



## COALEX STATE INQUIRY REPORT - 235

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**TOPIC:** DEFINITION OF "MATERIAL DAMAGE" RE: HYDROLOGIC BALANCE  
OUTSIDE THE PERMIT AREA

**INQUIRY:** 30 CFR 780.21 (g) and (h) talk about "material damage" to the hydrologic balance outside the permit area. Are there cases that define "material damage", specify remedial obligations or substantiate a basis for denial of material damage?

**SEARCH RESULTS:** Using COALEX and LEXIS, administrative decisions, legislative history and regulatory history material were identified addressing relevant aspects of the "material damage" issue. Some of the material identified discusses "damage" in more general terms - the impacts of mining both on and off the permit area. Copies of the information listed below are attached.

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### REMEDIAL OBLIGATIONS

**SHAMROCK COAL CO. v OSM, Docket Nos. NX 89-66-R, NX 89-67-R (1990).**

The terms of this Consent Decision include Shamrock's agreement "to submit a permit modification in which it will undertake to comply with the regulation to identify all the probable hydrologic consequences" and "to conduct a hydrologic monitoring program...to be incorporated in a supplement" to Shamrock's permit. The addition of the hydrologic monitoring program was in response to OSM's "allegation of failure to minimize damage to the hydrologic balance."

### APPLICATION REVIEW/PERMIT CONDITIONS

**JOHN J. BAGNATO v COMMONWEALTH OF PENNSYLVANIA, DEPT. OF ENVIRONMENTAL RESOURCES (DER) AND MARQUISE MINING CORP., PERMITTEE, 1992 Pa Envirn LEXIS 20, Pa EHB Docket No. 90-358-MJ (1992).**



Bagnato asserted that DER failed to consider the cumulative impact of all mining in the area, the probable impact of the Marquise mining operation and its effect on hydrology and water availability. The Pennsylvania Environmental Hearing Board (the Board) found that DER "had considered all of the parameters of law" in evaluating the probable hydrologic consequences of Marquise's mining operation, including review of the permit application, preparation on a Mine Site Assessment, "an study of the hydrologic regime of the area", etc., eliminating certain areas from the permit area because of the probability of acid mine drainage. DER was not required to follow all aspects of its Program Guidance Manual; its use was for guidance purposes only.

**J.C. BRUSH v DER AND RAMPSIDE COLLIERIES, INC., PERMITTEE, 1990 Pa Envirn LEXIS 181, Pa EHB Docket No. 87-492-MJ (1990).**

The Board ruled that "An assessment of the probable cumulative impact of all coal mining in the area on the hydrologic balance was made by DER, and the activities proposed under the application have been designed to prevent damage to the hydrologic balance within and outside the permit area". Brush failed to prove "that the permit in question was improperly issued or that DER failed to consider the conditions of the area in granting the permit." DER's testimony demonstrated that Rampside's application met the requirements of the Pennsylvania Code.

**RITH ENERGY, INC. v OSM, 111 IBLA 239, IBLA 89-393 (1989).**

"HEADNOTES: "OSMRE properly denies an application for permit revision when the applicant does not provide sufficient operational data to demonstrate that reclamation...can be accomplished under the permit plan, or that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area."

**DONALD B. PETERSON AND MRS. B.C. PETERSON v OSM; FRANK STEBLY v OSM, Docket Nos. DV 6-2-PR, DV 6-3-PR (1986).**

The ALJ ruled that Peterson failed to provide sufficient evidence to prove that the hydrologic data relating to Pacific Coast Coal Co.'s application was incomplete or inaccurate or that OSM had not considered possible hydrologic impacts on the Petersons' well. Stebly's complaint was dismissed for lack of standing.

**FRANK STEBLY v OSM, 109 IBLA 242, IBLA 87-782 (1989).**

"HEADNOTES: A determination that approval of a permit for a coal preparation plant will not have a significant impact on groundwater, based on an environmental assessment, will be affirmed on appeal if the record establishes that a careful review of environmental problems has been undertaken; relevant environmental concerns have been identified; and the final determination is reasonable in light of the environmental analysis."

**PEABODY COAL CO. v OSM, 123 IBLA 195, IBLA 92-286 (1992).**



Despite OSM's reevaluation of the CHIA and the conclusion that Peabody's mining operation would not cause material damage to the hydrologic balance outside the permit area nor would the impoundments have a negative impact on downstream users, OSM issued a special permit condition requiring the dewatering of the impoundments. The Board ruled that the permit condition was invalid: OSM's principal reason for imposing the condition was to protect the water rights claims of the downstream users, claims which were being adjudicated in the state courts.

### **MINIMIZE DISTURBANCE TO HYDROLOGIC BALANCE**

**MUSKINGUM MINING CO. v OSM, IBLA 90-171, Docket No. CH 89-1-R (1991).  
MUSKINGUM MINING CO. v OSM, DELBERT LACY, INTERVENOR, 113 IBLA 352,  
IBLA 90-171 (1990). DELBERT R. LACY v MUSKINGUM MINING CO., INC. AND  
OHIO DEPT. OF NATURAL RESOURCES, DIV. OF RECLAMATION, 1990 Ohio App  
LEXIS 287, Case No CA 89-15 (Ohio Ct App 1990).**

The ALJ affirmed the issuance of the NOV, finding that OSM presented "ample evidence" to prove that Muskingum "failed to conduct mining and reclamation operations so as to minimize disturbance to the prevailing hydrologic balance both in the permit area and in adjacent areas [Lacy's property]".

Earlier decisions ruled on collateral estoppel and the Ohio Reclamation Board of Review's finding that Muskingum's operation caused offsite damage but that the damage was "non-remedial".

**J & M COAL CO. v OSM, 122 IBLA 90, IBLA 89-504 (1992).**

The Board found the conditions at the related mine sites threatened the prevailing hydrologic balance. J & M performed remedial action to prevent surface runoff from flowing offsite. Due to the topography, OSM allowed the use of straw bales and filter fabric fences as an alternative to the construction of sedimentation ponds.

**BANNER ENERGY CORP. OF INDIANA v OSM, Docket No. NX 4-5-P (1984).**

The ALJ affirmed the NOV which was issued because of toxic mine drainage disturbing the hydrologic balance on and off the mine site. Although the water quality had improved since the last study, taken after the end of previous shaft mining operations, Banner was required to meet the specific water quality specifications of SMCRA.

**ALPINE CONSTRUCTION CO. v OSM, 114 IBLA 232, IBLA 88-527 (1990).**

"Alpine's efforts to abate the violation, no matter what technology was used, were not enough to correct the cited conditions and did not relieve the company of its continuing responsibility under SMCRA to minimize disturbances to the prevailing hydrologic balance."



**See also:**

**BROOKS RUN COAL CO. v OSM**, Docket Nos. CH 0-362-R, CH 1-23-P (1981).

**AVANTI MINING CO., INC. v OSM**, Docket No. CH 0-344-P (1981). **AVANTI MINING CO., INC. v OSM**, 4 IBSMA 101, IBSMA 81-62 (1982).

**AMAX COAL CO. v OSM**, Docket Nos. IN 1-15-P, IN 1-28-P (1983). **AMAX COAL CO. v OSM**, Docket Nos. CH 0-3-6-P (1984),./

**ALPINE CONSTRUCTION CORP. v OSM**, 101 IBLA 128, IBLA 85-847 (1988).

### **LEGISLATIVE HISTORY**

Several excerpts from congressional reports and other legislative history materials that discuss "material damage", hydrologic impacts, House-Senate compromises on language and related issues are attached. The quotation included below does not include the phrase "material damage", however, it provides a good overview of Congress' concern about the impact of mining on an area.

**H.R. REP. No. 218, 95th Cong., 1st Sess. 109 (H.R.2 April 22, 1977). Elements of a mine regulation program; Mining impacts on hydrologic balance.**

"Surface coal mining operations can have a significant impact on the hydrologic balance of the mined area and also its environs. The hydrologic balance is the equilibrium established between the ground and surface waters of an area between the recharge and discharge of water to and from that system. Some of the measurable indicators of such an equilibrium are: Flow patterns of ground water within aquifers; the quantity of surface water as measured by the volume rate and duration of flow in streams; the erosion, transport, and deposition of sediment by surface runoff and stream flow; the quality of both ground and surface water including both suspended and dissolved materials; and the interrelationship between ground and surface waters. The hydrologic balance of an area is a complex relationship maintained by a number of factors. The impacts of mining on any one of these factors can trigger changes throughout the system.

"The total prevention of adverse hydrologic effects from mining is impossible and thus the bill sets attainable standards to protect the hydrologic balance if impacted areas within the limits of feasibility. For most critical areas uncertain fragile hydrologic settings, the bill sets standards that are imperative to begin to assure that adverse impacts to the hydrologic balance are not irreparable. It is not intended by such minimum standards that these measures will be considered wholly sufficient to meet the objectives of 'minimizing disturbance to the prevailing hydrologic balance.' It is anticipated that the State regulatory authority will strengthen such provisions and require whatever additional measures are necessary to meet local conditions."

**See also:**



**H.R. REP. No 189**, 94th Cong., 1st Sess. 78 (Major Provisions May 2, 1975).

**H.R. REP. No. 218**, 95th Cong., 1st Sess. pp 65 (Major Modifications) & 172 (Section-by-Section Analysis) (April 22, 1977).

**H.R. REP. No. 493**, 95th Cong., 1st Sess. 104 (Overview of Conference Decisions July 12, 1977).

**123 CONG. REC. H7582 (Daily ed. July 21, 1977)**. Implementation of Public Law 95-87: Hearings before the Senate Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources, 95th Cong., 2nd Sess. 39 (April 24, 1978) (statement of Walter N. Heine, Director, OSM).

### **FEDERAL REGISTER PREAMBLES**

These Federal Register preambles are attached for background:

**44 FR 14902 (MARCH 13, 1979)**. Permanent Program Final Preamble -- Final Rule. Excerpts from:

1. Section 701.5 Definitions
2. Part 785 Permits for special categories of mining
3. Part 786 Approval or disapproval of permit applications
4. Part 816 Performance standards
5. Part 822 Alluvial valley floors

**48 FR 29802 (JUNE 28, 1983)**. Final rule. Alluvial valley floors.

**48 FR 43956 (SEPTEMBER 26, 1983)**. Final rules. Hydrology permitting and performance standards.

**52 FR 4860 (FEBRUARY 17, 1987)**. Final rule. Subsidence control. [Excerpt]

**53 FR 36394 (SEPTEMBER 19, 1988)**. Final rule. Probable hydrologic consequences determination.

**54 FR 9724 (MARCH 7, 1989)**. Final rule. Requirements for permits for special categories of mining.

### **ATTACHMENTS**

- A. SHAMROCK COAL CO. v OSM, Docket Nos. NX 89-66-R, NX 89-67-R (1990).
- B. JOHN J. BAGNATO v COMMONWEALTH OF PENNSYLVANIA, DEPT. OF ENVIRONMENTAL RESOURCES (DER) AND MARQUISE MINING CORP., PERMITTEE, 1992 Pa Envirn LEXIS 20, Pa EHB Docket No. 90-358-MJ (1992).



- C. J.C. BRUSH v DER AND RAMPSIDE COLLIERIES, INC., PERMITTEE, 1990 Pa Envirn LEXIS 181, Pa EHB Docket No. 87-492-MJ (1990).
- D. RITH ENERGY, INC. v OSM, 111 IBLA 239, IBLA 89-393 (1989).
- E. DONALD B. PETERSON AND MRS. B.C. PETERSON v OSM; FRANK STEBLY v OSM, Docket Nos. DV 6-2-PR, DV 6-3-PR (1986).
- F. FRANK STEBLY v OSM, 109 IBLA 242, IBLA 87-782 (1989).
- G. PEABODY COAL CO. v OSM, 123 IBLA 195, IBLA 92-286 (1992).
- H. MUSKINGUM MINING CO. v OSM, IBLA 90-171, Docket No. CH 89-1-R (1991).
- I. MUSKINGUM MINING CO. v OSM, DELBERT LACY, INTERVENOR, 113 IBLA 352, IBLA 90-171 (1990).
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- O. AVANTI MINING CO., INC. v OSM, Docket No. CH 0-344-P (1981).
- P. AVANTI MINING CO., INC. v OSM, 4 IBSMA 101, IBSMA 81-62 (1982).
- Q. AMAX COAL CO. v OSM, Docket Nos. IN 1-15-P, IN 1-28-P (1983).
- R. AMAX COAL CO. v OSM, Docket Nos. CH 0-3-6-P (1984).
- S. ALPINE CONSTRUCTION CORP. v OSM, 101 IBLA 128, IBLA 85-847 (1988).
- T. H.R. REP. No. 218, 95th Cong., 1st Sess. 109 (H.R.2 April 22, 1977). Elements of a mine regulation program; Mining impacts on hydrologic balance.
- U. H.R. REP. No 189, 94th Cong., 1st Sess. 78 (Major Provisions May 2, 1975).
- V. H.R. REP. No. 218, 95th Cong., 1st Sess. pp 65 (Major Modifications) & 172 (Section-by-Section Analysis) (April 22, 1977).
- W. H.R. REP. No. 493, 95th Cong., 1st Sess 104 (Overview of Conference Decisions July 12, 1977).
- X. 123 CONG. REC. H7582 (Daily ed. July 21, 1977).
- Y. Implementation of Public Law 95-87: HEARINGS before the Senate Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources, 95th Cong., 2nd Sess. 39 (April 24, 1978) (statement of Walter N. Heine, Director, OSM).
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OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
U.S. Department of the Interior

- DD. 53 FR 36394 (SEPTEMBER 19, 1988). Final rule. Probable hydrologic consequences determination.
- EE.54 FR 9724 (MARCH 7, 1989). Final rule. Requirements for permits for special categories of mining.