

SPENCER MOUNTAIN COAL CO.
GRACE RICE

IBLA 93-310

Decided November 21, 1996

Appeal from a decision of the Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, forfeiting performance bond for failure to reclaim land or abate violations under Permit No. 2624.

Affirmed.

1. Surface Mining Control and Reclamation Act of 1977: Bonds: Generally--Surface Mining Control and Reclamation Act of 1977: Performance Bond or Deposit: Forfeiture

Under Departmental regulation 30 CFR 800.50(a), OSM properly forfeits a bond when the mining operation is abandoned and the operator failed to conduct reclamation of unabated violations.

APPEARANCES: Robert Rice, Mine Foreman, Spencer Mountain Coal Company, Rockwood, Tennessee; Grace Rice, Barbourville, Kentucky; Patricia Woods, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Knoxville, Tennessee, for the Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Spencer Mountain Coal Company (Spencer Mountain), and Grace Rice have appealed the January 19, 1993, decision of the Knoxville, Tennessee, Field Office, Office of Surface Mining Reclamation and Enforcement (OSM), providing notification of performance bond forfeiture for failure to abate violations stated in certain Notices of Violations and Cessation Orders for Permit No. 2624. See Addendum.

The operation permitted is located approximately 7 miles northwest of Rockwood, Tennessee, and embraces 43.2 acres. The permit, issued to Spencer Mountain (John Parrot - Sole Proprietor), expired on December 22, 1991, and a permit renewal application was denied, without appeal, on February 7, 1992. Due to numerous outstanding violations existing on the permitted area remaining unabated 30 days after denial of the permit renewal, OSM issued a Notice of Potential Bond Forfeiture on May 27, 1992. The notice provided that a conference could be requested to discuss an agreement under which bond forfeiture could be avoided. The record shows that Robert Rice, mine foreman for Spencer Mountain, requested such a

conference, which was held July 10, 1992. Based on a report that an interested mining company had initiated plans to lease and repermit the mining site, and planned to correct the outstanding violations, OSM agreed to suspend forfeiture actions, but only until September 10, 1992. Additional periods of extension were subsequently granted.

In its January 19, 1993, decision, OSM reported it was proceeding with forfeiture because, over an extended period of time, a repermit application had not been approved and the referenced violations had not been abated. The bond to be forfeited is in the form of a first lien security interest, in the amount of \$132,500, in real property located in Whitley County, Kentucky, and owned by sisters Grace Evans Rice and Clara Evans. Both Spencer Mountain and Grace Rice appeal the decision to forfeit.

By order dated July 8, 1993, we granted OSM's request that action on the appeal be held in abeyance pending two permit applications encompassing the Spencer Mountain Permit No. 2624. OSM stated that, if the applications are approved, the bond may be abated or the new permittees may assume responsibility for correcting the outstanding violations. In its request, OSM agreed to provide the Board with status reports on the progress of the two permit applications. On June 6, 1994, OSM filed a status report indicating one permit was being processed, and that inquiry had been received as to another portion of the Spencer Mountain Permit. On August 13, 1996, the Board issued an order requesting that OSM file a status report. On August 23, 1996, OSM responded by filing a status report and a motion to withdraw its abeyance request. In support of its motion, OSM states that the applicants have taken "no action in many months to pursue completion of the permit application process," and that "[t]he mine site remains abandoned and unreclaimed." We grant OSM's motion, and address the merits of the appeal.

In its statement of reasons, Spencer Mountain asserts that in reference to Cessation Order C91-092-162-001, the disturbed area draining into pond No. 2 has been reclaimed. As to Cessation Order C92-092-093-003, Spencer Mountain asserts that pond No. 3 was pumped dry and inspected, but no evidence of the purported leak was found. Spencer submits that the leak was caused by a wet weather spring, and was not mining related. Regarding the remaining violations, it asks for a delay in bond forfeiture until the new permittee has the opportunity to repermit the area at issue. A copy of a lease for the subject mining site, executed on July 30, 1992, was provided.

Grace Rice states in her reasons for appeal that she was not aware of the impending bond forfeiture because she had been away from her home taking care of Clara Evans, her seriously ill sister. She asks that the Board delay bond forfeiture until her sister is in better health.

[1] The bonding provisions of the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1259 (1994), and pertinent regulations at 30 CFR Part 800, require a permit applicant to file with the regulatory authority a bond conditioned upon faithful performance of all surface mining and reclamation requirements of the Act and the permit.

Specific conditions which authorize bond forfeiture are set forth in 30 CFR 800.50(a):

If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the regulatory authority shall take actions to forfeit all or part of a bond or bonds * * *.

Further, the collateral bond, signed by Grace Rice, Clara Evans, and John Parrot (as Sole Proprietor - Spencer Mountain Coal Company), provides: "The failure of the Obligor to fulfill the obligations specified by the Act, 30 C.F.R. Chapter VII, and its permit, shall result in forfeiture of the collateral posted with this performance bond according to the procedures described in 30 C.F.R. §800.50."

OSM's decision explained that the forfeiture was caused by the failure to abate certain violations which included the following:

failure to properly maintain siltation structures as required after construction, specifically Ponds Nos. 002 and 003, failure to remove sediment from Pond No. 002 to maintain adequate storage volume for the design event, failure to protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations, failure to protect and stabilize exposed surface areas to effectively control erosion and failure to restore in a timely manner all disturbed areas to conditions that they are capable of supporting before mining.

Even if we accept Spencer Mountains's assertions that notices of violations regarding Pond Nos. 2 and 3 (CO's C91-092-162-001 and C91-092-093-003) are abated, the permittee's failure to abate CO 92-092-162-002 and CO 92-092-162-004 is not disputed. Moreover, waiting for a new permittee to abate the violations has only resulted in further delay of the required reclamation. More than 3 1/2 years have elapsed since OSM issued its decision; further delay in bond forfeiture can no longer be justified.

We conclude that the record clearly supports OSM's decision to proceed with bond forfeiture, and that its decision of January 19, 1993, must be affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur.

R. W. Mullen
Administrative Judge

ADDENDUMNotice of Violation N90-092-179-017

Issued December 14, 1990, for (1) discharged water (Ponds 2 and 3) with pH less than standard and (2) failure to properly maintain siltation structures (Ponds 2 and 3); regulations reported as violated: 30 CFR 816.42; estimated corrective costs: \$3,078; corrective measures ordered: (1) treat water to bring into compliance, (2) repair structures to prevent leakage; abatement dates: (1) January 4, 1991, and (2) January 15, 1991, inspected April 18, 1991, and Cessation Order C91-092-093-003 issued.

Notice of Violation N91-092-093-004

Issued October 31, 1991, for failure to maintain sedimentation pond (Pond 2) by providing periodic sedimentation removal sufficient to maintain adequate volume; regulations reported as violated: 30 CFR 816.46(c)(iii)(A) and (F); estimated corrective costs: \$11,375; corrective measures ordered: clean pond of sediment as needed to restore storage capacity; abatement date: December 2, 1991 (extended to January 15, 1992); inspected January 15, 1992, and Cessation Order C92-092-162-001 issued.

Notice of Violation N92-092-162-002

Issued February 21, 1992, for (1) failure to protect offsite areas from slides or damage, (2) failure to monitor surface water and submit water monitor reports, and (3) failure to submit ownership and control information; laws reported as violated: 30 U.S.C. § 1265(b)(21) (1994), regulations reported as violated: 30 CFR 773.17, 778.13(c), 816.41(e), and Part 942; estimated corrective costs: \$575; corrective measures ordered: (1) stabilize slide area, control erosion, and seed with vegetative cover, (2) monitor surface water and submit results, and (3) submit ownership and control information; abatement date: March 9, 1992; inspected March 9, 1992, and Cessation Order C92-092-162-002 issued.

Notice of Violation N92-092-162-003

Issued March 9, 1992, for (1) failure to protect and stabilize exposed surface areas to effectively control erosion and (2) failure to restore all disturbed areas in a timely manner; regulations reported as violated: 30 CFR 816.95 and Part 942; estimated corrective costs: \$82,430; corrective measures ordered: (1) fill, regrade, replace (topsoil), and revegetate exposed surface areas and (2) fill, regrade, replace (topsoil), and revegetate cuts; abatement date: April 13, 1992; inspected June 8, 1992, and Cessation Order C92-092-162-004 issued.

