**Section 300.40 Bonds**

a) Bonds Generally

Bonds shall be in keeping with the Act and this Part. Each application for a permit shall require a separate bond. Bonds shall be issued to coincide with the permit period.

b) Bond Calculation

The amount of bond required to be filed with the Department before any surface mining or refuse disposal permit is issued shall be from $600 to $10,000 per acre or fractional part thereof, the exact amount to be determined by the Director after considering the various factors relating to the predictable reclamation cost.

Under circumstances in which a written agreement between the operator and a third party requires overburden to be removed, replaced, graded and seeded in a manner that the necessary bond penalty exceeds $10,000 per acre, the Department shall require a bond amount sufficient to ensure the completion of the reclamation plan specified in the approved permit in the event of forfeiture. In no case shall the bond for the entire area under one permit be less than $600 per acre or $3,000, whichever is greater. The Director shall notify the applicant of the amount of the bond which must be filed by the applicant before a permit will be issued.

c) Definitions

1) Bond means surety bond or other security in lieu thereof.

2) Surety bond means an indemnity agreement in a sum certain payable to the Department, executed by the permittee as principal and supported by the performance guarantee of a corporation licensed to do business as a surety in Illinois.

3) Other security means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the deposit with the Department of one or more of the following:

A) A cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Department upon demand, or the deposit of cash directly with the Department;

B) Negotiable government securities, endorsed to the order of, and placed in the possession of, the Department;

C) An irrevocable letter of credit of any bank organized or authorized to transact business in Illinois, payable only to the Department upon presentation;

D) Certificates of deposit, drawn on a federally insured bank, made payable or assigned to the Department and placed in its possession.

d) Bond Requirements

1) Form

Bonds required to be filed with the Department shall be in such form and content as the Director prescribes, payable to the "People of the State of Illinois".

2) Conditions Generally

A) Each bond shall conform with the requirements of the Act and this Part and with the declared purpose for which the application for the permit is filed. The bond shall be in the amounts prescribed by the Act and established by the Director governing that declared purpose and the proposed area affected.

B) Bonds shall remain in effect until the affected lands have been reclaimed, approved and released by the Department, pursuant to the Act and this Part.

3) Surety Bond Requirements

A) Bonds shall be signed by the operator as principal, and by a good and sufficient corporate surety, approved by the Director and licensed to do business in Illinois as surety.

B) Each surety bond shall provide that the bond shall not be cancelled by the surety except after not less than 90 days' notice to the Department. The notice shall be served upon the Department in writing by registered or certified mail to the following address:

Illinois Department of Natural Resources

Office of Mines and Minerals

One Natural Resources Way

Springfield IL 62702-1271

C) Not less than 10 days prior to the expiration of the 90 days' notice of cancellation, the operator must deliver to the Department a replacement bond. If the bond is not delivered, all surface mine operations and use of slurry ponds and gob disposal areas by that operator must cease. The replacement bond shall be accompanied by a letter from the bonding company acknowledging the bond is in lieu of a formerly cancelled bond and identifying the dates of the permit period the bond is to cover.

D) If the license to do business in Illinois of any surety upon a bond filed with the Department shall be suspended or revoked, the operator, within 30 days after receiving notice of the suspension/revocation from the Department, shall substitute for any surety a good and sufficient corporate surety approved by the Director and licensed to do business in Illinois as a surety. Upon the failure of the operator to make the substitution of surety, the Department shall have the right to suspend the permit of the operator until substitution has been made.

4) Other Securities Requirements

A) Letters of credit shall be subject to the following conditions:

i) 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.

ii) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Department if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date.

iii) 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 Section 300.170.

iv) 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 on the letter of credit shall be enforceable in the Courts of Illinois, and shall be construed under Illinois law.

B) Certificates of deposit shall be subject to the following conditions:

i) The Department shall require that certificates of deposit be made payable to or assigned to the Department, both in writing and upon the records of the bank issuing the certificates. If assigned, the Department, shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.

ii) The Department shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC).

C) Cash accounts shall be subject to the following conditions:

i) The Department may authorize the permittee to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the Department.

ii) Any interest paid on a cash account shall be returned to the permittee.

iii) The Department shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the FDIC or the FSLIC.

e) Request for Bond Review

1) During the term of the permit, and until all bond has been released, the permittee, the county board of each county containing lands affected, or a municipality with legal jurisdiction over the permit area through an annexation or pre-annexation agreement with the permittee, may submit a written request to review the Department's required bond amount and calculations upon which the bond amount was based.

2) The Department shall notify the permittee, county board and municipality whenever a request for bond review has been received. It shall be the permittee's responsibility to accurately identify in the permit application any applicable municipality with legal jurisdiction, pursuant to Section 300.50(a)(16).

3) Based upon review of the bond calculation, if the permittee, county board or municipality believes the bond amount to be inadequate or excessive, it may present written information to the Department in support of its position. That information must be based upon site specific conditions and supported by sound technical data, including, but not necessarily limited to, engineering cost estimates for earthmoving, grading and revegetation. All information submitted will be made available to the permittee, county board and municipality.

4) The Department shall render a written decision on each request for bond review within 60 days after receipt of all information specified in subsection (e)(3), and shall provide a copy of its decision to the permittee, county board and municipality. The Department's decision concerning the bond review request must be based upon site specific conditions and supported by sound technical data, including, but not necessarily limited to, engineering cost estimates for earthmoving, grading and revegetation. If the Department makes the determination that the bond amount is inadequate or excessive, the bond shall be adjusted in accordance with Section 8 of the Act.

5) The Department will make any site specific information in its possession available to the permittee, county or municipality upon request, with the exception that confidential information submitted by the permittee pursuant to Section 5(e)(15) of the Act may not be released to the county or municipality.

6) The Department's written decision on a request for bond review shall be considered the final agency action, and the permittee, county or municipality may request judicial review of that decision in accordance with the Administrative Review Law [735 ILCS 5/Art. III].

(Source: Amended at 41 Ill. Reg. 10490, effective July 28, 2017)