

SURFACE MINING STATUTES RELATED TO FINANCIAL ASSURANCE

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59-8-207. Performance bonds.

(a) The bond filed with the commissioner shall be payable to the state of Tennessee and shall be executed by the operator and a corporate surety that is approved by the commissioner and properly authorized to act as corporate surety and licensed to do business in this state; provided, however, that the operator may elect to deposit cash, irrevocable letters of credit or certificates of deposit with the state treasurer in lieu of a corporate surety if the instruments are executed in accordance with guidelines set forth by the commissioner. The state treasurer shall receive and hold the deposits in the name of the state of Tennessee, in trust, for the purposes for which the deposit is made and shall at all times be responsible for the custody and safekeeping of the deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the treasurer, on the written order of the commissioner, the whole or any portion of any instruments so deposited upon depositing with the treasurer, in lieu of the deposits, other instruments of the classes specified in this section having a value at least equal to the sum of the bond or instrument and also to demand and recover any interest income from instruments as the interest becomes due and payable.

(b) The bond or cash deposit or marketable value of the securities, which shall be conditioned upon the faithful performance of the provisions of this part, shall not be less than six hundred dollars (\$600) for each estimated acre or fraction thereof affected by the respective operation. Liability under such bond shall be continuous until the reclamation provisions of this part have been fulfilled. The amount of the bond shall be increased or decreased to take account of any change in the acreage covered by the permit as provided in § 59-8-205(a)(2).

(c) In those counties requiring a performance bond of two thousand dollars (\$2,000) or more per acre, the operator may at the operator's option present evidence of such bond to the commissioner in lieu of filing a bond with the commissioner. The commissioner may in the commissioner's discretion accept such evidence of the existence of such a performance bond in lieu of a bond filed with the commissioner. However, if the bond is released by county authorities prior to such time as the commissioner would normally release all or part of it, the commissioner may require a new performance bond to be filed as required by this section.

(d) No performance bond shall be charged for land upon which overburden is deposited if, in the opinion of the commissioner, the deposition of such overburden amounts to reclamation of a previously mined area.

59-8-211. Notice of noncompliance -- Forfeiture of bond.

(a) If any of the requirements of this part or rules and regulations adopted pursuant thereto or the orders of the commissioner have not been complied with within the time limits set by the commissioner or by this part, the commissioner shall cause a notice of noncompliance to be served upon the operator, or, where found necessary, the commissioner shall order suspension of a permit. Such notice or order shall be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this chapter or the regulations or orders of the commissioner.

(b) If the operator has not reached an agreement with the commissioner or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the commissioner and the performance bond shall then be forfeited to the commissioner. When a bond is forfeited pursuant to the provisions of this part, the commissioner shall give notice to the attorney general who shall collect the forfeiture.

59-8-408. Bond requirements.

(a) (1) When an application is submitted, the applicant shall file with the commissioner, on a form prescribed and furnished by the commissioner, a bond payable to the state of Tennessee, in penal sum, and conditioned on the faithful performance of the provisions of the applicant's permit.

(2) The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct coal surface mining and reclamation operations.

(3) The bond shall be executed by the operator and a corporate surety who is approved by the commissioner and properly authorized to act as such surety and licensed to do business in the state of Tennessee; provided, however, that the operator may elect to deposit cash or negotiable certificates of deposit assigned irrevocably to the state, or negotiable United States treasury bonds or negotiable general obligation municipal or corporate bonds, which municipal or corporate bonds have the highest rating by Moody's and/or Standard and Poor's rating services, with the treasurer of the state of Tennessee in lieu of a corporate surety.

(4) The treasurer shall receive and hold such deposits in the name of the state of Tennessee, in trust, for the purposes for which such deposit is made, and shall at all times be responsible for the custody and safekeeping of such deposits.

(5) The operator making the deposit shall be entitled from time to time to demand and receive from the treasurer, on the written order of the commissioner, the whole or any portion of any securities so deposited, upon depositing with the treasurer, in lieu thereof, other negotiable securities of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand and recover the interest income from the securities as the same becomes due and payable; provided, however, that the treasurer, at the request of the operator,

shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the operator.

(b) The amount of bond or cash deposit or marketable value of the securities shall be ten thousand dollars (\$10,000). Liability under each bond shall be continuous until the reclamation provisions of this part and regulations have been fulfilled.

(c) Local governmental entities and state agencies may execute their own bonds as surety.

59-8-414. Release of bond.

(a) The commissioner may release all or part of the bond or deposit when the commissioner is satisfied that the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this part. Releases and partial releases shall be accomplished as follows:

(1) When the operator completes the backfilling, regrading, topsoiling, drainage control, site preparation, soil treatments, mulching, and initial planting of the vegetative cover in accordance with the approved plan as noted on a completion report, the commissioner shall issue to the operator and the operator's surety a partial release of seventy percent (70%) of the bond. The remaining bond shall be held for one (1) year, at a minimum, to assure that all reclamation requirements have been successfully met.

(2) The permittee shall not be denied access to the mining site for the purposes of completing or maintaining reclamation work because of the expiration of the permittee's lease, until all of the permittee's performance bond has been released.

(b) If the commissioner disapproves the application for release of the bond or portion thereof, the commissioner shall notify the permittee and the permittee's surety, stating the reasons for disapproval and recommending specific corrective actions necessary to secure the release, and allowing the permittee an opportunity for a hearing before the board of reclamation review [repealed. See the Compiler's Notes]. This notice and recommendation shall be handed to the operator in person, or served by certified mail addressed to the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this part, or the regulations of the commissioner.

59-8-416. Permit revocation and bond forfeiture proceedings.

(a) Whenever the commissioner determines that remedial action required by any notice of noncompliance or cease order is not being carried out satisfactorily, the commissioner may revoke the permit and commence bond forfeiture proceedings consistent with this section. The commissioner shall recommend such proceedings whenever the remedial action required under a cease order issued pursuant to § 59-8-415(a) is not satisfactorily completed within sixty (60) days of issuance of the cease order.

(b) (1) Permit revocation and bond forfeiture proceedings shall be commenced by issuing a notice of intent to revoke the permit and forfeit the bond.

(2) The notice shall be sent to the permittee and the permittee's surety.

(3) The permittee or the permittee's surety may request a public informal meeting with the commissioner or the commissioner's designee to review the notice of intent. Such meeting must be requested within ten (10) days of receipt of the notice or the meeting will not be held.

(4) All such meetings must be held within twenty (20) days of receipt of the request.

(c) If a person fails to timely request an informal meeting pursuant to subsection (b), the notice of intent shall become the final order of permit revocation and bond forfeiture.

(d) After conducting an informal meeting pursuant to subsection (b), the commissioner or the commissioner's designee may take any of the following actions:

(1) Issue a final order of permit revocation and bond forfeiture;

(2) Withdraw revocation and forfeiture proceedings; or

(3) Enter into an agreement with the permittee or the permittee's surety for complete reclamation, under the following conditions:

(A) No such agreement may exceed thirty (30) days for backfilling, grading, and initial seeding; and

(B) If the commissioner or the commissioner's designee determines that the agreement is not being complied with, either person may issue a final order of permit revocation and bond forfeiture.

(e) When a notice of intent to revoke the permit and forfeit the bond becomes final because of failure to appeal, or if the commissioner issues a final order to revoke the permit and forfeit the bond, the permittee shall immediately tender or cause to be tendered the bond to the commissioner.

(f) (1) Any person, who is aggrieved by a final order of revocation and forfeiture, may appeal the decision to the board of reclamation review pursuant to § 59-8-321(g) [repealed. See the Compiler's Notes].

(2) Such person shall make a request for appeal and tender the amount of the bond to the commissioner within thirty (30) days from service of the final order.

(3) If the bond is other than cash, the bond must be converted to cash and deposited with the commissioner.

(4) Failure to request an appeal and submit the bond amount within thirty (30) days shall result in a waiver of all rights to contest the permit revocation and bond forfeiture and any underlying violations which may have led to the revocation and forfeiture.

(g) (1) After the permit is revoked and the bond is forfeited, the commissioner may collect the bond. If judicial action is required to collect the bond, it shall be the duty of the attorney general and reporter upon request of the commissioner to take appropriate action to collect the bond.

(2) All proceeds from the bonds shall be placed in the surface mining reclamation fund established in § 59-8-326.

(h) The commissioner is authorized once the bond is tendered or otherwise collected to use the proceeds for such reclamation as is necessary, regardless of whether or not an appeal is requested or hearing is pending. If, through administrative or judicial review, it is determined that no violation occurred or that the bond should otherwise be released, the commissioner shall within thirty (30) days remit the appropriate amount to the operator, with interest, at the rate of six percent (6%) or at the prevailing department of treasury rate, whichever is greater.