

TERRY EAGLE COAL CO.

IBLA 94-432

Decided June 7, 1994

Appeal from decision of the Audit Appeals Officer, Office of Surface Mining Reclamation and Enforcement, Wilkes Barre, Pennsylvania, denying an appeal from OSM Audit Report No. 930122029.

Dismissed.

1. Appeals: Jurisdiction--Board of Land Appeals--Rules of Practice: Appeals: Jurisdiction--Surface Mining Control and Reclamation Act of 1977: Appeals: Generally--Surface Mining Control and Reclamation Act of 1977: Reclamation Fees: Generally

An appeal taken pursuant to 43 CFR 4.1280 from a decision requiring payment of additional reclamation fees will be dismissed where the decision did not specifically grant a right of appeal to the Board.

APPEARANCES: Bruce E. Gibson, Esq., Kingsport, Tennessee, for appellant; Stephen G. Mahoney, Esq., Office of the Solicitor, Pittsburgh, Pennsylvania, for the Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Terry Eagle Coal Company has appealed from the January 13, 1994, decision of the Audit Appeals Officer, Office of Surface Mining Reclamation and Enforcement (OSM), Wilkes Barre, Pennsylvania, denying an appeal from OSM Audit Report No. 930122029 which determined that appellant owed approximately \$50,000 in additional reclamation fees because appellant had improperly taken an "excess moisture" deduction. Appellant has also requested a hearing.

OSM has moved to dismiss this appeal, citing 43 CFR 4.1281, which provides as follows: "Any person who is or may be adversely affected by a written decision of the Director of OSM or his delegate may appeal to the Board where the decision specifically grants such right of appeal." (Emphasis added.) OSM contends that this appeal must be dismissed because the decision from which this appeal is taken did not specifically grant such a right of appeal.

[1] We have exercised jurisdiction over an appeal from an OSM field office requiring payment of unpaid reclamation fees where the OSM decision

specified that it was appealable under 43 CFR 4.1280. McWane Coal Co., 95 IBLA 1, 93 I.D. 460 (1986), vacated and remanded, McWane Coal Co. v. Hodel, No. CV 87-P-0045-S (N.D. Ala. July 2, 1987), Board decision reinstated, IBLA 85-621 (Order dated Dec. 30, 1987). McWane was consistent with our holding in Donald St. Clair, 77 IBLA 283, 90 I.D. 496 (1983), where we held that a decision is appealable to the Board under 43 CFR 4.1281 only if the decision so states. ^{1/} Accordingly, we conclude that an appeal taken pursuant to 43 CFR 4.1280 from a decision requiring payment of additional reclamation fees is properly dismissed if the decision did not specifically grant a right of appeal. Since no right of appeal was granted in the January 13, 1994, decision, this appeal must be dismissed. We have considered all the arguments presented by appellant, and without addressing each of them, find that they present no basis for assuming jurisdiction over this appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

John H. Kelly
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

^{1/} We exercised jurisdiction in St. Clair to review the denial of a citizen's complaint requesting enforcement action, even though the decision did not grant a right of appeal, because OSM had previously agreed in settlement of litigation to provide a right of appeal from the denial of citizen complaints. We declined to review other matters for which no right of appeal had been provided. We are not aware of any similar commitment by OSM to Board review of audit decisions as an alternative to judicial action.