

TITLE 62: MINING  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES  
  
PART 1800  
BONDING AND INSURANCE REQUIREMENTS FOR  
SURFACE COAL MINING AND RECLAMATION OPERATIONS

Section	
1800.1	Scope and Purpose
1800.2	Objective (Repealed)
1800.4	Department Responsibilities
1800.5	Definitions
1800.11	Requirement to File a Bond
1800.12	Form of the Performance Bond
1800.13	Period of Liability
1800.14	Determination of Bond Amount
1800.15	Adjustment of Amount
1800.16	General Terms and Conditions of Bond
1800.17	Bonding Requirements for Underground Coal Mines and Long-Term Coal-Related Surface Facilities and Structures
1800.20	Surety Bonds
1800.21	Collateral Bonds
1800.23	Self-Bonding
1800.30	Replacement of Bonds
1800.40	Requirement to Release Performance Bonds
1800.50	Forfeiture of Bonds
1800.60	Terms and Conditions for Liability Insurance

**AUTHORITY:** Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

**SOURCE:** Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9354; amended at 11 Ill. Reg. 7985, effective July 1, 1987; amended at 14 Ill. Reg. 11785, effective January 1, 1991; amended at 17 Ill. Reg. 10916, effective July 1, 1993; amended at 20 Ill. Reg. 1939, effective January 19, 1996; amended at 20 Ill. Reg. 15683, effective December 2, 1996; amended at 22 Ill. Reg. 20157, effective November 5, 1998; emergency amendment at 23 Ill. Reg. 12490, effective September 23, 1999, for a maximum of 150 days; emergency expired February 19, 2000; amended at 24 Ill. Reg. 5898, effective March 21, 2000; amended at 26 Ill. Reg. 4197, effective March 6, 2002; amended at 27 Ill. Reg. 4683, effective February 26, 2003.

**Section 1800.1      Scope and Purpose**

This Part sets forth the minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations under regulatory programs in accordance with the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1985, ch. 96 1/2, pars. 7901.01 et seq. (State Act)).

(Source: Added at 11 Ill. Reg. 7985, effective July 1, 1987)

**Section 1800.2      Objective (Repealed)**

(Source: Repealed at 11 Ill. Reg. 7985, effective July 1, 1987)

**Section 1800.4 Department Responsibilities**

- a) The Illinois Department of Natural Resources, Office of Mines and Minerals (Department) shall prescribe and furnish forms for filing performance bonds.
- b) The Department shall determine the amount of the bond for each area to be bonded, in accordance with Section 1800.14. The Department shall also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change, according to the requirements of Section 1800.15.
- c) The Department may accept a self-bond if the permittee meets the requirements of Section 1800.23.
- d) The Department shall release liability under a bond or bonds in accordance with Section 1800.40.
- e) If the conditions specified in Section 1800.50 occur, the Department shall take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that Section.
- f) The Department shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in Section 1800.16(e)(2), operating without a bond is a violation of a condition upon which the permit is issued.

(Source: Amended at 20 Ill. Reg. 15683, effective December 20, 1996)

**Section 1800.5      Definitions**

- a) Surety bond means an indemnity agreement in a sum certain payable to the Department, executed by the permittee as principal and which is supported by the

performance guarantee of a corporation licensed to do business as a surety in Illinois.

- b) Collateral bond means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Department of one or more of the following:
  - 1) A cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Department upon demand, or the deposit of cash directly with the Department;
  - 2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Department;
  - 3) Negotiable certificates of deposit, made payable or assigned to the Department and placed in its possession or held by a federally-insured bank;
  - 4) An irrevocable letter of credit of any bank organized or authorized to transact business in Illinois, in another state of the United States, or in the United States by national charter, payable only to the Department upon presentation provided that if the bank does not have an office for collection in Illinois, there shall be a confirming bank designated with an office in Illinois that is authorized to accept, negotiate and pay the letter upon presentment in Illinois; or
  - 5) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of the Department.

(Source: Amended at 20 Ill. Reg. 1939, effective January 19, 1996)

**Section 1800.11      Requirement to File a Bond**

- a) After a permit application under 62 Ill. Adm. Code 1772 through 1785 has been approved, but before a permit is issued in accordance with 62 Ill. Adm. Code 1773.19, the Department shall notify the applicant in writing of the amount of bond required to ensure reclamation of the permit area. The applicant shall file with the Department, on a form provided by the Department a bond or bonds for performance made payable to the Department and conditioned upon the faithful

performance of all the requirements of the State Act, 62 Ill. Adm. Code 1700 through 1850, the permit and the reclamation plan. Failure to file a performance bond or other equivalent guarantee in accordance with this Section within 1 year after the issuance of the Department's written notification of the required bond amount shall result in the application being deemed null and void. The Department may issue an extension to this time limit if the applicant can demonstrate just cause (e.g., extended periods of illness, extreme inclement weather, acts of civil unrest, or other emergency situations) for doing so.

- b) Bond coverage.
  - 1) The bonds or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining operations during the initial term of the permit.
  - 2) As surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the Department an additional bond or bonds to cover such increments in accordance with this Section.
  - 3) The operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under 62 Ill. Adm. Code 1780 and 1784), and shall specify the bond amount to be provided for each area or increment.
  - 4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the Department become necessary pursuant to Section 1800.50.
- c) An operator shall not disturb any surface areas, succeeding increments or extend any underground shafts, tunnels, or operations prior to acceptance by the Department of the required performance bond.
- d) The applicant shall file, with the approval of the Department, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with Section 1800.14:
  - 1) A performance bond or bonds for the entire permit area;
  - 2) A cumulative bond schedule and the performance bond required for the full reclamation of the initial area to be disturbed; or

- 3) An incremental bond schedule and the performance bond required for the first increment in the schedule.
- e) The Department shall administer self-bonding for eligible permittees consistent with all applicable provisions of Section 1800.1 through 1800.50.

(Source: Amended at 26 Ill. Reg. 4197, effective March 6, 2002)

**Section 1800.12      Form of the Performance Bond**

The Department shall prescribe the form of the performance bond. The Department shall allow for:

- a) A surety bond;
- b) A collateral bond;
- c) A self-bond; or
- d) A combination of any of these bonding methods.

(Source: Amended at 20 Ill. Reg. 15683, effective December 20, 1996)

**Section 1800.13      Period of Liability**

- a) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in 62 Ill. Adm. Code 1816.116 or 1817.116 or until achievement of the reclamation requirements of the State Act, regulatory programs, and permit, whichever is later.
- b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Department. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the Department.
- c) If the Department approves a long-term, intensive agricultural post-mining land use, in accordance with 62 Ill. Adm. Code 1816.133 or 1817.133, the five year period of liability shall commence at the date of initial planting for such long-term agricultural use.

- d) Bond Liability
  - 1) The bond liability of the permittee shall include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the post-mining land use approved under 62 Ill. Adm. Code 1816.133 or 1817.133.
  - 2) Implementation of an alternative post-mining land use approved under 62 Ill. Adm. Code 1816.133 and 1817.133 which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in Section 1800.40(c)(2).

(Source: Amended at 24 Ill. Reg. 5898, effective March 21, 2000)

**Section 1800.14      Determination of Bond Amount**

- a) The amount of the bond required for each bonded area shall:
  - 1) Be determined by the Department;
  - 2) Depend upon the requirements of the approved permit and reclamation plan;
  - 3) Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and
  - 4) Be based on, but not limited to, the estimated cost submitted by the permit applicant.
- b) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Department in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than the greater of six hundred dollars (\$600) per acre or ten thousand dollars (\$10,000).
- c) An operator's financial responsibility under 62 Ill. Adm. Code 1817.121(c) for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under Section 1800.60.

(Source: Added at 11 Ill. Reg. 7985, effective July 1, 1987)

**Section 1800.15      Adjustment of Amount**

- a) The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond shall be adjusted by the Department from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The Department may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.
- b) The Department shall:
  - 1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under Section 1800.21(e) of any proposed adjustment to the bond amount; and
  - 2) Provide the permittee an opportunity for administrative review in accordance with 62 Ill. Adm. Code 1847.3.
- c) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the Department proving that the permittee's method of operation or other circumstances reduces the estimated cost for the Department to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of Section 1800.40.
- d) In the event that an approved permit is revised in accordance with 62 Ill. Adm. Code 1772 through 1785 the Department shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

(Source: Amended at 24 Ill. Reg. 5898, effective March 21, 2000)

**Section 1800.16      General Terms and Conditions of Bond**

- a) The performance bond shall be in an amount determined by the Department as provided in Section 1800.14.
- b) The performance bond shall be payable to the Department.
- c) The performance bond shall be conditioned upon faithful performance of all the requirements of the State Act, 62 Ill. Adm. Code 1700 - 1850, the regulatory program, and the approved permit, including completion of the reclamation plan.

- d) The duration of the bond shall be for the time period provided in Section 1800.13.
- e)
  - 1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the Department and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.
  - 2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the Department. The Department, upon notification received through the procedures of subsection (e)(1) or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed ninety (90) days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of 62 Ill. Adm. Code 1816.132 or 1817.132 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the Department has determined that an acceptable bond has been posted.

(Source: Added at 11 Ill. Reg. 7985, effective July 1, 1987)

**Section 1800.17      Bonding Requirements for Underground Coal Mines and Long-Term Coal-Related Surface Facilities and Structures**

- a) Responsibilities. The Department shall require bond coverage, in an amount determined under Section 1800.14, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines within the permit area. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation.
- b) Long-term period of liability.
  - 1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for



that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of Section 1800.40, or until the bond has been replaced or extended in accordance with subsection (b)(3).

- 2) Long-term surface disturbances shall include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds five (5) years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, boreholes, ventilation shafts, preparation plants, machine shops, roads, and loading and treatment facilities.
  - 3) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of Section 1800.40 have been met.
- c) The Department shall take action to forfeit a bond pursuant to this Section if thirty (30) days prior to bond expiration the permittee has not filed:
- 1) A performance bond for a new term as required for continuous coverage; or
  - 2) A performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

(Source: Added at 11 Ill. Reg. 7985, effective July 1, 1987)

**Section 1800.20      Surety Bonds**

- a) A surety bond shall be executed by the operator and a corporate surety licensed to do business in Illinois.
- b) Surety bonds shall be subject to the following conditions:

The Department shall not accept the bond of a surety company unless the surety company is licensed to do business in the State of Illinois as surety and bond shall not be cancelable by the surety at any time for any reason including, but not limited to, non-payment of premiums or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed shall be cancelled if the surety gives at least ninety (90) days notice to the Department of

the intent to cancel prior to cancellation. Such notice shall be by certified mail and shall not be effective until received by the Department. Cancellation shall not be effective for lands subject to bond coverage which have already been disturbed or are disturbed after receipt of notice, but prior to approval by the Department. The Department may allow continuation of surface coal mining and reclamation operations on the land for which the bond is cancelled only if a replacement bond is filed by the permittee prior to the cancellation date, or the permit is amended so that the surface coal mining operations approved under the permit are reduced to the degree necessary to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Section 1800.11(b)(2).

(Source: Amended at 20 Ill. Reg. 1939, effective January 19, 1996)

**Section 1800.21      Collateral Bonds**

- a) Collateral bonds, except for letters of credit and cash accounts, shall be subject to the following conditions:
  - 1) The Department shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in Sections 1800.30 and 1800.40.
  - 2) The Department shall value collateral at its current market value, not at face value.
  - 3) The Department shall require that certificates of deposit be made payable to or assigned to the Department both in writing and upon the records of the bank issuing the certificates. If assigned, the Department shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.
  - 4) The Department shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
  
- b) Letters of credit shall be subject to the following conditions:
  - 1) The letter may only be issued by a bank organized or authorized to do business in Illinois, in another state of the United States, or in the United States by national charter ("issuing bank"). If the issuing bank does not

have an office for collection in Illinois, there shall be a confirming bank designated with an office in Illinois that is authorized to accept, negotiate and pay the letter upon presentment in Illinois.

- 2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Department if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.
  - 3) The letter of credit shall be payable to the Department upon demand, in part or in full, upon receipt from the Department of a notice of forfeiture issued in accordance with Section 1800.50.
  - 4) The Department shall not accept a letter of credit in excess of ten percent (10%) of the issuing bank's total capital and surplus accounts, as certified by the President of the bank providing the letter of credit and as evidenced by the most recent quarterly Call Report provided to the Federal Deposit Insurance Corporation. The ten percent (10%) limit, as used in this subsection, shall be a cumulative total of all letters of credit submitted to the Department by any one issuing bank.
  - 5) The letter of credit shall provide on its face that the Department, its lawful assigns, or the attorneys for the Department or its assigns, may sue, waive notice and process, appear on behalf of, and confess judgment against the issuing bank (and any confirming bank) in the event that the letter of credit is dishonored. The letter of credit shall be deemed to be made in Sangamon County, Illinois, for the purpose of enforcement and any actions thereon shall be enforceable in the Courts of Illinois, and shall be construed under Illinois law.
- c) Cash accounts shall be subject to the following conditions:
- 1) The Department may authorize the permittee to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the Department. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with Section 1800.40.

- 2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the Department has approved the payment of interest to the permittee.
  - 3) Certificates of deposit may be substituted for a cash account in accordance with subsection (a).
  - 4) The Department shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- d) Bond value of collateral.
- 1) The estimated bond value of all collateral posted as assurance under Section 1800.21 shall be subject to a margin which is the ratio of bond value to market value, as determined by the Department. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the Department to complete reclamation.
  - 2) The bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.
- e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Department at the time collateral is offered.

(Source: Amended at 20 Ill. Reg. 1939, effective January 19, 1996)

**Section 1800.23      Self-Bonding**

- a) For purposes of this section only, the following terms have the following meanings:

Current assets means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

Current liabilities means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

Fixed assets means plants and equipment, but does not include land or coal in place.

Liabilities means legally enforceable obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

Net worth means total assets minus total liabilities and is equivalent to owners' equity.

Parent corporation means a corporation which owns or controls the applicant.

Tangible net worth means net worth minus intangibles such as goodwill and rights to patents or royalties.

- b) The Department may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:
- 1) The applicant designates a suitable agent to receive service of process in the State of Illinois.
  - 2) The applicant has been in continuous operation as a business entity for a period of not less than five years. Continuous operation shall mean that business was conducted over a period of five years immediately preceding the time of application.
    - A) The Department may allow a joint venture or syndicate with less than five years of continuous operation to qualify under subsection (2) above, if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application.
    - B) When calculating the period of continuous operation, the Department may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

- 3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:
  - A) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;
  - B) The applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or
  - C) The applicant's fixed assets in the United States total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.
  
- 4) The applicant submits:
  - A) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;
  - B) Unaudited financial statements for completed quarters in the current fiscal year; and
  - C) Additional unaudited information as requested by the Department.
  
- c) Written guarantee
  - 1) The Department may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of subsections (b)(1) through (4), above, as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee". The terms of the corporate guarantee shall provide for the following:
    - A) If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the Department sufficient

- to complete the reclamation plan, but not to exceed the bond amount.
- B) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the Department at least 90 days in advance of the cancellation date, and the Department accepts the cancellation.
  - C) The cancellation may be accepted by the Department if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.
- 2) The Department may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of subsections (b)(1), (2) and (4) above, and the guarantor meets the conditions of subsections (b)(1) through (4) above. Such a written guarantee shall be referred to as a "non-parent corporate guarantee". The terms of this guarantee shall provide for compliance with the conditions of subsections (c)(1)(A) through (C) above. The Department may require the applicant to submit any information specified in subsection (b)(3) above in order to determine the financial capabilities of the applicant.
- d) In order for the Department to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. In order for the Department to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States. In order for the Department to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.
  - e) If the Department accepts an applicant's self-bond, and indemnity agreement shall be submitted subject to the following requirements:
    - 1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.

- 2) Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Department along with an affidavit certifying that such an agreement is valid under all applicable federal and state laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.
- 3) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.
- 4) Pursuant to Section 1800.50, the applicant, parent or non-parent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Department an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. Under Illinois law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.
- f) The Department shall require self-bonded applicants and parent and non-parent corporate guarantors to submit an update of the information required under subsections (b)(3) and (4) above within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.
- g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or non-parent corporate guarantor change so that the criteria of subsections (b)(3) and (d) above are not satisfied, the permittee shall notify the Department immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of Section 1800.16(e)(2) shall apply.

(Source: Added at 20 Ill. Reg. 15683, effective December 20, 1996)

**Section 1800.30      Replacement of Bonds**

- a) The Department may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage, if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds. The



replacement bond shall be accompanied by a letter from the bonding company identifying the dates of the permit period which the bond is to cover and acknowledging any previously affected areas which the replacement is to cover.

- b) The Department shall not release existing performance bonds until the permittee has submitted, and the Department has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this Section shall not constitute a release of bond under Section 1800.40.

(Source: Added at 11 Ill. Reg. 7985, effective July 1, 1987)

**Section 1800.40 Requirement to Release Performance Bonds**

- a) Bond release application.
  - 1) The permittee may file an application with the Department for the release of all or part of a performance bond at any time. The permittee may authorize a person to act on the permittee's behalf. The Department may also initiate an application for bond release. For bond releases initiated by the Department, the Department shall undertake the notification and certification requirements of the applicant under this Section.
  - 2) Within 30 days after an application for bond release has been filed with the Department, the applicant shall submit a copy of an advertisement placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the Department to which written comments, objections, or requests for public hearings on the specific bond release may be submitted pursuant to subsection (d). In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. The applicant shall submit a certification of

publication for such advertisement prior to the Department's final administrative decision releasing bond.

- 3) The applicant shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the State Act, the regulatory program and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.
- b) Inspection by Department.
- 1) Upon filing of the bond release application, the Department shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the Department in making the bond release inspection. The Department may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.
  - 2) Within the later of 60 days from the filing of the bond release application or 5 days after the expiration of the public comment period provided under subsection (d), if no public hearing is held pursuant to subsection (d), or within 30 days after a public hearing has been held pursuant to subsection (d), the Department shall notify, in writing, the permittee, the municipality and county in which the surface coal mining operation is located, the surety, or other persons with an interest in bond collateral who have requested notification under Section 1800.21(e), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, its final administrative decision to release or not to release all or part of the performance bond. The municipality and county shall be notified by certified mail.
- c) The Department may release all or part of the bond for the entire permit area or incremental area if the Department is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

- 1) At the completion of Phase I, after the operator completes the backfilling, regrading (which includes the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60% of the bond or collateral for the applicable area.
  
- 2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Department shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in Section 6.08(d)(2) of the State Act for reestablishing revegetation. No part of the bond or deposit shall be released under this subsection (c)(2) so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 3.10 of the State Act and by 62 Ill. Adm. Code 1816 or 1817 or until soil productivity for prime farmland has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 2.02(a) of the State Act and 62 Ill. Adm. Code 1823. Where a silt dam is to be retained as a permanent impoundment pursuant to 62 Ill. Adm. Code 1816 or 1817, the Phase II portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the Department.
  
- 3) At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in 62 Ill. Adm. Code 1816.116 or 1817.116. However, no bond shall be fully released under this subsection until the reclamation requirements of the State Act and the permit are fully met.
  
- d) Any person with a valid legal interest which might 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 which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file a written request for

hearing and written objections to the proposed release from bond with the Department within 30 days after the last publication of the notice required by subsection (a)(2). If written objections are filed and a hearing is requested, the hearing shall be held in accordance with 62 Ill. Adm. Code 1847.9.

- e) If the Department disapproves the application for release of the bond or portion of the bond, the Department shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Section 1800.21(e), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release. The permittee, the surety, and any person with an interest in collateral as provided for in Section 1800.21(e) may request an administrative hearing on the disapproval of bond release by filing a request for hearing in accordance with the procedures set forth in 62 Ill. Adm. Code 1847.3.

(Source: Amended at 27 Ill. Reg. 4683, effective February 26, 2003)

**Section 1800.50      Forfeiture of Bonds**

- a) If a permittee refuses or is unable to conduct reclamation of an unabated violation due to bankruptcy, insolvency, creditor attachment of equipment or to the collateral supporting the performance bond being repledged, if the terms of the permit are not met, or if the permittee defaults on the conditions under which the bond was accepted, the Department shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:
  - 1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited.
  - 2) The amount shall be based on the estimated total cost of achieving the reclamation plan requirements.
- b) Prior to the bond forfeiture notification under subsection (a)(1) above, the Department shall advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions include, but are not limited to:
  - 1) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program

and a demonstration that such party has the ability to satisfy the conditions; or

- 2) The Department may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Department may approve partial release authorized under Section 1800.40, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including the applicable liability periods of Section 1800.13.
- c) In the event forfeiture of the bond is required by subsection (a) above, the Attorney General, on request of the Department, shall file suit to collect any unpaid, forfeited bonds pursuant to Section 6.07 of the State Act.
- 1) Before making a request to the Attorney General to collect the forfeited bonds, or before presenting the collateral bond for collection, the Department shall afford the permittee the right to a hearing to be held not less than thirty (30) days after the permittee's receipt of the bond forfeiture notification under subsection (a)(1).
  - 2) The Department shall hold the hearing provided in subsection (c)(1) in accordance with the procedures set forth in 62 Ill. Adm. Code 1847.7.
- d) The Department shall use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment and to cover associated administrative expenses to which bond coverage applies. Unless specifically limited, as provided in Section 1800.11(b), bond liability shall extend to the entire permit area under forfeiture.
- e) Reclamation costs.
- 1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The Department may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.
  - 2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the Department to the party from whom they were collected.

- f) No permittee who has forfeited any bond shall be issued a permit from the Department for surface coal mining and reclamation operations unless the permit applicant provides the following assurances to the Department that such proceedings will not again become necessary:
  - 1) The permit applicant submits a cash bond or certificate of deposit for the proposed permit area, pursuant to Section 1800.11.
  - 2) The officers, directors, ten percent (10%) or greater shareholders of the permit applicant, if a corporation, agree to be held personally liable for violations of the State Act caused by the permittee.
  - 3) The permit applicant has compensated the entity that completed reclamation of the permit area for all costs attributable to bond forfeiture.
  - 4) All prior violations of the State Act attributable to the permit applicant have been corrected, including payments of all outstanding civil penalties.

(Source: Amended at 17 Ill. Reg. 11031, effective July 1, 1993)

**Section 1800.60      Terms and Conditions for Liability Insurance**

- a) The Department shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in Illinois certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury and property damage shall be three hundred thousand dollars (\$300,000) for each occurrence and five hundred thousand dollars (\$500,000) aggregate.
- b) The policy or approved replacement thereof shall be maintained in full force during the life of the permit or any renewal thereof, and the liability period necessary to complete all reclamation operations under 62 Ill. Adm. Code 1800 - 1850.
- c) The policy shall include a rider requiring that the insurer notify the Department whenever substantive changes are made in the policy including any termination or failure to renew.

(Source: Amended at 14 Ill. Reg. 11785, effective January 1, 1991)