



COALEX STATE INQUIRY REPORT - 299

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G. Milton McCarthy, Esquire
Alabama Surface Mining Commission
P.O. Box 2390
Jasper, Alabama 35502-2390

TOPIC: MATERIAL DAMAGE TO STRUCTURES AS A RESULT OF SUBSIDENCE

INQUIRY: The rules proposed on September 24, 1993 will provide a definition of "material damage" with regard to subsidence. What is in force now regarding material damage to structures as a result of subsidence? Please locate any material that defines or indicates what constitutes such "material damage".

SEARCH RESULTS: Research was conducted using the COALEX Library and other materials available in LEXIS. A summary of the research is followed by a list of attached documents.

OSM determined that a definition of "material damage" was not needed. In the preamble to Part 701 of the MARCH 13, 1979 permanent program final rules OSM stated:

"Material damage. A commenter suggested that this term be defined for purposes of subsidence. However, the Office believes it is not necessary to define the term for subsidence purposes in these rules. Additional definitions may be included in State or Federal programs, if appropriate."

And again in the preamble to Section 784.20 Subsidence control plan:

"A suggestion was made to define 'material damage.' OSM believes that it is not necessary to define the term 'material damage' in reference to subsidence. Instead, it is left to each regulatory authority or regulatory program to define and use the term in a manner appropriate for subsidence problems in its jurisdiction."

In the APRIL 16, 1982 proposed subsidence control rules, OSM stated, with regard to presubsidence surveys:

"Present sec. 784.20(d) requires a description of measures to determine the degree of material damage in those instances where structures and/or renewable resource lands



exist and may suffer material damage from subsidence. This section would be deleted from the proposed rule. It is anticipated that an appropriate means of determining the degree of subsidence related damage and/or appropriate mitigative or remedial measure is implicit in the performance standards of sec. 817.121. A separate submittal detailing methods for evaluating such damage is not deemed necessary. Therefore, the requirement would be deleted to reduce the reporting burden on the operator."

The SEPTEMBER 24, 1993 proposed rules stated the following with regard to a definition of "material damage":

"In 1988, OSM issued a proposed rule to address the issue of whether and to what extent the mining prohibitions of Sec. 522(e) of the Act, which identifies the areas designated by Congress as unsuitable for mining, apply to subsidence. 53 FR 52374, DECEMBER 27, 1988. In one option of that proposal, OSM defined 'material damage' as a 'functional impairment of the surface, features, facilities, or structures.' Consideration was given at that time to providing additional guidance concerning what is 'material damage.' However, the entire proposed rule was withdrawn for further study in 1989. 54 FR 30557, JULY 21, 1989."

Other Federal Register preambles, legislative history documents and an OSM directive that discuss material damage in more general terms were retrieved. Also identified were state and federal administrative decisions and court cases that specified in the opinions exactly what damage occurred to various structures.

COPIES OF THE FOLLOWING MATERIALS ARE ATTACHED:

A. ALL VERSIONS OF THESE FINAL RULES:

- 1. 30 CFR 784.20 Subsidence control plan.
- 2. 30 CFR 817.121 Subsidence control.

B. LEGISLATIVE HISTORY MATERIALS [Excerpts]:

- 3. HEARING, November, 1971
- 4. CONGRESSIONAL RECORD, October, 1973

C. FEDERAL REGISTER PREAMBLES:

- 5. SEPTEMBER 18, 1978 (43 FR 41662). Proposed rules. 817.121-817.126 Subsidence control. [Excerpts]
- 6. MARCH 13, 1979 (44 FR 14902). Permanent program final rules. Part 701. [Excerpts]
Section 784.20. Subsidence control plan [Excerpts].
Sections 817.121-817.126. Subsidence control.
- 7. APRIL 16, 1982 (47 FR 16604). Proposed rules. Subsidence control.
- 8. JUNE 1, 1983 (48 FR 24638). Final rules. Subsidence control.
- 9. FEBRUARY 21, 1985 (50 FR 7274). Notice of suspension.
- 10. FEBRUARY 17, 1987 (52 FR 4860). Final rules. Subsidence control.
- 11. SEPTEMBER 24, 1993 (58 FR 50174). Proposed rules. Underground mining permit application; Underground mining performance standards.



D. OSM DIRECTIVE:

- 12. SUBJECT NO. REG-3, Transmittal No 652, "Subsidence-caused material damage to structures or facilities where the Office of Surface Mining is the regulatory authority" (Issued 1/4/91).

E. INTERIOR OHA DECISIONS:

- 13. WELLMORE COAL CORP. v OSM, Docket No. NX 6-84-R (1987).
- 14. PAUL BEERS, IBLA 87-283, Case No. VA-13-86 (1990).
- 15. HARLAN CUMBERLAND COAL CO. v OSM, 123 IBLA 129, IBLA 88-330 (1992).

F. PENNSYLVANIA ADMINISTRATIVE DECISIONS:

- 16. CLAPSADDLE AND SOPCAK v COMMONW. OF PA, DER, 1992 Pa Environ LEXIS 109 (Pa EHB 1992).
- 17. PHILLIPS v COMMONW. OF PA, DER, 1993 Pa Environ LEXIS 90 (Pa EHB 1993).

G. STATE CASES:

- 18. WRIGHT v THE BUCKEYE COAL CO., 434 A 2d 728 (Pa Super Ct 1981).
- 19. HIGGINBOTHAM v CLARK, 432 SE 2d 774 (W VA 1993).

H. FEDERAL CASES:

- 20. KEYSTONE BITUMINOUS COAL ASSN. v DEBENEDICTIS, 480 US 470 (1987).
- 21. PETERS TWP SCH DIST V HARTFORD ACCIDENT & INDEM CO., 833 F 2d 32 (3rd Cir 1987).
- 22. M&J COAL CO. v US, 30 Fed Cl 360 (1994).
- 23. M&J COAL CO. v OSM, 115 IBLA 8, IBLA 88-564 (1990).