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TAKE PRIDE IN AMERICA

United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240

APR - 5 1991

FROM
5-8-91
MTZ

Memorandum

To: Assistant Deputy Director, Operations and Technical Services

From: Assistant Director, Reclamation and Regulatory Policy

Subject: Environmental Problems During Reclamation with Forfeited Bond Funds

This is in response to your request of March 18, 1991, concerning my views on what would constitute an appropriate State response to a ten-day notice (TDN) which alleges violations at a minesite where the bond has been forfeited by the regulatory authority. As I understand the underlying case, the Albuquerque Field Office has transmitted a TDN to Colorado based on a citizen complaint alleging that sedimentation is occurring at a forfeited site and apparently the sedimentation has resulted from the regulatory authority directing its reclamation contractor to remove sediment control structures as part of the bond forfeiture reclamation efforts at the site.

Reclamation activities performed at a forfeited site, either by the regulatory authority or a third party contracted by the regulatory authority, are not subject to Title V of the Surface Mining Control and Reclamation Act (SMCRA). Indeed, neither the regulatory authority or its contractor are permittees under SMCRA since no permit is required to conduct reclamation at a site where the permit has been revoked and since neither party assumes the liability of the permittee in performing reclamation using available funds. Moreover, in situations like the underlying case, the permittee would not be liable under Title V since the condition resulted from the actions of the regulatory authority in expending the forfeited funds and not through the actions of the permittee. The original permittee remains liable only for those residual violations which resulted from his mining activity and are not eliminated by the regulatory authority with bond forfeiture funds.

The regulatory authority's affirmative obligations under Title V of SMCRA with respect to bond forfeiture are to collect all bonds deposited upon default, use the funds collected to complete the reclamation plan, and to return any unused funds to the party from whom they were collected. Where the amount of forfeited

bond is not sufficient to complete the reclamation plan or abate all violations the regulatory authority has the discretion to either recover from the permittee the additional costs required to complete the reclamation plan or to determine the scope of reclamation and abatement that will be performed within the limits of the funds available.

Based on the foregoing, Field Office oversight of bond forfeiture sites is limited to reviewing whether a State is fulfilling its obligations under the State program counterparts to 30 CFR 800.50(b), (c), and (d), reviewing whether these obligations are accomplished in a timely manner, and reviewing the extent to which bond forfeiture sites are reclaimed with the monies available. Beyond this, we have no other role under Title V of SMCRA. Accordingly, citizen complaints alleging violations at forfeited sites should be transmitted to the regulatory authority for informational purposes as required under section 4.c.(4)(c) of Directive INE-35.

30 CFR
800-50

(b) In the event forfeiture of the bond is required by this section, the regulatory authority shall—

(1) Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the regulatory authority, or if such appeal, if taken, is unsuccessful.

(2) Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

(c) Upon default, the regulatory authority may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in § 800.11(b), bond liability shall extend to the entire permit area under conditions of forfeiture.

(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.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the regulatory authority to the party from whom they were collected.