



## COALEX STATE INQUIRY REPORT - 232

November 1992

Tom Roan, Esquire  
Attorney General's Office  
123 Capitol Building  
Cheyenne, Wyoming 82002

**TOPIC:** DEFINITION OF "OPERATOR" (Continuation of Report 224)

**INQUIRY:** A permit holder minimally disturbed the permitted area; no minerals were removed. Is this permit holder considered an "operator", as defined in SMCRA and the regulations, who is responsible for reclamation? Please locate any materials on this issue.

**SEARCH RESULTS:** Research was conducted using the COALEX Library and the other materials available in LEXIS. No materials were identified that address the specific fact situation above. The Interior administrative decisions and Federal Register notice listed below have fact situations with some elements in common with the inquiry situation and discuss related issues. Some decisions have been summarized, for others, a relevant excerpt has been included. Copies of all materials are attached.

---

### ADMINISTRATIVE DECISIONS OF THE DEPT. OF THE INTERIOR

#### **RUSSELL PRATER LAND CO. v OSM, 3 IBSMA 124, IBSMA 80-94 (1981).**

"Proof of the intention to mine coal and of a disturbance is sufficient to establish OSM's authority to regulate a site."

Also see these attached decisions that cite Russell Prater: C & N COAL CO., INC. v OSM, 103 IBLA 48, IBLA 86-166 (1988) and AUBREY WATKINS v OSM, Docket No. NX 0-225-R (1983).

#### **SQUIRE BAKER, 1 IBSMA 279, IBSMA 79-26 (1979).**

"Where excavation work has taken place and coal exposed, but no coal removed and the landowner's intent is to create homesites and not to remove coal unless permission to do so is received from the state, the Office of Surface Mining Reclamation and Enforcement lacks jurisdiction over the land."

#### **B & H COAL COMPANY, INC. v OSM, Docket No. NX 89-48-P (1991). Consent Decision.**



Section IV. Terms of Agreement: "OSM's theory of liability against Petitioner is that Petitioner, as the permittee, is an appropriate responsible party for the reclamation of the site."

**COOK AND SON, INC. AND STONE v OSM, Docket Nos. NX 90-35-R, NX 90-37-R, NX 90-42 R, NX 90-44-R (1992).**

The ALJ found that four sites operated by the applicants exceeded the two acre limitation because of relatedness. In discussing its rationale for ruling that neither the state nor the federal statute of limitations applied to this case, the ALJ stated:

"[28 USC] Section 2462 imposes a five year time limit for actions to enforce 'any civil fine, penalty or forfeiture.' This statute is of little value to Applicants Estill Stone and Cook and Son because the present enforcement action does not involve a civil fine, penalty or forfeiture. The purpose of this review is to determine the Applicant's potential responsibility for reclaiming the mine sites to permanent program standards. Reclamation responsibilities are an incident of being granted a proper coal mining permit. The right to mine coal is conversely conditioned on fulfillment of reclamation responsibilities. In no way are these responsibilities punitive in nature. They are simply the minimum requirements are not met will the government proceed to the next step of assessing penalties."

**HERALD v OSM, 123 IBLA 334, IBLA 90-153 (1992).**

"OSM argues that as the permittee for the site, appellant is responsible for any violations. OSM notes that under section 521(a)(5) of SMCRA, 30 USC sec. 1271(a)(5) (1988), notices of violation and CO's issued pursuant to that section are to be served on the 'permittee' or his agent.... As a general rule the permittee is a proper party to be cited...for a violation of the Act, regardless of the fact that the coal was removed by a third party."

The Board reversed the ALJ's ruling, finding that the appellant did not control the operations on sites OSM contended were related and affected acreage in excess of two acres.

**MCWANE COAL CO., INC., 95 IBLA 1, IBLA 85-621 (1986).**

"'Operator'. Identification of the 'operator' responsible for payment of reclamation fees...does not turn solely upon a literal interpretation of the phrase 'removes or intends to remove' coal...but involves consideration of business realities."

**CONSOLIDATED COAL CO. V OSM, Docket Nos. CH 89-1-P, CH 89-2-P (1990).**

"[T]he fact that [the West Virginia Department of Natural Resources] had not previously issued a permit to petitioner for that minesite did not relieve petitioner of its continuing reclamation responsibility under Federal Law."

**CITIZENS FOR THE PRESERVATION OF KNOX COUNTY, 81 IBLA 209, IBLA 83-631, IBLA 83-2 (1984).**



The mine owner who had mined coal under an interim program permit but had ceased all mining operations prior to the approval of a state's permanent program was not required to obtain a permanent program permit to conduct only reclamation operations. The mine owner, Midland Coal Company, was not an "operator" as defined by SMCRA section 701(13). Since Midland was not required to obtain a permanent program permit, its reclamation operations continued to be subject to the interim program reclamation requirements.

## STATE CASES

**CALL v G M SADER EXCAVATING & PAVING, INC., 68 Ohio App 2d 41, 426 NE 2d 798 (Ohio Ct App 1980).**

"The term 'surface mining', as used in R.C. 1514.01(A), includes mining methods which do not necessarily involve digging pits into the earth; hence, 'surface mining' includes the removal of sand knobs from the surface of the earth."

**INGRAM COAL CO. V COMMONWEALTH OF PA, DEPT. OF ENVIRONMENTAL RESOURCES, 1990 Pa Envirn LEXIS 49 (1990).**

The liability of an operator under Section 315(a) of Pennsylvania's Clean Streams Law "is predicated not upon causation [of acid mine drainage], but upon the operator's relationship with the land it mines."

## FEDERAL REGISTER NOTICES

**42 FR 62639 (DECEMBER 13, 1977). Final rules. [Excerpt]**

"Comments were received suggesting that the attribution to the permittee of the actions of all persons working on the mine site was improper. They were rejected. The Act, and indeed State laws, makes the permittee liable for the conduct of the mining and compliance with the law. Anyone working on the mine is there for the benefit of or at the sufferance of the permittee."

## ATTACHMENTS

- A. RUSSELL PRATER LAND CO. v OSM, 3 IBSMA 124, IBSMA 80-94 (1981).
- B. C & N COAL CO., INC. v OSM, 103 IBLA 48, IBLA 86-166 (1988).
- C. AUBREY WATKINS v OSM, Docket No. NX 0-225-R (1983).
- D. SQUIRE BAKER, 1 IBSMA 279, IBSMA 79-26 (1979).
- E. B & H COAL COMPANY, INC. v OSM, Docket No. NX 89-48-P (1991).
- F. COOK AND SON, INC. AND STONE v OSM, Docket Nos. NX 90-35-R, NX 90-37-R, NX 90-42 R, NX 90-44-R (1992).
- G. HERALD v OSM, 123 IBLA 334, IBLA 90-153 (1992).
- H. MCWANE COAL CO., Inc., 95 IBLA 1, IBLA 85-621 (1986).
- I. CONSOLIDATED COAL CO. v OSM, Docket Nos. CH 89-1-P, CH 89-2-P (1990).



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

- J. CITIZENS FOR THE PRESERVATION OF KNOX COUNTY, 81 IBLA 209, IBLA 83-631, IBLA 83-2 (1984).
- K. CALL v G M SADER EXCAVATING & PAVING, INC., 68 Ohio App 2d 41, 426 NE 2d 798 (Ohio Ct App 1980).
- L. INGRAM COAL CO. v COMMONWEALTH OF PA, DEPT. OF ENVIRONMENTAL RESOURCES, 1990 Pa Envirn LEXIS 49 (1990).
- M. 42 FR 62639 (DECEMBER 13, 1977). Final rules. [Excerpt]