



## COALEX STATE INQUIRY REPORT - 32

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**TOPIC:** BOND FORFEITURE (Addendum to COALEX STATE INQUIRY REPORT - 5)

**BACKGROUND:** COALEX STATE INQUIRY REPORT - 5 asked whether regulatory authorities had the authority to forfeit the entire amount of a reclamation bond when the actual cost of reclamation was less than the bonded sum. Two jurisdictions, Kentucky and Pennsylvania, were identified as recently deciding the issue. Courts in both states decided the bond was penal in nature and that failure to perform all reclamation requirements resulted in total bond forfeiture, even if reclamation costs were less than the bonded sum. The purpose of this Report is to update the previous report with the recent decisions.

### SEARCH RESULTS:

The Supreme Court of Tennessee recently decided whether a reclamation bond was penal in nature in *TENNESSEE v GULF AM. FIRE & CASUALTY CO.*, slip op. (Tenn November 5, 1984). The Court, holding that such a bond was penal, found opinions from Kentucky, Pennsylvania and West Virginia to be persuasive.

*AM. DRUGGISTS INS. CO. v COM. DEPT. FOR NAT. RES.*, 670 SW 2d 485 (Ky Ct App 1983) and *MORCOAL CO. v PENNSYLVANIA*, 459 A 2d 1303 (Pa Commw Ct 1983) were the Kentucky and Pennsylvania decisions, respectively, upon which the Supreme Court of Tennessee relied. Both of these cases were identified in COALEX STATE INQUIRY - 5.

*STATE v ELDER*, 165 SE 2d 108 (WVA 1968). The West Virginia decision referred to by the Tennessee Supreme Court, also held that such bonds were penal in nature.

To date, four jurisdictions -- West Virginia, Pennsylvania, Kentucky and Tennessee -- have been identified as having addressed the issue of whether reclamation bonds are penal in nature. All four states have resolved the issued in the same manner, holding that such bonds are indeed penal, and that the total bonded sum may be forfeited.

### ATTACHMENTS:

- A. *TENNESSEE v GULF AM. FIRE & CASUALTY CO.*, slip op. (Tenn November 5, 1984).
- B. *STATE v ELDER*, 165 SE 2d 108 (W Va 1968).