

ALABAMA SURFACE MINING COMMISSION
ADMINISTRATIVE CODE

CHAPTER 880-X-9C
BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND
RECLAMATION OPERATIONS FORM, CONDITIONS, AND TERMS OF PERFORMANCE
BONDS AND LIABILITY INSURANCE

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880-X-9C-.01 Scope.

This Rule establishes the standards for the form of the bond for surface coal mining and reclamation operations, and the terms and conditions applicable to bonds and liability insurance.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 85, 89, 90, 91.

History:

880-X-9C-.02 Form Of The Performance Bond.

The form of the performance bond shall be prescribed by the State Regulatory Authority in accordance with the provisions of Rules 880-X-9B and 880-X-9C. The State Regulatory Authority may allow for --

- (a) A surety bond.
- (b) A collateral bond.
- (c) Self-bonding.
- (d) A combination of these bonding methods.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 85, 89, 90, 91.

History:

880-X-9C-.03 Terms And Conditions Of The Bond.

(1) The performance bond shall be in an amount determined by the State Regulatory Authority as provided in Rules 880-X-9B-.02 and 880-X-9B-.03.

(2) The performance bond shall be payable to the State Regulatory Authority.

(3) 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 affects on all lands disturbed by the surface coal mining operation or such parts of the operation pertinent to an increment.

(4) The duration of the bond shall be for the time period provided in Rule 880-X-9B-.04.

(5) Surety bonds shall be subject to the following conditions:

(a) The State Regulatory Authority shall not accept the bond of a surety company unless 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 released with the consent of the Regulatory Authority pursuant to Rule 880-X-9D. The Regulatory Authority may approve a replacement bond release only if a replacement bond is filed by the permittee prior to the release 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 cost attributable to the completion of reclamation operations on the reduced permit area in accordance with Rule 880-X-9B and the remaining performance bond liability.

(b) The Regulatory Authority shall not exceed a surety company's bond in excess of the company's maximum single obligation as provided by State law unless the surety company satisfies State law for exceeding that limit.

(c) The Regulatory Authority shall not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided by State law.

(d) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(e) The bond shall provide that --

1. The surety will give prompt notice to the permittee and the Regulatory Authority 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;

2. 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 Regulatory Authority;

3. 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. The State Regulatory Authority shall issue a notice of violation to any operator who is without bond coverage which shall specify a reasonable period to replace bond coverage, not to exceed sixty (60) days. Such 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 Rule 880-X-11C-.04 and need not be reported as a past violation in permit applications under Rule 880-X-8D-.06 and 880-X-8G-.06. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

(6) Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The Regulatory Authority shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in the Chapter.

(b) The Regulatory Authority shall value collateral at their current market value, not face value.

(c) Certificates of deposit shall be assigned to the Regulatory Authority, in writing and upon the books of the bank issuing such certificates.

(d) The Regulatory Authority shall not accept an individual certificate for a denomination in excess of \$40,000 or maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C.

(e) The Regulatory Authority shall require the banks issuing these certificates to waive all rights or setoff or liens which it has or might have against those certificates.

(f) The Regulatory Authority shall only accept automatically renewable certificates of deposit.

(g) The Regulatory Authority shall require the applicant to deposit sufficient amounts of certificates of deposit, to assure that the Regulatory Authority will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this Chapter.

(h) 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 U.S. --

2. The letter must be irrevocable prior to a release by the State Regulatory Authority in accordance with Rule 880-X-9D.

3. The letter must be payable to the State Regulatory Authority in part or in full upon demand and receipt from the State Regulatory Authority of a notice of forfeiture issued in accordance with Rule 880-X-9E.

4. The State Regulatory Authority shall not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a Certified Public Accountant.

5. The State Regulatory Authority shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided by State law or, in the absence of State law, as provided in paragraph (5) (b) of this Rule.

6. The letter of credit shall provide that --

(i) The bank will give prompt notice to the permittee and the State Regulatory Authority 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.

(ii) In the event the bank becomes unable to fulfill these obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the State Regulatory Authority.

(iii) Upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of

its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of Rule 880-X-9A-.04(2). The State Regulatory Authority shall issue a notice of violation to any operator who is without bond coverage which shall specify a reasonable period to replace bond coverage, not to exceed sixty (60) days. Such 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 Rule 880-X-11C-.04 and need not be reported as a past violation in permit applications under Rule 880-X-8D-.06 and 880-X-8G-.06. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

(i) The estimated bond value of all collateral posed as bond assurance shall be subject to a margin-bond value to market value ratio determined by the State Regulatory Authority. This margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the State Regulatory Authority in performing reclamation. The bond value of collateral may be evaluated at any time, but shall be evaluated as part of permit renewal. In no case shall the bond value exceed the market value.

(7) The Regulatory Authority may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor.

(a) The applicant designates a suitable agent to receive services of process in the State where the proposed surface coal mining operation is to be conducted.

(b) The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

1. The Regulatory Authority may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years immediately preceding the time of application.

2. When calculating the period of continuous operation, the Regulatory Authority may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in

business during the proposed surface coal mining and reclamation operations.

(c) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

1. The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation.
2. The applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or
3. The applicant's fixed assets in the United States total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(d) The applicant submits:

1. Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;
2. Unaudited financial statements for completed quarters in the current fiscal year; and
3. Additional unaudited information as requested by the Regulatory Authority.

(e) The Regulatory Authority may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of paragraphs (7)(a) through (7)(d) of this rule as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

1. 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 funds to the Regulatory Authority sufficient to complete the reclamation plan, but not to exceed the bond amount.

2. The corporate guarantee shall remain in force unless the guarantor send notice of cancellation by certified mail to the applicant and to the Regulatory Authority at least 90 days in advance of the cancellation date, and the Regulatory Authority accepts the cancellation.

3. The cancellation may be accepted by the Regulatory Authority if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portions thereof, was accepted have not been disturbed.

(f) For the Regulatory Authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the Regulatory Authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(g) If the Regulatory Authority accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

1. The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.

2. Corporations applying for a self-bond and parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind the corporation. A copy of such authorization shall be provided to the Regulatory Authority along with an affidavit certifying that such an agreement is valid under all 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.

3. If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

4. Pursuant to Subchapter 880-X-9C, the applicant or parent corporation 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 judgment against those parties liable under the indemnity agreement.

(h) The State Regulatory Authority may require self-bonded applicants and parent guarantors to submit an update of the information required under paragraphs (7) (c) and (7) (d) of this rule within 90 days after the close of each fiscal year following issuance of the self-bond or corporate guarantee. If at any time the financial conditions of the applicant or parent corporation guarantor change so that the criteria of paragraphs (7) (c) and (7) (f) of this rule are not satisfied, the permittee shall notify the Regulatory Authority immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of 880-X-9C-.03(5) (e)3, shall apply.

Author: Randall C. Johnson

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 85, 89, 90, 91.

History: May 20, 1982; **Amended:** September 18, 1990; effective: August 2, 1991.

880-X-9C-.04 Terms And Conditions For Liability Insurance.

(1) The State Regulatory Authority 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 and property damage shall be \$300,000.00 for each occurrence and \$500,000.00 aggregate.

(2) The policy shall be maintained in full force during the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation operations under these regulations.

(3) The policy shall include a rider requiring that the insurer notify the State Regulatory Authority whenever substantive changes are made in the policy, including any termination or failure to renew.

Author: Randall C. Johnson

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 85, 89, 90, 91.

History: May 20, 1982; **Amended:** September 18, 1990; effective: August 2, 1991.