

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

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

57 established under this section.

58 D. Cash or securities so deposited shall be deposited upon the same terms as the terms upon which  
59 surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable  
60 certificate of deposit.

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

64 **§ 45.1-270.3. Initial payments into Fund; renewal payments; bonds.**

65 A. Operators filing permit applications for coal surface mining operations participating in the pool  
66 fund shall be required to pay into the Fund, as an entrance fee, a sum equal to \$1,000 for each  
67 applicable permit application. An entrance fee of \$5,000 shall be required of all operators who elect to  
68 participate in the Fund when the Director has determined the total balance of the Fund is less than  
69 \$1,750,000 pursuant to subsection B of § 45.1-270.4. The entrance fee shall be reduced to \$1,000 when  
70 the total Fund balance is greater than \$2,000,000 \$2 million pursuant to subsection C of § 45.1-270.4. A  
71 renewal fee of \$1,000 shall be required of all permittees in the Fund at permit renewal.

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

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

78 B. In addition to the initial payments into the Fund described in subsection A of this section, all  
79 operators that participate in the Fund shall furnish to the Fund a bond which meets the criteria of  
80 § 45.1-241 and regulations issued pursuant thereto as follows:

81 1. For those underground mining operations participating in the Fund prior to July 1, 1991, the  
82 amount of \$1,000 per acre covered by each permit. In no event shall such total bond be less than  
83 \$40,000, except that on permits which have completed all mining and for which completion reports have  
84 been approved prior to July 1, 1991, the total bond shall not be less than \$10,000.

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

88 3. For other coal mining operations participating in the Fund prior to July 1, 1991, the amount of  
89 \$1,500 per acre covered by each permit. In no event shall such total bond be less than \$100,000, except  
90 that on permits which have completed all mining and for which completion reports have been approved  
91 prior to July 1, 1991, the total bond shall not be less than \$25,000.

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

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

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

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

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

112 F. E. Any mining operation participating in the Fund that has been in temporary cessation for more  
113 than six months as of July 1, 1991, shall within ninety days of that date post bond equal to the total  
114 estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any  
115 mining operation participating in the Fund that has been in temporary cessation six months or less as of  
116 July 1, 1991, shall within ninety days after the date on which the operation has been in temporary  
117 cessation for more than six months post bond equal to the total estimated cost of reclamation for all

118 portions of the permitted site which are in temporary cessation. Any mining operation participating in  
 119 the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the  
 120 operation has been in temporary cessation for more than six months, post bond equal to the total  
 121 estimated cost of reclamation for all portions of the permitted site which are in temporary cessation.  
 122 Such bond shall remain in effect throughout the remainder of the period during which the site is in  
 123 temporary cessation. At such time as the site returns to active status, the bond posted under this  
 124 subsection may be released, provided the permittee has posted bond pursuant to subsection B of this  
 125 section.

126 **§ 45.1-270.4. Assessment of reclamation tax revenues for Fund.**

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

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

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

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

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

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

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

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

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

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

160 2. That the provisions of this act amending and reenacting § 45.1-270.4 shall expire on July 1,  
 161 2017.