



## COALEX STATE INQUIRY REPORT - 243

January 1993

Olga Brunning, Esquire  
Department of Natural Resources  
Tawes Building  
580 Taylor Avenue, Room C-4  
Annapolis, Maryland 21401

### **TOPIC:** LIABILITY INSURANCE COVERAGE

**INQUIRY:** An operator's permit has been revoked and the bond is in process of being revoked (the regulatory authority is negotiating with the surety to determine if they will pay or reclaim). The owner of the property wants to know who is liable if there is an accident on the formerly permitted area. Please locate any material that discusses liability insurance coverage between the time a permit is revoked and the bond is forfeited, and reclamation is performed by the surety or the state (this assumes that the company performing the reclamation obtains proper insurance coverage).

**SEARCH RESULTS:** Research was conducted using the COALEX Library and other materials available in LEXIS, as well as discussions with a state and a federal staff attorney. No materials were identified that discuss what happens to liability insurance coverage when permits are revoked and bonds forfeited. It is the opinion of the attorneys canvassed that the permittee remains liable for accidents, etc. that might occur on the formerly permitted area; this opinion is based on a reading of the following materials:

---

### **1. SMCRA Sec. 507(f), 30 USC 1257(f)**

"Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought.... Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations...and entitled to compensation under the applicable provisions of State law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations."



## **2. 54 FR 13814 (APRIL 5, 1989). Final rule.**

30 CFR 800.60 Terms and conditions for liability insurance:

"(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation operations under this Chapter."

OSM is "amending 800.60(b) of the permanent program regulations to state that the liability insurance policy shall be maintained in full force during the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation operations. This change clarifies that the liability period extends through the completion of reclamation regardless of whether the permit was renewed for authorization to conduct section 701(28) activities."

## **3. 800.50 Forfeiture of bonds.**

"(d)(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The regulatory authority may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited."

## **4. NATIONAL WILDLIFE FEDERATION, et al. v LUJAN, 31 ERC (BNA) 2069, 21 ELR 20143, 1990 US Dist LEXIS 11682 (D DC 1990).**

### **IV. CONTINUOUS PERMITTING n. 15:**

"[T]he Secretary amended the rule at 30 C.F.R. 800.60(b) to require that permittee must continue to carry liability insurance until it completes reclamation, regardless of whether it renews its permit."

### **ATTACHMENTS**

- A. SMCRA Sec. 507(f), 30 USC 1257(f).
- B. 54 FR 13814 (APRIL 5, 1989). Final rule.
- C. 30 CFR 800.50 Forfeiture of bonds and 800.60 Terms and conditions for liability insurance.
- D. NATIONAL WILDLIFE FEDERATION, et al. v LUJAN, 31 ERC (BNA) 2069, 21 ELR 20143, 1990 US Dist LEXIS 11682 (D DC 1990).