



COALEX STATE INQUIRY REPORT - 340

April 1998

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TOPIC: 10-YEAR 24-HOUR PRECIPITATION EVENTS

INQUIRY: Both state and federal SMCRA regulations require sedimentation ponds be designed to treat or contain a 10-year 24-hour event. Has there been any policy developed, either by OSM or a state regulatory authority concerning intense, short rainfall events, such as having 25% of the 10-year 24-hour event fall in 30 minutes?

SEARCH RESULTS: Research consisted of a survey of IMCC members and the use of COALEX and LEXIS. IMCC members who responded to the survey stated that they did not have a policy for intense short rainfall events. Three Interior administrative decisions were identified that provide OSM's opinions on exemptions to effluent limitations resulting from intense precipitation events. Also identified were two EPA and one OSM Federal Register preambles to relevant regulations.

SURVEY RESULTS

IMCC member states were contacted via facsimiles. Those who responded to the survey stated that they had no policy regarding short term, intense rainfall events. All followed the SMCRA/EPA regulations. Illinois indicated that, as a result of problems that state experienced several years ago with such rainfall events, they considered making changes to their regulations; changes which would be made in conjunction with ILEPA. However, because the spring and summer storms bring heavy but isolated rainfall, Illinois determined that record keeping would be too difficult to maintain and monitoring too difficult to verify. Therefore, they have not gone forward with new rules to provide operators with exemptions for short intense rainfall events.

RESEARCH RESULTS

ISLAND CREEK COAL CO., 3 IBSMA 383, 88 I.D. 1122 (1981).



HEADNOTES: "Entitlement to an exemption from the application of effluent limitations to discharges from a sedimentation pond resulting from a precipitation event is conditioned on a demonstration that the sedimentation pond was constructed and has been maintained to contain or treat the volume of water which would run off into the pond during a 10-year 24-hour or greater precipitation event."

TURNER BROTHERS, INC. v OSM, IBLA 86-243 & 86-245, 103 IBLA 124 (1988).

Footnote 4: "An operator is not required to protect against all conceivable events which might cause surface drainage to leave a permit area, but is required to protect against a reasonable foreseeable range of events which are defined in the regulations as construction standards. Sedimentation ponds are required to contain or treat a 10-year 24-hour precipitation event.... It would be incongruous to establish a standard requiring protection against a specific range of events, but then, when a diversion structure or sedimentation pond meeting the standards is breached or overflows, hold the operator responsible because it is assumed that there could be sufficient precipitation to allow surface water to reach the permit boundary. Such an assumption is tantamount to establishing a standard under which every operator is in continual violation of the regulation because, whatever the design and construction of a diversion structure or sedimentation pond, assuming sufficient rainfall, there could be a breach or overflow and water would flow off the permit area."

TENNESSEE CONSOLIDATED COAL CO. v OSM, IBLA 95-81, 141 IBLA 105 (1997).

HEADNOTES: "The statement best technology currently available' in 30 C.F.R. sec. 816.45(a) does not impose strict liability upon an operator. An operator is not required to protect against all conceivable events which might cause surface drainage to leave a permit area, but is required to protect against a reasonable foreseeable range of events which are defined in the regulations as construction standards. The reasonable foreseeable standard for design intended to protect against flooding and resultant damage to life and property has been clearly stated in 30 C.F.R. sec. 816.43(c)(3)."

50 FR 41296 (OCTOBER 9, 1985). Coal Mining Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards. EPA: 40 CFR Part 434. Final Rule.

The preamble to the final rule discusses "controlled surface mine drainage", non-controlled surface mine drainage", "alternate precipitation limitations", etc.

47 FR 45382 (OCTOBER 13, 1982). Coal Mining Point Source Category: Effluent Limitations Guidelines for Existing Sources and Standards of Performance for New Sources. EPA: 40 CFR Part 434. Final Rule.

This is enclosed for background.



59 FR 53022 (OCTOBER 20, 1994). Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments. Final Rule.

This, also, is enclosed for background.

ATTACHMENTS

- A. ISLAND CREEK COAL CO., 3 IBSMA 383, 88 I.D. 1122 (1981).
- B. TURNER BROTHERS, INC. v OSM, IBLA 86-243 & 86-245, 103 IBLA 124 (1988).
- C. TENNESSEE CONSOLIDATED COAL CO. v OSM, IBLA 95-81, 141 IBLA 105 (1997).
- D. 50 FR 41296 (OCTOBER 9, 1985). Coal Mining Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards. EPA: 40 CFR Part 434. Final Rule.
- E. 47 FR 45382 (OCTOBER 13, 1982). Coal Mining Point Source Category: Effluent Limitations Guidelines for Existing Sources and Standards of Performance for New Sources. EPA: 40 CFR Part 434. Final Rule.
- F. 59 FR 53022 (OCTOBER 20, 1994). Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments. Final Rule.