

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

CHAPTER 11

SELF-BONDING PROGRAM FINANCIAL ASSURANCE

Section 1. **Definitions**

~~(c)~~ “~~Comparative balance sheet~~” means ~~item amounts from a number of the operator's successive yearly balance sheets arranged side by side in a single statement.~~

~~(d)~~ “~~Comparative income statement~~” means ~~an operator's income statement amounts for a number of successive yearly periods arranged side by side in a single statement.~~

~~(e)~~ “~~Current assets~~” means ~~cash and assets that are reasonably expected to be realized in cash or sold or consumed within one year or within the normal identified operating cycle of the business.~~

~~(f)~~ “~~Current liabilities~~” means ~~debts or other obligations that must be paid or liquidated within one year or within the normal identified operating cycle of the business. This shall also include dividends payable on preferred stock within one quarter if declared, or one year if a pattern of declaring dividends each quarter is apparent from the business' past practices.~~

~~(g)~~ “~~Fixed assets~~” means ~~plants and equipment, but for coal mining operations does not include land or coal in place.~~

(a) “Irrevocable letter of credit” is a negotiated financial instrument that is used to pay a beneficiary issued by a banking institution to guarantee payment.

(b) “Liabilities” means obligations to transfer assets or provide services to other entities in the future as a result of past transactions including off-balance sheet liabilities.

(c) “Net worth” means total assets minus total liabilities including on and off-balance sheet liabilities and is equivalent to owners' equity.

~~(i)~~ “~~Parent corporation~~” means ~~a corporation which owns or controls the applicant.~~

(d) “Real property” means land and appurtenances as defined in Wyoming Statute (W.S.) §39-15-101(a)(v).

(e) “Real property collateral” means the actual or constructive deposit of as appropriate, with the Administrator of one or more of the following kinds of property to

~~support a self-bond: Section 1(b)(i) A~~ a perfected, first lien security interest in real property located within the State of Wyoming, in favor of the Wyoming Department of Environmental Quality which meets the requirements of this Chapter. The property may include land which is part of the permit area; however, land pledged as collateral for a bond shall not be disturbed under any permit while it is serving as security.

~~(ii) Securities backed by the full faith and credit of the United States government or State government securities acceptable to the Administrator. These securities must be endorsed to the order of, and placed in the possession of, the Administrator.~~

~~(iii) Personal property located within the State, owned by the operator, which in market value exceeds 1 million dollars per property unit.~~

~~(f a)~~ “Self-bond” means an indemnity agreement in a sum certain made payable to the State, with or without separate surety. The indemnity agreement is signed by the permittee and, if applicable, the ultimate parent entity ~~or non-parent corporate guarantor.~~

~~(g j)~~ “Tangible net worth” means net worth minus intangibles such as goodwill, patents or royalties.

~~(h)~~ “Ultimate parent entity” means an entity not controlled by any other entity and is the topmost responsible entity which owns or controls the applicant and is the guarantor for a self-bond.

Section 2. Acceptable Financial Instruments.

The following bond instruments are accepted by the Division: corporate surety, irrevocable letters of credit, self-bond, federally insured certificates of deposit, cash, government securities, and real property collateral.

Section 3 2. Irrevocable Letters of Credit. Initial Application to Self-bond.

Chapter 20 Section 1. Conditions on the Letter of Credit.

(a) Letters of credit as authorized by W.S. § 35-11-418, shall be subject to the following conditions:

~~(i) The letter shall be irrevocable during its term, which shall coincide with the annual bonding period. The letter shall also assign the State of Wyoming as the debtor in possession of the letter of credit. The Administrator may approve the use of letters of credit as security in accordance with a schedule approved with the permit. Any bank issuing a letter of credit shall notify the Director in writing at least 90 days prior to the maturity date of such letter or the expiration of the letter of credit agreement. Letters of credit utilized as security for reclamation liability shall be collected by the Director if not replaced by other suitable evidence of financial responsibility at least 30 days before the expiration date of the letter of credit agreement;~~

(ii) The letter must be payable to the Department in part or in full upon demand and receipt from the Director of a notice of forfeiture issued in accordance with W.S. § 35-11-421;

(iii) The letter shall not be in excess of ten percent of the issuing or supporting bank's capital surplus account as shown on a balance sheet liabilities certified by a certified public accountant;

(iii) The Administrator shall not accept standby letters of credit;

(iv) The Administrator shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of ~~three times~~ the limitations imposed by W.S. §13-3-402; and

(v) The letter of credit shall provide that:

(A) The bank will give prompt notice to the permittee and the Director of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

(B) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Director; and

(C) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of the Act. The Director shall issue a notice of violation against any operator who is without bond coverage, specifying a reasonable period to replace bond coverage, not to exceed 90 days. During this period the Director or his designated representative shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulations and the Act. If the notice is not abated in accordance with the schedule, a cessation order shall be issued.

(D) The irrevocable letter of credit may be cancelled by the surety only after ninety (90) days notice to the Director, and upon receipt of the Director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

(b) Chapter 20 Section 2. Agent for Service of Process. (a) The letter may only be issued by a bank organized to do business in the U.S. which identifies by name, address, and telephone number an agent upon whom any process, notice or demand required or permitted by law to be served upon the bank; may be served.

(i) If the bank fails to appoint or maintain an agent in this State, or whenever any such agent cannot be reasonably found, then the Director shall be an agent for such bank upon whom any process, notice or demand may be served for the purpose of this Chapter. In the event of any such process, the Director shall immediately cause one copy of such process, notice

or demand to be forwarded by registered mail to the bank at its principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(ii) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon the bank in any other manner now or hereafter permitted by law.

Section 4 3. **Self-bonds. Approval or Denial of Operator's Self-bond Application.**

(a) Application to Self-bond.

(i) ~~Section 2(a)~~ Initial application to self-bond shall be made at the time the operator makes written application to the Administrator for a license to mine. An operator conducting an existing operation with greater than a five (5)-year life of mine remaining may submit an application to self-bond to the Administrator. The application shall be on forms furnished by the Administrator and shall contain:

(A) ~~Section 2(a)(i)~~ Identification of operator by:

(I) ~~Section 2(a)(i)(A)~~ For corporations, name, address, telephone number, state of incorporation, a description of the corporate structure, principal place of business and name, title and authority of person signing application, and statement of authority to do business in the State of Wyoming, or

(II) ~~Section 2(a)(i)(B)~~ For all other forms of business enterprises, name, address and telephone number and statement of how the enterprise is organized, law of the state under which it is formed, place of business, and relationship and authority of the person signing the application.

(B) ~~Section 2(a)(ii)~~ Amount of bond proposed to be under a self-bond required, to be determined in accordance with W.S. § 35-11-417(c)(i) (1977). ~~If the self bond amount is proposed to be less than the full bond amount, the amount which is proposed is to be under a self-bond.~~ The proposed self-bond maximum amount shall not exceed seventy-five percent (75%) of the required bond amount.

(C) ~~Section 2(a)(iii)~~ Type of operation and anticipated dates performance is to be commenced and completed.

(D) ~~Section 2(a)(iv)~~ Brief chronological history of business operations conducted within the last five years which would illustrate a continuous operation for five years immediately preceding the time of application. ~~Section 2(a)(iv)(A)~~ The Administrator may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application.

~~Section 2(a)(iv)(B) When calculating the period of continuous operation, the Administrator may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.~~

~~(E) Section 2(a)(v) Information in sufficient detail to show good faith performance of past mining and reclamation obligations. For coal operations, tThe compliance information in the permit and/or annual reports may be referenced to satisfy part of this requirement.~~

~~Section 2(a)(vi) A statement, in detail, so as to show a history of financial solvency. For an initial bond, each operator must provide:~~

~~(A) Audited financial statements supporting the following comparative documents, prepared and certified by an independent Certified Public Accountant who, by reason of education, experience or special training, and disinterest, is competent to analyze and interpret the operator's financial solvency. All statements shall be prepared following generally accepted principles of accounting:~~

~~(I) A comparative balance sheet which shows assets, liabilities and owner equity for five years. The operator may provide common size documents for confidentiality.~~

~~(II) A comparative income statement which shows all revenues and expenses for five years. The operator may provide common size documents for confidentiality.~~

~~(III) A report for the most recently completed fiscal year containing the accountant's audit opinion or review opinion of the balance sheet and income statement with no adverse opinion.~~

~~(IV) Notwithstanding the language in (A) above, unaudited financial statements may be submitted to support the comparative documents where current fiscal year quarters have ended but a CPA opinion has not yet been obtained because the fiscal year has not yet ended.~~

~~(F) Section 2(a)(vii) For coal mining operations, fFinancial information in sufficient detail to show that the operator and ultimate parent entity meets one of the following criteria (the specific criterion relied upon shall be identified):~~

~~(I) Section 2(a)(vii)(A) The operator Have has a rating for all bond issuance actions and long term credit rating within the current year over the past five years of "Aa3" or higher as issued by Moody's Investor Service, "AA-" or higher as issued by Standard and Poor's Corporation or "AA-" or higher as issued by Fitch Ratings. or any other~~

nationally recognized rating organization that is acceptable to the regulatory authority. Any additional rating organization must be a “nationally recognized statistical rating organization” as approved by the Securities and Exchange Commission. If the additional rating organization uses a different rating system, only ratings that are equivalent to a rating of “A” or higher by either Moody’s Investor Service or Standard and Poor’s Corporation will qualify (the rating organization should be identified together with any further breakdown of specific ratings). The operator is eligible for a maximum of seventy-five percent (75%) of the approved reclamation cost estimate in the most recent Director’s bond letter.

(II) Have a rating for all bond issuance actions and long term credit rating within the current year of “A2” or higher as issued by Moody’s Investor Service, “A” or higher as issued by Standard and Poor’s Corporation or “A” or higher as issued by Fitch Ratings. The operator is eligible for a maximum of seventy percent (70%) of the approved reclamation cost estimate in the most recent Director’s bond letter unless the requirements of subsection (I) are met above.

(III) Have a rating for all bond issuance actions and long term credit rating within the current year of “Baa2” or higher as issued by Moody’s Investor Service, “BBB” or higher as issued by Standard and Poor’s Corporation or “BBB” or higher as issued by Fitch Ratings. The operator is eligible for a maximum of fifty percent (50%) of the approved reclamation cost estimate in the most recent Director’s bond letter unless the requirements of subsection (II) are met above.

(IV) In the event of a split rating, the Director has the discretion to determine which rating would be accepted and applied to (I), (II) or (III) of this subsection.

~~Section 2(a)(vii)(B) The operator has a tangible net worth of at least 10 million dollars, and a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements must be met for the past year, and documented for the four years preceding the past year. Explanations should be included for any year where the ratios fall below the stated limits.~~

~~Section 2(a)(vii)(C) The operator's fixed assets in the United States total at least 20 million dollars, and the operator has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements must be met for the past year and documented for the four years preceding the past year. Explanations should be included for any year where the ratios fall below the stated limits.~~

~~Section 2(a)(vii)(D) If the operator chooses (B) or (C), the two ratios shall be calculated with the proposed self bond amount added to the current or total liabilities for the current year. The operator may deduct the costs currently accrued for reclamation which appear on the balance sheet.~~

(G) Section 2(a)(ix) A statement identifying by name, address and telephone number:

(I) ~~Section 2(a)(ix)(A)~~ A registered office which may be, but need not be, the same as the operator's place of business.

(II) ~~Section 2(a)(ix)(B)~~ A registered agent, which agent must be either an individual resident in this State, whose business office is identical with such registered office, a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office. The registered agent so appointed by the operator shall be an agent to such operator upon whom any process, notice or demand required or permitted by law to be served upon the operator may be served.

(III) ~~Section 2(a)(ix)(C)~~ If the operator fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot be reasonably found at the registered office, then the Director shall be an agent for such operator upon whom any process, notice or demand may be served. In the event of any such process, the Director shall immediately cause one copy of such process, notice or demand to be forwarded, by registered mail, to the operator at his principal place of business. The Director shall keep a record of all processes, notices, or demands served upon him under this paragraph, and shall record therein the time of such service and his action with reference thereto.

(IV) ~~Section 2(a)(ix)(D)~~ Should the operator change the registered office or registered agent, or both, a statement indicating such change shall be filed immediately with the Land Quality Division.

(V) ~~Section 2(a)(ix)(E)~~ Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon an operator in any other manner now or hereafter permitted by law.

(H) ~~Section 2(a)(x)~~ A written guarantee for an operator's self-bond from a the ultimate parent entity corporate guarantor if the guarantor meets the conditions of subsections (a)(iv)~~(D)~~, ~~(vi)~~, (a)(i)(F) ~~(vii)~~ and (a)(i)(G)~~(ix)~~ of this Section as if it were the operator. Such a written guarantee may be accepted by the Administrator and shall be referred to as an "ultimate parent entity corporate guarantee." The terms of the ultimate parent entity corporate guarantee shall provide for the following:

(I) ~~Section 2(a)(x)(A)~~ If the operator fails to complete the reclamation plan, the ultimate parent entity corporate guarantor shall do so or the ultimate parent entity corporate guarantor shall be liable under the indemnity agreement to provide funds to the state sufficient to complete the reclamation ~~plan~~, but not to exceed the actual reclamation costs ~~bond amount~~.

(II) ~~Section 2(a)(x)(B)~~ The ultimate parent entity corporate guarantee shall remain in force unless the ultimate parent entity corporate guarantor sends notice of cancellation by certified mail to the operator and to the Administrator at least 120 ~~90~~ days in advance of the cancellation date, and the Administrator accepts the cancellation. The

cancellation shall be accepted by the Administrator if the operator obtains a suitable replacement bond before the cancellation date, if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed, or if the lands have been released under Chapter 15 or W.S. §§ 35-11-417(e) and 423.

~~(I) Section 2(a)(xi) A written guarantee for an applicant's self bond from any corporate guarantor, whenever the operator meets the conditions of subsections (a)(iv), (a)(vi) and (a)(ix) of this Section, and the guarantor meets the conditions of subsections (a)(iv), (a)(vi), (a)(vii) and (a)(ix) of this Section may be accepted by the Administrator. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of subsections (a)(x)(A) and (B) of this Section. The Administrator may shall require the operator to submit any information specified in subsection (a)(vii)(F) of this Section in order to determine the financial capabilities of the operator.~~

~~(J) Section 2(a)(xii) The following in order:~~

~~(I) Section 2(a)(xii)(A) For the Administrator to accept an operator's self-bond, the total amount of the outstanding and proposed self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States; or and~~

~~(II) Section 2(a)(xii)(B) For the Administrator to accept an ultimate parent entity corporate guarantee, the total amount of the ultimate parent entity corporation guarantor's outstanding present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the ultimate parent entity corporate guarantor's tangible net worth in the United States; or~~

~~Section 2(a)(xii)(C) For the Administrator to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the non-parent corporate guarantor's tangible net worth in the United States.~~

~~(b) Section 3: Approval or Denial of Operator's Self-bond Application.~~

~~(i) Section 3(a) The Administrator, within 60 days of operator's submission of all materials necessary to base a decision on the application shall:~~

~~(A) Section 3(a)(i) Approve or reject such application and declare in writing his reasons for such action to the operator or his registered agent. The decision shall be based on all the information submitted and shall be sufficient to meet the demonstrations required by W.S. § 35-11-417(d).~~

~~(B) Section 3(a)(ii) If a rejection is based on inadequate information or failure of the operator to supply all necessary material, the Administrator shall allow the operator 30 days to remedy the deficiencies. Such corrections must be made to the satisfaction of the Administrator. The Administrator shall have an additional 60 days to approve or reject the corrected application.~~

(ii) ~~Section 3(b)~~ If the Administrator accepts an ~~un-collateralized~~ self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(A) ~~Section 3(b)(i)~~ The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the ultimate parent or non-parent corporate entity guarantor, and shall bind each jointly and severally.

(B) ~~Section 3(b)(ii)~~ Corporations applying for a self-bond or ~~parent and non-parent ultimate parent~~ corporations guaranteeing an operator's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Administrator along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, all corporate guarantors shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

(C) ~~Section 3(b)(iii)~~ If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest directly or indirectly, in the operator.

(D) ~~Section 3(b)(iv)~~ The indemnity agreement shall provide that the persons or parties bound shall pay all litigation costs incurred by the State in any successful effort to enforce the agreement against the operator.

(c) Section 4: Self-Bond Renewal Bonds.

(i) ~~Section 4(a)~~ Information for the self-bond renewal under the self-bonding program which shall accompany the annual credit rating evaluation shall include:

(A) ~~Section 4(a)(i)~~ The amount of bond required which is determined by the reclamation cost estimate in accordance with W. S. § 35-11-417(c)(ii). ~~If the self-bond amount is proposed to be less than the full bond amount, and~~ the amount which is proposed is to be under a self-bond.

(B) ~~Section 4(a)(ii)~~ Financial information in sufficient detail to show that the guarantor still meets one of the criteria in Section ~~2(a)(vii)~~ 4(a)(i)(F), and the limitation in Section ~~2(a)(xii)~~ 4(a)(i)(J). ~~The Administrator may request financial statements for the most recently completed fiscal year together with an independent certified public accountant's audit opinion or review opinion of the financial statements with no adverse opinion. The guarantor shall submit the full report from the credit reporting agency or agencies supporting its rating for the current year. Additional unaudited information may be requested by the Administrator Director when a split rating occurs.~~

~~Section 4(a)(iii) If the Administrator has accepted a mortgage, any changes in evidence of value, title and possession of the property shall be submitted.~~

~~Section 4(a)(iv) If the Administrator deems it necessary to value any asset, he may appoint the appraiser or appraisers mutually acceptable to the Administrator and the operator. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the Administrator and the operator. The expense of the appraisal shall be borne by the operator. The findings of the appraisal shall be final and binding unless both parties agree to a reappraisal.~~

~~Section 4(a)(v) For coal operators using personal property as collateral to support a self bond, the operator's current financial information showing continuing compliance with Section 3(c)(ii) of this Chapter.~~

~~Section 4(b) If the Administrator has authorized a parent corporate guarantee, the parent corporation shall supply all information required under subsection (a)(ii) of this Section.~~

~~Section 4(c) Any valid initial self bond shall carry the right of successive renewal as long as the above listed information is submitted which demonstrates that the guarantor remains qualified under W.S. § 35-11-417(d).~~

(ii) Any valid initial self-bond may carry the right of successive renewal as long as the above listed information is submitted and demonstrates that the guarantor remains qualified under W.S. § 35-11-417(d) and there is a minimum five (5)-year life of mine remaining.

(iii) Renewal of self-bonds approved prior to the effective date of these rules shall require the bond and credit ratings described in Section 4(a)(i)(F) and shall meet the limitations in Section 4(a)(i)(J). Operators with self-bonds approved prior to the effective date of these rules shall submit a new application to self-bond within eighteen (18) months of the effective date of these rules.

(d) Section 5: Self-bond Substitution of the Operator's Self-bond.

(i) Section 5(a) The Administrator may require the operator to substitute a good and sufficient bond instrument corporate surety licensed to do business in the State if the Administrator determines in writing that the self-bond of the operator fails to provide the protection consistent with the objectives and purposes of this Act. The Administrator shall require this full or partial substitution if the financial information submitted or requested under Section 4(c)(i)(B)(a)(ii) indicates that the operator and/or the ultimate parent entity no longer qualifies under the self-bonding program. Substitution of an alternate bond shall be made within 90 days. The operator may also request substitution. This request is contingent upon the operator meeting all the requirements of the bond provisions (W.S. §§ 35-11-417 through 424 (1977)) of the Act. If these requirements are met, the Administrator shall accept substitution.

(ii) Section 5(b) If the operator fails within 90 days to make a substitution for the revoked self-bond with a corporate surety, cash, governmental securities, or federally insured certificates of deposit, or irrevocable letters of credit, the Administrator shall suspend or revoke the license of the operator to conduct operations upon the land described in the permit until such substitution is made.

(iii) Section 5(e) All methods of substitution shall be made in accordance with the bonding provisions (W.S. §§ 35-11-417 ~~through to 35-11-418 424 (1977)~~) of the Act. The Administrator shall require substitution of a good and sufficient bond. either:

Section 5(c)(i) Require substitution of a good and sufficient corporate surety licensed to do business in the State that will stand as surety so as to cover all periods of time as they relate to the mining operations, or

Section 5(c)(ii) Retain from the operator sufficient assets within the department so as to cover that period of time of the mining operation which is not covered by the substituted surety. Those assets not retained shall be returned to the operator within 60 days free from the Department's encumbrances, liens, mortgages or security interests.

(e) Reporting Requirements.

(i) If a devaluation in the credit rating occurs, the Administrator shall be notified within thirty (30) days of the change and a copy of the rating report shall be provided to the Administrator.

(ii) Section 2(a)(viii) A statement listing any notices issued by the Securities and Exchange Commission or proceedings against the operator or the ultimate parent entity initiated by any party alleging a failure to comply with any public disclosure or reporting requirements under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof. The Administrator shall be notified within thirty (30) days of the filing.

Section 5. Collateral Bonds.

(a) Collateral bond means an indemnity agreement in a sum certain executed by the operator as principal which is supported by the deposit with the Department of one or more of the following:

(i) Cash directly deposited with the Department is exempt from the trust provisions;

(ii) Negotiable bonds of the United States, a State or a municipality, endorsed to the order of the Department and placed in possession of the Department. Possession may be in the form of the cash value of the irrevocable trust for the full amount of the reclamation obligation and payable to the Department and federally insured. An operator may satisfy the requirements of this subsection by establishing an irrevocable trust that conforms to the requirements below and submitting an originally signed duplicate of the trust agreement to the Administrator for consideration.

(A) The wording of the irrevocable trust must be identical to the

wording specified on the Wyoming Department of Environmental Quality Irrevocable Trust for Coal Reclamation Form and be signed by the operator or guarantor as principal, the financial institution as Trustee and be made payable to the Department;

(B) The Trustee must be a bank organized to do business in the United States that has the authority to act as a trustee and whose trust operations is regulated and examined by a Federal or State Agency;

(C) The irrevocable trust must be cash funded for the full amount of the reclamation obligation to be provided in the irrevocable trust before it may be approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of this subsection, “the full amount of the reclamation obligation to be provided” means the amount of coverage for reclamation required to be provided for the permit, less the amount of financial assurance for reclamation obligation that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the operator or guarantor;

(D) Cancellation of an irrevocable trust shall follow the same procedures detailed in W.S. 35-11-419 for performance bonds; and

(E) Forfeiture proceeding for an irrevocable trust shall follow the same procedures detailed in W.S. 35-11-421 for performance bonds.

(iii) Section 3(e)(i) For any real property collateral offered to support a self bond, the following information shall be provided:

(A) Section 3(e)(i)(A) The value of the real property. The property shall be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value shall be determined by a market analysis that may be conducted by an appraiser or appraisers or qualified agent proposed by the operator. The appraiser or appraisers shall be selected by the Administrator. The Administrator has the option to reject any appraiser proposed by the operator. The appraisal shall be expeditiously made, and copy thereof furnished to the Administrator and the operator. The expense of the appraisal shall be borne by the operator. The real property shall be appraised every three (3) years.

(B) Section 3(e)(i)(B) A description of the property satisfactory for deposit to further assure that the operator shall faithfully perform all requirements of the Act. The Administrator shall have full discretion in accepting any such offer.

(I) Section 3(e)(i)(B)(I) Real property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands within the permit boundary the bonds for which have received phase 3 bond release have been released or lands within a permit area which will not be disturbed affected while pledged as collateral. In addition, any land used as a security shall not be mined or otherwise disturbed while it is a security. The acceptance of real property within the permit boundary shall be at the discretion of the Director.

~~Section 3(c)(i)(B)(III) Personal property shall be in the possession of the operator, shall be unencumbered, and shall not include:~~

- ~~(1.) Property which is already being used a collateral, or~~
- ~~(2.) Goods which the operator sells in the ordinary course of his business, or~~
- ~~(3.) Fixtures, or~~
- ~~(4.) Certificates of deposit which are not federally insured or where the depository is unacceptable to the Administrator.~~

~~(C) Section 3(c)(i)(C) Evidence of ownership submitted in one of the following forms: of the real property shall be in the form of a clear and unencumbered title. Section 3(c)(i)(C)(I) If the property offered for deposit is real property, the operator's interest must be evidenced by:~~

~~Section 3(c)(i)(C)(I)(1.) In the case of a Federal or State lease, a status report prepared by an attorney, satisfactory to the Administrator as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred upon default.~~

~~Section 3(c)(i)(C)(I)(2.) In the case of a fee simple interest, a title certificate or similar evidence of title and encumbrances prepared by an abstract office authorized to transact business within the State and satisfactory to the Administrator.~~

~~Section 3(c)(i)(C)(III) If the property offered for deposit is personal property as defined in Section 1(b)(iii), evidence of ownership shall be submitted in the form satisfactory to the Administrator to establish unquestionable title to the property in the operator.~~

~~Section 3(c)(ii) In addition to submitting the above information, if the operator offers personal property as collateral to support a self bond, he must meet the financial criteria contained in (A) or (B) following:~~

~~Section 3(c)(ii)(A) The operator must have a tangible net worth of at least 10 million dollars, a ratio of total liabilities to net worth of 3.0 times or less, and a ratio of current assets to current liabilities of 1.0 times or greater. The two ratios shall be calculated with the proposed self bond amount added to the current or total liabilities for the current year. The operator may deduct the costs currently accrued for reclamation which appear on the balance sheet.~~

~~Section 3(c)(ii)(B) The operator must have fixed assets in the United States that total at least 20 million dollars, a ratio of total liabilities to net worth of 3.0 times or less, and a ratio of current assets to current liabilities of 1.0 times or greater. The two ratios~~

shall be calculated with the proposed self bond amount added to the current or total liabilities for the current year. The operator may deduct the costs currently accrued for reclamation which appear on the balance sheet.

~~Section 3(c)(iii) If the Administrator accepts personal property as collateral to support a self bond, he shall require:~~

~~Section 3(c)(iii)(A) Quarterly maintenance reports prepared by the operator, and~~

~~Section 3(c)(iii)(B) A perfected first lien security interest in the property used, in favor of the Wyoming Department of Environmental Quality. This security interest shall be perfected by filing a financing statement or taking possession of the collateral in accordance with (v)(B) below.~~

~~Section 3(c)(iv) In addition, the Administrator may also require quarterly inspections of the personal property by a qualified representative of the Department.~~

~~(D) Section 3(c)(v) If the Administrator accepts any real property as collateral to support a self bond, the Administrator shall, as applicable, require possession by the Department of the personal property, or a mortgage or security agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be that which is sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act. Personal property collateral to support a self bond shall be secured under the provisions of uniform commercial code as required by (B) below. Section 3(c)(v)(A) Any mortgage shall be executed and duly recorded as required by law so as to be first in time and constitute notice to any prospective subsequent purchaser of the same real property or any portion thereof.~~

~~(E) Section 3(c)(v)(B) Any security interest created by a security agreement shall be perfected by filing a financing statement or taking possession of the collateral in accordance with W.S. §§ 34.1-9-401 through 406 34-21-950 through 34-21-955 (1977). The Department shall have all rights and duties set forth in W.S. § 34.1-9-207 34-21-926 (1977) when the collateral is in its possession as a secured party, as defined in W.S. § 34.1-9-102(a)(lxxv) 34-21-905(a)(ix). Any money received from the collateral during this period of time shall be remitted to the operator. When the collateral is left in the possession of the operator, the security agreement shall require that, upon default, the operator shall assemble the collateral and make it available to the Department at a place to be designated by the Department which is reasonably convenient to both parties.~~

~~(F) Section 3(c)(vi) The operator may, with written approval by consent from the Administrator, substitute for any of the real property held hereunder other real property upon submittal of all information required under this subsection, and compliance with all requirements of this subsection so as to secure all obligations under all periods of time as they relate to mining operations.~~

(G) Section 3(c)(vii) For collateral posted to support a self bond, all persons with an interest in the collateral All parties with a claim subordinate to the Department in property held as collateral under this section shall be notified by the operator of the posting, and of all other actions affecting the collateral.

(iv) Securities.

(A) Section 3(c)(i)(B)(II) Securities that are unencumbered shall only include those which are United States government securities or those State government securities which are acceptable to the Administrator. Securities shall meet the requirements specified in the definition of "Securities" found in Section 1(b)(ii). Certificates of deposit shall be insured by the Federal Deposit Insurance Corporation (FDIC).

(B) Section 3(c)(i)(C)(II) If the instrument property offered for deposit is a security, the operator's interest must be evidenced by possession of the original or a notarized copy of the certificate or a certified statement of account from a brokerage house.

(C) Section 3(c)(v) If the Administrator accepts any real property or government securities as collateral, the Administrator shall, as applicable, require possession by the Department of the personal property, or a mortgage or security agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be that which is sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act. Personal property collateral to support a self bond shall be secured under the provisions of uniform commercial code as required by (B) below.

Section 6. Requirements for Forfeiture and Release.

(a) All requirements as to bond forfeiture proceedings and the release of bonds shall be consistent with W.S. § 35-11-417(e) and W.S. §§ 35-11-421 through ~~35-11-424~~ of the Act, excepting the requirements as to notification to the surety. ~~When the Administrator has required a mortgage and the bond has been forfeited, foreclosure procedures shall be in accordance with W.S. §§ 34-4-101 through 34-4-113 (1977).~~

(b) The Department shall retain the full value of the real property until the bond liability equal to the value of the real property is released or substituted with another financial instrument. Upon bond release of self bonds supported by collateral, property return shall be of that form sufficient for the Department to release that portion of the interest or mortgage commensurate with the amount of the bond released less any disposed of in accordance with the mortgage or indemnity agreement.

Section 7. Existing Operations.

(a) ~~An operator conducting an existing, ongoing operation may at any time~~

~~submit to the Administrator an application to self bond. The application shall contain all information required in Section 2 of this Chapter except Section 2(a)(ii) shall read: "Amount of bond required to be determined in accordance with W.S. § 35-11-417(e)(ii) (1977)."~~

~~(b) If the Administrator determines that the operator qualifies for self-bonding, then the operator shall execute all required agreements or instruments and sign a new bond payable to the State of Wyoming which covers all periods of time as they relate to the mining operation. At this time, the prior bond shall be released. This release shall not be governed by any requirements as to the release of bonds which occur upon completion in whole or in part of the reclamation program.~~

~~(c) Any operation which holds a self bond on the effective date of this Chapter shall be presumed to meet the requirements of this Chapter. To continue the self bond, within one year from the effective date of this Chapter an application for a renewal self bond shall be filed with the Administrator which meets all requirements in Section 3. A new indemnity agreement shall be executed which includes the requirements in Section 4(b).~~