

**ALABAMA SURFACE MINING COMMISSION
ADMINISTRATIVE CODE**

**CHAPTER 880-X-9E
BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND
RECLAMATION OPERATIONS PERFORMANCE BOND FORFEITURE CRITERIA AND
PROCEDURES**

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880-X-9E-.01 **Scope.**

This Rule sets forth the requirements for provisions to be applicable whenever the State Regulatory Authority initiates a proceeding for the forfeiture of all or any part of bond, as a result of the permittee's failure to meet the conditions upon the bond.

Author:

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

History:

880-X-9E-.02 **General.**

(1) The State Regulatory Authority shall forfeit all or part of a bond for any permit where required or authorized by Rule 880-X-9E-.03.

(2) The State Regulatory Authority may withhold forfeiture, if the permittee and surety, if applicable, agree to a compliance schedule to comply with the violations of the permit or bond conditions.

(3) The State Regulatory Authority may allow the surety to complete the reclamation plan if the surety can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the alternative postmining land use approved by the State Regulatory Authority. No bond shall be released, except for partial releases authorized under Rule 880-X-9D-.02, until successful completion of all reclamation under the

terms of the permit, including applicable liability periods of Rule 880-X-9B.

Author:

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

History:

880-X-9E-.03 Procedures.

(1) In the event forfeiture of the bond is required by Rule 880-X-9E-.04, the State Regulatory Authority shall --

(a) Send written notification by certified mail, return receipt requested, to the permittee, and the surety on the bond, if applicable, of the State Regulatory Authority's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited.

(b) Advise the permittee and surety, if applicable, of any rights of appeal that may be available from that determination under State law;

(c) Proceed in an action for collection on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this Rule, for the amount forfeited, if an appeal is not filed within a time established by the State Regulatory Authority and a stay of collection issued by the hearing authority or such appeal is unsuccessful; and

(d) If an appeal is filed, defend the action.

(2) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the State Regulatory Authority.

(3) The State Regulatory Authority may forfeit any or all bonds deposited for an entire permit area or any increment thereof in order to satisfy Rules 880-X-9E-.02 - 880-X-9E-.05.

(4) The State Regulatory Authority shall utilize funds collected from bond forfeiture to pay for all costs to complete the reclamation plan on the permit area on which bond coverage applies.

Author:

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

History:

880-X-9E-.04 Criteria For Forfeiture.

(1) A bond shall be forfeited, if the State Regulatory Authority finds that --

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with the Act, the conditions of this Chapter, the regulatory program and the permit within the time required, and the State Regulatory Authority has determined that it is necessary, in order to fulfill the requirements of the permit and the reclamation plan, to have someone other than the operator correct or complete reclamation;

(c) The permit for the area under the bond has been revoked, unless the operator or surety assumes liability for completion of the reclamation work and is, in the opinion of the State Regulatory Authority, diligently and satisfactorily performing such work; or

(d) The permittee has failed to comply with a compliance schedule approved pursuant to Rule 880-X-9E-.02(2).

(2) A bond may be forfeited, if the State Regulatory Authority finds that --

(a) The permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court; or

(b) A creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials, facilities at the permit area or on the collateral pledged to the State Regulatory Authority; and

(c) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with the Act, these regulations, and the permit.

Author:

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

History:

880-X-9E-.05 Determination Of Forfeiture Amount.

(1) The State Regulatory Authority shall either --

(a) Determine the amount of the bond to be forfeited on the basis of all the estimated cost to the State Regulatory Authority and any contractor to complete the reclamation plan and other requirements of the Act and the permit; or

(b) Forfeit the entire amount of the bond for which liability is outstanding and deposit the proceeds thereof in an account for use in the payment of all costs associated with the conduct of reclamation, restoration or abatement activities by the State Regulatory Authority and any contractor.

(2) Upon completion of all reclamation, restoration or abatement activities by the State Regulatory Authority and following payment of all costs associated with conduct of such activities, the principle balance remaining shall be returned to the surety or principal, if applicable.

(3) If estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The Alabama Surface Mining Commission may recover from the operator all costs of reclamation in excess of the amount forfeited and may complete, or authorize completion of, reclamation of the bonded area.

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.