



COALEX STATE INQUIRY REPORT - 308

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TOPIC: "IN CONNECTION WITH" (Continuation of COALEX Report Nos. 293)

INQUIRY: Please locate any additional information that discusses some aspect of the phrase "in connection with".

SEARCH RESULTS: The enclosed OHA decisions complete the cases sent as part of Report - 293: "Moving equipment off the permit area". That Report included Report 136 and provided the main "in connection with" OHA cases plus Federal Register preambles. While these cases are not as persuasive as the ones in Report 136, they contain a wider range of fact situations. Copies of the materials listed below are attached.

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

The inquiry included a request for information on the phrase "in connection with" and "incident to [underground coal mining]" in an attempt to answer the question: "Is the physical processing of coal at the site of final use regulated under SMCRA?" The Report includes legislative and regulatory history material as well as administrative, state and federal decisions.

COALEX STATE INQUIRY REPORT - 293, "Moving equipment off permit area" (1994).

The fact situation here involved an operator driving a bulldozer and loader off the permit area. The inquirer asked if the moving of the equipment could be considered an activity "in connection with" surface mining operations and if the permitted area had to be revised to include the area affected by the equipment. The retrieved material included a COALEX Report the construction of walkways to move draglines and the need to have the walkway permitted, COALEX Report - 136, as well as some additional decisions.



BETHLEHEM MINES CORP., 2 IBSMA 215, IBSMA 80-46 (1980).

"Although [the tipple operated by Sell] was neither owned nor operated by Bethlehem,...Bethlehem controlled the facility through its lease from the railroad and contract with Sell....Such control, combined with Bethlehem's use of the tipple to load coal from Mine 91 and public advertising of a relationship between the mine and tipple through the sign bearing its MSHA number at the entrance is sufficient to establish that the facility is operated in connection with the mine within the meaning of 30 CFR 700.5."

Also see, FALCON COAL CO., INC., 2 IBSMA 406, IBSMA 80-70 (1980).

BRANHAM & BAKER COAL CO. v OSM, Docket No. NX 9-79-R (1980).

"There is sufficient indicia of common ownership and use, control and economic and functional integration to find that the coal loading facility/tipple/preparation plant in question was being operated 'in connection with' a surface coal mine. Of the eight mines which supplied the facility in question two were owned and operated by the applicant firm and two others were being mined by subcontractors on the applicant firm's mineral leases. These four mines were located within 14 miles of the Beverly Ann Tipple. Thus, that facility has been shown to be operated in connection with those four mines."

ROSS TIPPLE CO. v OSM, Docket Nos. NX 9-17-R & NX 9-49-R (1980).

Ross Coal Co. and Ross Tipple Co. were found to be commonly owned. All of the coal processed at the Tipple came from the Ross mine, located 22 miles away. The ALJ found this to be a "sufficient basis for satisfying the connection test" when determining that the Ross Tipple was operated in connection with Ross Coal's surface coal mine.

WOLFERINE COAL CORP., 2 IBSMA 325, IBSMA 80-74 (1980).

SYLLABUS: "'Surface coal mining operations.' When a tipple is owned and operated by the same company that owns and operates the two mines supplying most of the coal processed through the tipple, that tipple is operated 'in connection with' a surface coal mine within the meaning of 'surface coal mining operations' in 30 CFR 700.5."

WELLMORE COAL CORP. v OSM, Docket No. CH 1-38-R (1980).

The ALJ concluded that OSM failed to "establish any functional or economic integration between the preparation plant and commonly controlled mines so as to bring this facility under the jurisdiction of the Office of Surface Mining."

THOROUGHFARE COAL CO., 3 IBSMA 72, IBSMA 80-77 (1981).



"At the time of OSM's inspections the tipple facility was operated by Thoroughfare in connection with and near a surface coal mine."

SOUTH MISSISSIPPI ELECTRIC POWER ASSOC. v OSM, Docket No. NX 9-35-P (1981).

"[T]he instant facts present a unique factual situation inasmuch as the coal preparation facility herein was under construction and was not in actual operation at the time of the alleged violation, thus presenting the question as to whether the two-part test in this area should be extended to cover facilities under construction as well as those completed and in operation at the time of the issuance of the notice of violation. That question must be answered in the affirmative when the evidence discloses, as here, that the facility being constructed is to process coal received from the same mines currently supplying petitioner's [existing] facility."

SOUTH ATLANTIC COAL CO. v OSM, Docket No. CH 1-166-P (1981).

"This is the first case where OSM has attempted to subject a tipple or preparation to the Act based upon the association it enjoys with its contract operators."

SOUTHWESTERN VIRGINIA COAL CORP. v OSM, Docket Nos. CH 0-323-R & CH 1-193-P (1981).

Southwestern Virginia Coal's tipple was ruled to be "an operation done in connection with surface mining operations as defined in the Act":

"[I]t is evident here that the tipple owes its existence to the production output of the various mines in the vicinity which are the contract miners for Southwestern Virginia. Southwestern Virginia is therefore an integral part of the coal mining venture it has designed regardless of whether they actually mined coal or not."

WESTBURY COAL MINING PARTNERSHIP v OSM, 3 IBSMA 402, IBSMA 81-55 (1981).

In affirming the ruling of the ALJ, the Board cited to the ALJ's decision:

"In the instant case, the preparation plant must be found to be subject to the Act, because, while there is no evidence as to its nearness to a mine site, the partnership relationship between Tazewell and Westbury is sufficient to establish the type of interest envisioned by the Board....I must therefore find that the preparation plant was operated in connection with a surface coal mining operation that not only had joint ownership by virtue of the partnership relations, but joint control and management by virtue of the stipulation that the manager of both partnerships was the same individual."

SUNBEAM COAL CORP. v OSM, Docket No. CH 0-229-P (1983).



Analyzing the connection between the tipple and the mines as well as the distance separating the tipple and the mines, the ALJ determined that the coal preparation plant/tipple was covered under the Act and interim regulations and subject to OSM's inspection: both Sunbeam Coal's mining operations and tipple were in active operation; the tipple processed 55-60 percent of the coal mined by Sunbeam and accounted for most of the coal processed at the tipple.

CAMBRIA COAL CO. v OSM, Docket No. CH 0-216-P (1983).

Fallentimber Tipple, the ALJ ruled, fell within "the Act's ambit": Cambria Coal owned the tipple and all of the supplying mines, located between 4 and 16 miles away; the tipple's operations operated continuously; and the tipple processed coal provided exclusively by its wholly-owned minesites.

SOUTH EAST COAL CO. v OSM, Docket No. NX 2-18-R (1984).

As a result of the activities conducted at the Irvine processing facility (crushing coal, washing it, blending it and loading it into railroad cars), the facility was determined to be a "coal processing" facility and as such was a "surface coal mining operation" subject to the requirements of the Act and its associated regulations.

TOMMY CARPENTER ET AL., 88 IBLA 286, IBLA 83-632 (1985).

HEADNOTES: "'Surface coal mining operations.' A crushing and loading facility operated in connection with a coal mine need not be located at or near such mine in order to be a surface coal mining operation within the meaning of sec. 701(28)(A) of [the Act]."

VALLEY CAMP COAL CO. v OSM, 112 IBLA 19, IBLA 84-632 (1989).

The Board concluded that the stockpiling of coal from an underground mining operation was subject to the Act "where the evidence establishes that such stockpiling was incident to the surface operations of the mine."

"Given Valley Camp's own description of the surface activities it conducts in connection with its underground mine [from its Brief], we fail to comprehend the assertion that it was not engaged in any of the activities mentioned in subsection 701(28)(A)."

NATIONAL WILDLIFE FEDERATION v LUJAN, 928 F 2d 453 (DC DC March 22, 1991).

"This case involves NWF's challenge to the Secretary's 1987 regulations that declined to regulate off-site processing facilities that were not included in the 1983 coal processing definition and that ceased operating before the PSMRL decision in July 1984. Agreeing with NWF, the district court in this case held that the Secretary violated



the Act by failing to apply the coal preparation performance standards to all coal preparation facilities that have operated subsequent to the enactment of the SMCRA. 733 F. Supp. at 435."

The circuit court reversed the district court's ruling, holding "that the Secretary reasonable exercised his discretion in regulating off-site physical processing facilities from the date of the PSMRL decision, instead of the effective date of the Act."

ATTACHMENTS

- A. COALEX STATE INQUIRY REPORT - 136, "Definition of 'in connection with' under 'surface mining operations'" (1990).
- B. COALEX STATE INQUIRY REPORT - 293, "Moving equipment off permit area" (1994).
- C. BETHLEHEM MINES CORP., 2 IBSMA 215, IBSMA 80-46 (1980).
- D. FALCON COAL CO., INC., 2 IBSMA 406, IBSMA 80-70 (1980).
- E. BRANHAM & BAKER COAL CO. v OSM, Docket No. NX 9-79-R (1980).
- F. ROSS TIPPLE CO. v OSM, Docket Nos. NX 9-17-R & NX 9-49-R (1980).
- G. WOLFERINE COAL CORP., 2 IBSMA 325, IBSMA 80-74 (1980).
- H. WELLMORE COAL CORP. v OSM, Docket No. CH 1-38-R (1980).
- I. THOROUGHFARE COAL CO., 3 IBSMA 72, IBSMA 80-77 (1981).
- J. SOUTH MISSISSIPPI ELECTRIC POWER ASSOC. v OSM, Docket No. NX 9-35-P (1981).
- K. SOUTH ATLANTIC COAL CO. v OSM, Docket No. CH 1-166-P (1981).
- L. SOUTHWESTERN VIRGINIA COAL CORP. v OSM, Docket Nos. CH 0-323-R & CH 1-193-P (1981).
- M. WESTBURY COAL MINING PARTNERSHIP v OSM, 3 IBSMA 402, IBSMA 81-55 (1981).
- N. SUNBEAM COAL CORP. v OSM, Docket No. CH 0-229-P (1983).
- O. CAMBRIA COAL CO. v OSM, Docket No. CH 0-216-P (1983).
- P. SOUTH EAST COAL CO. v OSM, Docket No. NX 2-18-R (1984).
- Q. TOMMY CARPENTER ET AL., 88 IBLA 286, IBLA 83-632 (1985).
- R. VALLEY CAMP COAL CO. v OSM, 112 IBLA 19, IBLA 84-632 (1989).
- S. NATIONAL WILDLIFE FEDERATION v LUJAN, 928 F 2d 453 (DC DC March 22, 1991).