

40-10-16 Release of performance bond, surety, or deposit -- Inspection and evaluation of reclamation work -- Action on application for release of bond -- Objections -- Formal hearing or informal conference.

- (1) The division shall adopt and promulgate rules providing for the release of all or part of a performance bond, surety, or deposit which will include the following requirements:
 - (a) filing of a request with the division by the operator; and
 - (b) advertisement by the operator designed to give public notice of the release and the reclamation steps taken by the operator.
- (2) Upon receipt of the notification and request, the division shall within 30 days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The division shall notify the operator in writing of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request, if no public hearing is held pursuant to Subsection (6), and if there has been a public hearing held pursuant to Subsection (6), within 30 days thereafter.
- (3) The division may release in whole or in part the bond or deposit if the division is satisfied the reclamation covered by the bond or deposit or portion of them has been accomplished as required by this chapter according to the schedule set forth in the division's rules, but no bond shall be fully released until all reclamation requirements of this chapter are finally met.
- (4) If the division disapproves the application for release of the bond or portion of it, the division shall notify the permittee in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.
- (5) When any application for total or partial bond release is filed with the division, the division shall notify the municipality in which a surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.
- (6)
 - (a) Any person with a valid legal interest which may be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to these operations shall have the right to file written objections to the proposed release from bond with the division within 30 days after the last publication of the above notice.
 - (b) If written objections are filed and a conference is requested, the division shall inform all the interested parties of the time and place of the conference and hold an informal conference within 30 days after the request is filed with the division.
 - (c) The conference officer may convert the conference to a formal proceeding under the standards set forth by Section 63G-4-202. The matter shall be scheduled for hearing before the board and a hearing shall be held in accordance with the rules of practice and procedure of the board.
 - (d) A decision from the informal conference may be appealed to the board. The board shall hold a hearing pursuant to the rules of practice and procedure of the board.

Amended by Chapter 382, 2008 General Session