



## COALEX STATE INQUIRY REPORT - 282

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**TOPIC:** DEFINITION OF "DAMAGE" IN PHRASE: "PROTECT OFFSITE AREAS FROM SLIDES AND DAMAGE"

**INQUIRY:** Indiana wrote an NOV for drainage control causing damage off the permitted site, citing the Indiana equivalent of SMCRA 515(a)(21) [I.C. 13-4.1-8-1(21)] which contains the phrase indicated above. Are there any materials covering the definition of "damage" as used in this code section?

**SEARCH RESULTS:** The COALEX Library and other materials available in LEXIS were used to conduct the research. Few items were identified that mentioned "damage" as contained in 515(a)(21) and the corresponding regulations, 30 CFR 816.99/817.99. The material retrieved did not specify what the offsite damages were; however, the material indicated that whatever damage occurred was caused by slides. Discussions of drainage control and other mentions of offsite damage were found in materials addressing hydrologic impacts, sedimentation controls, effluent limitations and discharges into waterways.

The relevant legislative history, regulatory history and an Interior administrative case are discussed below. Copies are attached. Also included is an ALJ decision which addresses the issue of an NOV containing an improper citation to the regulations.

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### LEGISLATIVE HISTORY

Search of offsite damage in the Reports, Hearings and other Congressional documents comprising the legislative history of SMCRA yielded two relevant items:

**S. REP. No. 402, 93rd Cong., 1st Sess., 63 [S. 425 "Surface Mining Reclamation Act of 1973", Senate Committee on Interior and Insular Affairs (September 21, 1973)]. SECTION-BY-SECTION ANALYSIS.**



"Offsite areas must be protected from damages caused by slides which might occur during mining and reclamation operations. Furthermore, all waste accumulations and damages must be contained within the permit area. This provision not only serves to protect landowners not associated with the mining, it also insures that the permit will encompass an area which covers the entire mining activity, including the storage or disposal of spoil and waste. Therefore, the entire activity will be subject to all of the terms of the permit. The Committee intends that permits be limited to the minimum area necessary to accommodate the operation."

**H. REP. No. 218, 95th Cong., 1st Sess., 80 [H.R. 2 "Surface Mining Control and Reclamation Act of 1976", House Committee on Interior and Insular Affairs (April 22, 1977)]. NEED.**

"In the humid East, retention of overburden material on the bench, avoiding all unnecessary placement of unconsolidated material on steep slopes, would contribute most significantly to the elimination of slides, sedimentation, siltation and other offsite effects which threaten downstream areas. The basic concept embodying this principle is returning the mining area to its approximate original contour."

Additional excerpts relate "damage" to

1. hydrologic impacts
2. insurance requirements
3. spoil placement

## **REGULATORY HISTORY**

**44 FR 14902 (MARCH 13, 1979). Preamble to the final rules. Sec. 816.99 Slides and other damage.**

"This Section establishes requirements necessary to prevent damage caused by slides and erosion. It further specifies those steps that must be taken any time a slide occurs which may have a potential adverse affect on life, property, health, safety, or the environment in or near the permit area."

## **ADMINISTRATIVE DECISIONS**

A review of the Administrative Law Judge (ALJ) and Interior Board of Land Appeals (IBLA) decisions that discuss offsite damage or drainage control indicated that the majority of the NOV's written cite performance standard sections 30 CFR 816.41-816.49 (or 30 CFR 817.41-817.49 or the interim rule equivalents), the hydrologic balance requirements relating to sedimentation controls, siltation structures, discharges into waterways, etc.



One ALJ decision was identified where the operator was cited for violating the state equivalent of 30 CFR 816.99, the rule implementing SMCRA 515(a)(21). The NOV stated that blasted material had traveled along the ground, off the permit area. In accordance with regulations, OSM was informed of the slide and damage. The corrections plan included stabilizing rocks on the hillside. See *TURNER BROS., INC. v OSM*, Docket Nos. TU 6-22-R, TU 6-65-R (1987), attached.

### **ISLAND CREEK COAL CO., 2 IBSMA 125, IBSMA 80-23 (1980).**

SYLLABUS. "A notice of violation containing an improper citation to the regulations is reasonably specific where the narrative description of the alleged violation accurately notifies the permittee of the nature of the alleged violation."

### **ATTACHMENTS**

1. IC 13-4.1-8-1(21).
2. S. REP. No. 402, 93rd Cong., 1st Sess. 63 [S. 425 "Surface Mining Reclamation Act of 1973", Senate Comm. on Interior and Insular Affairs (September 21, 1973)]. SECTION-BY-SECTION ANALYSIS.
3. H. REP. No. 218, 95th Cong., 1st Sess. 80 [H.R. 2 "Surface Mining Control and Reclamation Act of 1976", House Comm. on Interior and Insular Affairs (April 22, 1977)]. NEED.
4. S. REP. No. 1162, 92nd Cong., 2nd Sess. 32 [S. 630 "Surface Mining Reclamation Act of 1972", Senate Comm. on Interior and Insular Affairs (September 18, 1972)]. II. BACKGROUND -- FROM THE LITERATURE.
5. "Surface Mining Control and Reclamation Act of 1977": HEARINGS before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs, 95th Cong., 1st Sess. 341 (February 18 & March 4, 1977) (statement from the Environmental Policy Institute).
6. S. REP. No. 28, 94th Cong., 1st Sess. 212 [S. 7 "Surface Mining Control and Reclamation Act of 1975", Senate Comm. on Interior and Insular Affairs (March 5, 1975)]. SECTION-BY-SECTION ANALYSIS.
7. H. REP. No. 1072, 93rd Cong., 2nd Sess. 244 [H.R. 11500 "Surface Mining Control and Reclamation Act of 1974", House Comm. on Interior and Insular Affairs (May 30, 1974)]. ADDITIONAL, DISSENTING, SEPARATE, AND SUPPLEMENTAL VIEWS.
8. H. REP. No. 1072, 93rd Cong., 2nd Sess. 81 [H.R. 11500 "Surface Mining Control and Reclamation Act of 1974", House Comm. on Interior and Insular Affairs (May 30, 1974)]. ELEMENTS OF MINE REGULATION PROGRAM.
9. H. REP. 218, 95th Cong., 1st Sess. 158 [H.R. 2 "Surface Mining Control and Reclamation Act of 1976", House Comm. on Interior and Insular Affairs (April 22, 1977)]. COMMITTEE RECOMMENDATION.
10. 44 FR 14902 (MARCH 13, 1979). Preamble to the final rules. Sec. 816.99 Slides and other damage.
11. *TURNER BROS., INC. v OSM*, Docket Nos. TU 6-22-R, TU 6-65-R (1987).



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12. ISLAND CREEK COAL CO., 2 IBSMA 125, IBSMA 80-23 (1980).