



COALEX STATE INQUIRY REPORT – 146
July 10, 1990

Olga Bruning, Esquire
Department of Natural Resources
Tawes Building
580 Taylor Avenue
Annapolis, Maryland 21401

TOPICS: SURETY'S RIGHT TO A HEARING IN BOND FORFEITURE PROCEEDINGS

INQUIRY: When an operator has waived his right to a hearing on the forfeiture of his bond, can the surety seek a separate hearing? Are there any state cases or administrative decisions which discuss this issue? Are there any states which include sureties in their notice of bond forfeiture regulations?

SEARCH RESULTS: Research was conducted using the COALEX Library and other materials available in LEXIS. The materials retrieved as a result of the research are discussed below. Copies are attached.

A Wyoming case and an Interior Board of Land Appeals (IBLA) decision with fact situations similar to those in question were retrieved. Several states were identified as having regulations which require notice to both the surety and operator in the event of a determination to forfeit a performance bond.

STATE CASE LAW

ALLIED FIDELITY INSURANCE CO. v ENVIRONMENTAL QUALITY COUNCIL,
753 P2d 1038, 1988 Wyo LEXIS 52, (Wyo 1988).

The Supreme Court of Wyoming reversed a lower court ruling in determining that a surety could "step into the shoes of a defunct operator to request a [bond] forfeiture hearing."

IBLA DECISIONS

AMERICAN RESOURCES INSURANCE CO., INC., 99 IBLA 242, IBLA 87-424 (1987).

The Board set aside the decision to forfeit the operator's performance bond because the record was unclear whether the surety was served with OSM's notice of determination to forfeit and "the surety on appeal expresses its intention to reclaim the permit area". (The operator was served with the notice and did not request a conference on the matter.)



STATE STATUTES AND REGULATIONS

The regulations of the following states require written notification of the determination to forfeit performance bonds to be sent, by certified mail, to both the permittee and the surety:

- Alaska
- Kentucky
- Maryland
- Missouri
- North Dakota
- Ohio
- Pennsylvania
- Virginia
- Wyoming

The regulations of these states specifically state that the operator or surety may request a conference or hearing:

- Alaska
- Kentucky
- North Dakota
- Pennsylvania
- Virginia

These states provide an opportunity for the surety to reclaim the permit area:

- Ohio
- Maryland
- Missouri

ATTACHMENTS

- A. ALLIED FIDELITY INSURANCE CO. v ENVIRONMENTAL QUALITY COUNCIL, 753 P2d 1038, 1988 Wyo LEXIS 52, (Wyo 1988).
- B. AMERICAN RESOURCES INSURANCE CO., INC., 99 IBLA 242, IBLA 87-424 (1987).
- C. 11 ALASKA ADMIN. CODE [AAC] 90.213 (Register 86, 1983).
- D. 405 KENTUCKY ADMIN. REGS. [KAR] 10:050E (1981).
- E. ANNOTATED CODE OF MARYLAND title 7, Sec. 7-6A-22 (1979).
- F. 10 MISSOURI CODE OF STATE REGS. [CSR] 40-7.031 (1987).
- G. NORTH DAKOTA ADMIN. CODE Sec. 69-05.2-12-16 (1987).
- H. OHIO COAL MINING AND RECLAMATION LAW, Sec. 1513.16 (1986).
- I. OHIO ADMIN. CODE Sec. 1501:13-7-06 (1986).
- J. PENNSYLVANIA Dept. of Environmental Resources Coal Mining Regulations, Title 25, Sec. 86.182 (1982).



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

- K. VIRGINIA Dept. of Mines, Minerals and Energy, Div. of Mined Land Reclamation, Coal Surface Mining Reclamation Regulations, Sec. 480-03-19.800.51 (1985).
- L. WYOMING STAT. SEC. 35-11-421 (1973).