ILLINOIS DEPARTMENT OF MINES AND MINERALS
Richard R. Shockley
Director

LAND RECLAMATION DIVISION
227 SOUTH 7TH STREET - ROOM 201
SPRINGFIELD, ILLINOIS 62701
TELEPHONE: (217) 782-4970

LAND RECLAMATION DIVISION MEMORANDUM NO. 88-7

TO: All Permit Applicants

DATE: November 28, 1988

FROM: Douglas Downing, Supervisor
Land Reclamation Division

RE: Irrevocable Letters of Credit
62 Ill. Adm. Code 1800.21

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. Adm. Code 1800.21 for an acceptable reclamation bond. A copy of this new regulation is attached as Exhibit No. 2.

Please note that 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. 62 Ill. Adm. Code 1800.21(b)(4). Thus, be sure that any letter of credit submitted to the Department is accompanied by the above-referenced letter from the issuing bank's President and by the appropriate FDIC Call Report in order to avoid delays in bond approval.

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DEPT OF MINES AND MINERALS
LAND RECLAMATION

ADDRESS OF ISSUING BANK

Date: _____

Irrevocable Letter of Credit

Amount: $_____

Permit No. _____

Illinois Department of Mines and Minerals
Land Reclamation Division
227 South Seventh 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 _____ _____ (Permittee) Permit No. _____. 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. Adm. Code 1800.50(a).

The Issuing Bank authorizes 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 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 Banking Corporation operating under 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 filed 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.

Exhibit No. 1

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 or omissions of the Permittee, payable to the Department upon presentment in accordance with 62 Ill. Adm. Code 1800.21(b)(3). The Department and/or the State of Illinois shall in no way be obligated to the Issuing Bank, its agents, or the Permittee for repayment of all or any portion thereof, subject to the provisions of 62 Ill. Adm. Code 1800.50(e).

* This Irrevocable Letter of Credit will automatically extend for an additional term of one (1) year unless the Issuing Bank provides the Department with written notice, at least ninety (90) days prior to the expiration date, that it does not wish to extend the Irrevocable Letter of Credit for an additional period. The Department has the right to draw on this Irrevocable Letter of Credit in the event the Permittee does not replace this Irrevocable Letter of Credit, prior to thirty (30) days before its expiration, with a replacement bond that complies with the Department's regulations, pursuant to 62 Ill. Adm. Code 1800.21(b)(2).

* The 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. Adm. Code 1800.40.

NAME OF ISSUING BANK

_____

AUTHORIZED AGENT OF ISSUING BANK

* Select one

_____

TITLE OF AUTHORIZED AGENT

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 one hundred thousand dollars ($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 the United States ("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 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.

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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 one hundred thousand dollars ($100,000) or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

d)

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.

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

FILED
APR 15 1987

Effective Date
JUL 1 1987