



## COALEX STATE INQUIRY REPORT - 251

March 1993

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

### **TOPIC:** BOND FORFEITURE: INSUFFICIENT FUNDS FOR RECLAMATION

**INQUIRY:** What information is available on the regulatory authority's ability to seek additional remedies after an operator's bond has been forfeited and the permit revoked in situations where the amount of the bond was insufficient to cover the cost of the completed reclamation? [30 CFR 800.50(d)(1)]

**SEARCH RESULTS:** Research was conducted using the COALEX Library and other LEXIS materials. A preamble to federal regulations and an OSM Directive were identified which state that in the event reclamation costs exceed forfeited bonds, the regulatory authority may recover the excess costs from the operator. Several administrative decisions were retrieved that address the issues of an operator's continued liability for reclamation even after bonds are forfeited and the need to ensure that the amount of the bonds are sufficient to cover reclamation in the event of forfeiture. Copies of the materials listed below are attached.

**NOTE:** Several of the retrieved items cite to a Tennessee case. The COALEX Researcher was unable to obtain a copy of the case for this Report.

---

### **REGULATION HISTORY**

#### **48 FR 32932 (JULY 19, 1983). Final rule. Bond and insurance requirements.**

From "The Discussion of Comments and Rules Adopted":

"The operator does have the underlying obligation to fully reclaim disturbed lands. A regulatory authority, in having reclamation performed on which the operator has defaulted in his obligation, may incur costs in excess of the forfeited amount. To make clear that the regulatory authority may recover that excess amount from the operator, the suggested addition is made to Sec. 800.50 in paragraph (d)(1)."



**OSM DIRECTIVE, Subject No. REG-10, Transmittal No. 339, "Bond forfeiture"  
(Issued May 26, 1987).**

3. Policy/Procedures.... c. Procedures when OSMRE is the Regulatory Authority...(7)  
Completion of Reclamation

"(a) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the AD or FOD [Field Office Director] may complete reclamation of the bonded area to the extent the forfeited funds allow and, with assistance from the Field Solicitor, implement actions to recover from the permittee the additional funds needed to fully reclaim the areas. If changes in the reclamation plan are needed, the ADFO [Assistant Director for Field Operations] or FOD will coordinate development of a new reclamation plan with the appropriate surface mining Federal agency, surface owner or Indian tribe."

**INTERIOR ADMINISTRATIVE DECISIONS**

**H.C. BOSTIC COAL CO., INC. AND WAYNE BOSTIC v OSM, Docket Nos. NX 88-8-R. et al. (1991).**

Findings, Discussions, Conclusion.... 4. Liability Beyond The Bond Amount.

"Applicants incorrectly argue that after the state sought forfeiture of the bond and fully expended the money in attempting to reclaim the site that the state became solely responsible for the inadequate reclamation. The permittee's performance bond liability lasts until the reclamation requirements of the Act are achieved. See 30 C.F.R. 800.12(a)(1). When an operator refuses or is unable to reclaim unabated violations, the state is required to pursue forfeiture of part or all of the bond. See 30 C.F.R. 800.50(a). However, if the bond amount does not satisfy the reclamation need, OSMRE can pursue further enforcement actions against the operator. The United States District Court for the Eastern District of Tennessee has upheld OSMRE's right to enforce reclamation where the bond money fully forfeited to the state was not sufficient. See *United States v. Queen Mountain Mining, Inc.*, No. CV-3-85-344, 93 FED 3067 (December 24, 1986) (OSMRE allowed to seek injunction because this is not the sort of situation where the regulators are seeking a double recovery)."

**INNOVATIVE DEVELOPMENT OF ENERGY, INC. v OSM, 110 IBLA 119, IBLA 88-55 (1989).**

HEADNOTES:... 4. Bonds: Forfeiture of

"Neither SMCRA nor Departmental regulations implementing SMCRA contains provisions which operate to release a minesite from regulatory enforcement when a reclamation bond is forfeited. Under the provisions of 30 U.S.C. Sec. 1259(b) (1982), an operator is liable for the duration of the surface coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation. The Act



contains no provision suggesting that the forfeiture of a performance bond creates a limitation upon the Federal regulation of a minesite subject to the Act."

**ROBERT L. CLEWELL et al., 123 IBLA 253, IBLA 91-321 (1992).**

HEADNOTES:... 5. Performance Bond or Deposit: Forfeiture

"Where reclamation costs exceed the amounts forfeited under a bond, the Board will not affirm the OSM decision that a state agency has taken appropriate action under 30 U.S.C. Sec. 1271(a)(1) (1988) simply because a bond was ordered forfeited."

**STATE CASE LAW**

**STATE OF WEST VIRGINIA EX REL. LAUREL MOUNTAIN/FELLOWSVILLE AREA CLEAN WATERSHED ASSOCIATION, INC., et al. v CALLAGHAN, 418 SE 2d 580 (W Va 1992).**

SYLLABUS:

"2. Pursuant to 38 C.S.R Sec. 2-12.4(c) (1991), the Commissioner of the Division of Environmental Protection has a duty to utilize the proceeds from forfeited bonds to accomplish the completion of reclamation of affected lands of a surface mine."

Also see STATE OF WEST VIRGINIA EX REL. WEST VIRGINIA HIGHLANDS CONSERVANCY, INC., et al. v CALLAGHAN, 447 SE 2d 920 (W Va 1994).

**TRUSTEES FOR ALASKA v GORSUCH, 835 P 2d 1239 (Alaska 1992).**

Trustees for Alaska challenged Alaska Department of Natural Resources' (DNR) issuance of a surface coal mining permit to Diamond Shamrock-Chuitna Coal Joint Venture claiming, in part, that DNR "violated ASCMCRA by approving a bond amount which 'does not reflect the cost of all reclamation which will need to be performed during the life of the permit.'" The court held:

"DNR should recalculate the bonds so that they are 'sufficient to assure the completion of the reclamation plan by [DNR] in the event of forfeiture.' AS 27.21.160(a). This does not necessarily mean that DNR must require Diamond to post a bond equal to the total reclamation cost. DNR should calculate the bond assuming forfeiture at a time when unabated permit violations exist, though it need not assume that no reclamation will have taken place."

**ATTACHMENTS**

A. 48 FR 32932 (JULY 19, 1983). Final rule. Bond and insurance requirements.



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

- B. OSM DIRECTIVE, Subject No. REG-10, Transmittal No. 339, "Bond forfeiture" (Issued May 26, 1987).
- C. H.C. BOSTIC COAL CO., INC. AND WAYNE BOSTIC v OSM, Docket Nos. NX 88-8-R. et al. (1991).
- D. INNOVATIVE DEVELOPMENT OF ENERGY, INC. v OSM, 110 IBLA 119, IBLA 88-55 (1989).
- E. ROBERT L. CLEWELL et al., 123 IBLA 253, IBLA 91-321 (1992).
- F. STATE OF WEST VIRGINIA EX REL. LAUREL MOUNTAIN/FELLOWSVILLE AREA CLEAN WATERSHED ASSOCIATION, INC., et al. v CALLAGHAN, 418 SE 2d 580 (W Va 1992).
- G. STATE OF WEST VIRGINIA EX REL. WEST VIRGINIA HIGHLANDS CONSERVANCY, INC., et al. v CALLAGHAN, 447 SE 2d 920 (W Va 1994).
- H. TRUSTEES FOR ALASKA v GORSUCH, 835 P 2d 1239 (Alaska 1992).