

Directive

DRAFT POLICY FOR BOND RELEASE INFORMATION

The objective of this policy is to provide information on the general requirements for bond release in accordance with rules and regulations pertaining to surface and underground coal mining activities in the state of Utah.

PRIOR TO BOND RELEASE REQUEST

In accordance with Section UMC/SMC 800.40 of the regulations [R645-301-880], the permittee must submit appropriate reclamation evaluations prior to application for bond release. Additionally, weather conditions must allow for site inspection and evaluation of the work accomplished on the site.

In order to comply with the requirements for bond release, the permittee shall be required to:

1. Address all outstanding stipulations for the permit as required.
2. Submit as-built plans, including designs, reports and drawings of the reclamation work accomplished. Any modifications, amendments, or changes to the reclamation plan as a result of the reclamation work must be approved by the Division and incorporated into the Mining and Reclamation Plan prior to request for bond release.
3. Submit a detailed cost estimate for the remaining reclamation work to be accomplished in the plan. The cost estimate shall include but not be limited to cost for remaining reclamation treatments; revegetation; vegetative, water, and other monitoring requirements; surveys or studies to determine reclamation success; maintenance costs; and, engineering and contingency costs.
4. Submit a copy of the proposed newspaper advertisement for requesting bond release. (see part B below)

REQUEST FOR BOND RELEASE

A. **GENERAL REQUIREMENTS** - Bond release information submitted by the permittee must contain or reference the following information:

1. Notice Letters shall at a minimum contain the same information as submitted in the Newspaper Advertisement (see part B below). Copies of all Notice Letters shall be submitted to the Division. Notice Letters shall be sent to all parties who have a valid interest in release of the bond notifying them of intention to seek release, and shall include but not be limited to:
 - a. Surface Owners
 - b. Subsurface Owners
 - c. Adjoining Property Owners
 - d. State Historical Society
 - e. State Division of Water Rights
 - f. State Department of Environmental Quality
 - g. State Division of Wildlife Resources
 - h. Federal Agencies (BLM, Forest Service, National Park Service, etc. as may be involved with **FEDERAL** mines)
 - i. County Commissions
 - i. Mayors
 - j. Local Planning Agencies
 - k. Municipality Authorities
 - l. Others _____
2. A legal description of the release area.
3. Maps of a scale of 1"=500' or larger illustrating the boundaries of lands for which bond release is being requested. The maps shall include the entire disturbed area boundaries and delineate areas of prior bond release and include the date and the acreage for the PHASE(S) of reclamation which bond has currently been released.
4. References to the appropriate portions of the approved mining and reclamation plan and revisions for postmining topography, drainage control, vegetation, intended land use, etc. citing the specific reclamation treatments, areas, and work which was accomplished in consideration for bond release.
5. A summary of the current bond amount, total disturbed area acreages, and the acreages, locations, dates and amounts of bond released for PHASE I, PHASE II, and PHASE III reclamation.

B. NEWSPAPER ADVERTISEMENT - Newspaper Advertisements shall be approved by the Division PRIOR to publication. A copy of a newspaper advertisement which is published at least once a week for four consecutive weeks in a newspaper of the locality of the mining operation shall be submitted to the Division within 30 days from the date of bond release application. The advertisement shall contain the following items:

1. The permit number, name of the permittee, and the permit approval date.
2. Accurate legal description of the land under consideration for release.
3. Number of acres to be considered for release.
4. Current amount and type of bond.
5. The amount of bond being sought for release.
6. A description of the type of reclamation work performed and the dates when the work was performed and completed.
7. A statement that written comments, objections and requests for public hearing or informal conference may be submitted to the Division of Oil, Gas and Mining.
8. The address of the Division of Oil, Gas and Mining, where requests, comments and objections may be submitted.
9. The closing date for submission of such comments, etc. (At least 30 days AFTER the last publication date.)

C. INSPECTION BY DIVISION - Upon receipt of the bond release application and acceptance of the information presented in the application, the Division shall within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. In conjunction with the inspection, the following shall be accomplished:

1. The surface owner, agent or lessee shall be given notice of the inspection by the Division and may participate with the Division in making the bond release inspection. The Division may also arrange with the permittee to permit other persons with an interest in bond release access to the site for the purpose of gathering information relevant to bond release proceedings.
2. Notification to the Office of Surface Mining shall be made two-weeks prior to the scheduled bond release inspection in accordance with OSMRE Directive REG-26 for concurrence with bond release on FEDERAL LANDS.

3. A field report regarding the inspection will be prepared by the Division. The report shall include any concerns raised by other persons present at the time of the inspection. The field report will be used in conjunction with the information presented by the operator in evaluation for bond release.

D. PUBLIC HEARINGS AND WRITTEN OBJECTIONS - Written objections and requests for public hearings or informal conferences may be made by any person with a valid legal interest which might be adversely affected by release of the bond, or by any federal, state or local governmental agency which has jurisdiction by law, special expertise, or enforcement regarding any impact involved in the operation.

1. The Division shall notify the permittee, surety and persons who either filed objections in writing or who were party to the hearing proceeding, if any, of its decision to release or not release all or part of the performance bond. If no public hearing is held, the notification shall occur within 60 days from the filing of the bond release application, or, if a public hearing is held, within 30 days after the hearing has been held.
2. The Division may hold an informal conference as provided in UCA 40-10-13(a) of the Act to resolve written objections. The Division shall make a record of the informal conference unless waived by all parties, which shall be made accessible to all parties. The Division shall also furnish all parties of the informal conference with a written finding of the Division based on the informal conference and the reasons for said finding.

PHASE I BOND RELEASE

Bond release for PHASE I may be considered only after the Division is satisfied that all the reclamation requirements for PHASE I have been met. The requirements for PHASE I reclamation are:

1. Completion of backfilling and regrading (which may include the replacement of topsoil); and,
2. Completion of drainage control in accordance with the requirements of the approved reclamation plan.

A request for PHASE I bond release shall require that the general information for bond release be provided, and, include but not be limited to the following:

1. A map illustrating the "as-built" topography if different than the most recently approved plan.

2. Pre and Postmining Contour Topographic Maps (no smaller than 1"=500') showing:
 - a. Permit Area
 - b. Areas Previously Released
 - c. Areas Proposed for Release
 - d. Postmining Topography
 - e. Postmining Hydrologic Features, including drainage, ponds, and monitoring sites
 - f. Cross-sections, including but not limited to, Approximate Original Contour (AOC), drainage systems, ponds, roads, etc.
 - g. Dates of Backfilling and Grading Activities
 - h. Dates of Topsoil Replacement
 - i. Topsoil Replacement Depths
3. Results of overburden chemical analysis with discussion on how overburden will not adversely affect plant growth or water quality.
4. Evaluation of topsoil or substitute soil including analyses and replacement depths.
5. Evaluation of subsoil including analyses and replacement depths.
6. Any field designs, modifications or changes to the mining and reclamation plan which occurred in conjunction with the reclamation activities.
7. A brief history of mining and reclamation activities indicating when mining operations began and ended, when earthwork and topsoil distribution began and ended.

PHASE II BOND RELEASE

Bond release for PHASE II may be considered only after the Division is satisfied that all the reclamation requirements for PHASE II have been met. The requirements for PHASE II reclamation are:

1. Completion of PHASE I reclamation;
2. Revegetation has been established in accordance with the requirements of the approved reclamation plan; and,

3. No part of the land considered for bond release is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by UCA 40-10-17(j) of the Act and by Subchapter K [R645-301-200(Part 823)] of the regulations, or, where a permanent impoundment is to remain as a siltation structure under provisions made with and approved by the Division; and,
4. In the event that the area under consideration includes prime farmlands, that soil productivity has returned to the equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to UCA 40-10-11(4) of the Act and Part 823 [R645-301-200(Part 823)] of the regulations.

A request for PHASE II bond release shall require that the general information for bond release be provided, and, include but not be limited to the following:

1. A brief history of mining and reclamation activities indicating when mining operations began and ended, when earthwork and topsoil distribution began and ended, and when specific revegetation treatments were applied in accordance with the approved plan, and when, if any, additional revegetation treatments or supplements were applied.
2. Detailed vegetation information including sampling data on productivity and cover, species composition, and sampling methodology in accordance with the approved reclamation plan and as required by state regulation and policy.
3. Any field designs, modifications or changes to the mining and reclamation plan which occurred in conjunction with the reclamation activities.

PHASE III BOND RELEASE

Bond release for PHASE III may be considered only after the Division is satisfied that all the reclamation requirements for PHASE III have been met. The requirements for PHASE III reclamation are:

1. Completion of PHASE I reclamation;
2. Completion of PHASE II reclamation; and,
3. The period specified for Permittee responsibility in R645-301-356 (Section 817.116) of the regulations has been met.

A request for PHASE III bond release shall require that the general information for bond release be provided, and, include but not be limited to the following:

1. A brief history of mining and reclamation activities indicating when mining operations began and ended, when earthwork and topsoil distribution began and ended, and when specific revegetation treatments were applied in accordance with the approved plan, and when, if any, additional revegetation treatments or supplements were applied.
2. Water quality data and analysis indicating successful erosion protection and ground and surface water quality.
3. Detailed vegetation information including sampling data on productivity and cover, species composition, and sampling methodology in accordance with the approved reclamation plan and as required by state regulation and policy.

BOND RELEASE, DETERMINATION OF AMOUNT

The Division shall review, revise and approve the recalculated bond amount as necessary in order to determine the amount of bond to be retained and the amount of bond to be released. If it is determined that the current bond amount is inadequate and the remaining costs exceed what is currently held by the Division, the Division may require an increase to the bonding sum rather than a partial reduction of the dollar value of the bond. It may be possible to release partial liability on lands reclaimed without actually reducing the dollar sum.

PHASE I bond release shall in no case exceed 60% of the bond for the applicable area.

PHASE II bond release shall require that the Division retain that amount of bond for the revegetated area which would be sufficient to cover the cost reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in UCA 40-10-17(t) of the Act for reestablishing revegetation.

PHASE III or final bond release shall not be made until such time as the period specified for permittee responsibility in Section UMC/SMC 817.116 of the regulations [R645-301-356] has been met, or, PHASE II reclamation requirements have been met, whichever is greater.

O:\COALBOND.RPT\BONDING.REL

that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the division an additional bond or bonds to cover these increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential; and shall be determined by the division. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the division in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

(2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in Section 40-10-17. The bond shall be executed by the operator and a corporate surety licensed to do business in the state, except that the operator may elect to deposit cash, negotiable bonds of the United States government, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the bonded area.

(3) The division may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the division the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.

(4) Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. The securities shall be security for the repayment of the negotiable certificate of deposit.

(5) The amount of the bond, surety, or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the division from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

1994

* 40-10-16. Release of performance bond, surety, or deposit — Inspection and evaluation of reclamation work — Action on application for release of bond — Objections — Formal hearing or informal conference.

(1) The division shall adopt and promulgate rules providing for the release of all or part of a performance bond, surety, or deposit which will include the following requirements:

- (a) filing of a request with the division by the operator; and
- (b) advertisement by the operator designed to give public notice of the release and the reclamation steps taken by the operator.

(2) Upon receipt of the notification and request, the division shall within 30 days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The division shall notify the operator in writing of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request, if no public hearing is held pursuant to

Subsection (6), and if there has been a public hearing held pursuant to Subsection (6), within 30 days thereafter.

(3) The division may release in whole or in part the bond or deposit if the division is satisfied the reclamation covered by the bond or deposit or portion of them has been accomplished as required by this chapter according to the schedule set forth in the division's rules, but no bond shall be fully released until all reclamation requirements of this chapter are finally met.

(4) If the division disapproves the application for release of the bond or portion of it, the division shall notify the permittee in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(5) When any application for total or partial bond release is filed with the division, the division shall notify the municipality in which a surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(6) (a) Any person with a valid legal interest which may be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to these operations shall have the right to file written objections to the proposed release from bond with the division within 30 days after the last publication of the above notice.

(b) If written objections are filed and a conference is requested, the division shall inform all the interested parties of the time and place of the conference and hold an informal conference within 30 days after the request is filed with the division.

(c) The conference officer may convert the conference to a formal proceeding under the standards set forth by Section 63-46b-4. The matter shall be scheduled for hearing before the board and a hearing shall be held in accordance with the rules of practice and procedure of the board.

(d) A decision from the informal conference may be appealed to the board. The board shall hold a hearing pursuant to the rules of practice and procedure of the board.

1994

40-10-17. Performance standards for all coal mining and reclamation operations — Additional standards for steep-slope surface coal mining — Variances.

(1) Any permit issued pursuant to this chapter to conduct surface coal mining shall require that the surface coal mining operations will meet all applicable performance standards of this chapter, and such other requirements as the division shall promulgate.

(2) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operations as a minimum to:

(a) Conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized.

(b) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as the use or uses does not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicant's declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent

are authorized to bind their corporations. A copy of such authorization shall be provided to the Division along with an affidavit certifying that such an agreement is valid under all applicable federal and Utah laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self bond and execute the indemnity agreement.

860.363. If the applicant is a partnership, joint venture or syndicate, the agreement will bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant;

860.364. Pursuant to R645-301-880.900, the applicant, parent or nonparent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Division an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

860.365. The indemnity agreement when under forfeiture will operate as a judgment against those parties liable under the indemnity agreement.

860.370. The Division may require self-bonded applicants, parent and nonparent corporate guarantors to submit an update of the information required under R645-301-860.323 and R645-301-860.324 within 90 days after the close of each fiscal year following the issuance of the self bond or corporate guarantee.

860.380. If at any time during the period when a self bond is posted, the financial conditions of the applicant, parent, or nonparent corporate guarantor change so that the criteria of R645-301-860.323 and R645-301-860.340 are not satisfied, the permittee will notify the Division immediately and will within 90 days post an alternate form of bond in the same amount as the self bond. Should the permittee fail to post an adequate substitute bond, the provisions of R645-301-840.500 will apply.

870. Replacement of Bonds.

870.100. The Division may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

870.200. The Division will not release existing performance bonds until the permittee has submitted, and the Division has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section will not constitute a release of bond under R645-301-880.100 through R645-301-880.800.

* 880. Requirement to Release Performance Bonds.

880.100. Bond release application.

880.110. The permittee may file an application with the Division for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the Division in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation will be identified in the approved mining and reclamation plan.

880.120. Within 30 days after an application for bond release has been filed with the Division, the

operator will submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the coal mining and reclamation operations. The advertisement will be considered part of any bond release application and will contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan and the name and address of the Division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to R645-301-880.600 and R645-301-880.800. In addition, as part of any bond release application, the applicant will submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

880.200. Inspection by the Division.

880.210. Upon receipt of the bond release application, the Division will, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation will consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution and the estimated cost of abating such pollution. The surface owner, agent or lessee will be given notice of such inspection and may participate with the Division in making the bond release inspection. The Division may arrange with the permittee to allow access to the permit area, upon request of any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

880.220. Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to R645-301-880.600, or, within 30 days after a public hearing has been held pursuant to R645-301-880.600, the Division will notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under R645-301-860.260 and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, if its decision to release or not to release all or part of the performance bond.

880.300. The Division may release all or part of the bond for the entire permit area if the Division is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II and III:

880.310. At the completion of Phase I, after the operator completes the backfilling and regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area;

880.320. At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Division will retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in UCA 40-10-17(t) of the Act for reestablishing revegetation. No part of the bond or deposit will be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by UCA 40-10-17(j) of the Act and by R645-301-751 or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to UCA 40-10-11(4) of the Act and R645-301-200. Where a silt dam is to be retained as a permanent impoundment pursuant to R645-301-700, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the Division; and

880.330. At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation operations, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in R645-301-357. However, no bond will be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

880.400. If the Division disapproves the application for release of the bond or portion thereof, the Division will notify the permittee, the surety, and any person with an interest in collateral as provided for in R645-301-860.260, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

880.500. When an application for total or partial bond release is filed with the Division, the Division will notify the municipality in which the coal mining and reclamation activities are located by certified mail at least 30 days prior to the release of all or a portion of the bond.

880.600. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any

federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, will have the right to file written objections to the proposed release from bond with the Division within 30 days after the last publication of the notice required by R645-301-880.120. If written objections are filed and a hearing is requested, the Division will inform all the interested parties of the time and place of the hearing and will hold a public hearing within 30 days after receipt of the request for the hearing. The date, time and location of the public hearing will be advertised by the Division in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing will be held in the locality of the coal mining and reclamation operations from which bond release is sought, or at the location of the Division office, at the option of the objector.

880.700. For the purpose of the hearing under R645-301-880.600, the Division will have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing will be made and a transcript will be made available on the motion of any party or by order of the Division.

880.800. Without prejudice to the right of an objector or the applicant, the Division may hold an informal conference as provided in UCA 40-10-13(a) of the Act to resolve such written objections. The Division will make a record of the informal conference unless waived by all parties, which will be accessible to all parties. The Division will also furnish all parties of the informal conference with a written finding of the Division based on the informal conference and the reasons for said finding.

880.900. Forfeiture of Bonds.

880.910. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the Division will take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

880.911. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond including the reasons for the forfeiture and the amount to be forfeited. The amount will be based on the estimated total cost of achieving the reclamation plan requirements;

880.912. Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to: