TOPIC: ACID MINE DRAINAGE/HYDROLOGIC BALANCE (Update of Report No. 192)

INQUIRY: Please update Report No. 192


REGULATORY HISTORY


Enclosed for background.


Due to the possibility of a remining operation unintentionally causing a sudden discharge of water releasing acid mine drainage, the operator applying for a remining permit must "identify the potential environmental and safety problems associated with the site, maximum impacts associated with these problems, and the probability for each type of problem to occur."

PENNSYLVANIA ADMINISTRATIVE CASES


"Hamilton failed to demonstrate that it would prevent damage to the hydrologic balance". DER's expert witness concluded that there was a strong likelihood of acid mine drainage and that Hamilton's proposed treatment plan was insufficient to remedy the drainage problems. The Board ruled that the certainty requirement did not apply to the expert's opinions:
"The Department need not show that discharge of pollution will result; it will prevail if it shows that the potential for pollution exists."


A surface mine operator appealed compliance orders issued "for unauthorized discharges from its mine site causing degradation of a stream, pond, and springs and for failure to reclaim". DER's orders to treat the mine drainage and complete reclamation of the site were sustained:

"A mine operator is responsible for all mine drainage on its permitted area and is required to treat it in order to meet the applicable effluent limits, whether or not the mine drainage predated operation of the mine."

WEST VIRGINIA STATE AMD CASES


"[T]he Commissioner of the Division of Environmental Protection has a duty to utilize the proceeds from forfeited bonds to accomplish the completion of reclamation of affected lands of a surface mine."

STATE OF WEST VIRGINIA EX REL. WEST VIRGINIA HIGHLANDS CONSERVANCY, INC. v WEST VIRGINIA DIV. OF ENVTL. PROTECTION, 447 SE 2d 920 (W VA 1994).

West Virginia DER "has a mandatory, nondiscretionary duty to utilize moneys from the Special Reclamation Fund...to treat acid mine drainage at bond forfeiture sites when the proceeds from forfeited bonds are less than the actual cost of reclamation."

"Whenever changes to laws or regulations that make up the approved State program are proposed by the State, the State shall immediately submit the proposed changes to the Director [of OSM] as an amendment. No such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment."

ATTACHMENTS


G. STATE OF WEST VIRGINIA EX REL. WEST VIRGINIA HIGHLANDS CONSERVANCY, INC. v WEST VIRGINIA DIV. OF ENVTL. PROTECTION, 447 SE 2d 920 (W VA 1994).