Rules of
Department of Natural Resources
Division 40—Land Reclamation Commission
Chapter 7—Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

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Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 40—Land Reclamation
Commission
Chapter 7—Bond and Insurance
Requirements for Surface Coal Mining
and Reclamation Operations

10 CSR 40-7.010 General Requirements
for Bonding of Surface Coal Mining
and Reclamation Operations
(Rescinded April 11, 1983)

10 CSR 40-7.011 Bond Requirements

PURPOSE: This rule sets forth require-
ments for bonding of surface coal mining
and reclamation operations pursuant to
sections 444.830, 444.910 and 444.950,
RSMo.

(1) Definitions.
(A) Increment means an area that is covered
by a single bond and that is a portion of a
permit area.
(B) Open pit means that area between the
crest of the highwall to the toe of the spoil.
(C) Personal bond means an undertaking by
the permittee to successfully complete recla-
mation according to commission regulations,
supported by negotiable certificates of deposit
or irrevocable letters of credit which may be
drawn upon by the commission if reclamation
is not completed or if the permit is revoked
prior to completion of reclamation.
(D) Phase I bond means a performance bond
conditioned on the release of eighty percent
(80%) of the bond upon the successful comple-
tion of all the requirements of the Surface Coal Mining Law,
the regulatory program, the permit and the
reclamation plan, and bonded liability shall
continue until reclamation is completed and
approved by the commission. In the event of
forfeiture, the amount remaining on the bond
may be used to complete reclamation in any
location in the permit area.

(2) Requirement to File a Bond. After an
application for a permit to conduct surface coal
mining and reclamation operations has been
approved under 10 CSR 40-6, but before the
permit is issued, the applicant shall file with
the director a performance bond payable to the
state. The performance bond shall be condi-
tioned upon the faithful performance of all the
requirements of the Surface Coal Mining Law,
the regulatory program, the permit and the
reclamation plan, and bonded liability shall
continue until reclamation is completed and
approved by the commission. In the event of
forfeiture, the amount remaining on the bond
may be used to complete reclamation in any
location in the permit area.

(3) Incremental Bonding.
(A) The applicant may file either a bond
sufficient to cover the entire permit area or a
bond for the increment in which the applicant
will initiate and conduct surface coal mining
and reclamation operations. Disturbance is
prohibited on succeeding increments, under-
ground shafts, tunnels, or operations prior to
acceptance of bond.
(B) An operator shall not disturb acreage
outside the boundary of a bonded increment
until s/he has submitted to the director a bond
for the proposed increment and has received
notification from the director that the bond has
been accepted.
(C) Independent increments shall be of
sufficient size and configuration to provide for
efficient reclamation operations should recla-
mation by the regulatory authority become
necessary pursuant to 10 CSR 40-7.031(3).
(D) The operator shall submit an incremen-
tal bonding schedule and identify the initial
and successive areas or increments for bonding
on the permit application map submitted
for approval as provided in the application
and shall specify the bond amount to be provided
for each area or increment.

(4) Bond Amounts.
(A) Except as noted in subsection (4)(D), the
amount of Phase I bonds shall be calculated at
two thousand five hundred dollars ($2,500) per
every bonded acre unless the area is a coal
preparation area in which Phase I bond shall
be calculated at ten thousand dollars ($10,000)
per acre.
(B) For mines with fewer than one thousand
(1,000) bonded acres, the minimum amount of
Phase I bond applied to a single permit shall be
ten thousand dollars ($10,000), or the equiva-
 lent of twenty (20) acres of bond for each acre
of open pit area, whichever is greater.

(5) Changing Bond Amounts.
(A) The Phase I bond amount listed in
subsection (4)(A) of this rule may be adjusted
annually by a maximum of two hundred fifty
dollars ($250) per acre, not to exceed a
maximum per acre bond amount of five
thousand dollars ($5,000) per acre.
(B) The Phase I bond amount listed in
subsection (4)(B) of this rule for coal prepara-
tion areas may be adjusted annually by a
maximum of five hundred dollars ($500) per
acre, not to exceed a maximum per acre bond
amount of fifteen thousand dollars ($15,000)
per acre.
(C) The changes allowed in subsection (5)(A)
and (B) shall be proposed by the commission
through the normal rulemaking process after
demonstration by the director that such action
is necessary to ensure adequate bonding
amounts.

(D) The director shall calculate the liability
to the Coal Mine Land Reclamation Fund on
an annual basis and shall on the basis of the
calculations determine whether to pursue
rulemaking to raise the bonding amounts
listed in subsections (4)(A) and (B) of this rule.

(E) The calculations of the minimum Phase
I reclamation bond amount for subsections
(4)(A) and (B) shall depend upon the reclama-
tion requirements of the approved permits, and
shall reflect the probable difficulty of reclama-
tion giving consideration to such factors as
site topography, geology, hydrology, and
revegetation potential.

(6) Types of Bonds. The director may accept
surety bonds, personal bonds and self-bonding.
(A) Surety bonds shall be subject to the
following conditions:

1. The surety bond shall be submitted on a
form provided by the director.
2. No bond of a surety company will be
accepted unless the bond shall not be cancella-
ted for any reason whatsoever, including, but
not limited to, nonpayment of premium,
bankruptcy or insolvency of the permittee or
issuance of notices of violations or cessation
orders and assessment of penalties with
respect to the operations covered by the bond,
except that surety bond coverage for lands not
disturbed may be canceled if the surety
provides written notification and the director
is in agreement. The director shall advise the
surety, within thirty (30) days after receipt of a
notice to cancel bond, whether the bond may be
canceled on an undisturbed area.
3. A surety company's bond shall not be
accepted in excess of ten percent (10%) of the
surety company's capital surplus account as
shown on a balance sheet certified by a
certified public accountant;
4. The total amount of the bonds issued by a surety on behalf of any permittee shall not exceed thirty percent (30%) of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant;

5. The surety shall be licensed to conduct a surety business in Missouri;

6. Both the surety and the permittee shall be primarily liable for completion of pit reclamation, with the surety's liability being limited to the penalty amount of the bond;

7. The bond shall provide that—
   A. The surety will give prompt notice to the permittee and the director 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; and
   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 director;

8. The bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority 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. 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 of subsection (2)(A). The director shall issue a 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 sixty (60) days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. The notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1)(A), 6. and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(3) or 10 CSR 40-6.100(2). If a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued requiring immediate compliance with 10 CSR 40-3.150(4). The operator shall also immediately begin to conduct reclamation operations in accordance with the reclamation plan; and

9. The bond shall be forfeitable upon revocation of the underlying permit.

(B) Personal bonds secured by certificates of deposit shall be subject to the following conditions:

1. The bond shall be submitted on a form provided by the commission;

2. The certificate(s) shall be in the amount of the bond or in an amount greater than the bond, subject to the limitations of paragraph (5)(D)(4) of this rule, shall be made payable to or assigned to Missouri, both in writing and upon the records of the bank issuing the certificates, and shall be automatically renewable at the end of the term of the certificate. If assigned, banks issuing the certificate(s) waive all rights of set off or liens against the certificate(s);

3. Interest on the certificate of deposit shall be paid to the permittee;

4. No single certificate of deposit shall exceed the sum of one hundred thousand dollars ($100,000) nor shall any permittee submit certificates of deposit aggregating more than one hundred thousand dollars ($100,000) from a single bank. The issuing bank or savings and loan company must be insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

5. The certificate of deposit shall be kept in the custody of Missouri until the bond is released by the commission;

6. The bank issuing the certificate(s) of deposit for bonding purposes shall give prompt notice to the commission and the permittee of any insolvency or bankruptcy of the bank;

7. The bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority 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. Upon notice of any bank insolvency or bankruptcy, the permittee shall be deemed to be without bond coverage in violation of subsection (2)(A). The director shall issue a 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 sixty (60) days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. The notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1)(F), and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(2) or 10 CSR 40-6.100(2). If a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued requiring immediate compliance with 10 CSR 40-3.150(4). The operator shall also immediately begin to conduct reclamation operations in accordance with the reclamation plan; and

8. The bond shall be forfeitable upon revocation of the underlying permit.

(C) Personal bonds secured by letters of credit shall be subject to the following conditions:

1. The bond and the letters of credit shall be submitted on forms provided by the commission;

2. The letter of credit shall be no less than the face amount of the bond and shall be irrevocable;

3. The beneficiary of the letter of credit shall be the director of the Missouri Land Reclamation Commission;

4. The letter of credit shall be issued by a bank or trust company located in the United States. If the issuing bank or trust company is located in another state, a bank or trust company located in Missouri must confirm the letter of credit. Confirmations shall be irrevocable and on a form provided by the director;

5. The letter of credit shall be governed by Missouri law. The Uniform Customs and Practice for Documentary Credits, fixed by the International Chamber of Commerce, shall not apply;

6. The letter of credit shall provide that the director may draw upon the credit by making a demand for payment, accompanied by his/her statement that the commission has declared the permittee's bond forfeited;

7. The issuer of a letter of credit or confirmation shall warrant that the issuance will not constitute a violation of any statute or regulation which limits the amount of loans or other credits which can be extended to any single borrower or customer or which limits the aggregate amount of liabilities which the issuer may incur at any one (1) time from issuance of letters of credit and acceptances;

8. The bank issuing the letter(s) of credit for bonding purposes shall give prompt notice to the commission and the permittee of any insolvency or bankruptcy of the bank;

9. Upon notice of any bank insolvency or bankruptcy, the permittee shall be deemed to be without bond coverage in violation of subsection (2)(A). The director shall issue a 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 sixty (60) days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. A notice of violation, if abated within the period allowed, shall not be counted
as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1)(F)2. and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(2) or 10 CSR 40-6.100(2). If a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued; and

10. The bond shall be forfeitable upon revocation of the underlying permit.

(D) Self-Bonding.

I. Definitions. For the purposes of this section only—

A. Current assets means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one (1) year or within the normal operating cycle of the business;

B. Current liabilities means obligations which are reasonably expected to be paid or liquidated within one (1) year or within the normal operating cycle of the business;

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

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

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

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

2. The commission may accept a self-bond if the following conditions are met:

A. The applicant designates an agent for service of process in the state;

B. The applicant has been in continuous operation as a business entity the five (5) years preceding the application. The commission may accept the bond of a joint venture with fewer than five (5) years of continuous operation if each member has been in continuous operation for the five (5) years preceding the application;

C. The applicant submits financial information in sufficient detail to show one (1) of the following:

(I) The applicant has a current Moody's Investor Service or Standard and Poor's rating for its most recent bond issuance of A or higher;

(II) The applicant has a tangible net worth of at least ten (10) million dollars, a ratio of total liabilities to net worth of two and one-half (2 1/2) times or less and a ratio of current assets to current liabilities of 1.2 times or greater; and

D. The applicant submits—

(I) Financial statements for the last complete fiscal year, accompanied by a report prepared by an independent certified public accountant, in conformity with generally accepted accounting principles, containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; and

(II) Financial statements for completed quarters in the current fiscal year and additional information that may be requested by the director.

3. The commission may accept a written guarantee for an applicant's self-bond from a third-party guarantor with a long-term vested interest in the surface coal mining operation, if the guarantor meets the conditions of paragraph (5)(D)2. as if it were the applicant. The applicant must still meet the requirements of subparagraphs (5)(D)2.A., B. and D. of this rule. Copies of documents demonstrating that interest must be submitted to the director. The written 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 to the commission funds, up to the bond amount, sufficient to complete the reclamation plan;

B. The guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the director at least ninety (90) days in advance of the cancellation date and the director accepts the cancellation; and

C. The cancellation may be accepted by the director only if the applicant obtains suitable replacement bond before the cancellation or if the covered lands have not been disturbed.

4. The total amount of the outstanding and proposed self-bonds for surface coal mining and reclamation operations shall not exceed twenty-five percent (25%) of the applicant's or third-party guarantor's tangible net worth in the United States, as determined by a certified public accountant.

5. For a self-bond, the guarantor shall execute an indemnity agreement according to the following:

A. The indemnity agreement shall be executed and signed by all persons and parties who are to be bound by it, including the parent corporate guarantor, a third-party nonparent corporate guarantor, or both, and shall bind each jointly and severally. If the applicant is a partnership, joint venture or a syndicate, the agreement shall bind the partner or party who has a beneficial interest, directly or indirectly, in the applicant;

B. Corporations applying for a self-bond, and parent and nonparent corporations guaranteeing a permittee's self-bond, shall submit an indemnity agreement signed by two (2) corporate officers who are authorized to bind the corporations. A copy of the authorization shall be provided to the director along with an affidavit certifying that the 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; and

C. Pursuant to 10 CSR 40-7.031(3), the applicant, parent or nonparent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the regulatory authority an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under state law, the indemnity agreement when under forfeiture shall operate as a judgement against those parties liable under the indemnity agreement.

6. Self-bonded permittees and third-party guarantors shall submit an update of the information required under subparagraphs (5)(D)2.C. and D. within ninety (90) days after the close of their fiscal years.

7. If the financial conditions of the permittee or the third-party guarantor change so that the criteria of this section are not satisfied, the permittee shall notify the director immediately and post an alternate bond in the same amount as the self-bond.

8. Upon notification that the conditions of the permittee no longer satisfy this section, the permittee shall be deemed to be without bond coverage in violation of subsection (2)(A). The director shall issue a 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 sixty (60) days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. The notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1)(F)2. and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(2) or 10 CSR 40-6.100(2). If a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued requiring immediate compliance with 10 CSR 40-5.150(4).
9. The bond shall be forfeitable upon revocation of the underlying permit.

(7) Replacement of Bonds.

(A) Permittees may replace existing surety or personal bonds with other surety or personal bonds, if the liability which has accrued against the permittee on the permit area is transferred to those replacement bonds.

(B) Existing performance bonds will not be released until the permittee has submitted and the director has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this section shall not constitute a release of liability under 10 CSR 40-7.021.

Auth: section 444.810, RSMo (1994).*

MISSOURI DEPARTMENT OF NATURAL RESOURCES  
LAND RECLAMATION COMMISSION  
SURETY BOND  
(SURFACE COAL MINING LAW)

SURETY COMPANY BOND NUMBER  
PERMIT NUMBER  
INCREMENT NUMBER

KNOW ALL MEN BY THESE PRESENTS, That the undersigned  
(NAME OF PERMITTEE)

of  
(ADDRESS OF PERMITTEE)

as Principal, and  
(NAME OF SURETY)

of  
(ADDRESS OF SURETY)

as Surety, are held and firmly bound unto the State of Missouri, payable to the Treasurer of the State of Missouri, to the

credit of the Mined Land Reclamation Fund in the penal sum of  

($  

) for the payment of which sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, administrators, executors, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above named Principal did on the  

(day of  

, 19  

, file with the Land Reclamation Commission an application

to secure a permit to engage in surface coal mining and reclamation operations in the State of Missouri, under the terms and provisions of Sections 444.800 to 444.970, RSMo; that said application has been approved for operations under Permit  

Number  

, Increment Number  

, consisting of  

acres; that the Principal will undertake operations and complete pit reclamation on the affected land in accordance with the statutes, regulations of the Commission, conditions of the permit, and the approved reclamation plan; and that this bond is subject to forfeiture pursuant to the statutes and regulations for failure to so comply. The penalty of this bond shall be the full effective amount of this bond.

Now if the said Principal shall faithfully perform all of the requirements of Sections 444.800 to 444.970, RSMo, and shall comply with the regulations of the Land Reclamation Commission at 10 CSR Division 40, with the conditions of the permit issued to Principal as identified herein, or any amendments to said permit, and with the approved reclamation plan submitted with the application for said permit and any amendments to said reclamation plan, and shall successfully complete pit reclamation on the area covered by said permit according to said statutes, regulations, permit conditions and reclamation plan as they pertain to pit reclamation and operations prior to completion of pit reclamation, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.
The Surety shall not cancel this bond, for any reason whatsoever, including, but not limited to, nonpayment of premium, bankruptcy or insolvency of the Principal, or issuance of notices of violations or cessation orders and assessment of penalties with respect to the operations covered by this bond, unless the Surety shall first give actual notice in writing to both the Commission and the Principal of intent to cancel the bond, stating the reasons therefor, sixty (60) days in advance of such cancellation. The obligations of the bond may not be cancelled as to acreage affected prior to the expiration of the sixty-day notice period.

Application for release of the obligations of this bond may be made to the Commission in accordance with the provisions of Sections 444.875 and 444.950, RSMo.

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WHO EXECUTED THE ABOVE AS THEIR FREE ACTS AND DEEDS. WHO EXECUTED THE ABOVE AS THEIR FREE ACTS AND DEEDS.

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The amount of this bond shall be calculated as follows: five hundred dollars ($500.00) for each acre or portion thereof of land affected by surface coal mining operations, except for coal preparation areas, where the bond shall be ten thousand dollars ($10,000.00) per acre. Minimum bond is ten thousand dollars ($10,000.00) per permitted surface coal mine operation. Bonding requirements are per 444.950, RSMo.

Where one signs by virtue of Power of Attorney for a surety company, such Power of Attorney must be filed with the bond.

Any notices to or correspondence with the surety hereunder shall be to the following name and address:

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<th>NAME</th>
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BOND ACCEPTED BY THE DIRECTOR: SIGNATURE DATE
MISSOURI DEPARTMENT OF NATURAL RESOURCES
LAND RECLAMATION COMMISSION
SURETY BOND
(SURFACE COAL MINING LAW)

P.O. BOX 176
JEFFERSON CITY, MISSOURI 65102

SURETY COMPANY BOND NUMBER

PERMIT NUMBER

INCREMENT NUMBER

KNOW ALL MEN BY THESE PRESENTS, That the undersigned ____________________________

(NAME OF PERMITTEE)

of ____________________________

(ADDRESS OF PERMITTEE)

as Principal, and ____________________________

(NAME OF SURETY)

of ____________________________

(ADDRESS OF SURETY)

as Surety, are held and firmly bound unto the State of Missouri, payable to the Treasurer of the State of Missouri, to the credit of the Mined Land Reclamation Fund in the penal sum of ____________________________ Dollars

($ ____________________________ ) for the payment of which sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, administrators, executors, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above named Principal did on the ____________________________ day of ____________________________, 19___, file with the Land Reclamation Commission an application to secure a permit to engage in surface coal mining and reclamation operations in the State of Missouri, under the terms and provisions of Sections 444.800 to 444.970, RSMo 1986 (Supp. 1987); that said application has been approved for operations under Permit Number ____________________________, Increment Number ____________________________, consisting of ____________ acres;

that the Principal will undertake operations and complete pit reclamation on the affected land in accordance with the statutes, regulations of the Commission, conditions of the permit, and the approved reclamation plan; and that this bond is subject to forfeiture pursuant to the statutes and regulations for failure to so comply.

Now if the said Principal shall faithfully perform all of the requirements of Sections 444.800 to 444.970, RSMo, and shall comply with the regulations of the Land Reclamation Commission at 10 CSR Division 40, with the conditions of the permit issued to Principal as identified herein, or any amendments to said permit, and with the approved reclamation plan submitted with the application for said permit and any amendments to said reclamation plan, and shall successfully complete pit reclamation on the area covered by said permit according to said statutes, regulations, permit conditions and reclamation plan as they pertain to pit reclamation and operations prior to completion of pit reclamation, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

MO 780-1155 (5-88)

Roy D. Blunt (11/23/92)    CODE OF STATE REGULATIONS
Secretary of State

Next Section