

# Virginia Administrative Code

Agency 25 - DEPARTMENT OF MINES, MINERALS AND ENERGY

4VAC25-130-800.40. Requirements to release performance bonds.

(a) Bond release application.

(1) The permittee may file an application with the division for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the division in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the mining and reclamation plan required in Subchapter VG.

(2) Within 30 days after an application for bond release has been filed with the division, the permittee shall submit proof of publication of the advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the applicant's name, the permit number, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to 4VAC25-130-800.40(f) and (h). In addition, as part of any bond release application, the permittee shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

(b) Inspection by the division.

(1) Upon receipt of the bond release application, the division shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the division in making the bond release inspection. The division may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to paragraph (f) of this section, or, within 30 days after a public hearing has been held pursuant to paragraph (f) of this section, the division shall notify in writing the permittee, the surety or other persons with an interest in the bond collateral who have requested notification under 4VAC25-130-800.21(c), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

(c) The division may release all or part of the bond for the entire permit area or a portion of the permit area if the division is satisfied that all reclamation or a phase of the reclamation covered by the bond or portion thereof has been

accomplished in accordance with the following schedules for reclamation of Phases I, II and III:

(1) At the completion of Phase I, after the permittee completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60% of the bond or collateral for the applicable area.

(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the division shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for permittee responsibility in § 45.1-241 of the Act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by § 45.1-242 of the Act and by Subchapter VK or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to § 45.1-238(D) of the Act and Part 823. Where a silt dam is to be retained as a permanent impoundment pursuant to Subchapter VK, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the permittee or the landowner have been made with the division.

(3) At the completion of Phase III, after the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in 4VAC25-130-816.116 or 4VAC25-130-817.116. However, no bond shall be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

(d) If the division disapproves the application for release of the bond or portion thereof, the division shall notify the permittee, the surety, and any person with an interest in collateral as provided for in 4VAC25-130-800.21(c), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) When any application for total or partial bond release is filed with the division, the division shall notify the town, city or other municipality nearest the operation and the county in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the division within 30 days after the last publication of the notice required by 4VAC25-130-800.40(a)(2). If written objections are filed and a hearing is requested, the division shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time and location of the public hearing shall be advertised by the division in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the division office, or at the State Capital, at the option of the objector. The decision of the Hearing Officer shall be made within 30 days from the close of the hearing.

(g) For the purpose of the hearing under paragraph (f) of this section, the division shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the division.

(h) Without prejudice to the right of an objector or the applicant, the division may hold an informal conference as provided in § 45.1-239 of the Act to resolve such written objections. The division shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The division shall also furnish all parties of the informal conference with a written finding of the division based on the informal conference, and the reasons for said finding.

#### Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

#### Historical Notes

Derived from VR480-03-19 § 800.40, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

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