

IC 14-34-6

Chapter 6. Bonding

IC 14-34-6-1

Bond requirements

Sec. 1. (a) After a surface coal mining and reclamation permit application is approved but before the permit is issued, the applicant must file with the director, on a form prescribed and furnished by the director, a bond for performance payable to the state and conditional upon faithful performance of all the requirements of this article and of the permit. The bond must cover the 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.

(b) As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the permittee must file with the director an additional bond to cover those increments in accordance with this chapter.

(c) If a permittee files a bond that becomes unacceptable under section 4 of this chapter, the permittee must file an acceptable bond as required by the director.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-2

Bond amount

Sec. 2. (a) The director shall determine the amount of the bond required for each bonded area. The amount of the bond must be sufficient to assure the completion of the reclamation plan if the work had to be performed by the director if forfeiture occurs. However, the bond amount may not be less than ten thousand dollars (\$10,000).

(b) In making a determination of bond amount, the director shall consider the following:

- (1) The reclamation requirements of the approved permit.
- (2) The probable difficulty of reclamation due to factors such as the following:
 - (A) Topography.
 - (B) Geology of the site.
 - (C) Hydrology.
 - (D) Revegetation potential.
- (3) The history of mining and reclamation activities of the applicant.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-3

Liability under bond

Sec. 3. Liability under the bond extends for:

- (1) the duration of the surface coal mining and reclamation operation; and
- (2) a period coincident with the operator's responsibility for

revegetation requirements in IC 14-34-10.
As added by P.L.1-1995, SEC.27.

IC 14-34-6-4

Execution of bond

Sec. 4. The operator and a corporate surety:

- (1) licensed to do business in Indiana; and
- (2) recognized by the treasurer of state as holding a certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds;

shall execute the bond.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-5

Options instead of bond

Sec. 5. (a) Instead of a bond, an operator may elect to deposit:

- (1) cash;
- (2) negotiable bonds of the United States government or of Indiana; or
- (3) negotiable certificates of deposit or letters of credit of a bank organized or transacting business in the United States;

in an amount or that has a market value equal to or greater than the amount of the bond required for the bonded area under the same terms and conditions upon which surety bonds are deposited.

(b) In the alternative, the director may accept the applicant's own bond without separate surety if the applicant demonstrates to the satisfaction of the department under IC 14-34-7 the following:

- (1) The existence of a suitable agent to receive service of process.
- (2) A history of financial solvency and continuous operation sufficient for authorization to self insure or bond the amount.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-6

Adjustment of bond or deposit amount

Sec. 6. The director shall adjust the amount of the bond or deposit required and the terms of each acceptance of the applicant's bond periodically as:

- (1) affected land acreages are increased or decreased;
- (2) changes occur in the cost of future reclamation; or
- (3) significant changes occur in the history of the mining and reclamation activities of the applicant.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-7

Release of bond or deposit

Sec. 7. (a) After a permit is issued, the permittee may apply to the director for the release of all or part of the bond or deposit. As part of the bond release application, the permittee must do the following:

- (1) Submit copies of letters that the permittee has sent by

certified mail to:

- (A) adjoining property owners;
- (B) local government bodies;
- (C) planning agencies;
- (D) sewage and water treatment authorities; or
- (E) water companies;

in the county in which the surface coal mining and reclamation operation is located notifying the entities of the bond release application.

(2) Within thirty (30) days after filing the bond release application, submit a copy of an advertisement placed at least one (1) time a week for four (4) successive weeks in a newspaper of general circulation in the county in which the surface coal mining and reclamation operation is located. The advertisement must contain the following:

- (A) A notification of the precise location of the land affected.
- (B) The number of acres.
- (C) The permit and the date of approval.
- (D) The amount of the bond filed and the part sought to be released.
- (E) The type and appropriate dates of reclamation work performed.
- (F) A description of the results achieved relating to the operator's approved reclamation plan.

(b) The director may initiate an application for the release of a bond. If a bond release application is initiated by the director, the department shall perform the notification and certification requirements otherwise imposed on the permittee under this section and section 8 of this chapter.

As added by P.L.1-1995, SEC.27. Amended by P.L.71-2004, SEC.26.

IC 14-34-6-8

Bond release application; notification

Sec. 8. If an application for total or partial bond release is filed with the director, the director shall notify appropriate:

- (1) local governmental bodies;
- (2) planning agencies;
- (3) sewage and water treatment authorities; or
- (4) water companies;

in the county in which the surface coal mining operation is located by certified mail at least thirty (30) days before the release of all or a part of the bond.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-9

Inspection and evaluation

Sec. 9. Within thirty (30) days of receipt of a bond release application, the director shall conduct an inspection and evaluation of the reclamation work involved. The evaluation must include the

following:

- (1) The degree of difficulty to complete a remaining reclamation.
- (2) Whether pollution of surface and subsurface water is occurring.
- (3) The probability of continuance or future occurrence of the pollution.
- (4) The estimated cost of abating the pollution.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-10

Written objections; request for public hearing

Sec. 10. (a) This section applies to the following:

- (1) A person with a legal interest that might be adversely affected by release of a bond.
- (2) The responsible officer or head of a federal, state, or local governmental agency that:
 - (A) has jurisdiction by law or special expertise with respect to an environmental, a social, or an economic impact involved in the operation; or
 - (B) may develop and enforce environmental standards with respect to those operations.

(b) A person described in subsection (a) may do the following:

- (1) File written objections to the proposed release from bond with the director.
- (2) Request a public hearing within thirty (30) days after the last publication of the notice required by section 7 of this chapter.

As added by P.L.1-1995, SEC.27. Amended by P.L.71-2004, SEC.27.

IC 14-34-6-11

Public hearing

Sec. 11. (a) If written objections are filed and a hearing requested under section 10 of this chapter, the director shall do the following:

- (1) Inform all the interested parties of the date, time, and location of the hearing.
- (2) Advertise the information in a newspaper of general circulation in the county where the surface coal mining and reclamation operation proposed for bond release is located one (1) time each week for two (2) consecutive weeks.

(b) The director shall hold the public hearing in accordance with IC 14-34-4-5:

- (1) in the county where the surface coal mining and reclamation operation proposed for bond release is located; or
- (2) at the state capital;

at the option of the objector, within thirty (30) days of the request for the hearing.

(c) At a hearing held under this section, the director may inspect the land affected and other surface coal mining operations carried on by the applicant in the vicinity.

(d) The director shall notify the permittee in writing of the decision and findings of the hearing within thirty (30) days of the completion of the hearing.

(e) The director's decision is subject to IC 4-21.5.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-12

Informal conference

Sec. 12. Without prejudice to the rights of the objectors under section 10 of this chapter or the applicant, the director may provide for an informal conference to resolve the written objections.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-13

Schedule for release of bond or deposit

Sec. 13. The director may release the bond, deposit, or letter of credit in whole or in part if the director is satisfied that the reclamation covered by the bond or deposit or part of the bond or deposit has been accomplished as required by this article according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the release of sixty percent (60%) of the bond or collateral for the applicable permit area.

(2) After revegetation is established on the regraded mined land in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the director shall retain the amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of establishing revegetation and for the period specified for operator responsibility in IC 14-34-10 of establishing revegetation. The director may not release a part of the bond or deposit under this subdivision:

(A) if the land to which the release would be applicable is contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements set forth in IC 14-34-10-2(b)(13); or

(B) until soil productivity for prime farmland 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 under IC 14-34-3-3(16).

If a silt dam is to be retained as a permanent impoundment under IC 14-34-10-2(b)(11), the appropriate part of the bond may be released under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the director.

(3) When the operator has successfully completed all surface coal mining and reclamation activities, the release of the remaining part of the bond, but not before the expiration of the

period specified for operator responsibility in IC 14-34-10. However, the director may not fully release a bond or deposit until all reclamation requirements of this article are fully met.
As added by P.L.1-1995, SEC.27.

IC 14-34-6-14

Notification of decision

Sec. 14. (a) If a public hearing requested under section 10 of this chapter is not held, the director shall notify the permittee in writing of the decision on the application or bond release within sixty (60) days of the filing of the application.

(b) If the director disapproves the application for release of the bond or part of the bond, the director shall notify the permittee, in writing, stating the following:

- (1) The reasons for disapproval.
- (2) A recommendation as to the corrective actions necessary to secure the release.
- (3) Allowing an opportunity for a public hearing in accordance with IC 4-21.5-3.

As added by P.L.1-1995, SEC.27.

IC 14-34-6-14.3

Release of bond covering undisturbed area

Sec. 14.3. The director may release the bond, deposit, or letter of credit covering an area that has not been disturbed by surface coal mining activities. A release under this subsection is not subject to the public notice and hearing requirements set forth in sections 7 through 14 of this chapter.

As added by P.L.176-1995, SEC.6.

IC 14-34-6-14.6

Release of bond covering disturbed area

Sec. 14.6. (a) This section applies when an applicant or permittee submits a bond, deposit, or letter of credit covering an area that:

- (1) has been disturbed by surface coal mining activities; and
- (2) is covered by another bond, deposit, or letter of credit previously submitted by another permittee.

(b) Except as provided in subsection (c), in a situation described in subsection (a):

- (1) the bond, deposit, or letter of credit previously submitted shall be released when the director accepts the bond, deposit, or letter of credit submitted by the applicant or permittee; and
- (2) the bond, deposit, or letter of credit submitted by the applicant or permittee:

(A) is subject to the standards set forth in sections 7 through 14 of this chapter; and

(B) may not be released under section 14.3 of this chapter.

(c) If two (2) or more persons who are applicants or permittees each file a bond, deposit, or letter of credit covering the same area, the persons may enter into a written agreement that allocates

responsibility among the persons for the reclamation of the area. If the agreement is approved by the director, the agreement governs the respective responsibilities of the persons for the reclamation of the area.

As added by P.L.176-1995, SEC.7.

IC 14-34-6-15

Abandoned mine reclamation fund

Sec. 15. (a) As used in this section, "fund" refers to the post-1977 abandoned mine reclamation fund established by this section.

(b) The post-1977 abandoned mine reclamation fund is established. The fund consists of bond forfeiture money collected under section 16 of this chapter and the civil penalties described in IC 14-34-16-9. The fund may be used as follows:

(1) To effect the restoration of land not otherwise eligible for federal funding on which there has been surface mining activity after August 3, 1977.

(2) To replace domestic water supplies disrupted or affected by a surface coal mining and reclamation operation, including the disposal of coal combustion waste (as defined in IC 13-19-3-3), where the surface coal mining and reclamation operation has been completed and is no longer subject to IC 14-34.

The money held for this purpose may not exceed an amount established by the department that is sufficient to enable the director to cover the anticipated cost of restoration.

(c) At least five hundred thousand dollars (\$500,000) in the fund is dedicated as collateral for the bond pool under IC 14-34-8 and may not be used for the restoration of land or replacement of water described in subsection (b).

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

As added by P.L.1-1995, SEC.27. Amended by P.L.63-1999, SEC.1.

IC 14-34-6-16

Forfeiture of bond

Sec. 16. (a) The director may order the forfeiture of all or part of a bond for a permit area or an increment of a permit area, regardless of whether the entire area has been disturbed by surface mining activities, if:

(1) the permittee does not conduct reclamation operations in accordance with the applicable reclamation plan; or

(2) the permittee does not fulfill at least one (1) of the conditions under which the bond was posted.

(b) An order issued under subsection (a) or under IC 13-4.1-6-9(a) (before its repeal) is subject to IC 4-21.5-3-6 and becomes an effective and final order of the director without a proceeding if a

request for review of the order is not filed with the director within fifteen (15) days after the order is served upon:

(1) the permittee; and

(2) the person that executed the permittee's bond or other performance guarantee if the permittee filed a bond or other performance guarantee under this chapter.

(c) If the forfeited bond is insufficient to pay the entire cost of reclamation, the permittee shall pay the uncompensated balance necessary for complete reclamation as determined by the director.

(d) If the amount of the forfeited bond exceeds the amount necessary for complete restoration, the excess amount shall be returned by the director to the person from whom the amount was received.

(e) A person who has forfeited a bond may not be given a permit until:

(1) the land subject to the forfeiture has been reclaimed without cost to the state; or

(2) the department has received an amount of money equal to the amount determined by the director to be necessary to reclaim the land.

(f) Money collected under this section is appropriated and allotted to the department, at the time of deposit, for restoration of the site from which the bond was forfeited.

As added by P.L.1-1995, SEC.27.