSMA 85, IBSMA 79-1 (1979).**

"Discharges from any portion of a permitted area that is disturbed in the course of the permittee's mining operations must comply with the effluent limitations contained in 30 FR 715.17(a) of the Department's initial regulatory program.

"A sedimentation pond is a "disturbed area," as that term is defined for the purpose of 30 CFR 715.17(a) of the Department's initial regulatory program, when any portion of the permitted area which drains into the sedimentation pond has been disturbed by the permittee other than by the construction of other sedimentation ponds, roads, or diversion ditches."

### **CRAVAT COAL CO., INC., 2 IBSMA 249, IBSMA 80-30 (1980).**



"All surface water drainage from the area disturbed by surface mining and reclamation operations must comply with the effluent limitations of 30 FR 715.17(a) even if it originates as contaminated ground water from previously mined areas."

**S. KELLY INDUSTRIES v OSM, Docket No. CH 0-252-R (1980).**

Water originating from an abandoned deep mine drained into the sedimentation pond with water from the permitted area. The permittee attempted to treat the water; however, he was not able to meet the required effluent limitations. The ALJ affirmed the NOV and gave the permittee additional time to meet the water quality standards.

**CONSOLIDATION COAL CO. v OSM, Docket No. CH 1-44-R (1981).**

Contrasting the fact situation here with that of Cravat, above, the ALJ vacated the NOV, finding that OSM had not proven that the discharge from the pipe came from Consolidation's preparation plant area.

**MARTY CORP. v OSM, Docket No. NX 0-39-P (1981).**

The ALJ ruled Marty Corporation responsible for the excess siltation produced by a logging operation which entered Marty's sedimentation ponds. Despite the fact that the permittee had no connection with or control over the logging operation located on the permitted area, Marty was held to the standards established in THUNDERBIRD COAL, above.

NOTE: The decisions referred to the District of Columbia Circuit Court decision of May 2, 1980 which remanded a portion of the regulation to the District Court. The ALJ found that the regulations were still in effect since the District Court had taken no further action.

**K.I.M. COAL CO. v OSM, Docket No. CH 1-150-P (1982).**

The ALJ vacated K.I.M.'s NOV because the logging operation producing the suspended solids had no connection with the coal company and was operating off the permitted area.

**JEFFCO SALES & MINING CO., INC., 4 IBSMA 140, IBSMA 81-76 (1982).**

"The general rule is that all discharges from a sedimentation pond which receives surface drainage from areas disturbed by ongoing surface coal mining and reclamation operations must meet the effluent limitations expressed in 30 CFR 715.17(a), even when part of the drainage received by a particular sedimentation pond emanates from areas not disturbed by current operations."M/

**SAHARA COAL CO., INC. v OSM, Docket IN 1-78-P (1983).**

Sahara was found responsible for the flow of water that entered their sedimentation pond from a railroad bed which was outside the permit area. The ALJ cited to THUNDERBIRD, above.



**LAROSA FUEL CO., INC. v OSM, Docket Nos. CH 0-170-R, CH 0-171-R (1983).**

Larosa was held to be in violation of 30 CFR 715.17(a): the operator was responsible for meeting the effluent limitations even though the water discharges resulted from the commingling of drainage from other areas and the pH level of the receiving stream did not meet the effluent limits prior to the commencement of the mining operation.

**P & K CO., LTD. v OSM, Docket No. TU 4-27-R (1985).**

The water impoundment left by P & K at the end of production was not indicated as a postmining land use in its permit. P & K's application for a permit revision was denied because they had not affirmatively demonstrated that the water quality would continue to be within proper limits on a permanent basis. The ALJ gave P & K additional time to bring the pH level to the proper limits and obtain a permit revision; otherwise, the impoundment would have to be drained and backfilled.

**INNOVATIVE DEVELOPMENT OF ENERGY, INC. (IDE) v OSM, Docket No. NX 6-44-R (1987).**

Citing to THUNDERBIRD and CRAVAT, above, the ALJ found IDE's arguments for vacating the NOV unpersuasive. IDE had argued that water from an abandoned mine entered one sedimentation pond causing a low pH; that construction on a nearby subdivision caused a blockage of a diversion ditch; and that permitting problems caused IDE to lose its lease.

**NATIONAL MINES CORP. v OSM, 104 IBLA 331, IBLA 87-57 (1988). NATIONAL MINES CORP. v OSM, Docket No. CH 5-19-P (1986).**

"As a general rule, where discharges from disturbed areas are commingled in a sedimentation pond with discharges from areas not disturbed by the permittee's operations, the discharge from the sedimentation pond must meet the effluent limitations of the regulations. However, where a person charged with a violation of the effluent limitation can establish that the effluent violation related solely to drainage from areas which have not been disturbed by that person's operations, the person may escape responsibility for the violation. However, a failure to provide such evidence will result in an affirmation of the violation."

**ATTACHMENTS**

- A. COALEX REPORT No. 143, "Impoundments" (1990) [without attachments].
- B. THUNDERBIRD COAL CORP. v OSM, 1 IBSMA 85, IBSMA 79-1 (1979).
- C. CRAVAT COAL CO., INC., 2 IBSMA 249, IBSMA 80-30 (1980).
- D. S. KELLY INDUSTRIES v OSM, Docket No. CH 0-252-R (1980).
- E. CONSOLIDATION COAL CO. v OSM, Docket No. CH 1-44-R (1981).
- F. MARTY CORP. v OSM, Docket No. NX 0-39-P (1981).
- G. K.I.M. COAL CO. v OSM, Docket No. CH 1-150-P (1982).
- H. JEFFCO SALES & MINING CO., INC., 4 IBSMA 140, IBSMA 81-76 (1982).



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
U.S. Department of the Interior

- I. SAHARA COAL CO., INC. v OSM, Docket IN 1-78-P (1983).
- J. LAROSA FUEL CO., INC. v OSM, Docket Nos. CH 0-170-R, CH 0-171-R (1983).
- K. P & K CO., LTD. v OSM, Docket No. TU 4-27-R (1985).
- L. INNOVATIVE DEVELOPMENT OF ENERGY, INC. (IDE) v OSM, Docket No. NX 6-44-R (1987).
- M. NATIONAL MINES CORP. v OSM, 104 IBLA 331, IBLA 87-57 (1988).
- N. NATIONAL MINES CORP. v OSM, Docket No. CH 5-19-P (1986).