

WEST VIRGINIA CODE: §22-4-20

§22-4-20. Fiscal responsibility.

(a) Each applicant must provide a certificate of insurance issued by an insurance company authorized to do business in this state for all operators at the site including blasting and quarrying operators. Blasting insurance is not required of quarry operations which do not conduct blasting. The coverage shall include not less than \$1 million for personal injury per occurrence, and not less than \$500,000 for property damage per occurrence. Proof of continuing insurance coverage shall be required on an annual basis. In addition, the insurance company shall promptly notify the director of any lapses, default, nonrenewal, cancellation, or termination of coverage.

(b) Each applicant who makes application for a new permit under section five of this article shall furnish a performance bond after permit approval but before its issuance, on a form to be prescribed and furnished by the director, payable to the State of West Virginia and conditioned that the permittee faithfully performs all of the requirements of this article. The bond or bonds shall cover the entire area disturbed by quarrying plus the estimated number of acres to be disturbed in the upcoming year. As additional areas outside the bonded acreage are needed to facilitate the quarry operation, the permittee shall file an additional bond or bonds to cover the additional acreage with the director. The bond shall be posted and accepted by the director prior to disturbing an area for quarrying.

(c) The amount of the bond shall be at least \$1,000 for each acre or fraction of an acre of land to be disturbed. The director shall determine the amount per acre of the bond that is required before a permit is issued. The minimum amount of bond required is \$10,000.

(d) In lieu of a performance bond covering the entire permitted area, the director may accept incremental bonding. If incremental bonding is used, as succeeding increments of quarry operations are to be initiated and conducted within the permit area, the permittee shall file with the director an additional bond or bonds to cover the increments in accordance with this section.

(e) The applicant may elect to execute the performance, surety bonding, collateral bonding, establishment of an escrow account, performance bonding fund participation, self-bonding or a combination of these methods.

(f) If collateral bonding is used, the applicant 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 division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond.

The director shall, upon receipt of any such 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 same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The applicant or permittee making the deposit is entitled from time to time to receive from the state Treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. Interest received on financial instruments shall accrue to the applicant or permittee.

(g) The director shall authorize release of incremental portions of a bond or other surety required in this section upon verification of completion of adequate reclamation of a previously mined portion of a quarry covered by the bond or other surety.

(h) The performance bond or deposits from the bond pooling fund shall be forfeited upon failure of the permittee to perform in the manner set forth in the approved quarrying and reclamation plan or to reclaim the land as provided for in the permit or upon revocation of the permit. The director shall notify the permittee by certified mail, return receipt requested, of its intention to initiate forfeiture proceedings. The permittee has thirty days to request a hearing before the director. The director shall render a decision within thirty days of the hearing. Where the operation has deposited cash or securities as collateral in lieu of corporate surety, the director shall declare said collateral forfeited and shall direct the state Treasurer to pay said funds into the "quarry reclamation fund" as created in section twenty-three of this article, to be used by the director to effect proper reclamation and to defray the cost of administering this article. Should any corporate surety fail to promptly pay in full the forfeited bond, it is disqualified from writing any further surety bonds under this article.

(i) Additional bond procedures shall be provided in legislative rules proposed by the director and promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(j) The liability under the bond is for the duration of the permit and for a period of two years after reclamation unless previously released, in whole or part, as provided in section twenty-one of this article.