



COALEX STATE INQUIRY REPORT – 92
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Clint Milne
Mining and Minerals Division
New Mexico Energy and Minerals Department
525 Camino de los Marquez
Santa Fe, New Mexico 87501

TOPIC: SMALL AREA EXEMPTIONS

INQUIRY: 30 CFR Sec. 816.46(e) creates an exemption from the requirement that an operator construct siltation structures if, among other things, the disturbed drainage area is "small". Has Congress or OSM attempted to define the meaning of the work "small" as used in this context?

SEARCH RESULTS: Section 816.46 of the federal regulations requires that treatment facilities be constructed to establish and maintain sediment control on a permitted area. Under Sec. 816.46(e), exemptions to this requirement may be granted if (1) the disturbed drainage area within the total disturbed area is "small"; and (2) the operator can demonstrate that siltation structures and other sediment control measures are not necessary for drainage from the area to meet effluent limitations established under Sec. 816.42 and applicable state and Federal laws.

This "small area exemption" is not specifically enunciated in SMCRA, therefore, no pertinent legislative history on the meaning of the work "small" is available. OSM included this exemption when it promulgated the original regulations in 1978 concerning the use of siltation structures to control surface runoff. These regulations were authorized by Sec. 515(b)(10)(B) of SMCRA, which requires the operator to minimize the disturbances to the prevailing hydrologic balance by "conducting surface coal mining operations so as to prevent...additional contributions of suspended solids to streamflow, or runoff outside the permit area" and to "construct any siltation structures...prior to commencement of surface coal mining operations." From this language, it is apparent that Congress left the development of specific siltation control measures to the discretion of the regulatory authority.

The language of Sec. 816.46(e) has not been altered since it was originally developed by OSM in 1978. In the preamble to the final rules as published in 1979, OSM made no attempt to specifically define "small"; instead, it appears that the determination of whether an area is "small" is to be left to the discretion of the regulatory authority.

This assertion is bolstered by OSM's response to comments made on this section. In the 1979 preamble, OSM considered modifying the exemption to require that the area be "small relative to the size of the ponds which would have to be constructed to comply with Sec. 814.46", but rejected such a modification, noting:



"The Office considers this modification to the proposed exemption to be unnecessary, because the language of the more general exemption provides greater latitude for a determination of what is small' and also meets the intent of the Office to recognize that, on isolated corners of operations, the building of sedimentation ponds may not be necessary to meet effluent limitations or water quality requirements and may create more deleterious effects to the local hydrologic system than the mining disturbance itself." (44 FR 14901, 15152 (1979))

As was noted earlier, the language of this exemption has not been altered since its adoption. Thus, the determination of whether an area is "small" is left to the discretion of the regulatory authority.

An earlier COALEX Report dealt with the meaning of a related topic: the definition of "small depression" as it is found at 30 CFR Sec. 816.102. A copy of the Report and its documentation are attached.

ATTACHMENTS

- A. 44 FR 15152 (1979).
- B. COALEX STATE INQUIRY REPORT - 83, "Small depressions".