

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	3.3.09
PROCEDURES MANUAL		ISSUE DATE	February 11, 2002
SUBJECT	Performance Bond Forfeiture	Section	Enforcement
		Last Revised	3/12/97

OBJECTIVE AND INTENT :

To ensure the Enforcement Section properly identifies grounds for and provides an orderly process to initiate and complete bond forfeiture action against a permit.

PROCEDURES :

Identifying Grounds For Bond Forfeiture - A permit is subject to bond forfeiture if the permittee (4 VAC 25-130-800.50) -

- fails to abate expired NOV's or CO's.
- fails to comply with the Terms of Issuance of the permit.
- defaults on the conditions under which the bond was accepted.
- fails to comply with Director's orders to reclaim the permit site as a result of permit revocation.

If the permittee fails to abate expired NOV's or CO's, the Field Inspector shall initiate Show Cause Order proceedings within 5 days of the Notice/Order's expiration date (see Procedure #3.3.10).

Recommending Bond Forfeiture -

If any of the above situations exist, the Inspector shall prepare a written fact sheet outlining the permit's history of violations - in concise chronological order (most recent date first, with only those violations pertinent to the bond forfeiture request included).

The Inspector shall:

- concurrently inform the permittee that bond forfeiture proceedings are being initiated. This should occur during an onsite meeting or telephone conversation between the permittee and Inspector. If the permittee is not available, the action should be explained in the inspection report narrative (**DMLR-ENF-044**). The Inspector shall document in the inspection report as to when the permittee was informed of this action.
- submit a "fact sheet" with his or her recommendation to proceed with bond forfeiture to the Area Supervisor. The Inspector shall retain a copy of the fact sheet and recommendation for future reference.

If requested by the Supervisor, the Inspector shall submit and explain any additional material necessary to support or clarify the bond forfeiture request.

The Supervisor shall:

- ensure that the bond forfeiture request file is complete and accurate.
- based upon a review of the Inspector's supporting rationale, submit a recommendation and the Inspector's background information to the Reclamation Services Manager . The recommendation shall either concur or disagree with the Inspector's bond forfeiture request.
- include with the recommendation, a list of any other permits in Virginia owned or under control of

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the permittee/operator; the number of people employed at each permit; and, a discussion of how the bond forfeiture will affect the permittee/operator's overall operations.

The Reclamation Services Manager shall review the material, and render a written decision, which concurs with or rejects the Supervisor's recommendation. The basis for rejecting the recommendation must be documented in writing and placed in the enforcement file.

Inadequate Bond Coverage -

If the Reclamation Program Manager determines that the permittee is without adequate bond coverage for a particular permit per 4 VAC 25-130-800.15(a) or 4 VAC 25-130-800.16(e)(2), he shall notify the permittee by letter (sent certified mail) of the deficiency and provide the permittee a reasonable period, not to exceed 60 days, to replace or increase the permit's bond.

Should the permittee fail to timely submit the required bond for the permit, the Reclamation Program Manager shall immediately notify the Field Inspector by memo. The Inspector shall issue a two-part NOV instructing the permittee to:

Interim Step # 1 - replace the performance bond (or submit the required additional bond amount). The set abatement date shall not exceed 90 days from the date the Reclamation Program Manager sent the initial notice.

Interim Step # 2 - immediately cease coal extraction and initiate reclamation in accordance with the approved reclamation plans (4 VAC 25-130-800.16(e)(2)).

If the permittee fails to cease coal extraction operations or submit the necessary bond coverage by the set abatement dates, the Inspector shall issue a failure to abate CO and proceed with bond forfeiture as set forth on page 1 of 3, or pursue a Show Cause Order under Procedure #3.3.10.

Approval of Bond Forfeiture -

If the Reclamation Services Manager concurs with the recommendation, he shall sign the **BOND FORFEITURE LETTER** prepared by the Enforcement Section Secretary. The letter shall notify the permittee (and surety if applicable) and any lien holders of the pending bond forfeiture action, the reasons for the forfeiture action, the applicable bond amount(s), and the measures it (they) may take to avoid forfeiture. The letter shall be sent by certified mail, return receipt requested.

Should the permittee (or surety) fail to submit an acceptable plan or proposal to avoid bond forfeiture to the Division within 15 days from the receipt of the letter, the Division Director shall sign the final notice of bond forfeiture letter. The Enforcement Section Secretary shall send the letter by certified mail to the permittee (and surety, if applicable), and send a copy to the Inspector, Client Assistance Manager, and the Assessments Officer.

Recording and Tracking Bond Forfeiture Action -

The Enforcement Section Secretary and Field Inspector shall monitor the permittee's or surety's 15 day response period (to submit proposal to avoid bond forfeiture). If the permittee or surety fails to timely respond to the forfeiture notice, the Inspector shall immediately submit a memo recommending that forfeiture be finalized. The memo shall be sent to the Supervisor and Reclamation Services Manager .

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Once the bond forfeiture becomes final, the Enforcement Section Secretary shall enter that activity into the DMLR system, and update the enforcement file.

Permittee's Rights of Appeal -

The Division Director's letter (final notice of bond forfeiture) shall inform the permittee or surety of the right to submit a written request for a formal administrative hearing to contest the forfeiture action. The letter shall state that the request must be submitted to the Division within thirty days from the permittee's or surety's receipt of the final bond forfeiture decision. The Division would provide a hearing per 4 VAC 25-130-800.51 of the regulations.

If requested, the Inspector or Supervisor shall assist the Assistant Attorney General in preparing for and defending the forfeiture action in a formal hearing (administrative and judicial review).