

**460. DEPARTMENT OF MINES
CHAPTER 10. NON-COAL RULES AND REGULATIONS**

SUBCHAPTER 25. FORM, CONDITIONS, AND TERMS OF PERFORMANCE BONDS

460:10-25-3. Terms and conditions of the bond. [AMENDED]

- (a) The performance bond shall be in the amount determined by the Department as provided in Section 460:10-23-2 and 460:10-23-3 or as provided in 460:10-10-5 for limited use permits.
- (b) The performance bond shall be payable to the Department.
- (c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Mining Lands Reclamation Act, this Chapter, and the conditions of the permit and shall cover the entire permit area.
- (d) The duration of the bond shall be for the entire period provided in Section 460:10-23-4.
- (e) Collateral Bonds, except Letters of Credit, shall be subject to the following conditions:
 - (1) The Department shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in the bonding regulations contained in Subchapters 21, 23, and 27 of this Chapter.
 - (2) The Department shall value collateral at their current market value, not face value.
 - (3) The Department shall require that Certificates of Deposit be assigned to the Department in writing, and upon the books of the bank issuing such certificates.
 - (4) The Department shall not accept an individual certificate for a denomination in excess of \$100,000.00, or the maximum insurable amount as determined by FDIC and FSIC.
 - (5) The Department shall require the banks issuing these certificates to waive all rights to setoff or liens which it has or might have against those certificates.
 - (6) The Department shall only accept automatically renewable Certificates of Deposits.
 - (7) The Department shall require the applicant to deposit sufficient amounts of certificates of deposits, to assure that the Department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required under the bonding regulations.
- (f) Letters of Credit shall be subject to the following conditions:
 - (1) The letter may only be issued by a bank organized or authorized to do business in the United States.
 - (2) Letters of Credit shall be irrevocable during their terms. The Department may approve the use of letters of credit as security in accordance with a schedule approved with the permit. Any bank issuing a letter of credit for the purpose of this paragraph shall notify the Department in writing at least 90 days prior to the maturity date of such letter of credit or expiration of the letter of credit agreement. Letters of credit utilized as security in areas requiring continuous bond coverage shall be forfeited and collected by the Department if not replaced by other suitable evidence of financial responsibility at least 30 days before the expiration date of the letter of credit agreement.
 - (3) The letter must be payable to the Department in part or in full upon demand and receipt from the Department of a notice of forfeiture issued in accordance with Subchapter 29 of this Chapter.
 - (4) The Department shall not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet by a Certified Public Accountant.
 - (5) The Department shall not accept a letter of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation, as provided by State Law or in the absence of State Law, in accordance with (e)(2) of this section.

(6) The bond shall provide that:

(A) The bank will give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations or requirements which could result in suspension or revocation of the bank's charter or license to do business;

(B) In the event the bank becomes unable to fulfill its obligation under the letter of credit for any reason, notice shall be given immediately to the permittee and the Department;

(C) Upon the incapacity of the bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without bond coverage in violation of Section 460:10-21-4(b). The Department shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period, the Department shall conduct weekly inspections to ensure continuing compliance with other permit requirements and the Act. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.