

# WEST VIRGINIA CODE: §22-3-11

## **§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.**

(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than \$1,000 nor more than \$5,000 for each acre or fraction of an acre: *Provided*, That the minimum amount of bond furnished for any type of reclamation bonding shall be \$10,000. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: *Provided, however*, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c)(1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions of the Federal Land Bank or of the Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West Virginia or other states and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities, or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities, or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified

in this subsection having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary 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.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with §22-3-23 of this code.

(g)(1) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the state treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital and operating expenses for the treatment of water discharges from forfeited sites where the secretary has obtained or applied for an NPDES permit as of the effective date of this article. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and §22-1-17 of this code.

(2) The funds shall be administered by the secretary who is authorized to expend the moneys in both funds for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after August 3, 1977, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under §22-2-1 *et seq.* of this code. The secretary may also expend an amount not to exceed 10 percent of the total annual assets in both funds to implement and administer the provisions of this article and, as they apply to the Surface Mine Board, §22B-1-1 *et seq.* and §22B-1-4 *et seq.* of this code.

(3)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section to any mine operator who performs reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive and may be claimed for reclamation or remediation performed on or after January 1, 2012: Provided, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may be granted unless a written application for the tax credit was

submitted to the Tax Commissioner prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

(B) The amount of a reclamation tax credit granted under this subsection shall be equal to the amount that the Tax Commissioner determines, based on the project costs, as shown in the records of the secretary, that would have been spent from the Special Reclamation Fund or Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed by the mine operator, including expenditures for water treatment.

(C) To claim the credit, the mine operator shall, from time to time, file with the Tax Commissioner a written application seeking the amount of the credit earned. Within 30 days of receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for the difference. Should no certification be issued within the 30-day period, the application shall be considered certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq.* of this code. Applications for certification of the proposed tax credit shall contain the information and be in the detail and form as required by the Tax Commissioner.

(h) The Tax Commissioner may promulgate rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code to carry out the purposes of this subdivision two, subsection (g) of this section.

(i)(1) Rate, deposits, and review.

(A) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax of 14 and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund.

(B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal surface mining shall remit a special reclamation tax of 27 and nine-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, 15 cents per ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

(C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply.

(D) Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued: *Provided*, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-effective alternative water treatment strategies; (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund; and (C) develop and maintain a database to track existing reclamation liabilities (including water treatment) at coal mining operations in the state that were permitted after August 3, 1977. This information is to be updated on a quarterly basis beginning July 2022 to ensure that actuarial studies of the special reclamation fund and special reclamation water trust fund are informed by current data.

(3) Prior to December 31, 2008, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

(C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.

(4) If the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary may propose legislative rules in accordance with §29A-3-1 *et seq.* of this code to implement an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination thereof.

(j) This special reclamation tax shall be collected by the Tax Commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by §11-12B-1 *et seq.* of this code is collected: *Provided*, That under no circumstance may the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by that article or the severance tax imposed by §11-13-1 *et seq.* of

this code.

(k) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(l) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal, or revision of any permit.

(m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(n) At the beginning of each quarter, the secretary shall advise the Tax Commissioner and the Governor of the assets, excluding payments, expenditures, and liabilities, in both funds.

(o) To the extent that this section modifies any powers, duties, functions, and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. § 1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.