



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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TO: **Internal File**

THRU: Pamela Grubaugh-Littig, Acting Associate Director *pgl*

THRU: Daron R. Haddock, Permit Supervisor *DRH*

FROM: Wayne H. Western, Senior Reclamation Specialist *WHW*

RE: Evaluation of the 5% Rule for Adjusting Reclamation Bonds.

## SUMMARY:

As part of the evaluation of the reclamation bond guidelines the Division looked at the unofficial 5% rule for adjusting bonds. The unofficial 5% rule states that the Division will not require a bond to be increased if the difference between the reclamation cost estimate and the bond is not more than 5%.

## PURPOSE:

The Division is developing guidelines for the calculation of reclamation bonds. The guidelines deal with minor increases to the reclamation bond. In the past the Division used an unofficial guideline that allows minor increases to the reclamation cost estimate but not the bond amount. If the difference between the reclamation cost estimate and bond was not more than 5%, then the Division would not require the permittee to adjust the bond. The unofficial rule became known as the 5% rule.

The Division contacted other agencies to find out how they handle minor reclamation cost increases. The results are as follows:

- Colorado requires that the bond be increased whenever the reclamation cost estimate is increased. For practical reasons the Colorado program has the permittee include a line item in the bond calculations for minor bond increases. If the increased reclamation cost estimate exceeds the bond

amount then the permittee must increase the bond. The amount of the minor amendment fund is negotiated between Colorado's staff and the permittee.

- Montana, OSM, and Wyoming do not have a guideline for minor reclamation cost increases. Such increases are left to the discretion of the technical staff that reviews the bond. The bonds are reviewed every year and at the midterm and permit renewal. During the review period the technical staff will evaluate the reclamation cost estimate and the bond. If the staffs believe that an increase to the reclamation bond is needed, then the permittee is required to post additional bond.

I asked the people who handled reclamation cost estimates if they saw any problems with the 5% rules. The response was no.

As part of the reclamation cost guideline review, Mary Ann Wright asked the question, "Why not use a 10% rule instead of 5% rule?" What amount to use is a judgement call that should be based on experience regarding:

- The workload of the Division's staff to update the bond.
- The risk the Division is willing to accept with having enough money to reclaim a mine and to what standard.
- The time and money required by the permittee to change the bond.

The main justification for using 5% is the 5% rule's track record. For the past 9 years the 5% rule allowed the Division to support the coal industry by reducing the time and money that a permittee must spend when processing small changes to the permit. Most small permit changes increase the reclamation cost amount by less than 1%. Usually a bond is only adjusted during a permit renewal or when large changes to the permit are made.

During the same period the Division completed reclamation at the Boyer, Thompson Canyon and Sunnyside forfeiture sites. In each case the Division was about to complete reclamation using the forfeited bond and spent the entire bond amount on reclamation. Since no money was left over suggests that the sites were not over bonded.

During the past 9 years neither the Division's staff nor the permittees have requested a change in the 5% rule. The lack of any complaints suggests that the 5% rule is acceptable to both sides and does not need to be changed.

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**RECOMMENDATION:**

My recommendation is to continue using the 5% rule because it enables the Division to do the following:

- Process most small amendments, without having the Division or the permittees spend time and money changing the bond.
- Insure that the Division has enough money to reclaim a forfeited site.

My recommendation is that the bonding guidelines be incorporated into a directive

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