



COALEX STATE INQUIRY REPORT - 40

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TOPIC: CESSATION ORDERS, 30 CFR SEC. 843.11(e)

INQUIRY: What is the regulatory and legislative history of the provisions for vacating, terminating, and modifying cessation orders under 30 CFR Sec. 843.11(e)?

SEARCH RESULTS:

30 CFR Sec. 843.11(e) provides that:

"An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee."

Legislative History

The provisions for issuing, vacating, modifying, and terminating cessation orders are found in Sec. 521(a) of the SMCRA, 30 USC 1271(a). The legislative history does not include substantial discussion on the intent of the provisions relating to when a cessation order can be modified, terminated, etc.

However, during the 93rd Congress Committee discussions on H.R. 11500, one of the major predecessors to P.L. 95-87, Congressman Symms from Idaho did offer an amendment to the language then under consideration. Symms' amendment provided for the addition of provisions for (1) the issuance of imminent danger cessation orders, and (2) the revision of the bill's language to delete the word "abated" and substitute the language "abated or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a)(5) of this section." (120 Cong. Rec. 24078 (JULY 18, 1974))

All bills considered during the 94th and 95th Congresses included, without debate, language identical with that finally passed in P.L. 95-87.

OSM Regulations

Sec. 843.11(e) was added to the federal regulations at the time of the initial issuance of the permanent program regulations on March 13, 1979, and has been retained unchanged since.



In discussing comments on the 1979 regulations, OSM provided the following explanation of the provisions relating to cessation orders:

"The Act provides in Section 521(a)(2) and (3) that the inspector shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. . . There are cases where cessation of the entire operation may be necessary or where it may result in more expeditious abatement of the condition, practice or violation involved. If such is the case, cessation of the entire operation may be entirely justified. Nevertheless, inspectors should not close down more of an operation than in their judgment is necessary under the circumstances.

. . .

"Sections 521 (a) (2) and (3) of the Act provide that a cessation order issued under those subsections shall remain in effect until the Secretary or his authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated.

"It is the policy of the Office that a regulatory authority should terminate cessation orders or modify them to permit resumption of operations as soon as reasonably possible to avoid unnecessary economic harm to an operator. While Section 521 (a) (2) and (3) of the Act provides that a cessation order may be kept in force until the condition, practice or violation is abated, Section 843.11(e) of the regulations allows modification of a cessation order to permit resumption of operations when the imminent harm has been abated, even though the violation may take longer to correct." (44 FR 15301 (MARCH 13, 1979))

ATTACHMENTS:

- A. 120 Cong. Rec. 24078 (JULY 18, 1974).
- B. 44 FR 15300-15302 (MARCH 13, 1979).