



## **COALEX STATE INQUIRY REPORT - 310** **January 1995**

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### **TOPIC: POSTMINING LAND USE CHANGE - SURFACE MINING**

**INQUIRY:** Must all postmining land use changes be considered "significant alterations" which require the full blown permit review process? Can a postmining land use change for a surface mining operation which involves under 5% of the permitted area be considered a minor change? OSM's interpretive rule of October 1, 1980 (45 FR 64908) applies to underground mines. Is there any material that discusses this issue with regard to surface mines?

**SEARCH RESULTS:** Research was conducted using prior COALEX Reports, the COALEX Library and other materials available in LEXIS. The materials identified indicate that all alterations to the original permit require a permit revision; however, it is the regulatory authorities that determine which revisions are "significant", are subject to a full blown permit review, and which revisions are "nonsignificant", subject to a simpler review procedure. For some states, land use changes are always considered "significant, in that the changes are subject to full blown permit review procedures.

Copies of the October 1, 1980 interpretive rule, relevant COALEX Reports, federal regulatory and OSM directives listed below are attached.

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### **BACKGROUND MATERIAL**

#### **45 FR 64908 (OCTOBER 1, 1980). Final interpretive rule.**

"The Office of Surface Mining is providing an interpretation of 30 CFR 784.15 and 817.133 to clarify OSM's position that an operator of a long duration underground coal mining operation may apply for approval of an alternative post-mining land use through the permit revision procedures of 30 CFR 788.12 [now 30 CFR 774.13] toward the end of the mine life rather than initial permit application."

#### **COALEX STATE INQUIRY REPORT - 165, "Permit revisions; incidental boundary revisions" (March, 1991).**



This Report provides information on legislative history, regulatory history and state regulations of incidental boundary revisions (IBRs) from prior Reports; OSM Directives and Federal Register preambles discussing OSM rationale for approving or disapproving state IBR requirements; administrative and state decisions indicating situations where IBRs or revised permits were required; and a survey of eleven IMCC member states providing information on state regulations and their implementation.

### **COALEX STATE COMPARISON REPORT - 228, "Incidental boundary revisions and insignificant permit revisions." (August, 1992).**

Part of this Report included a survey of nine IMCC member states asking if land use changes were allowed via the insignificant permit revisions process and, if so, under what criteria they were allowed.

There was no uniformity among the states on this issue. Some allowed land use changes if they were "nonsignificant", as defined by state program guidelines, while other states always required public notice and other "full blown" review provisions for land use changes.

### **REGULATORY HISTORY**

#### **44 FR 14902 (MARCH 13, 1979). Permanent program final preamble -- final rules. Sec. 788.12 Permit revisions. [Now 774.13]**

A commenter suggested that a permit revision be required only for "substantial" changes that would constitute a significant departure from the methods of mining or reclamation contemplated by the original permit. OSM modified the language in the final rule to provide the regulatory authorities with "parameters in their regulations to determine what changes in the methods of operations or reclamation constitute a significant departure from those approved in the original permit and, therefore, necessitate a revision."

Another commenter's request for the inclusion of a definition for the term "significant alteration" was rejected. OSM stated that the language of the regulation closely tracked that of the Act which "requires that revision or modification of a permit required by the regulatory authority (based on written findings) be subject to notice and hearing requirements established by the State or Federal program."

#### **48 FR 44344 at 44377 (SEPTEMBER 28, 1983). Final rule. (Renumbering of sections.) Sec. 774.13 Permit revisions.**

"The final rule allows the permittee to apply for both significant and insignificant permit revisions, but also requires...that the regulatory authority set guidelines establishing the scale or extent of 'significant revisions'." Significant revisions must meet all the permit application requirements; nonsignificant revisions are subject only to review procedures.



OSM added: "The final rule changes the concept of the previous rule which required permit revisions only for 'significant departures' from the original permit. It was not the intent of the previous rule to allow the operator to violate the terms of the existing permit so long as the departure was not 'significant'."

**51 FR 21574 (JUNE 13, 1986). Notice of availability of a petition to initiate rulemaking and request for comments. Guidelines for significant revisions. And 52 FR 6827 (March 5, 1987). Notice of decision on rulemaking petition.**

The OSM director granted the petition for the federal program for Tennessee which requested that the regulatory authority establish guidelines for determining when a proposed revision to a permit is considered "significant". The petition included a request that any change in postmining land uses be considered significant.

The OSM guidelines drafted in 1985, proposed specific criteria for significant revisions. Generally the changes involved environmental issues, e.g., changes in land use from nonindustrial or noncommercial to industrial or commercial.

**59 FR 27932 (MAY 27, 1994). Final rule. Land use information.**

The revised regulations concerning premining and postmining land use information that must be submitted in a permit application is included here for background.

## **OTHER OSM MATERIAL**

**OSM DIRECTIVE, Subject No. REG-21, Transmittal No. 398, "Findings and Determinations for Revisions and Renewals of Federal Permits" (1987).**

Minor permit revision. "In most cases, a minor permit revision does not alter the original environmental document findings."

**OSM DIRECTIVE, Subject No. TSR-5, Transmittal No. 399, "Alternative Postmining Land Use Requirements for Real Property" (1987)**

"Any changes to the postmining land use should be approved during the permitting process or as a revision to the permit."

## **ATTACHMENTS**

1. 45 FR 64908 (OCTOBER 1, 1980). Final interpretive rule.
2. COALEX STATE INQUIRY REPORT - 165, "Permit revisions; incidental boundary revisions" (March, 1991).
  - A. OSM DIRECTIVE, Subject No REG-19, Transmittal No 387, "Incidental Boundary Revisions" (October 19, 1987).



- B. OSM DIRECTIVE, Subject No REG-21, Transmittal No 398, "Findings and Determinations for Revisions and Renewals of Federal Permits" (November 10, 1987).
- C. COALEX STATE INQUIRY REPORT - 34, "Incidental boundary revision" (1985).
  - A. S Rep No 402, 93rd Cong, 1st Sess 57 (1973). [Excerpt]
  - B. S Rep No 128, 95th Cong, 1st Sess 79-80 (1977). [Excerpt]
  - C. 48 FR 44376-78 (September 28, 1983). Sec. 774.13 Permit revisions. [Excerpt]
  - D. Kentucky Administrative Regulations, 405 KAR 8:010 Sec. 20 Permit Revisions. [Excerpts]
  - E. Illinois Coal Mining Regulations. Parts 1711, 1786, 1787 and 1788. [Excerpts]
  - F. West Virginia Surface Mining Reclamation Regs. Sec. 7D, IBRs; West Virginia Surface Coal Mining and Reclamation Act, Article 6, Sec. 20-6-19 Permit Revision. [Excerpts]
  - G. Annotated Code of Maryland, Sec. 7-505 (1979). Code of Maryland Regulations Sec. 08.13.09.08. [Excerpts]
  - H. Wyoming Environmental Quality Act, Sec. 35-11-402. Land Quality Div. of the Dept. of Environmental Quality Regs., Sec. 6 (1980). [Excerpts]
  - I. North Dakota Admin. Code, Sec. 69-05.2-11-02 Permit Revisions. [Excerpt]
  - J. Colorado Surface Coal Mining Reclamation Act, Sec. 34-33-103. Colorado Surface Coal Mining Reclamation Regs., Sec. 2.08.4 (1982).
- D. COALEX STATE INQUIRY REPORT - 118, "Major/minor permit revisions" (1989).
  - A. SMCRA Sec. 511.
  - B. 30 CFR 774.13 Permit Revisions.
  - C. Indiana Regulations and Statutes
  - D. Tennessee Regulations and Statutes
  - E. West Virginia Regulations and Statutes
  - F. Montana Regulations and Statutes
  - G. Wyoming Regulations and Statutes
  - E. Illinois: 53 FR 43112 (October 25, 1988) [Excerpts]
  - F. Indiana: 51 FR 17478 (May 13, 1986) [Excerpts]
  - G. Iowa: 51 FR 17176 (May 9, 1986) [Excerpts]
  - H. Kentucky:
    - 1. 55 FR 46054 (November 1, 1990)
    - 2. 55 FR 24113 (June 14, 1990) [Excerpts]
    - 3. 48 FR 21574 (May 13, 1983) [Excerpts]
    - 4. 48 FR 22711 (May 20, 1983) [Excerpts]
  - I. Ohio: 52 FR 26959 (July 17, 1987) [Excerpts]
  - J. Tennessee: 53 FR 49104 (December 5, 1988)



- K. West Virginia:
  - 0. 55 FR 23703 (June 12, 1990) [Excerpts]
  - 1. 55 FR 21304 (May 23, 1990) [Excerpts]
  - 2. 54 FR 16136 (April 21, 1989) [Excerpts]
- L. TURNER BROTHERS, INC. (TBI) v OSM, Docket No. TU 6-51-R (1987).
- M. ROCKY COAL CO., INC. v OSM, Docket No. NX 7-90-R (1987).
- N. MULLINS COAL CO., INC. v OSM, Docket Nos. NX 5-29-R, NX 5-41-R (August 23, 1985).
- O. ISLAND CREEK COAL CO. v OSM), Docket Nos. NX 9-106-R, NX 0-35-P (1981).
- P. KOCHER COAL CO. v COMMONWEALTH OF PENN., DEPT. OF ENVIRONMENTAL RESOURCES (DER), EHB Docket No. 82-073-W (1986).
- Q. ROCKWOOD INSURANCE CO. (BLUE COAL CO.) AND ROCKWOOD INSURANCE CO. (NORTHWEST MINING CO.) v COMMONWEALTH OF PENN., DPET. OF ENVIRONMENTAL RESOURCES (DER), 1981 EHB 424, Docket Nos. 78-168-S, 78-166-S (1981).
- R. OOTEN v FAERBER, COMMISSIONER, W. VA. DEPT. OF ENERGY, AND MAGNET COAL, INC., 383 SE 2d 774 (W Va 1989).
- 3. COALEX STATE COMPARISON REPORT - 228, "Incidental boundary revisions and insignificant permit revisions." (August, 1992).
  - A. Alabama:
    - 1. Memorandum from Randall C. Johnson, Director, Alabama Surface Mining Commission, "Revised Guidelines for Revisions" (1987).
    - 2. Rules of Alabama Surface Mining Commission, Sec. 880-X-8M-.06 (1982). Permit revisions.
  - B. Indiana:
    - 1. 310 IAC 12-3-121 (1986). Permit revisions; revisions and renewals, etc.
    - 2. 310 IAC 12-3-82 (1982). Postmining land use.
  - C. Kentucky:
    - 1. . KRS Ann. Sec. 350.070 (Baldwin)(1991). Permit revisions.
    - 2. 405 KAR 8:010, Sec. 20 (1991). Permit revisions.
  - D. Maryland: COMAR 08.13.09.08 (1980). Permit review and transfer of permit rights.
  - E. Ohio:
    - 1. Ohio Admin. Code 1501:13-4-06 (1986). Permit applications, revisions and renewals, etc.
    - 2. Ohio Admin. code 1501: 13-9-17 (1982). Postmining use of land.
  - F. Pennsylvania:
    - 1. Current Policy Guidelines, "Insignificant Boundary Corrections for Surface Mining Activities", Sec. II:02:03:1 (1986).
    - 2. PADER Coal Mining Regulations, Sec. 86.54 (1989). Public notice of permit revision.



- G. Texas: Railroad Commission of Texas, Surface Coal Mining Regulations, Sec. 051.07.04.226 (1979). Permit revisions.
  - H. Virginia:
    - 1. Memorandum from Danny R. Brown, Commissioner, Division of Mined Land Reclamation, "Incidental Boundary Revision/Insignificant Permit Revision" (1992).
    - 2. Virginia Surface Mining Regulations, Sec. 480-03-19.774.13 (1985). Permit revisions.
  - I. West Virginia:
    - 1. West Virginia Surface Mining Regulations, Sec. 38-2-3 (1990). Incidental boundary revisions.
    - 2. West Virginia Surface Mining Regulations, Sec. 38-2-7 (1986). Criteria for approving alternative postmining use of land.
    - 3. West Virginia Surface Mining Regulations, Sec. 38-2-3 (1986). Permit revisions.
    - 4. West Virginia Surface Mining Regulations, "Addendum to Permit or Significant Revision of a Permit".
  - J. OSM DIRECTIVE, Subject No. REG-19, Transmittal No. 397, "Incidental Boundary Revisions" (1987).
  - K. OSM DIRECTIVE, Subject No. REG-21, Transmittal No. 398, "Findings and Determinations for Revisions and Renewals of Federal Permits" (1987).
  - L. Copies of survey conducted by IMCC for COALEX REPORT - 165.
  - M. COALEX STATE INQUIRY REPORT - 165, "Permit revisions; incidental boundary revisions" (1991). [ONLY SURVEY RESPONSES INCLUDED - SEE ABOVE]
- 4. 44 FR 14902 (MARCH 13, 1979). Permanent program final preamble -- final rules. Sec. 788.12 Permit revisions. [Now 774.13]
  - 5. 48 FR 44344 at 44377 (SEPTEMBER 28, 1983). Final rule. (Renumbering of sections.) Sec. 774.13 Permit revisions.
  - 6. 51 FR 21574 (JUNE 13, 1986). Notice of availability of a petition to initiate rulemaking and request for comments. Guidelines for significant revisions.
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  - 9. OSM DIRECTIVE, Subject No. REG-21, Transmittal No. 398, "Findings and Determinations for Revisions and Renewals of Federal Permits" (1987).
  - 10. OSM DIRECTIVE, Subject No. TSR-5, Transmittal No. 399, "Alternative Postmining Land Use Requirements for Real Property" (1987).