



COALEX STATE INQUIRY REPORT - 227

August 1992

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TOPIC: CITIZENS' REQUEST FOR FEDERAL INSPECTION: LIABILITY FOR INJURY

INQUIRY: According to 30 CFR 842.12, a complainant may accompany an inspector investigating possible violations. The mine operator does not want the complainant on the mine site for fear that the operator will be liable if the complainant gets injured during the inspection. Please locate any material which discusses an operator's liability for citizens who accompany inspectors on such trips.

SEARCH RESULTS: Research was conducted using the COALEX Library and other LEXIS materials. Two Federal Register preambles to OSM final rules were identified that discuss the issue of operator liability for injury to a citizen during inspection tours. Copies of these notices and the preamble to proposed rules are attached.

1. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule.

Section 840.15 Public Participation. "[T]he Senate Report indicates that Congress intended that citizen involvement be provided in all areas of the regulatory process".

Section 842.12 Citizens' requests for Federal inspections. "Commenters requested a modification to Section 842.12 to require a citizen to sign a release from damages for any injuries before being allowed to accompany the inspector on an inspection. The Office did not make this modification. The Act gives the citizen a right to accompany the inspector on the inspection. Ordinary tort law principles can be used to determine whether, if a citizen is injured on the site during an inspection, he may hold the operator liable for such injury."

2. 46 FR 58464 (DECEMBER 1, 1981). Proposed rules. Federal inspection and enforcement. Section 840.15 Public Participation.

OSM proposed to delete the requirement that state programs contain the requirement that citizens have the right to accompany state inspectors onto the minesite when the inspection is a result of a citizen's request.



3. 47 FR 35620 (AUGUST 16, 1982). Final rules. Inspection and enforcement. Section 840.15 Public Participation.

In response to comments received, OSM decided not to adopt the proposed change regarding a citizen's right to accompany an inspector. In explaining the reason for its decision, OSM stated:

"Citizen participation in inspections reduces OSM's oversight burden and does not compromise the operator's legitimate business interests. The commenters pointed out that citizens have contributed to the effectiveness of enforcement under the interim program, and that Congress certainly did not intend to return primary regulatory responsibility to the States without providing this safeguard."

"Two commenters who opposed the proposal recommended that OSM address industry concerns by (1) clarifying the operator's liability for any harm a citizen may suffer while on the site, (2) limiting a citizen's access to that area on the site related to the complaint, (3) limiting the number of persons who may accompany an inspector.... OSM does not agree that Section 840.15 should address these matters.... The question of operator liability for injuries a person may suffer while on a mine site is one to be decided under general principles of State tort law."

ATTACHMENTS

- A. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule.
 - 1. Section 840.15 Public Participation.
 - 2. Section 842.12 Citizens' requests for Federal inspections.
- B. 46 FR 58464 (DECEMBER 1, 1981). Proposed rules. Federal inspection and enforcement.
- C. 47 FR 35620 (AUGUST 16, 1982). Final rules. Inspection and enforcement.