

Office of Surface Mining  
Reclamation and Enforcement  
Western Region



**ADMINISTRATIVE PROCEDURES FOR  
BOND RELEASE AND TERMINATION OF  
JURISDICTION  
UNDER THE PERMANENT PROGRAM  
ON INDIAN LANDS AND IN FEDERAL PROGRAM  
STATES**

May 8, 2009

**ADMINISTRATIVE PROCEDURES FOR  
BOND RELEASE AND TERMINATION OF JURISDICTION  
UNDER THE PERMANENT PROGRAM  
ON INDIAN LANDS AND IN FEDERAL PROGRAM STATES**

**PURPOSE:**

This guideline establishes administrative procedures in the Western Region of the Office of Surface Mining Reclamation and Enforcement (OSM), for processing bond release applications under the permanent program on Indian lands and in Federal Program States. With approval of Phase III bond release, OSM will terminate jurisdiction on the lands specified in the application.

**PROCEDURES:**

The procedures outlined below apply where OSM is the regulatory authority and has direct responsibility for processing applications for all phases of permanent program bond release, and terminating jurisdiction upon Phase III bond release, under the permanent program.

1. Receipt of Application

- a. Timing of application submission. The following time frames are general in nature in order to allow for meaningful review and inspections by which to properly evaluate the completed reclamation (see 30 CFR 800.40(a) (1)). OSM will accept Phase I bond release applications at any time during the year with possible delays to avoid inspections during inclement weather conditions. OSM will accept Phase II and III bond release applications during the growing season, to allow adequate evaluation of vegetation establishment and revegetation success.
- b. The bond release application is filed with the applicable OSM Field or Area Office (see 30 CFR 800.40). The number of copies submitted should be the same as required for a permitting action.
- c. OSM will send an acknowledgment letter to the bond release applicant.
- d. OSM will ensure that there are no unabated enforcement actions pertaining to reclamation obligations on the area covered by the bond release application. If unabated NOV's or CO's exist, OSM will notify the applicant of its finding and will not proceed with processing the application until the enforcement actions are satisfactorily resolved according to 30 CFR 843.12(e).
- e. OSM will send the appropriate Indian tribe or Federal, State, and/or

local governmental agency where the operation is located, and any affected Federal land management agency, a copy of the bond release application for review and comment.

2. Application requirements are addressed in the OSM Western Region Permanent Program Bond Release Guidance (Phase I, II, III).

3. Notice of Bond Release Inspection

a. When OSM has completed its review of the bond release application, the applicant will be notified of the date for an inspection. The inspection will be held within 30 days after the application is deemed complete, or as soon thereafter as weather permits.

b. OSM will send notification letters, which include a date for the inspection, to the appropriate Indian tribe, surface land owners, agent, or lessee of the permit area for which a bond release is sought, and appropriate Federal land management and/or State agencies.

c. The surface owner, agent, or lessee may participate in the bond release inspection. OSM may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the bond release for the purpose of gathering information relevant to the proceeding.

4. Preparation of Written Determination

a. For Phase I and II bond release requests OSM will prepare an inspection report (including the Application Checklist) documenting review of the request for bond release. If OSM determines that the bond release application for Phase I or II bond release should be approved, OSM will prepare a memorandum of approval for the Phase I or II bond release.

b. For Phase III bond release, and in accordance with 30 CFR 700.11(d) (1) (ii), Termination of Jurisdiction, OSM will prepare a decision document. The decision document will include results of the technical review of the bond release application, review of the approved permit application package and inspection files, and the bond release inspection. This decision document will include a determination concerning whether the permittee has complied with the applicable reclamation requirements of the regulatory program and the permit.

5. Public Hearings

a. If a request for a hearing in accordance with 30 CFR Part 800.40(f) or 43 CFR Part 4 is received, OSM shall inform all interested parties and

hold a public hearing within 30 days after receipt of the request.

b. OSM will publish the date, time, and location of the public hearing in a newspaper of general circulation in the area of the mining operation for two consecutive weeks and will conduct the hearing in accordance with 30 CFR 800.40(g).

c. OSM may hold an informal conference, as provided in Section 513(b) of the Surface Mining Control and Reclamation Act (SMCRA) and 30 CFR 800.40(h) to resolve any written objections.

## 6. Decision

a. Within 60 days of receipt of a complete application, including public notice and proof of publication, if no public hearing is held, or within 30 days after a public hearing, OSM will send written notification to the applicant and interested parties of OSM's decision. If applicable, OSM will send written notification of its decision to release all or part of a performance bond. (See 30 CFR 800.40(b) (2) and 700.11(d) (1))

b. OSM's decision on the application shall be based upon the administrative record for Phase I and II or the decision document for Phase III, and the transcript of the public hearing or informal conference, if held.

c. If the decision is made to approve all or a part of the bond release application, the notification of OSM's decision should contain: the bond type and identification, the location and number of acres of land, the dollar amount released, the appropriate regulations by which a determination is made that the requirements for bond release and, when applicable, the requirements of termination of jurisdiction have been met, and a contact for further information. For the Indian Lands program, comments from the BIA, BLM, other Federal agencies as appropriate, and Tribal Government Authorities will be included in the decision document.

d. Where OSM approves a bond release in part or in total, OSM will prepare the bonding instruments for release to.

e. Where OSM disapproves the application, the letter of notification should contain, as appropriate: the bond identification, the reasons for disapproval, the recommendations for corrective actions necessary to obtain release, and the opportunity for a public hearing in accordance with 30 CFR 800.40(d).

f. All decision letters shall be sent certified mail, return receipt requested.

## 7. Appeal of Decision

If an appeal of the decision is made to the Office of Hearings and Appeals in accordance with 43 CFR Part 4, OSM will coordinate with the Solicitor's office, as appropriate.

**REFERENCES:**

The Surface Mining Control and Reclamation Act of 1977. 30 CFR 700.11(d), 30 CFR Part 750, 30 CFR Part 800, 31 CFR Part 225, and 43 CFR Part 4

**ATTACHMENTS:**

Appendix A: Application Checklist

Appendix B: Sample Phase III Bond Release and Termination of Jurisdiction Decision Document

**APPENDIX A**  
**APPLICATION CHECKLIST**

( ) Bond Release Application      ( ) Termination of Jurisdiction Request  
 Control No. \_\_\_\_\_ Permit No. \_\_\_\_\_ Phase \_\_\_\_\_  
 Company Name \_\_\_\_\_ Area \_\_\_\_\_

Application for Bond Release and Termination of Jurisdiction

|                |                 |  |
|----------------|-----------------|--|
| _____          |                 | Application submitted                                    |
| _____          |                 | Application signed and dated                             |
| _____          |                 | Map submitted  |
| <u>Present</u> | <u>Adequate</u> | Copies of letters required under 30 CFR 800.40(a)<br>(2) |
| _____          | _____           | Adjoining property owners                                |
| _____          | _____           | Local government bodies                                  |
| _____          | _____           | Planning agencies  |
| _____          | _____           | Sewage and water treatment authorities                   |
| _____          | _____           | Water Companies  |

|                |                 |   |
|----------------|-----------------|---|
| <u>Present</u> | <u>Adequate</u> | Notarized statement, in accordance with 30 CFR<br>800.40(a) (3) |
|----------------|-----------------|---|

|                |                 |  |
|----------------|-----------------|--|
| <u>Present</u> | <u>Adequate</u> | Bond Release Application Contents:<br>(See Permanent Program Bond Release and Termination<br>of Jurisdiction Guidance Documents) |
| _____          | _____           | Phase I  |
| _____          | _____           | Phase II   |
| _____          | _____           | Phase III  |

|                |                 |   |
|----------------|-----------------|---|
| <u>Present</u> | <u>Adequate</u> | <u>Newspaper Advertisement</u>  |
| _____          | _____           | Published in a newspaper of general circulation in locality<br>of the operation placed at the time of filing of application<br>(dates_____) |
| _____          | _____           | Proof received (date received _____)  |
| _____          | _____           | Proof received within 30 days of filing application   |
| _____          | _____           | Ad runs at least once a week for 4 successive weeks   |
| _____          | _____           | Ad includes:  |
| _____          | _____           | Name of permittee   |
| _____          | _____           | Permit number   |
| _____          | _____           | Approval date   |
| _____          | _____           | Precise location of lands affected  |
| _____          | _____           | Number of acres   |
| _____          | _____           | Type of bond in effect  |
| _____          | _____           | Amount of bond in effect  |
| _____          | _____           | Amount of bond for which release is sought  |
| _____          | _____           | Type of reclamation work performed  |
| _____          | _____           | Dates of completion of that work  |
| _____          | _____           | Description of the reclamation results achieved   |
| _____          | _____           | Statement that written comments, objections and<br>request for public hearing or informal conference<br>may be submitted                    |



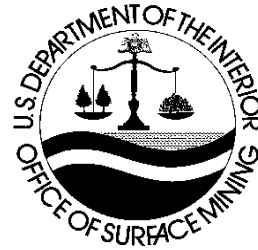
\_\_\_\_\_  
\_\_\_\_\_

Address for submission of such comments, etc.  
Closing date for receipt of such comments, etc. (at  
least 30 days after the last publication date

**APPENDIX B**

**SAMPLE PHASE III BOND RELEASE AND TERMINATION OF  
JURISDICTION DECISION DOCUMENT**

Office of Surface Mining Reclamation and  
Enforcement Western Region



**DECISION DOCUMENT**  
**Phase III Bond Release and Termination of**  
**Jurisdiction**

**[Permit No. / Mine Name]**

**PSD Project Number:**

**[Date]**

## **PHASE III BOND RELEASE AND TERMINATION OF JURISDICTION**

**[Permittee's Name]**  
**[Mine Name]**  
**[Project/Permit Number]**

1. Determination that the permittee has fully complied with the applicable requirements of the Surface Mining Control and Reclamation Act of 1977 and the Indian Lands Program /Federal Program in 30 CFR Part 750 or 30 CFR Part 947, respectively.
2. Copy of the Approved Application
3. Letters of Review and Consultation
  - a. Tribes
  - b. Bureau of Land Management
  - c. Bureau of Indian Affairs
  - d. Other Federal, State, Local agencies
4. OSM Technical Analyses
5. Transcripts of Public Hearing and/or Informal Conference