



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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### **4 VAC 25-130 – Coal Surface Mining Reclamation**

#### **Department of Mines, Minerals, and Energy**

May 7, 2004

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

§45.1-230 of the Code of Virginia provides the Department of Mines, Minerals, and Energy (DMME) with the authority to publish and promulgate regulations necessary to carry out the purposes and provisions of the Virginia Coal Surface Mining Control and Reclamation Act. Specifically, §45.1-241 of the Code of Virginia authorizes DMME to develop and promulgate an alternative bonding system that will achieve the objectives and purposes of the bonding program established under §45.1-241.

Prior to the issuance of a permit for surface coal mining or approval of an acreage amendment to an existing permit, applicants are required to meet certain bonding requirements. These requirements are intended to ensure that sufficient funds are available to conduct reclamation activities in the event that a permittee does not adequately complete reclamation. The bonding requirement can be met through cost estimate performance bonds that cover the full cost of reclamation for each individual or through Virginia's alternative bonding system, the

Coal Surface Mining Reclamation (Pool Bond) Fund, available to qualifying mine operators. Under either bonding method, the agency can accept a performance bond in the form of letters of credit, surety bonds, certificates of deposit, or cash.

The proposed regulation amends the bond release procedures for bonds furnished using the Coal Surface Mining Reclamation (Pool Bond) Fund. The bond release procedures for pool bonds are being made consistent with those used for cost estimate performance bonds. The proposed regulation also clarifies the minimum bond amount to be furnished under the Coal Surface Mining Reclamation (Pool Bond) Fund.

### **Estimated Economic Impact**

The proposed regulation amends the bond release procedures for bonds furnished using Virginia's alternative bonding system, the Coal Surface Mining Reclamation (Pool Bond) Fund. The Code of Virginia requires that applicants seeking a surface coal mining permit or seeking to amend an existing permit furnish a bond to cover reclamation costs in the event that the permittee does not conduct adequate reclamation of the land following the conclusion of mining activities. The bonding requirement can be met through cost estimate performance bonds or through the Coal Surface Mining Reclamation (Pool Bond) Fund (available to qualifying mine operators). However, under existing regulations, the bond release procedures for cost estimate performance bonds are different from those for pool bonds. The proposed regulation amends the pool bond release procedures to make them consistent with those used for cost estimate performance bonds.

Under the existing regulation, permittees using the Coal Surface Mining Reclamation (Pool Bond) Fund to meet their bonding requirement can apply for a partial or total bond release for areas that have been reclaimed and re-vegetated. The first application for release of up to 60% of the bond or collateral can be made twelve months after establishment of post-mining land use or re-vegetation (a minimum of two full growing seasons after the completion of mining activity and the implementation of land use). Permittees can also apply for additional bond release, over and above 60%, once two growing seasons have elapsed since the end of mining activity and the implementation of land use. However, a minimum bond of not less than \$10,000 is to be retained. The full amount of the bond is to be released after the successful implementation of the reclamation plan and the elapse of the minimum bond liability period.

The bond is to be released once all the reclamation requirements of the Virginia Coal Surface Mining Control and Reclamation Act and the permit have been fully met.

Under the proposed regulation, pool bond release procedures are being made consistent with procedures applied to cost estimate performance bonds. DMME will be allowed to release all or part of the pool bond for the entire permit area or a portion of the permit area based on three phases of reclamation. Phase I requires the permittee to complete backfilling, re-grading, and drainage control of the bonded area in accordance with the reclamation plan. Following DMME's determination of the adequate completion of Phase I, the agency could release up to 60% of the bond. Phase II requires the establishment of vegetation on the re-graded mined land and a minimum of two growing seasons to have elapsed since the end of all mining activity and the implementation of land use. The additional amount of the bond released on completion of Phase II is to be determined by DMME based on any remaining reclamation and re-vegetation costs. A minimum bond of not less than \$10,000 is to be retained. Phase III requires the successful completion of all surface mining and reclamation activities. Permittees can apply for release of the full amount of the bond after the completion of Phase III and the elapse of the minimum bond liability period. The bond is to be released once all the reclamation requirements of the Virginia Coal Surface Mining Control and Reclamation Act and the permit have been fully met.

According to DMME, the proposed Phase III bond release is identical to current pool bond release procedures. Phase II is also similar to current bond release procedures, insofar as permittees can apply for bond release of up to 60% or more (up to a \$10,000 bond minimum) once re-vegetation has been established and two full growing seasons have elapsed. The difference between the proposed regulation and the existing regulation arises at Phase I. Under the proposed regulation, permittees will be allowed to apply for bond release of up to 60% once they complete backfilling, re-grading, and drainage control of the bonded area. Under the existing regulation, they are eligible for up to 60% bond release a minimum of twelve months after re-vegetation has been established (or two full growing seasons). Thus, the proposed regulation provides the permittees with an opportunity to get a portion of their bond released earlier in the reclamation process than they would under the existing regulation.

The bonding requirement is intended to reduce the risk to the environment and to the public from surface coal mining activities. Permittees that are not implementing adequate reclamation impose costs on the citizens of Virginia, either by degrading the environment or by forcing the state to implement some form of reclamation in order to prevent environmental degradation (in the event of bond forfeiture). By requiring financial guarantees at the time the permit is issued or modified, the proposed regulation provides an incentive for permittees to fulfill their reclamation responsibilities and ensures that adequate resources are available for the state to conduct reclamation in the event that a permittee does not conduct adequate reclamation.

By easing the bond release requirements, the proposed regulation is likely to produce economic benefits for coal surface mining permit holders using the Coal Surface Mining Reclamation (Pool Bond) Fund to meet their bonding requirements. These permittees will now be able to get up to 60% of their bond released without waiting two growing seasons for re-vegetation to be established as required under the current regulation. The financial resources so released can then be used for other economic activities, including for meeting the bonding requirement on other surface coal mining sites. According to DMME, cost estimate performance or reclamation bonds are getting harder and more expensive to obtain. Thus, permittees are increasingly using pool bonds to meet their bonding requirements. The proposed change is likely to increase bonding capacity by allowing permittees to get quicker release of their bond.

According to DMME, there are 264 permitted sites currently using the Coal Surface Mining Reclamation (Pool Bond) Fund to meet the bonding requirement. This amounts to approximately \$105 million posted as bonding for these sites. Under the proposed regulation, up to 60% or \$63 million will be available for bond release once the permittee completes Phase I of the reclamation. Under the existing regulation, this amount is available for release only after re-vegetation has been established and two full growing seasons have elapsed from the time that mining activity ended and land use was implemented. Thus, the proposed change will allow permittees to seek and receive bond release earlier in the reclamation process than they would have under the existing regulation. However, a precise estimate of how much earlier, on average, bond release is likely to occur under the proposed regulation is not available at this time. Moreover, a precise estimate of the average amount of bond released after the completion of Phase I of reclamation is not available. Both estimates, of the average time taken to complete Phase I and of the average amount of bond released after Phase I, vary widely depending on

factors such as site-specific conditions, the type of mining, and the eventual post-mining land use. Thus, it is not possible to precisely estimate the savings to permittees arising out of the proposed change.

The proposed change could also impose additional costs. By allowing for bond release earlier in the reclamation process, the proposed change could reduce the incentive for permittees to complete all the required reclamation. It also reduces financial resources available to conduct any remaining reclamation in the event that a permittee does not do so. In addition, by allowing for bond release earlier reclamation process and increasing the bonding capacity of mine operators, the proposed change could also result in more surface coal mining activity and more surface coal mining sites in the state. All these factors put together could increase the risk to the environment from surface coal mining activities and to the state of incurring mitigation costs to deal with the environmental degradation. However, DMME does not believe that the proposed change will significantly increase the risk of environmental degradation and of additional mitigation costs being imposed on the state. According to DMME, backfilling, re-grading, and drainage control constitute the majority of reclamation costs and allowing for bond release following the completion of this stage will not significantly increase the risk to the environment and to the state. Moreover, according to DMME, the Coal Surface Mining Reclamation (Pool Bond) Fund, at over \$5 million, is large enough to cover costs arising out of any potentially inadequate reclamations and forfeitures. In other words, it appears that the aggregate risk to the environment and to the state posed by mine operators participating in the pool bond fund as a result of their activities is commensurate with the contributions of these operators to the Coal Surface Mining Reclamation (Pool Bond) Fund.

According to DMME, there have been 86 forfeitures on pool bonds and 81 forfeitures on cost estimate performance bonds since 1983. There have been no instances when financial resources have not been available to reclaim the land in the event of forfeiture.

The net economic impact of the proposed change will depend on whether the additional benefits provided are greater than or less than the additional risk to the environment from these activities and cost to the state of conducting mitigation and reclamation activities. While precise estimates of the benefits and costs are not available, it is likely that the proposed change will produce a net positive economic impact. The proposed change is likely to give permittees using

the Coal Surface Mining Reclamation (Pool Bond) Fund greater flexibility in using their financial resources, while not significantly increasing the risk to the environment and to the state from surface coal mining activities.

### **Businesses and Entities Affected**

The proposed change is likely to affect all new and existing surface coal mining permit holders. New and existing surface coal mining permit holders choosing to use the Coal Surface Mining Reclamation (Pool Bond) Fund to meet their bonding requirements will now be eligible to have a portion of their bond released earlier in the reclamation process than they would under the existing regulation.

According to DMME, there are 264 permitted sites currently using the Coal Surface Mining Reclamation (Pool Bond) Fund to meet the bonding requirement. Moreover, on average, DMME receives 20 applications per year for new permits and for significant revisions to existing permits, with approximately 50% using performance bonds and 50% using pool bonds. The agency expects this percentage to shift increasingly in favor of pool bonds as cost estimate performance bonds get harder and more expensive to come by.

### **Localities Particularly Affected**

The proposed regulation applies to all localities in the Commonwealth. However, localities with surface coal mining activity are likely to be more affected.

### **Projected Impact on Employment**

The proposed regulation is not likely to have a significant impact on employment in the Commonwealth.

### **Effects on the Use and Value of Private Property**

The proposed regulation is likely to have a net positive economic impact on the use and value of private property. By allowing for bond release earlier in the reclamation process, the regulation provides surface coal mine operators with greater flexibility in the use of their financial resources, thus increasing the efficiency and hence the asset value of these businesses.