

Office of Surface Mining

Table 7 summarizes the Office of Surface Mining's oversight inspection and enforcement activities during 1997.

Prior to 1996, the Office of Surface Mining focused its oversight activities on the states' procedural compliance with state program processes and procedures. Under revised oversight guidance

implemented in January 1996, and further enhanced in 1997, the Office of Surface Mining's evaluation activities now primarily focus on the successes of states in meeting the Surface Mining Law's goals of protecting the public and the environment against off-site impacts to the land and water and achieving prompt, effective reclamation of land mined for coal. Based in part on input the

TABLE 6 1997 SIGNIFICANT COURT DECISIONS

TAKINGS

Helmick v. United States, No. 95-0115 (N.D. W. Va.)

On September 8, 1997, Judge Robert Maxwell, United States District Court for the Northern District of West Virginia, granted plaintiff's motion for summary judgment in the valid existing rights case. The Court ruled that OSM had a mandatory duty under SMCRA to define "valid existing rights" and ordered the Department within 30 days to file a schedule for publishing a VER rule by a date certain. Noting that the Department had previously published proposed rules defining VER which had been withdrawn or invalidated in some way, the Court rejected the Department's argument that the January 31, 1997, publication of a proposed rule defining VER had made the rulemaking issue moot. The Court also ruled that OSM had failed to carry out its mandatory duty under SMCRA when, because of a property rights dispute between plaintiff and the U.S. Forest Service, OSM had not issued a final decision on plaintiff's pending application for VER. Finally, the Court declared moot plaintiff's claim that the Department's refusal to process the VER application constituted a taking of its property without just compensation.

Eastern Minerals International, Inc., et al. v. United States, No. 94-1098-L (Fed. Cl.)

On April 21, 1997, Judge Hodges issued an opinion awarding \$12,016,254 to plaintiff Eastern Minerals and \$2,720,712 to plaintiffs Wilson and Ann Wyatt, and, on April 25, the court entered final judgment. The monetary award in *Eastern* follows from an October 2, 1996, decision holding that OSM's delay in processing plaintiff Eastern Minerals' permit application had effected a permanent regulatory taking of Eastern Minerals' leasehold interest and the Wyatts' royalty interest but dismissing the claims of other plaintiffs in the case. Both the Government and plaintiffs filed motions for reconsideration on May 9. Those motions remain pending.

RULE CHALLENGES

National Mining Ass'n v. Department of Interior, Nos. 95-5434; 95-5435; 95-5436 (D.C. Cir.) (consolidated)

On January 31, 1997, the U.S. Court of Appeals for the District of Columbia Circuit invalidated OSM's 1988 ownership and control rule finding that one aspect of the rule was inconsistent with the express language of SMCRA § 510(c). The court also invalidated OSM's 1989 permit information and improvidently issued permits rules explaining that they were "founded on the ownership and control rule." The invalidated rules implemented SMCRA § 510(c), which provides that a permit shall not be issued when a surface coal mining operation "owned or controlled by the applicant" is currently in violation of SMCRA. Federal defendants and Appellees National Wildlife Federation and Kentucky Resources Council filed petitions for rehearing, which were denied without explanation on March 28, 1997. The court's mandate was issued on April 16, 1997. All three regulations had previously been upheld in their entirety by the District Court on August 31, 1995. In response to the Court of Appeals' decision, OSM promulgated interim final rules on April 21, 1997, to replace the rules invalidated by the court. NMA then filed a series of motions, in both the Court of Appeals and the District Court, asking the courts to assert jurisdiction over OSM's interim rules and strike them down as being contrary to the Court of Appeals' January 31 opinion, and for other alleged defects in their promulgation.

On June 19, 1997, after a hearing on that same day, the District Court filed a written opinion denying NMA's motion to enforce the mandate and dismissing the case from the court's docket. In doing so, the court found that OSM complied with the mandate by doing "exactly what the Court of Appeals required." On August 20, 1997, the D.C. Circuit entered an order denying NMA's motion to recall and enforce the mandate, noting that any challenge to the interim final rules must be in the form of a new complaint in District Court. NMA filed such a complaint in District Court on June 20, 1997. On October 15, 1997, NMA filed an application for preliminary injunction, asking the District Court to prohibit implementation or enforcement of the interim final rules.

OWNERSHIP AND CONTROL

Arch Mineral Corp. v. Babbitt, No. 95-2793 (4th Cir.)

On January 16, 1997, a panel of the court held that the district court had jurisdiction, that the case was ripe, and that the statute of limitations at 28 U.S.C. § 2462 precluded OSM from making links based on unpaid civil penalties more than five years old. On August 1, 1995, the U.S. District Court for the Southern District of West Virginia had entered a final order granting summary judgment to OSM on the issue of whether under the ownership and control rules, OSM may link an applicant to Abandoned Mine Land (AML) fees more than five years old. The court, however, had granted summary judgment to Arch on all other counts, including holding that OSM may not link applicants to unpaid Federal or State civil penalties more than five years old. The Government did not appeal or seek a rehearing on the January 16, 1997 decision.

1997 SIGNIFICANT ADMINISTRATIVE DECISIONS

OFFICE OF HEARINGS AND APPEALS —INTERIOR BOARD OF LAND APPEALS

Kentucky Resources Council, et al., ("KRC") v. OSM, IBLA No. 94-161 (*Branham & Baker*) (attorneys fees)

On January 17, 1997, in a long-awaited decision, the Board clarified the scope of Section 525(e) of SMCRA, which authorizes fees reasonably incurred in connection with participating in administrative proceedings and is expected to minimize subsequent litigation over fee entitlement in administrative cases. At issue was the extent to which attorneys for citizen complainants should be compensated for time spent prior to initiation of an adversarial proceeding before the Office of Hearings and Appeals. KRC had argued that a party successfully prosecuting a SMCRA citizen's complaint is entitled to recover fees regardless of whether the Board ruled on the substantive or procedural issues raised in the complaint. In its decision, however, the Board adopted the position advocated by OSM, *i.e.*, that a fee applicant must generally show that there was either a procedural or a substantive infirmity in OSM's response to a citizen's complaint and that the citizen made a substantial contribution to resolution of the issues as a result of filing an appeal to the Board.