



COALEX STATE INQUIRY REPORT - 323

April 1995

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TOPIC: DEFINITION OF: "ALL ANTICIPATED MINING IN CUMULATIVE IMPACT AREA" (Includes COALEX Report No. 152)

INQUIRY: Under the cumulative hydrologic impact assessment (CHIA) regulations, please locate material that discusses the meaning of "all anticipated mining".

SEARCH RESULTS: An existing COALEX Report consisting of decisions that rule on various aspects of probable hydrologic consequences and CHIAs was updated/expanded by research using the COALEX Library and other LEXIS materials. The materials retrieved include additional SMCRA-related cases and Federal Register preambles discussing the rationale for final federal regulations.

A copy of the items listed below are attached, as indicated.

COALEX STATE INQUIRY REPORT - 152, "Challenges to cumulative hydrologic impact assessments (CHIAs)" (1990).

Included as part of this Report are Interior administrative decisions, as well as state and federal cases. All of the decisions that are part of this Report are listed under ATTACHMENTS, below; however, only these three items are included here:

NATURAL RESOURCES DEFENSE COUNCIL, INC. (NRDC), ET AL. v OSM, ATLANTIC RICHFIELD CO. AND STATE OF COLORADO, 89 IBLA 1, IBLA 83-757 (IBSMA 81-83) (September 27, 1985, as amended by November 18, 1986 decision).

NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. v OSM AND WEST ELK COAL CO, 94 IBLA 269, IBLA 83-757 [IBSMA 81-83] (November 18, 1986, amends September 27, 1985 decision).

Excerpts from NATIONAL WILDLIFE FEDERATION (NWF), ET AL. v HODEL, 839 F 2d 694 (DC Cir 1988).



ADDITIONAL MATERIALS

The following items update/expand the materials included with Report - 152:

44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule.

Parts 779 Permit application-Minimum requirements for information on environmental resources and 780 Permit application-Minimum requirements for reclamation and operation plan are enclosed for background.

48 FR 14814 (April 5, 1983). Final rule. Definitions and terminology.

The rule amended definitions of "affected area" and "permit area". It is enclosed for background.

48 FR 43956 (SEPTEMBER 26, 1983). Final rules. Program hydrology permitting and performance standards.

The second part of the definition of "cumulative impact area" (Section 701.5), clarified "the meaning of the term 'anticipated mining' and identifies the minimum extent of mining, both existing and proposed, which must be included in the CHIA evaluation."

"In the final rule, OSM adopts a technically and environmentally sound definition for 'anticipated mining' that avoids requiring the regulatory authority to attempt to assess the hydrologic impacts of operations that are merely speculative rather than actually anticipated, while assuring that all operations receive thorough analysis prior to commencement of mining. The definition includes all operations which have a reasonable expectation of receiving regulatory authority approval to mine and for which there is sufficient mine development information available to allow adequate analysis."

48 FR 44344 (SEPTEMBER 28, 1983). Final rule. Information requirements of applications.

Some discussion of 'anticipated mining' appears under Sections 773.15(c) Written findings for permit approval and 773.19(d) Right of renewal.

IN RE PERMANENT SURFACE MINING REGULATION LITIGATION, 620 F Supp 1519 (D DC 1985).

See "I. Hydrology and Geology Permitting".

53 FR 36394 (SEPTEMBER 19, 1988). Final rule. Probable hydrologic consequences determination.



This preamble discusses amendments to the PHC determination required in an application for a surface coal mining permit. The amendments were prepared in response to a district court decision.

**NATIONAL WILDLIFE FEDERATION v LUJAN, 31 ERC (BNA) 2034, 21 ELR 20135.
U.S. Dist LEXIS 11541 (D DC 1990).**

See "VIII. Probable Hydrologic Consequences".

ATTACHMENTS

1. COALEX STATE INQUIRY REPORT - 152, "Challenges to cumulative hydrologic impact assessments (CHIAs)" (1990).
 - A. NATURAL RESOURCES DEFENSE COUNCIL, INC. (NRDC), ER AL. v OSM, 4 IBSMA 4, IBSMA 81-83 (1982).
 - B. NATURAL RESOURCES DEFENSE COUNCIL, INC. (NRDC), ET AL. v OSM, ATLANTIC RICHFIELD CO. AND STATE OF COLORADO, 89 IBLA 1, IBLA 83-757 (IBSMA 81-83) (September 27, 1985, as amended by November 18, 1986 decision).
 - C. NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. v OSM AND WEST ELK COAL CO, 94 IBLA 269, IBLA 83-757 [IBSMA 81-83] (November 18, 1986, amends September 27, 1985 decision).
 - D. THE HOPI TRIVE v OSM AND PEABODY COAL CO., Docket No. TU 6-3-PR (1986).
 - E. FRABK STEBLE v OSM, Docket No. DV 7-2-PR (1987).
 - F. CITIZENS ORGANIZED AGAINST LONGWALLING v OHIO DEPT. OF NATURAL RESOURCES, 41 Ohio App 3d 290, 535 NE 2d 687 (Ohio Ct App 1987).
 - G. VILLAGE OF PLEASANT CITY v DIV. OF RECLAMATION, No. CA-835, slip op (Ohio Ct App 1987).
 - H. OOTEN, ET AL. v FAERBER, AS COMMISSIONER, WEST VIRGINIA DEPT. OF ENERGY, AND MAGNET COAL, INC., 383 SE 2d 774 (W Va 1989).
 - I. Excerpts from NATIONAL WILDLIFE FEDERATION (NWF), ET AL. v HODEL, 839 F 2d 694 (DC Cir 1988).
 - J. LOUISIANA ENVIRONMENTAL SOCIETY (LES) v BRINEGAR, SECRETARY, DEPT. OF TRANSPORTATION, 407 F Supp 1309 (WD La 1976).
 - K. MINNESOTA PUBLIC INTEREST RESERACH GROUP v BUTZ, 541 F 2d 1292 (8th Cir 1976).
 - L. ENVIRONMENTAL DEFENSE FUND, INC. v COSTLE, 439 F Supp 980 (ED NY 1977).
 - M. STATE OF MISSOURI, EX REL. v DEPT. OF THE ARMY, CORPS OF ENGINEERS, 526 F Supp 660 (WD Mo 1980).



- N. CITIZENS COUNCIL OF DELAWARE COUNTY v BRINEGAR, 619 F Supp 52 (ED Pa 1985).
- O. OREGON NATURAL RESOURCES COUNCIL (ONRC) v LYNG, 1988 U.S. Dist LEXIS 17264, 18 ELR 21503 (D Or 1988).
- 2. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule.
- 3. 48 FR 14814 (APRIL 5, 1983). Final rule. Definitions and terminology.
- 4. 48 FR 43956 (SEPTEMBER 26, 1983). Final rules. Program hydrology permitting and performance standards.
- 5. 48 FR 44344 (SEPTEMBER 28, 1983). Final rule. Information requirements of applications.
- 6. IN RE PERMANENT SURFACE MINING REGULATION LITIGATION, 620 F Supp 1519 (D DC 1985).
- 7. 53 FR 36394 (SEPTEMBER 19, 1988). Final rule. Probable hydrologic consequences determination.
- 8. NATIONAL WILDLIFE FEDERATION v LUJAN, 31 ERC (BNA) 2034, 21 ELR 20135. U.S. Dist LEXIS 11541 (D DC 1990).