WEST VIRGINIA CODE: §22-3-28

§22-3-28. Special permits authorization for reclamation of existing abandoned coal processing waste piles; coal extraction pursuant to a government-financed reclamation contract; coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use; no cost reclamation contract.

(a) Except where exempted by section twenty-six of this article, it is unlawful for any person to engage in surface-mining as defined in this article as an incident to the development of land for commercial, residential, industrial or civic use without having first obtained from the director a permit therefor as provided in section eight of this article, unless a special authorization therefor has been first obtained from the director as provided in this section.

Application for a special authorization to engage in surface-mining as an incident to the development of land for commercial, residential, industrial or civic use shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. The application shall be accompanied by:

(1) A site preparation plan, prepared and certified by or under the supervision of a person approved by the director, showing the tract of land which the applicant proposes to develop for commercial, residential, industrial or civic use; the probable boundaries and areas of the coal deposit to be mined and removed from said tract of land incident to the proposed commercial, residential, industrial or civic use thereof; and such other information as prescribed by the director;

(2) A development plan for the proposed commercial, residential, industrial or civic use of said land;

(3) The name of owner of the surface of the land to be developed;

(4) The name of owner of the coal to be mined incident to the development of the land;

(5) A reasonable estimate of the number of acres of coal that would be mined as a result of the proposed development of said land: Provided, That in no event may such number of acres to be mined, excluding roadways, exceed five acres; and

(6) Such other information as the director may require to satisfy and assure the director that the surface-mining under special authorization is incidental or secondary to the proposed commercial, residential, industrial or civic use of said land.

(b) There shall be attached to the application for the special authorization a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state affording personal injury protection in accordance with subsection (d), section nine of this article.

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The application for the special authorization shall also be accompanied by a bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of $2,000 per acre, for a maximum disturbance of five acres.

The bond shall be payable to the State of West Virginia and conditioned that the applicant complete the site preparation for the proposed commercial, residential, industrial or civic use of said land. At the conclusion of the site preparation, in accordance with the site preparation plan submitted with the application, the bond conditions are satisfied and the bond and any cash, securities or certificates furnished with said bond may be released and returned to the applicant. The filing fee for the special authorization is $500. The special authorization is valid for two years.

(c) The purpose of this section is to vest jurisdiction in the director, where the surface-mining is incidental or secondary to the preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation of land, minerals must be removed, including, but not limited to, the building and construction of railroads, shopping malls, factory and industrial sites, residential and building sites and recreational areas. Anyone who has been issued a special authorization may not be issued an additional special authorization on the same or adjacent tract of land unless satisfactory evidence has been submitted to the director that such authorization is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other sections of this article are not applicable to the operator holding a special authorization: Provided, That the director shall promulgate rules establishing applicable performance standards for operations permitted under this section.

(d) The director may, in the exercise of his or her sound discretion, when not in conflict with the purposes and findings of this article and to bring about a more desirable land use or to protect the public and the environment, issue a reclamation contract solely for the removal of existing abandoned coal processing waste piles: Provided, That a bond and a reclamation plan is required for such operations.

(e) No person may engage in coal extraction pursuant to a government-financed reclamation contract without a valid surface-mining permit issued pursuant to this article unless such person affirmatively demonstrates that he is eligible to secure special authorization pursuant to this section to engage in a government-financed reclamation contract authorizing incidental and necessary coal extraction. The director shall determine eligibility before entering into a government-financed reclamation contract authorizing incidental and necessary coal extraction. The director may provide the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. The director may not be required to grant a special authorization to any eligible person. The director may, however, in his or her discretion, grant a special authorization allowing incidental and necessary coal extraction pursuant to a government-financed reclamation contract in accordance with this section.

Only eligible persons may secure special authorization to engage in incidental and necessary

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coal extraction pursuant to a government-financed reclamation contract. Any eligible person who proposes to engage in coal extraction pursuant to a government-financed reclamation contract may request and secure special authorization from the director to conduct such activities under this section. A special authorization can only be obtained if a clause is inserted in a government-financed reclamation contract authorizing such extraction and the person requesting such authorization has affirmatively demonstrated to the director's satisfaction that he or she has satisfied the provisions of this section. A special authorization shall only be granted by the director prior to the commencement of coal extraction on a project area. In order to be considered for a special authorization by the director, an eligible person must meet the permit eligibility requirements of this article and demonstrate at a minimum that:

(1) The primary purpose of the operation to be undertaken is the reclamation of abandoned or forfeited mine lands;

(2) The extraction of coal will be incidental and necessary to accomplish the reclamation of abandoned or forfeited mine lands pursuant to a government-financed reclamation contract;

(3) Incidental and necessary coal extraction will be confined to the project area being reclaimed; or

(4) All coal extraction and reclamation activity undertaken pursuant to a government-financed reclamation project will be accomplished pursuant to the applicable environmental protection performance standards and conditions included in the government-financed reclamation contract.

Prior to commencing coal extraction pursuant to a government-financed reclamation project, the contractor shall file with the director a performance bond conditioned upon the contractor's performance of all the requirements of the government-financed reclamation contract pursuant to this article. For a no cost reclamation contract, the criteria for establishing the amount of the performance bond shall be the engineering estimate, determined by the director: Provided, That the director may establish a lesser bond amount for long term, no cost reclamation projects in which the reclamation schedule extends beyond two years. In these contracts, the director may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a specified period. The performance bond which is provided by the contractor under a federally financed or state financed reclamation contract shall be deemed to satisfy the requirements of this section: Provided, however, That the amount of such bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection.

(f) Any person engaging in coal extraction pursuant to this section is subject to the following:

(1) Payment of all applicable taxes and fees related to coal extraction;

(2) Replacement or restoration of the water supply of an owner of interest in real property

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who obtains all or part of the owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately caused by coal extraction;

(3) Extraction pursuant to this section cannot be initiated without the consent of the surface owner for right of entry and consent of the mineral owner for extraction of coal.

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