

# You should know...



North Dakota Public Service Commission

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North Dakota Public  
Service Commission

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## Performance Bond

### INTRODUCTION

Surface coal mining operators in North Dakota must supply a performance bond before the Public Service Commission will issue a mining permit. The purpose of this fact sheet is to acquaint you with the requirements of the regulatory program that pertain to performance bond.

### PURPOSE OF THE BOND

The reason for requiring a performance bond is to ensure that reclamation of land disturbed for coal mining will be reclaimed at no cost to the state or to the public in the event an operator's mining permit is revoked or the operator goes out of business. The Commission accepts several kinds of performance bond, including surety, collateral, self, or a combination of them.

### DETERMINATION OF BOND AMOUNT

The amount of bond needed is a reflection of the requirements of the approved permit and reclamation plan, and is therefore a very site-specific determination. The Reclamation Division has developed a method to identify the combination of site disturbances that would cost the greatest amount of money to reclaim. These liabilities include volume of ungraded spoils behind open pits, area occupied by open pits, area stripped of topsoil and subsoil ahead of open pits, area occupied by stockpiles, ponds and haulroads, and

numerous others. Variable costs associated with reclamation such as fuel and equipment costs, labor rates, and seed and fertilizer costs are brought up to date each year. These variable costs are supplied to the mining companies for their use in calculating the amount of performance bond needed for new or revised permit applications. In addition, the Reclamation Division reviews mining permits approximately every two and one-half years and re-evaluates the amount of bond in place to ensure that it is sufficient.

### BOND RELEASE

Bond normally is released incrementally. Up to 40 percent of the bond can be released on disturbed acreage following the backfilling, grading and establishment of drainage control on it. Another 20 percent can be released following the respreading of subsoil and topsoil. An additional amount of bond can be released once vegetation has been established, but enough must be retained to cover the costs of reseeding or minor erosion control during the ten-year period of responsibility for successful revegetation should that be necessary. When the operator has successfully completed all requirements of the regulatory program, and has completed the ten-year period of responsibility, the Commission may release the remaining performance bond. Mining companies must show that lands reclaimed to agricultural use produce at least what they did prior to mining.

# Performance Bond (cont.)

## PUBLIC NOTICE OF BOND RELEASE APPLICATIONS

The operator must publish a newspaper notice once a week for four consecutive weeks in the official county newspaper as part of the process for requesting any bond release. The notice must include the precise location and size of the acreage proposed for bond release, information on the amount of bond reduction proposed, and information on the reclamation practices used on the acreage. The notice must include also the right to file written objections and to request a public hearing or an informal conference. In addition, the operator must send letters with that same information to all owners of surface and subsurface rights on the acreage proposed for release, to adjoining property owners, and to certain state and local governmental bodies.

## BOND RELEASE INSPECTION

The Reclamation Division must notify the surface owner, agent or lessee of the bond release application and inform them of their right to participate in the bond release inspection. Knowledgeable individuals from state and federal agencies are also invited to participate in the inspection and furnish their evaluation of the suitability of the acreage for bond release.

## BOND FORFEITURE

In the event the mine operator's permit is revoked or the operator goes out of business, the performance bond is forfeited and the proceeds are deposited in a special account. The Reclamation Division draws on that account to pay for the development of plans and specifications for the reclamation work remaining to be done, advertising for bids, entering into contracts and supervising the work done by the contractor(s). Any money remaining from the forfeiture following successful reclamation will be returned to the person or organization that supplied the bond.