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

Subject Number:
REG-26

Transmittal Number:
516

Date: 2/14/89

Subject: ADMINISTRATIVE PROCEDURES FOR BOND RELEASE

Approval:

Title: DIRECTOR

1. Purpose. This directive outlines the general policy and administrative procedures the Office of Surface Mining Reclamation and Enforcement (OSMRE) will follow in processing requests for performance bond release on Federal lands, Indian lands and in Federal Program States.

2. Summary of Changes. This directive provides administrative procedures for OSMRE personnel in conducting releases of performance bonds. This revised directive contains provisions dealing with the involvement of OSMRE in bond releases on Federal lands under an approved cooperative agreement with a State. It supersedes directive REG-26, dated 2/22/88.

3. Definitions.

a. Complete Application for Bond Release means an application for bond release filed with the regulatory authority in accordance with 30 CFR 800.40, and includes, at a minimum, a copy of the document to be used for public advertisement of the request for bond release and a notice to landowners and others of the request for bond release.

b. Cooperative Agreement means a cooperative agreement entered into in accordance with section 523(c) of the Act and 30 CFR Part 745.

c. Performance Bond means a surety bond, collateral bond, self-bond, or a combination thereof, made payable to United States 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.

d. Permit means a permit to conduct surface coal mining and reclamation operations pursuant to a State or Federal program. For purposes of the Federal lands program, permit means a permit issued by the State Regulatory Authority (SRA) under a cooperative agreement or by OSMRE where there is no cooperative agreement.

4. Policy/Procedures.

a. Policy. It is the policy of OSMRE to:

(1) Ensure that bond release applications are processed in accordance with the applicable regulatory program;

(2) Ensure that where there is a cooperative agreement on Federal lands, and the agreement does not specify actions for release, OSMRE will use the State inspection report, the technical analysis, and comments from the Federal land management agency to concur in bond release.

b. Responsibilities.

(1) Assistant Directors for Field Operations. The Assistant Directors for Field Operations (AD/FO) are responsible for directing the implementation of these procedures.

(2) Field Office Director. The Field Office Director (FOD) has responsibility for:

Where OSMRE is the regulatory authority:

(a) Processing bond release applications in accordance with the provisions of 30 CFR 800.40 and this directive;

(b) Consulting with the permit issuing official and compliance inspector (if outside the Field Office) and considering their input while processing the application; and

(c) Making the decision to release the bond after consultation with the permit issuing official.

Where OSMRE is not the regulatory authority:

(d) Concurring in any bond release decisions made by a State on Federal lands in accordance with the terms of any approved cooperative agreement;

c. Procedures.

There are two types of procedures outlined below for bond release. The first applies where OSMRE is the regulatory authority and has direct responsibility for processing the bond release application. The second applies where the State is the regulatory authority under a cooperative agreement and the State has direct responsibility for processing the bond release application. These procedures apply to all phases of bond release. Sample letters and

notices have been included in this directive for illustrative purposes and can be altered to fit the appropriate action. Tracking of bond amounts and releases should be in accordance with OSMRE Directives on bond forms and procedures (FIN-5).

1. OSMRE is the Regulatory Authority.

Step 1

o The bond release application is filed with the FOD. The FOD shall notify, by certified mail, the municipality where the operation is located and any affected Federal land management agency, at least 30 days prior to the release of the bond.

o The FOD shall notify the permit issuing official and, if necessary, request technical assistance at this step or at any step from the appropriate Field Operations Office.

o The FOD shall ensure that no outstanding enforcement actions pertaining to reclamation obligations remain on the permit for which bond is to be released.

o The FOD shall send an acknowledgement letter to the bond release applicant. (Appendix 1 contains a sample acknowledgement letter.)

Step 2

o The FOD shall evaluate the application for administrative completeness. (Appendix 2 contains a sample checklist for this evaluation.)

Step 3

o When the application has been determined to be complete and the 30 day period for inspection begins, notification of the determination of completeness and of the date for an inspection is sent to the applicant. (Appendix 3 contains a sample notification letter).

o The FOD shall send notification letters to all necessary surface land owners of the permit area for which bond release is sought, with a date for the inspection. (Appendix 4 contains a sample of a landowner notification letter).

Step 4

o The FOD will order an inspection, including any necessary permit issuing office personnel, on the site where the bond release is sought. The FOD should review permit and inspection/enforcement files to determine which aspects of reclamation relative to the phase of

bond release requested are outstanding. Reclamation activities previously inspected and certified as complete do not need a detailed evaluation during the bond release inspection.

o The FOD shall prepare a bond release report documenting the results of the review of the permit and inspection files as well as the bond release inspection, including appropriate site photographs. The bond amount for the remaining phases of reclamation should be recalculated by Field Operations staff using the OSMRE Handbook for the Calculation of Reclamation Bond Amounts.

o If a citizen participates in the site inspection as provided in 800.40(b), that citizen has the right of entry to the site, subject to the control of OSMRE inspection personnel. Any concerns raised by the citizen during the inspection should be included in the field report.

Step 5

o If a request for a hearing in accordance with 30 CFR Part 800.40(f) is received, the FOD shall inform all interested parties and hold a public hearing within 30 days after receipt of the request.

o The FOD will publish the date, time, and location in a newspaper of general circulation in the area of the mining operations for 2 consecutive weeks and will conduct the hearing in accordance with 30 CFR 800.40(g).

o The FOD may hold an informal conference as provided in Section 513(b) of SMCRA and 30 CFR 800.40(h) to resolve any written objections.

Step 6

o Within 60 days of receipt of the complete bond release application, if no public hearing is held, or within 30 days after a public hearing, the FOD shall send written notification to the permittee and the surety of a decision to release or not release all or part of a performance bond in accordance with 30 CFR Part 800.40(b)(2).

o The FOD's decision on the application shall be based upon all written comments received, the bond release report, and the transcript of the public hearing or informal conference, if held.

o If the decision is made to approve all or a part of the release, the notification should contain: the identification and amount of land, the amount released, the appropriate regulations by which a determination is made that the requirements for bond release have been met, and a contact for further information. (Appendix 5 contains a sample letter of notification of approval).

o After the bond is released, the FOD shall ensure that the appropriate bond official records the release.

o If the decision is made to disapprove the application, the letter of notification should contain: the bond identification, the reasons for disapproval, the recommendations for corrective actions necessary to obtain release and the opportunity for a public hearing in accordance with 30 CFR 800.40(d). (Appendix 6 contains a sample copy of a letter of disapproval).

The letter should be sent certified mail, return receipt requested.

Step 7

o If an appeal of the decision is made to the Interior Board of Land Appeals (IBLA), the FOD should coordinate with the Solicitor's office, as appropriate.

2. Cooperative Agreement State.

The following steps should be followed unless the cooperative agreement stipulates otherwise.

Step 1

o The FOD receives a copy of the bond release application from the regulatory authority (RA), in accordance with the provisions of the cooperative agreement.

Step 2

o The FOD notifies the affected Federal land management agency, ensures that it receives a copy of the bond release application, and invites the land management agency to participate in any State scheduled field inspection.

o The FOD or a representative may attend the site inspection scheduled by the State and may request Field Operations participation in the site inspection.

Step 3

o The FOD will coordinate all comments from the Federal land management agencies with the SRA. Such coordination will be in accordance with the cooperative agreement and any applicable Memorandum of Understanding (MOU) between OSMRE and the Federal land management agency.

Step 4

o Where the cooperative agreement requires OSMRE to concur in the decision to release the bond:

o The FOD shall make a decision to concur or not concur in the release based upon the State report, information from Field Operations and any comments received from the Federal land management agencies.

o If the FOD concurs in the release, the FOD shall ensure that the permittee's release is recorded with the bond official responsible for the collection and maintenance of bonds payable to the United States.

o The FOD decision on concurrence and notification to the State shall be made within the required time periods set forth in the State program or as specified in the Cooperative Agreement.

o If the FOD does not concur in the State release, the reasons shall be provided to the State in a timely manner.

5. **Reporting Requirements.** None.

6. **Effect On Other Documents.** Supersedes directive REG-26 (2/22/88).

7. **References.** The Surface Mining Control and Reclamation Act of 1977. 30 CFR Part 800, 30 CFR Part 745.

8. **Effective Date.** Upon Issuance.

9. **Contact.** Chief, Division of Technical Services, 343-1475.

10. **Keywords.** 30 CFR 800.40, cooperative agreements, reclamation performance bonds, bond release.

11. Appendices. Appendix 1: Sample Letter of Acknowledgement
Appendix 2: Sample Checklist
Appendix 3: Sample of Applicant Notification
Letter
Appendix 4: Sample of Landowner Notification
Letter
Appendix 5: Sample of Approval Letter
Appendix 6: Sample of Disapproval Letter
Appendix 7: Bond Release Process Flow Chart

M. Operator
Surface Mine
P.O. Box 007
O'Neil Corners, Franklina 12310

Re: Surface Mine
Permit No. 6345789
Phase I Bond Release

Dear Mr. Operator:

On October 1, 1987, we received your application for Phase I Bond Release for permit No. 6345789. This application includes the mining operator's reclamation completion report, site map, and letters providing notice of intent to seek bond release. All of the documents submitted are acceptable. No outstanding enforcement actions relating to reclamation requirements were found on this site.

If proof of publication of the newspaper notice required by 30 CFR 800.40(a)(2) is received by OSMRE within thirty (30) days of your application submittal, the application will be considered complete. However, OSMRE reserves the right to request additional information at any time during the processing of the bond release request. After determination of the completion of the bond release application, you will be notified of the date and time of the scheduled inspection in which you may participate.

If you have any questions on this matter, please contact Bill Bond at (212) 726-5000.

Sincerely,

Field Office Director

M. Operator
Surface Mine
P.O. Box 789
Somewhere, U.S.A. 12376

Re: M. Operator
Permit No. 6345789
Unknown County, State
Phase I Bond Release

Dear Mr. Operator:

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has received proof of publication of your newspaper advertisement for bond release on Permit No. 6345789. This document along with the previously submitted mining operator's completion report, site maps, and letters providing notice of intent to seek bond release, completes the information required in the application for bond release. All the documents submitted are accepted.

Inspection of the site and evaluation of the reclamation work will be made on October 31, 1987, at 9:30 a.m., during which time you are invited to be present.

Please contact Bill Bond at (212) 726-5000, if you have questions or if we may be of further assistance.

Sincerely,

Field Office Director

cc: M.J. Findley
Safety Surety Co.

F. Firm
P.O. Box 007
O'Neil Corners, Franklania 12310

Re: F. Operator
Permit No. 6345789
Unknown County, Franklania
Phase I Bond Release

Dear F. Firm:

M. Operator has applied for a bond release on Permit No. 6345789. This application has been received and qualifies for an onsite inspection and evaluation. The date for this evaluation and inspection is set for October 31, 1987, at 9:30 a.m., at which you are welcome to be present.

Please notify Bill Bond at (212) 736-5000, if you plan to attend the inspection or if you have any questions.

Sincerely,

Field Office Director

Mr. M. Operator
Surface Mine
P.O. Box 789
Somewhere, U.S.A. 12310

Re: M. Operator
Permit No. 12345
Unknown County, State
Phase I Bond Release

Dear Mr. Operator:

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has evaluated your application for bond release which was accepted as complete on November 24, 1987.

As required under the OSMRE regulations, OSMRE has determined that the requirements for Phase I bond release have been accomplished.

We are presently holding Guaranteed Surety Company's Surety Bond No. 1789 - 1861 - 1917, in the amount of the \$300,000 of which \$245,000 will be retained to ensure the completion of the remaining reclamation on this permit. The bond amount of \$55,000 is hereby released.

If you have questions regarding this action or we may be further assistance, please contact Bill Bond at (305) 591-4037.

Sincerely,

Field Office Director

cc: Mr. J. Silver
Guaranteed Surety Company

CERTIFIED MAIL

M. Operator
Surface Mine
P.O. Box 789
Somewhere, U.S.A. 12310

Re: M. Operator
Permit No. 8910
Unknown County, State
Phase I Bond Release

Dear Mr. Operator:

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has evaluated your application for bond release which was accepted as complete on November 24, 1987.

For the reasons given below, Phase I bond release cannot be given and your application is disapproved.

On this site there are outstanding violations and unpaid reclamation fees. We are also aware that a highwall remains on the site adjacent to one of the sediment ponds. This highwall cannot be eliminated until it is appropriate to remove the sediment pond.

OSMRE will continue to hold the collateral bond and Letter of Credit No. 1234 in the amount of \$50,000. We will reconsider Phase I bond release when the outstanding violations have been resolved and the backfilling and grading have been completed, as required.

A public hearing on this decision may be requested pursuant to 30 CFR 800.40(d) by submitting a written request to me at the letterhead address by January 6, 1988.

This decision may be appealed in accordance with the regulations found at 43 CFR 4.1280 to 4.1286 (copy attached). To initiate an appeal, you must file a written notice of appeal with this office at the above address within 20 days of the date you receive this decision. At the same time, you must also file a copy of the notice with the Interior Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. The Board will render a final agency decision on the matter in accordance with the applicable regulations. Failure to strictly comply with these requirements may result in summary dismissal of the appeal.

If you have questions or wish to arrange a meeting to discuss this action informally, please contact Bill Bond at (212) 634-5789.

Sincerely,

Field Office Director

cc: Mr. J.D. McDuck, Bank of Columbia

