



COALEX STATE INQUIRY REPORT - 86
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TOPIC: DEFINITION OF "OFFSITE"

INQUIRY: What is the definition given to the word "offsite" as used in SMCRA?

SEARCH RESULTS: The specific case addressed by this inquiry concerns the situation where an operator has caused a slide to occur outside his planned disturbed area but inside his permit area boundary. The inquiry then focuses on the meaning given to the term "offsite" as it relates to these boundaries.

Congress made three references to the term "offsite" in the Surface Mining Control and Reclamation Act of 1977 (SMCRA). (SMCRA Sec. 508(a)(13)(A), codified at 30 USC Sec. 1258(a)(13)(A); SMCRA Sec. 515 (b)(10) and (21), codified at 30 USC Sec. 1265 (b)(10) and (21).) The most pertinent of these, Section 515(21) requires an operator to:

"Protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit." (SMCRA Sec. 515(b)(21), 30 USC Sec. 1265(b)(21))

Clearly, protection of offsite areas is mandated by the Act; however, the term "offsite" is not defined in the Act nor are the other sections of the Act where "offsite" occurs helpful to an understanding of the term. They refer only to permit requirements for measures to be taken to assure the quality of surface and ground water systems both on and off-site (30 USC Sec. 1258(a)(3)(A)) and performance standards to minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas (30 USC Sec. 12645(b)(10)).

LEGISLATIVE HISTORY

Both the House and the Senate reports in the 95th Congress addressed "offsite" in terms of preventing damage by slides. The Senate version required the operator to:

"Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the regulatory authority shall determine shall be retained in place as a barrier to slides and erosion." (S. Rep. No. 128, 95th Cong., 1st Sess. 27 (1977))



The House version of this provision (H. Rep. No. 218, 95th Cong., 1st Sess. 32 (1977)) contained language identical to that in the legislation which was eventually enacted. The conference report contained no explanation as to why the Senate conceded to the House on this provision.

An investigation of earlier legislative history indicates that the language as currently included in the Act was the same as far back as the version approved by a House and Senate Conference Committee in 1974. (H. Conf. Rep. No. 1522, 93rd Cong., 2d Sess. 36 (1974)) None of these reports provide any insight into what was meant by the term "offsite".

FEDERAL REGULATIONS

Definitions for "affected area", "disturbed area" and "permit area" have been promulgated by the Office of Surface Mining and are contained in 30 CFR Sec. 701.5. However, the term "offsite" has not been defined by OSM.

The term "offsite", however, has been discussed in the context of Part 827 - Permanent Program Performance Standards - Coal Preparation Plants Not Located Within the Permit Area of a Mine. Thus, OSM's requirement that any coal preparation plant not within the permit equated "offsite" with any area outside a permit area.

Furthermore, in the regulations promulgated to protect the hydrologic balance (30 CFR Sec. 816.41), the reference to offsite in the original Act has been termed "outside the permit area".

Thus, there appears no question that OSM has interpreted "offsite" to refer to areas located outside the permit boundary.

COURT DECISIONS

In agreement with OSM's interpretation is at least one Board of Surface Mining Appeals case, CARBON FUEL CO., 3 IBSMA 207. In this case, Carbon Fuel had been cited for conducting coal mining operations that created an imminent danger to the health or safety of the public by tracking mud from its job onto a public highway. Carbon Fuel contended that since the effects of the violation occurred offsite, it could not be required to go offsite to correct it. The Board disagreed and reversed the Administrative law Judge, holding that "the Act contemplates that the consequences of violations of its requirements may extend off the permit area." (3 IBSMA 207, 213)

While the search results do not provide a concrete definition for "offsite", it does appear that legislative history is at least not contradicted (since none really addressed the term) by promulgated regulations and by the Interior Board of Surface Mining Appeals decision that "offsite" is equated with any area outside the permit area.



ATTACHMENTS

- A. Excerpt, 30 USC Sec. 1258(a)(13(A)).
- B. Excerpt, 30 USC Sec. 1265(a)(10).
- C. Excerpt, 30 USC Sec. 1265(a)(21).
- D. Excerpt, S. Rep. No. 128, 95th Cong., 1st Sess. 27 (1977).
- E. Excerpt, H. Rep. No. 218, 95th Cong., 1st Sess. 32 (1977).
- F. Excerpt, H. Conf. Rep. No. 1522, 93rd Cong., 2d Sess/ 36 (1974).
- G. Excerpt, 30 CFR Sec. 827.11.
- H. Excerpt, 30 CFR Sec. 816.41.
- I. CARBON FUEL CO., 3 IBSMA 207.