

TABLE 4
1996 SIGNIFICANT COURT and IBLA DECISIONS

OWNERSHIP AND CONTROL

Pittston Coal Co. v. Babbitt, No. 92-1606 (4th Cir.)

On April 15, 1996, the U.S. Supreme Court denied Pittston's request for certiorari. The 4th Circuit Court of Appeals had affirmed the decision by the Western District of Virginia that SMCRA's requirement that challenges to OSM's national regulations be brought in the D.C. District Court applied also to indirect challenges to the rules. Thus, Pittston's challenge to OSM's application of the ownership and control rules on due process grounds was found to be beyond the jurisdiction of the courts in the Fourth Circuit. In June, the Fourth Circuit transferred the case to the D.C. District Court. In July, 1996 the parties reached a settlement agreement which has been filed with the district court for approval.

TAKINGS

Eastern Minerals International, Inc., et al. v. United States, No. 94-1098-L (Fed. Cl.),

On Wednesday, October 2, 1996, Judge Robert Hodges held that there had been a regulatory taking by OSM of the leasehold interest of plaintiff Eastern Minerals and of the royalty interest of plaintiffs Wilson and Ann Wyatt, but dismissed the claims of the other plaintiffs. In reaching this decision, Judge Hodges found that OSM had unreasonably delayed its processing of Eastern Minerals' permit application, and that the Government had no intention of ever granting the plaintiffs a permit. In reaching his decision, Judge Hodges ruled that plaintiffs, in order to prevail, did not have to show that they had a compensable expectancy to be free of the regulatory requirements that resulted in the alleged taking. He also held that the noise and hydrology consequences which had concerned OSM did not constitute nuisances under Tennessee state law. Finally, Judge Hodges held that the taking occurred on the date Eastern's lease interest lapsed even though no Government action occurred on that date.

STATE PROGRAM AUTHORITY

Cat Run Coal Co. v. Babbitt, No. 95-1063 (S.D.W.V)

On August 8, 1996, the court granted the plaintiff's motion for summary judgment in this action challenging OSM's approval of a West Virginia regulation that allows the state regulatory authority to impose reclamation costs and responsibilities not only on "operators" and "permittees" but also on "other responsible parties." The court held that OSM's approval of this regulation violated the notice and comment requirement of the APA because it failed to alert landowners and lessors who might later be liable under the regulation that they were interested parties. The court also held that the West Virginia regulation is inconsistent with SMCRA in that it allows the West Virginia regulatory authority to transfer the costs of reclamation from operators and permittees to landowners who are expressly protected under SMCRA.

RULE CHALLENGES

National Mining Association v. Department of Interior, No. 94-2740-AER (D.D.C.)

On July 10, 1996, the U.S. District Court for the District of Columbia upheld the Office of Surface Mining's 1994 Applicant/Violator System Procedures Rules, and related regulations promulgated by the Interior Department's Office of Hearings and Appeals (OHA) against wide-ranging challenges brought by a mining industry group. Judge Robinson held that the regulations are within the Secretary's statutory authority, do not violate State primacy, properly allocate the burdens of proof, do not violate Due Process, and are not retroactive. The mining association has appealed.

National Coal Ass'n v. Lujan, National Wildlife Fed'n v. Lujan, Nos. 94-5351, 94-5353 (D.C. Cir.),

On April 1, 1996, the U.S. Court of Appeals for the D.C. Circuit denied industry's request for rehearing en banc of the three-judge panel's December 12, 1995, decision which sustained the Secretary's NOV regulation challenged by industry groups. Although the court of appeals reached its decision on procedural, rather than substantive, grounds, its ruling leaves intact a system of federal oversight that includes the full range of federal enforcement against a mine operator when there is a violation of an environmental standard at the mining operation and when a State fails to enforce its State program.

AML

Addington Mining, Inc. v. U. S. Department of the Interior, No. 94-464-C (Fed. Cl.)

On June 28, 1996, Judge Margolis rejected Addington's claim for a refund of \$267,056.73 in abandoned mine reclamation fees and penalties. Addington claimed that AML payer letters are not binding, and contended that the company had satisfied the regulatory requirement of "demonstrat[ing] through competent evidence that there is a reasonable basis for determining the existence and amount of excess moisture." The court found that, based on the information in the administrative record, it was reasonable for OSM to conclude that Addington had failed to demonstrate a reasonable basis for its excess moisture deduction. Judge Margolis also upheld OSM's assessment of a penalty against Addington on fees that had been underpaid.

ADMINISTRATIVE DECISIONS: INTERIOR BOARD OF LAND APPEALS OWNERSHIP AND CONTROL

James Spur, Inc. v. OSM, No. D 95-184

On April 15, 1996, the Director of the Department's Office of Hearings and Appeals affirmed the decision of the Interior Board of Land Appeals (133 I.B.L.A. 123), that an applicant's showing of legitimate purposes for its ability to control another entity would rebut a presumption of ownership or control where there was no evidence of the exercise of control. Thus, James Spur and related persons were determined not to be linked to unabated violations by contract miner B & J Excavating Company.

