



COALEX STATE INQUIRY REPORT - 326

July 1995

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TOPIC: PREPAYMENT OF CIVIL PENALTIES (Update of COALEX Report No. 123)

INQUIRY: Please locate cases that rule on the need to prepay civil penalties when petitioning for a review of the proposed penalties. Attorneys for the cited permittee are claiming that requiring the money before a hearing is unconstitutional and violates due process.

SEARCH RESULTS: A earlier COALEX Report on this topic was updated using the COALEX Library and other LEXIS materials. All of the administrative, state and federal cases identified hold that it is not unconstitutional nor a violation of due process to require a prepayment of civil penalties.

Copies of the original report and the supplemental materials are attached.

ATTACHMENTS

1. COALEX STATE INQUIRY REPORT - 123, "Prepayment of civil penalties" (1989).
 - A. FRANKLIN v. NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, No. 87-CA-2602-MR, 1989 Ky. App. LEXIS 46 (Ky. Ct. App. 1989).
 - B. LYLE CONSTRUCTION, INC. v. OHIO DEPARTMENT OF NATURAL RESOURCES, 516 N.E.2d 209 (Ohio 1987).
 - C. LYLE CONSTRUCTION, INC. v. DIVISION OF RECLAMATION, No. 426, slip op. (Ohio Ct. App. 1986).
 - D. BOYLE LAND AND FUEL, CO. v. COMMONWEALTH OF PENNSYLVANIA, 475 A.2d 928 (Pa. Commw. Ct. 1984).
 - E. DRESSLER COAL CO. v DIVISION OF RECLAMATION, No. CA-88-1, 1988 Ohio App. LEXIS 5136 (Ohio App Ct. 1988).
 - F. TWELVE VEIN COAL CO. v COMMONWEALTH OF PENNSYLVANIA, No. 876 C.D. 1988, 1989 Pa. Commw. LEXIS 515 (Pa. Commw. Ct. 1988).



- G. GRAHAM v OSMRE, 722 F.2d 1106 (3rd Cir. 1983).
 - H. BLACKHAWK MINING CO. v ANDRUS, 711 F.2d 753 (6th Cir. 1983).
 - I. B & M COAL CORP. v OSMRE, 699 F.2d 381 (7th Cir. 1982).
 - J. JOHN WALTERS COAL CO. v WATT, 553 F. Supp. 838 (E.D.Ky. 1982).
 - K. U.S.A. v THOMPSON BROTHERS COAL, CO., 532 F. Supp. 979 (W.D.Pa. 1982).
 - L. U.S. v FINLEY, 835 F.2d 134 (6th Cir. 1987).
 - M. ANNOTATION, "Penalties Under 30 USCS Sec. 1268 for Violating Surface Mining Control and Reclamation Act", 82 A.L.R. Fed. 218 (1988).
 - N. H. REP. 93-1072, 93rd Cong., 2nd Sess. (1974).
 - O. S. REP. 28, 94th Cong., 1st Sess. (1975).
 - P. 120 CONG. REC. 24,594 (July 23, 1974).
 - Q. Surface Mining Control and Reclamation Act of 1977: HEARINGS on S. 7 Before the Subcomm. on Public Lands and Resources of the Senate Comm. on Energy and Natural Resources, 95th Cong., 1st Sess. 1038 (1977) (statement of J. Davitt McAteer and L. Thomas Galloway, Council of the Southern Mountains, Inc.).
 - R. H.R. 2, 95th Cong., 1st Sess. 115-118 (1977).
 - S. H. REP. 95-218, 95th Cong., 1st Sess. 68 (1977).
 - T. S. REP. 95-128, 95th Cong., 1st Sess. 58 (1977).
2. FEDERAL REGISTER NOTICES
- A. 45 FR 58780 (SEPTEMBER 4, 1980). Final rulemaking. Civil Penalties.
 - B. 51 FR 16319 (MAY 2, 1986). Final rule. Special rules applicable to surface coal mining hearings and appeals.
 - C. 56 FR 10060 (MARCH 8, 1991). Final rule. Civil penalty assessment conference procedures.
3. INTERIOR ADMINISTRATIVE CASES
- A. R.C.T. ENGINEERING, INC. v OSM, 1987 IBLA LEXIS 304, IBLA 87-408, 87-409 (1987).
 - B. BROWN BROS. COAL CO., INC. v OSM, 1987 IBLA LEXIS 303, IBLA 87-463 (1987).
 - C. BILL SMITH COAL CO. v OSM, 101 IBLA 224, 1988 IBLA LEXIS 269, IBLA 87-473 (1988).
 - D. BEN COLLINS v OSM, 92 IBLA 371, 1986 IBLA LEXIS 279, IBLA 85-466, 85-467 (1986).
 - E. TRI COAL CO. v OSM, 85 IBLA, 1985 IBLA LEXIS 311, IBLA 85-269 (1985).
 - F. ERNEST EDWARDS, EDWARDS MINING CO. & EDWARDS COAL CO. v OSM, Docket No. NS 88-32-P (1988).



- G. EDWARDS COAL CO. v OSM, Docket No. NX 88-31-P (1988).
- H. J.A.D. COAL CO., INC., ARTHUR WOODARD COAL CO., MCAFEE COAL CO. v OSM, Docket No. NX 88-29-P (1988).
- I. PARAMONT COAL CORP. v OSM, Docket No. NX 88-28-P (1988).
- J. BOTNER GAMBREL COAL CO. v OSM, Docket No. NX 7-45-P (1988).

4. STATE CASES

- A. BOYLE LAND & FUEL v ENVIRONMENTAL HEARING BOARD, 488 A 2d 1109 (Pa 1985).
- B. DRESSLER COAL CO. v DIVISION OF RECLAMATION, 536 N.E. 2d 1172 (Ohio 1989).
- C. ST. JAMES v DEPT. OF ENVTL. PROTECTION & ENERGY, 646 A 2d 447 (NJ 1994).
- D. FRANKLIN v NATURAL RESOURCES & ENVTL. PROTECTION CABINET, 799 S.W. 2d 1 (Ky 1990).
- E. TRACEY MINING CO. v PENNSYLVANIA, 544 A 2d 1075 (Pa Commw Ct 1988).

5. FEDERAL CASES

- A. B & M COAL CORP. v OSMRE, 699 F 2d 381 (7th Cir 1983).
- B. INDIANA v ANDRUS, 501 F Supp 452 (S.D. Ind 1980).
- C. HODEL v INDIANA, 452 U.S. 314 (1981).
- D. UNITED STATES v KOBALY, 1987 U.S. Dist. LEXIS 15019, 25 ERC (BNA) 2110 (W.D. Pa 1987).