

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	3.5.01
PROCEDURES MANUAL		ISSUE DATE	04/10/15
SUBJECT	Bond Forfeiture Reclamation	Section	All
		Last Revised	11/01/12

OBJECTIVE AND INTENT:

To ensure the Division coordinates the reclamation of a bond forfeiture site in a timely manner. The reclamation operation of each bond forfeiture site must comply with all applicable standards required by the **Virginia Coal Surface Mining Reclamation Regulations and the Virginia Procurement Act.**

PROCEDURES:

Potential Bond Forfeiture Identification -

The Field Inspector shall immediately notify his or her Supervisor and the Reclamation Services Manager by memo of any compliance problem, which may be progressing towards bond forfeiture. The memo shall specifically describe any onsite problems of the potential bond forfeiture site, what the permittee has or has not done to comply, a summary of the enforcement action(s) issued to address the problems, inability of the permittee to comply, and whether the site may be subject to re-permitting.

The Reclamation Services Manager shall relay the information to the Reclamation Program Manager-Chief Engineer and the DMLR Director .

The Reclamation Program Manager-Chief Engineer shall review the potential bond forfeiture information and assign a Pre-Bond Forfeiture Team. The Team will be made up of the DMLR Legal Services Officer, appropriate technical and AML staff, the Field Inspector, and Supervisor. The Area Supervisor or his/her designee shall schedule a team onsite inspection within 10 working days of notification.

The team’s written evaluation report shall be electronically forwarded to the Reclamation Program Manager-Chief Engineer and Reclamation Services Manager within 5 working days from the close of the team’s onsite inspection. The report shall contain the following information and be based on the actual on-ground conditions:

- A written technical staff evaluation of the permit’s outstanding reclamation requirements and obligations, and recommendation as to whether the DMLR should prepare the engineering plans internally or seek outside assistance should bond forfeiture actually occur. The recommendation shall consider:
 - the complexity of the potential reclamation project;
 - the available agency resources and expertise;
 - the amount of time and effort the project will demand; and,
 - whether the in-house preparation would adversely impact other DMLR services.
- A written AML evaluation in conjunction with the technical review of the

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preliminary reclamation cost estimate for the potential site.

After review of the team’s report, the team Engineer will make a recommendation to the Reclamation Services Manager, AML Project Coordinator, and Division Director as to how to proceed in the event of actual bond forfeiture.

Bond Collection:

After the bond forfeiture becomes final (see Procedure #3.3.09), the Reclamation Services Office Services Specialist shall forward a copy of the official bond forfeiture notification letter and the relevant Reclamation Services enforcement records to the Reclamation Program Manager-Permitting.

Non-Surety Bonds

Upon receipt of the forfeiture materials, the Reclamation Program Manager-Permitting shall immediately initiate action to collect the non-surety bonds by:

1. **Certificate of Deposit/Letter of Credit** - sending a memo to the Permitting Office Services Specialist authorizing the retrieval of the certificate of deposit from the bank. The memo shall identify the specific certificate number, the name of the bank where the certificate was purchased, the amount, the company name, and the applicable permit number.

Once the certificate of deposit is retrieved, an authorized DMME representative must sign it. Then it shall be mailed by certified mail (return receipt requested) or hand delivered to the issuing bank for payment of the face value amount. Payment should be by cashiers or certified check made payable to the “Treasurer of Virginia”.

Upon receipt of payment, the Reclamation Program Manager-Permitting shall deposit the amount into the appropriate bond forfeiture account.

The Reclamation Program Manager-Permitting shall inform the Assessments Officer of any funds collected in excess of the performance bond amount, which could be used to offset any debts the company owes the DMME. If there are DMME claims, the Reclamation Program Manager-Permitting shall work with the Assessments Officer and the Office of Fiscal Services per established procedures to see that the money is transferred to the appropriate accounts.

2. **Cash Bond** - transferring the proceeds from this bond to the appropriate bond account once the period to seek administrative review of the bond forfeiture action has expired.

Surety Bonds

If a surety company provided the performance bond, the Permitting Office Services

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Specialist shall (after bond forfeiture becomes final) prepare the collection letter demanding payment of the bond from the surety company. The letter shall be signed by the DMLR Director and sent to the surety company by certified mail (return receipt requested) or as recommended by the Assistant Attorney General. The Office Services Specialist shall forward a copy of the letter and other bond forfeiture materials to the Reclamation Program Manager-Permitting.

Should a surety company fail to submit payment to the DMLR for the **surety bond** within 30 days from the company's receipt of the DMLR's demand letter, the Reclamation Program Manager-Permitting shall send a follow up letter (by certified mail) to the company demanding payment. If the surety company fails to respond to the second payment demand within a reasonable time, the Reclamation Program Manager-Permitting shall refer the matter to the Assistant Attorney General for collection action.

Upon receipt of the bond forfeiture proceeds, the Reclamation Program Manger-Permitting shall notify the DMLR Director, Reclamation Services Manager, AML Project Coordinator, and AML Contracting Officer of the bond amount collected.

BUDGET SETUP:

The AML Contracting Officer shall establish, in coordination with the Office of Fiscal Service's Budget Analyst, a budget for each bond forfeiture project that is based upon the bond amount collected and the estimated cost of reclamation.

- Each project budget shall be reviewed at least quarterly to determine the budget needs during the construction process and payment for such services.
- The budgets shall be analyzed at the end of each fiscal year or at the beginning of the fiscal year.
- Revised budgets are to be sent to the Office of Fiscal Service's Budget Analyst.

AVS CLEARANCE:

Any company or person who submits a bid to perform engineering or construction work under the DMLR's reclamation programs must clear the ownership and control investigation of the Applicant Violator System.

Upon receipt of a proposal or bid to perform bond forfeiture work, the AML Contracting Officer shall cause an AVS check to be conducted per Procedure #2.2.05.

MEMORANDUM OF UNDERSTANDING:

To meet the requirements of the MOU between DMLR and DM signed September 1, 2000, DMLR will notify DM when a DMLR contractor will be performing reclamation work on a

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bond forfeiture site, as the contractor will be required to obtain a mine license from DM and comply with the Mine Safety Act.

DEVELOPMENT OF ENGINEERING CONSTRUCTION PLANS AND SPECIFICATIONS:

Engineering Design by DMLR Personnel:

The entire process for DMLR to complete a detailed internal engineering design will be completed soon after the bond proceeds are collected for the project.

The AML Contracting Officer and the team engineer or AML Engineer shall work together in finalizing an effective engineering plan to reclaim the bond forfeiture site.. Existing permit plans will be used as a template where possible.

The team engineer or AML Engineer shall:

- develop pertinent engineering plans and time schedule.
- render the final decision concerning the necessary engineering work

The draft plan and specifications shall be reviewed by the DMLR Director or Reclamation Program Manager-Chief Engineer, AML Project Coordinator, the AML Program Specialist and the field Supervisor and Inspector. Any comments/corrections regarding the plan shall be forwarded to the Team engineer or AML Engineer.

The final engineering construction plans and specifications shall be delivered to the AML Contracting Officer after the Team Engineer’s or AML Engineer’s final approval of the material.

The AML Contracting Officer shall prepare the project’s “Invitation for Bid” package.

Engineering Design - Use of External Consultants:

The Division may utilize the services of an independent engineering consultant. The AML Contracting Officer shall initiate procurement for professional services and award the contract following the procurement procedures.

The entire process from selection of the engineer to receipt of the final plans (which shall include “Invitation for Bid” package and all specifications in the engineering plan) should be completed as soon as possible after forfeiture monies are received.

The Supervisor, Inspector, AML Engineer, AML Program Specialist and Team Engineer shall review the engineering plan with the AML Contracting officer.

The AML Contracting Officer shall collect any questions or concerns the DMLR has with the plan, and forward such to the engineering consultant. The consultant shall respond to and/or clarify issues or concerns raised by the DMLR within a reasonable period until the **final**

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plan is approved by the AML Engineer or Reclamation Program Manger-Chief Engineer.

After receiving the final plans from the engineering consultant or the AML Engineer/Team Engineer, the AML Contracting Officer shall initiate procurement for the actual construction work.

Inspection of Project Site:

After the contract is awarded, the assigned Inspector shall inspect the site and monitor contract compliance. The inspector will use form DMLR-AML-130S to document construction progress and inspection findings.

Upon completion of each inspection report, a PDF image is to be generated and forwarded to the inspector’s supervisor and copied to the Reclamation Services Manager by e-mail. This will ensure that all reports, including the pictures that are contained within those reports, are automatically filed in the correct system folder located at <\\wdb01513\AMLProjects>.

If a “Change Order” to the contract is necessary, the Inspector shall discuss the need with the appropriate Supervisor and AML Contracting Officer. In the event the change could affect the integrity of the approved plan, the AML Engineer or Team Engineer (and the engineering consultant who designed the plan) must approve the change. Revisions to the approved construction plan must be fully documented.

The assigned Inspector shall review the contractor’s request(s) for payments and shall verify that the work performed complied with the approved contract. The written verification shall include reference(s) to the inspection report(s), which documented the work and must accompany the application for payment.

The AML Contracting Officer and AML Project Coordinator shall approve and sign the “Request(s) for Payment” in accordance with Procedure # 4.1.07.

The AML Engineer or Team Engineer shall inspect the project site as may be necessary.

If the construction plans were prepared by an independent engineering consultant, the consultant shall be required to inspect the project site per the contract or as requested by the AML Contracting Officer. If the assigned Inspector feels an onsite inspection with the consultant is necessary, he/she may request the AML Contracting Officer coordinate such inspection.

The Inspector, AML Program Specialist, Supervisor and Team Engineer or AML Engineer must conduct a final inspection of the AML contractor’s reclamation work (documented on form **DMLR-AML-130S**) before the contractor can be released from the contract.

PROJECT CLOSE OUT:

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Upon close out of the Reclamation Contract, the inspector will continue to inspect the site using form **DMLR-ENF-044S**. When construction at the site has been completed, the site will be considered inactive and will be inspected at least once per quarter. One year after vegetation has been established, the assigned Inspector will evaluate vegetative success at the site. If the site has a sufficient vegetative cover, the project may be closed by coding the final inspection report NI/FI (not inspectable/final inspection) using form **DMLR-ENF-044S**. A copy of the assigned Inspector's closeout report shall be forwarded to the AML Contracting Officer. Included in the report will be a statement whether or not a barrier stability evaluation (if applicable) has been completed.

Once construction activities have been completed, DMLR will not assume responsibility for third party disturbances at the site (i.e., grazing for pasture, housing construction, logging, etc.). DMLR will close out the project once these third party activities begin.

In closing the project, the AML Contracting Officer shall:

- Send a notification letter to the following explaining the DMLR's intent to close out the reclamation project and administrative record -
 1. Permittee or operator.
 2. Surety Company, if applicable.
 3. Landowners of the project area.

Disposition of Residual Bond -

The AML Contracting Officer will notify the Office of Fiscal Services' Accounting Manager (with copy to the Assessments Officer):

1. that the project has been completed;
2. the bond forfeiture file closed; and,
3. the amount of any residual bond money from the project.

Upon receipt of the notice, the Assessments Officer shall determine whether the permittee has an outstanding civil penalty debt, which may cause the residual bond to be subject to claim under the set-off debt collection procedure.

If advised by the Assessments Officer that the permittee has no civil penalty debt, the Accounting Manager shall return the residual moneys to the person/entity who supplied the bond. Any residual bond moneys from a surety bond shall be returned to the surety.

Upon notice from the Assessments Officer that a civil penalty debt exists, the Accounting Manager shall transfer the residual moneys (of the cash, letter of credit, or certificate of deposit performance bond) to the civil penalty escrow fund. The Assessments Officer will notify the company of the agency's claim per the Virginia Set-Off Debt Collection Act, and shall maintain documentation concerning the agency's claim and subsequent actions thereof.

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COMPLAINT INVESTIGATION:

Complaints concerning the bond forfeiture **construction activities** shall be investigated in accordance with Procedure 3.1.06 using form **DMLR-ENF-032S**. If a complaint occurs after the bond forfeiture site is released by the Division, the inspector will note in the complaint investigation report (**DMLR-ENF-032S**) that any problems found during the investigation will be coded as eligible for post act funding.