

retary, in the case of any review proceedings under section 1275 of this title initiated by the operator wherein the Secretary orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under section 1276 of this title initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation), shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation continues.

**(i) Effect on additional enforcement right or procedure available under State law**

As a condition of approval of any State program submitted pursuant to section 1253 of this title, the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement right or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.

(Pub. L. 95-87, title V, §518, Aug. 3, 1977, 91 Stat. 499.)

**§ 1269. Release of performance bonds or deposits**

**(a) Filing of request; submittal of copy of advertisement; notification by letter of intent to seek release**

The permittee may file a request with the regulatory authority for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered 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, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

**(b) Inspection and evaluation; notification of decision**

Upon receipt of the notification and request, the regulatory authority shall within thirty days conduct an inspection and evaluation of

the reclamation work involved. Such 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 of future occurrence of such pollution, and the estimated cost of abating such pollution. The regulatory authority shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty days from the filing of the request, if no public hearing is held pursuant to subsection (f), and if there has been a public hearing held pursuant to subsection (f), within thirty days thereafter.

**(c) Requirements for release**

The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of 60 per centum of the bond or collateral for the applicable permit 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 regulatory authority 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 1265 of this title of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph 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 section 1265(b)(10) of this title 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 section 1257(b)(16) of this title. Where a silt dam is to be retained as a permanent impoundment pursuant to section 1265(b)(8) of this title, the portion of bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(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 1265 of this title: *Provided, however,* That no bond shall be fully released until all reclamation requirements of this chapter are fully met.

**(d) Notice of disapproval**

If the regulatory authority disapproves the application for release of the bond or portion

thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

**(e) Notice to municipality**

When any application for total or partial bond release is filed with the regulatory authority, the regulatory authority shall notify the municipality in which a surface coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.

**(f) Objections to release; hearing**

Any person with a valid legal interest which might 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 such operations shall have the right to file written objections to the proposed release from bond to the regulatory authority within thirty days after the last publication of the above notice. If written objections are filed, and a hearing requested, the regulatory authority shall inform all the interested parties, of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the regulatory authority in a newspaper of general circulation in the locality for two consecutive weeks, and shall hold a public hearing in the locality of the surface coal mining operation proposed for bond release or at the State capital at the option of the objector, within thirty days of the request for such hearing.

**(g) Informal conference**

Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the regulatory authority pursuant to this section, the regulatory authority may establish an informal conference as provided in section 1263 of this title to resolve such written objections.

**(h) Power of regulatory authority with respect to informal conference**

For the purpose of such hearing the regulatory authority shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority.

(Pub. L. 95-87, title V, §519, Aug. 3, 1977, 91 Stat. 501.)

**§ 1270. Citizens suits**

**(a) Civil action to compel compliance with this chapter**

Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter—

(1) against the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter; or

(2) against the Secretary or the appropriate State regulatory authority to the extent permitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this chapter which is not discretionary with the Secretary or with the appropriate State regulatory authority.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties.

**(b) Limitation on bringing of action**

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice in writing of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator; or

(B) if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

**(c) Venue; intervention**

(1) Any action respecting a violation of this chapter or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In such action under this section, the Secretary, or the State regulatory authority, if not a party, may intervene as a matter of right.