



## COALEX STATE INQUIRY REPORT - 273

January 1994

Caroleen Carman  
Assistant Chief Counsel  
Oklahoma Department of Mines  
4040 N. Lincoln, Suite 107  
Oklahoma City, Oklahoma 73105

### TOPIC: TEMPORARY CESSATION OF OPERATIONS

**INQUIRY:** What time frame constitutes a "temporary" cessation? An operator "temporarily" ceased mining part of his permitted area, claiming that he was awaiting technology that would allow him to mine the wet area and meet the reclamation requirements. Is there any material that discusses when a temporary cessation becomes a permanent cessation, requiring proper reclamation?

**SEARCH RESULTS:** COALEX and LEXIS were used to research information on 30 CFR 816.131 (Temporary cessation of operations) and 816.132 (Permanent cessation of operations). No information on what constitutes "temporary" cessation was found in the legislative history, Interior administrative decisions or state/federal cases. A 1987 OSM Directive was retrieved that states when temporary cessation of operations terminates. Federal rules proposed in November, 1991 to establish time frames and termination of temporary cessation are instructive; however, they were withdrawn in October, 1992. Two Interior administrative decisions were identified that rule on a related issue: an operator's use of "best technology currently available" defense for his inability to comply with required regulations.

Materials listed below are attached.

---

### OSM DIRECTIVE

**OSM DIRECTIVE, Subject No. INE-22, Transmittal No. 332, "Temporary Cessation of Operations" (Issued May 8, 1987).**

3.b. Policy/Procedures.

...

"(2) Temporary cessation of operations shall terminate upon either the resumption of surface coal mining operations; the failure of the permittee to submit an application for permit renewal within at least 120 days before expiration of the existing permit; or upon



expiration of any maximum time periods which may be imposed under the applicable regulatory program."

### **REGULATORY HISTORY OF 816.131 AND 816.132**

#### **43 FR 17835 (APRIL 26, 1978). Advance notice of proposed rulemaking.**

Attached for background.

#### **44 FR 14902 (MARCH 13, 1979). Permanent program final preamble -- Final rule. 816.131 and 816.132 Cessation of operations.**

"Several commenters suggested revising Section 816.131(b) by defining the temporary cessation of operations in terms of time (planned vs. unplanned) as well as deletion of the statement of activities that will continue during a temporary cessation. The adverse environmental effects from an operation during temporary cessation of operation would be essentially the same regardless of the fact that the cessation was planned or unplanned. However, due to the nature of surface mining, adverse weather, labor disputes, and the coal market itself, temporary cessation of mining is relatively common. Many of these temporary cessations are brief, often a week or less. To eliminate relatively unproductive paperwork, which would be both time-consuming and expensive and would place a large burden on the regulatory authority the phrase 'for a period of 30 days or more or as soon as it is known that a temporary cessation will extend beyond 30 days' was added to 816.131(b). OSM believes that in most cases regulatory authorities may find it difficult to respond to conditions in a meaningful way in less than 30 days. The plan which must be provided will assure that environmental protection measures necessary under the permit will continue or that appropriate alternative measures have been brought to the regulator authority's attention. This will facilitate meaningful evaluation of the closure measure and permit their modification if necessary."

#### **56 FR 60012 (NOVEMBER 26, 1991). Proposed rule. Temporary cessation of operations.**

OSM proposed rules that would require a permittee to submit an application to the regulatory authority for approval before temporarily ceasing surface or underground coal mining operations for a period of more than 30 days. These proposed rules detailed that application requirements and procedures.

#### Background

...

"In promulgating the existing rules, OSM recognized that temporary cessation of operations is relatively common and is sometimes necessary due to the nature of the coal mining business and the coal market itself. Moreover, section 515(b)(1) of the Act requires surface coal mining and reclamation operations to be conducted 'so as to



maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining may be minimized.' Under this performance standard if an operator cannot comply with a mining and reclamation schedule for legitimate business reasons, it would make no sense to require the closing and reclamation of the uncompleted mining operation when closing would economically preclude future recovery of remaining coal reserves or would require substantial redisturbance of reclaimed land in order to reopen operations. While these views have not changed, OSM believes that the existing rules need to be revised to prevent potential misapplication or abuse.

...

"(6) The existing regulations do not provide for periodic review of those operations in temporary cessation status. The average term that an operation is in temporary cessation is 2.3 years, but can range up to five years or more. There currently is no assurance that once an operation enters temporary cessation status, it remains qualified for that status. Without some periodic review to validate the justification for continued temporary cessation, the potential exists for reclamation to be delayed indefinitely for reasons unrelated to legitimate business needs. This would violate the requirement at 30 CFR 816.100/817.100 that reclamation efforts proceed as contemporaneously as practicable with mining operations.

"(7) The existing rules do not specify under what conditions temporary cessation will terminate and thus, reinstate the operator's obligation to resume mining and reclamation operations to completion.

Proposed 816.131(f)/817.131(f) established conditions for the terminating the approved cessation of operations: (1) resumption of surface or underground mining activities; (2) failure of a permittee to submit an application for temporary cessation ; (3) after periodic review of temporary cessation status, particularly when that status extends beyond the midterm permit review or the permit renewal period; and (4) failure of the permittee to submit an application for permit renewal at least 120 days prior to expiration of the existing permit term.

**57 FR 4085 (FEBRUARY 3, 1991). Correction.**

Included for background.

**57 FR 47431 (OCTOBER 16, 1992). Withdrawal of proposed rules.**

The proposed rules were withdrawn as a result of "reviews conducted under the President's Guidelines for Reducing the Burden of Government Regulations."

**OSM COMMENTS ON STATE PROGRAM AMENDMENTS**

**PENNSYLVANIA: 56 FR 24687 (MAY 31, 1991).**



OSM approved Pennsylvania's amendment which stated "that temporary cessation of operations shall not exceed 90 days, unless the regulatory authority approves a longer period not to exceed 180 days or unless the regulatory authority approves a longer period for reasons of seasonal shutdown or labor strike."

**WEST VIRGINIA: 56 FR 50256 (OCTOBER 4, 1991).**

OSM approved a revision which provided that "the 3-year limitation on inactive status for surface mines shall not apply to preparation plants or load-out facilities".

**IOWA: 56 FR 56578 (NOVEMBER 6, 1991).**

Iowa's proposed rule established "the length of time that a mine may temporarily cease operations before it must permanently cease operations. The Federal regulation does not provide such a timeframe thus allowing the States to use their discretion to set a reasonable limit."

**INTERIOR DECISIONS RE: "BEST TECHNOLOGY CURRENTLY AVAILABLE"**

**ALPINE CONSTRUCTION CO. v OSM, 114 IBLA 232, IBLA 88-527 (1990). Alpine Construction Co. v OSM, Docket No. TU 7-55-R (1988).**

The Board upheld the NOV issued to the operator who admitted the existence of "deteriorating conditions" but "sought to excuse its failure to comply based on its use of the best technology currently available in the face of severe weather conditions which assertedly prevented compliance."

**ATTACHMENTS**

- A. OSM DIRECTIVE, Subject No. INE-22, Transmittal No. 332, "Temporary Cessation of Operations" (Issued May 8, 1987).
- B. 43 FR 17835 (APRIL 26, 1978). Advance notice of proposed rulemaking.
- C. 44 FR 14902 (MARCH 13, 1979). Permanent program final preamble -- Final rule. 816.131 and 816.132 Cessation of operations.
- D. 56 FR 60012 (NOVEMBER 26, 1991). Proposed rule. Temporary cessation of operations.
- E. 57 FR 4085 (FEBRUARY 3, 1991). Correction.
- F. 57 FR 47431 (OCTOBER 16, 1992). Withdrawal of proposed rules.
- G. PENNSYLVANIA: 56 FR 24687 (MAY 31, 1991).
- H. WEST VIRGINIA: 56 FR 50256 (OCTOBER 4, 1991).
- I. IOWA: 56 FR 56578 (NOVEMBER 6, 1991).
- J. ALPINE CONSTRUCTION CO. v OSM, 114 IBLA 232, IBLA 88-527 (1990).
- K. ALPINE CONSTRUCTION CO. V OSM, Docket No. TU 7-55-R (1988).