



## COALEX STATE INQUIRY REPORT - 349 February 1999

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### **TOPIC:** RIGHT OF ENTRY - INSPECTOR'S PRESENTATION OF CREDENTIALS

**INQUIRY:** An inspector conducted an onsite inspection of a permitted operation, took a water sample and wrote an NOV. The inspector had not presented his credentials or identified himself prior to conducting the inspection. Is the NOV still valid? Please locate Interior administrative decisions and any other material that address this issue.

**SEARCH RESULTS:** Using the COALEX Library and other materials in LEXIS, a number of relevant items were identified. These include a Federal Register preamble, an OSM directive and Interior Administrative Law Judge (ALJ) and Appeals Board (IBLA and IBSMA) decisions. Excerpts from the most relevant documents are provided below. Copies of all of the relevant retrieved documents are attached (See the ATTACHMENTS section).

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### **47 FR 35620 (AUGUST 16, 1982). Final rule. Inspection and enforcement.**

See the preambles to Sections 840.12 (State Regulatory Authority Inspection and Enforcement: Right of Entry) and 842.13 (Federal Inspections and Monitoring: Right of Entry).

### **OSM DIRECTIVE, Subject No. INE-1, Transmittal No. 162, "Presentation of Credentials at Minesites" (Issued 3/18/83).**

This directive establishes the policy regarding proper presentation of credentials by inspectors. Relevant sections are excerpted.

#### **POLICY-PROCEDURE:**

3.a. Background: "Right of entry in extraordinary circumstances without prior presentation of credentials was deemed appropriate by the Interior Board of Surface Mining and Reclamation Appeals in CONSOLIDATION COAL CO. v OSM (2 IBSMA 21, February 13, 1980) and upheld by the U.S. District Court in



**CONSOLIDATION COAL CO. v WATT (Civ. No. 80-3037, Slip Opinion, February 8, 1982).**

"b. Procedure. In the absence of extraordinary circumstances, presentation of credentials should be made at the earliest practical opportunity, normally by proceeding to the minesite office (or the first appropriate person) upon arrival. If an inspector briefly leaves the permit area, presentation of credentials before reentering, unless specifically requested, is not necessary.

"(1) Exceptions.

"(a) Extraordinary Circumstances. Credentials need not be presented when an inspector reasonably believes that doing so would provide the operator with notice that would thwart the inspector's ability to determine whether or not a violation existed.... In such a case, the inspector should present credentials subsequent to completing the inspection...."

**CONSOLIDATION COAL COMPANY, IBSMA 80-15, 2 IBSMA 21 (1980).**

"Right-of-entry without prior presentation of credentials is warranted in order to minimize instances in which an operator's violation may escape detection. Each case where such an entry occurs must be measured against its own facts to determine whether, objectively, entry without prior presentation of credentials was justified."

**CONSOLIDATION COAL CO. v OSM, IBSMA 79-25, 1 IBSMA 273 (1979).**

"[F]or the safe and orderly operation of their mines, operators are entitled to know who is on their property and when. Presentation of credentials at the earliest practical opportunity and whenever requested to do so after each entry facilitates such safety and orderliness and does not impose undue burdens on OSM's inspection program."

**CAPITOL FUELS, INC., IBSMA 80-27, 2 IBSMA 261 (1980).**

"An OSM inspector who, after a reasonably diligent search, does not find a mine employee with some degree of management or supervisory authority and who is not asked for identification by other employees, may conduct an inspection without the prior presentation of credentials."

**WILLIAM M. JOHNSON, IBSMA 81-25, 3 IBSMA 377 (1981).**

In citing to CONSOLIDATION COAL and CAPITOL FUELS decisions the Board determined that a balance had been struck "between a mine operator's interest in the safe and orderly conduct of mining operations, and the Department's interest, on behalf of the public at large, in avoiding operator subterfuge or unwarranted delays in mine inspections."



## ATTACHMENTS

- A. 47 FR 35620 (AUGUST 16, 1982). Final rule. Inspection and enforcement.
- B. OSM DIRECTIVE, Subject No. INE-1, Transmittal No. 162, "Presentation of Credentials at Minesites" (Issued 3/18/83).
- C. CONSOLIDATION COAL COMPANY v WATT, Civil No. 80-3037, 1982 U.S. Dist. LEXIS 12273 (S.D. Ill February 8, 1982).
- D. CONSOLIDATION COAL COMPANY, IBSMA 80-15, 2 IBSMA 21 (1980).
- E. CONSOLIDATION COAL CO. v OSM, IBSMA 79-25, 1 IBSMA 273 (1979).
- F. CONSOLIDATION COAL CO. v OSM, Docket No. IN 9-9-R (November 28, 1979).
- G. CONSOLIDATION COAL CO. v OSM, Docket No. In 9-9-R (May 29, 1979).
- H. CAPITOL FUELS, INC., IBSMA 80-27, 2 IBSMA 261 (1980).
- I. CAPITOL FUELS, INC. v OSM, Docket No. CH 9-174-R (1980).
- J. WILLIAM M. JOHNSON, IBSMA 81-25, 3 IBSMA 377 (1981).
- K. WILLIAM M. JOHNSON v OSM, Docket No. NX 0-160-R (1982).
- L. WILLIAM M. JOHNSON v OSM, Docket No. NX 0-160-R (1980).
- M. GRAFTON COAL COMPANY, INC., IBSMA 80-84, 3 IBSMA 175 (1981).
- N. GRAFTON COAL COMPANY, INC. v OSM, Docket No. CH 0-175-R (1980).
- O. FIRCHAU MINING, INC. v OSM, IBLA 86-199, 101 IBLA 144 (1988).
- P. FIRCHAU MINING, INC. v OSM, Docket No. DV 5-4-R (1985).
- Q. AMCORD, INC. v OSM, Docket No. TU 7-16-R (1988).
- R. C & N COAL CO. v OSM, Docket No. NX 3-16-P (1985).
- S. TENNESSEE CONSOLIDATED COAL CO. AND WALNUT COAL CO. v OSM, Docket Nos. NX 1-87-R, NX 1-147-P (1985).
- T. FOUR RIVERS COAL CO., INC. v OSM, Docket Nos. IN 0-43-R, IN 1-8-P (1983).
- U. FOUR RIVERS COAL CO., INC. v OSM, Docket No. IN 9-6-P (1979).
- V. G & M COAL CO. v OSM, Docket No. NX 0-192-R (1982).
- W. S. KELLY INDUSTRIES v OSM, DOCKET NO. CH 0-252-R (1980).
- X. INTERNATIONAL MIDWEST MINING v OSM, Docket No. IN 0-24-P (1980).
- Y. W.W. COAL CO. v OSM, Docket No. NX 9-10-P (1979).