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To: DIVISION OF OIL, GAS AND MINING, COAL PROGRAM

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Overview Of State Financial Assurance Programs For Mining Reclamation. Received At The Interstate Mining Compact Commission Meeting (Imcc), May 2006

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Overview of State Financial Assurance Programs for Mining Reclamation

State Survey Responses

May 2006

Survey Instrument

Coal Programs under Title V of SMCRA

1) What adjustments, if any, have you undertaken (or considered undertaking) with regard to the existing reclamation bonding requirements under your state program (i.e. moving to conventional bonding systems and away from alternative bonding systems; use of trust funds; use of corporate guarantees)?

2) What are the particular challenges you are facing in your state with regard to bonding requirements for surface coal mining operations?

3) Are you experiencing surety companies requiring new or additional collateral in conjunction with surety bonds? If so, what types of collateral (i.e. cash or cash equivalents; investment-grade rated securities; interests in real and personal property)?

4) What percentage of your state's outstanding bonding obligations are met using the following instruments or mechanisms:

Traditional surety bonds _____

Corporate guarantees:
- Self bonds _____
- Parent guarantees _____
- Third-party guarantees _____

Collateral only _____ Please specify the nature thereof: ____________________

Trust funds _____ Please specify the nature thereof: ______________________

Bond pools ______

Other _____ Please specify the nature thereof: _______________________________

5) What, if any, adjustments have you made to your bond calculation methodology? If none, are you facing any particular challenges with regard to this matter?

6) With regard to bond release, what are the particular challenges you are facing in this area? Have you developed any type of guidance on this topic?

7) What types of innovative approaches are you undertaking in the area of reclamation bonding (i.e. segregating obligations (short v. long term); use of multiple instruments; matching the level of risk to the appropriate financial assurance vehicle)?

8) What protections has your state enacted or adopted to avoid bankrupt surety problems?

Noncoal regulatory programs

1) Does your state have a financial assurance requirement for noncoal mining and reclamation?

2) If so, what areas are covered by the requirement (i.e. entire permit area; proposed affected area; haul roads; processing or stockpile areas)?

3) What types of financial assurance, if any, does your state require for mining reclamation obligations and what are the relative percentages?

_____ Traditional surety bonds

_____ Collateral

Please designate:

_____ Cash or cash equivalents

_____ Investment-grade rated securities

_____ Interests in real or personal property

_____ Water rights

_____ Bond pools

_____ Trust funds

_____ Corporate guarantees

Please designate:

_____ Self bonds

_____ Parent guarantees

_____ Third-party guarantees

_____ Other

Please specify: ____

4) What is the amount per acre required under your financial assurance procedure? (If a rate structure applies, please specify).

5) What types of calculation methodologies do you employ for determining the required financial assurance amount?

6) To what extent has RELEASE of financial assurance obligations been an issue for your state? Do you have procedures or guidelines in place addressing release?

7) What is your experience with regard to the availability of surety bonds?

8) What are the specific challenges you are facing with respect to financial assurance in your state?

9) What types of innovative approaches are you considering with respect to financial assurance (i.e. segregating risk (short v. long term); use of dedicated trust funds; use of multiple instruments; matching the level of risk to the appropriate mechanism; phased bonding)?

10) What adjustments to your regulatory program have you undertaken (or considered undertaking) in the area of financial assurance?

State Responses

Coal Programs under Title V of SMCRA

Coal Programs Under Title V of SMCRA
State Survey Responses

1) *What adjustments, if any, have you undertaken (or considered undertaking) with regard to the existing reclamation bonding requirements under your state program (i.e. moving to conventional bonding systems and away from alternative bonding systems; use of trust funds; use of corporate guarantees)?*

State	Response
AL	None
AR	None
CO	All Colorado bonds are calculated on a task-by-task basis, using industry standard cost estimating techniques. This has been the case for many years, and we do not intend to change this practice
IL	We are a conventional bonding system.
IN	None in regard to systems of bonding with exception of a revision to the Bond Pool statute. Indiana's Bond Pool covers Phase II and Phase III only. Phase I must still be guaranteed through a conventional method. The revision to the statute strengthened Indiana's program as it provides an avenue to remove a company from the Bond Pool if they do not aggressively pursue bond release.
KY	Kentucky primarily relies on the use of conventional bonds. The state also has a bond pool and accepts cash and letters of credit. Consideration is also being given to potentially allowing the creation of Trust Funds in order to manage the long-term financial obligations created by AMD.
MD	Maryland is in the early stages of revising their coal mining bonds. We maintain an alternative bonding system utilizing a per acre bond and a Bond Supplement Fund that is funded by a $0.10 per ton fee. The Fund cap is set at $750,000. There are 63 active coal mining permits in Maryland. We are considering a bond requirement based upon the worst-case volume of material that would have to be moved to backfill a permit in addition to a flat rate bond for support area and revegetation. If implemented, it won't be a total full cost bond, but it will increase the bond amount on those permits that have a higher reclamation liability and significantly reduce the liability to the Supplement Fund in the event of forfeiture. Maryland will not consider self-bonding.
ND	North Dakota recently added rules that allow letters of credit as the financial instrument to back a collateral bond. Previously, we only accepted cash deposits and certificates of deposit as the collateral. We also accept surety and self bonds.
NM	No adjustments made.

OH	Revised statutory language is being reviewed to move from Alternative Bonding system with a bond pool to a revised bond mechanism including optional "full cost bonding" as well as a bond pool mechanism. Also, we are revising the Letter of Credit language to provide a longer period of notification prior to expiration. A bill will be proposed shrotly which would change the existing Ohio bond pool system. Key provisions are as follows: ▸ The bond pool is optional. For those who choose not to participate, full cost bonding will be required using the OSM bond calculation procedure to determine the bond amount and they will not pay any severance tax toward the bond pool. For those who choose to participate the severance tax will be 14 cents per ton. ▸ A one-time 5 million dollar general fund appropriation is proposed that will clean up the backlog of sites where insufficient funds have been available to reclaim. ▸ Bond pool membership will be restricted to companies that have paid severance tax for a 5-year period. ▸ The bond pool will not cover coal preparation plants that are not associated with an active permit. These items will require full cost bond. ▸ The bond pool will not cover long-term acid mine drainage treatment or water supply replacement requirements. The statute will provide for a trust fund system to assure discharge treatment. ▸ The bond pool will not cover subsidence repair as this will be covered by an insurance policy, as Illinois requires. ▸ Current Ohio law does not allow bond adjustment. The bill proposes to allow bond adjustment for bond pool permits in those circumstances only where a failure to abate cessation order has been issued for non-contemporaneous reclamation. ▸ The bill proposes to give the agency a priority lien in front of all other creditors in the event of bankruptcy. ▸ A coal bond advisory board is proposed comprised of 2 persons from industry, 2 from the state and an independent CPA. ▸ A severance tax credit is proposed for an operator who reclaims a bond-forfeited site in the amount of the construction estimate the agency would have spent to reclaim the site.
OK	None
PA	The cost of two recent bond forfeiture sites is significantly higher than the full cost bond amount. We investigated to determine the reason for the difference, have reported that to the Mining and Reclamation Advisory Board and have sought the MRAB's advice on how to fine tune our bonding methodology to prevent future occurrences. We anticipate receiving the MRAB's advice on April 27, 2006 and will then decide what refinements to make. Pennsylvania is also developing a "blanket bond" for surface coal mining that would allow a permittee to post one bond to cover all of its surface coal mine permits instead of having individual bonds posted for individual surface coal mine permits.
TX	No adjustments have been made and none are contemplated at this time.
UT	Utah now requires that surety bonds must have an A.M. Best's Key Rating Guide rating of A- or greater. All surety companies must be continuously listed on the U.S. Department of Treasury Circular 570.

VA	None
WV	HB 3033 (2005 Regular Session) required the agency to consider and make determinations concerning the feasibility of certain financial assurance mechanisms (full cost bonding for land reclamation, water quality trust fund, water treatment bonds) for reclamation of a coal mine site and the impacts of such mechanisms on the fiscal stability of the Special Reclamation Fund (SRF). The evaluation of the financial assurance mechanisms is a work in progress. It appears any bonding mechanism could need a fund to address situations where the calculated costs of reclamation are inadequate or the bond amount is uncollectible.

2) *What are the particular challenges you are facing in your state with regard to bonding requirements for surface coal mining operations?*

State	Response
AL	None
AR	Shift from surety bonds to Letters of Credit since only small operators are mining.
CO	Routine challenges occur as we negotiate permit-specific bond amount requirements with permittees. Negotiations must reconcile the regulatory requirement for adequate bond with the permittee's need to maintain an amount that is reasonable and affordable.
IL	It has become difficult for a company to obtain a surety bond for coal mining operations. In the past five + years, we have moved away from surety bond to letters of credit and CD's for bonding small areas. In the past three years, we have seen a move by the big company toward self bonding. However, a majority of the bonds held are surety bonds.
IN	Industry continues to give the indication it is difficult to obtain bonds. Surety companies are very concerned with LLC Corporations and several levels of ownership. This issue has delayed transfer or renewal applications in the past and puts the RA in a position in which enforcement action may be necessary.
KY	Variability in the bonding market.
MD	Maryland has statutory bond minimums and no maximums. Therefore, the RA can increase bond amounts as necessary to insure adequate funds for reclamation. This process has been done on individual permits occasionally but generally per acre bond amounts are set industry wide. Political pressure could be placed on the RA that could be somewhat problematic but would not likely stop the increase.
ND	The high cost of surety bonds is the biggest issue; however, a small company could not recently find a surety to issue them a reclamation bond for a new permit area. That company had to furnish a collateral bond backed by a letter of credit.
NM	No significant challenges.

OH	Surety companies are hesitant to write reclamation bonds; operators are forced to seek alternative bonding. Overall, bond amounts and supplemental severance tax are currently insufficient to cover liabilities to the state. Industry will not accept full cost bonding for all operations.
OK	None, although more assistance for small to mid-sized operators would be helpful.
PA	Convincing permittees that are no longer mining to post the additional bond to provide for the perpetual treatment of their post mining discharge. We are hearing from operators that it is still difficult for them to obtain surety bonds.
TX	No particular challenges.
UT	An operator notified the state of Utah that their surety is no longer interested in providing reclamation bonds for mining companies. The surety will maintain their bond but will cancel the bond if any change or "rider" is requested. The operator emphasized "any". This position reflects a new level of inflexibility by bonding companies.
VA	The availability of surety bonds.
WV	▸ Accomplishing land reclamation and water treatment at revoked sites with available funding. ▸ Imposition of water quality standards on the agency at revoked sites. ▸ Determining the amount of full cost bond for any given mining permit. Some of the methods to consider in determining "full cost bond" amounts are the OSM handbook, a revised matrix from the WV mining rules, and historic costs for the Special Reclamation Program to reclaim revoked sites. Another complication in ascertaining a full cost bond amount is the fact that the costs for water treatment are often difficult to estimate due to the broad ranges of water flow, concentrations of pollutants, duration, and other factors that influence water discharges associated with some mining operations.

3) *Are you experiencing surety companies requiring new or additional collateral in conjunction with surety bonds? If so, what types of collateral (i.e. cash or cash equivalents; investment-grade rated securities; interests in real and personal property)?*

State	Response
AL	Do not know this answer.
AR	No.
CO	We hear that such arrangements are occurring with some permittees and their surety companies, but we do not become involved in this transaction. Permittees are obtaining required bonds.

IL	I have been told that where a surety bond is used, the surety company has increased the collateral requirements. However, we are not directly involved with the bonding agreements between coal companies and surety companies.
IN	We are not aware but this is a matter that would be between the surety and the permittee.
KY	Based on comments from industry, surety companies are requiring additional collateral. We are not certain specifically what types of collateral they may be requiring.
MD	We do not have direct contact with the sureties regarding collateral. However, operators have indicated to us that their sureties generally require between 25 to 80% collateralization with the norm closer to 80%. Some have indicated their sureties require 100%.
NM	Surety bonds have been a very small part of NM's coal financial assurance for a while. The last two bonds were released in 2004 when those mines reached final bond release. Late last year, a new mine obtained a surety bond for its first 5-year term, which covers mostly facility construction. That mine is paying high premiums and will likely convert to self-bond to meet the higher bonding requirements for actual mining disturbance. We are not aware of any collateral requirements from surety companies.
ND	The mining companies are dealing with this issue on a case-by-case basis. It is our understanding that some surety companies have required the mining companies to provide collateral in order to have a surety bond issued.
OH	Operators complain of such things as posting collateral in the amount of the bond. No personal knowledge of requirements.
OK	No. N/A
PA	Do not have any information on this point.
TX	None, to my knowledge.
UT	Utah is not aware of any of these changes.
VA	Have heard of these items being required, but do not have any specific information.
WV	The agency is aware of sureties requiring additional collateral for surety bonds, but is uncertain of the details.

4) What percentage of your state's outstanding bonding obligations are met using the following instruments or mechanisms:

	Traditional Surety Bonds:
AL	55%
AR	48%
CO	73%
IL	69.63%
IN	24%
KY	80%
MD	Approximately 40% of bonds are surety; 40% CD's; and 20% Letters of Credit. Some companies use a combination of all three.
ND	37.3%
NM	1%
OH	30%
OK	90%
PA	66%
TX	6.5%
UT	90%
VA	91.21%
WV	85%

Corporate Guarantees:

	Self Bonds:	**Parent Guarantees:**	**Third-Party Guarantees:**
AL	2%		
CO	3% (All include a parent guarantee)		
IL	1.5%	20.83%	2.80%
IN		57%	1%
ND			57.3%
NM	35%	22%	
TX	16.5% (Self bonds with Third-Party Guarantee: 73.5%)		
VA	5.72%		0.12%
WV	11% (Includes parent guarantors)		

	Collateral Only:	Please specify the nature thereof:
AL	43%	Cash, Certificates of Deposit (CD's), Bank Letters of Credit (LOC)
CO	21%	16% = CD; 5% = Cash
IL	5.16%	CD's, LOC and Cash. The use of LOC's is increasing, however, many banks will not write because of our specific requirements.
IN	13%	
ND	5.4%	Most are in the form of cash deposits but we have accepted one LOC
NM	42%	LOC
OH	3%	CD's
OK	0.5%	Escrow Account Deposited Monthly
PA	17%	CD's, LOC, Cash, US Treasuries
TX	3.5%	LOC
UT	10%	Irrevocable LOC's - 5%; Government Securities - 4%; Real Property - 1%
WV	2%	CD's and Cash
	Trust Funds:	**Please specify the nature thereof:**
PA	8%	Various Investments (Stocks/Bonds)
	Bond Pools:	
IN	5%	
KY	5%	
OH	66%	
VA	57.20%	
	Other:	**Please specify the nature thereof:**
AR	52%	Irrevocable Letter of Credit
CO	3%	Letters of Credit (LOC's)
KY	15%	LOC's, CD's and Cash
NM	42%	LOC's
OH	1%	LOC's
OK	0.5%	Irrevocable LOC's
PA	10%	State Financial Guarantees (Remining Incentive & Conversion Assistance).
VA	3.07%	LOC's, Cash, CD's, Actual Cost Bond – 42.80%
WV	2%	LOC's

5) *What, if any, adjustments have you made to your bond calculation methodology? If none, are you facing any particular challenges with regard to this matter?*

State	Response
AL	Periodic adjustments of cost factors due to inflation.
AR	None. No.
CO	None. See response to # 2.
IL	None. No.
IN	None. No.
KY	Kentucky requires the submittal of supplement bonds in situations of extending contemporaneous reclamation relative to highwall backfilling and grading. This instrument, termed "supplemental assurance" assesses an additional bond requirement of $50,000 per 1,500 linear feet of highwall extending beyond the allowed initial 1,500 feet of exposed highwall.
MD	As indicated in # 1 above, we are considering a calculation method based on the total void of the pit(s) when liability would be the greatest. This method will provide a figure of the total cubic yards of material that would have to be moved to reclaim. We would likely still bond support area and revegetation at a flat per acre rate based on our AML reclamation cost experiences.
ND	In 1985, North Dakota adopted procedures and guidelines for calculating the worst-case reclamation condition for a permit area or mine. The variable costs associated with these guidelines are updated each year by the Reclamation Division and sent to the mining companies. If hourly rates increase more than a couple percent in a given year, we require companies to increase the bond amount. Also, if more than one permit is issued for a particular mine, we allow a bond area to include more than one permit at a time. Based on questions raised by one of the large mining companies in the state, we are presently reviewing the methods we use to calculate hourly equipment rates. However, it does not appear we will be making any significant changes to the methods used for calculating the hourly rates for the types of equipment that would be used to reclaim a mine in the event of bond forfeiture.
NM	None. No.
OH	None. No changes have been made to the calculation method because the bond rate is flat $2500 per acre set by the legislature.
OK	None, other than keeping up with current equipment operating costs.

PA	Pennsylvania assesses its Bond Rate Guidelines annually based on the prior year's reclamation contract amounts. Changes in the reclamation contract amounts affects the Bond Rate Guidelines. Some items have increased.
TX	No adjustments have been made to our bond calculation methodology. However, one of our calculation methods, the "worst case pit" bonding method, presents the following challenges: requires detailed reclamation cost accounting, not flexible to mine plan changes and when major compliance issues arise may result in inadequate bond amounts, until adjusted.
UT	Utah has a prescribed reclamation cost estimate methodology. The bond calculations are reviewed at least at the permit midterm and escalated for five years. Bond re-calculations are done when there is a need, such as adding a new surface facility. The escalation factor was recently revised – i.e. the Historical Cost Index. The revision entails reviewing "reclamation only" historical costs from the Means Historical Cost Index.
VA	None
WV	The tax used to supplement the Special Reclamation Fund was increased to provide funding for the inventory of post 1977 revoked sites.

6) With regard to bond release, what are the particular challenges you are facing in this area? Have you developed any type of guidance on this topic?

State	Response
AL	None
AR	None. No.
CO	Bond release proceeds without difficulty. Act/Regs, and we have a Bond Release Guidelines.
IL	None
IN	Indiana has had a standardized process for all Phases of bond release for a number of years and terminated jurisdiction on nearly 9,000 acres in 2004.
KY	Kentucky is not encountering any real or unusual challenges relative to bond release. We have a standardized bond release process that has been established in a guidance document.
MD	We have not experienced any difficulties in this area.

ND	Since we allow the bond amount to be set based on the worst-case reclamation condition, we have not been receiving all that many bond release applications for reclaimed lands at the active mines. Hardly any partial bond release applications are filed and final bond release is delayed until a larger tract, such as an entire quarter section, is eligible for release. Partial bond release for inactive mines is more common. Following a legislative study on bond release in North Dakota, a few of the notice requirements associated with bond release applications were eliminated from the state reclamation law to encourage companies to file more bond releases.
NM	Bond releases have been managed smoothly with few problems. The biggest challenge has been meeting vegetation standards during years of little or no precipitation. Several years ago, New Mexico developed flexible criteria for revegetation success that has aided some mines in reaching final bond release despite drought years. NM Faces some frustration, however, with persuading companies to come in for bond releases when they are eligible. If they have corporate guarantees or self-bonds, they have little incentive to do so.
OH	Current challenges are related to adverse water quality issues on reclaimed sites. Ohio has included in regulation the requirement for operators to "take all measures necessary to obtain a bond release on sites". This includes the requirements to submit necessary release paperwork. This allows the required submission of bond release documents that previously would lag behind the actual reclamation work. Ohio has procedural directives.
OK	We have bond release guidelines that have been used in Oklahoma for about 10 years.
PA	Nothing new.
TX	Some permittees with self bonds and/or using the "worst case pit" bonding method have become apathetic towards seeking reclamation bond releases because there is no monetary incentive in doing so. To overcome this situation, we have (since about 5 years ago), required that the submission of bond release applications be made part of the reclamation plan timetable, which is a condition of the approved mining permit. This allows failure to submit bond release applications within specified time frames to become a violation of the permit. More recently, we revised our annual permit fee structure to include an annual fee of $3.00 for each acre bonded on December 31st of each year. It is our goal to gradually shift all of the annual mined acreage fee collections to this bonded acreage fee, thereby creating an incentive for mining companies to more aggressively seek release of reclamation bond.
UT	Utah has a guidance document for bond releases.
VA	Getting permittees to submit bond release requests. VA has developed a guidance document.
WV	One challenge to bond release is the circumstances where land reclamation is completed but ongoing water treatment obligations preclude release. The agency is exploring and in some instances utilizing escrow accounts or other financial assurance mechanisms to address compliance with Clean Water Act requirements in efforts to release the SMCRA reclamation bond. Vegetative cover and capability of meeting post mining land use continue to be