

From: David Buczkowski

Date: 10/3/2023

Hi Cathy,

I hope all is well with you. I have some comments on Section 12. I think it needs a bit of beefing up. Early in my legal career I had some experience in surety bonds, including reclamation bonds. I had occasion to tour a strip mine in West Virginia where I saw how mining operations can adversely impact the environment. So, here is some proposed language for your edification:

Section 12 – General Provisions

Section 12A---Insurance

- (a) The Applicant shall carry, insurance throughout the term of the Permit with the Town of Alna as an additional insured, with an insurance company satisfactory to the Town, indemnifying the Town and the Applicant from and against all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance and/or extraction of material of the mining operation. The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000.00) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than One Million Dollars per occurrence (\$1,000,000.00). The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000.00) in umbrella form.
- (b) The Applicant shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
- (c) All insurance coverage, including Workers' Compensation in amounts as required by applicable law, shall be maintained throughout the entire term of the Permit. All expenses incurred for said insurance shall be at the sole cost and expense of the Applicant.
- (d) The following conditions shall apply to the insurance policies required herein:
 - (i) Such insurance shall commence no later than the Execution Date of the Permit.
 - (ii) Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town's insurance for contributions.
 - (iii) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in the State of Maine.

Section 12B---PERFORMANCE BOND

- (a) The Applicant shall maintain at its sole cost and expense throughout the term of the Permit a faithful performance bond running to the Town of Alna, with good and sufficient surety licensed to do business in the State of Maine in the sum of Five Million Dollars (\$5,000,000.00). Said bond shall be conditioned upon the faithful performance and discharge of all of the obligations imposed by the Permit.
- (b) The performance bond shall be effective throughout the term of the Permit, including the time for reclamation required in the Permit, and shall be conditioned that in the event that the Applicant shall fail to comply with any one or more provisions of the Permit, the Town shall recover from the surety of such bond all damages suffered by the Town as a result thereof, pursuant to the provisions of the Permit.
- (c) Said bond shall be a continuing obligation of the Permit, and thereafter until the Applicant has satisfied all of its obligations to the Town that may have arisen from the grant of the Permit or from the exercise of any privilege herein granted. In the event that the Town recovers from said surety, the Applicant shall take immediate steps to reinstate the performance bond to the appropriate amount required herein. Neither this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall limit the liability of the Applicant under the Permit.

Section 12C---Reporting

The Applicant shall annually submit to the Town, or its designee, copies of all current certificates regarding (i) all insurance policies as required herein, and (ii) the performance bond as required herein.

Section 12D---Indemnification

The Applicant shall, at its sole cost and expense, indemnify and hold harmless the Town, its officials, boards, commissions, committees, agents and/or employees against all claims for damage due to the actions of the Applicant, its employees, officers or agents arising out of the construction, installation, maintenance, operation, and/or reclamation of the mining operation under the Permit, including without limitation, damage to persons or property, both real and personal, caused by the maintenance, operation, and/or removal of any structure, equipment, and/or material. Indemnified expenses shall include all reasonable attorneys' fees and costs incurred up to such time that the Applicant assumes defense of any action hereunder. The Town shall give the Applicant timely written notice of its obligation to indemnify and defend the Town within a reasonable time from receipt of a claim or action pursuant to this section.

I realize that insurance is covered elsewhere in the proposed ordinance, but time prevents me from plugging the language into the ordinance where appropriate. Use or don't use as you will! Just my two cents.

Best regards,

Dave
