ALABAMA SURFACE MINING COMMISSION ADMINISTRATIVE CODE

CHAPTER 880-X-9D BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS PROCEDURES, CRITERIA AND SCHEDULE FOR RELEASE OF PERFORMANCE BOND

TABLE OF CONTENTS

880-X-9D-.01 Scope
880-X-9D-.02 Procedures For Seeking Release Of Performance Bond
880-X-9D-.03 Criteria And Schedule For Release Of Performance Bond

880-X-9D-.01 Scope.

This Rule sets forth the provisions for procedures and criteria for release of performance bonds for surface coal mining and reclamation operations. This includes the filing, notice and hearing requirements, and the standards by which applications for release shall be evaluated.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 84, 89, 90, 91.

History:

880-X-9D-.02 Procedures For Seeking Release Of Performance Bond.

(1) Bond release application and contents. The permittee or any person authorized to act on his behalf, may file an application with the State Regulatory Authority for release of all or part of the performance bond liability applicable to a particular permit after all reclamation restoration and abatement work in a reclamation phase as defined in Rule 880-X-9D-.03(5) of this Rule has been completed on the entire permit area or on an area approved pursuant to Rule 880-X-9A-.04(2) for the incremental filing and release of bond liability.

(a) Applications may only be filed at times or seasons that allow the State Regulatory Authority to evaluate properly the reclamation operations alleged to have been completed. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the mining and

reclamation operations plan required in Chapter 880-X-8 and approved by the State Regulatory Authority.

(b) The application shall include copies of letters sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s). These letters shall be sent before the permittee files the application for release.

(c) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

(d) Within 30 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by Paragraph (2) of this Rule. Such proof of publication shall be considered part of the bond release application.

(2) Newspaper advertisement of application. At the time of filing an application under this Rule, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement shall --

(a) Be placed in the newspaper at least once a week for four (4) consecutive weeks;

(b) Show the name of the permittee, including the number and date of issuance or renewal of the permit;

(c) Show the precise location and the number of acres of the lands subject to the application;

(d) Show the total amount of bond in effect for the permit area and the amount for which release is sought;

(e) Summarize the reclamation, restoration or abatement work done, including, but not limited to, backstowing or mine sealing, if applicable, and give the dates of completion of that work;

(f) Describe the reclamation results achieved, as they relate to compliance with the Act, these regulations, and the approved mining and reclamation plan and permit; and

(g) State that written comments, objections, and requests for a public hearing or informal conference may be submitted to

the office of the State Regulatory Authority, provide the address of that office, and the closing date by which comments, objections, and requests must be received.

(3) Objections and requests for hearing. Written objections to the proposed bond release and requests for an informal conference may be filed with the State Regulatory Authority by any affected person within thirty (30) days following the last advertisement of the filing of the application. For the purpose of this Rule, an affected person is --

(a) Any person with a valid legal interest which might be adversely affected by bond release; and

(b) The responsible officer or head of any Federal, State or local government agency which --

1. Has jurisdiction by law with respect to any environmental, social or economic impact involved; or

2. Is authorized to develop and enforce environmental standards with respect to surface coal mining and reclamation operations.

(4) Inspection By State Regulatory Authority. The State Regulatory Authority shall inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release. The surface owner, or agent, or lessee shall be given notice of such inspection and may participate with the State Regulatory Authority in making the bond release inspection. The State Regulatory Authority may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(5) Informal Conferences. The State Regulatory Authority shall schedule a conference if written objections are filed and a conference is requested. The conference shall be held in the locality of the permit area for which bond release is sought.

(a) Notice of an informal conference shall be published in a newspaper of general circulation in the locality of the conference, at least two weeks before the date of the conference.

(b) The informal conference shall be held within 30 days from the date of the notice.

(c) The State Regulatory Authority may arrange with the applicant upon request by any party to the administrative proceedings access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An

electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties.

(6) Regulatory Authority review and decision.

(a) The State Regulatory Authority shall consider, during inspection evaluation, hearing and decision --

1. Whether the permittee has met the criteria for release of the bond under Rule 880-X-9D-.03.

2. The degree of difficulty in completing any remaining reclamation, restoration or abatement work; and

3. Whether pollution of surface and subsurface water is occurring, the probability of future pollution or the continuance of any present pollution, and the estimated cost of abating any pollution.

(b) If no informal conference has been held under Paragraph (5), the State Regulatory Authority shall notify the permittee and any other interested parties in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from the receipt of the completed application, or within thirty days from the close of the public comment period if comments were received, whichever occurs last.

(c) If there has been an informal conference held under Paragraph (5), the notification of the decision shall be made to the permittee and all interested parties within thirty days after conclusion of the conference.

(d) The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee and all interested parties of their right to request a public hearing in accordance with Paragraphs (7) and (8) of this Rule.

(e) The State Regulatory Authority shall not release the bond until --

1. The town, city or other municipality nearest to, or the county in which the surface coal mining and reclamation operation is located has received at least thirty days' notice of the release by certified mail; and

2. The right to request a public hearing pursuant to Paragraph (7) of this Rule has not been exercised, or a final decision by the hearing authority approving the release has been issued pursuant to Paragraph (8) of this Rule.

(7) Administrative review - public hearings. Following receipt of the decision of the State Regulatory Authority under Paragraph (6) the permittee or any affected person may request a public hearing on the reasons for that decision. Request for hearings shall be filed within 30 days after the permittee and other parties are notified of the decision of the State Regulatory Authority under Paragraph (6).

(8) Public hearings. The State Regulatory Authority shall inform the permittee, local government, and any objecting party of the time, date, and place of the hearing and publish notice of the hearing in a newspaper of general circulation in the locality of the permit area for two consecutive weeks before the hearing. The hearing shall be adjudicatory, in nature and be held within 30 days of the receipt of the request, in the town or city nearest the permit area or in the office of the State Regulatory Authority at the option of the objector. The State Regulatory Authority may subpoena witnesses and printed materials and compel the attendance of witnesses and production of the materials at the hearing. A verbatim record of the hearing shall be made and the transcript made available on the motion of any party or by order of the State Regulatory Authority. The decision of the hearing authority shall be made within 30 days of the hearing. Parties seeking to reverse the decision or any part of the decision of the State Regulatory Authority which is the subject of the hearing shall have the burden of presenting a preponderance of evidence, to persuade the hearing authority that the decision cannot be supported by reasons given in the notification of the State Regulatory Authority's decision.

Author: Randall C. Johnson
Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 84, 89, 90, 91.
History: May 20, 1982; **Amended:** September 18, 1990; effective: August 2, 1991. **Amended:** Filed July 27, 1998; effective August 31, 1998; operative January 3, 1999.

Ed. Note: On December 4, 1998, the Office of Surface Mining approved this rulemaking adopted by the commission on July 16, 1998. The effective date of this rule will be January 3, 1999.

880-X-9D-.03 Criteria And Schedule For Release Of Performance Bond.

(1) The State Regulatory Authority may release portions of the liability under performance bonds applicable to the permit area following the completion of reclamation phases as defined in Paragraph (5) of this Rule.

(2) The maximum liability of performance bonds applicable to an increment or permit area which may be released shall be calculated on the following basis --

(a) Release of an amount not to exceed 60 percent of the total bond amount on the increment or permit area upon completion of phase I reclamation.

(b) Release of an additional amount not to exceed 25 percent of the total original bond amount on the permit area or an increment upon completion of phase II reclamation, but in all cases the amount remaining shall be sufficient to reestablish vegetation and reconstruct any drainage structures.

(c) Release of the remaining portion of the total performance bond on the increment or permit area after standards of phase III reclamation have been attained and final inspection and procedures of Rule 880-X-9D-.02 have been satisfied.

(3) The State Regulatory Authority may choose to release all bond coverage for an increment if the phase III reclamation of the increment is complete. The portion of the permit area being released from bond coverage shall be capable of supporting the proposed postmining land use independent of the successful completion of the reclamation of portions of the permit area still under bond or not yet initially disturbed provided, however, that no bond shall be fully released until all reclamation requirements of the Act and the permit are fully met.

(4) The State Regulatory Authority shall require performance bond liability, applicable to the permit area or an increment, in the amount necessary to --

(a) Allow someone other than the operator to complete the approved reclamation plan, achieving compliance with the Act, this Chapter, the regulatory program, and the permit;

(b) Allow someone other than the operator to abate any significant environmental harm to air, water, or land resources, or danger to public health and safety prior to release of the land under the terms of the permit;

(c) Achieve the capability of supporting any alternative postmining land use plan proposed in the permit, consistent with Rules 880-X-10C-.62, 880-X-10C-.66, 880-X-10D-.56, and 880-X-10D-.64 of this Chapter, including such measures as may be necessary in the event the permittee fails to undertake development within the 2 years.

(d) Fulfill the minimum bond amount of $10,000 as required by Rule 880-X-9C-.03.

(5) For the purpose of this Rule --

(a) Reclamation phase I shall be deemed to have been completed when the permittee completes backfilling, regrading, and

drainage control of an incrementally bonded area in accordance with the approved reclamation plan; and

(b) Reclamation phase II shall be deemed to have been completed when --

1. Topsoil replacement has been completed and revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

2. The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of Section 22(b)(10) of the Act, Chapter 880-X-10 of these regulations or the permit; and

3. With respect to prime farm lands, soil productivity has been returned to the level of yield as required by Rules 880-X-8J-.08 and 880-X-10G when compared with non-mined prime farm land in the surrounding area as determined from the soil survey performed under Section 15(b)(15) of the Act and the plan approved under Rule 880-X-8J-.08; and

4. The provisions of a plan for the sound future maintenance of any permanent impoundment by the permittee or landowner have been made with the State Regulatory Authority.

(c) Phase III reclamation shall be deemed to have been completed when --

1. The permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan so that the land is capable of supporting any postmining land use approved pursuant to Rule 880-X-10C-.66 or 880-X-10D-.64;

2. The permittee has achieved compliance with the requirements of the Act, this Chapter, the regulatory program, and the permit; and

3. The applicable liability period under Section 21(b) of the Act and Rule 880-X-9B-.04(2) of this Chapter has expired.

Author:
Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 84, 89, 90, 91.
History: