



COALEX STATE INQUIRY REPORT - 329

January 1995

Interstate Mining Compact Commission
Herndon, VA

TOPIC: Update on 16 2/3 exemptions, Incidental Development, Definition of Mineral

INQUIRY: Update of COALEX Reports 134 & 191 with more recent decisions on the exemption from SMCRA where the extraction of coal constitutes less than 16 2/3 percent of the tonnage of minerals removed for the purposes of commercial sale.

SEARCH RESULTS: COALEX and LEXIS were used to update existing reports:

1. Report - 173: "Coal removal incident to private development";
2. Report - 262: "Non-commercial use of 'other materials'";
3. Report - 134: "16 2/3 exemption"

ADDITIONAL INFORMATION

Horizon Coal Corp. v US, 1994 US App LEXIS 30608, 1994 FED App 400 (6th Cir 1994).

This case, involving reclamation fees, required the determination of whether the shale extracted and used to improve the property's value as a sanitary landfill could be counted toward the tonnage of minerals removed for purposes of commercial use. If the shale was removed for commercial use then the government could not collect the reclamation fees as coal extraction would not have exceeded 16 2/3 percent threshold. The court ruled:

"Here, Kohl stockpiled and used the shale to reclaim the land in the aftermath of surface mining operations -- a process that enabled him to prepare the land for its ultimate transformation into a sanitary landfill. We hold that this constitutes a 'commercial use' as that term is used by sec. 1291(28)(A)."

Cumberland Reclamation Co. v Secretary, US Dept. of the Interior, 925 F 2d 164 (6th Cir 1991). Cumberland Reclamation Co., 102 IBLA 100, IBLA 85-583 (1988).

Cumberland failed to provide evidence concerning the percentage of coal it had extracted; therefore, it was not entitled to the incidental mining exemption.



Hoesli v Indiana Dept. of Natural Resources, Administrative Cause No. 93-469R (1993).

Hoesli's operation was found to be a surface mining operation for which a permit was required. The court found that the operation "was consistent both with the development of a commercial and retail site and with the operation of a surface coal mine. Standing alone, the surface coal mine may not have been economically viable, but it was a venture purposefully entered as part of a larger commercial enterprise.... The existence of a surface coal mine is not, however, in itself sufficient to invoke ISMCRA. The product of the coal mine must be placed directly or indirectly into interstate commerce.

Reports - 113, 182 & 191: Def. of soil & mineral

Annotation, "Clay, sand, or gravel as 'minerals' within deed, lease or license", 95 ALR 2d 843 (1994).

Discusses several decisions included in Report - 182.

ATTACHMENTS

NOTE: Copies of the COALEX Reports are included without attachments.

- A. COALEX Comparison Report - 173, "Coal removal incident to private development" (1991).