



COALEX STATE INQUIRY REPORT - 27

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TOPIC: ATTORNEY GENERAL ACTION FOR COLLECTION

INQUIRY: Under SMCRA, the state regulations specify performance bond forfeiture criteria and procedures. Alabama's 1975 Act, which addressed the interim regulations, contains a clause stating that "Nothing in this Article shall prevent the attorney general from prosecuting violations hereof." (Ala. Code, Sec. 9-16-51(d)= (1975)) The position presently being argued is: regardless of specific bond forfeiture procedures of the 1975 Act, the attorney general should be allowed to file a separate action in the circuit court to obtain collection.

Do any of the other states regulatory programs contain a similar provision? Is there any state case law that supports separate action outside of the administrative bond procedure to obtain collection?

SEARCH RESULTS:

A search of the COALEX library was conducted. Five state statutes were identified which pertain to attorney general action for collection.

West Virginia Code Sec. 20-6-30(c) (1967) grants the attorney general, as well as others, the authority to seek an injunction to compel compliance with or enjoining violation of the West Virginia Surface Mining Act. The statute permits a court of competent jurisdiction to grant injunctive relief:

"notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article." (W Va Code, Sec. 20-6-30(c) (1967))

In Missouri, the mining commission may request the attorney general to bring an action for injunctive relief and bond forfeiture when the commission or director determines that a provision of Missouri surface mining legislation is being violated. The request for injunctive relief may be made "after judicial review or simultaneous with judicial review." (Mo. Rev. Stat., Sec. 444.710 (1978))

The Ohio attorney general is directed to bring an action to recover reclamation expenses after the reclamation has been completed and the expenses have been certified. (Ohio Rev. Code, Sec. 1513.18 (1981))



The Montana Hard Rock Mining Act directs the attorney general, when requested by the mining board, to bring an action to recover from a permittee and surety who have failed to reclaim the disturbed land. The action by the attorney general may be brought only when the permittee and surety have not paid within thirty days of receipt of the expense. (Mont. Code Ann., Sec. 82-4-341(5))

In Utah, a violation of the Air Conservation Act "shall not be a bar to enforcement of [the] act...and the committee shall have the power to institute and maintain in the name of [Utah] any and all such enforcement proceedings." (Utah Code Ann., Sec. 26-24-13(1)(c) (1953))

A search of the COALEX file containing administrative law judge opinions* did not identify any pertinent decisions. Also, a LEXIS search of state cases did not identify any opinions on point.

*The ALJ file is currently being updated by OSM and may not be complete.

ATTACHMENTS

- A. W Va Code, Sec. 20-6-30(c) (1967).
- B. Mo. Rev. Stat., Sec. 444.710 (1978).
- C. Ohio Rev. Code, Sec. 1513.18 (1981).
- D. Mont. Code Ann., Sec. 82-4-341(5).
- E. Utah Code Ann., Sec. 26-24-13(1)(c) (1953).