WEST VIRGINIA CODE: §22-3-12

§22-3-12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent.

(a) Notwithstanding the provisions of section eleven of this article, the secretary may establish and implement a site-specific bonding system in accordance with the provisions of this section.

(b) A legislative rule proposed or promulgated pursuant to this section must provide, at a minimum, for the following:

(1) The penal amount of a bond shall be not less than $1,000 nor more than $5,000 per acre or fraction thereof.

(2) Every bond, subject to the limitations of subdivision (1) of this subsection, shall reflect the relative potential cost of reclamation associated with the activities proposed to be permitted, which would not otherwise be reflected by bonds calculated by merely applying a specific dollar amount per acre for the permit.

(3) Every bond, subject to the provisions of subdivision (1) of this subsection, shall also reflect an analysis under the legislative rule of various factors, as applicable, which affect the cost of reclamation, including, but not limited to: (A) The general category of mining, whether surface or underground; (B) mining techniques and methods proposed to be utilized; (C) support facilities, fixtures, improvements and equipment; (D) topography and geology; and (E) the potential for degrading or improving water quality.

(c) A legislative rule proposed or promulgated pursuant to the provisions of this section may, in addition to the requirements of subsection (b) of this section, provide for a consideration of other factors determined to be relevant by the secretary. For example, the rule may provide for the following:

(1) A consideration as to whether the bond relates to a new permit application, a renewal of an existing permit, an application for an incidental boundary revision or the reactivation of an inactive permit;

(2) A consideration of factors which may result in environmental enhancement, as in a case where remining may improve water quality or reduce or eliminate existing highwalls, or a permitted operation may create or improve wetlands; or

(3) An analysis of various factors related to the specific permit applicant, including, but not limited to: (A) The prior mining experience of the applicant with the activities sought to be permitted; and (B) the history of the applicant as it relates to prior compliance with statutory and regulatory requirements designed to protect, maintain or enhance the environment in

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this or any other state.

(d) It is the intent of the Legislature that a legislative rule proposed or promulgated pursuant to the provisions of this section shall be constructed so that when the findings of fact by the Division of Environmental Protection with respect to the proposed mining activity and the particular permit applicant coincide with the particular factors or criteria to be considered and analyzed under the rule, the rule will direct a conclusion as to the amount of the bond to be required, subject to rebuttal and refutation of the findings by the applicant. To the extent practicable, the rule shall limit subjectivity and discretion by the secretary and the division in fixing the amount of the bond.

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