



U. S. DEPARTMENT OF THE INTERIOR  
OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
**DIRECTIVES SYSTEM**

Subject Number:  
REG-10

Transmittal Number:  
339

Date: 5/26/87

Subject: Bond Forfeiture

Approval: *Jed O. Christensen* Title: Director

1. PURPOSE. The purpose of this directive is to provide guidance for the forfeiture of performance bonds held for surface coal mining operations on Federal lands, Indian lands and in States with Federal programs. This directive is not intended to apply to State regulatory authorities (SRA's); however, it does provide guidance where there is a Federal-State cooperative agreement or wherever OSMRE is a co-obligee of a surety, collateral or self-bond. The directive is intended to provide general procedural and policy guidance which may be supplemented by Field Directives to further define organizational involvement in the bond forfeiture process.

2. DEFINITIONS.

a. Cooperative Agreement. - An agreement pursuant to Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and Subchapter D of Title 30 of the Code of Federal Regulations (the Federal Lands Program) which allows any State with an approved program to regulate surface coal mining and reclamation operations on Federal lands within that State.

b. Federal Program. - A program established by the Secretary pursuant to Section 504 of SMCRA to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State.

c. Bond Forfeiture. - Actions taken by the obligee to collect from the surety, the issuer of collateral or the guarantor of any self-bond, the amount of the performance bond upon failure of the permittee to perform the conditions for which the bond was given. Bond forfeiture begins with notification of the surety and principal and ends with the collection of the bond amount or an agreement with the surety or other party to satisfactorily perform the actions for which the bond was issued.

d. Performance Bond. - A surety bond, collateral bond, self-bond, or a combination thereof, made payable to the regulatory authority and conditioned upon the performance of all the appropriate requirements of SMCRA, a State or Federal regulatory program, the Federal lands program, the permit and the approved reclamation plan.

e. Surety. - One who promises to pay money or perform other acts in the event a principal/permittee fails to perform all the appropriate requirements of SMCRA, a State or Federal regulatory program, or the permit, including completion of the approved reclamation plan. A surety is usually a corporation licensed to do business as a surety in the state where the operation is located.

f. Principal. - The person or corporation ultimately liable, whose performance of actions under the permit is guaranteed by the surety.

g. Obligor. - Person who promises to perform some obligation under the bond.

h. Obligee. The party to whom a bond is given.

### 3. POLICY/PROCEDURES.

a. Policy. - It is OSMRE's policy that:

(1) Bond forfeiture will be used whenever the appropriate official determines that other enforcement actions have not been or will not be effective to ensure compliance with SMCRA. The bond forfeiture process may be initiated at the discretion of the appropriate official who shall consider the individual circumstances of the permit and the reasonableness of pursuing other enforcement actions. Bond forfeiture is the ultimate means to obtain reclamation.

(2) The bond forfeiture process may be initiated when a permittee fails to conduct the approved reclamation, fails to abate a violation or if the terms and conditions of the permit are violated.

(3) The bond forfeiture process and reclamation of the affected mining sites will be completed in a timely manner, as described in the procedures of this directive and any related field directives.

(4) Reclamation performed by the permittee, surety or other party in lieu of bond collection shall be in accordance with the approved reclamation plan.

(5) When the amount of the performance bond has been collected and appears to be insufficient, OSMRE may take action to initiate reclamation with funds available pursuant to Section c. (7) of this directive, and take appropriate actions to collect the additional costs of reclamation from the permittee.

(6) When the amount of the performance bond has been collected but is insufficient to do the reclamation in accordance with the approved reclamation plan, OSMRE may implement an alternative reclamation plan giving consideration to the surface owner's land use plans.

(7) OSMRE cannot assign its claims against the principal/permittee or otherwise subrogate the government's interests in order to collect the bond from the surety. When collecting a bond OSMRE officials should not sign any releases or "settlement agreements" which assign OSMRE's claims against the principal.

(8) After the bond amount is paid by the surety, OSMRE can agree to a total release of the surety against all future claims on bond.

(9) The permittee shall be provided the right to appeal the notice of bond forfeiture to the Office of Hearings and Appeals under 43 CFR 4.1280.

b. Responsibilities.

(1) Director. The Director of OSMRE provides policy guidance and approves procedures for bond forfeiture.

(2) Deputy Director for Operations and Technical Services (OTS). The Deputy Director of OTS implements these procedures and assures consistent application by Field Operations, including approval of any field directives implementing this directive.

(3) Assistant Director for Field Operations (ADFO). The Assistant Directors for Field Operations assure the collection of forfeited bond funds and completion of reclamation. This includes: coordinating legal and technical aspects of bond collection with the appropriate Field Office Director and Field Solicitor; consulting with State regulatory authorities, Federal land management agencies and surface owners; monitoring contracts for the completion of reclamation activities; and approving proposed forfeiture actions and subsequent reclamation work conducted on Federal lands in States with cooperative agreements. The ADFO's are also responsible for developing and implementing any policy field directives under this directive.

(4) Field Office Director (FOD). The Field Office Directors initiate bond forfeiture procedures and provide assistance to the Assistant Directors for Field Operations. FOD's are also responsible for developing and implementing procedural directives on bond forfeiture.

c. Procedures When OSMRE is the Regulatory Authority.

(1) When to Initiate the Bond Forfeiture Process.

The bond forfeiture process can begin under any of the following circumstances:

(a) 30 days after a Failure To Abate Cessation Order (FTACO) has been issued and abatement has not occurred.

(b) 120 days prior to the expiration of a permit on which there has been a temporary cessation of production and no application for renewal has been received.

(c) After a permit has been revoked and the reclamation is not completed within the period specified by the revocation decision.

(d) Whenever a permittee has filed for bankruptcy or a creditor has filed a claim against the collateral posted by a permittee.

(e) 30 calendar days prior to bond expiration if the permittee fails to file a new bond.

(f) After all other enforcement actions have been exhausted to resolve a compliance problem.

(2) How to Initiate the Bond Forfeiture Process. The forfeiture process is initiated by an inspector or any other OSMRE official, by preparing a Request to Begin Forfeiture (RBF), which is sent to the Field Office Director or Assistant Director for Field Operations, as appropriate. Appendix 1 contains the format for the RBF.

(a) After receiving an RBF, the ADFO or FOD may designate an official to be responsible for handling all matters relating to the forfeiture request. This designated official will coordinate with the Regional Solicitor's office and any other appropriate official to determine if the permittee has appealed the notice of violation (NOV), cessation order (CO) or other action upon which the forfeiture action is based.

(b) The designated official must review all the available information and make a determination whether the forfeiture action should be pursued in lieu of, or in conjunction with other enforcement actions. Consideration should be given to the history of violations, the seriousness of the violation, hazards to health and safety, and the likelihood that the government's interests will be protected and that the permittee will properly reclaim the site.

### (3) Forfeiture Notification.

(a) If the recommendation to proceed with the bond forfeiture action is approved by the ADFO or FOD, a notice of bond forfeiture will be prepared following the letter format in Appendix 2. Copies of the signed notices of bond forfeiture will be sent to the Deputy Director, Program Operations and Technical Services. In addition, the notice of bond forfeiture should be sent to the surety or other responsible party guaranteeing the permittee's collateral, using the letter format provided in Appendix 3. The ADFO or FOD will determine if a field survey should be performed at this time.

(b) The notice of bond forfeiture states that OSMRE has determined the permittee to be in default of the terms of the permit and that OSMRE intends to collect the performance bond or collateral 30 calendar days from the date of receipt of the letter. The notification letter should include:

1. Permit number;
2. Acreage of lands subject to forfeiture;
3. The reasons for the forfeiture;
4. The amount and identification of bond(s) subject to forfeiture;
5. The conditions under which forfeiture may be avoided.

(c) The notice of bond forfeiture allows the permittee 30 calendar days to request an informal conference to discuss actions to avoid forfeiture. The letter also provides an opportunity for an appeal by the permittee of the decision to forfeit. These letters must be sent by certified mail to ensure timely notification.

(4) Informal Conference. Forfeiture actions will temporarily cease if the permittee requests an informal conference in writing, within 30 calendar days. The surety should be invited to attend the informal conference. Whenever such a conference is held, the ADFO or FOD will ensure that a complete field survey of the mine site is made.

(a) Where appropriate, the survey team should include technical personnel from the OSMRE Field Operations Offices. The team must assess the reclamation work to be done at the permit site, as well as the approximate cost of such reclamation work. The survey team will also prepare conditions and a schedule for the completion of reclamation work, in accordance with the approved reclamation plan, which shall be presented to the permittee at the informal conference.

(b) Any agreement between OSMRE and the permittee at the informal conference shall be written and should identify the actions which will rectify the problems and result in the withdrawal of the forfeiture action. Appropriate OSMRE staff

will monitor the permittee's compliance with the agreement. The agreement should contain provisions for reinstatement of forfeiture in the event of noncompliance.

(c) After successful implementation of the agreement, the forfeiture notification will be formally withdrawn. In the event that a satisfactory agreement is not reached or the permittee fails to comply with the negotiated agreement, OSMRE will reinstate the forfeiture notification by proceeding to collect the bond amount.

(5) Bond Collection Letter. The ADFO or FOD will send a collection letter to the surety using the form letter provided in Appendix 4. The letter specifies the amount of bond to be paid, the address to which payment must be sent, and the name of the payee. The bond collection letter is sent to the surety when: the permittee has failed to request an informal conference within the time allowed; the permittee or other party has failed to negotiate a satisfactory compliance agreement; the appeal of the forfeiture by the permittee is ended; or the compliance agreement has not been implemented.

(6) Collection and Deposit of Forfeiture Bond Money. When forfeited funds are received they will be immediately sent to the Chief, Division of Finance, Denver Finance Center by the Collections Officer. Denver Finance will furnish the Chief, Division of Budget, Planning and Management Analysis a copy of the abstract of remittance for each bond forfeiture so that an apportionment request from the Office of Management and Budget (OMB) can be initiated. OSMRE's Denver Finance Center is responsible for establishing the proper accounts, crediting the collected forfeited funds or collateral and for certifying funds available for expenditure for reclamation. If the surety fails to relinquish the amount of the bond or insists upon subrogation of the government's interests as a condition of payment of the bond, the appropriate ADFO or FOD will notify the Solicitor's Office in writing to initiate proceedings to collect the bond amount.

(a) It is OSMRE's policy not to agree to any subrogation of interests or to assign claims against the permittee as a condition for bond payment.

(b) After the bond amount is collected, OSMRE may agree to release the surety against any and all future claims relating to that bond.

(c) Procedures for acceptance of forfeited funds and proper transfer to the Denver Finance Center are provided in a separate directive. (FIN-5)

(7) Completion of Reclamation. The Denver Finance Center will establish a separate account for each bond forfeiture and notify the Division of Budget, Planning and Management Analysis (DBMA). The DBMA will obtain an

apportionment of funds from OMB and warrant from Treasury and then allocate the funds to the appropriate office. The ADFO or FOD will then contract for completion of the reclamation, monitor the contractor's performance and approve the completed work.

(a) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the AD or FOD may complete reclamation of the bonded area to the extent the forfeited funds allow and, with assistance from the Field Solicitor, implement actions to recover from the permittee the additional funds needed to fully reclaim the areas. If changes in the reclamation plan are needed, the ADFO or FOD will coordinate development of a new reclamation plan with the appropriate surface managing Federal agency, surface owner or Indian tribe.

(b) In the event the amount forfeited is more than the amount necessary to complete reclamation, the ADFO or FOD will approve the return of the unused funds to the surety or party from whom they were collected.

d. Procedures Where There is a Federal-State Cooperative Agreement

Under the Federal Lands Program authorized by SMCRA, the responsibility for bond forfeiture and completion of reclamation with the forfeited funds may be delegated to a State regulatory authority, (SRA). In States where this delegation has occurred, the State regulatory authority will be responsible for implementing the bond forfeiture procedures in accordance with the approved State program and the Federal-State cooperative agreement. It is expected that all cooperative agreements will be reviewed for adequate provisions for bond forfeiture procedures and notification consistent with this directive.

(1) Permit Issued by SRA

Where, under the Federal-State cooperative agreement, the permit is issued by the SRA, the forfeiture will be initiated by the SRA under State procedures. SRA's should be requested to send a copy of any forfeiture notification to the appropriate OSMRE ADFO or FOD. Where the amount of the forfeited funds is insufficient to cover the cost of reclamation according to the approved plan, OSMRE will coordinate with the appropriate Federal land managing agency or Indian tribe to modify and approve an alternate reclamation plan, if necessary. OSMRE will also coordinate with the SRA and the Solicitor's Office to collect from the permittee the additional funds needed to reclaim the site.

(2) Permit Jointly Issued. Where, under the Federal-State cooperative agreement, the permit is issued jointly and the SRA and OSMRE are co-obligee's, the SRA will generally initiate the bond forfeiture action. The SRA should

send copies of the bond forfeiture initiating document to OSMRE; however, it is the responsibility of the ADFO or FOD to ensure that such notification occurs.

(a) Where the amount of the forfeited funds are insufficient to cover the cost of reclamation according to the approved plan, OSMRE will review the proposed reclamation plan, coordinate with the appropriate Federal land management agency or Indian tribe, and provide written concurrence to the SRA on any alternative reclamation plan. OSMRE will co-sign any check received from the surety or guarantor. OSMRE will also monitor the reclamation in such cases and provide technical assistance to the SRA if requested.

(b) If the amount of the forfeited bond or collateral is sufficient to cover the cost of reclamation, the State should be instructed to return any unused portion of the forfeited funds to the surety or other party from whom the funds were collected.

(c) If an agreement between the permittee or surety and the SRA is negotiated, the SRA must obtain the concurrence of OSMRE. OSMRE will coordinate with the appropriate Federal land management agency or Indian tribe before giving concurrence.

4. Reporting Requirements. None

5. References.

- a. SMCRA 521 (a)(4)
- b. SMCRA 525 (d)
- c. 30 CFR 800.50
- d. 43 CFR 4.1280
- e. OSMRE Directive FIN-5

6. Effect on Other Documents. None

7. Effective Date. Upon Issuance.

8. Contact. Frank Mancino, Division of Permit and Environmental Analysis, (202) 343-7952.



UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF SURFACE MINING AND RECLAMATION  
BOND FORFEITURE REFERRAL

Referral No. \_\_\_\_\_  
(to be completed by Field Office)

Company Name \_\_\_\_\_ Permit No. \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ County \_\_\_\_\_

Is expedited action required?  yes  no

Briefly describe the reasons for the recommended action (supporting detailed information, background documents, and court referral must be attached where appropriate):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Are there enforcement actions which have been taken against other persons concerning issues related to this same mine site?  
 yes  no

Are there enforcement actions which have been taken against other permits or operations associated with this permittee?  yes  no

If yes, identify the permits/operations, persons and/or companies involved and describe the type, dates, and status of enforcement actions (supporting detailed information and background documents must be attached).

Permit Issue Date \_\_\_\_\_ Expiration Date \_\_\_\_\_

Is the operation currently mining?  yes  no  
Is all permitted coal extraction completed?  yes  no  
Is reclamation work currently being done?  yes  no  
Is the site abandoned without completion of reclamation or maintenance?  
 yes  no

Originator \_\_\_\_\_ Date \_\_\_\_\_

Supervisor \_\_\_\_\_ Date \_\_\_\_\_

(Date)

NOTICE OF BOND FORFEITURE

(Name)

(Address)

\_\_\_\_\_

Re: (Permittee)

Permit No. \_\_\_\_\_

\_\_\_\_\_ County, (State)

Dear \_\_\_\_\_:

You are hereby notified that the Office of Surface Mining Reclamation and Enforcement is initiating forfeiture effective on (date of letter) on the performance bond for Permit No. \_\_\_\_\_ in the amount of \_\_\_\_\_ for failure to comply with the terms of the permit and bond agreement. This action is taken pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 USC 1201 et seq., and its attendant regulations at 30 CFR Part 800. The performance bond on this permit is Surety Bond No. \_\_\_\_\_ issued by \_\_\_\_\_ (Surety) \_\_\_\_\_ in the amount of \_\_\_\_\_.

(Name)

This forfeiture is a result of your failure to abate the violations | Explanation  
stated in the following Notices of Violation and Cessation Orders: | of why Bond  
| forfeiture  
| action is

<u>Notice of Violations</u>	<u>Issued</u>	<u>Cessation Order</u>	<u>Issued</u>	being taken.   Identify   permit revo-   cation, or   expiration
<u>(Number)</u>	<u>(Date)</u>	<u>(Number)</u>	<u>(Date)</u>	
_____	_____	_____	_____	
_____	_____	_____	_____	

You may prevent bond forfeiture from proceeding by taking one of the | dates, bond  
following actions: (1) satisfactorily abate the above violations | expiration,  
within 30 days of the date of this notice, (2) show cause why we | bankruptcy  
should not proceed with forfeiture, or (3) satisfactorily abate the | filings,  
above violations within the time limits given in a reclamation | etc.  
agreement which you or another party have signed.

In order to arrange a reclamation agreement with us or to show cause  
why we should proceed to collect the bonds (or collateral), you must  
submit a written request for a conference to me at the letterhead  
address within 20 calendar days from the date you receive this notice,  
but no later than 30 calendar days from the date of this notice.

Pursuant to 43 CFR 4.1280, you have the right to an administrative  
appeal of this bond forfeiture decision. Such appeal must be filed in  
writing within 20 days from the date you receive this decision, but no  
later than 30 days from the date of this notice. The notice of appeal  
must be sent to the letterhead address and a copy sent at the same time

(Name)

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to the U.S. Department of the Interior, Board of Land Appeals, 4015  
Wilson Boulevard, Arlington, Virginia 22203.

We will proceed with collection of the performance bond 30 calendar  
days from the date of this notice if you have not satisfactorily  
abated the violations above (or corrected the reasons for  
non-compliance), requested a conference, or filed an administrative  
appeal.

Sincerely,

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

cc: (Surety Company)

(Address)

\_\_\_\_\_

(Name)

(Address)

\_\_\_\_\_

Re: (Permittee)

Permit No. \_\_\_\_\_

\_\_\_\_\_ County, (State)

Dear \_\_\_\_\_:

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has found that (coal company), permittee for permit No. \_\_\_\_\_, is not in compliance with the terms and conditions of the approved permit. The enclosed notice, which was sent to the permittee contains the specific reasons for the decision.

In accordance with the provisions of performance bond No. \_\_\_\_\_, failure of the principal to fulfill the specified obligations will result in a forfeiture of the bond. As the surety, you may participate with (the permittee) should the permittee request a

(Name)

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conference within 30 calendar days from the date on the enclosed notice. We will proceed with collection of the performance bond 30 calendar days from the date of this notice if the permittee has not abated the violations (corrected the reason for non-compliance), requested a conference, or filed an administrative appeal.

Sincerely,

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

Enclosure

cc: Assistant Director, Eastern or Western Field Operations

DD/OTS

LETTER OF COLLECTION

(Address of Surety)  
\_\_\_\_\_  
\_\_\_\_\_

Re: (Address of Principals /  
Permittee)  
\_\_\_\_\_

Dear Sir:

Under the authority of the Surface Mining Control and Reclamation Act of 1977, (SMCRA) the Office of Surface Mining Reclamation and Enforcement (OSMRE) hereby requires payment of (amount of bond to be collected) for surety bond No. \_\_\_\_\_.

On (date of Notice of Bond Forfeiture) we sent you a copy of the (permittee's name) Notice of Bond Forfeiture. Our records show that no written request for a conference was received, and that the required actions to bring the permit into compliance with the terms of the permit and bond agreement have not occurred. Therefore, under SMCRA and the regulations at 30 CFR Part 800, OSMRE demands payment of (amount of bond), within 30 calendar days from the date of this letter. This amount represents the total of the surety bond issued for (permittee's name), Permit No. \_\_\_\_\_, \_\_\_\_\_ County, (State).

Payment of this amount within the time period specified will result in the release of the surety from all future claims under this bond. However, OSMRE will not subrogate the Government's interests or assign any future claims against the permittee as a condition of payment of the forfeited bond amount. Unless we receive payment by (date), proceedings will be instituted in the appropriate district court of the United States to collect this bond.

Please make your check or money payable to DOI, Office of Surface Mining Reclamation and Enforcement, and mail to:

(Assistant Director FO or  
Field Office Director)

To assure proper credit for payments, please write the bond number and permittee's name on the front of the check or money order.

Sincerely,

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

cc: Field Solicitor, DD/OTS  
ADFO or FO