



COALEX STATE INQUIRY REPORT - 171

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TOPICS:

I - PERMIT RENEWALS: NOTIFICATION OF SURETIES; LIABILITIES OF SURETIES
II - OBTAINING DEFICIENCY JUDGMENTS AGAINST COAL MINING COMPANY STOCKHOLDERS

INQUIRY: Please locate any administrative, state or federal decisions on the following two issues:

- I. How does the renewal of a coal mining permit affect the surety's liability on its bonds when the renewal constitutes a substantial modification of the original permit? Must a surety be notified when a permit is renewed or modified?
- II. Can the state bring a deficiency judgment against any solvent corporations or individuals who were shareholders of the insolvent mining company in order to recover the actual cost of reclamation when the cost is twice the amount of the bond?

The state administrative decision on which this Inquiry is based is attached.

SEARCH RESULTS: Research was conducted using the COALEX Library and publicly available materials in LEXIS, as well as several existing COALEX State Inquiry Reports which address related issues.

TOPIC I

SEARCH RESULTS

No decisions were identified which address the specific issues of this topic. However, two COALEX Reports and several other opinions, relating to bond forfeiture, were identified which discuss the responsibility of the regulatory authority (RA) to notify the surety when operators fail to meet their responsibilities under SMCRA, leading to bond forfeiture, or the responsibility of the surety to ensure that the operators meet their SMCRA responsibilities. Opinions from the two COALEX Reports which are particularly relevant and the additional cases are discussed below. Copies of all materials are attached.



Research in the state materials available in COALEX indicate that the state regulations generally follow the federal program language with regard to permit revisions or renewal, bonds and surety notification requirements: the RA may require reasonable revision of the permit and send a copy of the order to the permittee [30 CFR 774.11 (b) and (c)]; permit revision and permit renewals require public notification procedures to be followed [30 CFR 774.13 and 774.15]; the surety must be notified if there is an adjustment to be made to the bond [30 CFR 800.15]. {Emphasis added.} NOTE: State regulations in COALEX are current through mid-1989.

BOND FORFEITURE DECISIONS - EXISTING COALEX REPORTS

COALEX STATE INQUIRY REPORT - 102 (January, 1989). "Forfeiture of reclamation bonds; liability period".

See attached report.

COALEX STATE INQUIRY REPORT - 105 (February, 1989). "Bond forfeiture - relationship of bond to permitted area".

Entire report is attached. See cases of particular interest, below.

1. **AMERICAN DRUGGISTS' INSURANCE CO. [ADI] v NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINTE, 687 SW 2d 555 (Ky Ct App 1985).**

The court held that as a compensated surety, ADI had a duty to ensure that the operator reclaimed the permitted area and that nothing prevented the surety from minimizing their loss by undertaking to perform the required reclamation. The court noted that an operator's bankruptcy was a hazard that the surety bonds were meant to guard against. "It should take something more than an anticipated risk of doing business to relieve [ADI] from performing on its bonds."

2. **AMERICAN CASUALTY CO. v COMMONWEALTH OF PA., DEPT. OF ENVIRONMENTAL RESOURCES [DER], 65 Pa Commw 223, 441 A2d 1383 (Pa Commw Ct 1982).**

The court upheld bond forfeiture actions which followed cessation of mining operations by seven years, stating that both the "Anthracite Strip Mining and Conservation Act" and the bonds require that American Casualty's liability continue "until all of the requirements of the Act are performed. Furthermore, the general rule is that where the provisions of the bond are capable of two or more meanings, the language is construed most strongly against the obligor." The court ruled that DER owed the surety "no duty of active diligence in proceeding against [the operator] beyond what was actually required by the Anthracite Act. The surety could not point to any provision in the Act which required enforcement action beyond that taken by DER."



BOND FORFEITURE - ADDITIONAL DECISIONS

PERSONAL SERVICE INSURANCE CO. [PSI] v MAMONE, 22 Ohio St 3d 107, 489 NE2d 785 (Ohio 1986).

When the operator defaulted, PSI opted to perform the reclamation work rather than make payments on the bond. During the course of the work, PSI committed violations of the reclamation performance standards. The court reversed the lower court decision when it ruled that citing PSI was not an invalid retroactive application of the law (which was enacted before PSI began its reclamation) nor was it an unconstitutional impairment of the surety contract: PSI was penalized for its conduct during reclamation, not as a surety.

OHIO FARMERS INSURANCE CO. v COMMONWEALTH OF PA, DEPT OF ENVIRONMENTAL RESOURCES [DER], 73 Pa Commw 18, 457 A2d 1004 (Pa Commw Ct 1983).

Citing to AMERICAN CASUALTY, above, the court stated that Ohio Farmers "failed to direct our attention to any provision in the Act which requires enforcement action beyond that which DER appears to have taken here." Neither the surface mining law nor the "suretyship contract obligated DER to give the insurance company advance notice of any possible default by [the operator]."

ROCKWOOD INSURANCE CO. v COMMONWEALTH OF PA, DEPT. OF ENVIRONMENTAL RESOURCES [DER], 1981 EHB 424 (Pa. Environ. Hearing Bd. 1981).

Rockwood, the surety on the forfeited bonds, failed to prove that it should be discharged from liability because DER did not perform its duty to enforce SMCRA against the operators, Blue Coal Company and Northwest Mining Company.

TOPIC II

SEARCH RESULTS

The deficiency cases retrieved addressed non-coal mining related issues, e.g., securities law violations, failed banks, IRS tax issues and personal guarantees on loan agreements. Only one case of possible relevance was identified. It is discussed below and a copy is attached. An existing COALEX Report on the individual liability of corporate officers, directors or agents for civil penalties and several other decisions which rule on "piercing the corporate veil" are also attached. Some of these cases are discussed below.



DEFICIENCY JUDGMENTS

APACHE LANES, INC. v NATIONAL EDUCATORS LIFE INSURANCE CO., 529 P2d 984 (Oklahoma 1974).

The court ruled that the failure of National Educators (creditor) to seek a deficiency judgment against Apache Lanes (debtor) at the time of its foreclosure sale barred National Educators from taking action against the individual guarantors of the Apache Lanes' mortgage note. The proceeds from the foreclosure sale of the bowling alley were "deemed to be in full satisfaction of the mortgage debt".

PIERCING THE CORPORATE VEIL - EXISTING COALEX REPORT

COALEX STATE INQUIRY REPORT - 131 (November, 1989). "Individual liability of corporate officer, director or agent".

See attached report.

PIERCING THE CORPORATE VEIL - ADDITIONAL DECISIONS

NOVAK AND NOVAK SANITARY LANDFILL, INC. [NSL] v COMMONWEALTH OF PA, DEPT. OF ENVIRONMENTAL RESOURCES [DER], EHB DOCKET NO. 84-425-M, SLIP OP (PA. ENVIRON. HEARING BD. 1987).

"CORPORATE OFFICERS may be held personally liable for violations of the Solid Waste Management Act and the Clean Streams Law either through piercing the corporate veil or establishing their participation in the violations." DER failed to present sufficient evidence to hold the Novaks personally liable under either of the two theories indicated above. NSL, however, was found to have failed to comply with certain terms and conditions of its permit and was in violation of both state statutes.

US v PISANI, 646 F2d 83 (3rd Cir 1981).

The court held Pisani personally liable for Medicare overpayments which the former Department of Health, Education and Welfare [HEW] made to his solely-owned corporation. HEW presented evidence that the corporation was "merely a facade for the operations of the dominant stockholder". For example, Pisani followed no corporate formalities, operated the corporation with his personal funds and kept the corporation undercapitalized.

PLEASE NOTE: The cases in this and the attached reports have been Shepardized.

ATTACHMENTS

- A. IN THE MATTER OF SUGARLOAF MINING CO., Docket No. LIS 90-033 (Ark Dept of Pollution Control and Ecology 1990).



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
U.S. Department of the Interior

- B. COALEX STATE INQUIRY REPORT - 102 (January, 1989). "Forfeiture of reclamation bonds; liability period". (See attached report.)
- C. COALEX STATE INQUIRY REPORT - 105 (February, 1989). "Bond forfeiture - relationship of bond to permitted area".
- D. PERSONAL SERVICE INSURANCE CO. [PSI] v MAMONE, 22 Ohio St 3d 107, 489 NE2d 785 (Ohio 1986).
- E. OHIO FARMERS INSURANCE CO. v COMMONWEALTH OF PA, DEPT OF ENVIRONMENTAL RESOURCES [DER], 73 Pa Commw 18, 457 A2d 1004 (Pa Commw Ct 1983).
- F. ROCKWOOD INSURANCE CO. v COMMONWEALTH OF PA, DEPT. OF ENVIRONMENTAL RESOURCES [DER], 1981 EHB 424 (Pa. Environ. Hearing Bd. 1981).
- G. APACHE LANES, INC. v NATIONAL EDUCATORS LIFE INSURANCE CO., 529 P2d 984 (Oklahoma 1974).,./
- H. COALEX STATE INQUIRY REPORT - 131 (November, 1989). "Individual liability of corporate officer, director or agent".
- I. NOVAK AND NOVAK SANITARY LANDFILL, INC. [NSL] v COMMONWEALTH OF PA, DEPT. OF ENVIRONMENTAL RESOURCES [DER], EHB Docket No. 84-425-M, slip op (Pa. Environ. Hearing Bd. 1987).
- J. US v PISANI, 646 F2d 83 (3rd Cir 1981).