



COALEX STATE INQUIRY REPORT - 102
January 19, 1989

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Research was conducted on two topics. The inquiries and research results are listed separately.

TOPIC I: FORFEITURE OF RECLAMATION BONDS; LIABILITY PERIOD

INQUIRY I: The Commonwealth is suing the surety of a now defunct coal company on its reclamation bond. The company has stated as its defense that the bond covers only work contemplated to be done within one year of the issuance of the permit and does not include the entire permitted site or any additions to the permitted site. Locate cases which support a contrary position.

SEARCH RESULTS: Using LEXIS, several searches were conducted in state case law. An article on bankrupt operators written by an Assistant Counsel in the Office of Chief Counsel, Pennsylvania Office of Environmental Resources was located.

A list of the relevant materials identified as a result of the research and the topics they address follows. Copies of the cases and the article are attached.

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1. **"Regulating Financial Responsibility For Bankrupt Operators", Douglas F. Brennan, July, 1987. Major relevant issues discussed are:**
 - a. Nature of bonding requirements.
 - b. Trustee's "duty to comply with state law, including permit/license requirements..."
 - c. Forfeiture of bonds.
 2. **COMMONWEALTH v OGDEN, 501 A. 2d 311 (Pa. Commw. Ct. 1985).**
 - a. Bonds are "penal" in nature. "Bonds became part of the permits issued by DER [Departmental of Environmental Resources]." Their purpose "is to reimburse the Commonwealth for damages which may arise from non-compliance with the requirements of SMCRA insofar as the non-compliance relates to the permitted area."
 - b. Limitations on forfeiture of bonds. "...each bond was issued as part of a specific permit and not as an umbrella to cover all mining being performed by the operator...", affirming the Environmental Hearing Board conclusion "...forfeiture



- was appropriate in an amount equal to the number of acres affected and not reclaimed multiplied by the per acre liability specified in the applicable bonds."
- c. Off-permit mining. "...off-permit mining and/or the failure to reclaim this area does not justify the forfeiture of all the bonds posted for other permitted areas. It is more appropriate that a portion of the bond or the entire bond be forfeited to complete reclamation in a non-permitted area only when the permitted area is adjacent to or contiguous to the affected off-permit area, or is one in which the ecological harm may be traced directly to the specifically permitted area."
3. **PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1986) [No. 85 CA 1, Fourth Appellate Dist.].**
 - a. Limitations on forfeiture of bonds. "...release of bond for reclaimed areas prior to forfeiture of bond for unreclaimed areas." Bonds should be released on a per-permit basis, not "floated" over the entire permit area.
 - b. Election of performance versus payment mentioned.
 4. **PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1985) [No.418, Fourth Appellate District].**
 - a. Application of statutes is central issue.
 - b. Limitations on forfeiture of bonds discussed.
 - c. Election of performance versus payment mentioned.
 5. **PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1985) [No. 419, Fourth Appellate District].**
 - a. Election of performance versus payment. "It is the surety's right to elect performance instead of payment if it wished to save money. But if performance is not timely completed [the Division of Reclamation has the statutory right "to terminate PSI's right to reclaim...].
 6. **PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1985) [No. CA-85-1, Fifth Appellate District]. PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1985) [No. CA-85-4, Fifth Appellate District].**
 - a. Statutory changes and assessment of civil penalties.
 - b. Election of performance versus payment mentioned.
 7. **NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET v INTEGRITY INSURANCE CO., 759 S.W. 2d 67 (Ky. Sup. Ct. 1988).**
 - a. Limitations on forfeiture of bonds.
 8. **ALLIED FIDELITY INSURANCE CO. v ENVIRONMENTAL QUALITY COUNCIL, 753 P. 2d 1038 (Wyo. Sup. Ct. 1988).**
 - a. Legal subrogation. The surety has the right to step "into the shoes of a defunct operator to request a forfeiture hearing."

TOPIC II:

- a. Constitutionality of the abandoned mine reclamation program
- b. Liability for failure to give notice



INQUIRY II:

- a. Are there any cases dealing with the constitutionality of Section 45.1-263 of the Code of Virginia, 30 U.S.C. Sec. 1237 or similar state legislation [abandoned mine reclamation program]?
- b. Are there any cases dealing with the government's liability for failure to give the notice required under Sec. 45.1-263 of the Code of Virginia or comparable federal or state statute?

SEARCH RESULTS: Searches were conducted using LEXIS. No relevant cases were identified that directly addressed the issues raised in the second set of inquiries.

ATTACHMENTS

- A. "Regulating Financial Responsibility For Bankrupt Operators", Douglas F. Brennan, July, 1987.
- B. COMMONWEALTH v OGDEN, 501 A. 2d 311 (Pa. Commw. Ct. 1985).
- C. PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1986) [No. 85 CA 1, Fourth Appellate Dist.].
- D. PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1985)[No.418, Fourth Appellate District].
- E. PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1985) [No. 419, Fourth Appellate District].
- F. PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1985) [No. CA-85-1, Fifth Appellate District].
- G. PERSONAL SERVICE INSURANCE CO. v MAMONE, Slip Opinion (Ohio Ct. App. 1985) [No. CA-85-4, Fifth Appellate District].
- H. NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET v INTEGRITY INSURANCE CO., 759 S.W. 2d 67 (Ky. Sup. Ct. 1988).
- I. ALLIED FIDELITY INSURANCE CO. v ENVIRONMENTAL QUALITY COUNCIL, 753 P. 2d 1038 (Wyo. Sup. Ct. 1988).