

**Editor's note: 96 I.D. 139**

SAVE OUR CUMBERLAND MOUNTAINS, INC.

IBLA 87-692

Decided March 23, 1989

Appeal from a decision of the Director, Tennessee Field Office, Office of Surface Mining Reclamation and Enforcement, in response to a request for inspection.

Reversed and remanded.

1. Surface Mining Control and Reclamation Act of 1977: Abatement: Remedial Actions--Surface Mining Control and Reclamation Act of 1977: Citizen Complaints: Generally--Surface Mining Control and Reclamation Act of 1977: Enforcement Procedures: Generally--Surface Mining Control and Reclamation Act of 1977: Inspections: Generally

When a citizen files a request for a Federal inspection in a state where OSMRE is enforcing the state's program, OSMRE is required to conduct a Federal inspection under 30 CFR 842.11(b)(1)(i) when the authorized representative has reason to believe on the basis of information available to him (other than information resulting from a previous Federal inspection) that there exists a violation of the Surface Mining Control and Reclamation Act of 1977, its regulations, the applicable program, or any condition of a permit or an exploration approval,

or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources. Under

30 CFR 842.11(b)(2), OSMRE has reason to believe that a violation exists if the facts alleged by the informant would, if true, constitute a violation. If there is a violation, OSMRE is required to take whatever action

is necessary to secure abatement of the violation.

2. Surface Mining Control and Reclamation Act of 1977: Abatement: Remedial Actions--Surface Mining Control

and Reclamation Act of 1977: Backfilling and Grading Requirements: Generally--Surface Mining Control and Reclamation Act of 1977: Citizen Complaints: Generally--Surface Mining Control and Reclamation Act of 1977: Enforcement Procedures: Generally--Surface Mining Control and Reclamation Act of 1977: Inspections: Generally

Under 30 CFR 942.816(e), in area mining, rough backfilling and grading of an area must be completed within 180 days following removal of coal from that area. If a citizen files a complaint alleging that

any area from which coal has been removed has been exposed for 180 days or more, OSMRE should inspect

the site and take appropriate enforcement action, excepting only where the permittee has previously demonstrated through the detailed written analysis required by 30 CFR 780.18(b)(3) that further time is justified.

3. Surface Mining Control and Reclamation Act of 1977: Generally--Surface Mining Control and Reclamation Act of 1977: Administrative Procedure: Generally--Surface Mining Control

and Reclamation Act of 1977: Appeals: Generally--Surface Mining  
Control and Reclamation Act

of 1977: Citizen Complaints: Generally

When an appeal to the Board of Land Appeals is filed from a citizen complaint decision by an officer of OSMRE under 43 CFR 4.1280, OSMRE is obliged to submit the complete, original administrative record to the Board, including all original documentation involved in the matter. It is not adequate to submit copies of only those documents deemed relevant by OSMRE as part of the pleadings filed on appeal.

APPEARANCES: Thomas J. FitzGerald, Esq., Frankfurt, Kentucky, for appellant; Judith M. Stolfo, Esq., Office of the Field Solicitor, Knoxville, Tennessee, for the Office of Surface Mining Reclamation and Enforcement.

## OPINION BY ADMINISTRATIVE JUDGE HUGHES

Save Our Cumberland Mountains, Inc. (SOCM), has appealed from the July 13, 1987, decision by the Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement (OSMRE), which disposed of SOCM's citizen's complaint (request for inspection). The complaint asserted that Rith Energy, Inc. (Rith), in its operations under permit No. 2583 at the Eagle-Ferguson Mine No. 1 in Bledsoe County, Tennessee, had violated the requirement of 30 CFR 942.816(e)(3) that rough backfilling and grading be completed no more than 180 days after coal removal. In its notice of appeal, SOCM "seeks review of this matter and an Order directing the Tennessee OSMRE to take appropriate enforcement action pursuant to 30 CFR 842.11(b)(1), 842.12, and 843.12(a)(1)."

As discussed more fully below, OSMRE has never transmitted a case file in this matter, and we are therefore forced to consider the case on the basis of the limited documentation included in the parties' pleadings. As we have no assurance that this documentation is complete, it is difficult to state with particularity what transpired. Nevertheless, we shall set out the circumstances of the matter as they appear from the documents to which we have been made privy.

By May 1987, Rith had already mined extensively at this site and was at the point where all available coal had been removed from the Richland seam. It desired to mine a new deposit, the Sewanee seam, but the coal from it was considered toxic. As a result, as early as June 1986, OSMRE had barred its

removal unless Rith developed a toxic material handling plan as a revision to its permit. Rith applied for such revision on July 3, 1986, and OSMRE allowed continued mining only on the nontoxic Richland seam while the per-mit revision application was being considered. As discussed below, Rith's application for revision was eventually denied on July 2, 1987.

At the end of May 1987, SOCM filed its request for inspection under 30 CFR 842.12(a), dated May 28, 1987, with the Chattanooga, Tennessee, Area OSMRE Office, requesting an inspection of the Rith operation. In this inspection request, SOCM's representative Don Barger stated that he had inspected and photographed much of the Rith site on December 10, 1986.<sup>1</sup> The complaint noted that most of the area that was exposed at that time was still exposed and that, as of June 8, 1987, those areas would have been exposed for at least 180 days. This condition, he alleged, violated 30 CFR 816.101(a)(3) (1979), which mandated in part that, for area mines such as Rith's, "rough backfilling and grading shall be completed within 180 days following coal removal."

In response to SOCM's complaint, OSMRE inspected the site on June 3, 1987. The inspection report noted simply that coal had been removed from the extreme end of cut 13 since the last inspection conducted on May 7, 1987, and that the remaining length of that cut remained open. Other cuts mined prior to cut 13 were backfilled. The report concluded that "backfilling and grading requirements appear to be in compliance." No

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<sup>1</sup>/ We are left to speculate that Barger may have inspected the site in connection with SOCM's participation in OSMRE's consideration of Rith's application to amend its permit.

reference was made to how long cut 13 might have been open, despite the allegations in SOCM's complaint. OSMRE has subsequently explained that it believed that, because some coal had been removed from cut 13 within 180 days prior to its inspection, that is, some time between May 7 and June 3, 1987, no violation of 30 CFR 816.101(a) had occurred.

On June 12, 1987, OSMRE's Knoxville Field Office officially responded to SOCM's complaint, directing SOCM's attention to new regulations for the Federal program for Tennessee, specifically to 30 CFR 942.816(e)(2) (1987), governing backfilling and grading. OSMRE acknowledged that, under this regulation, a permittee of an area mine must complete rough backfilling and grading within 180 days or less following coal removal from the pit being worked, but stated that "OSMRE may grant additional time if the permittee can demonstrate that additional time is necessary." OSMRE explained that the Rith mine was already or would soon be at the point that no further coal could be removed without disturbance of the toxic Sewanee seam, and that Rith had requested a revision on July 3, 1986. OSMRE's response further noted a dilemma facing Rith:

Since OSMRE will not allow the mining to proceed until a revision for a toxic-material-handling plan is approved, [Rith] is faced with the situation of having to (1) leave the last pit open until a decision is made on the revision, or (2) backfill the pit and then reopen it if a revision were to be approved.

OSMRE noted that its position in this situation was as follows:

In those unforeseeable situations where a disturbed area is left unreclaimed, due to a change in mining operations that could necessitate the processing of a revision, OSMRE will evaluate the site conditions to determine whether the operation is

in compliance with the performance standards. If an inspection indicates reclamation is in compliance, then OSMRE would not take action until a decision is made on the issues surrounding the related revision request. If the site is determined not to be in compliance OSMRE would take appropriate enforcement action to correct the situation.

Shortly after writing this reply to SOCM, on June 25, 1987, OSMRE wrote to Rith to discuss two distinct reclamation violations at the minesite. OSMRE noted that cuts 13 and 13c were both open at that time, a circumstance that violated no specific regulatory requirement but did violate a provision of Rith's reclamation plan that "only one complete length of cut will be open at one time." OSMRE also expressly recognized that coal removal from cut 13 had taken place in November and December 1986, and reclamation had not been completed within 180 days. However, OSMRE stated its position (previously explained to SOCM) that, since it was processing Rith's permit revision to allow handling of toxic material, it had "granted an extension to the 180-day [requirement] contingent upon timely processing of Rith's revision."<sup>2</sup> The letter advised Rith that OSMRE would soon reach a decision concerning the revision request and that the request would be denied if needed information was not provided by July 1. Finally, the letter stated: "If and when your request is denied, you will be required to begin reclamation operation immediately, and complete the reclamation including final grading and revegetation by September 30, 1987."

By letter dated June 28, 1987, SOCM requested that OSMRE's Field Office Director in Knoxville review the June 12 disposition of its complaint under

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<sup>2/</sup> The document actually states "we have granted an extension to the 180-day request," but this apparently makes no sense. (Emphasis supplied).

30 CFR 842.15(a). The letter reiterated that pits on the Rith site had been exposed for more than 180 days, that Rith's permit required that backfilling and grading would occur within 90 days, and that the determination that the Rith site was in compliance with the performance standards "is fundamentally at odds with the above-referenced performance standard." SOCM's letter stated that OSMRE had erred in assuming it could grant an extension beyond the 180-day limit if the permittee could demonstrate that additional time was necessary, pointing out that the sole vehicle for an extension or modification of the 180-day limitation would be a request submitted as part of the permitting process through a "detailed written analysis" under 30 CFR 780.18(b)(3), that additional time is necessary. SOCM also pointed out that Rith had neither provided such an analysis nor requested an extension of time during the permitting process, and that relief should not be given at that time in any event, because the toxic nature of the overburden and interburden material proposed to be disturbed under the mining and reclamation plan should have been identified in advance of the permit issuance. SOCM contended that it was both inequitable and contrary to law to allow a violation of what it termed the "contemporaneous reclamation requirements" on the basis of unforeseen circumstances which should have been foreseen during the permitting process.

As noted above, on July 2, 1987, OSMRE denied Rith's request for permit revision to allow handling of the toxic coal from the Sewanee seam. On July 13, 1987, the Director, Knoxville Field Office, sent a letter to SOCM in response to its request for review. However, the letter did not address SOCM's concerns about the 180-day violation. Instead, it merely indicated

that OSMRE had denied Rith's request for permit revision and that reclama- tion was required to begin immediately and be completed by September 30, 1987. OSMRE's letter set out its holding that "this action satisfactorily addresses [SOCM's] concern regarding initiation of appropriate enforcement action at the Rith Site." SOCM appealed this determination to us, asserting that OSMRE failed to take appropriate action on its complaint.

[1] OSMRE is the regulatory authority under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. || 1201 through 1328 (1982), in the State of Tennessee. 49 FR 38874 (Oct. 1, 1984). Departmental regu- lation 30 CFR 842.11(b)(1)(i) indicates that OSMRE is required to conduct a Federal inspection in a state where OSMRE is enforcing the state's program when

the authorized representative has reason to believe on the basis of information available to him or her (other than information resulting from a previous Federal inspection) that there exists a violation of the Act, this chapter, the applicable program, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

Subsection (b)(2) makes clear that OSMRE "shall have reason to believe

that a violation exists if the facts alleged by the informant would, if true, constitute a violation." If there is a violation, OSMRE is required to take whatever action is necessary to secure abatement of the violation.

See Thomas J. FitzGerald, 88 IBLA 24 (1985).<sup>3</sup>

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<sup>3/</sup> The FitzGerald case arose in a state where the state's program was carried out by the state regulatory authority, not OSMRE. Unlike the

First, OSMRE argues that OSMRE did take appropriate enforcement action by issuing a notice of violation (NOV) and cessation order (CO) to Rith citing it for failing to comply with the terms of its permit at this mine. It is true, that, while SOCM's appeal was pending, OSMRE, on July 15, 1987, inspected the site and issued NOV No. 87-92-162-013, citing Rith generally for its failure to conduct operations according to the reclamation plan and backfilling soil stabilization plan specified in its approved permit. A CO, No. 87-92-180-02, was then issued for failure to abate. The NOV and CO were challenged by Rith, but were affirmed as validly issued by the Board in Rith Energy, Inc. v. OSMRE, 101 IBLA 190 (1988).<sup>4</sup>

However, contrary to OSMRE's position, in that decision and in our order denying reconsideration thereof, we expressly ruled, citing the testimony of OSMRE's inspector, that the NOV and CO were issued by the inspector only to cite Rith because more than one cut remained open at the time of inspection, a condition which did not violate any specific regulation but was contrary to the mandatory terms of Rith's reclamation plan. Rith Energy, Inc. v. OSMRE, supra at 194; Rith Energy v. OSMRE, IBLA 88-89 and IBLA 88-90 (Apr. 18, 1988) (order denying reconsideration).

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fn. 3 (continued)

instant appeal, OSMRE was obliged to notify the state of a citizen's inspection request and conduct a Federal inspection only if the state had failed to take appropriate action after 10 days. We held that a state fails to take appropriate action if it does not take what action is necessary to abate the violation. It then becomes OSMRE's obligation to take whatever action is necessary to abate a violation. In the instant case, there is no 10-day delay before OSMRE's obligation to inspect and take action arises.

<sup>4/</sup> Although received and docketed after the instant appeal, Rith Energy, Inc. v. OSMRE, supra, was reached first because it was entitled to expeditious treatment under 43 CFR 4.1180.

We clarified therein that, although the two-cut violation had been abated, it did not necessarily follow that the cut that remained open was in compliance with the 180-day reclamation requirement, and that it was still incumbent on OSMRE to take whatever enforcement action was appropriate to abate other violations. Id. In other words, we held that this NOV and CO did not cover the "180-day open cut" violation alleged by SOCM in its request for inspection.

Accordingly, we reject OSMRE's argument in the instant appeal that, by issuing NOV No. 87-92-162-013 and CO No. 87-92-180-02, it cited Rith for failure to comply with 30 CFR 942.816(e)(2) (1987). Thus, we hold that, by issuing this NOV and CO, OSMRE did not answer the concerns raised by SOCM in its request for inspection.

[2] Thus, the issue becomes whether it was so clear that Rith's failure to complete backfilling and grading within 180 days of coal removal from certain land areas at this mine did not constitute a violation of the requirement set forth in 30 CFR 942.816(e)(2) (1987) that OSMRE was not required to take enforcement action. This section provides: "Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge."

OSMRE has also taken the position that Rith was not in violation of 30 CFR 942.816(e) (1987), since coal was removed from cut 13 as late as the end of May, so that 180 days had not expired at the time the complaint was filed. SOCM counters that the requirement to complete rough backfilling

and grading attaches to an area of land at the time of coal removal from the land, and not at the time of final coal removal from a mining cut. We agree with SOCM.

OSMRE's position is aptly described by SOCM as being "grounded on the premise that the 180-day backfilling requirement does not attach to an area mine cut until the last lump of coal is removed from the last portion of the mine cut." (Emphasis omitted.) SOCM argues, with reason, that this construction is contrary to law and, effectively, "eviscerates the concept of contemporaneous reclamation."

The intent of the backfilling and grading requirements of 30 CFR 942.816(e) of the Tennessee program regulations may fairly be discerned by reference to the regulatory history of 30 CFR 816.101, which is its Federal program counterpart. The intent of the backfilling and grading requirements of 30 CFR 816.101, which implement section 515(b)(3) of SMCRA, 30 U.S.C. | 1265(b)(3) (1982), is to "insure the prompt restoration of disturbed lands to minimize additional damage to the environment and to return the land to a productive use." 44 FR 15226 (Mar. 13, 1979). The intent of 30 CFR 816.101, as finally adopted, was clear:

The intent of the Act is to compel reclamation as "Contemporaneously as practicable \* \* \* and \* \* \* as possible." It is necessary to establish a maximum time limit for backfilling and grading to insure that toxic-forming material in the spoil will not remain exposed to surface runoff over an indefinite period of time.

44 FR 15226 (Mar. 13, 1979).

The policy of requiring rapid reclamation of disturbed land is also readily apparent from the legislative history of SMCRA:

The essence of good reclamation therefore consists of reducing as much as possible the time from initial disturbance of the land surface to the successful reestablishment of a vegetative cover on stable spoil areas. In order to achieve this, performance standards relating to environmental protection must be carried on concurrently with the mining operations. [Emphasis added.]

H.R. Rep. No. 218, 95th Cong. 1st Sess. 79 (1977).

OSMRE's interpretation is not in accord with Congress' expressed concern for rapid and contemporaneous reclamation and therefore cannot be accepted. Indeed, the present case presents an apt example of why OSMRE's interpretation is flawed. There is no indication here that the cuts exposed in 1986 have ever been reclaimed. In a supplemental brief filed on May 2, 1988, SOCM stated that the cut remains open, an assertion which OSMRE does not challenge. Further, SOCM has presented uncontroverted evidence suggesting that leaving the cut open for a prolonged period may have resulted in water discharges from the open mine cut that are in violation of water quality standards, in that the mine discharge is acidic and heavily laden with manganese.

We turn now to the question of whether OSMRE could properly extend the 180-day reclamation period established by 30 CFR 942.816(e).<sup>5</sup> Subsection (e)(3) provides that OSMRE "may grant additional time for rough

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<sup>5</sup>/ Curiously, on appeal, OSMRE denies that its decision not to take enforcement action following SOCM's request was based on its having granted

backfilling and grading if the permittee can demonstrate, through the detailed written analysis under Section 780.18(b)(3) of this chapter, that additional time is necessary." <sup>6</sup> Section 780.18(b)(3) of 30 CFR in turn refers to a plan for backfilling, soil stabilization, compacting, and grading, with contour maps of cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 30 CFR 816.102 through 816.107.

It is evident from this that there is only one circumstance under which OSMRE could validly issue an extension to Rith: where the permittee had demonstrated through a detailed written analysis under 30 CFR 780.18(b)(3) that additional time was necessary. There is nothing to indicate that Rith submitted to OSMRE the "detailed written analysis" required as a condition to granting an extension. Thus, OSMRE's attempts to justify its decision not to take enforcement action because an extension was granted are fruitless, as there is no evidence in the record that a request was validly made.

We conclude that there was ample reason presented by SOCM's request for inspection for OSMRE to take enforcement action. We are aware that Rith \_\_\_\_\_

fn. 5 (continued)

Rith an extension of the 180-day compliance period. However, it is clear from the OSMRE's June 12, 1987, letter to SOCM that, at least at that time, OSMRE not only believed that it "may grant additional time if the permittee can demonstrate that additional time is necessary," but also that Rith's situation justified an extension of time. OSMRE's viewpoint on this question is absolutely clear from its June 25, 1987, letter to Rith, in which it expressly stated that, "because we have been processing your revision for toxic-material handling, we have granted an extension to the 180-day request contingent upon timely processing of your revision." (Emphasis supplied.)

<sup>6/</sup> Subsection 30 CFR 942.816(e)(3) appeared in the 1987 edition of 30 CFR, but is, inexplicably, not included in the 1988 edition. This omission appears to have been inadvertent, as we are aware of no amendment of this provision that occurred between publication of the 1987 and 1988 editions.

has not participated in our consideration of SOCM's appeal. However, there is nothing in the regulations expressly requiring that an operator be joined to a proceeding before this Board concerning a request for inspection. <sup>7/</sup>

Furthermore, even if it were not otherwise aware of the pendency of this proceeding, Rith was so notified by our decision in Rith Energy, Inc. v. OSMRE, 101 IBLA at 194, and our order of April 18, 1988, denying reconsideration in which we expressly alluded to it. Thus, Rith had ample notice, well in advance of this decision, of the pendency of SOCM's appeal and could

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<sup>7/</sup> Under 30 CFR 842.15(b), the Director or his designate is required to give a copy of his decision concerning his review of a field level decision not to inspect or enforce to the "person alleged to be in violation." Due to the absence of the case file in this matter, it is impossible to ascertain whether the Director, Tennessee Field Office, complied with this requirement. However, the photocopy of his decision of July 13, 1987, which SOCM has supplied does not indicate that a copy was given to Rith. As discussed below, in the unusual circumstance of the present dispute, OSMRE's apparent failure to comply creates no hardship for Rith, as we expressly notified Rith of the pendency of SOCM's appeal sufficiently in advance of this decision to allow it to participate.

Decisions by the Director of OSMRE or his delegate denying a citizen request for inspection are appealable to this Board under 43 CFR 4.1280 through 4.1286. 30 CFR 842.15(d); Hazel King, 96 IBLA 216, 227, 94 I.D.

89, 95 (1987); Donald St. Clair, 77 IBLA 283, 293-95, 90 I.D. 496, 501-02 (1983). Neither SOCM nor OSMRE has served copies of any pleadings on Rith during this appeal. However, the provisions of 43 CFR 4.1280 through 4.1286 apply generally to all appeals from decisions of the Director of OSMRE or his delegate, not just to citizen complaint proceedings. As a result, nothing in these provisions expressly requires that an operator accused of noncompliance be joined to the citizen complaint proceeding. Under 43 CFR 4.1283(a), an appellant is required to serve copies of his notice of appeal and other pleadings "on each party." However, Rith has never become a party here.

Although Rith was notified of SOCM's appeal and was therefore not prejudiced here by this lacuna in the regulation, the interests of ensuring full participation in citizen complaint appeals suggest a regulatory amendment that would automatically grant the party alleged to have committed a violation status as a "party," thus granting it the right to receive service of pleadings under 43 CFR 4.1283(a), and to file an answer under 43 CFR 4.1284, and to request a hearing under 43 CFR 4.1286. Compare 43 CFR 4.1105(a)(2) (52 FR 39522, 39526 (Oct. 22, 1987) making an applicant for a mining permit a party in an appeal by a third party from the granting of the permit).

have intervened. There may be mitigating factors involved in Rith's apparent failure to comply with 30 CFR 942.816(e). Rith will have an opportunity to present arguments against any enforcement action ultimately taken against it by OSMRE (including its position on the proper interpretation of the contemporaneous reclamation provisions), if it seeks administrative review of such action.

[3] In closing, we wish to comment on the proper method of assembling the case record in appeals under 43 CFR 4.1280 from decisions of OSMRE officials. As noted above, no formal record has been presented to us by OSMRE. Rather, we have relied on documents attached to pleadings filed by its counsel. This is not adequate because we have no assurance that we have received the complete file. These comments are offered in hopes of correcting this situation for future appeals.

When an appeal of one of its officers' decisions is filed, OSMRE is obliged to submit the complete, original administrative record to this Board, including all original documentation involved in the matter. While our disposition of the instant appeal does not result from OSMRE's handling of the case record, it is nevertheless true that a decision of an officer of OSMRE may be set aside and remanded if it is not supported by a case file providing information upon which the Board may conduct an independent, objective review of the basis of the decision. Fred D. Zerfoss, 81 IBLA 14 (1984); see also Wayne D. Klump, 104 IBLA 164, 166 (1988) (concerning decisions by officers of the Bureau of Land Management); and Dugan Production, Co., 103 IBLA 362 (1988) (concerning decisions by the Director, Minerals Management Service).

In Mobil Oil Exploration & Producing Southeast, Inc., 90 IBLA 173, 177 (1986), we outlined the requirements for records forwarded by agencies whose decisions are subject to our review:

The proper assembly of a case record should not be difficult matter. However, the agency should not wait to begin this task until after a notice of appeal has been filed. It should start to assemble a file at the initiation of any process which might culminate in a decision subject to this Board's review.

The first document in the record should be the one that initiates the process. In certain cases, this might be a notice from the agency, which should be placed in a file with any documents necessary to establish the basis for issuing the notice. Cases such as this, however, are initiated by an application by a member of the public, and a case file should be opened upon receipt of such a document. Any correspondence should be dated and included in the case file chronologically as it is issued or received, along with memoranda of meetings and telephone conversations.

See NLRB v. West Texas Utilities Co., 214 F.2d 732, 737 (5th Cir. 1954). It may be necessary to add additional reports, plans, and other documents, depending on the type of case. The final documents added should be the decision and proof of service thereof. The record should be maintained in such a manner that when a notice of appeal is timely filed, the only task remaining is to add the notice to the record and transmit it to this Board.

Further, as we explained in Mobil Oil Exploration & Producing Southeast, Inc., *supra*, the agency case file must be complete because it may be subject to direct judicial scrutiny. It is well established that, absent a complete record, a reviewing court is incapable of complying with the procedural requirements statutorily mandated by the Administrative Procedure Act, 5 U.S.C. || 501 through 706 (1982). See, e.g., Higgins v. Kelley, 574 F.2d 789, 792 (3rd Cir. 1978). Where the announced validity of the agency's action is not sustainable on the administrative record made by that agency, courts are instructed to vacate the agency decision and remand the matter for further consideration. Camp v. Pitts, 411 U.S. 138, 143 (1973).

When a suit for judicial review of Departmental action is filed, the Board forwards to the reviewing court the agency case file that it has used, together with pleadings filed with it by the parties. In so doing, the Board is required to certify, under oath, that the records before it constituted the complete administrative record in the matter, so that the reviewing court may meet its statutory requirements under the APA. Thus, the onus is on the Board to ensure that it has received the complete file from the Departmental agency that is the sole repository of documentation on the matter, in this case, the Knoxville OSMRE office. By requiring Departmental agencies to assemble case records prior to administrative review, the Board not only ensures that it will have an adequate basis for intelligent review of the correctness of the agency's decision, but also greatly facilitates handling of appeals to the judiciary and, ultimately, avoids having decisions by agencies of the Department vacated on judicial review.

Apart from considerations of the adequacy of the case file, we can find no basis for sustaining OSMRE's action which is the subject of this appeal. Furthermore, SOCM's pleadings provide reason to believe that a violation of the 180-day reclamation requirement may still exist. Therefore, we conclude that OSMRE should conduct another inspection and, if it determines that violations are present, on the basis of the criteria set out above, it should take appropriate enforcement action.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

from is reversed, and the case remanded for appropriate action consistent with this opinion.

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David L. Hughes  
Administrative Judge

I concur:

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Wm. Philip Horton  
Chief Administrative Judge