

MINING - SURETY AND RECLAMATION REQUIREMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Dmitrich

AN ACT RELATING TO MINED LAND RECLAMATION; SPECIFYING RESPONSIBILITIES OF THE DIVISION AND BOARD OF OIL, GAS AND MINING IN APPROVING THE AMOUNT AND FORM OF SURETY REQUIRED TO BE PROVIDED BY MINING OPERATIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

40-8-14, as last amended by Chapter 299, Laws of Utah 1995

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **40-8-14** is amended to read:

40-8-14. Surety requirement -- Liability of small mining operations for failure to reclaim -- Forfeiture of surety.

(1) After receiving notification that a notice of intention for mining operations other than small mining operations has been approved, but prior to commencement of those operations, the operator shall provide surety to the division, in a form and amount determined by the division or board as provided in this section.

(2) (a) Except as provided in Subsection (3), the division shall approve the amount and form of surety.

(b) In determining the amount of surety to be provided, the [board] division shall consider [factual information and recommendations provided by the division as to]:

(i) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and

(ii) the nature, extent, and duration of operations under the approved notice.

(b) (c) The [board] division shall approve a fixed amount estimated [as] to be required to complete reclamation at any point in time covered by the notice of intent [to complete reclamation] to an acceptable standard.

~~[(3)(a)]~~ (d) In determining the form of surety to be provided by the operator, the [board] division shall approve a method acceptable to the operator [and] consistent with the requirements of this chapter [which]. The form of surety that the operator may [be one or a combination of] provide includes, but is not limited to, [a written contractual agreement,] the following:

- (i) collateral~~[-];~~
- (ii) a bond or other form of insured guarantee~~[-];~~
- (iii) deposited securities~~[-];~~ or
- (iv) cash.

(3) (a) If the operator proposes reclamation surety in the form of a written contractual agreement, the board shall approve the form of surety.

(b) In making this decision the board shall~~[- with respect to the operator,]~~ consider [such factors as]:

- (i) the operator's:
 - ~~[(i)]~~ (A) financial status;
 - ~~[(ii)]~~ (B) assets within the state;
 - ~~[(iii)]~~ (C) past performance [on] in complying with contractual agreements; and
 - ~~[(iv)]~~ (D) facilities available to carry out the planned work~~[-];~~
- (ii) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and

(iii) the nature, extent, and duration of operations under the approved notice.

(4) In determining the amount and form of surety to be provided under this section, consideration shall be given to [other] similar requirements made [effective] on the operator by landowners, governmental agencies, or [otherwise] others, with the intent that [these] surety requirements shall be coordinated and not duplicated.

(5) The liability under surety provisions shall continue until [such time as released as to] liability in part or in its entirety, is released by the division.

(6) If the operator of a small mining operation fails or refuses to carry out the necessary land reclamation as required by this chapter and the rules of the board, the board, after notice and hearing,

may order that:

(a) reclamation be conducted by the division; and

(b) the costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court.

(7) (a) If the operator of a mining operation other than a small mining operation fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited.

(b) With respect to the surety filed with the division, the board shall request the attorney general to take the necessary legal action to enforce and collect the amount of liability.

(c) ~~[Where] If~~ surety or a bond has been filed with ~~[an agency of] the [state or]~~ Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or any agency of the federal government, the board shall certify a copy of the transcript of the hearing ~~[to the division or the agency,]~~ and transmit it to the agency together with a request that the necessary forfeiture action be taken.

(d) The forfeited surety shall be used only for the reclamation of the land to which it relates, and any residual amount returned to the rightful claimant.