VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 692

An Act to amend and reenact § 45.1-241 of the Code of Virginia, relating to mine reclamation performance bonds.

[H 978]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 45.1-241 of the Code of Virginia is 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. ~~Each letter of credit may only be issued up to the amount which can be insured by the FDIC. Any letter of credit issued by a non-Virginia lending institution shall be confirmed by an approved Virginia lending institution.~~ 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.