



COALEX STATE INQUIRY REPORT - 230

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TOPIC: DEFINITION OF "NO CONTINUING RECLAMATION RESPONSIBILITY"

INQUIRY: Are there any materials in the legislative history or any case law that discuss the definition of the phrase "no continuing reclamation responsibility" which appears in SMCRA Sec. 404 Eligible Lands and Water [30 USC 1234]? In this fact situation, an operator was discharging contaminants into the waters of the state; there was no permit and no bond to forfeit. Does the operator have a continuing responsibility to reclaim the minesite? At what point is the site eligible for AML funds?

SEARCH RESULTS: Research was conducted in the COALEX Library and other materials available in LEXIS. A West Virginia case was identified that addresses the issues of an operator's reclamation responsibility and a site's eligibility for AML funds; however, the court's ruling was based on the wording of the state statute in force at the time which was subsequently repealed. (See CALLAGHAN V EASTERN ASSOCIATED COAL, below.) Several other cases are attached; these discuss the operator's liability for reclamation in the absence of a permit. Preambles to relevant federal regulations are also attached as background.

DESISIONS

DAVID C. CALLAGHAN, DIR., W. VA. DEPT. OF NATURAL RESOURCES v EASTERN ASSOCIATED COAL CORP., 351 SE 2d 605 (W Va 1986).

The court found that Eastern, though not a current "operator" of a refuse dam, was the "owner" and, therefore, the refuse dam could not be considered "an abandoned coal refuse disposal pile" under the statute in force at the time the clean-up order was issued. The applicable statute required the Department of Natural Resources "to take remedial action to abate conditions constituting imminent danger to human life, and to recover state funds expended for this purpose from the operator of the coal refuse pile.... It does not require that such dams be reclaimed." In ruling that Eastern had no continuing reclamation responsibility for the refuse dam, the site became eligible for reclamation under AML funding.



MORCOAL CO. v COMMONWEALTH OF PA., DEPT. OF ENVIRONMENTAL RESOURCES (DER), 74 Pa Commw 108, 459 A 2d 1303 (Pa Commw Ct 1983).

DER forfeited bonds covering surface mining sites abandoned and unreclaimed by Morcoal and denied Morcoal's surface mining license. The court upheld the bond forfeiture, ruling that the bonds were penal and, therefore, DER was not required to prove damages actually sustained in order to collect on the bonds. The court disagreed with Morcoal's contention that a license was required in order to reclaim the sites:

"Nothing in the Mining Act prohibits reclamation without a license; the act provides only that it shall be 'unlawful for any person to proceed to mine coal...without first obtaining a license....'"

S & M COAL CO. AND JEWELL SMOKELESS COAL CO. v OSM, 79 IBLA 350; IBLA 83-620; IBSMA 82-20 (1984).

"Under the initial regulatory program one who conducts a surface coal mining operation regulated by a state under state law is a permittee whether or not required to hold a permit under state law. The permittee is responsible for compliance with the performance standards applicable to the operation."

**CLAYPOOL CONSTRUCTION CO., INC. v OSM, 1 IBSMA 259, IBSMA 79-17 (1979).
CLAYPOOL CONSTRUCTION CO., INC. v OSM, Docket Nos. CH 9-9-R, CH 9-22-R (1979).**

"Permittee'. The definition of 'permittee' adopted by the Secretary for the initial regulatory program in 30 CFR 700.5 includes those persons who fail to obtain a state permit before conducting surface coal mining and reclamation operations regulated by a state."

"The enforcement provisions of the Act and the initial Federal regulatory program are not avoided by the failure of a person to obtain a state permit before conducting surface coal mining and reclamation operations regulated by a state."

PREAMBLES TO FEDERAL REGULATIONS

**PART 874 GENERAL RECLAMATION REQUIREMENTS. SECTION 874.12
ELIGIBLE COAL LANDS AND WATER.**

1. 56 FR 57376 (NOVEMBER 8, 1991). Proposed rule. AML Reclamation Fund Reauthorization Implementation.

These rules, proposed after the passage of the Abandoned Mine Reclamation Act of 1990, "allow states to address high priority coal sites abandoned after enactment of the 1977 Act."

47 FR 28574 (JUNE 30, 1982). Final rules. Revision of AML Reclamation Program Rules.



These are the eligibility and reclamation objectives and standards currently in effect.

3. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -Final Rule. Section 771.11 General requirements for permits-operations. [Excerpts]

"One commenter questioned whether reclamation of abandoned mines would require a permit. If activities defined as surface coal mining and reclamation operations under the Act and in Section 700.5 are carried out, regardless of previous use or present condition of the land, then a permit under the Act is required."

4. 43 FR 49932 (OCTOBER 25, 1978). Final rules. AML Reclamation Program Provisions. [Excerpts]

These final regulations implemented the AML reclamation program and incorporated the provisions of title IV of the Act.

PART 840 STATE REGULATORY AUTHORITY INSPECTION AND ENFORCEMENT. SECTION 840.11 INSPECTIONS BY STATE REGULATORY AUTHORITY.

1. 56 FR 25836 (JUNE 3, 1991). Notice of suspension. Compliance with court order.

The regulations allowing for a reduced inspection frequency for abandoned sites were suspended as a result of a District Court decision.

2. 53 FR 24872 (JUNE 30, 1988). Final rule. Abandoned sites.

OSM "amended its regulations to define 'abandoned site' to specify the inspection frequency for abandoned sites, and to allow regulatory authorities to refrain from issuing additional [NOVs] or [COs] for abandoned sites under certain limited circumstances."

3. 52 FR 32758 (AUGUST 28, 1987). Proposed rule. Abandoned sites.[Excerpts]

Attached for background.

4. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -Final Rule. [Excerpts]

Attached for background.

ATTACHMENTS

A. DAVID C. CALLAGHAN, DIR., W. VA DEPT. OF NATURAL RESOURCES v EASTERN ASSOCIATED COAL CORP., 351 SE 2d 605 (W Va 1986).



- B. MORCOAL CO. v COMMONWEALTH OF PENNSYLVANIA, DEPT. OF ENVIRONMENTAL RESOURCES, 74 Pa Commw 108, 459 A 2d 1303 (Pa Commonw Ct 1983).
- C. S & M COAL CO. AND JEWELL SMOKELESS COAL CO. v OSM, 79 IBLA 350; IBLA 83-620; IBSMA 82-20 (1984).
- D. CLAYPOOL CONSTRUCTION CO., INC. v OSM, 1 IBSMA 259, IBSMA 79-17 (1979).
- E. CLAYPOOL CONSTRUCTION CO., INC. v OSM, Docket Nos. CH 9-9-R, CH 9-22-R (1979).
- F. 56 FR 57376 (November 8, 1991). Proposed rule. AML Reclamation Fund Reauthorization Implementation.
- G. 47 FR 28574 (JUNE 30, 1982). Final rules. Revision of AML Reclamation Program Rules.
- H. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -Final Rule. Section 771.11 General requirements for permits-operations. [Excerpts]
- I. 43 FR 49932 (OCTOBER 25, 1978). Final rules. AML Reclamation Program Provisions. [Excerpts]
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- L. 52 FR 32758 (AUGUST 28, 1987). Proposed rule. Abandoned sites.[Excerpts]
- M. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -Final Rule. [Excerpts]