



COALEX STATE INQUIRY REPORT - 285

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TOPIC: ROOT MATERIAL IN TOPSOIL

INQUIRY: Indiana section 310 IAC 12-5-12.1 corresponds to the federal regulations 30 CFR 816.22 and provides the rules for removing, storing, etc. topsoil. Please locate administrative cases and other material that discuss what constitutes topsoil, how it is identified and, in particular, the observance of root material.

SEARCH RESULTS: Using the COALEX Library in LEXIS, two Interior Administrative Law Judge decisions were retrieved that contain statements from the inspectors indicating that they were able to identify topsoil in part due to the presence of roots. Two additional decisions, the preamble to the final rule for topsoil and an existing COALEX Report on substituting alternative materials for topsoil are enclosed for background.

ADMINISTRATIVE DECISIONS

GATLIFF COAL CO. v OSM, Docket Nos. NX 92-17-R, NX 92-7-P (1993).

The NOV issued for failure to salvage topsoil was withdrawn because Gatliff offered persuasive evidence that they had not used topsoil in the clay liner of a basin. The inspector testified that he had looked for roots, among other things, as evidence that topsoil had been used to construct the liner of a basi, but has not found any. A Gatliff engineer stated that he saw subsoil material placed in the pond and "saw topsoil material after it was placed in the topsoil pile and could identify it because of the roots and woody debris in the material."

M & M MINING, INC. v OSM, Docket No. CH 0-125-R (1981). M & M, INC. v OSM, 3 IBSMA 135, IBSMA 81-37 (1981).

M & M was cited for failure to segregate and protect all of its topsoil or "A" horizon material. The reclamation specialist inspecting the site found topsoil mingled with spoil.



The specialist was able to identify the topsoil material "by its color and the fact that small roots were mingled with the darker material."

CARBON FUEL CO. v OSM, Docket Nos. CH 9-1-R, CH 9-2-P, CH 9-3-P, CH 9-6-P (1979). CARBON FUEL CO. v OSM, 1 IBSMA 253, IBSMA 79-9 (1979).

In discussing the ability to identify topsoil, the ALJ stated:

"Although the word 'topsoil' is used liberally throughout the Act and regulations, there is no definition for topsoil either in the Act or in the interim regulations. The thrust of the Act is therefore that the A horizon should be removed, stockpiled, and stored to be replaced on disturbed areas or enough material below the A horizon to comprise a total of 6 inches, the purpose being that the drafters considered this to be the proper material for revegetation when the mined area has been returned to approximate original contour."

BACKGROUND MATERIAL

48 FR 22092 (MAY 16, 1983). Final rule. Topsoil.

COALEX STATE INQUIRY REPORT - 176, "Substituting alternative materials for topsoil" (1991).

NOTE: The Report is enclosed without attachments.

ATTACHMENTS

- A. GATLIFF COAL CO. v OSM, Docket Nos. NX 92-17-R, NX 92-7-P (1993).
- B. M & M MINING, INC. v OSM, Docket No. CH 0-125-R (1981).
- C. M & M, INC. v OSM, 3 IBSMA 135, IBSMA 81-37 (1981).
- D. CARBON FUEL CO. v OSM, Docket Nos. CH 9-1-R, CH 9-2-P, CH 9-3-P, CH 9-6-P (1979).
- E. CARBON FUEL CO. v OSM, 1 IBSMA 253, IBSMA 79-9 (1979).
- F. 48 FR 22092 (MAY 16, 1983). Final rule. Topsoil.
- G. COALEX STATE INQUIRY REPORT - 176, "Substituting alternative materials for topsoil" (1991).