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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: 427 Date: Feb. 22, 1988

Subject: Administrative Procedures for Bond Release

Approval: /signed/ Jed Christenson | 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. 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. 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.

c. 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.

3. Policy/Procedures.

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

(1) Ensure that reclamation has been achieved in accordance with the approved reclamation plan prior to any partial bond release and that the remaining bond amount is sufficient to accomplish the completion of the reclamation plan;

(2) Ensure that the bond release application is processed in a timely manner.

(3) Ensure that the public participation aspects of the bond release process provide adequate opportunity for input by all concerned parties.

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 direct responsibilities for:

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

(b) Processing bond release applications in accordance with the provisions of 30 CFR 800.40 and this directive where OSMRE is the regulatory authority;

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

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

c. Procedures.

There are two types of procedures outlined below for bond release. The first applies where OSMRE is the regulatory authority and the second applies where the State is the regulatory authority under a cooperative agreement and the bond is jointly payable to the United States and the State. 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 (FIN-5).

1. OSMRE is the Regulatory Authority.

Step 1

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

- 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

- 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.

- 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).

- 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

- 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 notify, in writing, 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).

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

- 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).

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

- 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).

- Pending bond release, the FOD shall coordinate with the appropriate Solicitor's office to pursue the assets of operators that owe outstanding civil penalties and AML fees.

Step 7

- If an appeal of the disapproval 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

- The FOD receives a copy of the bond release application from the RA, in accordance with the provisions of the cooperative agreement.

Step 2

- The FOD ensures that the affected Federal land management agencies receive a copy of the bond release application.

- Whenever appropriate, the FOD shall request Field Operations participation in the site inspection, and arranges for Field Operation or other Federal agency participation. The FOD shall require that OSMRE personnel accompanying the State on the site inspection prepare a field report.

Step 3

- 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

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

- The FOD shall make a decision to concur or not concur in the release based upon the State report, and the OSMRE field report(s), after considering any comments received by the Federal land management agencies.

- 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.

- 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.

- If the FOD does not concur in the State release, reasons and corrective actions shall be provided to the State in a timely manner.

4. Reporting Requirements. None.

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

6. Effect On Other Documents. None.

7. Effective Date. Upon Issuance.

8. Contact. Chief, Branch of Environmental and Economic Analysis, 343-5150.

Attachments

Appendix 1

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

Appendix 2

SAMPLE CHECKLIST

( ) Bond Release Application

Control No. _____ Permit No. _____ Phase _____

Company Name _____ Area _____

Review Date	Remarks	Reviewer
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Bond Release Application

Reclamation Completion Report

_____ Report form submitted
_____ Report form signed and dated
_____ Map Submitted

Present	OK	Newspaper Advertisement
_____	_____	Published (dates _____) in a newspaper of general circulation in locality of the operation
_____	_____	Placed at the time of filing of application
_____	_____	Proof received (date received _____)
_____	_____	Proof received within 30 days of filing application
_____	_____	Ad run at least once a week for 4 successive weeks
		Ad includes:
_____	_____	Name of permittee
_____	_____	Permit number
_____	_____	Approval date
_____	_____	Precise location of lands affected
_____	_____	Number of acres
_____	_____	Type of bond in effect
_____	_____	Amount of bond in effect
_____	_____	Amount of bond for which release is sought
_____	_____	Type of reclamation work performed
_____	_____	Dates of completion of that work
_____	_____	Description of the reclamation results achieved
_____	_____	Statement that written comments, objections and request for public hearing or informal conference may be submitted
_____	_____	Address for submission of such comments, etc.
_____	_____	Closing date for receipt of such comments, etc. (at least 30 days after the last publication date)

Control No. _____ Permit No. _____ Phase _____

Present	OK	Notification Letters
_____	_____	Surface owners (date sent _____)
_____	_____	Adjoining property owners (date sent _____)
_____	_____	Local government bodies (date sent _____)
_____	_____	Planning agencies in permit locality (date sent _____)
_____	_____	Sewage and water treatment facilities in permit locality (date sent _____)
_____	_____	Water companies in permit locality (date sent _____)
_____	_____	Letters sent prior to filing application

Enforcement Information

Has any action been taken toward bond forfeiture? ____ Yes _____ No

If yes, type action _____ Date _____

Status of Action _____

Are there any outstanding NOV's and CO's on this permit?

Appendix 3

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.

Appendix 4

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

Re: F. Operator
Permit No. 6345789
Unknown County, Franklinia
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

Appendix 6

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

Attachment

APPEALS TO THE BOARD FROM DECISIONS OF THE OFFICE OF SURFACE MINING

§ 4.1280 Scope.

This section is applicable to appeals from decisions of the Director of OSM concerning small operator exemptions under 30 CFR 710.12(h) and to other appeals which are not required by the Act to be determined by formal adjudication under the procedures set forth in 5 U.S.C. 554.

§ 4.1281 Who may appeal.

Any person who is or may be adversely affected by a written decision of the Director of OSM or his delegate may appeal to the Board where the decision specifically grants such right of appeal.

§ 4.1282 Appeals; how taken.

(a) A person appealing under this section shall file a written notice of appeal with the office of the OSM official whose decision is being appealed and at the same time shall send a copy of the notice to the Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Va. 22203.

(b) The notice of appeal shall be filed within 20 days from the date of receipt of the decision. If the person appealing has not been served with a copy of the decision, such appeal must be filed within 30 days of the date of the decision.

(c) The notice of appeal shall indicate that an appeal is intended and must identify the decision being appealed. The notice should include the serial number or other identification of the case and the date of the decision. The notice of appeal may include a statement of reasons for the appeal and any arguments the appellant desires to make.

(d) If the notice of appeal did not include a statement of reasons for the appeal, such a statement shall be filed with the Board within 20 days after the notice of appeal was filed. In any case, the appellant shall be permitted to file with the Board additional statements of reasons and written arguments or briefs within the 20-day period after filing the notice of appeal.

[43 FR 34386, Aug. 3, 1978, as amended at 49 FR 7565, Mar. 1, 1984]

§ 4.1283 Service.

(a) The appellant shall serve personally or by certified mail, return receipt requested, a copy of the notice of appeal and a copy of any statement of reasons, written arguments, or other documents on each party within 15 days after filing the document. Proof of service shall be filed with the Board within 15 days after service.

(b) Failure to serve may subject the appeal to summary dismissal pursuant to § 4.1285.

§ 4.1284 Answer.

(a) Any party served with a notice of appeal who wishes to participate in the proceedings on appeal shall file an answer with the Board within 20 days after service of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal.

(b) If additional reasons, written arguments or other documents are filed by the appellant, a party shall have 20 days after service thereof within which to answer. The answer shall state the reasons the party opposes or supports the appeal.

§ 4.1285 Summary dismissal.

An appeal shall be subject to summary dismissal, in the discretion of the Board, for failure to file or serve, upon all persons required to be served, a notice of appeal or a statement of reasons for appeal.

§ 4.1286 Request for hearings.

(a) Any party may request the Board to order a hearing before an administrative law judge in order to present evidence on an issue of fact. Such a request shall be made in writing and filed with the Board within 20 days after the answer is due. Copies of the request shall be served in accordance with § 4.1283.

(b) The allowance of a request for a hearing is within the discretion of the Board, and the Board may, on its own motion, refer any case to an administrative law judge for a hearing on an issue of fact. If a hearing is ordered, the Board shall specify the issues upon which the hearing is to be held.

Appendix 7

Bond Release Time Line

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        ┌──────────────────┐                ┌──────────────────────┐
day 1   :Release Application:                :Operator places public:
        :   Filed with FO   :                :newspaper notice for  :
        └──────┬───────────┘                :4 weeks               :
               :                            └──────────┬───────────┘
          ┌────┴────┐                                  :
          : F.O. notify :                              :
          : municipality:                              :
          └────┬────┘                                  :
               :                                       :
     ┌─────────┴─────────┐                             :
30   :Copy of public newspaper┬──────────────────────┘
days :    filed with F.O      :
     └─────────┬─────────┘
               :
          ┌────┴────┐
          :Field Inspection:
          └────┬────┘
               :
     No   ┌────┴────┐  Yes
      ┌───┬Public Hearing┬────┐
      :   :  Requested   :    :
      :   └─────────────┘    :
┌─────┴─────┐            ┌───┴─────┐
:Notification: 30 days     :Newspaper :
:  Decision  :             :Notice for: 30 days
└─────┬─────┘             :2 weeks   :
      :                    └───┬─────┘
┌─────┴─────┐                  :
:Opportunity for:        ┌─────┴─────┐
:public hearing :90 days :Public Hearing: 30 days
:if disapproved :        └─────┬─────┘
└───────────┘                  :
                       ┌─────┴─────┐
                       :Decision made on:
                       :Bond Release    : 30 days
                       └─────┬─────┘
                             :
                        ┌─────┴─────┐
                        :Opportunity for: 120 days
                        :public hearing :
                        :if requested   :
                        └───────────┘
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