**Section 1800.23 Self-Bonding**

a) For purposes of this Section only, the following terms have the following meanings:

 Current assets means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

 Current liabilities means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

 Fixed assets means plants and equipment, but does not include land or coal in place.

 Liabilities means legally enforceable obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

 Net worth means total assets minus total liabilities and is equivalent to owners' equity.

 Parent corporation means a corporation which owns or controls the applicant.

 Tangible net worth means net worth minus intangibles such as goodwill and rights to patents or royalties.

b) The Department may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

1) The applicant designates a suitable agent to receive service of process in the State of Illinois.

2) The applicant has been in continuous operation as a business entity for a period of not less than five years. Continuous operation shall mean that business was conducted over a period of five years immediately preceding the time of application.

A) The Department may allow a joint venture or syndicate with less than five years of continuous operation to qualify under subsection (b)(2) above, 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.

B) When calculating the period of continuous operation, the Department 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.

3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

A) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

B) The applicant has a tangible net worth of at least $10 million, 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; or

C) The applicant's fixed assets in the United States total at least $20 million, and the applicant 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.

4) The applicant submits:

A) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

B) Unaudited financial statements for completed quarters in the current fiscal year; and

C) Additional unaudited information as requested by the Department.

c) Written guarantee.

1) The Department may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of subsections (b)(1) through (4), above, as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

A) If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the Department sufficient to complete the reclamation plan, but not to exceed the bond amount.

B) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the Department at least 90 days in advance of the cancellation date, and the Department accepts the cancellation.

C) The cancellation may be accepted by the Department if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

2) The Department may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of subsections (b)(1), (2) and (4) above, and the guarantor meets the conditions of subsections (b)(1) through (4) above. 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 (c)(1)(A) through (C) above. The Department may require the applicant to submit any information specified in subsection (b)(3) above in order to determine the financial capabilities of the applicant.

d) In order for the Department to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. In order for the Department to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States. In order for the Department 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 guarantor's tangible net worth in the United States.

e) If the Department accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.

2) Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant'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 Department along with an affidavit certifying that such an agreement is valid under all applicable federal and state laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

3) 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 applicant.

4) Pursuant to Section 1800.50, the applicant, parent or non-parent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Department an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. Under Illinois law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

f) The Department shall require self-bonded applicants and parent and non-parent corporate guarantors to submit an update of the information required under subsections (b)(3) and (4) above within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or non-parent corporate guarantor change so that the criteria of subsections (b)(3) and (d) above are not satisfied, the permittee shall notify the Department immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of Section 1800.16(e)(2) shall apply.

(Source: Added at 20 Ill. Reg. 15683, effective December 2, 1996)