



COALEX STATE INQUIRY REPORT - 226

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TOPIC: Effluent limitation requirements and damage from previous mining (Includes COALEX Reports 90 & 107)

INQUIRY: Discharge from a sedimentation pond exceeds the effluent limitations. The operator claims the problem stems from the previous mining operation located on that site for which he is not responsible. Please locate relevant administrative cases.

SEARCH RESULTS: Two existing COALEX Reports addressing the topics of this Report were identified. The COALEX Library and LEXIS were used to update the earlier Reports. Copies of the materials discussed below are attached.

COALEX State Inquiry Report - 107, "Effluent limitation requirements" (1989).

The inquirer wanted decisions indicating whether the discharge water must meet the 6.0 pH effluent limitation requirements even though the natural level of the receiving water does not meet this level. Interior administrative decisions attached with the Report indicate that the effluent limitations in the regulations must be met regardless of the levels of the receiving waters.

COALEX State Inquiry Report - 90, "Damage from previous mining" (1987).

Was a surface mine operator responsible for reclamation of subsidence damage which occurred within the permit area but was caused by an old underground mine? The Interior administrative decisions included here indicate that an operator is responsible for meeting all the requirements of SMCRA on previously mined areas. In cases where an exception to a general rule applies, the operator must demonstrate entitlement to that exception.

S. Kelly Industries v OSM, Docket No. CH 0-252-R (1980).

"The most important event in the entire case was the applicant going upon property known to be a disaster area created by previous mining because acid mine drainage and high iron concentrates



which have apparently destroyed environmental resources in the area of Booth's Creek. The applicant undertook this with the knowledge that he would be required by the Act to comply with its terms and regulations, and indeed, the evidence is undisputed that the applicant undertook such obligations with such knowledge, but without success, in spite of his numerous and continued efforts to comply with State and Federal laws regarding effluent limitations."

"It would appear that this was one of those unforeseeable conditions which were not addressed by the Act so as to grant some type of exemption to an operator who was willing to accept such risks as are evident in the instant case."

In keeping with "both the letter and spirit of the law", the ALJ found that the NOV was validly issued and gave the operator 6 months to come into compliance with the rules by continuing "to mine in the manner in which he is now mining so as to eliminate the deep mine portals which are causing the effluent limitation violations."

James Filiaggi v OSM, Docket No. CH 0-368-R (1980)

The ALJ found that the NOV was not properly issued. The discharge from old underground mine workings flowed entirely "beneath the area disturbed by the applicant, James Filiaggi, and none of Mr. Filiaggi's activities affect the drain or the discharge from the drain in quality or quantity."

LaRosa Fuel Co., Inc. v OSM, Docket No. CH 1-12-P (1981).

As part of its permit package, LaRosa agreed to reclaim a previously mined area that it did not disturb during its coal removal operations. Water from the previously mined and unreclaimed area flowed into LaRosa's sedimentation ponds and were treated. A conflict then arose between the state regulatory agency and OSM regarding LaRosa's re-ditching the previously mined area to channel "the offending water around LaRosa's permitted area and out of the sedimentation pond." As a result of the facts stipulated, the ALJ "technically affirmed" the CO, waived the use of the point system and reduced the amount of the civil penalty.

Also see 1983 LaRosa Fuel decisions discussed in COALEX Report - 107.

Consolidation Coal Co., 4 IBSMA 227, IBSMA 82-14 (1982).

HEADNOTES: "An alleged violation of the effluent limitations prescribed in 30 CFR 717.17(a) cannot be upheld where the evidence shows that the drainage identified in the notice of violation neither originated in an area disturbed by the surface coal mining and reclamation operations nor became commingled with drainage from that disturbed area."

National Mines Corp. v OSM, 104 IBLA 331, IBLA 87-57 (1988).

HEADNOTES: "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 relates 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."

Thompson Bros. Coal Co. v OSM, 105 IBLA 69, IBLA 86-1394 (1988).

HEADNOTES: "No violation of [SMCRA] occurred where, during the interim program for the regulation of surface coal mining in Pennsylvania, surface drainage was passed from one permit area to an adjacent permit and then passed through a sedimentation pond before leaving the second permit area, where both permit areas were embraced within the same mine drainage permit issued by the state regulatory agency."

Innovative Development of Energy, Inc. (IDE) v OSM, 110 IBLA 119, IBLA 88-55 (1989).

The Board ruled that "[w]ater quality limitations apply to all discharges flowing from a disturbed area into a sedimentation pond constructed to achieve compliance with SMCRA", including water discharged from stockpiles and an abandoned underground mine located near IDE's site. IDE failed to establish that a subdivision development near the mining area was responsible for some of the problems on the site.

ATTACHMENTS

- A. COALEX State Inquiry Report - 107, "Effluent limitation requirements" (1989).
 - A. Crown Simpson Pulp Co. v Costle, 642 F 2d 323 (9th Cir 1981).
 - B. William J. McIntire Coal Co., Inc. v Commonwealth of Pa, 530 A 2d 140 (Pa Commw Ct 1987).
 - C. Lucas v Commonwealth of Pa, 420 A 2d 1 (Pa Commw Ct 1980).
 - D. LaRosa Fuel Co., Inc. v OSM, Docket Nos. CH 0-101-R & CH 0-171-R (1983).
 - E. National Mines Corp. v OSM, Docket No. CH 5-19-P (1986).
 - F. COALEX State Inquiry Report - 90.
 - G. NOTE: RELEVANT DECISIONS NOT ATTACHED:
 - 1. EPA v National Crushed Stone Ass'n, 449 U.S. 64 (1980).
 - 2. Appalachian Power Co. v Train, 54 5 F 2d 1351 (4th Cir 1976).
 - 3. DuPont v Train, 541 F 2d 1018 (4th Cir 1976).
- B. COALEX State Inquiry Report - 90, "Damage from previous mining" (1987).
 - A. Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (1982).
 - B. Thunderbird Coal Corp., 1 IBSMA 85 (1979).
 - C. Cravat Coal Co., Inc., 2 IBSMA 249 (1980).
 - D. Central Oil and Gas, Inc., 2 IBSMA 308 (1980).
 - E. Island Creek Coal Co., 3 IBSMA 383 (1981).
 - F. Cedar Coal Co. v OSM, 1 IBSMA 145 (1979).
 - G. Miami Springs Properties v OSM, 2 IBSMA 399 (1980).
 - H. Mountain Enterprises Coal Co., 3 IBSMA 338 (1981).
 - I. Darmac Coal Co., 74 IBLA 100 (1983).



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- J. Daniel Brothers Coal Co., 2 IBSMA 45 (1980).
- K. Tiger Corp., 4 IBSMA 202 (1982).
- C. S. Kelly Industries v OSM, Docket No. CH 0-252-R (1980).
- D. James Filiaggi v OSM, Docket No. CH 0-368-R (1980).
- E. LaRosa Fuel Co., Inc. v OSM, Docket No. CH 1-12-P (1981).
- F. Consolidation Coal Co., 4 IBSMA 227, IBSMA 82-14 (1982).
- G. National Mines Corp. v OSM, 104 IBLA 331, IBLA 87-57 (1988).
- H. Thompson Bros. Coal Co. v OSM, 105 IBLA 69, IBLA 86-1394 (1988).
- I. Innovative Development of Energy, Inc. (IDE) v OSM, 110 IBLA 119, IBLA 88-55 (1989).