



COALEX STATE INQUIRY REPORT - 293

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TOPIC: MOVING EQUIPMENT OFF PERMIT AREA (Includes COALEX Reports 136 & 157)

INQUIRY: An operator drove a bulldozer and a loader off the permit area without using the haul road. The area on which the equipment rode was not part of the permitted area. Can the moving of the mining equipment be considered an activity "in connection with" surface coal mining operations and should the permit have been revised to include the land over which the equipment was driven? Does it make a difference that no roadway was constructed?

SEARCH RESULTS: COALEX, LEXIS and existing COALEX State Inquiry Reports were used to research this inquiry.

Several decisions were identified, including both Interior administrative and state opinions, that address construction of walkways to move draglines over unpermitted areas. No materials were identified that specifically discussed moving bulldozers or loaders or moving equipment but not constructing paths. Also identified were two existing COALEX Reports, discussing the definition of "adjacent to" and "in connection with" a surface coal mining operation. Copies of the materials discussed below are attached.

MOST RELEVANT DECISION

K & R COAL CO., INC. v OSM, Docket Nos. DV 91-1-R, DV 91-3-R (1994).

"K&R's construction and use of the walkway clearly constituted 'surface coal mining operations' in two ways. First, K&R constructed the walkway to move mining equipment, i.e., the dragline, from one permitted site, across some 5 miles of unpermitted private land, to K&R's permitted site, at which the dragline was to be used for K&R's surface coal mining operations. Thus, the walkway was constructed on 'adjacent land the use of which is incidental' to K&R's surface coal mining activities at its permitted site. Also, the walkway constituted 'the construction of [a] new road[.]'," the sole purpose of which was 'to gain access to the site' of K&R's Mine for the delivery of K&R's dragline. Thus, K&R's



construction and use of the walkway was a surface coal mining activity that required a permit under SMCRA and the Oklahoma program. See *WILLOWBROOK MINING CO. v OSM*, 108 IBLA 303 (1989), aff'd *WILLOWBROOK MINING CO. v LUJAN*, No. 89-1223 (W.D. Pa. January 19, 1993); *PEABODY COAL CO. v RIDENOUR*, 515 NE 2d 1163 (Ind App 1 Dist 1987)."

PLEASE NOTE: *WILLOWBROOK MINING CO. v OSM* is attached as part of COALEX Report No. 147. *WILLOWBROOK MINING CO. v LUJAN* was not available from LEXIS at this time.

RELEVANT, BUT LESS PERSUASIVE CASES:

CONSOLIDATION COAL CO. v OSM, Docket No. CH 0-224-P (1981).

A NOV was issued for conducting surface coal mining operations outside of the original permitted area without approval from the regulatory authority: "a dozer path had been permitted which had not been constructed nor followed by the petitioner and another which was constructed off of the area permitted."

MULLINS AND BOLLING CONTRACTORS, 4 IBSMA 156, IBSMA 81-75 (1982).

Two 2-acre sites owned and mined by the same operators were connected by a dozer track. The Board found that the sites constituted a surface coal mining operation that was not eligible for the 2-acre exemption: the total disturbed area, including both mining sites plus the bulldozer path and the haul road, was over 4 acres.

COALEX REPORTS

COALEX STATE INQUIRY REPORT - 157, "Definition of 'adjacent to' under 'surface mining operations'" (1990).

Specifically, did the moving of a dragline over an area "adjacent to" fall under the definition of "surface mining operations" which required a permit? Research on the definition of "adjacent to" retrieved material that discussed the definition of "in connection with". This report includes *WILLOWBROOK MINING CO. v OSM*.

COALEX STATE INQUIRY REPORT - 136, "Definition of 'in connection with' under 'surface mining operations'" (1990).

This Report includes legislative history, federal SMCRA decisions, Interior administrative decisions and Federal Register notices.

ATTACHMENTS

- A. *K & R COAL CO., INC. v OSM*, Docket Nos. DV 91-1-R, DV 91-3-R (1994).



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U.S. Department of the Interior

- B. PEABODY COAL CO. v RIDENOUR, 515 NE 2d 1163 (Ind App 1 Dist 1987)."
- C. CONSOLIDATION COAL CO. v OSM, Docket No. CH 0-224-P (1981).
- D. MULLINS AND BOLLING CONTRACTORS, 4 IBSMA 156, IBSMA 81-75 (1982).
- E. COALEX STATE INQUIRY REPORT - 157, "Definition of 'adjacent to' under 'surface mining operations'" (1990). [This report includes WILLOWBROOK MINING CO. v OSM.]
- F. COALEX STATE INQUIRY REPORT - 136, "Definition of 'in connection with' under 'surface mining operations'" (1990).