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Office of Surface Mining Reclamation and Enforcement Issues Policy Advisory Regarding Use of Self-bonding For Coal Mine Reclamation

Washington, DC – In response to the significant markets shifts facing major coal companies and financial difficulties that may affect their ability to carry out their obligations for reclamation of the lands disturbed by their surface mining operations, the [Office of Surface Mining Reclamation and Enforcement](#) (OSMRE) is issuing a Policy Advisory (Advisory) regarding financial assurance practices in the coal mining industry.

The Policy Advisory, a first in OSMRE history, provides suggested guidance to state agencies that regulate surface coal mining on the restricted use of self-bonding. It also provides recommendations for surety requirements, cash or collateral bonds to ensure that coal companies have adequate financial resources to properly restore lands disturbed by surface mining activity.

“Lack of global demand for coal, competition from low cost shale gas and the unprecedented and continuing retirement of coal-fired power plants are clear signs that the energy industry is undergoing a major transformation and it is incumbent upon OSMRE to protect the public’s interest,” said [OSMRE Director Joe Pizarchik](#). “This Policy Advisory provides clear direction to our partners who have the responsibility to enforce federal surface mining law at the state level. We will continue to work with these states to develop best practices that ensure all coal mining companies provide full coverage for their legally mandated reclamation obligations and that companies do not forgo their legal reclamation responsibilities.”

As defined by the [Surface Mining Control and Reclamation Act \(SMCRA\)](#), there are three major types of reclamation bonds: corporate surety bonds; collateral bonds such as cash or certificates of deposit; and self-bonds, which are legally binding corporate promises without separate surety or collateral, available only to permittees who meet certain financial tests. Of nineteen states that have regulatory authority for surface coal mining and allow self-bonding, ten have previously accepted billions of dollars of self-bonds for reclamation.

The Director’s Policy Advisory outlines three suggestions to address the growing threat of coal company bankruptcies:

1. Regulatory authorities that had elected to accept self-bonds should immediately assess whether companies that are currently self-bonded remain eligible by making a thorough inquiry into the company’s financial health utilizing all the tools at their disposal and all pertinent information available.



2. Each regulatory authority should exercise its discretion and not accept new or additional self-bonds for any permit until coal production and consumption market conditions reach equilibrium, events which are not likely to occur until at least 2021.
3. Where a bankruptcy reorganization plan has resulted in the creation of a new company, the new company would need to be in existence for at least five years as required by the law before it would be eligible for self-bonding.

In evaluating the financial solvency requirement, the regulatory authority should always evaluate the present and future financial circumstances of every applicant. This includes a careful evaluation of the financial information of a company that is likely to file for, has filed for, or has emerged from bankruptcy to determine whether it meets the self-bonding criteria.

In addition to the Policy Advisory, OSMRE is taking a number of steps to implement practical, well-rounded solutions that ensure coal companies reclaim the land they mine. These include:

- Monitoring the financial landscape in the energy sector
- Evaluating responses to the Ten-Day Notices OSMRE issued to Illinois, Indiana, New Mexico and Wyoming to determine if these states' regulatory authorities are properly administering their bonding programs in accordance with the law
- Sharing financial data and best practices with state agencies
- [Reviewing public comments on the citizens' petition to change self-bonding regulations](#)

OSMRE is the primary regulator of surface coal mining under SMCRA until a state or American Indian Tribe demonstrates it has developed a regulatory program meeting all SMCRA requirements and regulations issued by OSMRE.

States or Tribes that become the primary regulator of surface coal mining in their jurisdiction (known as primacy) assume responsibility over permitting, inspection and enforcement activities, including reclamation. OSMRE then oversees the state's or Tribe's implementation of the approved regulatory program.

Currently, [twenty-four states](#) have primary authority for regulating surface coal mining and reclamation) while OSMRE directly regulates surface coal mining and reclamation operations in [twelve states](#) and on American Indian lands. Nineteen of these primacy states allow self-bonding, while five do not.

[Click here to read the electronic version](#) of the Policy Advisory. To learn more about primacy and how OSMRE works with the states to enforce SMCRA please visit the





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bureau's [web page on Regulating Coal Mines](#). To learn more about self-bonds and other forms of financial assurance please visit OSMRE's [web page on Reclamation Performance Bonds](#).

The Office of Surface Mining Reclamation and Enforcement (OSMRE) carries out the requirements of the Surface Mining Control and Reclamation Act of 1977 in cooperation with states and tribes. OSMRE's objectives are to ensure that coal mining activities are conducted in a manner that protects citizens and the environment during mining, to ensure that the land is restored to beneficial use after mining, and to mitigate the effects of past mining by aggressively pursuing reclamation of abandoned coal mines. For instant updates on OSMRE, follow the bureau's Twitter feed [@OSMRE](#).

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