

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

November 1, 2005

TO: Internal File

THRU: Priscilla W. Burton, Environmental Scientist III/Soils, Team Lead

FROM: Wayne H. Western, Environmental Scientist III/Engineering, Bonding

RE: MRP Rewrite, Andalex Resources, Inc., Wildcat Loadout, C/007/0033, Task ID #2277

SUMMARY:

On June 20, 2005, the Division received a rewritten MRP for the Wildcat Loadout. The rewritten MRP is organized into sections and subsections similar those in the R645 Rules. This memo deals specifically with bonding.

TECHNICAL ANALYSIS:

RECLAMATION PLAN

BONDING AND INSURANCE REQUIREMENTS

Regulatory Reference: 30 CFR Sec. 800; R645-301-800, et seq.

Analysis:

Form of Bond

The Permittee met the minimum requirements of this section of the R645-Rules. Those rules require that the Division shall prescribe the form of the performance bond. The Division may allow for: a surety bond, a collateral bond, a self-bond, or a combination of any of these bonding methods.

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Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation or until achievement of the reclamation requirements of the Act, regulatory programs, and permit, whichever is later.

With the approval of the Division, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Division. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the Division.

The bond liability of the permittee shall include only those actions that he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved. Implementation of an alternative postmining land use which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be specific to include productivity requirements.

The reclamation bond is an irrevocable letter of credit, which was approved by the Division on February 2, 2004. See Appendix B of the MRP for additional details. The bonded area is shown on Plate 9 and the list of structures and other items covered by the bond are in Section R645-301-542.400 of the MRP.

Determination of Bond Amount

The Permittee met the minimum requirements of this section of the R645 Rules. Those rules require that the amount of the bond required for each bonded area shall: be determined by the Division; depend upon the requirements of the approved permit and reclamation plan; reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and, be based on, but not limited to, the estimated cost submitted by the permit applicant.

The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Division in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than \$10,000.

An operator's financial responsibility for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required in this section.

The Division and the Permittee calculated the reclamation cost of the Wildcat Loadout. Those calculations are in Appendix B of the MRP. The calculations are based on the R645-301-830 rules, the OSM reclamation handbook and the Division's reclamation cost technical divertive.

Terms and Conditions for Liability Insurance

The Permittee met the minimum requirements of this section of the R645 Rules. Those rules state that the Division shall require the permittee to submit, as part of its permit application, a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

The policy shall be maintained in full force during the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation operations under this Chapter.

The policy shall include a rider requiring that the insurer notify the Division whenever substantive changes are made in the policy including any termination or failure to renew.

The Division may accept from the permittee, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable State self-insurance requirements approved as part of the regulatory program and the requirements of this section.

A copy of the insurance certificate is in Appendix B of the MRP.

Findings:

The Permittee has met the minimum requirements of this section of the regulations.

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RECOMMENDATIONS:

The Division should approve the amendment.

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