



COALEX STATE INQUIRY REPORT - 300

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TOPIC: DENIAL OF ADMINISTRATIVE EXPENSES

INQUIRY: A mining operator with a valid permit filed for bankruptcy under chapter 11. The operator stopped removing coal and has received a number of NOV's. If the operator was still actively mining, the civil penalties would get priority as administrative expenses. [See IN RE N.P. MINING CO., INC. and IN RE BILL'S COAL CO., INC.] Are there any decisions which find that civil penalties get priority if the operator is not actively mining under a valid permit?

SEARCH RESULTS: A search of COALEX and other LEXIS files was unable to identify any materials directly on point. Some related cases, law review articles, Federal Register preambles and an OSM Directive on administrative expenses and temporary cessation were retrieved. These are listed below; copies are attached.

DECISIONS

UNITED STATES DOI v ELLIOTT, 761 F 2d 168 (4th Cir 1985). UNITED STATES DOI v ELLIOTT, 40 Bankr 985 (WD Va 1984).

These cases involving postpetition violations of SMCRA were superseded by statute as stated IN RE N.P. MINING.

IN RE YOUNGER, 165 Bankr 965 (SD Ga 1994).

This case, unrelated to mining, cites to IN RE N.P. MINING and READING CO. v BROWN. [See the attached brief.]

LAW REVIEW ARTICLES

De Wolf, "Strange Things are Afoot at the Circle K: Agency Action Against Leased Sites in Environmental Bankruptcy", 21 B C Env'tl Aff L Rev 145 (Fall, 1993).



Citing to IN RE N.P. MINING:

"Some Agencies with environmental claims against bankrupt [potentially responsible parties] have found tremendous success filing for administrative expense priority under Section 503 of the Code. Administrative expense priority provides the highest possible priority available under the Code for unsecured creditors, qualifying claims to be paid in full, ahead of all other unsecured creditors. The rationale behind elevating certain expenses to this high priority is to encourage third parties to continue to conduct business with the estate, in an effort to rehabilitate the debtor's business and preserve the estate's assets. Without a guarantee of first priority, third parties, such as goods and service supplies, would not deal with a business in chapter 11 reorganization or chapter 7 liquidation, thereby greatly hindering administration of the estate."

III. The Agencies Get Tough, B. Administrative Expense Priority, p. 171-172.

Drake and Dilz, "Bankruptcy", 44 Mercer L Rev 1073 (1993). [Excerpts]

IN RE N.P. MINING is discussed under VII. Claims Against the Estate, A. Administrative Expense, at 1092.

Losch, "Bankruptcy v. Environmental Obligations: Clash of the Titans", 52 La L Rev 137 (September 1991).

This article was included for background.

ADDITIONAL BACKGROUND MATERIAL ON TEMPORARY CESSATION

OSM DIRECTIVE, Subject No. INE-22, Transmittal No. 332, "Temporary cessation of operations" (Issued May 8, 1987).

44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule. Sections 816.131 and 816.132 Cessation of operations.

56 FR 60012 (NOVEMBER 26, 1991). Proposed rule. Temporary cessation of operations.

57 FR 47431 (OCTOBER 16, 1992). Withdrawal of proposed rules. Temporary cessation of operations.

ATTACHMENTS

- A. Brief for the Commonwealth of Kentucky. COMMONWEALTH v KARST ROBBINS COAL CO., INC., Case No. 6:94-cv-00335 (September 23, 1994).
Contains the following cases:
- B. IN RE N.P. MINING CO., INC., 963 F 2d 1449 (11th Cir 1992).



- C. IN RE BILL'S COAL CO., INC., 124 B R 827 (D Kan 1991).
READING CO. v BROWN, 88 S Ct 1759 (1968).
- D. UNITED STATES DOI v ELLIOTT, 761 F 2d 168 (4th Cir 1985).
- E. UNITED STATES DOI v ELLIOTT, 40 Bankr 985 (WD Va 1984).
- F. IN RE YOUNGER, 165 Bankr 965 (SD Ga 1994).
- G. De Wolf, "Strange Things are Afoot at the Circle K: Agency Action Against Leased Sites in Environmental Bankruptcy", 21 B C Env'tl Aff L Rev 145 (Fall, 1993).
- H. Drake and Dilz, "Bankruptcy", 44 Mercer L Rev 1073 (1993). [Excerpts]
- I. Losch, "Bankruptcy v. Environmental Obligations: Clash of the Titans", 52 La L Rev 137 (September 1991).
- J. OSM DIRECTIVE, Subject No. INE-22, Transmittal No. 332, "Temporary cessation of operations" (Issued May 8, 1987).
- K. 44 FR 14902 (MARCH 13, 1979). Permanent Program Final Preamble -- Final Rule. Sections 816.131 and 816.132 Cessation of operations.
- L. 56 FR 60012 (NOVEMBER 26, 1991). Proposed rule. Temporary cessation of operations.
- M. 57 FR 47431 (OCTOBER 16, 1992). Withdrawal of proposed rules. Temporary cessation of operations.