



COALEX STATE COMPARISON REPORT - 241

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TOPIC: REPLACEMENT OF WATER SUPPLY - PAYMENT OF ONGOING COSTS

INQUIRY: An operator replaced the water supply of a landowner, which was cut off during mining, by hooking up with the public water system, installing a pump and filling the landowner's pond. The landowner is now incurring monthly water and electric bills (to run the pump) of \$200. Please locate any information that discusses who is responsible for paying these types of ongoing water replacement costs.

SEARCH RESULTS: Using LEXIS, an OSM Directive, two state cases and a number of Pennsylvania Environmental Hearing Board decisions were identified that discuss responsibility for water supply replacement costs. These materials plus some additional background materials are listed below. Copies are attached.

DIRECTIVES

CITIZENS ORGANIZED AGAINST LONGWALLING v DIV. OF RECLAMATION, OHIO DEPT. OF NATURAL RESOURCES; SOUTHERN OHIO COAL, INTERVENOR, 535 NE 2d 687 (Ohio Ct App 1987). CITIZENS ORGANIZED AGAINST LONGWALLING, et al. V SOUTHERN OHIO COAL (SOCCO), 1989 Ohio App LEXIS 2262 (Ohio Ct App 1989).

SYLLABUS: "4. In application for a permit for coal mining, a plan for replacement of water supplies is inadequate if it proposes piped water as a replacement without proposing that the mine operator pay the water bills, or if it proposes vague 'negotiations' with landowners to replace damaged water supplies."

The court vacated the Ohio Reclamation Board of Review's (RBR) decision affirming the approval of SOCCO's permit and remanded the case for further proceedings.



In the later decision, the court vacated RBR's decision affirming SOCCO's revised water replacement plan. The court found the new plan inadequate and remanded the case, again.

GIOIA COAL COMPANY v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES, EHB Docket No. 84-211-G, 1986 Pa Envirn LEXIS 157 (1986).

The EHB ruled that the alternate water supply provided by the mine operator to replace a water supply shared by two parties is not considered adequate if one party's supply can be shut off by the unilateral action of the second party. However, a replacement water supply that is reliable and does not require "excessive operating and maintenance costs" meets the statutory requirements. "The legislature in enacting 52 P.S. Sec. 1396.4b(f) did not require that a replacement water supply require no more maintenance than the original source."

BUFFY AND LANDIS v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES (DER) AND PBS COALS, INC., EHB Docket No. 90-284-E, 1990 Pa Envirn LEXIS 185 (1990).

SYNOPSIS: "In approving the water replacement proposal made by PBS Coals, Inc. ("PBS"), DER's staff was shown to have failed to follow DER's own written policy on evaluating proposed replacement supplies as to issues of quantity of water and water supply replacement costs."

CONCLUSIONS OF LAW: "7. A proposal for a replacement water supply cannot be considered as an alternative source of water adequate in quantity and quality unless it demonstrates that either the O&M costs for the proposed replacement source are substantially the same as the existing system and the existing supply's users agree to shoulder these costs or that the miner has included in its proposal a satisfactory method for compensating the users of the existing supply for the replacement supply's increased costs."

CARLSON MINING v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES, EHB Docket No. 91-547-E, 1992 Pa Envirn LEXIS 161 (1992).

SYNOPSIS: "DER is authorized to require an operator to permanently provide for increased costs of operating and maintaining an affected homeowner's replacement water supply where these costs are 'excessive', i.e., more than marginally higher, when compared with the supply system. See Gioia Coal Company v DER, 1896 EHB 82; Buffy and Landis v DER, et al., 1990 EHB 1665. As the five-fold increase in operating and maintenance costs to the affected homeowner in this appeal is excessive, DER properly found the replacement supply did not comply with Sec. 4.2(f) and required the operator to provide for the homeowner's increased costs on a permanent basis...the matter is remanded to DER to address the funding mechanism...."



AMBROSIA COAL v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES, EHB Docket No. 85-078-W, 1986 Pa Envirn LEXIS 129 (1986).

SYNOPSIS: "DER must prove, first of all, that appellant's mining operations affected the original well, and then that the replacement well does not meet the statutory standards of being 'adequate in quality and quantity for the purposes served by the supply.' Even if DER establishes both of these elements, the mining operator is not perpetually responsible for the replacement supply under a strict liability standard."

OSM DIRECTIVE, Subject No. REG-27, Transmittal No. 474, "Water Replacement" (Issued: November 19, 1988).

Policy-Procedure: 3.b.(3) Cost of Replacement Water Supplies.

"(c) Operation and maintenance costs associated with the replacement water supply shall be borne by the landowner, unless such costs are higher than those associated with the premining supply. In such cases, the permittee shall make provision to offset the increased costs."

The following materials are enclosed for background:

44 FR 14902 (3/13/79). Permanent Program Final Preamble -- Final Rule. 816.54 Hydrologic balance: Water rights and replacement. [Excerpts]

48 FR 43956 (9/26/83). Final rules. Geology permitting. 816.41(h) Water rights and replacement. [Excerpts]

COALEX STATE INQUIRY REPORT - 203, "Water supply and replacement for underground mining (Includes Reports 35 & 93)" (1992).

COALEX STATE COMPARISON REPORT - 210, "Subsidence: compensation for damaged structures and water supply" (1992).

ATTACHMENTS

1. CITIZENS ORGANIZED AGAINST LONGWALLING v DIV. OF RECLAMATION, OHIO DEPT. OF NATURAL RESOURCES; SOUTHERN OHIO COAL, INTERVENOR, 535 NE 2d 687 (Ohio Ct App 1987).
2. CITIZENS ORGANIZED AGAINST LONGWALLING, et al. v SOUTHERN OHIO COAL (SOCCO), 1989 Ohio App LEXIS 2262 (Ohio Ct App 1989).
3. GIOIA COAL COMPANY v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES, EHB Docket No. 84-211-G, 1986 Pa Envirn LEXIS 157 (1986).



4. BUFFY AND LANDIS v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES (DER) AND PBS COALS, INC., EHB Docket No. 90-284-E, 1990 Pa Envirn LEXIS 185 (1990).
5. . CARLSON MINING v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES, EHB Docket No. 91-547-E, 1992 Pa Envirn LEXIS 161 (1992).
6. AMBROSIA COAL v COMMONWEALTH OF PENN. DEPT. OF ENVIRONMENTAL RESOURCES, EHB Docket No. 85-078-W, 1986 Pa Envirn LEXIS 129 (1986).
7. OSM DIRECTIVE, Subject No. REG-27, Transmittal No. 474, "Water Replacement" (Issued: November 19, 1988).
8. 44 FR 14902 (3/13/79). Permanent Program Final Preamble -- Final Rule. 816.54 Hydrologic balance: Water rights and replacement.
9. 48 FR 43956 (9/26/83). Final rules. Geology permitting. 816.41(h) Water rights and replacement.
10. COALEX STATE INQUIRY REPORT - 203, "Water supply and replacement for underground mining (Includes Reports 35 & 93)" (1992). [ENCLOSED WITHOUT ATTACHMENTS.]
 - A. 56 FR 33170 (JULY 18, 1991). Notice of inquiry. Underground mining performance standards -- Subsidence.]
 - B. 56 FR 37194 (AUGUST 5, 1991). Notice of public meeting. Underground mining performance standards -- Subsidence. C. 56 FR 49286 (AUGUST 14, 1991). Notice of public meeting. Underground mining performance standards -- Subsidence.
 - C. NATIONAL WILDLIFE FEDERATION v HODEL, 839 F 2d 694 (DC Cir 1988).
 - D. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule.
 - a. Section 817.54. Hydrologic balance: Water rights and replacement.
 - b. Introduction to Part 783. Underground Mining Permit Application - Minimum Requirements for Information on Environmental Resources.
 - c. Section 783.17. Alternate water supply information.
 - E. IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION [PSMRL I (ROUND II)], 19 ERC (BNA) 1477 (D DC May 16, 1980).
 - F. 48 FR 43956 (SEPTEMBER 26, 1983). Final rules. Hydrology Permitting and Performance Standards.
 - G. IN RE: PERMANENT SURFACE MINING REGULATION LITIGATION [PSMRL II (ROUND III)], 620 F Supp 1519 (D DC July 15, 1985).
 - H. COALEX STATE INQUIRY REPORT - 35, "Water Rights and Replacement" (1985).
 - I. COALEX STATE INQUIRY REPORT - 93, "Water Rights and Replacement" (1988).
 - J. 120 CONG. REC. H23639 (daily ed. July 16, 1974) (statement of Rep. Evans). [Excerpt]



- K. 123 CONG. REC. S8083 (daily ed. May 20, 1977) (statement of Sen. Danforth).
 - L. 1977 versions of SMCRA sections:
 - a. S. 7, 95th Cong, 1st Sess (January 10, 1977). Excerpt from Sec. 415 Environmental Protection Performance Standards.
 - b. HR 2, 95th Cong, 1st Sess (April 1, 1977). New sec. 717. Water Rights and Replacement of Supplies.
 - c. HR REP. No. 218, 95th Cong, 1st Sess 181 (April 22, 1977). Section-by-Section Analysis. Section 717 - Water Rights.
 - M. 52 FR 45920 (DECEMBER 2, 1987). Final rule. Underground coal mining activities; hydrologic balance; protection recharge capacity.
 - N. UTAH POWER & LIGHT CO. v OSM, Docket Nos. UT-001; TU 6-1-PR (1988).
 - O. OSM DIRECTIVE, Subject No. REG-27, Transmittal No. 474, "Water Replacement" (Issued October 19, 1988).
11. COALEX STATE COMPARISON REPORT - 210, "Subsidence: compensation for damaged structures and water supply" (1992). [ENCLOSED WITHOUT ATTACHMENTS.]