

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 135

An Act to amend and reenact §§ 45.1-241, 45.1-270.3, and 45.1-270.4 of the Code of Virginia, relating to the Virginia Coal Surface Mining Control and Reclamation Act of 1979.

[H 710]

Approved March 5, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-241, 45.1-270.3, and 45.1-270.4 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-241. Performance bonds.

A. After a coal surface mining permit application has been approved, but before such permit is issued, the applicant shall file with the Director on a form prescribed and furnished by the Director, a bond for performance payable to the Commonwealth and conditioned upon faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of coal surface mining and reclamation operations are initiated and conducted within the permit area, the permittee shall file with the Director an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit, shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the Director. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Director in the event of forfeiture, but in no case shall the bond for the entire area under one permit be less than \$10,000.

B. Liability under the bond shall be for the duration of the coal surface mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation as required under regulations promulgated pursuant to § 45.1-242. The bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or of the Commonwealth, or negotiable certificates of deposit of any bank organized for transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

C. ~~The Director may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the Director, pursuant to regulations, the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount.~~ The Director may also accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. The letters of credit shall be irrevocable, unconditional, shall be payable to the Department upon demand, and shall afford to the Department protection equivalent to a corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, and the Department shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until acceptable bond is posted. The letter of credit shall be provided on the form and format established by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. The Director is further authorized to develop and promulgate an alternative system that will achieve the objectives and purposes of the bonding program established under this section.

D. Cash or securities so deposited shall be deposited upon the same terms as the terms upon which

surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

E. The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the Director from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

§ 45.1-270.3. Initial payments into Fund; renewal payments; bonds.

A. Operators filing permit applications for coal surface mining operations participating in the pool fund shall be required to pay into the Fund, as an entrance fee, a sum equal to \$1,000 for each applicable permit application. An entrance fee of \$5,000 shall be required of all operators who elect to participate in the Fund when the Director has determined the total balance of the Fund is less than \$1,750,000 ~~pursuant to subsection B of § 45.1-270.4~~. The entrance fee shall be reduced to \$1,000 when the total Fund balance is greater than \$2,000,000 ~~\$2 million pursuant to subsection C of § 45.1-270.4~~. A renewal fee of \$1,000 shall be required of all permittees in the Fund at permit renewal.

1. For the purposes of this section, all planned expenditures shall be deducted from the balance of the Fund during each calendar quarter, including forfeitures on which engineering cost estimates have been prepared, but no money has actually been expended from the Fund.

2. Should the actual expenditures from the Fund be less than the engineering cost estimate, then the difference shall be credited to the balance of the Fund during the calendar quarter in which the final expenditure is made from the Fund to accomplish the reclamation.

B. In addition to the initial payments into the Fund described in subsection A of this section, all operators that participate in the Fund shall furnish to the Fund a bond which meets the criteria of § 45.1-241 and regulations issued pursuant thereto as follows:

1. For those underground mining operations participating in the Fund prior to July 1, 1991, the amount of \$1,000 per acre covered by each permit. In no event shall such total bond be less than \$40,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than \$10,000.

2. For underground mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of \$3,000 per acre. In no event shall the total bond for such underground operations entering the Fund on or after July 1, 1991, be less than \$40,000.

3. For other coal mining operations participating in the Fund prior to July 1, 1991, the amount of \$1,500 per acre covered by each permit. In no event shall such total bond be less than \$100,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than \$25,000.

4. For other coal mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of \$3,000 per acre. In no event shall the total bond for such operations entering the Fund on or after July 1, 1991, be less than \$100,000.

~~C. 1. Notwithstanding the above, the Director may accept the bond of an operator of an underground mining operation without separate surety as provided in subsection C of § 45.1-241 and in any case upon a showing by such operator of a net worth, total assets minus total liabilities, certified by an independent certified public accountant equivalent to \$1,000,000. Such net worth figure shall thereafter during the existence of the permit be certified annually on the anniversary date of such permit by an independent certified public accountant.~~

~~2. The Director may accept the bond of an operator of a surface mining operation or associated facility without separate surety as provided in subsection C of § 45.1-241 upon a showing by the operator of a suitable agent for service of process, satisfactory continuous operation, financial solvency, and submission of information and an indemnity agreement in accordance with regulations implementing this section and the applicable federal regulations.~~

~~D. All fees and payments provided in this article shall be in addition to initial permit application and anniversary payments provided pursuant to § 45.1-235 or any other payments required in compliance with this chapter.~~

~~E. D. Fund participants shall be allowed to post incremental bonds as set forth in § 45.1-241. Such bonds will be posted in annual increments according to a schedule contained in the permit application and approved annually by the Director on the anniversary date.~~

~~F. E. Any mining operation participating in the Fund that has been in temporary cessation for more than six months as of July 1, 1991, shall within ninety days of that date post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation six months or less as of July 1, 1991, shall within ninety days after the date on which the operation has been in temporary cessation for more than six months post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Such bond shall remain in effect throughout the remainder of the period during which the site is in~~

temporary cessation. At such time as the site returns to active status, the bond posted under this subsection may be released, provided the permittee has posted bond pursuant to subsection B of this section.

§ 45.1-270.4. Assessment of reclamation tax revenues for Fund.

A. There is hereby levied a reclamation tax upon the production of coal by operators participating in the Fund under permits issued under this chapter as set forth herein.

B. Thirty days after the end of ~~any each~~ calendar quarter during which the total balance of the Fund, including interest thereon, ~~shall be~~ is less than \$1,750,000 \$20 million, all operators shall pay into the Fund an amount equal to:

1. Four cents per clean ton of coal produced by a surface mining operation permitted under this chapter.

2. Three cents per clean ton of coal produced by a deep mining operation permitted under this chapter.

3. One and one-half cents per clean ton of coal processed or loaded by preparation or loading facilities permitted under this chapter.

C. At the end of ~~any each~~ calendar quarter during which the total balance in the Fund, including interest thereon, ~~shall exceed two million dollars~~ exceeds \$20 million, payments under this section shall cease until again required pursuant to subsection B of this section.

1. For the purposes of subsection B of this section, all potential obligations shall be deducted from the balance of the Fund during each calendar quarter, including forfeitures on which engineering costs estimates have been prepared, but no money has actually been expended from the Fund.

2. Should the actual expenditures from the Fund be less than the engineering cost estimate, then the difference shall be credited to the balance of the Fund during the calendar quarter in which the final expenditure is made from the Fund to accomplish the reclamation.

D. Upon the issuance of a permit for which bond is provided pursuant to this article, each operator shall pay a reclamation tax into the Fund pursuant to the schedule set forth in subsection B of this section on coal mined and removed under authority of that permit during the one-year period commencing with and running from the date of the commencement of coal production, processing or loading from those operations covered under that permit.

~~E.~~ D. In no event shall any operator pay reclamation tax under this section on total coal production in excess of five million tons per calendar year, regardless of the number of permits held by that operator; ~~except as set forth in subsection D hereof.~~ In no event shall any operator holding more than one type of permit pay tax at a rate in excess of five and one-half cents per ton on coal originally surface mined by that operator or in excess of four and one-half cents per ton on coal originally deep mined by that operator. Any operator holding one permit upon which coal is mined and processed or loaded shall pay only the tax applicable under this section to the surface mining operation or deep mining operation.

2. That the provisions of this act amending and reenacting § 45.1-270.4 shall expire on July 1, 2017.