**Section 1800.50 Forfeiture of Bonds**

a) If a permittee refuses or is unable to conduct reclamation of an unabated violation due to bankruptcy, insolvency, creditor attachment of equipment or to the collateral supporting the performance bond being repledged, if the terms of the permit are not met, or if the permittee defaults on the conditions under which the bond was accepted, the Department shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

1) 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 all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited.

2) The amount shall be based on the estimated total cost of achieving the reclamation plan requirements.

b) Prior to the bond forfeiture notification under subsection (a)(1) above, the Department shall advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions include, but are not limited to:

1) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

2) The Department may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Department may approve partial release authorized under Section 1800.40, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including the applicable liability periods of Section 1800.13.

c) In the event forfeiture of the bond is required by subsection (a) above, the Attorney General, on request of the Department, shall file suit to collect any unpaid, forfeited bonds pursuant to Section 6.07 of the State Act.

1) Before making a request to the Attorney General to collect the forfeited bonds, or before presenting the collateral bond for collection, the Department shall afford the permittee the right to a hearing to be held not less than thirty (30) days after the permittee's receipt of the bond forfeiture notification under subsection (a)(1).

2) The Department shall hold the hearing provided in subsection (c)(1) in accordance with the procedures set forth in 62 Ill. Adm. Code 1847.7.

d) The Department shall use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment and to cover associated administrative expenses to which bond coverage applies. Unless specifically limited, as provided in Section 1800.11(b), bond liability shall extend to the entire permit area under forfeiture.

e) Reclamation costs.

1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The Department may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the Department to the party from whom they were collected.

f) No permittee who has forfeited any bond shall be issued a permit from the Department for surface coal mining and reclamation operations unless the permit applicant provides the following assurances to the Department that such proceedings will not again become necessary:

1) The permit applicant submits a cash bond or certificate of deposit for the proposed permit area, pursuant to Section 1800.11.

2) The officers, directors, ten percent (10%) or greater shareholders of the permit applicant, if a corporation, agree to be held personally liable for violations of the State Act caused by the permittee.

3) The permit applicant has compensated the entity that completed reclamation of the permit area for all costs attributable to bond forfeiture.

4) All prior violations of the State Act attributable to the permit applicant have been corrected, including payments of all outstanding civil penalties.

(Source: Amended at 17 Ill. Reg. 10916, effective July 1, 1993)