**Section 1800.21 Collateral Bonds**

a) Collateral bonds, except for letters of credit and cash accounts, shall be subject to the following conditions:

1) The Department shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in Sections 1800.30 and 1800.40.

2) The Department shall value collateral at its current market value, not at face value.

3) 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.

4) 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 or the Federal Savings and Loan Insurance Corporation.

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

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

2) 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 thirty (30) days before its expiration date.

3) 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 1800.50.

4) The Department shall not accept a letter of credit in excess of ten percent (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. The ten percent (10%) limit, as used in this subsection, shall be a cumulative total of all letters of credit submitted to the Department by any one issuing bank.

5) 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.

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

1) 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. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with Section 1800.40.

2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the Department has approved the payment of interest to the permittee.

3) Certificates of deposit may be substituted for a cash account in accordance with subsection (a).

4) 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 Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

d) Bond value of collateral.

1) The estimated bond value of all collateral posted as assurance under Section 1800.21 shall be subject to a margin which is the ratio of bond value to market value, as determined by the Department. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the Department to complete reclamation.

2) The bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Department at the time collateral is offered.

(Source: Amended at 20 Ill. Reg. 1939, effective January 19, 1996)