



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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Instruction Memorandum No. WY-2010-001
Expires 09/30/2011

To: District Managers

From: State Director

Subject: Acceptable Forms of Financial Guarantees for Locatable Mineral Plans of Operation and Notices, and Exclusive Mineral Material Sales

Program Areas: Mining Law Administration and Mineral Materials

Purpose: To provide guidance on acceptable types of bond instruments held jointly by the Bureau of Land Management (BLM) and the Wyoming Department of Environmental Quality-Land Quality Division (WDEQ-LQD) for 43 CFR 3809 notices and plans of operation for locatable minerals and exclusive competitive and noncompetitive contract sales of mineral materials. This Instruction Memorandum (IM) also provides direction on what actions the District and/or Field Offices should take if BLM and LQD hold joint bonds and it is determined the bond type is not acceptable per BLM regulations.

Policy/Action: Bonds for Surface Management of Locatable Mineral Operations (43 CFR 3809.555): A surface management operator of record must post a financial guarantee in one of the forms cited in 43 CFR 3809.555. Acceptable forms of bonds include:

- (a) Surety bonds;
- (b) Cash deposited in a Federal depository account;
- (c) Irrevocable letters of credit;
- (d) Certificates of deposit or savings accounts;
- (e) Negotiable government securities or bonds or investment-grade securities; and
- (f) Certain types of insurance

Self-bonds, also known as corporate sureties, are not allowed under the BLM regulations with the following exception. Our Regional Solicitor has advised us that a State-approved self-bond or corporate surety that was in place before January 20, 2001, the date the present 3809

regulations went into effect, is considered a preexisting bond. In this case, a new bond is not needed if current operations are limited to the mining areas and operations specifically covered by the State-approved self-bond approved prior to January 20, 2001. In addition, pre-existing self-bonds are allowed if they were accepted by the State and meet the three requirements under 3809.570(a)-(c); i.e., (1) each self-bond is redeemable by the Secretary, acting by and through BLM; (2) each one is held or approved by a State agency for the same operations covered by the notice or plan of operations; and (3) each provides for at least the same amount of financial guarantee as required under the other provisions of the 3809 regulations.

Attachment 1 is a list of non-coal self-bonds held by the WDEQ-LQD, many which overlap the BLM administered lands. It includes one uranium, one leonardite and seven bentonite operations. Attachment 1 also lists the Field Office where the mine permit is located, and 3809 surface management plan of operation or mineral material sale serial numbers that overlap the mine permits. This was based upon a review of the last annual reports for six of these permits on file with the DEQ in Cheyenne and LR2000. The Authorized Officer (AO) at the District or Field Office, in conjunction with the permitting lead at the LQD District Office, will evaluate (a) what operational areas were covered by the self-bond on or before January 20, 2001, and (b) if the LQD held bond meets the three criteria in 3809.570. If the District or Field Office identifies surface disturbance no longer allowed to be self-bonded they should report the case serial number and acreage of the BLM when preparing corrective action plans for financial guarantees.

Please note that the State-approved bond held by WDEQ-LQD may cover existing or planned operations on State, fee, and, in some instances, split estate land. It has typically been the practice for operators to post a bond for existing disturbances, areas of interim reclamation, as well as those areas they intend to disturb in the coming year. On or after January 20, 2001, a self-bond cannot be increased to cover the planned disturbance of BLM administered surface, even if those lands were specifically covered by the previously State-approved self-bond. This policy was articulated in Washington Office IM No. 2005-123. It is an internal instruction memorandum which is available for review at intranet address <http://web.blm.gov/internal/wo-500/directives/dir-05/im2005-123.html>. The increased bond amount must be covered by a financial guarantee allowed under the provisions of 43 CFR 3809.555.

If (a) the amount of self-bond has been increased on or after January 20, 2001 due to accretion of operations on public domain lands, or (b) the self-bond does not meet all three criteria of 3809.570, the AO will issue the operator a decision letter requiring the operator to post a separate reclamation bond for the additional areas with the LQD in the form and amount acceptable to the AO at the BLM District or Field Office. A copy of this correspondence will be provided to the LQD District Office and the LQD Administrator in Cheyenne with a cross reference made to the WYDEQ-LQD issued State mine permit number.

Bonds for Exclusive Mineral Material Sales (43 CFR 3602.14): Applicants for noncompetitive and competitive mineral material sales must post a financial guarantee in one of the forms cited in 43 CFR 3602.14(c). No bond is needed for sales from the BLM-designated community pits or common use areas if the applicant pays the BLM a reclamation fee. Acceptable forms of bonds include:

- (a) Surety bond from the approved U.S. Treasury Department list;
- (b) Certificate of deposit issued by a Federally-insured institution;
- (c) Cash bond;
- (d) Irrevocable letter of credit; and
- (e) Negotiable Treasury bond.

Self-bonds were never allowed under the mineral material regulations. Prior to November 23, 2001, the only acceptable forms of bond were surety bonds, cash bonds, and negotiable Treasury bonds. When the present 43 CFR 3600 regulations went into effect on that date, certificates of deposit and irrevocable letters of credit were added to the list of acceptable bond instruments. The August 1984 Memorandum of Understanding (MOU) between the WYSO and WDEQ regarding mineral material disposals states that the MOU does not apply when operators on BLM administered lands post with the LQD a bond of corporate surety not shown on the approved list issued by the U.S. Treasury Department, a self-bond, or a government security other than negotiable Treasury bonds of the United States. This MOU is in the process of being updated and expanded to conform to new regulations and procedures.

If the District or Field Office determines WDEQ-LQD is holding an unacceptable bond instrument for any authorized mineral material contract sales, the purchaser will be notified by a decision letter from the AO. The letter should require the holder of the contract to either post a separate reclamation bond with the BLM AO in an acceptable form and amount or promptly post with the LQD a jointly held bond in a form and amount acceptable to the AO.

Attachment 1 shows a self-bond is being held in the matter of a mine permit for weathered lignite (leonardite) within the Casper Field Office. The BLM issued the subject leonardite sale under the mineral material regulations. The portion of the bond that covers the BLM surface will need to be reissued under an acceptable bond instrument.

Review of Bond Instruments for New Notices, Plans, and Exclusive Mineral Material Sales: The AO should always notify the operator or purchaser of record what types of financial guarantees are acceptable to the BLM, even if LQD will be holding the bond instrument. A copy of the bond instrument should be obtained from the LQD District office and posted to the case file.

Time Frame: This IM is effective immediately and will be in effect unless formally modified.

Budget Impact: There will be minimal budget impact, but there is no estimate at this time.

Background: The revised surface management regulations (43 CFR 3809) that became effective January 20, 2001 allow for preexisting corporate surety bonds that meet certain conditions. The November 2003, supplement to Wyoming BLM and WDEQ-LQD MOU No. WY-19 allows the BLM to recommend modifications to LQD bonds. The LQD may hold more than one bond instrument for a permit, as long as the grand total is deemed adequate by the LQD with the BLM concurrence when public domain lands are involved. The mineral material regulations at 43 CFR 3600 that became effective December 24, 2001 do not allow for self-bonding in the matter of mineral material disposals. Some other background information is contained in the Policy/Action section above.

Manual/Handbook Sections Impacted: No published manuals or handbooks would be affected.

Coordination: This IM was circulated among the staff of WY920, Field Offices, the Wyoming DEQ-LQD, and the Regional Solicitor.

Contacts: If you have any questions concerning the IM, please contact WY922 Geologists, Pete Sokolosky at 307-775-6261 or Ed Heffern at 307-775-6259.

Signed by:
Donald A. Simpson
State Director

Authenticated by:
Pamela D. Hernandez
Wyoming Central Files

1 Attachment

1- Listing of self-bonded mine permits (1 p.)

Distribution

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