**Section 245.220 Permit Bonds or Other Collateral Securities**

a) No person shall be allowed to construct, drill, operate, perform HVHHF operations, or produce from a well for which a permit is necessary under this Part if that well is not covered and protected by a bond or other collateral securities as required by this Section.

b) All applicants *for a permit under this* Part, and persons requesting permit transfers, *shall provide a bond* at the time of filing an application for permit pursuant to Section 245.210 or at the time of filing a request for transfer of permit pursuant to Section 245.340. *The bond shall be in the amount of $50,000 per permit or a blanket bond of $500,000 for all permits.* (Section 1-65(a) of the Act) All bonds must meet the following requirements during the permit application process and through the entire term of an issued permit until the bond is released as provided by subsection (d):

1) Bonds shall be signed by the permittee as principal and by a good and sufficient corporate surety legally authorized to transact business as a surety in Illinois.

2) Each bond shall provide that the bond shall not be cancelled by the surety without at least 90 days' notice to the Department. Notice shall be served upon the Department in writing by registered or certified mail to the Illinois Department of Natural Resources, Attention: Office of Oil and Gas Resource Management, One Natural Resources Way, Springfield IL 62702.

3) Within the 90-day notice period and before the bond is cancelled the permittee shall deliver to the Department a replacement bond. If the replacement bond is not delivered, all activities covered by the bond shall cease at the expiration of the 90-day notice period.

4) If the authority to transact business in Illinois of any surety upon which a bond is filed with the Department is suspended or revoked, the permittee, within 30 days after receiving notice of the suspension/revocation, shall notify the Department and shall make substitution by providing a bond or other security as required by this Section. Upon the failure of the permittee to make the substitution of bond or other security, all activities covered by the bond shall cease until substitution has been made.

c) *In lieu of a bond, other collateral securities such as cash, certificates of deposit, or irrevocable letters of credit under the* following *terms and conditions* may be provided by a permittee (Section 1-65(a) of the Act):

1) Cash: Cash shall be placed in the Department's possession.

2) Certificates of Deposit

A) Certificates of deposit shall be payable to the permittee and assigned to the Department, both in writing submitted to the Department and upon the records of the bank issuing the certificates. If assigned, the Department will require the banks issuing these certificates to waive all rights of setoff or liens against the certificates.

B) The Department will not accept an individual certificate of deposit in an amount in excess of the maximum insurable amount determined by the Federal Deposit Insurance Corporation.

C) Any interest accruing on a certificate of deposit shall be for the benefit of the permittee except that accrued interest shall first be applied to any prepayment penalty when a certificate of deposit is forfeited by the Department.

D) The certificate of deposit, if a negotiable instrument, shall be placed in the Department's possession. If the certificate of deposit is not a negotiable instrument, a withdrawal receipt, endorsed by the permittee, shall be placed in the Department's possession.

3) Letters of Credit

A) The letter may only be issued by a bank organized or authorized to do business in the United States (issuing bank). If the issuing bank does not have an office for collection in Illinois, there shall be a confirming bank designated that is authorized to accept, negotiate and pay the letter upon presentment in Illinois.

B) Letters of credit shall be irrevocable during their terms. A letter of credit shall be forfeited and shall be collected by the Department if not replaced by other suitable bond or other collateral securities at least 30 days before its expiration date.

C) The letter of credit shall be payable to the Department upon demand, in part or in full, upon receipt from the Department of a notice of forfeiture issued in accordance with subsection (e).

D) The Department will not accept a letter of credit in excess of 10% of the issuing bank's total capital and surplus accounts, as certified by the President of the bank providing the letter of credit and as evidenced by the most recent quarterly Call Report provided to the Federal Deposit Insurance Corporation.

E) The letter of credit shall provide on its face that the Department, its lawful assigns, or the attorneys for the Department or its assigns may sue, waive notice and process, appear on behalf of, and confess judgment against the issuing bank (and any confirming bank) in the event that the letter of credit is dishonored. The letter of credit shall be deemed to be made in Sangamon County, Illinois, for the purpose of enforcement and any actions thereon shall be enforceable in the Courts of Illinois, and shall be construed under Illinois law.

d) *The bond or other collateral securities shall remain in force until the well is plugged, abandoned* and restored, or transferred. *Upon* plugging, *abandoning* and restoring, or transferring *a well to the satisfaction of the Department and in accordance with the Illinois Oil and Gas Act, the bond or other collateral securities shall be promptly released by the Department. Upon the release by the Department of the bond or other collateral securities, any cash or collateral securities deposited shall be returned by the Department to the applicant* or permittee *who deposited it*. (Section 1-65(b) of the Act)

e) *If, after notice and* the opportunity for *hearing, the Department determines that any of the requirements of* the *Act or* this Part *or the orders of the Department have not been complied with within the time limit set by any notice of violation issued* thereunder, *the permittee's bond or other collateral securities shall be* subject to forfeiture pursuant to the following procedure (Section 1-65(c) of the Act):

1) A permittee's failure to comply with the Department's order finding a violation of the Act or this Part constitutes grounds for bond forfeiture.

2) The Department will send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit the bond pursuant to subsection (e)(1).

3) The Department may allow a surety to correct the violation if the surety can demonstrate an ability to complete the corrective work in accordance with the requirements of the Act and this Part. No surety liability shall be released until the successful correction of the violation ordered by the Department.

4) In the event forfeiture of the bond or other collateral securities is warranted by subsection (e)(1), the Department will afford the permittee the right to a hearing, if the hearing is requested in writing by the permittee within 30 days after the bond forfeiture notification is received in accordance with subsection (e)(2). If the permittee does not request a hearing within the 30-day period, the determination to forfeit the bond shall be a final administrative decision. If a hearing is requested by the permittee, the hearing shall be scheduled within 30 days after the receipt of the request for hearing, and shall be conducted by a Hearing Officer.

5) At the bond forfeiture hearing, the Department will present evidence and has the burden of proof to support its determination to forfeit the bond under subsection (e)(1). The permittee may present evidence contesting the Department's determination. The Hearing Officer may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence.

6) Within 30 days after the close of the record for the bond forfeiture hearing, the Hearing Officer shall issue recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case.

7) The Director or his or her designee shall review the administrative record in a contested case, in conjunction with the Hearing Officer's recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case. The Director or designee, shall then issue the Department's final administrative decision affirming, vacating or modifying the Hearing Officer's decision.

8) *In no way will payment under this bond exceed the aggregate* administrative *penalty as specified* in the Notice of Violation or Director's Decision. (Section 1-65(c) of the Act)

9) *Forfeiture under this* subsection (e) *shall not limit any duty of the permittee to mitigate or remediate harms or foreclose enforcement by the Department or the Agency.* (Section 1-65(c) of the Act)

f) *When any bond or other collateral security is forfeited under the provisions of* the *Act or* this Part, *the Department shall collect the forfeiture without delay. The surety shall have 30 days to submit payment for the bond after receipt of notice by the permittee* or the Department *of the forfeiture*. (Section 1-65(d) of the Act)

g) If the permittee's bond is subject to forfeiture and used for anything other than plugging and restoration of the well and well site, the permittee shall have 30 days from the date of the Department's determination to forfeit the bond to replace the bond. Failure to replace the bond within this time shall result in the immediate cessation of activities covered by the bond and permit.

h) *All forfeitures shall be deposited in the Mines and Minerals Regulatory Fund to be used, as necessary, to mitigate or remediate violations of* the *Act or* this Part. (Section 1-65(e) of the Act)