

SUBJECT: Bonding Procedures for Quarry Permits

DATE: November 1, 2001 - Revised 09-01-06

Legal Authority: 22-4-20, 22-4-22, 38-3-4, 38-3-14(annual)

Performance bond or contributions to the Bond Pooling Fund must be posted with each new permit. Contributions to the Bond Pooling Fund must be reviewed annually *at the anniversary date of the permit* to determine if additional contributions to the Bond Pooling Fund are required. A permittee who qualifies for the Bond Pooling Fund must participate in the Fund.

PERFORMANCE BOND (22-4-20(b))

Bonding Rate: Any permittee who does not qualify for the Bond Pooling Fund must post a Performance Bond. The permittee must provide and justify an estimate of the cost per acre to reclaim the entire permit area based upon the mining and reclamation plan. The amount of the bond shall be adequate to cover the estimated reclamation costs. Documentation shall be provided to ensure that the bond provided is equal to or greater than the reclamation liability (38-3-4). The Permitting Unit and the Inspection and Enforcement Unit shall review the proposal to verify the adequacy of the bond. For verification, the Special Reclamation Unit can be requested to review the site, the reclamation plan, and the estimate of the cost to reclaim. The bond shall be at least \$1,000.00 per acre or fraction of an acre of land disturbed and to be disturbed in the next five years, with a minimum \$10,000.00 bond. If a permit is issued, but operations are not anticipated to begin within the upcoming year, the minimum \$10,000.00 bond shall be required.

In lieu of a performance bond covering the entire permit area the director may accept incremental bonding. The minimum performance bond to be posted with the first increment shall not be less than \$10,000.00. If incremental bonding is used, as succeeding increments of quarry operations are to be initiated and conducted within the permit area, the permittee shall file with the director an additional bond or bonds to cover the increments [22-4-20(d)]. If additional area is needed to be disturbed prior to the renewal of the permit, the operator shall submit a minor modification which indicates the additional areas to be disturbed and bonded in the next increment.

Any major permit modification that changes the mining and reclamation plan or adds new area will have the performance bond re-evaluated for the entire permit area. Any additional bond which may be required to bring the permit into

compliance with the new bond rate must be submitted prior to approval of the modification. If the bond rate should decrease, then no bond will be released, but any extra bond will be credited toward any future bond postings.

Initially, posted performance bond must cover all disturbed areas, and all areas proposed to be disturbed during the first five years. At the renewal of the permit, the applicant may qualify for the bond pooling fund (if no serious violations have been issued within the previous five years).

BOND POOLING FUND

Qualification: Quarry operators who have operated for five years without a serious violation under previous West Virginia mining law or the provisions of Article 4, in lieu of a performance bond shall contribute to the Bond Pooling Fund.

1. The term “serious violation”, as defined in Regulation 2.30, means a violation that is rated at eight (8) or higher.
2. Demonstration of qualification for this Fund shall take the form of a signed statement by a principal officer of the applicant, to be included in the application. Review Team Personnel shall verify qualification. Only an initial demonstration is necessary; additional demonstrations in successive years are not necessary.
3. Qualification is not restricted to the permittee. If any officer, or on-site individual in a managerial or supervisory capacity for the permittee, can meet the qualification, then the permittee is considered to qualify. Any necessary explanation shall be included in the signed statement referenced in item 2 above.

Pooling Fund Rate: Contributions to the Fund for all new permits, shall be \$50.00 per acre of area proposed to be disturbed during the year following the anniversary date of the permit. The rate shall also be \$50.00 per acre for any acreage added to the permit by modification, presuming that acreage will be disturbed during the next year.

Contributions to the Fund for permits renewed, or for which an Annual Bonding Progress Report Map is submitted, is \$12.50 per acre of existing bonded area, plus \$12.50 for each acre proposed to be disturbed during the year following the anniversary date of the permit. (See Notes #1 and #2 at the end of this statement.) The attached Annual Bonding Progress Report Form shall be completed and submitted by the permittee.

The payments shall continue until the permittee has paid into the bond pooling fund a total of one thousand dollars for each disturbed acre. When the bond pooling fund balance for a permittee exceeds one thousand dollars for each

disturbed area and each acre estimated to be disturbed during the next ensuing year, the director shall return the excess fund to the permittee.

Format for Pooling Fund Contributions: Contributions shall be in the form of a Cashiers Check, Certified Check or Bank Money Order. Certificates of Deposit, Letters of Credit, or Surety Bonds are not acceptable for this purpose, because these funds are deposited in the Bond Pooling Fund Account.

NOTES ON BONDING OF QUARRIES

1. Bonding is not required for acreage which was disturbed and stabilized/reclaimed prior to June 8, 2000, presuming the permittee indicates that these areas will not be disturbed again.
2. At time of renewal or Annual Bonding Progress Report Map updates, additional bond is not required for areas which have been reclaimed and will not be re-disturbed, provided that these reclaimed areas have been released in accordance with the release requirements of Rules 38-3-17.1.

SUBJECT: Annual Bonding Progress Report

DATE: November 1, 2001 -Revised 09-01-06

Legal Authority: 38-3-14

SUBMISSION OF ANNUAL BONDING PROGRESS REPORTS

In the year when a permit renewal is due, the renewal shall be considered the annual bonding progress report. In other years, the Annual Bonding Progress Report shall be accomplished. Annual Bonding Progress Report is required for all permits that are members of the bond pooling funds. For permits that have performance bonds posted the Annual Bonding Progress Report is only required if the permit is incrementally bonded and additional areas outside the bonded acreage are needed to facilitate the quarry operation.

If the Annual Bond Progress Report Map from the previous year remains accurate, a new map is not required. However, the bonding chart must be completed. If a Progress Report Map is required, it shall be accomplished as follows:

1. The permittee shall arrange for an Approved Person, Professional Surveyor, or Professional Engineer to prepare an Annual Bonding Progress Report Map. Preparation of a new map for this purpose is not required; a copy of the most recent map of record shall be used as a base map. It must be labeled "Annual Bonding Progress Report Map".

The Annual Bonding Progress Report Map:

- A. must be a topographic map or acceptable aerial photograph which indicates the boundaries of the permit area, to include all other information required by WV Code 22-4-5(c) and Regulation 38-3-11,
- B. must indicate any areas which were reclaimed/stabilized before June 8, 2000 (for which bond is not required),
- C. must indicate any areas which were reclaimed after June 8, 2000, and have met the release criteria of 38-3-17.1 (for which additional bond is not required),
- D. must indicate all disturbed areas,
- E. must indicate all areas proposed to be disturbed during the next ensuing year (for which additional bond is required). If additional bond is required, must complete Annual Bonding Progress Report Form,
- F. must include a chart demonstrating the above acreages,

- G. must include on the map a statement by the Approved Person who prepares the Annual Bonding Progress Report Map that “I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the quarry laws of this state.” The certification shall be signed and notarized,
- H. if additional disturbance was not proposed for the next ensuing year, but disturbance is proposed at a later date, the company must submit a progress map with the attached bonding chart to the Permit Review Team for approval prior to initiating any disturbance.
2. The permittee shall complete the Annual Bonding Progress Report Form (MR-26). This Form, the map, and any required additional bond or contribution to the Bond Pooling Fund, shall be placed in a clasp-type binder. The original and three copies of this package, each in its own binder, must be submitted to the Permit Review Team in the Regional WV DEP Office. As per Regulation 38-3-14.1, this package must be received by ***30 days prior to the anniversary date*** of the permit.
3. The Permit Review Team will then track the application on ERIS, and will review the Annual Bonding Progress Report Form and bond or contributions to the Bond Pooling Fund to determine its accuracy, and request any necessary corrections. When the Form and bond or contributions to the Bond Pooling Fund are accurate, the Permit Supervisor shall sign off on the bottom of the form, and shall make distribution of the four copies.

Distribution:

Headquarters - folder and original Annual Bonding Progress Report Form
Regional Office - folder and copy of Annual Bonding Progress Report Form
Inspector - folder and copy of Annual Bonding Progress Report Form
Company - folder and copy of Annual Bonding Progress Report Form