



COALEX STATE INQUIRY REPORT - 253

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TOPIC: GRAZING VIOLATIONS (Includes COALEX Reports 183, 172 & 141)

INQUIRY: An operator was cited for allowing livestock to graze on pastureland in violation of the reclamation plan. Please locate Interior OHA decisions with this or similar fact situations or those discussing strict liability.

SEARCH RESULTS: The COALEX Library and other materials in LEXIS as well as existing COALEX Reports were used to research this report. Several ALJ and IBLA decisions were identified that rule on NOV's issued because livestock grazed on reclaimed areas before revegetation productivity standards were met. These decisions are listed below; copies are attached. Also included are three existing COALEX State Inquiry Reports that discuss strict liability issues: inability to comply; unwarranted failure to comply and reduction of the mandatory civil penalty.

LIVESTOCK GRAZING DECISIONS

Where grazing takes place without the approval of OSM, a violation exists. The permittee's efforts to prevent grazing are relevant for consideration only as mitigating factors in applying the civil penalty formula.

LONE STAR STEEL CO. v OSM, 98 IBLA 56, IBLA 86-101 (1987).

[Copy included as part of Report 183].

LONE STAR STEEL CO. v OSM, 107 IBLA 134, IBLA 87-284 (1989).

[Copy included as part of Report 183].

PEABODY COAL CO. v OSM, Docket Nos. TU 90-1-P, TU 90-3-P, TU 90-4-P, TU 90-6-P, TU 90-7-P (1991).

TURNER BROS., INC. v OSM, 112 IBLA 166, IBLA 87-316 (1989).



ALJ Decisions:

1. Docket Nos. TU 5-89-R, TU 6-6-R (1987).
2. Docket No. TU 6-45-R (1987).
3. Docket No. TU 6-49-R (1987).
4. Docket No. TU 6-56-R (1987).
5. Docket No. TU-4-32-R (1984).
6. Docket No. TU 4-20-R (1984).

INABILITY TO COMPLY, UNWARRANTED FAILURE TO COMPLY

No matter how legitimate the cause, NOVs and COs cannot be vacated because of an operator's inability to comply. The reason for the inability to comply may be taken into consideration as a mitigating factor in computing civil penalties. Reasons given for failure to comply include: insolvency, market conditions, landlord interference and such events beyond the control of the operator as excessive rainfall and drought.

COALEX STATE INQUIRY REPORT - 172, "Inability to comply" (1991).

[See ATTACHMENTS for list of included materials.]

COALEX STATE INQUIRY REPORT - 183, "Unwarranted failure to comply: definition of 'indifference', 'lack of diligence' and 'lack of reasonable care'" (1991).

[See ATTACHMENTS for list of included materials.]

MANDATORY CIVIL PENALTY

Unlike the civil penalty formula, the \$750 per day assessment for the failure-to-abate CO is mandatory and cannot be reduced.

COALEX State Inquiry Report - 141, "Reduction of mandatory civil penalty" (1990).

[See ATTACHMENTS for list of included materials.]

ATTACHMENTS

- A. PEABODY COAL CO. v OSM, Docket Nos. TU 90-1-P, TU 90-3-P, TU 90-4-P, TU 90-6-P, TU 90-7-P (1991).
- B. TURNER BROS., INC. v OSM, 112 IBLA 166, IBLA 87-316 (1989).
- C. TURNER BROS., INC. v OSM, Docket Nos. TU 5-89-R, TU 6-6-R (1987).
- D. TURNER BROS., INC. v OSM, Docket No. TU 6-45-R (1987).
- E. TURNER BROS., INC. v OSM, Docket No. TU 6-49-R (1987).
- F. TURNER BROS., INC. v OSM, Docket No. TU 6-56-R (1987).



- G. TURNER BROS., INC. v OSM, Docket No. TU-4-32-R (1984).
- H. TURNER BROS., INC. v OSM, Docket No. TU 4-20-R (1984).
- I. COALEX STATE INQUIRY REPORT - 172, "Inability to comply" (1991).
 - A. 43 FR 41662 (SEPTEMBER 18, 1978). Proposed rules. Part 843 Federal Enforcement. [Excerpts.]
 - B. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule. Part 843 Federal Enforcement. Section 843.18 Inability to comply. [Excerpts.]
 - C. 46 FR 58464 (DECEMBER 1, 1981). Proposed rules. Inspection, Enforcement and Civil Penalty Assessments. [Excerpts.]
 - D. 47 FR 35620 (AUGUST 16, 1982). Final rules. Inspection and Enforcement; Civil Penalty Assessments. [Excerpts.]
 - E. SURFACE MINING REGULATION LITIGATION, 452 F Supp 327 (D DC May 3, 1978).
 - F. VERNON R. PAUL v COMMONWEALTH OF PENN., DEPT. OF ENVIRON. RESOURCES (DER), Docket No. 84-290-G, 1985 EHB 791 (1985).
 - G. DAVID EXCAVATING CO., INC. v OSM, Docket Nos. IN 1-23-R, IN 1-7-P, IN 1-11-P, IN 2-12-P, IN 1-13-P (1983).
 - H. MARTIN MINING CORP. v OSM, Docket No. IN 1-9-R (1983).
 - I. GLENN COAL CO. v OSM, Docket No. CH 0-279-R (1984).
 - J. GARLAND COAL AND MINING CO. v OSM, Docket Nos. TU 4-43-R, IBLA 85-106 (1986).
 - K. CLEAR CREEK COAL CO. v OSM, 101 IBLA 6, IBLA 85-406 (1988).
 - L. CLEAR CREEK COAL CO. v OSM, Docket Nos. NX 1-49-R, NX 1-59-R (1985).
 - M. CARBON FUEL COMPANY, INC. v OSM, Docket No. NX 9-116-R (1980).
 - N. W.E. AND JONAH WARREN COAL CO., INC. v OSM, Docket No. NX 0-246-R (1984).
 - O. LONE STAR STEEL CO. v OSM, 98 IBLA 56, IBLA 86-101 (1987).
 - P. THE OHIO VALLEY COMPANY CONSTRUCTION DIV., INC. v OSM, Docket No. IN 9-13-R (1979).
 - Q. DAL-TEX COAL CORP. v OSM, Docket No. CH 9-87-R (1979).
 - R. GREATER PARDEE, INC. v OSM, Docket No. CH 0-284-R (1981).
 - S. SHAWNEE COAL CO. v OSM, Docket No. IN 2-2-R (1981).
 - T. COAL ENERGY, INC. v OSM, 105 IBLA 385, IBLA 87-190 (1988).
 - U. MARTIN v COMMONWEALTH OF PENN., DEPT. OF ENVIRONMENTAL RESOURCES (DER), 120 Pa Commw 269, 549 A 2d 675 (Pa Commw Ct 1988).
 - V. ALPINE CONSTRUCTION CO. v OSM, 114 IBLA 232, IBLA 88-527 (April 27, 1990).
 - W. ALPINE CONSTRUCTION CO. v OSM, Docket No. TU 7-55-R (1988).
 - X. TURNER BROS., INC. v OSM, Docket Nos. TU 6-20-R, TU 6-52-R, TU 6-81-R (1987).



- Y. TURNER BROS., INC. (TBI) v OSM, Docket Nos. TU 4-7-R, TU 4-11-R (1985).
- Z. TURNER BROS., INC. v OSM, 101 IBLA 84, IBLA 85-440 (1988).
- J. COALEX STATE INQUIRY REPORT - 183, "Unwarranted failure to comply: definition of 'indifference', 'lack of diligence' and 'lack of reasonable care'" (1991).
 - A. [Attachment not included.]
 - B. [Attachment not included.]
 - C. OSM v RWR DEVELOPMENT CO. AND DEBCON COAL CO., CH 0-2-A (March 17, 1981).
 - D. LONE STAR STEEL CO. v OSM, 98 IBLA 56, IBLA 86-101 (June 8, 1987).
 - E. LONE STAR STEEL CO. v OSM, 107 IBLA 134, IBLA 87-284 (February 6, 1989).
 - F. COLLINS MINING CO. v OSM, 103 IBLA 25, IBLA 87-327 (June 23, 1988).
 - G. NATIONAL MINES CORP. v OSM, 104 IBLA 331, IBLA 87-57 (September 23, 1988).
 - H. FARRELL-COOPER MINING CO. v OSM, 111 IBLA 115, IBLA 87-417 (September 28, 1989).
 - I. CF&I STEEL CORP. v OSM, DV 3-1-P (December 8, 1983).
- K. COALEX STATE INQUIRY REPORT - 141, "Reduction of mandatory civil penalty" (1990). [See ATTACHMENTS for list of included materials.]
 - A. SAVE OUR CUMBERLAND MOUNTAINS, INC. (SOCM) v WATT, 550 F Supp 979 (DDC 1982).
 - B. SAVE OUR CUMBERLAND MOUNTAINS, INC. v CLARK, 725 F2d 1434 (DC Cir 1984).
 - C. Subsequent history: Auto-Cite and Shepard's Citations.
 - D. PEABODY COAL CO. v OSM, 90 IBLA 186, IBLA 84-766 (1986).
 - E. GRAYS KNOB COAL CO. v OSM, 98 IBLA 171, IBLA 85-364 (1987).
 - F. L.W. OVERLY COAL CO. v OSM, 103 IBLA 356, IBLA 88-39 (1988).
 - G. APEX CO., INC., 4 IBSMA 19, IBSMA 81-53 (1982).
 - H. GRAHAM BROTHERS COAL CO. v OSM, Docket No. CH 3-14-R (1984).
 - I. MCNABB COAL CO., INC. v OSM, Docket Nos. TU 4-23-P, TU 4-24-P, TU 5-24-P, TU 4-37-R, TU 4-38-R, TU 5-1-R (1986).