

adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured;

(14) such other requirements as the regulatory authority shall prescribe by regulations.

(b) Any information required by this section which is not on public file pursuant to State law shall be held in confidence by the regulatory authority.

(Pub. L. 95-87, title V, § 508, Aug. 3, 1977, 91 Stat. 478.)

#### **§ 1259. Performance bonds**

##### **(a) Filing with regulatory authority; scope; number and amount**

After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond for performance payable, as appropriate, to the United States or to the State, and conditional upon faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the regulatory authority. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

##### **(b) Liability period; execution**

Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements in section 1265 of this title. The bond shall be executed by the operator and a corporate surety licensed to do business in the State where such operation is located, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or such State, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

##### **(c) Bond of applicant without separate surety; alternate system**

The regulatory authority may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount or in lieu of the establishment of a bonding program, as set forth in this section, the Secretary may approve as part of a State or Federal program an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.

##### **(d) Deposit of cash or securities**

Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

##### **(e) Adjustments**

The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(Pub. L. 95-87, title V, § 509, Aug. 3, 1977, 91 Stat. 479.)

#### **§ 1260. Permit approval or denial**

##### **(a) Basis for decision; notification of applicant and local government officials; burden of proof**

Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this chapter and pursuant to an approved State program or Federal program under the provisions of this chapter, including public notification and an opportunity for a public hearing as required by section 1263 of this title, the regulatory authority shall grant, require modification of, or deny the application for a permit in a reasonable time set by the regulatory authority and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of the applicable State or Federal program. Within ten days after the granting of a permit, the regulatory authority shall notify the local governmental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

##### **(b) Requirements for approval**

No permit or revision application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that—

(1) the permit application is accurate and complete and that all the requirements of this

chapter and the State or Federal program have been complied with;

(2) the applicant has demonstrated that reclamation as required by this chapter and the State or Federal program can be accomplished under the reclamation plan contained in the permit application;

(3) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 1257(b) of this title has been made by the regulatory authority and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside permit area;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 1272 of this title or is not within an area under study for such designation in an administrative proceeding commenced pursuant to section 1272(a)(4)(D) or section 1272(c) of this title (unless in such an area as to which an administrative proceeding has commenced pursuant to section 1272(a)(4)(D) of this title, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit);

(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would—

(A) not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production, or

(B) not materially damage the quantity or quality of water in surface or underground water systems that supply these valley floors in (A) of subsection (b)(5):

*Provided*, That this paragraph (5) shall not affect those surface coal mining operations which in the year preceding August 3, 1977, (I) produced coal in commercial quantities, and were located within or adjacent to alluvial valley floors or (II) had obtained specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors.

With respect to such surface mining operations which would have been within the purview of the foregoing proviso but for the fact that no coal was so produced in commercial quantities and no such specific permit approval was so received, the Secretary, if he determines that substantial financial and legal commitments were made by an operator prior to January 1, 1977, in connection with any such operation, is authorized, in accordance with such regulations as the Secretary may prescribe, to enter into an agreement with that operator pursuant to which the Secretary may, notwithstanding any other pro-

vision of law, lease other Federal coal deposits to such operator in exchange for the relinquishment by such operator of his Federal lease covering coal deposits involving such mining operations, or pursuant to section 1716 of title 43, convey to the fee holder of any such coal deposits involving such mining operations the fee title to other available Federal coal deposits in exchange for the fee title to such deposits so involving such mining operations. It is the policy of the Congress that the Secretary shall develop and carry out a coal exchange program to acquire private fee coal precluded from being mined by the restrictions of this paragraph (5) in exchange for Federal coal which is not so precluded. Such exchanges shall be made under section 1716 of title 43;

(6) in cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the regulatory authority—

(A) the written consent of the surface owner to the extraction of coal by surface mining methods; or

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with State law: *Provided*, That nothing in this chapter shall be construed to authorize the regulatory authority to adjudicate property rights disputes.

#### (c) Schedule of violations

The applicant shall file with his permit application a schedule listing any and all notices of violations of this chapter and any law, rule, or regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or such other laws referred to<sup>1</sup> this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation and no permit shall be issued to an applicant after a finding by the regulatory authority, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter of such nature and duration with such resulting irreparable damage to the environment as to indi-

<sup>1</sup> So in original. Probably should be followed by "in".

cate an intent not to comply with the provisions of this chapter.

**(d) Prime farmland mining permit**

(1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland pursuant to section 1257(b)(16) of this title, the regulatory authority shall, after consultation with the Secretary of Agriculture, and pursuant to regulations issued hereunder by the Secretary of<sup>2</sup> Interior with the concurrence of the Secretary of Agriculture, grant a permit to mine on prime farmland if the regulatory authority finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in section 1265(b)(7) of this title. Except for compliance with subsection (b), the requirements of this paragraph (1) shall apply to all permits issued after August 3, 1977.

(2) Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to August 3, 1977.

**(e) Modification of prohibition**

After October 24, 1992, the prohibition of subsection (c) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for reining under a permit held by the person making such application. As used in this subsection, the term "violation" has the same meaning as such term has under subsection (c).

(Pub. L. 95-87, title V, §510, Aug. 3, 1977, 91 Stat. 480; Pub. L. 102-486, title XXV, §2503(a), Oct. 24, 1992, 106 Stat. 3102; Pub. L. 109-432, div. C, title II, §208, Dec. 20, 2006, 120 Stat. 3019.)

**Editorial Notes**

**AMENDMENTS**

2006—Subsec. (e). Pub. L. 109-432 struck out at end "The authority of this subsection and section 1265(b)(20)(B) of this title shall terminate on September 30, 2004."

1992—Subsec. (e). Pub. L. 102-486 added subsec. (e).

**§ 1261. Revision of permits**

**(a) Application and revised reclamation plan; requirements; extensions to area covered**

(1) During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the regulatory authority.

(2) An application for a revision of a permit shall not be approved unless the regulatory authority finds that reclamation as required by this chapter and the State or Federal program can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the State or Federal program. The regulatory

authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: *Provided*, That any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

**(b) Transfer, assignment, or sale of rights under permit**

No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this chapter shall be made without the written approval of the regulatory authority.

**(c) Review of outstanding permits**

The regulatory authority shall within a time limit prescribed in regulations promulgated by the regulatory authority, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit: *Provided*, That such revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the State or Federal program.

(Pub. L. 95-87, title V, §511, Aug. 3, 1977, 91 Stat. 483.)

**§ 1262. Coal exploration permits**

**(a) Regulations; contents**

Each State or Federal program shall include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration regulations issued by the regulatory authority. Such regulations shall include, at a minimum (1) the requirement that prior to conducting any exploration under this section, any person must file with the regulatory authority notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration and (2) provisions for reclamation in accordance with the performance standards in section 1265 of this title of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

**(b) Confidential information**

Information submitted to the regulatory authority pursuant to this subsection as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

**(c) Penalties**

Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of section 1268 of this title.

**(d) Limitation on removal of coal**

No operator shall remove more than two hundred and fifty tons of coal pursuant to an explo-

<sup>2</sup> So in original. Probably should be "of the".