



COALEX STATE INQUIRY REPORT - 90
October 15, 1987

Ron Reeves, Legal Counsel
Texas Railroad Commission
Surface Mining & Reclamation Division
1701 N. Congress Ave.
William B. Travis Bldg., 7th Floor
Austin, Texas 78704

TOPIC: DAMAGE FROM PREVIOUS MINING

INQUIRY: A current surface mining operator has experienced subsidence from an old underground mine. The subsidence has caused surface damage within the permit area of the permitted mine. Is the surface mine operator responsible for reclamation of the subsidence damage caused by the old underground workings?

SEARCH RESULTS: A COALEX search was conducted of state and federal regulations, federal court decisions, and federal administrative decisions.

FEDERAL AND STATE REGULATIONS

No federal or state regulatory provision was identified that directly addressed the issue raised in the inquiry. Some regulations do, however, address the issue of an operator's responsibility for restoring previously mined areas. The revegetation portions of the federal regulations, for example, provide that:

"For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion." (30 CFR Sections 816.116(b)(5) and 817.116(b)(5)).

Further, the postmining land use provisions include the following exception for previously mined areas:

"If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining." (30 CFR Sections 816.133(b) and 817.133(b); see also, 30 CFR Sections 816.74 and 816.106)



FEDERAL DECISIONS

No federal court decisions were identified that addressed the specific issue raised in the inquiry.

Several Interior Board administrative decisions were identified which considered the issue of reclamation responsibility for pre-existing conditions. The general rule as put forth by the Interior Board of Land Appeals has been that: "Mining on previously mined lands does not relieve an operator of the duty to comply...." *JEFFCO SALES & MINING CO., INC.*, 4 IBSMA 140 (1982). In the *JEFFCO* case, the Board found the operator liable for mine drainage from the disturbed area, even though there may have been inflow into the area from areas previously mined by persons other than the operator. In accord, see *THUNDERBIRD COAL CORPORATION*, 1 IBSMA 85 (1979); *CRAVAT COAL CO., INC.*, 2 IBSMA 249 (1980); *CENTRAL OIL AND GAS, INC.*, 2 IBSMA 308 (1980); and *ISLAND CREEK COAL, CO.*, 3 IBSMA 383 (1981).

In *ISLAND CREEK*, supra, the Board pointed out that the "point of discharge at which numerical effluent limitations are to be applied is the point at which drainage from the disturbed area leaves the last sedimentation pond through which it is passed." In *CENTRAL OIL*, supra, the Board noted that "where a surface coal mining operation affects previously mined lands, the fact that an alleged violation could have existed before the present operation does not relieve the permittee from responsibility for the violation."

The general rule has not, however, been applied without exception. In *CEDAR CO. v OSM*, 1 IBSMA 145 (1979), and *MIAMI SPRINGS PROPERTIES v OSM*, 2 IBSMA 399 (1980), the Board held that neither the backfilling and grading requirements of the federal Surface Mining Control and Reclamation Act (SMCRA) nor the OSM regulations applied to previously mined lands on which no adverse physical impact to a pre-existing highwall resulted from surface coal mining operations conducted after the Act's effective date. (See also, *MOUNTAIN ENTERPRISES COAL CO.*, 3 IBSMA 338 (1981).)

The "no adverse physical impact" exception was further extended in *DARMAC COAL CO.*, 74 IBLA 100 (1983), which held that an operator was not liable for a seep from abandoned underground mines where the current operations had "no adverse physical impact on the seep." In *DARMAC*, the operator had deposited dirt on the seep, and thus "the area was technically affected, i.e., disturbed." However, the Board went on to find that "the area was not as a practical matter disturbed.... In a context involving previously mined areas...absent adverse physical impact from the current mining on the condition remaining from the previous mining...no disturbance occurs that requires bringing that condition into compliance with presently applicable standards." (Id.)

In the case where an exception to the general rule applies, the burden is on the operator to affirmatively demonstrate his entitlement to the exception. *DANIEL BROTHERS COAL CO.*, 2 IBSMA 45 (1980); *JEFFCO SALES & MINING CO., INC.*, supra; *TIGER CORP.*, 4 IBSMA 202 (1982).



ATTACHMENTS

- A. JEFFCO SALES & MINING CO., INC., 4 IBSMA 140 (1982).
- B. THUNDERBIRD COAL CORP., 1 IBSMA 85 (1979).
- C. CRAVAT COAL CO., INC., 2 IBSMA 249 (1980).
- D. CENTRAL OIL AND GAS, INC., 2 IBSMA 308 (1980)
- E. ISLAND CREEK COAL, CO., 3 IBSMA 383 (1981).
- F. CEDAR CO. v OSM, 1 IBSMA 145 (1979).
- G. MIAMI SPRINGS PROPERTIES v OSM, 2 IBSMA 399 (1980).
- H. MOUNTAIN ENTERPRISES COAL CO., 3 IBSMA 338 (1981).
- I. DARMAC COAL CO., 74 IBLA 100 (1983).
- J. DANIEL BROTHERS COAL CO., 2 IBSMA 45 (1980).
- K. TIGER CORP., 4 IBSMA 202 (1982).