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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



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COMMITTEE SUBSTITUTE
FOR

House Bill No. 2881

(By Delegates Craig, Morgan and Smirl)



Passed March 8, 2003

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK
SENATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 2881

(BY DELEGATES CRAIG, MORGAN AND SMIRL)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-three, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to surface coal mining and reclamation; and establishing requirements for bond release.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-23. Release of bond or deposits; application; notice; duties of secretary; public hearings; final maps on grade release.

1 (a) The permittee may file a request with the secretary for
2 the release of a bond or deposit. The permittee shall publish an
3 advertisement regarding the request for release in the same
4 manner as is required of advertisements for permit applications.
5 A copy of the advertisement shall be submitted to the secretary
6 as part of any bond release application and shall contain a
7 notification of the precise location of the land affected, the
8 number of acres, the permit and the date approved, the amount
9 of the bond filed and the portion sought to be released, the type
10 and appropriate dates of reclamation work performed and a
11 description of the results achieved as they relate to the
12 permittee's approved reclamation plan. In addition, as part of
13 any bond release application, the permittee shall submit copies
14 of letters which the permittee has sent to adjoining property
15 owners, local government bodies, planning agencies, sewage
16 and water treatment authorities or water companies in the
17 locality in which the surface mining operation is located,
18 notifying them of the permittee's intention to seek release from
19 the bond. Any request for grade release shall also be accompa-
20 nied by final maps.

21 (b) Upon receipt of the application for bond release, the
22 secretary, within thirty days, taking into consideration existing
23 weather conditions, shall conduct an inspection and evaluation
24 of the reclamation work involved. The evaluation shall con-
25 sider, among other things, the degree of difficulty to complete
26 any remaining reclamation, whether pollution of surface and
27 subsurface water is occurring, the probability of continuance or
28 future occurrence of the pollution and the estimated cost of
29 abating the pollution. The secretary shall notify the permittee in
30 writing of his or her decision to release or not to release all or
31 part of the bond or deposit within sixty days from the date of
32 the initial publication of the advertisement if no public hearing
33 is requested. If a public hearing is held, the secretary's decision
34 shall be issued within thirty days thereafter.

35 (c) If the secretary is satisfied that reclamation covered by
36 the bond or deposit or portion thereof has been accomplished as
37 required by this article, he or she may release the bond or
38 deposit, in whole or in part, according to the following sched-
39 ule:

40 (1) For all operations except those with an approved
41 variance from approximate original contour:

42 (A) When the operator completes the backfilling, regrading
43 and drainage control of a bonded area in accordance with the
44 operator's approved reclamation plan, the release of sixty
45 percent of the bond or collateral for the applicable bonded area:
46 *Provided*, That a minimum bond of ten thousand dollars shall
47 be retained after grade release;

48 (B) Two years after the last augmented seeding, fertilizing,
49 irrigation or other work to ensure compliance with subdivision
50 (19), subsection (b), section thirteen of this article, the release
51 of an additional twenty-five percent of the bond or collateral for
52 the applicable bonded area: *Provided*, That a minimum bond of
53 ten thousand dollars shall be retained after the release provided
54 for in this subdivision; and

55 (C) When the operator has completed successfully all
56 surface mining and reclamation activities, the release of the
57 remaining portion of the bond, but not before the expiration of
58 the period specified in subdivision (20), subsection (b), section
59 thirteen of this article: *Provided*, That the revegetation has been
60 established on the regraded mined lands in accordance with the
61 approved reclamation plan: *Provided, however*, That the release
62 may be made where the quality of the untreated post-mining
63 water discharged is better than or equal to the premining water
64 quality discharged from the mining site where expressly
65 authorized by legislative rule promulgated pursuant to section
66 three, article one of this chapter.

67 (2) For operations with an approved variance from approxi-
68 mate original contour:

69 (A) When the operator completes the backfilling, regrading
70 and drainage control of a bonded area in accordance with the
71 operator's approved reclamation plan, the release of fifty
72 percent of the bond or collateral for the applicable bonded area:
73 *Provided*, That a minimum bond of ten thousand dollars shall
74 be retained after grade release;

75 (B) Two years after the last augmented seeding, fertilizing,
76 irrigation or other work to ensure compliance with subdivision
77 (19), subsection (b), section thirteen of this article, the release
78 of an additional ten percent of the bond or collateral for the
79 applicable bonded area: *Provided*, That a minimum bond of ten
80 thousand dollars shall be retained after the release provided for
81 in this subdivision; and

82 (C) When the operator has completed successfully all
83 surface mining and reclamation activities, the release of the
84 remaining portion of the bond, but not before the expiration of
85 the period specified in subdivision (20), subsection (b), section
86 thirteen of this article: *Provided*, That the revegetation has been
87 established on the regraded mined lands in accordance with the
88 approved reclamation plan and if applicable the necessary post-
89 mining infrastructure is established and any necessary financing
90 is completed: *Provided, however*, That the release may be made
91 where the quality of the untreated post-mining water discharged
92 is better than or equal to the premining water quality discharged
93 from the mining site where expressly authorized by legislative
94 rule promulgated pursuant to section three, article one of this
95 chapter.

96 No part of the bond or deposit may be released under this
97 subsection so long as the lands to which the release would be
98 applicable are contributing additional suspended solids to

99 streamflow or runoff outside the permit area in excess of the
100 requirements set by section thirteen of this article, or until soil
101 productivity for prime farmlands has returned to equivalent
102 levels of yield as nonmined land of the same soil type in the
103 surrounding area under equivalent management practices as
104 determined from the soil survey performed pursuant to section
105 nine of this article. Where a sediment dam is to be retained as
106 a permanent impoundment pursuant to section thirteen of this
107 article, or where a road or minor deviation is to be retained for
108 sound future maintenance of the operation, the portion of the
109 bond may be released under this subsection so long as provi-
110 sions for sound future maintenance by the operator or the
111 landowner have been made with the secretary.

112 Notwithstanding the bond release scheduling provisions of
113 subdivisions (1), and (2) of this subsection, if the operator
114 completes the backfilling and reclamation in accordance with
115 an approved post-mining land use plan that has been approved
116 by the department of environmental protection and accepted by
117 a local or regional economic development or planning agency
118 for the county or region in which the operation is located,
119 provisions for sound future maintenance are assured by the
120 local or regional economic development or planning agency,
121 and the quality of any untreated post-mining water discharge
122 complies with applicable water quality criteria for bond release,
123 the secretary may release the entire amount of the bond or
124 deposit. The secretary shall propose rules for legislative
125 approval in accordance with the provisions of article three,
126 chapter twenty-nine-a of this code to govern a bond release
127 pursuant to the terms of this paragraph.

128 (d) If the secretary disapproves the application for release
129 of the bond or portion thereof, the secretary shall notify the
130 permittee, in writing, stating the reasons for disapproval and
131 recommending corrective actions necessary to secure the
132 release and notifying the operator of the right to a hearing.

133 (e) When any application for total or partial bond release is
134 filed with the secretary, he or she shall notify the municipality
135 in which a surface-mining operation is located by registered or
136 certified mail at least thirty days prior to the release of all or a
137 portion of the bond.

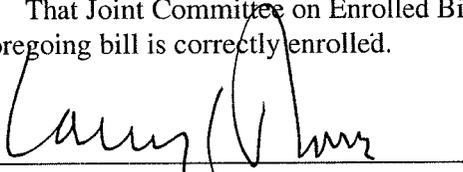
138 (f) Any person with a valid legal interest which is or may
139 be adversely affected by release of the bond or the responsible
140 officer or head of any federal, state or local governmental
141 agency which has jurisdiction by law or special expertise with
142 respect to any environmental, social or economic impact
143 involved in the operation, or is authorized to develop and
144 enforce environmental standards with respect to the operations,
145 has the right to file written objections to the proposed bond
146 release and request a hearing with the secretary within thirty
147 days after the last publication of the permittee's advertisement.
148 If written objections are filed and a hearing requested, the
149 secretary shall inform all of the interested parties of the time
150 and place of the hearing and shall hold a public hearing in the
151 locality of the surface-mining operation proposed for bond
152 release within three weeks after the close of the public comment
153 period. The date, time and location of the public hearing shall
154 also be advertised by the secretary in a newspaper of general
155 circulation in the same locality.

156 (g) Without prejudice to the rights of the objectors, the
157 applicant, or the responsibilities of the secretary pursuant to this
158 section, the secretary may hold an informal conference to
159 resolve any written objections and satisfy the hearing require-
160 ments of this section thereby.

161 (h) For the purpose of the hearing, the secretary has the
162 authority and is hereby empowered to administer oaths,
163 subpoena witnesses and written or printed materials, compel the
164 attendance of witnesses, or production of materials, and take
165 evidence, including, but not limited to, inspections of the land

166 affected and other surface-mining operations carried on by the
167 applicant in the general vicinity. A verbatim record of each
168 public hearing required by this section shall be made and a
169 transcript made available on the motion of any party or by order
170 of the secretary at the cost of the person requesting the tran-
171 script.

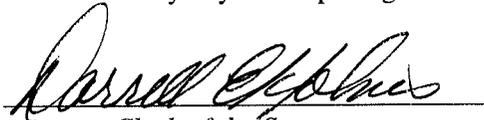
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

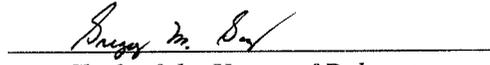

Chairman Senate Committee

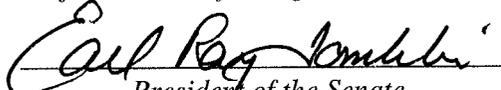

Chairman House Committee

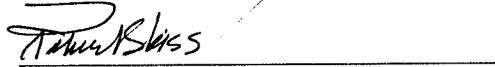
Originating in the House.

In effect ninety days from passage

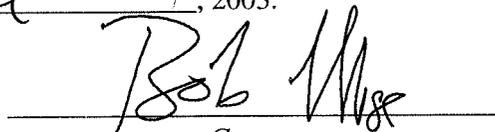

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 15th
day of April, 2003.


Governor

PRESENTED TO THE
GOVERNOR

Date 3/26/03

Time 3:52p