Orig ACT 007/007
cc ACT 007/012
ACT 007/013

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF COLORADO

In re:	:	
KAISER STEEL CORPORATION,	:	Bankruptcy No. 87 B 01552 E (Jointly Administered)
Debtor.	:	

Movants, the State of Utah Division of Oil, Gas and Mining ("Division") and the United States Office of Surface Mining Reclamation and Enforcement ("OSMRE"), by and through their undersigned attorneys, hereby reply to Respondents' Brief in Response to Motion for Relief from Automatic Stay, or in the Alternative for Adequate Protection and Request for Allowance and Payment of Administrative Claims as follows ("Brief").

I. INTRODUCTION.

As a short introduction, Movants wish to clarify their position regarding several statements made by Respondents in their Brief.

First, as will be discussed below, Movants do not by this action seek an injunction from this Court. Further, Movants have withdrawn their request for administrative expenses. Next, Movants deny that they agreed at any time to refrain from taking enforcement action at the Utah Properties, although Movants did, at a meeting on December 3, 1987, agree to refrain from filing the subject Motion until January 4, 1988. (See Brief at 3).

In addition, for the Court's information, IPA did not approve the purchase of the Geneva (Horse Canyon) Mine and the Wellington Preparation Plant at their meeting on April 26, 1988, but may do so sometime in the future. (See Brief at 4).

II. RESPONDENTS MISSTATE THE PURPOSE OF MOVANTS' MOTION AND THE REQUEST FOR RELIEF.

Throughout Respondents' Brief are references to the injunctive relief sought in this action by the Division and OSMRE ("Movants"), see e.g. pages 2 and 8 of the Brief. Respondents are mistaken in their belief that Movants are appearing before this Court for the purpose of seeking to enjoin Kaiser Steel Corporation, Kaiser Coal Corporation, Kaiser Coal Corporation of Utah, and Kaiser Coal Corporation of Sunnyside ("Kaiser") from continuing the operation of the Sunnyside Mine and to mandate the complete restoration of the Sunnyside Mine, the Geneva (Horse Canyon) Mine and the Wellington Preparation Plant ("Utah Properties"). Movants maintain that the proper forum for seeking such an injunction is the appropriate District Court within the State of Utah when the proper factual and legal arguments can be made for and against its imposition. In the current proceedings, Movants request only the concurrence of this Court that an action by the Division and OSMRE seeking to enforce their environmental laws through injunctive relief is excepted from the operation of the automatic stay provisions of 11 U.S.C. § 362(a) ("362(a)").

The analysis to determine whether Movants are entitled to the relief they request is clearly set out in the cases cited

in Movants' Memorandum in Support of Motion for Relief from Automatic Stay, or in the Alternative for Adequate Protection and Request for Allowance and Payment of Administrative Claims ("Memorandum"), especially in Penn Terra Ltd. v. Dept. of Environmental Resources, 733 F.2d 267 (CA3, 1984).

In Penn Terra, the Third Circuit systematically marks a path through the complex and sometimes conflicting legal and policy issues which seem to characterize these environmental cases. First, the Court found that its task was to determine:

> ...(1) whether DER's [the Pennsylvania equivalent to the Division in this action] actions come within the police or regulatory power of the state; if so, then it must further be determined (2) whether DER's actions are an attempt to enforce a money judgment."

Id. at 272. The Court found DER's actions to be within the police power authority. Id. at 274.

Next, as is discussed at length in Movants' Memorandum, the Court analyzed whether DER was, by its mandatory injunction action, attempting to enforce a money judgment. The test applied was:

> ...whether the remedy would compensate for past wrongful acts resulting in injuries already suffered, or protect against potential future harm.

Id. at 277. The Court concluded that DER's action was one to protect the affected land from further degradation and not to seek compensation for injuries already incurred. Id. at 278.

Respondent, in an attempt to diminish Penn Terra's importance to the outcome of this case, makes an effort to distinguish the facts leading to the Penn Terra decision from the facts present in this Kaiser matter. In fact, Respondent acknowledges that "...building demolition, regrading, backfilling, and revegetation of the building sites and operation sites, and then the monitoring and maintenance of the sites..." along with the sealing of mine shafts are all required reclamation activities at an underground mine site. Movants agree with Respondents' characterization of the underground mine reclamation requirements and point out that there is no real difference between Respondents' list of underground and surface mine categories of reclamation activities. See Brief at 10. The reality is that a total of approximately 690 acres are currently disturbed at the three Utah Properties which translates into spreading topsoil over coal waste piles, dismantling buildings, grading sedimentation ponds and drainage ditches, reseeding, and similar operations designed to protect and stabilize the sites.

In fact, though, any perceived or real differences in reclamation categories or in types of mines is irrelevant to the analysis that the Court must make to determine whether Movants are subject to the automatic stay. In Penn Terra as well as other cases cited in Movants Memorandum (see e.g. United States v. F.E. Gregory & Sons, Inc., 58 B.R. 590 (W.D.Pa. 1986), and United States v. Standard Metals Corp., 49 B.R. 623 (D.Colo. 1985)) the focus was on the type of relief sought. In those

cases, as in the present case, reclamation of sites affected by coal mining activities is an activity intended to prevent the prolonged degradation of the affected site and, as such, is not an attempt at collecting compensation for injuries incurred.

III. MOVANTS' ACTION IN REVOKING KAISER'S AUTHORITY TO SELF-BOND IS NOT A DISCRIMINATORY ACTION IN VIOLATION OF 11 U.S.C § 525(a).

Movants have extensively briefed the issue of whether Respondents' inability to meet the requirements of the net capital rules discriminates against Kaiser (see Memorandum at page 19 et seq.) and wish only to point out that Kaiser's reliance upon In re Rath Packing, 35 B.R. 615 (Bankr. N.D. Iowa 1983) is misplaced. In Rath, the Court found that the government action took place for the sole reason that the debtor had filed a petition for bankruptcy. In Rath, unlike the present case, there was no evenhanded application of reasonable rules. There was merely the stand-alone governmental action of withdrawing the exemption allowing self-insured status.

As Movants have pointed out in their Memorandum, Respondents, by their own admission, did not meet Utah's net capital rules permitting self-bonding. To find, as Kaiser proposes, that debtors-in-possession should be exempt from the operation of Utah's rules regarding self-bonding, is to seek a "head start" rather than the "fresh start" contemplated by the Bankruptcy Code. (Memorandum at page 28, citing Duffy v. Dollison, No. C-2-81-1154 (S.D. Ohio Aug. 13, 1982).

IV. CONCLUSION.

Movants are cognizant of Kaiser's continued efforts to seek a financially responsible party to assume the operation of the mine and the reclamation obligation. Movants, however, have suffered the continued operation of the Sunnyside Mine for over one year on the basis that Kaiser would soon meet the requirements of the March 26, 1987 letter (Attachment 5 of the Motion) and supply a party willing to assume the reclamation obligation. Now, with depletion of the existing developed coal at less that one year away, Movants cannot stand by and allow the mine to be made essentially worthless and with little hope of reclaiming the sites. Kaiser may yet have an opportunity to sell the Utah Properties, but if, as Kaiser observed in its Brief at page 11, an inactive mine is less attractive to prospective buyers, then a depleted inactive mine is a white elephant.

Movants have a mandate to protect these disturbed areas from prolonged degradation resulting from a failure to reclaim. It is essential that the governmental agencies be permitted to exercise their authority to cause Kaiser to cease operations and begin to completely reclaim the Utah Properties.

Movants respectfully request that this Court concur with their position that such actions are not subject to the stay provisions of 362(a) and that no discrimination against Kaiser on

the basis of its action in filing for bankruptcy has occurred.

Respectfully submitted this 29th day of April, 1988.

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Orig ——— ACT 007/007
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO IN BANKRUPTCY

In Re: KAISER STEEL CORPORATION Debtor(s).	Bankruptcy No. 87B 1552 E (Jointly Administered)
THE UTAH DIVISION OF OIL, GAS AND MINING and THE OFFICE OF SURFACE MINING, RECLAMATION AND ENFORCEMENT, Applicants, v. KAISER STEEL CORPORATION, KAISER COAL CORPORATION, KAISER COAL CORPORATION OF SUNNYSIDE, KAISER COAL CORPORATION OF UTAH, et al., Respondents.	

RESPONDENTS' BRIEF IN RESPONSE TO MOTION FOR RELIEF FROM AUTOMATIC STAY, OR IN THE ALTERNATIVE FOR ADEQUATE PROTECTION AND REQUEST FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIMS

Kaiser Steel Corporation, Kaiser Coal Corporation, Kaiser Coal Corporation of Utah, and Kaiser Coal Corporation of Sunnyside ("Kaiser Coal"), through their counsel, Sherman & Howard, in response to the motion for relief from automatic stay and brief in support of the motion filed by the State of Utah Division of Oil, Gas and Mining and the United States Office of Surface Mining, Reclamation and Enforcement (together the "Applicants") as follows.

I. INTRODUCTION

The Applicants seek three forms of relief in their motion for relief from the automatic stay. The Applicants seek permission to take all appropriate enforcement action against Kaiser Coal's Utah mining properties for alleged violations by Kaiser Coal of state and federal environmental laws. Here the Applicants seek an injunction directing Kaiser Coal to cease its mining operation until it has completed reclamation work at its Sunnyside mine. Alternatively, the Applicants request that Kaiser Coal provide adequate protection to the Applicants by posting surety or cash bonds to secure performance of reclamation requirements. As a final alternative, the Applicants seek an administrative claim for the costs of reclamation for Kaiser Coal's Utah properties.

The Applicants' brief in support of the motion for relief from stay puts forth no argument in furtherance of the Applicants' request for adequate protection or for an administrative claim. In fact, the Applicants seemingly have abandoned these forms of relief when they state in their brief that "[m]ovants seek no compensation for injuries already suffered. Movants' single-minded purpose in appearing before this Court is to take the steps necessary to enforce Kaiser's obligation to restore the disturbed areas of the Utah Properties to a '. . . condition capable of supporting the uses which it was capable of supporting prior to any mining.'" (Applicants Brief at 9.) Nonetheless, the Applicants have not withdrawn

their requests for adequate protection or an administrative claim and Kaiser Coal will respond herein to those requests, as well as the request for injunctive relief.

II. BACKGROUND

The Applicants' background statement appears to be arguing that Kaiser Coal was in violation of the Utah Coal Program when it failed to file a reclamation bond within 90 days of the March 26, 1987 letter from Dr. Nielsen. That letter advised Kaiser Coal that, if the bond was not posted, the regulatory provisions requiring the cessation of mining would be applicable because of Kaiser Coal's insolvency.

The Applicants' background statement ignores that in lieu of posting replacement reclamation bonds the Applicants entered into a Confidentiality Agreement with Kaiser Coal on July 28, 1987. Under this agreement, information was provided to the Applicants concerning prospective purchasers of the Utah mining properties with the understanding that any purchaser would assume reclamation liability for the properties.

The Applicants terminated the Confidentiality Agreement in late November when it appeared that Kaiser Coal would be unable to locate a purchaser for the Sunnyside mine. However, at a meeting between the Applicants and Kaiser Coal on December 3, 1987, the Applicants agreed to refrain from taking any enforcement action pending negotiations with Geneva Steel to purchase the Sunnyside mine. A purchase agreement was ultimately entered into between a subsidiary of Geneva Steel and

Kaiser Coal and submitted to this court for approval. Subsequently, the application to approve the sale was withdrawn when it became clear to the parties that certain conditions of closing would not be satisfied. Since the withdrawal of the application, the Applicants have not notified Kaiser Coal in writing that it must post a bond or cease operations and commence reclamation. Consequently, it is premature for the Applicants to request that Kaiser Coal cease operations and commence reclamation work.

In addition, the Applicants' enforcement action is premature because there are parties considering purchasing the Sunnyside operation. Moreover, the Intermountain Power Agency ("IPA"), a subsidiary of Los Angeles Water and Power, will meet on April 28, 1988 to consider approval of an Asset Purchase Agreement for the acquisition of Kaiser Coal's Geneva mine and Wellington Preparation Plant, both of which are the subject of the Applicants' motion for relief from stay. IPA has made arrangements with the Applicants to meet on April 29, 1988 and discuss assumption of reclamation bonding obligations for these properties.

Also, as is discussed in more detail later, approximately $1,000,000 of Kaiser Coal's reclamation liability is being assumed by Sunnyside Fuel Corporation ("Sunnyside Fuel") in connection with the purchase of Kaiser Power Corporation.

This additional background is provided so as to advise the court of Kaiser Coal's continued attempts to satisfy Utah's

reclamation regulations associated with its mining properties. These additional facts demonstrate that, in fact, Kaiser Coal has improved its position vis-a-vis reclamation liability since the filing of the bankruptcies. Although the Applicants vehemently deny this characterization of their motion, these additional background facts suggest that the Applicants are attempting through the use of injunctive relief to collect a pre-petition money judgment.

III. REQUEST FOR ADEQUATE PROTECTION

Section 362(d) of the Bankruptcy Code provides that a party in interest may seek relief from the provisions of the automatic stay for, among other things, ". . . cause, including the lack of adequate protection of <u>an interest</u> in property of such party in interest . . . ." (Emphasis added.)

Quite simply, the Applicants have no interest in Kaiser Coal's Utah coal mining properties that entitles the Applicants to adequate protection. As is set forth in the Applicants' brief (pp. 2-5), the Applicants are Utah's regulatory arm entrusted with the regulation of coal mining properties within Utah. As such, the Applicants have no ownership, possessory, or security interest in Kaiser Coal's Utah coal mining properties. Consequently, the Applicants are not entitled to any form of adequate protection under section 362 of the Bankruptcy Code.

IV. ADMINISTRATIVE CLAIM

As an alternative to adequate protection, the Applicants seek an administrative expense claim for the cost of reclaiming Kaiser Coal's Utah properties. The Applicants seek a total administrative claim of $8,877,000.00, subject to appropriate future increases.

As a procedural matter, the Applicants' request for an administrative claim couched in their motion for relief from stay should not be considered by the bankruptcy court. Under section 362(e) of the Bankruptcy Code, the bankruptcy court is required to handle motions for relief from stay on an expedited schedule. Consequently, the issues to be addressed by the bankruptcy court at hearings on motions for relief from stay are limited. The legislative history to section 362 states as follows:

> The action commenced by the party seeking relief from stay is referred to as a motion to make it clear that at the expedited hearing under subsection (e), and at hearings on relief from stay, the only issue will be the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization of the debtor, or the existence of other cause for relief from the stay. This hearing will not be the appropriate time at which to bring in other issues . . . .

Should the court decide to address the Applicants' request for an administrative claim as part of the motion for relief from stay, the Applicants still are not entitled to the relief they seek. Section 503(b) of the Bankruptcy Code sets

forth the criteria for the allowance of an administrative claim. Although never specifically identified by the Applicants in their motion or in their brief, it is presumed that they seek an administrative claim under section 503(b)(1)(A) for expenses incurred by Kaiser Coal while operating as a debtor-in-possession that are "the actual, necessary costs and expenses of preserving the estate . . . ." The Applicants may well be entitled to an administrative expense for any reclamation amounts that Kaiser Coal has incurred post-petition, but the Applicants are not entitled to an administrative expense claim for any pre-petition claims. See In re Pierce Coal and Construction, Inc., 65 B.R. 521, 530 (Bankr. N.D. W. Va. 1986). By asking for the total permit requirement amounts of $8,877,000.00, the Applicants clearly make no differentiation between pre-petition claims and post-petition claims. Further, prior to the award of any claim, the Applicants would be required to demonstrate the validity and amount of their claim. The Applicants have offered no evidence to demonstrate that the permit requirements are indeed the actual reclamation amounts. As suggested above, even if the Applicants prove the amount of their reclamation claim, the Applicants would then have to provide a breakdown between the reclamation expenses incurred pre-petition and reclamation expenses incurred post-petition for the court to determine the amount of any administrative claim.

It is Kaiser Coal's contention that it is current with its post-petition reclamation requirements. Kaiser Coal

Corporation and Kaiser Coal Corporation of Sunnyside have undertaken reclamation after the filing of their bankruptcy petitions. Moreover, the sale of a Kaiser Coal Corporation subsidiary, Kaiser Power Corporation, to Sunnyside Fuel, a subsidiary of Environmental Power Corporation, was approved by this court on December 23, 1987. Sunnyside Fuel intends to use the waste coal produced by the Sunnyside mine to operate a cogeneration facility. As part of this transaction, Sunnyside Fuel assumed the reclamation liability for the waste coal. Sunnyside Fuel has submitted a draft reclamation bond estimate to the State of Utah in the amount of $1,196,936. On April 15, 1988, the state approved the bond estimate and Sunnyside Fuel is currently negotiating the terms of its reclamation bond. To the extent that post-petition reclamation work has been done and to the extent that reclamation liability for the waste coal has been, or will be, assumed by Sunnyside Fuel, Kaiser Coal should be granted an offset to any administrative claim that the court awards to the Applicants.

V. INJUNCTIVE RELIEF

Applicants further seek to enjoin Kaiser Coal's Utah mining operations until Kaiser Coal posts a reclamation surety bond with the State of Utah Division of Oil, Gas and Mining in an amount equal to the estimated costs of reclamation or until Kaiser Coal has completed the requisite reclamation work. In support of this contention, the Applicants rely heavily on Penn Terra Ltd. v. Dept. of Environmental Resources, 733 F.2d 267

(3rd Cir. 1984). In essence, the Penn Terra court determined that an injunction directing the debtor to expend the money necessary to undertake reclamation work was not the enforcement of a money judgment and, therefore, within the exceptions to the automatic stay set forth in sections 362(b)(4) and (5).

The court in Penn Terra acknowledged that it was required to balance the federal bankruptcy policy and the state environmental protection policy in deciding whether the automatic stay prohibited a state from seeking an injunction to enforce its reclamation laws. The facts of the Penn Terra case which ultimately caused that court to balance the scales in favor of the state's environmental policy are readily distinguishable from the facts presented by this case.

Ultimately, the Penn Terra court decided to grant the state's request for an injunction directing the debtor to reclaim the mining land because it was determined that the state was not seeking to provide compensation for past injuries, that the cost of reclamation was not reducible to a sum certain, and no monies were sought by the state as a creditor. Rather, and this is the key to the Penn Terra decision, the state's injunction was meant to prevent future harm by controlling erosion and further deterioration of soil at the debtor's inactive surface mine site. Id. at 278.

In their motion for relief from stay the Applicants clearly are seeking monies in a sum certain for past injuries. Consequently, none of the bases cited by the Penn Terra court

are present here. Moreover, central to the Penn Terra court's decision was the prevention of future harm. The Applicants vastly overstate the condition of Kaiser Coal's Utah properties by referring to them as "worthless properties which will remain as a moonscape for decades." (Applicants' Brief at 17.) Perhaps the Applicants' overly-zealous description of the Sunnyside mine site is an attempt to align themselves with the facts of the Penn Terra case. In Penn Terra, the debtor's surface mining operation had ceased prior to the filing of a Chapter 7 petition. An abandoned surface mine presented the Penn Terra court with far different circumstances than what is presented to this court by Kaiser Coal's operating underground mine at Sunnyside, Utah. An abandoned surface mine has piles of overlay dirt with continuing erosion and run-off problems. An open-pit mine requires extensive backfilling, reseeding, and revegetation. An underground mine, on the other hand, has none of those negative qualities. At an underground mine, the mining operation itself is reclaimed by merely sealing the mine shaft from public access. Other reclamation required at Kaiser Coal's Utah mining properties is building demolition, regrading, back-filling, and revegetation of the building sites and operation sites, and then the monitoring and maintenance of the sites after the initial reclamation work is completed. Therefore, Kaiser Coal's Utah mining properties pose no continuing erosion or run-off problems to the environment. In fact, nothing changes in terms of reclamation at the Kaiser Coal Utah mining

properties with the passage of time. The reclamation undertaken today will be virtually identical to the reclamation undertaken when the underground mine is mined out. Likewise, the harm to the environment will be virtually the same today as it will when the underground mine is mined out.

There are further distinctions between the Penn Terra case and the facts of this case. There the court's weighing of the facts did not include a consideration of a debtor-in-possession continuing its operation. The continued operation of Kaiser Coal's Sunnyside mine provides jobs for approximately 250 miners, and provides the revenue to allow Kaiser Coal to continue making payments to equipment lessors and its other post-petition creditors, and it increases the possibility of finding a purchaser for the property, since an ongoing mining operation is far more attractive than an inactive mining property.

Against this background, the court must weigh the effect of granting an injunction which would unquestionably shut down the mining operation at the Sunnyside mine. Kaiser Coal does not have the monies to post the requisite bond amounts or to undertake the requisite reclamation work. The only cash available to Kaiser Coal is cash collateral and the secured creditors have not consented to its use for reclamation purposes. Consequently, an injunction will undoubtedly cause the Utah properties to be abandoned. Under the circumstances set forth herein, a trustee would be entitled to abandon these

properties. In the case of In re Oklahoma Refining Company, 63 B.R. 562 (Bankr. W.D. Okla. 1986) a bankruptcy trustee was permitted to abandon an oil refinery when

> [t]he refinery [did] not present immediate and menacing harm to public health and safety. Moreover, abandonment will not aggravate the existing situation, create a genuine emergency nor increase the likelihood of disaster or intensification of polluting agents.
>
> * * *
>
> To require strict compliance with state environmental laws under the facts of this case could create a bankruptcy case in perpetuity and fetter the estate to a situation without resolve. This trustee, with consent of the secured creditors, has done what is reasonable under the circumstances. To preempt the administration of this estate would degradate the spirit and purpose of the bankruptcy laws requiring prompt and effectual administration within a limited time period. Katchen v. Landy, 382 U.S. 323, 328, 86 S. Ct. 467, 472, 15 Lawyers Ed. 2d 391 (1966). The Oklahoma laws regarding environmental protection are not unreasonable but juxtaposed to the Bankruptcy Code cannot be reconciled to satisfy the strict compliance sought by the State Agencies.

Abandonment serves no useful purpose for any party to this bankruptcy, including the Applicants. To force such an outcome would destroy any attempt of Kaiser Coal to effectuate a sale of these properties or any plan of reorganization which could be proposed by creditors of this estate. The immediate effect, of course, would be unnecessarily to terminate the employment of 250 miners and devastate the economy of the area surrounding the Sunnyside mine, with no commensurate benefit to the Applicants in the enforcement of their reclamation regulations.

VI. APPLICANTS' REVOCATION OF KAISER COAL'S MINING PERMITS VIOLATES SECTION 525

Section 525(a) of the Bankruptcy Code provides as follows:

> [A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise or other similar grant to, or condition such a grant to . . . a person that is or has been a debtor under this title . . . solely because such . . . debtor is or has been a debtor under this title . . . has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title . . . .

By letter dated March 26, 1987, Kaiser Coal was informed that if it failed to post a bond within 90 days of the receipt of the letter, the provisions of UMC 800.16(E) would apply. Under the provisions of this regulation, insolvency of a surety triggers termination of bond coverage and cessation of mining. By the terms of Kaiser Coal's self-bonding arrangement with the State of Utah, Kaiser is the surety of its own reclamation obligation and Kaiser Coal's insolvency triggers default and revocation of Kaiser Coal's permit to operate. A reclamation bond is a condition of a permit to mine and without bond coverage, the Applicants, pursuant to the provisions of UMC 800.16(E), may require cessation of mining and immediate reclamation. The regulation being applied by the Applicants is exactly the discriminatory conduct which section 525(a) seeks to prevent.

The Applicants argue extensively in their brief that they do not seek to revoke Kaiser Coal's self-bonded status because Kaiser Coal is insolvent or in bankruptcy but rather because its ratio of current assets to current liabilities was less than the minimum ratio required by the Utah regulation. Further, the Applicants argue that they are not guilty of violating section 525 of the Bankruptcy Code because the regulations in question are applied uniformly against debtors and non-debtors alike. It is suggested that both arguments are attempts to veil the Applicants' true intentions to collect a pre-petition claim. As to the first argument, it is clear that the use of a ratio of current assets to current liabilities is merely a different way of defining that an entity is insolvent. When a coal mining company finds itself in violation of the state's assets to liabilities ratio it is probably a fair conclusion that bankruptcy is not too far behind. The same argument applies to the Applicants' contention that they are non-discriminatory in their application of the regulations to debtors and non-debtors. Of course this contention fails to consider that the regulations are only applicable once the entity is in a financial situation that equates to insolvency or being a debtor in bankruptcy.

Protection under section 525(a) has been extended under circumstances similar to those faced by Kaiser in In re Rath Packing, 35 B.R. 615 (Bankr. N.D. Iowa 1983). Under the facts of that case, the debtor, a self-insurer, had its

exemption from worker's compensation insurance revoked by the State Insurance Commission on the day following the filing of its Chapter 11 petition. The Rath court found that the state had violated section 525 because the exemption was revoked solely because of the debtor's Chapter 11 status. In addition, the court indicated that the revocation frustrated the rehabilitative policy of the Bankruptcy Code.

The Applicants argue that In re Rees, 61 B.R. 114 (Bankr. D. Utah 1986) supports their contention that the State of Utah's reclamation requirements regarding self-bonding do not violate section 525 of the Bankruptcy Code. The Rees court determined that if a regulation was applied across the board with equal effect on all regulated persons then it did not violate section 525, even if the regulation had a negative effect on a bankruptcy debtor. The regulation in question here may on its face apply to all coal mining operations in Utah, but in fact, it discriminates against debtors-in-possession by requiring immediate cessation of mining and commencement of reclamation if the debtor-in-possession cannot post a bond within 90 days of filing for bankruptcy. The regulation in essence precludes the debtor from conducting further mining activities in the state and frustrates the possibility of reorganizing a coal mining operation under Chapter 11 of the Bankruptcy Code. To contend that a regulation applies equity to all coal mining operations is misleading when that regulation is only triggered by the filing of bankruptcy.

The facts of this case further demonstrate the requirement to post a bond stems solely from Kaiser Coal's bankruptcy. First, it was Kaiser Coal's filing of bankruptcy that initiated the Applicants' revocation of Kaiser Coal's self-bonding status. In addition, Kaiser Coal's secured lenders have prohibited the use of their cash collateral for a reclamation bond. Since this is the only cash available to Kaiser Coal, the inability to comply with Utah's reclamation bonding requirements stems directly from Kaiser Coal's status as a bankrupt, and the necessity of operating under a cash collateral agreement.

VII. CONCLUSION

In determining whether the Applicants are entitled to relief from the automatic stay, or to the alternative relief they request, this court must weigh bankruptcy policy versus state environmental policy under the facts of this case. It is respectfully suggested that the facts of this case tip the balance of the scales towards a continuation of the automatic stay and require that the court deny the relief the Applicants request. To issue an injunction directing Kaiser Coal to undertake reclamation suggests two possible results. If it had the money available, Kaiser Coal could undertake the reclamation work. The effect of this scenario would be to satisfy the Applicants pre-petition claim. The second, and most likely scenario, would be for Kaiser Coal to abandon its Utah properties to the benefit of no party.

Further, the State of Utah's environmental regulations violate the provisions of section 525(a) of the Bankruptcy Code and, consequently, the Applicants should not be allowed to enforce those regulations in contravention of the purposes of the Bankruptcy Code.

Kaiser Coal requests that the Applicants' motion for relief from stay be denied.

Respectfully submitted this 26th day of April, 1988.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 1988, a true and correct copy of the foregoing **RESPONDENTS' BRIEF IN RESPONSE TO MOTION FOR RELIEF FROM AUTOMATIC STAY, OR IN THE ALTERNATIVE FOR ADEQUATE PROTECTION AND REQUEST FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIMS** was deposited in the United States mails, postage prepaid, addressed to the following:

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