



COALEX STATE INQUIRY REPORT - 5

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TOPIC: BOND FORFEITURE

INQUIRY: Search states for cases where regulatory authority has forfeited bond which is in excess of cost of reclamation. Can the state forfeit the total amount of the bond even though it is in an amount greater than the cost of reclamation or must part of it be returned to the permittee or surety company?

BACKGROUND: Mr. Abar has information on a Kentucky case where the lower court agreed with the defendant; then the Kentucky Court of Appeals affirmed the decision, stating that the Department of Natural Resources could forfeit the total amount.

SEARCH RESULTS:

A LEXIS search was performed to locate the case in issue, AMERICAN DRUGGISTS INSURANCE CO. v COMMONWEALTH OF KENTUCKY DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION AND MIDEASTERN CONSTRUCTION AND COAL CO., No. 83-CA-807-MR, slip op. (Ky Ct App November 11, 1983).

In AMERICAN DRUGGIST, the Kentucky Court of Appeals affirmed a lower court decision granting forfeiture of the entire bonded sum. The court, citing the language of KRS 350.060(14), stated that the bonded amount was a "penal" sum, not merely a performance bond, and held that failure to perform all reclamation requirements resulted in total bond forfeiture. No other cases were located which referred to this decision.

A search was conducted of COALEX Federal Register notices and of the Legislative History File. No documents concerning excess bond forfeiture or penal sums were identified. In a review of the Maryland statutes for surface mining reclamation, there was no language located specifically indicating that reclamation bonds in Maryland were intended to be penal in nature.

A follow-up search was made of federal and state cases in LEXIS. In a similar tone to that of the Kentucky Court of Appeals, a recent Pennsylvania court ruled that reclamation bonds under that state's surface mining act are intended to be penal, and that the Pennsylvania Department of Environmental Resources was not required to prove damages actually sustained in order to collect on the bonds. (MORCOAL CO. v COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL RESOURCES, 459 A 2d 1303 (Pa Commw Ct 1983)) On the other hand, in GENERAL INSURANCE CO. OF AMERICA, et al. v CITY OF COLORADO SPRINGS, 638 P 2d 752 (1981), the Supreme Court of Colorado reversed a Colorado Court of Appeals decision and held that a surety bond issued pursuant to a municipal ordinance was not a penalty bond, and that nonperformance by the developer did not entitle the city to recover the full amount irrespective of damages. No federal cases were located.



ATTACHMENTS:

- A. AMERICAN DRUGGISTS INSURANCE CO. v COMMONWEALTH OF KENTUCKY DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION AND MIDEASTERN CONSTRUCTION AND COAL CO., No. 83-CA-807-MR, slip op. (Ky Ct App November 11, 1983).
- B. KRS 350-060(14).
- C. MORCOAL CO. v COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL RESOURCES, 459 A 2d 1303 (Pa Commw Ct 1983).
- D. GENERAL INSURANCE CO. OF AMERICA, et al. v CITY OF COLORADO SPRINGS, 638 P 2d 752 (1981).