



COALEX STATE INQUIRY REPORT - 77
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TOPIC: DEFINITION OF "PATTEN OF VIOLATIONS"

INQUIRY: Please locate any Interior Board of Land Appeals cases which discuss and define the phrase "pattern of violations".

SEARCH RESULTS: Sec. 521(a)(4) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides that a permit may be suspended or revoked if the Secretary or his representative determines that at "pattern of violations" of any requirements of the Act or any permit exists or has existed. This provision of the Act is implemented in the federal regulations found at 30 CFR Sec. 843.13.

The legislative and regulatory history of the phrase "pattern of violations" was discussed in COALEX STATE INQUIRY REPORT - 42. In addition, a search of the ALJ and IBLA files was conducted to locate administrative decisions on this issue.

No decisions were located which specifically defined "pattern of violations"; however, two cases which discuss the phrase were identified. In HARLAN-CUMBERLAND COAL CO. v OSM, No. NX 5-15-P (June 4, 1986), a cessation order was issued against the operator after an OSM inspector responded to citizen complaints that black waste water was being pumped into a nearby stream. In challenging the issuance of the cessation order, the operator acknowledged that the state regulatory authority had previously cited the company for discharging black water into the stream. However, the operator provided correspondence which disclosed that the state did not regard those occurrences as being a "pattern of violations". The Administrative Law Judge ruled that OSM had properly found a pattern of violations, noting:

"[P]etitioner's argument that, despite the showing that it had improperly discharged black, substandard mine drainage into Clover Fork on three other occasions..., such conduct should not be viewed as a pattern of violations, has a hollow ring. Because the pertinent State regulatory authority did not regard petitioner's prior practices a constituting a pattern of violations, that determination is not binding upon OSM nor does it relieve petitioner of liability under the Act or implementing regulations. If the commission of an offense that has been demonstrated to have occurred, as here, on four occasions over a 10-month period is not to be regarded as constituting a pattern of violations, it is difficult to perceive a factual scenario which would qualify for such a categorization." (Id.)



REBEL COAL CO.; ISLAND CREEK COAL CO., 4 IBSMA 69 (1982) dealt with the attempt of an environmental group to intervene in a proceeding initiated by OSM with an order to show cause why a permit should not be suspended or revoked as the consequence of an alleged pattern of violations. While the case did not discuss the proceedings surrounding the show cause order, the Board noted that the companies had been cited for seven violations on one permit over a period of time.

ATTACHMENTS

- A. COALEX STATE INQUIRY REPORT - 42 and attachments.
- B. HARLAN-CUMBERLAND COAL CO. v OSM, No. NX 5-15-P (June 4, 1986).
- C. REBEL COAL CO.; ISLAND CREEK COAL CO., 4 IBSMA 69 (1982).