



STATE INQUIRY REPORT - 305

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TOPIC: "SUBSTANTIAL ECONOMIC LOSS" OR "CONDITIONS BEYOND THE CONTROL OF THE PERMITTEE" AS REASONS FOR EXTENDING THE INITIATION OF OPERATIONS

INQUIRY: An permitted operator built an access road and dug monitor wells but did not begin mining coal because of poor market conditions. The operator wants to transfer the permit to another company; the second company wishes to renew the permit. Are "poor market conditions" considered a "condition beyond the control of the permittee" for extending the three year initiation of operations period? [SMCRA Sec. 506(c) and 30 CFR 773.19(e)] Should the original permittee have notified the regulatory authority that it was temporarily ceasing operations? An objector to the permit renewal complained that the renewal will interfere with adjacent use; is there any information on SMCRA Sec. 506(d)(1)(C)?

SEARCH RESULTS: The use of COALEX and other LEXIS materials along with existing COALEX State Inquiry Reports identified relevant material on the several issues raised by this inquiry. Copies of the materials listed below are attached.

MARKET CONDITIONS/CONDITIONS BEYOND THE CONTROL OF THE PERMITTEE

CITY OF SCRANTON v COMMONWEAL OF PA., DER AND DIAMOND COLLIERY CO., 1986 Pa Envirn LEXIS 11, EHB Docket No. 85-335-W (1986).

The Board ruled that DER could reissue a surface mining permit to Diamond without waiting for the ultimate adjudication of the issue of compliance with Scranton's zoning ordinance. Diamond was unable to commence mining with the original permit due to litigation over Diamond's local zoning permit.

A.C.N., INC. v COMMONWEAL OF PA., DER, 1991 Pa Envirn LEXIS 164, EHB Docket No. 89-167-M (1991).



The Board sustained the assessment of civil penalties against a corporation operating a municipal solid waste transfer station in Philadelphia. ACN argued that their violations were caused by "conditions beyond its control". The Board's ruling provides good language on the issue.

COALEX STATE INQUIRY REPORT - 172, "Inability to comply (30 CFR 843.18)" (1991).

Interior administrative decisions in which permittees provide reasons why they were unable to comply, including poor market conditions. Of particular interest are the following opinions:

1. CLEAR CREEK COAL CO. v OSM, 101 IBLA 6, IBLA 85-406 (1988). CLEAR CREEK COAL CO. v OSM, Docket Nos. NX 1-49-R, NX 1-59-R (1985). SYLLABUS: "Whether particular reclamation work is timely must be determined by taking into account the overall circumstances of a surface coal mining and reclamation operation."
2. GLENN COAL CO. v OSM, Docket No. CH 0-279-R (1984). Glenn Coal received an NOV for failing to restore disturbed areas in a timely manner. Glenn Coal had halted its mining operations due to unfavorable coal marketing conditions but was planning to reopen the pit. The ALJ ruled that an NOV or CO could not be vacated because of the permittee's "inability to comply".
3. SHAWNEE COAL CO. v OSM, Docket No. In 2-2-R (1981). Among its explanations for failing to run drainage from its tipple area through a sedimentation pond, Shawnee stated that it was unable to dismantle the tipple equipment due to its inability to sell stockpiled coal fines because of the poor market conditions for its coal. The ALJ stated that congressional intent made it clear that a permittee's options were to comply with the regulations or "not conduct operations".
4. COAL ENERGY, INC. v OSM, 105 IBLA 385, IBLA 87-190 (1988). Failure to comply will not be excused because of conditions beyond the control of the permittee (drought).

CLEAR CREEK COAL CO. v OSM, Docket No. Nx 5-99-R (1987).

As part of its reclamation plan, Clear Creek proposed to remove its coal stockpile "as market conditions allow, over the next year."

C&N COAL CO. v OSM, 103 IBLA 48, IBLA 86-166 (1988).

C&N argued that "there was no negligence since any violation was caused by conditions beyond [its] control." The Board found that C&N's failure to pass surface drainage through properly placed sedimentation ponds demonstrated a "lack of concern" on C&N's part and the Board raised the assigned points for the violation.



MOSCOVICH AND MOSCOVICH MINING CO. v TRYCK, 875 P 2d 1293 (Alaska 1994). [Excerpts]

Footnote 5 makes reference to stopping mining due to economic conditions. Enclosed for background.

INITIATION OF OPERATIONS

COALEX STATE INQUIRY REPORT - 249, "Initiation of Operations" (1993).

Included here are legislative history materials on SMCRA Sec. 506(c) and 30 CFR 773.19(e) which require the permittee to commence operations within three years of issuance of the permit.

TEMPORARY CESSATION OF OPERATIONS

COALEX STATE INQUIRY REPORT - 273, "Temporary Cessation of Operations" (1994).

Research on 30 CFR 816.131 (Temporary cessation of operations) and 816.132 (Permanent cessation of operations) retrieved preambles to federal rules, an OSM directive and two related administrative decisions; however, no items were retrieved that specifically discussed what constitutes "temporary" cessation.

ATTACHMENTS

- A. CITY OF SCRANTON v COMMONWEAL OF PA., DER AND DIAMOND COLLIERY CO., 1986 Pa Envirn LEXIS 11, EHB Docket No. 85-335-W (1986).
- B. A.C.N., INC. v COMMONWEAL OF PA., DER, 1991 Pa Envirn LEXIS 164, EHB Docket No. 89-167-M (1991).
- C. COALEX STATE INQUIRY REPORT - 172, "Inability to comply (30 CFR 843.18)" (1991). Interior administrative decisions in which permittees provide reasons why they were unable to comply, including poor market conditions. Of particular interest are the following opinions:
 - 1. CLEAR CREEK COAL CO. v OSM, 101 IBLA 6, IBLA 85-406 (1988).
 - 2. CLEAR CREEK COAL CO. v OSM, Docket Nos. NX 1-49-R, NX 1-59-R
 - 3. GLENN COAL CO. v OSM, Docket No. CH 0-279-R (1984).
 - 4. SHAWNEE COAL CO. v OSM, Docket No. In 2-2-R (1981).
 - 5. COAL ENERGY, INC. v OSM, 105 IBLA 385, IBLA 87-190 (1988).
- D. CLEAR CREEK COAL CO. v OSM, Docket No. Nx 5-99-R (1987).
- E. C&N COAL CO. v OSM, 103 IBLA 48, IBLA 86-166 (1988).
- F. MOSCOVICH AND MOSCOVICH MINING CO. v TRYCK, 875 P 2d 1293 (Alaska 1994). [Excerpts]
- G. COALEX STATE INQUIRY REPORT - 249, "Initiation of Operations" (1993).



H. COALEX STATE INQUIRY REPORT - 273, "Temporary Cessation of Operations" (1994).