



COALEX STATE INQUIRY REPORT - 61

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TOPIC: 60% BOND RELEASE REQUIREMENTS

INQUIRY: What is considered necessary to obtain a 60% grading release of bond?

SEARCH RESULTS: Sec. 519(c) of the Surface Mining Control and Reclamation Act (SMCRA) allows the regulatory authority to release an operator's bond, in whole or in part, if it is satisfied that the reclamation or phase of reclamation has been accomplished. Conditions for bond release after successful completion of each of three phases of reclamation are also listed. Under Sec. 519(c)(1), sixty percent (60%) of bond may be released when the operator completes the backfilling, regrading, and drainage control of the bonded area in accordance with his approved reclamation plan.

This provision was included in every major version of SMCRA. In the 1975 version, the House committee noted that the decision to release sixty percent (60%) of the bond "should be based on the regulatory authority's inspection and assessment of: (1) conformance with the requirements of the Act; and (b) an assessment of the significance of residual problems of surface and ground water pollution, and the cost of completing reclamation and abating pollution." (H.R. Rep. No. 45, 94th Cong., 1st Sess. 203 (1975))

FEDERAL REGULATIONS

OSM's regulations pertaining to the release of an operator's bond are found at 30 CFR Sec. 800.40(c). The regulatory language essentially mirrors that of the SMCRA provision, but also notes parenthetically that the first phase may include the replacement of topsoil. Prior to 1983, OSM required topsoil replacement as part of its Phase I bond release; however, this requirement was removed to make the rules more closely reflect the wording of the Act. In the preamble to its 1983 regulations, OSM noted that the Act did not necessarily include topsoil replacement in Phase I operations. Thus, the regulatory authority has discretion to include or not include topsoil replacement in Phase I reclamation. (48 FR 32932, 32953 (1983))

In the 1980 preamble to its final rules, OSM defined backfilling and regrading, topsoil replacement, and drainage control as follows:

"a) Backfilling and regrading: Return of overburden material to achieve rough contour as set forth in the reclamation plan.



"b) Topsoil replacement: Return of the soil horizons which are capable of supporting vegetation, and fine grading of this stratum to finished contours.

"c) Drainage control: Construction of diversion ditches, swales, erosion-control structures, sediment control, and other aspects of fine grading required before initial planting." (45 FR 523006, 52315 (1980))

STATE REGULATIONS

Information was located for twenty-three of the states listed with COALEX. Twelve states require backfilling, regrading, topsoil replacement, and drainage control for completion of Phase I of reclamation. Seven states require backfilling, regrading, and drainage control, but not topsoil replacement. These states are listed in the attached table. New Mexico's regulations state that regrading may include topsoil replacement, presumably at the discretion of the regulatory authority. (N. Mex Surface Coal Mining Regs., Sec. 14-40(1) (1984))

Three states require a variety of standards to be met for Phase I bond release. In Kentucky, Phase I is deemed to have been completed when the permittee completes backfilling, regrading, topsoil replacement, and drainage control, including soil preparation, seeding, planting and mulching in accordance with the approved reclamation plan. A planting report for the area must also be submitted to the department. (405 KAR 10:040E, Sec. 2(4)(a) (1981))

Maryland requires that a general bond be submitted, which then will not be released until all Phase I work is completed. Reclamation Phase I is defined to include backfilling, regrading, topsoil replacement, seeding, mulching, and drainage control. (Md. Admin. Code., Title 8, Sec. 13.09.15H (1980))

Tennessee's regulatory program provides that no more than seventy percent (70%) of the bond may be released when Phase I of reclamation is completed. Phase I of the Tennessee program includes backfilling, regrading, topsoil replacement, drainage control, site preparation, mulching, liming, fertilizing, and seeding. (Tenn. Code Ann. Sec. 0400-1-10.06 (1982)) (NOTE: This is no longer in effect, since a federal program was developed for Tennessee.)

ATTACHMENTS

- A. H.R. Rep. No. 45, 94th Cong., 1st Sess. (1975).
- B. 48 FR 32932, 32953 (1983).
- C. 45 FR 52307, 52315 (1980).
- D. N. Mex. Surface Coal Mining Regs., Sec. 14-40 (1984).
- E. 405 Kar 10:040E (1981).
- F. Md. Admin. Code, Title 8, Sec. 13.09.15H (1980).
- G. Tenn. Code Ann., Sec. 0400-1-10.06 (1982).



TABLE I

States which require topsoil replacement:

Arkansas
Illinois
Iowa
Kansas
Louisiana
Mississippi
Missouri
Montana
Ohio
Oklahoma
Virginia
West Virginia

States not requiring topsoil replacement:

Alabama
Alaska
Colorado
Indiana
Pennsylvania
Texas
Utah