



## COALEX STATE INQUIRY REPORT - 338

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Max Wilkinson, Esquire  
Office of the Attorney General  
P.O. Drawer U  
Big Stone Gap, Virginia 24219

### **TOPIC:** DEFINITION AND DISPOSAL OF COAL PROCESSING WASTE

**INQUIRY:** The state regulatory authority cited an operator for improperly disposing of coal refuse off the permitted area. The operator claims that the material he sold as fill was coal which was not marketable as an energy source. We have located a particularly relevant Kentucky case, NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET v KENTUCKY HARLAN COAL CO., INC., 870 SW 2d 421 (Ky Ct App 1993). Please assist us in locating other relevant materials.

**SEARCH RESULTS:** Research was conducted using the COALEX Library and other materials available in LEXIS. A number of relevant administrative and court cases were identified. These are listed below. Copies are attached.

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### **NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET v KENTUCKY HARLAN COAL CO., INC., 870 SW 2d 421 (Ky Ct App 1993).**

Kentucky Harlan Coal, the operator of a coal washing plant, was cited for dumping waste rock material, one of the byproducts of its plant, into an residential yard as fill material. The cabinet appealed the trial court's finding that the state's regulation of the use and disposal of byproducts of coal washing (coal processing waste) was unconstitutionally overbroad, violated Kentucky Harlan Coal's due process guarantees and unconstitutionally deprived the company of its property.

The appellate court, agreeing with the cabinet, reversed the trial court's findings. The trial court found that the regulations failed to distinguish between those coal mining waste products that are harmful to the environment and those that are harmless and potentially useful. The appellate court concluded that "legitimate governmental concerns" are not limited "to the effects of pollution-producing materials", but also exist regarding soil erosion, landslides, etc. and, therefore, did not find the regulations overbroad. "[I]t follows that the circuit court also erred by concluding that as a result of such overbroad statutes and regulations, appellee has been deprived of his property without due process of law."



With regard to unconstitutionally depriving the company of its property, the appellate court stated that "the cabinet did not in any way attempt to deprive appellee of its ability to operate its coal washing plant, or to physically deprive appellee of either the coal processing waste or its rights in those materials. Instead, the disputed action was merely taken in regulation of the conditions under which such operations may be conducted."

**HEATHERLY MINING, INC. v OSM, Case No. DV 93-15-R (1995).**

Heatherly, the permittee of an underground coal mine, was cited for failure to obtain a valid permit "before engaging in or carrying out coal mining and reclamation operations". Heatherly sold or gave away coal mine waste (waste rock) for use off-permit as construction material, with most of it used by the county for roadbed material.

The ALJ found that the "material in question clearly falls within the definition of coal mine waste' and, therefore, must be placed in disposal areas within a permit area approved by [Oklahoma Department of Mines] for this purpose.... Because ODM had not approved a site other than the permitted area for disposal of the coal mine waste, Heatherly violated section 817.81(a) by allowing the coal mine waste to be taken to unpermitted areas."

"Heatherly has not disputed that its practice of allowing coal mine waste to be deposited on unpermitted lands constitutes surface coal mining and reclamation operations.' Therefore, Heatherly violated [Oklahoma statutes and regulations] if it did not have a valid permit for this practice."

**CENTRAL DISPOSAL, INC. v OSM, Docket No. CH 5-1-R (1985). CENTRAL DISPOSAL, INC. v OSM, IBLA 85-531, 1985 IBLA LEXIS 380 (1985).**

Central Disposal was cited for conducting surface coal mining and reclamation operations without a permit. Central Disposal claimed that it was a hauling operation and that the "coal waste product" (coal slurry) it trucked was not "coal".

The ALJ found that Central Disposal's activities were identical to the activities described in the cases listed below: "In each case, an operator is removing coal waste from or near previous mining operations. The waste material is not in its original geologic location and there is no processing beyond rough physical separation of debris from the coal waste. In each case the coal waste was sold commercially. No distinction can be made between these cases therefore no difference in the treatment should be made. The applicant's activities are within the definition of the surface coal mining operations under Section 701(28) of the Act and a permit should be required." The ALJ granted OSM's motion for a partial summary decision but reserved the determination of whether the material being removed was in fact "coal" for further hearing.



The IBLA, in response to Central Disposal's application for review seeking vacation of the CO issued by OSM, remanded the case for hearing to determine "the nature of the material being removed and transported by the appellants."

[**NOTE:** No subsequent administrative decision on this matter was identified in COALEX or LEXIS.]

**Also see:**

1. U.S. v DEVIL'S HOLE, INC., 747 F 2d 895 (3rd Cir Pa 1984).
2. U.S. v H.G.D. & J MINING CO., 561 F supp 315 (SD WV 1983).
3. UGI CORP. v CLARK, 747 F 2d 893 (3rd Cir Pa 1984).
4. UGI CORP. v WATT, 644 F Supp 16 (MD Pa 1985).

**REPUBLIC STEEL CORP. AND BCNR MINING COPR. v OSM, IBLA 8407, 79 IBLA 315, 1984 IBLA LEXIS 191 (1984). REPUBLIC STEEL CORP. AND BCNR MINING CORP. v OSM, Docket No. CH 2-49-R (1983).**

HEADNOTES: "The owner of a surface coal mining operation who operates a coal refuse disposal area without a permit required by State regulations may properly be cited by OSM for violation of 30 CFR 710.11(a)(2), which requires compliance with State permit requirements."

**CLINCHFIELD COAL CO. v OSM, Docket No. CH 1-224-P (1982).**

Clinchfield and OSM disputed the classification of the material used as fill. OSM alleged the material to be excess rock and earth material subject to interim regulations which required proper disposal. Clinchfield asserted that the material was "coal processing waste" that was not subject to the interim regulations.

After analyzing the definitions relevant definitions and regulations, the ALJ concluded: "While great pains are taken by the parties to create an identity for the material in the fill, I find no magical distinction between the two. Certainly the Act and the regulations were not formulated to allow the disposal of any mined material to escape coverage from the Act or the regulations. It must follow that the disposal of any product or by-product of coal mining is subject to the interim regulations regardless of its storage or disposal distinctions or requirements."

**PRICE RIVER COAL CO. v OSM, Docket No. DV-09-P (1981).**

The ALJ found "that a violation did, in fact, occur because the petitioner was disposing of excess materials (coal processing waste) without any plan having been submitted to or approved by the regulatory authority."



**REITZ COAL CO. v COMMONWEALTH OF PENN., DEPT OF ENVIRONMENTAL RESOURCES, Penn. Environmental Hearing Board, 1984 Pa Envirn LEXIS 34, 1984 EHB 413 (1984).**

SYLLABUS: "Deposition and removal for sale of coal slurry from a previously abandoned coal refuse disposal area does not constitute operation' of such an area under the provisions of the Coal Refuse Disposal Act, 52 P.S. sec. 30.53(7). The Act only applies to coal refuse material', 52 P.S. sec. 30.51(1); coal refuse does not include both product (coal) and non-product (waste materials). Therefore, because deposition and removal for sale of coal slurry involves a coal product rather than non-product, there was no activity by appellant involving coal refuse and no operation of the site within the meaning of the Act. Thus, DER had no authority to order reclamation of the site under the Act."

**ATTACHMENTS**

- A. NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET v KENTUCKY HARLAN COAL CO., INC., 870 SW 2d 421 (Ky Ct App 1993).
- B. HEATHERLY MINING, INC. v OSM, Case No. DV 93-15-R (1995).
- C. CENTRAL DISPOSAL, INC. v OSM, Docket No. CH 5-1-R (1985).
- D. CENTRAL DISPOSAL, INC. v OSM, IBLA 85-531, 1985 IBLA LEXIS 380 (1985).
- E. U.S. v DEVIL'S HOLE, INC., 747 F 2d 895 (3rd Cir Pa 1984).
- F. U.S. v H.G.D. & J Mining Co., 561 F supp 315 (SD WVa 1983).
- G. UGI CORP. v CLARK, 747 F 2d 893 (3rd Cir Pa 1984).
- H. UGI CORP. v WATT, 644 F Supp 16 (MD Pa 1985).
- I. REPUBLIC STEEL COPR. AND BCNR MINING CORP. v OSM, IBLA 8407, 79 IBLA 315, 1984 IBLA LEXIS 191 (1984).
- J. REPUBLIC STEEL CORP. AND BCNR MINING CORP. v OSM, Docket No. CH 2-49-R (1983).
- K. CLINCHFIELD COAL CO. v OSM, Docket No. CH 1-224-P (1982).
- L. PRICE RIVER COAL CO. v OSM, Docket No. DV-09-P (1981).
- M. REITZ COAL CO. v COMMONWEALTH OF PENN., DEPT. OF ENVIRONMENTAL RESOURCES, Penn. Environmental Hearing Board, 1984 Pa Envirn LEXIS 34, 1984 EHB 413 (1984).