



STATE OF ILLINOIS
DEPARTMENT OF MINES AND MINERALS
LAND RECLAMATION DIVISION

BRAD EVILSIZER
DIRECTOR

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SPRINGFIELD ILLINOIS 62707
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LAND RECLAMATION DIVISION MEMORANDUM NO. 86-1

TO: All Permit Applicants

DATE: March 5, 1986

FROM: Douglas Downing, Supervisor
Land Reclamation Division *Douglas Downing*

RE: Irrevocable Letters of Credit
62 Ill. Admin. Code 1806

The document attached as Exhibit No. 1 is a form irrevocable letter of credit prepared by counsel for this agency. This form irrevocable letter of credit contains all of the language required by 62 Ill. Admin. Code 1806 for an acceptable reclamation bond. A copy of this regulation is attached as Exhibit No. 2.

After your bank issues an irrevocable letter of credit, please submit this reclamation bond to the Department with a balance sheet certified by a Certified Public Accountant that such irrevocable letter of credit is not in excess of 10 percent of the issuing bank's capital surplus account. 62 Ill. Admin. Code 1806.12(g)(4).

Enclosure

cc: D.Downing
J.C.Henriksen
OSM

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NATIONAL DISTRICT OFFICE

MAR 10 1986

DEPT. OF MINES AND MINERALS
LAND RECLAMATION DIV.

Date: _____

Irrevocable Letter of Credit

Amount: \$ _____

Permit No. _____

Illinois Department of Mines and Minerals
Land Reclamation Division
227 South 7th Street - Room 201
Springfield, Illinois 62701

The _____
(Issuing Bank) hereby issues this Irrevocable Letter of Credit to the Illinois Department of Mines and Minerals (Department) for _____ Permit No. _____ (Permittee). This Irrevocable Letter of Credit authorizes the Department to draw on the Issuing Bank, up to the amount of \$ _____, by sight draft presented for payment to the Issuing Bank. The sight draft shall include a signed statement from the Department that the Permittee's acts or failures to act warrant forfeiture of this Irrevocable Letter of Credit, pursuant to 62 Ill. Admin. Code 1806.12(c) and/or 62 Ill. Admin. Code 1808.13.

The Issuing Bank authorizes the Department, its lawful assigns, or the attorneys for the Department and its assigns, to sue, to waive notice and process, to appear on behalf of, and to confess judgement against the Issuing Bank, in the event that this Irrevocable Letter of Credit is dishonored. This Irrevocable Letter of Credit shall be deemed to be made in Sangamon County, Illinois, for purposes of enforcement and any actions thereon shall be enforceable in the Courts of Illinois and shall be construed under Illinois law.

The Issuing Bank is [an Illinois Bank corporation operating under Illinois Banking Charter No. _____] (or) [a National Banking Association operating under Charter No. _____ issued by the U.S. Comptroller of the Currency] and conducts its business at the address shown above. The Issuing Bank shall give prompt notice to the Permittee and to the Department of any notice received or action alleging the insolvency or bankruptcy of the Issuing Bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the Issuing Bank's charter or license to do business.

In the event the Issuing Bank becomes unable to fulfill its obligations under this Irrevocable Letter of Credit for any reason, notice shall be given immediately to the Permittee and the Department, provided that such notice shall in no way relieve the Issuing Bank of its obligations under this Irrevocable Letter of Credit.

Upon the incapacity of the Issuing Bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the Permittee, within thirty (30) days after receiving notice thereof from the Department, shall substitute for this Irrevocable Letter of Credit a replacement bond that fully complies with the Department's regulations. Upon the Permittee's failure to submit a replacement bond as herein provided, the Department shall suspend Permit No. _____ until such substitution has been made.

This Irrevocable Letter of Credit is a binding obligation on the Issuing Bank, independent of the acts and omissions of the Permittee, payable upon presentment to the Department or its written order. The Department and/or the State of Illinois shall in no way be obligated to the Issuing Bank or Permittee for repayment of all or any portion thereof subject to the provisions of 62 Ill. Admin. Code 1808.14.

* This Letter of Credit will automatically extend for an additional term of one (1) year unless the Bank provides at least ninety (90) days notice prior to the expiration date that it does not wish to extend the Letter of Credit for an additional period. The Department has the right to draw on this Irrevocable Letter of Credit in the event Permittee does not replace this Irrevocable Letter of Credit prior to thirty (30) days before the expiration of this Irrevocable Letter of Credit with a replacement bond that complies with the Department's Regulations, pursuant to 62 Ill. Admin. Code 1806.12(c) and/or 62 Ill. Admin. Code 1808.13.

* Liability of the Issuing Bank under this Irrevocable Letter of Credit shall continue until all reclamation, restoration and abatement work for Permit No. _____ required of persons who conduct mining under the requirements of the Illinois Surface Coal Mining Land Conservation and Reclamation Act, the Department's regulations, and the provisions of Permit No. _____ has been completed and the permit terminated by release of the Permittee from any further liability, in accordance with 62 Ill. Admin. Code 1807.

NAME OF ISSUING BANK

AUTHORIZED AGENT OF ISSUING BANK

* Select one

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1806
FORM, CONDITIONS AND TERMS OF PERFORMANCE
BONDS AND LIABILITY INSURANCE

Section	
1806.11	Form of the Performance Bond
1806.12	Terms and Conditions of the Bond
1806.13	Escrow Bonding
1806.15	Replacement of Bonds
1806.16	Terms and Conditions for Liability Insurance

AUTHORITY: Implementing and authorized by Sections 1.01 et seq. of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1981, ch. 96 1/2, pars. 7901.01 et seq.).

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. 9358.

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Section 1806.11 Form of the Performance Bond

The form of the performance bond shall be prescribed by the Department in accordance with the provisions of 62 Ill. Adm. Code 1805 and 1806. The Department may allow for:

- a) A surety bond;
- b) A collateral bond;
- c) Establishment of an escrow account; or
- d) A combination of these bonding methods.

(Source: Amended at 6 Ill. Reg. 1, effective June 1, 1982)

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Section 1806.12 Terms and Conditions of the Bond

- a) The performance bond shall be in an amount determined by the Department as provided in 62 Ill. Adm. Code 1805.11 and 1805.12.
- b) The performance bond shall be payable to the Department only. The performance bond shall be signed by the operator as principal and, if the performance bond is a surety bond, by a good and sufficient Corporate Surety licensed to do business in Illinois as Surety.
- c) The performance bond shall be conditioned upon faithful performance of all of the requirements of the Act, these regulations, and the conditions of the permit and shall cover the entire permit area or increments of the permit area, which increments shall in no case be smaller than acreage to be affected annually under the permit, as determined by the Department.
- d) The duration of the bond shall be for the time period provided in 62 Ill. Adm. Code 1805.13.
- e) Surety bonds shall be subject to the following conditions:
 - 1) 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 a surety and the bond shall not be cancellable by the surety at any time for any reason including, but not limited to non-payment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed may be cancelled with the consent of the Department provided 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 62 Ill. Adm. Code 1805 and the remaining performance bond liability;
 - 2) The Department will not accept a surety company's bond in excess of the company's maximum single obligation as provided by the Illinois Insurance Code (Ill. Rev. Stat. 1977, ch. 73, par. 756), unless the surety company satisfies the requirements prescribed by that provision for exceeding that limit;

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- 3) The Department shall not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three (3) times the company's maximum single obligation as provided by the Illinois Insurance Code (Ill. Rev. Stat. 1977, ch. 73, par. 756);
 - 4) The Department may provide in the bond that the amount shall be confessed to judgment upon forfeiture;
 - 5) The bond shall provide that the surety and the permittee shall be jointly and severally liable; and
 - 6) The bond shall provide that:
 - A) The surety will give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business;
 - B) In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the Department; and
 - C) Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation 62 Ill. Adm. Code 1800.11 (b). The Department shall issue notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed ninety (90) days. During this period the Department shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program, and the Act. Such notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining "pattern of willful violations" under 62 Ill. Adm. Code 1843.13 and need not be reported as a past violation in permit application under 62 Ill. Adm. Code 1788.14. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.
- f) Collateral bonds, except for letters of credit, shall be subject to the following conditions:
- 1) The Department shall obtain possession of and keep in custody all collateral deposited or certificates of deposit by the applicant, until authorized for release or replacement as provided in this subchapter;
 - 2) The Department shall value collateral at their current market value, not face value. However, certificates of deposit may be valued at face value;

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- 3) The Department shall require that certificates of deposit be assigned to the Department, in writing, and upon the books of the bank issuing such certificates;
 - 4) The Department shall not accept an individual certificate for denomination in excess of the maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C.;
 - 5) The Department shall require the banks issuing these certificates to waive all rights of setoff or liens which it has or might have against those certificates;
 - 6) Any assignment or pledge of part or all of the collateral supporting the collateral bond as collateral for another obligation will be null and void and without force or effect, and will provide grounds for an immediate forfeiture of the repledged collateral by the Department;
 - 7) The Department will only accept automatically renewable certificates of deposit; and
 - 8) The Department will require the applicant to deposit sufficient amounts of certificates of deposit, to assure that the Department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by 62 Ill. Adm. Code 1800 through 1808.
- g) Letters of credit may be accepted as collateral for a bond, provided:
- 1) The letter may only be issued by a bank organized or authorized to do business in the U.S. ("issuing bank"). If the issuing bank does not have an office for collection in Illinois, there shall be a confirming bank designated that is authorized to accept, negotiate and pay the letter upon presentment in Illinois;
 - 2) Letters of credit shall be irrevocable. The Department may approve withdrawal of a letter of credit as security in accordance with a schedule approved with the permit. Such withdrawal may not occur less than ninety (90) days after written notice has been given to the Department. Those letters of credit approved for withdrawal on areas requiring continued bond coverage shall be forfeited and collected by the Department if not replaced by other suitable collateral at least thirty (30) days before the earliest day of withdrawal authorized by the Department;
 - 3) The letter must be payable to the Department in part or in full upon demand and receipt from the Department of a certification that relevant forfeiture has occurred;
 - 4) The Department will not accept a letter or credit in excess of ten (10) percent of the issuing bank's capital surplus account as shown on a balance sheet certified by a Certified Public Accountant;
 - 5) The letter of credit shall be a binding obligation of the issuing bank, independent of acts, or omissions of the permittee, payable upon presentment to the Department on

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its written order. The Department and the State shall in no way be obligated to the Bank, its agents, or the permittee for repayment thereof.

- 6) The letter of credit shall provide on its face, or be accompanied by authorization satisfactory to the Department, for the Department, its lawful assigns, or the attorneys for the Department or its assigns, to sue, to waive notice and process, to appear on behalf of, and to 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 purposes of enforcement and any actions thereon shall be enforceable in the Courts of Illinois, and shall be construed under Illinois law; and
- 7) The letter of credit shall provide that:
 - A) The bank will give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;
 - B) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Department, provided that such notice shall in no way relieve the bank of its obligation to fulfill its obligations under the letter of credit; and
 - C) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee, within thirty (30) days after receiving notice thereof from the Department, shall substitute for the letter of credit a good and sufficient corporate surety licensed to do business in Illinois, or other replacement bond that fully complies with these regulations. On failure of the operator to make replacement of bond as herein provided, the Department shall suspend the permit of the operator until such substitution has been made.

(Source: Amended at 6 Ill. Reg. 1, effective June 1, 1982)

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Section 1806.13 Escrow Bonding

- a) The Department may authorize the operator to supplement a bonding program through the establishment of an escrow account deposited in one (1) or more federally insured accounts payable on demand only to the Department or deposited with the Department directly. Contributions to the account may be based on acres affected or tons of coal produced or any other rate approved by the Department. In all cases, the total bond including the escrow account, as determined by the Department in the bonding schedule, shall not be less than the amount required under 62 Ill. Adm. Code 1805, less amounts released under 62 Ill. Adm. Code 1807.
- b) Escrow funds deposited in federally insured accounts shall not exceed the maximum insured amount under applicable Federal insurance programs such as by F.D.I.C. or F.S.L.I.C.
- c) Interest paid on escrow account shall be retained in the escrow account and applied to the bond value of the escrow account unless the Department has approved that the interest be paid to the operator as a result of a written request from the operator.
- d) Certificates of deposit may be substituted for escrow accounts upon approval of the Department. Provisions of Section 1806.12 (f) shall apply to certificates of deposit as a collateral bond.

(Source: Amended at 6 Ill. Reg. 1, effective June 1, 1982)

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Section 1806.15 Replacement of Bonds

- a) The Department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, 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. A replacement of performance bonds pursuant to this Section shall not constitute a release of bond under 62 Ill. Adm. Code 1807.

(Source: Amended at 6 Ill. Reg. 1, effective June 1, 1982)

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Section 1806.16 Terms and Conditions for Liability Insurance

- a) The Department shall require the applicant to submit at the time of permit application, a certificate certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certificate shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells, and entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury shall be three hundred thousand dollars (\$300,000) for each occurrence and five hundred thousand dollars (\$500,000) aggregate; and minimum insurance coverage for property damage shall be three hundred thousand dollars (\$300,000) for each occurrence and five hundred thousand dollars (\$500,000) aggregate.
- b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including completion of all reclamation operations under this Chapter.
- c) The policy shall include a rider requiring that the insurer notify the regulatory authority whenever substantive changes are made in the policy, including any termination or failure to renew.

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