



COALEX STATE INQUIRY REPORT - 3

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TOPIC: PERFORMANCE BONDS AND OUTSTANDING CIVIL PENALTIES

INQUIRY: Performance bonds are posted to ensure that conditions of the permit and the regulations are fully met. If a company completes the required reclamation, but during the permit period has been assessed civil penalties, can the regulatory authority go against the performance bond for payment of any outstanding penalties?

SEARCH RESULTS:

A search of the COALEX Library was conducted to probe the purpose of performance bonds. Sec. 509(a) of SMCRA states that a performance bond, made payable to the appropriate regulatory authority, is conditioned "[u]pon faithful performance of all the requirements of the Act [SMCRA] and the permit." (30 CFR 1259(a)) In the federal regulations, the phrase, "and the reclamation plan" is added to the language of SMCRA as a condition of the performance bond. (30 CFR Sec. 800.11(a)) Concerning this additional requirement, OSM stated:

"It is the requirements of the reclamation plan that the operator must fulfill in order to complete the requirements set by the Act, the regulatory program, and the permit." (48 FR 32936 (1983))

An additional search was performed of the COALEX Library for documents relating to the history and legislative intent of penalties. Five documents on point with this inquiry were located. A final search revealed that Sec. 518(e) of the 1975 version of SMCRA, vetoed by President Ford, contained language very similar to that of Sec. 518(f) of P.L. 95-87.

In April, 1977, the House of Representatives' version of Sec. 518(e) allowed for recovery of civil penalties against performance bonds:

"(e) Civil penalties owed under this Act, either pursuant to Subsection (c) of this section or pursuant to an enforcement order entered under Section 521 of this Act, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district court of the United States, or at the discretion of the Secretary, taken from the performance bond posted under Section 509 of this Act." (123 Cong. Rec. H3726 (APRIL 28, 1977))

The Senate version of this section, as reported by the Committee on Energy and Natural Resources in May, 1977, did not contain the same language:

"(e) Civil penalties owed under this Act, either pursuant to subsection (c) of this section or pursuant to enforcement order entered under Sec 421 of this Act, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district



court of the United States of by the State regulatory authority in a court of competent jurisdiction." (S. Rep. No. 128, 95th Cong., 1st Sess. (1977))

In July, 1977, the Conference Committee met to resolve the differences in the House and Senate versions. Of Sec. 518, the Committee reached a compromise and reported:

"A major issue was presented by the House bill's inclusion of language in Section 518(e) that would allow the Secretary to take civil penalties owed by the operator from the performance bond posted to assure reclamation of the area upon default. The Senate amendment had no similar provision. The House receded to the Senate on this issue." (H. Rep. No. 493, S. Rep. No. 337, 95th Cong., 1st Sess. (1977))

In a separate, but related search, the IMCC also investigated whether a state can forfeit the total amount of the bond even though it is in an amount greater than the cost of reclamation. A copy of COALEX STATE INQUIRY REPORT - 5 is included for your reference.

ATTACHMENTS:

- A. Excerpt from the Congressional Record containing House version of Sec. 518(e).
- B. Excerpt from the House Committee on Interior and Insular Affairs, Rep. No. 95-218, discussing the Committee's amendments of SMCRA.
- C. Excerpt from the Congressional Record containing Senate version of Sec. 518(e).
- D. Excerpt from S. Rep. No. 95-128 containing the Committee on Energy and Natural Resources comments on penalties.
- E. Excerpt from the Conference Committee report highlighting the compromise of Sec. 518(e).
- F. Excerpt from the Surface Mining Control and Reclamation Act of 1975.
- G. COALEX STATE INQUIRY REPORT - 5.