

Office of Surface Mining  
Reclamation and Enforcement  
Western Region



**Permanent Program Bond  
Release Guidance (Phase I, II, III)**

May 8, 2009

## **Permanent Program Bond Release Guidance (Phase I, II, III)**

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This guidance document is intended to facilitate the release of reclamation performance bonds for coal mines on Indian lands or in Western States with Federal programs administered by the Office of Surface Mining Reclamation and Enforcement (OSM) Western Region (i.e., Arizona, California, Idaho, Oregon, South Dakota, and Washington). This guidance document does not replace the regulations at 30 CFR 800.40, Requirement to release performance bonds.

Bond release actions may occur at the completion of the phases of reclamation defined under 30 CFR 800.40(c) and upon receipt of an application for release under 30 CFR 800.40(a). Phase I bond release may occur upon the completion of backfilling, regrading (which may include the replacement of topsoil) and drainage control, in accordance with the approved reclamation plan.

Phase II bond release may occur after vegetation has been established in accordance with the approved reclamation plan, or after prime farmland productivity has been restored, if applicable, and when contributions of suspended solids to streamflow or runoff outside the permit area are not in excess of the requirements established in the Section 515(b)(10) of the Surface Mining Control and Reclamation Act (SMCRA), the regulations, and the approved permit. Phase III or final bond release and termination of jurisdiction may occur at the successful completion of all reclamation activities required in the approved permit, the Act, and after expiration of the period of permittee responsibility in 30 CFR 816.116 or 30 CFR 817.116.

There are four sources of information that OSM will use to evaluate a Bond Release application. The first source is the information required under the Federal regulations at 30 CFR 800.40 and the applicable permanent program performance standards in 30 CFR Chapter VII, Subchapter K. The second source is applicable information provided by the permittee that is required by the approved permit, including any terms and conditions. The third source is the discretionary information identified in this guidance which, if supplied as part of the application, would facilitate the processing of the bond release application. The fourth source will be information collected by OSM during inspections and site visits. Permittees are encouraged to meet with OSM prior to applying for bond release to discuss data and information that could facilitate review of the bond release application.

OSM encourages application for bond release on reclaimed lands and strongly recommends that Phase I bond release be obtained as soon as possible after the completion of backfilling, grading (which includes placement of suitable root zone material over unsuitable graded spoil, if needed), and establishment of drainage control.

To expedite the review of phase and total bond release applications, OSM recommends submission of electronic data and maps. Contact OSM for information on preferred electronic file types and appropriate formats.

Based on the commitments in the approved mining and reclamation plan, any information required to demonstrate compliance with the approved reclamation plan must be submitted either prior to or with the bond release application. Any information that has been previously submitted (i.e. annual reports) would not have to be resubmitted. However, to facilitate review of the application it is recommended that this information be specifically referenced.

### **Information Requirements for All Bond Release Applications**

All applications for bond release (Phase I, II, & III) must include, at a minimum, the following information:

1. A notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan (30 CFR 800.40(a)(3)). Such certification shall be submitted for each application phase of bond release.
2. Copies of letters sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality of the surface coal mining and reclamation operation notifying them of the intention to seek bond release (30 CFR 800.40(a)(2)).
3. Proof of publication must be provided to OSM within thirty days after application for bond release has been filed (30 CFR 800.40(a)(2)). It is recommended that a draft proposed newspaper advertisement, with the information specified under 30 CFR 800.40(a)(2), be submitted for review prior to publication to ensure that all necessary information is included.
4. A map, at the scale approved in the permit, which includes:
  - a. Permit area boundary, and
  - b. Area proposed for release.

## **Phase I Bond Release Application Information:**

Examples of information that may be required for OSM to evaluate and approve a Phase I bond release application include:

1. Physical and chemical analyses results of final graded spoil and the locations of regraded spoil sampling.
2. If topsoil and/or topsoil substitute replacement has occurred, physical and chemical analyses that demonstrate that the replaced topsoil and and/or topsoil substitute is suitable for the post mining land use, and documentation that topsoil requirements of the permit and applicable performance standards of SMCRA and the regulatory program have been met.
3. Construction/safety reports, as-built drawings, any other documentation for permanent drainage control structures, roads, and other permanent facilities within the Phase I bond release area.

To facilitate and expedite the review and approval of an application for Phase I bond release, OSM recommends that the applicant provide the following information:

1. A map, at the scale approved in the permit that shows:
  - a. Contours of constructed postmining topography
  - b. Postmining hydrologic features including drainage channels, diversions, permanent impoundments, and terraces
  - c. Postmining roads and other permanent facilities
2. Reclamation status of all drill holes, exploration bore holes, and monitoring sites (as required in the approved reclamation plan).
3. If appropriate, a discussion of any differences between the final surface configuration approved in the permit and the constructed final surface configuration and the impacts of those differences on postmining land use and hydrology.
4. If the application includes a request for release of monies, a justification for the release of funds based on the remaining reclamation liability. For Phase I the amount of funds released cannot exceed 60% of the total bond amount for the applicable area (30 CFR 800.40(c)(1)).

## **Phase II Bond Release Application Information:**

Examples of information that may be required for OSM to evaluate and approve a Phase II bond release application include:

1. Information required for the Phase I bond release application if not previously submitted.
2. If topsoil and/or topsoil substitute replacement was not evaluated in a previous Phase I release, physical and chemical analyses that demonstrates that the replaced topsoil and and/or topsoil substitute is suitable for the post mining land use, and documentation that topsoil requirements of the permit and applicable performance standards of SMCRA and the regulatory program have been met.
3. Documentation that vegetation is successfully established in accordance with 30 CFR 816.111 and the approved reclamation plan for all reclaimed lands other than croplands and prime farmlands (see item 4 below) . Any data that has been collected to support the demonstration of vegetation establishment should be submitted (also see item 5 below). Information previously submitted can be referenced.
4. If applicable, documentation that soil productivity for prime farmlands has returned to the equivalent levels of yield as non-mined land of the same soil type in the surrounding area as determined from the soil survey performed pursuant to Section 507(b)(16) of the Act and Part 823.
5. A demonstration that suspended solids from the reclaimed lands are not contributing to streamflow or runoff outside the permitted area in excess of the requirements set by Section 515(b)(10) of the Act and by subchapter K.
6. If applicable, documentation that the permittee or the landowner has provided for sound future maintenance of all approved permanent impoundments in accordance with 30 CFR 800.40(c)(2).

### **Phase III Bond Release Application Information:**

Examples of information that may be required for OSM to evaluate and approve a Phase III bond release application include:

1. Information required for the Phase I and Phase II bond release applications if not previously submitted.
2. A demonstration that revegetation meets the success standards in the approved permit and the regulations at 30 CFR 816.116 to demonstrate support of the approved post mining land use(s). The demonstration should include vegetation data from the reclaimed area, and, if applicable, the native comparison area (i.e. reference area) / technical standard. The data should include a statistical analysis that demonstrates sample adequacy, revegetation success, and, if required, diversity.
3. A demonstration in accordance to 30 CFR 816.41 that all surface mining and reclamation activities have been conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure quantity and quality are suitable to support approved postmining land uses, the water rights of other users have been protected or replaced, and in accordance with terms and conditions of the approved permit.
4. No bond shall be fully released until the provisions of the Act, the performance standards of the regulatory program, the approved permit, and the approved reclamation plan demonstrate that all surface coal mining and reclamation operations have been successfully completed.