WEST VIRGINIA CODE: §22-3-23

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

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

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

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

(1) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with the operator's approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable bonded area.

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the secretary shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section

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thirteen of this article. No part of the bond or deposit shall be released under this subsection 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 subdivision (10), subsection (b), section thirteen of this article or until soil productivity for prime farm lands has returned to 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 subdivision (15), subsection (a), section nine of this article. Where a silt dam is to be retained as a permanent impoundment pursuant to subdivision (8), subsection (b), section thirteen of this article, the portion of bond may be released under this subdivision so long as provisions for sound future maintenance by the operator or the landowner have been made with the secretary.

(3) When the operator has completed successfully 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 operator responsibility in section thirteen of this article: Provided, That no bond shall be fully released until all reclamation requirements of this article are fully met: Provided, however, That the release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

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

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

(f) Any person with a valid legal interest which is or may 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 is authorized to develop and enforce environmental standards with respect to the operations, has the right to file written objections to the proposed bond release and request a hearing with the secretary within thirty days after the last publication of the permittee’s advertisement. If written objections are filed and a hearing requested, the secretary shall inform all of the interested parties of the time and place of the hearing and shall hold a public hearing in the locality of the surface-mining operation proposed for bond release within three weeks after the close of the public comment period. The date, time and location of the public hearing shall also be advertised by the secretary in a newspaper of general circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the secretary pursuant to this section, the secretary may hold an informal conference to

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resolve any written objections and satisfy the hearing requirements of this section thereby.

(h) For the purpose of the hearing, the secretary has the authority and is hereby empowered to administer oaths, subpoena witnesses and written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence, including, but not limited to, inspections of the land affected and other surface-mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the secretary at the cost of the person requesting the transcript.

(i) The secretary shall propose rules for legislative approval during the 2018 regular session of the Legislature in accordance with the provisions of article three, chapter twenty-nine-a of the code and revisions to the Legislative Rule entitled West Virginia Surface Mining Reclamation Rule, Title 38, Series 2 of the West Virginia Code of State Rules, to implement the revisions to this article made during the 2017 legislative session. The secretary shall specifically consider the adoption of corresponding federal standards codified at 30 C. F. R. 700 et. seq.

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