



## COALEX STATE INQUIRY REPORT - 231

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**TOPIC:** OWNERSHIP AND CONTROL: "RELATED PARTIES" (Includes COALEX Reports Nos. 131 & 148)

**INQUIRY:** Thompson Bros. Coal, owned by a father and two sons, applied to transfer its permit to Avery Coal. The permit transfer was denied by Pennsylvania Department of Natural Resources (PADER) when post mining discharges were found. Avery treated the discharges then went out of business. PADER negotiated with Thompson Bros. to get the company to continue to treat the discharges. Between the time the negotiations broke down and the issuance of the NOV, the sons sold their shares of the company to the father. Each son formed his own company and applied for a mining permit as a separate entity; both permits were denied on the grounds that the sons were "related parties" under Pennsylvania rules [25 Pa Code 86.37(a)(8)]. Please locate any related case law.

**SEARCH RESULTS:** Research was conducted using Interior's COALEX Library, other material available in LEXIS and existing COALEX State Inquiry Reports. No cases were identified that discussed "related party" as it appears in the Pennsylvania code. Cases, COALEX Reports and Federal Register notices identified rule on related issues, e.g., who is the party responsible for the condition cited in an NOV and CO; reliance on inspection reports and service to indicate who was in control of the daily operations at the time a violation occurred; individual responsibility of officers and directors. The retrieved material is listed below by topic; copies are attached.

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### I. RELIANCE ON INSPECTION REPORTS

**METZLER COAL CO. v OSM; DEAN CHAMBERS, D/B/A DEAN CHAMBERS COAL CO. v OSM, Docket Nos. NX 7-107-R, NX 7-168-R (1988).**

Metzler Coal, Dean Chambers Coal and Farco Mining mined the same area from 1977 through 1979. The ALJ relied on a series of inspection reports compiled by two inspectors to provide "the contemporaneous mining history of Area 19" and as an indication of "who was mining the site".



The NOV, issued for failure to eliminate highwalls, implement/maintain the approved drainage plan and meet effluent limitations, was vacated.

## **II. PARTNERSHIPS**

### **CHRISTINE COAL CO. v OSM; MORAN LEWIS v OSM; HERSHELL PENNINGTON v OSM, Docket Nos. NX 90-23-R, NX 90-41-R, NX 90- 47-R (1991).**

The ALJ found that OSM proved Lewis and Pennington had a relationship with Christine Coal "at the time of the subject violations", therefore, liability could be imposed on them for the company's activities. Pennington was an owner of Christine Coal. Both Pennington and Lewis were listed on MSHA and Dept. of Labor documents. Under an "oral lease", Lewis had a large degree of control over Christine Coal's operations; the payments he received indicated an "ownership interest in the mining company", not just repayment of a debt on the purchase of mining equipment. Lewis was "more than a creditor...he shared the requisite community of interest as a co-owner in Christine Coal."

## **III. RESPONSIBLE PARTIES**

### **W.P. (WP) CORP. v OSM, 119 IBLA 130, IBLA 89-648 (1991).**

The Board upheld the ALJ's ruling that WP "was a party responsible for the violations" referenced in the NOV's. OSM's evidence proved that Sullivan, an officer of WP and other companies involved in mining the site, was overseeing the daily operations.

### **COALEX STATE INQUIRY REPORT - 148, "Contractor liability for violations; ownership and control" (1990).**

Included in this report are state cases and Pennsylvania and Interior administrative decisions that discuss which party owns a company, controls an operation or is responsibility for violations. (The list of decisions which comprise this report are included as part of ATTACHMENTS. See below.)

## **IV. SEVERING RELATIONSHIP TO PERMIT**

### **ROY E. MEHAFFEY v OSM, 117 IBLA 350, IBLA 87-664 (1991).**

Mehaffey, who had filed the application for the mining permit, claimed that he sold his interest in Rich Mountain Coal Co. before it was issued a permit and, therefore, he could not be considered a responsible partner of the permittee for purposes of the NOV and CO. The Board ruled that Mehaffey could be served with the NOV as "one of the parties named as owner or agent of the applicant" since he never formally notified the Tennessee Dept. of Conservation, Div. of Surface Mining that he had severed his relationship to the partnership and the permit.

## **V. INDIVIDUAL LIABILITY OF CORPORATE OFFICER, DIRECTOR OR AGENT**



**COALEX STATE INQUIRY REPORT - 131, "Individual liability of corporate officer, director or agent" (1989).**

The subject of this report is the "participation theory" as a viable alternative to "piercing the corporate veil" when a regulatory agency attempts to hold a corporate officer, director or agent individually or personally liable for reclaiming a mine site or for civil penalties assessed against the corporation for its violations of SMCRA laws. (See ATTACHMENTS for the list of included decisions.)

**VI. PREAMBLES TO FEDERAL REGULATIONS**

**53 FR 38868 (OCTOBER 3, 1988). Final rule. Requirements for permit approval; ownership and control.**

This rule added the definitions of the terms "owns or controls" and "owned or controlled" to 30 CFR 773.5 and revised the scope of review of a permit applicant's compliance record prior to the issuance of a new permit. These revisions were aimed at providing OSM with effective tools to ensure that all violations are abated.

In the past, some operators evaded the requirements of the Act and obtained a new permit while past violations remained unabated or money remained unpaid. In some instances, they formed new corporations, partnerships or other business entities, and through them applied for permits for new operations without correcting the violations or paying the fees and penalties resulting from old operations. If allowed to persist, these practices could seriously weaken enforcement of the Act and impede mine site reclamation. This could result in an unfair competitive advantage to operators who fail to comply with the requirements of the law and thereby lower their coal production costs.

**54 FR 8982 (MARCH 2, 1989). Final rule. Requirements for permit approval; ownership and control information; reporting of violations.**

The revised rules required the permit applicant to submit more detailed information on persons who own or control it and changed the requirements for reporting violations. Permit application requirements were conformed with changes in the permitting process to insure that permits were issued based on current compliance review information.

**56 FR 45780 (SEPTEMBER 6, 1991). Proposed rules. Use of AVS; standards and procedures for ownership and control determinations.**

These proposed regulations would establish the procedures, standards required to use the Applicant/Violator System (AVS), type of proof required to challenge ownership or control links and disprove violations, etc.

**ATTACHMENTS**



- A. 25 Pa Code Sec. 86.37 (1991). Criteria for permit approval or denial.
- B. METZLER COAL CO. v OSM; DEAN CHAMBERS, D/B/A DEAN CHAMBERS COAL CO. v OSM, Docket Nos. NX 7-107-R, NX 7-168-R (1988).
- C. CHRISTINE COAL CO. v OSM; MORAN LEWIS v OSM; HERSHELL PENNINGTON v OSM, Docket Nos. NX 90-23-R, NX 90-41-R, NX 90- 47-R (1991).
- D. W.P. (WP) CORP. v OSM, 119 IBLA 130, IBLA 89-648 (1991).
- E. COALEX STATE INQUIRY REPORT - 148, "Contractor liability for violations; ownership and control" (1990).
  1. WILLIAM J. MCINTIRE COAL CO. v COMMONWEALTH OF PA., DEPT. OF NATURAL RESOURCES (DER), Docket No. 83-180-M, slip op (July 7, 1986).
  2. CONCERNED CITIZENS OF JEFFERSON TOWNSHIP v COMMONWEALTH OF PA., DEPT. OF ENVIRONMENTAL RESOURCES AND GRINDSTONE COAL CO., Docket No 83-269-G, slip op (March 5, 1986).
  3. KEYSTONE MINING COMPANY, INC. v COMMONWEALTH OF PA., DEPT. OF ENVIRONMENTAL RESOURCES, 1985 EHB 542, Docket No. 83-241-G (June 19, 1985).
  4. PARKER SAND AND GRAVEL v COMMONWEALTH OF PA., DEPT. OF ENVIRONMENTAL RESOURCES, 1893 EHB 557, Docket No. 83-134-G (September 9, 1983).
  5. JANE BURNS, et al. v GEORGE DIALS, COMMISSIONER, 378 SE 2d 665 (W Va 1989).
  6. CLARK COAL CO. v OSM, 102 IBLA 93, IBLA 86-627, 87-348 (1988).
  7.
    - a. SHELBIANA CONSTRUCTION CO. v OSM, SAMMY GOFF v OSM, 102 IBLA 19, IBLA 85-88, IBLA 87-307 (1988).
    - b. SAMMY GOFF v OSM, Docket Nos. NX 5-49-R, NX 5-102-R (1987).
  8.
    - a. TENNESSEE CONSOLIDATE COAL CO. v OSM, 99 IBLA 274, IBLA 85-351 (1987).
    - b. TENNESSEE CONSOLIDATED COAL CO. AND WALNUT COAL COMPANY, INC. v OSM, Docket Nos. NX 1-87-R, NX 1-147-P (1985).
  9. MCWANE COAL CO., INC., 95 IBLA 1, IBLA 85-621 (1986).
  10. S & M COAL CO. & JEWELL SMOKELESS COAL CO. v OSM, 79 IBLA 350, IBLA 83-620, 82-20 (1984).
  11. KIMBERLY SUE COAL CO., INC., 74 IBLA 170, IBLA 83-619, 82-19 (1983).
  12.
    - a. VIRGINIA FUELS, INC., 4 IBSMA 185, IBSMA 82-18 (1982).
    - b. MOLE COAL CO., INC. AND VIRGINIA FUELS, INC. v OSM, Docket Nos. CH 2-21-R, CH 2-33-R (1982).
  13. PIERCE COAL AND CONSTRUCTION, INC., 3 IBSMA 350, IBSMA 81-33 (1981).
  14.
    - a. WILSON FARMS COAL CO., 2 IBSMA 118, IBSMA 80-33 (1980).
    - b. WILSON FARMS COAL CO. v OSM, Docket No. NX 9-88-R (1980).



15. H.C. BOSTIC COAL CO., INC. AND WAYNE BOSTIC v OSM, Docket Nos. NX 88-8-R, NX 88-33-R, NX 88-34-R, NX 88-38-R, NX 88-46-R (1988).
16. . ROY E. MEHAFFEY v OSM, Docket No. NX 7-35-R (1987).
17. BERNOS COAL CO. AND EXCELLO LAND MINERAL CORP. v OSM, Docket Nos. NX 1-118-R, NX 3-10-P (1985).
18. GRUNDY MINING CO. AND TENNESSEE CONSOLIDATED COAL CO. v OSM, Docket No. NX 1-146-P (1985).
19. Q & G COAL CO., INC. v OSM, Docket No. CH 1-200-P (1982).
20. L & R MINING CO., INC. v OSM, Docket No. CH 1-222-P (1982).
21. BLACK FOX MINING AND DEVELOPMENT CORP. v COMMONWEALTH OF PA., DEPT. OF ENVIRONMENTAL RESOURCES, 1985 EHB 172, Docket No. 84-114-G (April 29, 1985).
22. DRESSLER COAL CORP. v DIVISION OF RECLAMATION, slip op (Ohio Ct App 1984).
23. US v RAPOCA ENERGY CO., 613 F Supp 1161 (D C VA 1985).
24. US v DIX FORK COAL CO., 692 F2d 436, 13 ELR 20244 (6th Cir 1982).
25. INTERNATIONAL UNION v FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION, 840 F2d 77 (D C Cir 1988).
26. ANNOTATION. "Who is 'operator' of coal mine within the meaning of the Federal Coal Mine Safety and Health Act (30 USCS Sec. 802(d))", 54 ALR Fed 792 (1989).
27. BERNOS COAL CO. AND EXCELLO LAND AND MINERAL CORP. v OSM, 97 IBLA 285, IBLA 85-845 (1987).
28. BERNOS COAL CO. AND EXCELLO LAND AND MINERAL CORP. v LUJAN, 739 F Supp 1133 (ED Tenn 1990).
- F. ROY E. MEHAFFEY v OSM, 117 IBLA 350, IBLA 87-664 (1991).
- G. COALEX STATE INQUIRY REPORT - 131, "Individual liability of corporate officer, director or agent" (1989).
  - A. Ky. Rev. Stat. Ann. Sec. 350.990(9) (Michie/Bobbs-Merrill 1988).
  - B. 25 Pa. Code Sec. 86.1 (1982). Protection of Natural Resources. Definitions.
  - C. Policy Statement of the Dept. of Environmental Resources: Civil Penalty Program (1985). Introduction.
  - D. RUDOLPH WILLIAMS (LAKE COAL CO., INC.) v OSM, Docket No. NX 5-12-P (Sept. 23, 1986).
  - E. BERT BANKS (LAKE COAL CO.) v OSM, Docket No. NX 5-14-P (Oct. 31, 1986).
  - F. GRUNDY MINING CO. AND TENNESSEE CONSOLIDATED COAL CO. v OSM, DOCKET NO. NX 1-146-P (JUNE 14, 1985).
  - G. BERNOS COAL CO. AND EXCELLO LAND MINERAL CORP. v OSM, Docket Nos. NX 1-118-R and NX 3-10-P (July 26, 1985).
  - H. U.S. v DIX FORK COAL CO., 692 F.2d 436 (6th Cir., 1982).
  - I. WILFORD NIECE v OSM, Docket No. NX 5-2-P (Oct. 27, 1986).
  - J. COLLEGE WATERCOLOR GROUP, INC. v WILLIAM H. NEWBAUER, INC. AND WILLIAM H. NEWBAUER, 468 Pa. 103, 360 A.2d 200 (Pa., 1976).



- K. ZUBIK v ZUBIK, 384 F.2d 267 (3rd Cir., 1967), cert. denied, 390 U.S. 988 (1968).
  - L. CHESTER-CAMBRIDGE BANK AND TRUST CO. v RHODES, 346 Pa. 427, 31 A.2d 128 (Pa., 1943).
  - M. DONSCO, INC. v CASPER CORP., 587 F.2d 602 (3rd Cir., 1978).
  - N. WICKS v MILZOCO BUILDERS, INC., 503 Pa 614, 470 A.2d 86 (Pa., 1983).
  - O. U.S. v PARK, 421 U.S. 658 (1975).
  - P. LUCKY STRIKE COAL CO. AND LOUIS J. BELTRAMI v COMMONWEALTH OF PA., DEPT. OF ENVIRONMENTAL RESOURCES, 119 Pa. Commw. 440, 547 A.2d 447 (Pa. Commw. Ct., 1988).
  - Q. DER v LUCKY STRIKE COAL CO. AND LOUIS J. BELTRAMI, EHB Docket No. 80-211-CP-W, slip op. (Pa. EHB, 1987).
  - R. JOHN E. KAITES AND JOHNSTOWN COAL AND COKE, INC. v DER, 108 Pa. Commw. 269, 529 A.2d 1148 (Pa. Commw. Ct., 1987).
  - S. JOHN E. KAITES et al. v DER, Docket No. 84-104-G, slip op. (Pa. EHB, 1986).
  - T. JOHN E. KAITES et al. v DER, Docket No. 84-104-G, 1985 E.H.B. 625 (1985).
- H. 53 FR 38868 (OCTOBER 3, 1988). Final rule. Requirements for permit approval; ownership and control.
- I. 54 FR 8982 (MARCH 2, 1989). Final rule. Requirements for permit approval; ownership and control information; reporting of violations.
- J. 56 FR 45780 (SEPTEMBER 6, 1991). Proposed rules. Use of AVS; standards and procedures for ownership and control determinations.