



COALEX STATE INQUIRY REPORT - 87
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TOPIC: LEGISLATIVE HISTORY OF SMCRA SECTION 519(c)

INQUIRY: (1) What is the legislative history of SMCRA Sec. 519(c) as it relates to the different percentages of release of an operator's bond for different stages of reclamation? (2) Are there any alternatives to these percentages?

SEARCH RESULTS: SMCRA Sec. 519(c) (codified at 30 USC Sec.1269(c)) describes the standards which must be met for an operator to receive partial bond release. This section also gives a certain percentage of the bond which may be released at each stage. The pertinent section of the Act allows release of 60% of the operator's bond upon satisfactory completion of the backfilling, regrading and drainage control of the bonded area. The remaining portion of the bond is to be released after revegetation has been established on the regraded area and after successful completion of all mining and reclamation activities but not before the expiration of the period specified for operator responsibility. (30 USC Sec. 1269(c)(1977).)

Given this statutory language, the question arises as to whether a regulatory agency may modify the percentages of the bond which is to be released at each stage of reclamation. A COALEX search was conducted of the relevant legislative history to determine whether Congress meant for these bond release percentages to be strictly applied.

LEGISLATIVE HISTORY

During the 92nd Congress, the Committee on Interior and Insular Affairs, unanimously reported the first surface mine bill, S. 630, in September, 1972.

Contained in Title IV, Sec. 203(b)(6) of this bill were the guidelines for bonding of disturbed areas and the standards for release of bonds. It stated in part:

"That upon a determination by the regulatory authority that an area has been satisfactorily reclaimed, so much of the bond as is applicable to such area may be released, or applied to any area to be mined in accordance with an approved plan." (S. Rep. No. 1162, 92nd Cong., 2d Sess. 5 (1972))

The 92nd Congress adjourned, however, before the full Senate considered the bill.



Of the fifteen surface mining bills introduced in the House in the 93rd Congress, only one provided for a measured amount of bond release during the reclamation phase of the mining operation, H.R. 5988. The bill, sponsored by Senators Saylor and Dent of Pennsylvania, first introduced the provision of releasing 60% of an operator's bond upon satisfactory completion of backfilling and regrading of the mine site. (H.R. 5988, 93rd Cong., 1st Sess., Sec. 218(a) (1973)) This provision was well received in the hearings conducted by the Committee on Interior and Insular Affairs, House of Representatives. (Testimony of Ernest Preate, (comparing H.R. 5988 favorably to other introduced bills) H.R. 3 and related bills: Hearings Before the Subcommittee on mines and Mining of the House Committee on Interior and Insular Affairs, 93rd Cong., 1st Sess. 913 (1973)) Thus it appears that this bill and the support the 60% release provision received was the origin of the 60% criteria, although no mention of the origin is given by Senator Saylor's section-by-section analysis of his bill (Id. at 858)

These fifteen separate bills were eventually molded into a single bill, H.R. 11500, which the Committee on Interior and Insular Affairs felt incorporated many features of the earlier bills and the results of many days of public hearings, testimony and extensive field trips. The final version of this bill concerning the standards for release of bonds remained virtually unchanged after 1974. (H.R. Rep. 1072, 93rd Cong., 2d Sess. 23 (1974)) These sections were not addressed in any further explanation in Congressional reports after this date.

Thus, there appears to be no clear reason why Congress chose the 60% level it did in the backfilling and grading phase of performance bond release. Since this provision is statutorily mandated, it cannot be altered through implementation by regulation. However, the remaining two levels of release are subject to interpretation in line with the current working of the Act. The legislative history simply does not provide any guidance on the interpretation of this section.

A search of the state regulatory programs revealed that one state, Wyoming, has taken a different approach to the traditional bonding practices. This system is designed to address the problems which would arise when the mining operation covers an extremely large area, as often occurs in Western states.

The Wyoming program requires that an operator post two separate bonds to cover the permit area: an "area bond" and an "incremental bond". The area bond is posted for the entire permit area, and must be an amount sufficient to cover the estimated cost of completing the maximum amount of rough backfilling during the annual bonding period as set forth in the regulation. The incremental bond is calculated by determining the estimated cost of performing all reclamation requirements other than those covered under the area bond.

Liability under both types of bonds is for the entire permit area; however, the duration of the liability differs for each type of bond. The liability under the area bond is for a duration sufficient to insure that all rough backfilling has been properly achieved on the entire permit area. Liability under the incremental bond is for the entire duration of the operation and for the ten-year period of revegetation responsibility; however, the incremental bond may be posted to guarantee a certain portion of the permit area, rather than the entire area.



When the operator has completed the backfilling, regrading, topsoil replacement, recontouring and drainage control of a bonded area, the regulatory authority may release 60% of the operator's incremental bond. Note that it is only the incremental bond, and not the area bond, which may be released under this provision. However, the area bond, in effect, "moves" from one increment to the next. Thus, the operator is allowed to post one amount for the entire duration of the operation to cover all backfilling, but is only required to pose the remainder of the bond for a small area at a time.

ATTACHMENTS

- A. Excerpt, Surface Mining and Control Reclamation Act of 1977, Pub. L. 95-87, Sec. 519(c), 91 Stat. 445, 501-503 (1977).
- B. Excerpt, S. Rep. No. 1162, 92nd Cong., 2d Sess., 5 (1972).
- C. Excerpt, H.R. 5988, 93rd Cong., 1st Sess., Sec. 218(a) (1973).
- D. Excerpt, H.R. 3 and Related Bills, Hearings Before the Subcommittee on mines and Mining of the House Committee on Interior and Insular Affairs, 93rd Cong., 1st Sess. 913, 858 (1973).
- E. Excerpt, H.R. Rep. 1072, 93rd Cong., 2d Sess. 23 (1974).
- F. Wyoming Land Quality Division Rules and Regulations, Section 2-5.