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W. Braxton
T. Mitchell
Wm Richards

Interstate Mining Compact

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459B Carlisle Drive
Herndon, Virginia 22070

Gregory E. Conrad, Executive Director

Phone: 703/709-8654

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OIL GAS & MINING

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October 30, 1992

COALEX REGULATORY DEVELOPMENT REPORT

MSHA EXTENSION OF PARTIAL ADMINISTRATIVE STAY

The Mine Safety and Health Administration (MSHA) extended the partial administrative stay of several provisions of the January 8, 1991 (56 FR 2070) final rule on safety standards for explosives at metal and nonmetal mines until July 1, 1993. (57 FR 44256)

OSM APPROVES MARYLAND PROGRAM AMENDMENT

The Office of Surface Mining (OSM) in the Department of Interior (DOI) announced the approval of a proposed amendment to the Maryland regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns changes to the Code of Maryland Regulations required by OSM in federal rulemaking on January 11, 1991 (56 FR 1097) and a revision concerning petition for designation of an area as unsuitable for mining. The rule became effective September 24, 1992. (57 FR 44112)

OSM APPROVES MISSOURI PROGRAM AMENDMENT

OSM announced approval of a proposed amendment, with certain exceptions, submitted by the state of Missouri as a modification to its permanent regulatory program approved under SMCRA. The amendment was initiated by the state to make the program consistent with other programs within

the Missouri Department of Natural Resources. The rule became effective September 24, 1992. (57 FR 44114)

OSM APPROVES OHIO AML PROGRAM AMENDMENTS

OSM announced the approval of proposed amendments to the Ohio Abandoned Mine Land Reclamation Plan under SMCRA. The amendments concern the proposed policies and procedures with which Ohio would conduct the Abandoned Mine Land Reclamation (AML) emergency program on behalf of OSM. The amendments would also make eligible for federal AML funding, certain sites in Ohio affected by mining activities after the passage of SMCRA and would revise the definition of what constitutes a small operator under the small operator assistance program to be consistent with the approved Ohio program. The rule became effective September 24, 1992. (57 FR 44118)

OSM APPROVES KENTUCKY PROGRAM AMENDMENT

OSM announced the approval, with exceptions, of a proposed program amendment to the Kentucky regulatory program under SMCRA. The amendment consists of proposed modifications to a number of Kentucky rules in various subject areas for the purpose of maintaining consistency with revised federal requirements, clarifying ambiguities, improving operational efficiency and implementing the additional flexibility afforded by federal regulatory revisions. The rule became effective October 1, 1992. (57 FR 45295)

MSHA PROPOSED RULEMAKING RE EXPLOSIVES

MSHA proposed a rule addressing stayed provisions of the agency's safety standards for explosives at metal and nonmetal mines which were promulgated on January 18, 1991 (56 FR 2070). The proposed rule defines "blast site," "magazine," and "storage facility"; the storage of packaged blasting agents; the location of explosive material storage facilities; vehicles transporting explosive material; primer protection; loading and blasting; double trunklines in nonelectric initiation systems; excessive temperatures; and burning explosive material. The proposed revisions are intended to provide the necessary safety requirements for the hazards addressed by the stayed provision. Comments are due December 15, 1992. (57 FR 47524)

OSM WITHDRAWS PROPOSED RULES

OSM withdrew three proposed rules from further consideration. The three proposed rules being withdrawn are: Requirements for Coal Exploration, Individual Civil Penalties, and the Temporary Cessation of Operations. The proposed rules are being withdrawn as a result of comments received during the public comment periods and reviews conducted under the President's Guidelines for Reducing the Burden of Government Regulations. The withdrawal became effective October 16, 1992. (57 FR 47431)

MSHA EXTENDS COMMENT PERIOD ON PROPOSED RULES

MSHA extended the period for public comment on the agency's proposed rules regarding electric motor-driven mine equipment and accessories and high-voltage longwall equipment for underground coal mines at the request of the mining community. Comments are now due November 13, 1992. (56 FR 48350)

OSM APPROVES INDIANA'S RESPONSE TO AMENDMENT REQUIREMENT

OSM announced the approval of Indiana's response to a required program amendment codified in the federal regulations at 30 CFR 914.16(a) concerning the state's regulatory program under SMCRA. The required amendment concerns notification of permit decisions to commenters or objectors to a permit application, and to each party to an informal conference or hearing. Indiana's response to the required amendment is intended to assert that the Indiana statutes and rules currently allow for appropriate and timely notification in accordance with SMCRA and that an amendment is not necessary. (57 FR 48724)

OSM APPROVES LOUISIANA PROGRAM AMENDMENT

The Director of OSM approved a proposed amendment submitted by the state of Louisiana as a modification to its permanent regulatory program under SMCRA. The amendment, concerning revisions to the Louisiana Surface Mining Regulations pertaining to hydrology, standards for revegetation success, termination of jurisdiction, and inspections of abandoned sites, revises Louisiana's regulations to be consistent with the corresponding federal regulations. The rule became effective October 28, 1992. (57 FR 48726)

OSM APPROVES OHIO PROGRAM AMENDMENT

OSM announced the approval of proposed Revised Program Amendment Number 55 to the Ohio permanent regulatory program under SMCRA. The amendment was initiated by Ohio and is intended to adopt provisions similar to the federal counterpart regulations which provide for reclamation agreements between Ohio and permittees who are in danger of bond forfeiture. The amendment would also delete a redundant provision concerning delinquent reclamation and would delete a provision terminating the rights of the permittee to reclaim all or part of a forfeited permit upon issuance of the bond forfeiture order. The rule became effective October 28, 1992. (57 FR 48730)

OSM APPROVES PENNSYLVANIA SOAP AMENDMENT

OSM announced the approval of a proposed amendment to the Pennsylvania regulatory program approved under SMCRA. The amendment consists of proposed modifications to the Pennsylvania Department of Environmental Resources Small

Operator Assistance Program (SOAP) at Chapter 86. The rule became effective October 28, 1992. (57 FR 48733)

OSM OPENS COMMENT PERIOD ON ILLINOIS AML PROPOSED AMENDMENT

OSM announced the receipt of a proposed amendment to the Illinois Abandoned Mine Land Reclamation (AML) Plan under SMCRA, Public Law 95-87, 30 U.S.C. 1231 *et. seq.*, as amended. The proposed amendment pertains to changes to SMCRA made by the AML Reclamation Act of 1990, Public Law 101-508, which became effective October 1, 1991. The proposed amendment is intended to revise the Illinois AML Plan to address the changes to SMCRA. Comments are due November 27, 1992. (57 FR 48758)

OSM OPENS COMMENT PERIOD ON INDIANA PROGRAM AMENDMENTS

OSM announced receipt of a proposed amendment submitted by Indiana as a modification to the state's regulatory program under SMCRA. The amendment submitted (program amendment number 92-4) consists of proposed changes to the Indiana Surface Coal Mining and Reclamation Rules concerning coal extraction incidental to extraction of other minerals. The amendment is intended to establish criteria and procedures for use in determining whether an operation qualifies initially, and on a continuing basis, for an exemption from permitting. Comments are due November 27, 1992. (57 FR 48759)

OSM also announced receipt of an Indiana program amendment (number 92-6) consisting of proposed changes to the Indiana Surface Coal Mining and Reclamation Law (IC 13-4.1) concerning the state's reclamation fee and the SOAP program. The amendment is intended to establish a reclamation fee for underground coal operations with no support facilities located within Indiana but producing coal from reserves within Indiana, and to increase the qualifying tonnage limit for the SOAP program from 100,000 tons to 300,000 tons. Comments are due November 27, 1992. (57 FR 48761)

OSM OPENS COMMENT PERIOD ON MARYLAND AML AMENDMENT

OSM announced receipt and requested comments on a proposed amendment to the Maryland AML Plan under SMCRA. The proposed amendment provides for a new program that will allow Maryland to expend up to ten percent of Title IV grants to abate and treat acid mine drainage (AMD). The proposed amendment was submitted in response to changes in the AML program that resulted from the AML Reclamation Act of 1990 (Pub. L. 101-508). Comments are due November 27, 1992. (57 FR 18762)

OSM REOPENS COMMENT PERIOD ON NEW MEXICO PROGRAM AMENDMENT

OSM announced receipt of revisions pertaining to a previously proposed amendment to the New Mexico permanent regulatory program under SMCRA. The revisions for New Mexico's proposed rules and statute pertain to protection of hydrologic

balance, reclamation plans, transportation facilities, subsidence control, support facilities, permit conditions, performance standards for coal exploration, permit information requirements, coal processing waste dams and embankments, protection of threatened and endangered species, revegetation, roads, cessation orders, ownership and control, permit rescission, the designation of lands unsuitable for coal mining, and repeal of the 2-acre exemption. The amendment is intended to revise the New Mexico program to be consistent with the corresponding federal regulations and provide additional safeguards. Comments are now due November 12, 1992. (57 FR 48764)

OSM REOPENS COMMENT PERIOD ON OHIO PROGRAM AMENDMENT

OSM reopened the public comment period for proposed Revised Program Amendment Number 54 to the Ohio permanent regulatory program under SMCRA. The revised amendment proposes further changes to seven sections of the Ohio Revised Code to clarify those sections of state law, to conform those sections to current state practices, and to make those sections equivalent to corresponding federal laws. The additional proposed revisions concern permit fees for interim program permits, discretion in providing financial assistance to small mine operators, informal review of issues as a form of alternative dispute resolution, limitations on and procedures for the award of costs and expenses, the Reclamation Supplemental Forfeiture Fund, and the priority and dates of eligibility for reclamation of interim forfeiture and insolvent surety sites. Comments are now due November 27, 1992. (57 FR 48765)

Should you have any questions or require copies of any of the above Federal Register notices, please contact the IMCC office at 703/709-8654.

COALEX STATE INQUIRY AND COMPARISON REPORTS

Attached is a list of new topics researched as of October 9, 1992. Please note that though the research has been done, many of the reports have not yet been completed in final form. A volume of the reports will be compiled and sent to you upon completion of the reports.

190 TOPIC: VARIANCE FROM AOC FOR PARTIAL MOUNTAINTOP REMOVAL

INQUIRY: An operator received a variance from AOC for mountaintop removal. After mining halfway through the seam, the operator switched to contour mining. Is the operator entitled to keep the variance now that the method of mining has changed and the entire seam will not be taken? Please locate legislative history material which discusses this issue. Have Kentucky or Virginia encountered similar situations?

191 TOPIC: IS FILL DIRT CONSIDERED A "MINERAL" FOR REGULATORY PURPOSES? [Includes State Inquiry Reports 134, 47, 24, 82 and 113.]

INQUIRY: A sand and gravel dealer identified two coal seams separated by shale below an area being excavated. If the intervening layers of shale are sold as fill dirt, can the dealer obtain an exemption, based on the 16 2/3 rule, for extraction of the lower seam of coal? What case law and other materials are available on this issue in addition to McNabb Coal Co. v OSM, 101 IBLA 282 (1988), Cordova Clay Co. v OSM, Docket No. NX 5-3-R (1986) and W.S. Newell, Inc. v Randall, 373 So 2d 1068 (Ala 1979)?

192 TOPIC: ACID MINE DRAINAGE

INQUIRY: Please locate legislative history, Federal Register preambles or other materials which discuss the following: does a coal company have to guarantee there will be no acid mine drainage in order to obtain a mining permit or is it sufficient for the company to present its plans for preventing or treating toxic drainage in order to receive a permit [SMCRA secs. 515(b)(10) and 516(b)(9)]?

193 TOPIC: FAILURE TO MAINTAIN SEDIMENTATION PONDS (SILTATION STRUCTURES)

INQUIRY: An operator was cited for failing to maintain sedimentation ponds: the inspector found water running under the discharge pipe. Please locate any materials - case law, Federal Register preambles, legislative history - which discusses the requirement to maintain sedimentation ponds and spillways.

194 TOPIC: PERMITTING OF UTILITY LINES

INQUIRY: An operator, who has the right to mine under a coal severance deed, is installing utility lines to supply power to the mine. The landowner is inquiring if the construction of utility lines over his land requires permitting under SMCRA. Please locate case law and other materials which address this issue.

195 TOPIC: REFORMATION OF BOND

INQUIRY: In the early days of SMCRA, Oklahoma used an existing form to issue a bond to a coal operator. The bond form referenced the pre-SMCRA regulations. Subsequently, the Department of Mines reformed the operator's bond to reflect the correct regulation. The state now wants to forfeit the bond; however, the surety refuses to pay, claiming it has no liability because the original bond referenced the old law. Please locate any relevant case law.

196 TOPIC: TRANSFER OF A PERMIT

INQUIRY: Please locate administrative decisions which address problems a coal company may have transferring a permit. What happens when one of the parties has outstanding violations?

197 TOPIC: NPDES PERMITS: STATE SET WATER QUALITY STANDARDS

INQUIRY: According to EPA regulation 40 CFR 122.44(d) a state can set NPDES water quality standards which are more stringent than the federal standards. (Tennessee administers its own NPDES permitting program; OSM administers the surface coal mining program.) A coal company is contesting the state's right to set certain effluent limits on an NPDES permit. Please locate any information which discusses the state's right to set more stringent levels and the processes the state must follow to establish those levels for the permit.

198 TOPIC: DEFINITION OF "PUBLIC FACILITIES"; STATUS OF UNDERGROUND PIPELINES WITHIN SMCRA

INQUIRY: Are there any cases, legislative history or other material which address the meaning of "public facilities" as set out in 30 CFR sec. 817.121(d)(1)? Specifically, do underground pipelines or gas utility lines fall within sec. 817.121(d)(1) as "public facilities"? How does SMCRA treat the undermining of underground pipelines or gas utility lines?

199 TOPIC: INCREASING BOND FOR OPERATOR IN BANKRUPTCY

INQUIRY: Does an action by the regulatory agency requesting an operator in bankruptcy to post more bond violate the automatic stay provision of 11 USC secs. 362(a)(1) and (6) when the higher bond is necessary to meet reclamation costs? Please locate any material which discusses the automatic stay provision and the need to uphold state environmental laws.

200 TOPIC: PHC/CHIA DATA COLLECTION ON PUBLIC ROADS
(Includes COALEX Reports Nos. 152 & 178)

INQUIRY: Is there any case law or other material on the need for PHC/CHIA data collection on public roads being upgraded in conjunction with initiation of coal mining activities? Does the public road constitute an "adjacent area" for purposes of data collection?

201 TOPIC: LEGISLATIVE HISTORY OF PHRASE "OWNED OR CONTROLLED"
[SMCRA 510(c)]

INQUIRY: In complying with its agreement, a coal mining company will list all permits it is associated with and correct any outstanding violations. SMCRA sec. 510(c) states that the company must list violations "during the three year period prior to the date [of the company's permit] application." What legislative history is available which discusses the time-frame aspect of providing violation and "ownership and control" information on the permit application? This information is needed as soon as possible.

202 TOPIC: OFFSITE DISPOSAL OF EXCESS SPOIL

INQUIRY: Can excess spoil from a surface coal mining operation be used as fill in the construction of a highway near the mine site? If the excess spoil can be used, must the site be permitted? Please locate any information which addresses these issues.

203 TOPIC: WATER SUPPLY REPLACEMENT FOR UNDERGROUND MINING
(Includes COALEX State Inquiry Reports Nos. 35 & 93)

INQUIRY: Please locate any information which discusses the state regulatory authority's ability to regulate water supply replacement for underground mining operations.

204 TOPIC: LENGTH OF TIME FOR PERMIT APPROVAL

INQUIRY: Please poll the IMCC member states for the following information: "How long (number of months) does it take to approve a new, first time permit, from the time of receipt until final approval?"

205 TOPIC: PERMITTING OF RAILROAD SIDINGS AND SPUR LINES

INQUIRY: Are railroad sidings and spur lines located at loading facilities and preparation plants required to be permitted? Please locate any relevant material which discusses this topic.

206 TOPIC: LIABILITY PERIOD FOR ALTERNATE POST-MINING LAND USE

INQUIRY: The liability period for final bond release in the western states is 10 years. Is there any material available which indicates that the liability period for bond release may be reduced for certain alternative post-mining land uses, such as residential development?

207 TOPIC: ENVIRONMENTAL EXTERNALITIES

INQUIRY: One of the environmental issues to be discussed at the upcoming AMC convention is "Environmental Externalities: Indirect Taxes on Electricity". California may already have law dealing with this on their books. Can you locate any existing information on this issue or people to contact for information?

208 TOPIC: EXTENSION OF CONDITIONS ON FEDERAL COAL LEASE TO STATE'S PERMIT OF PRIVATELY-OWNED SURFACE
(Includes COALEX Report - 154)

INQUIRY: An operator is mining federally-owned coal under privately-owned surface. The Wyoming regulatory authority wants to place the same conditions on the state mining permit that exist on the federal coal lease. Please locate any OSM or Bureau of Land Management (BLM) materials which discuss this issue.

209 TOPIC: REPLACEMENT OF TOPSOIL; PERMIT REQUIREMENTS MORE STRINGENT THAN THE REGULATIONS

INQUIRY: Prior to final bond release, an operator was found to have reclaimed the mined area with 14 inches of topsoil; the permit and reclamation plan required 18 inches to be replaced. The pre-mining topsoil depth is believe to be 14 inches. Does the operator have to put back what was not there originally to get his final bond release? Please locate any Interior administrative decisions which discuss the definition of "topsoil", topsoil replacement and the need to meet permit requirements which are more stringent than the regulations.

- 210 TOPICS: 1. DEFINITION OF OR TEST FOR "VALID EXISTING RIGHTS (VER)";
2. SUBSIDENCE: COMPENSATION FOR DAMAGED STRUCTURES AND WATER SUPPLY

INQUIRIES: A survey was conducted of IMCC and non-IMCC members consisting of the following questions:

For all states surveyed: VER

1. What is your state program's definition of or test for VER, e.g., the "good faith/all permits" test or the "takings" test? Please include the state statute or regulation section number. [SMCRA sec. 522(e); 30 CFR 761.5]

For states with underground mining: SUBSIDENCE

2. Does your state program contain regulations requiring compensation for or repair of structures (not land) damaged as a result of subsidence? Please include the state statute or regulation section number. [SMCRA sec. 516(b); 30 CFR 817.121(c)]
3. Does your state program contain regulations requiring the replacement of water supplies damaged as a result of subsidence? Please include the state statute or regulation section number. [SMCRA sec. 717(b)]

211 TOPIC: BUFFER ZONE FOR CEMETERIES

INQUIRY: Can the prohibition against mining within 100 feet of a cemetery be waived? Please locate any information which discusses this issue. [SMCRA 522(e)(5)].

212 TOPIC: DISCRETION TO WAIVE CIVIL PENALTIES

INQUIRY: According to 30 CFR 845.12(c), a regulatory authority MAY assess a penalty for each NOV assigned 30 points (or \$1,000) or less. At one time Indiana, in practice, automatically waived all penalties below \$1,100. Subsequently, the policy changed and the waiving of civil penalties became discretionary, depending on mitigating circumstances. Do other states waive civil penalties, if so, under what circumstances?