

Draft Guidance: Land Maintenance Financial Guarantees
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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TITLE: Land Maintenance Financial Guarantees

EFFECTIVE DATE: To be determined

AUTHORITY: Surface Mining Conservation and Reclamation Act
25 Pa. Code Chapter 86

POLICY: The Department has established the Land Maintenance Financial Guarantee program to provide the financial assurance needed for coal mine sites awaiting Stage 3 bond release.

PURPOSE: The purpose of this document is to provide guidance for the implementation and tracking of Land Maintenance Financial Guarantees.

APPLICABILITY: This guidance applies to all anthracite and bituminous surface coal mining permits, having a 5-year bonding liability period.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give the rules in these policies that weight or deference. This document establishes the framework within which the Department will exercise its administrative discretion in the future. The Department reserves the discretion to deviate from this policy statement if circumstances warrant.

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BACKGROUND:

The Land Maintenance Financial Guarantee (“LMFG”) Program was established by the Department to allow interested surface mine operators an opportunity to replace, at final stage 2 bond release, their private sector bonds with a state-backed financial guarantee. This financial assurance is called a Land Maintenance Financial Guarantee. The approval of a LMFG will allow for the total release of the existing bond upon approval of the final Stage 2 bond release for the permit. This document describes the procedures for implementing this program. This document supplements the procedures described in technical guidance 563-2504-001 “Conventional Bonding for Land Reclamation – Coal.”

Highlights of the LMFG program are as follows:

- Participation is optional.
- Permittees make a one-time payment of the fee.
- The LMFG may be terminated under certain conditions.
- The permittee commits to applying for final, stage 3 bond release at the end of the 5-year liability period.

PROCEDURE:

In order to qualify for the LMFG program, the permit and the permittee must satisfy the following requirements:

- (a) The permit must be bonded under the conventional bonding system.
- (b) The liability period under the bonds on the permit cannot exceed five years. Permits with a bond liability period greater than 5 years because of the risk of water pollution (25 Pa. Code sections 86.151 (b)(1) & 86.151 (c)) are not eligible.
- (c) The permit must have received Stage 2 bond release approval for the entire permit area.
- (d) Permittees participating in the Land Reclamation Financial Guarantee or Remining Financial Guarantee Programs must have a history of making timely payments.
- (e) If the permit has a post-mining discharge, there must be a fully funded financial assurance in place to cover long-term treatment of the discharge.
- (f) Subchapter F and G permits are eligible as long as the treatment liability has not been triggered.
- (g) Coal Refuse Reprocessing and Coal Refuse Disposal facilities are not eligible for LMFG.
- (h) No outstanding violations or unpaid penalties. The Outstanding Enforcement report will be run by the District Mining Office (DMO). All violations must be resolved.
- (i) It is recommended that a meeting be held between the DMO and the operator representative prior to submittal of the request for LMFG.

Processing:

- 1 1. When the permittee requests the final stage 2 bond release on a permit, he may request at the
2 same time, participation in the Land Maintenance Financial Guarantee Program.
- 3 2. The permittee's request for assistance must be on the APPLICATION AND AGREEMENT
4 FOR LAND MAINTENANCE FINANCIAL GUARANTEE form, state the amount of LMFG being
5 requested, and include the payment of the fee. The form is attached to this guidance as Appendix A.
- 6 3. There are several fees to the permittee, which must be paid prior to the approval of the LMFG,
7 for using this program:
 - 8 a. A fee will be calculated at 1.5% of the amount of the LMFG, based upon the date(s) of
9 stage 3 bond release eligibility. In cases where there are multiple stage 3 eligibility dates,
10 this fee will be prorated based on the number of acres and number of years of remaining
11 liability.
 - 12 b. A fee will be charged to cover the Department's administrative costs of the LMFG
13 program. This fee will be recalculated at least every three years and published along with
14 the Department's bond rate guidelines. *[The labor cost of the Department is expected to
15 be 5/6 of a staff person-year. For the initial part of this program the cost has been
16 estimated to be \$330 per LMFG instrument].*
 - 17 c. A fee will be charged to cover the cost of publication of final bond release, to cover the
18 event that the permittee fails to meet their obligation to submit a complete application for
19 bond release in a timely manner. This fee will be \$1,000 unless the permittee submits a
20 sample publication with a paper's estimate of the publication cost.
- 21 4. The process is handled as Stage 2 release and replacement of the permittee's Stage 3 bond. The
22 bond release recommendation will be sent to Certification, Licensing & Bonding (CL & B) along
23 with the Bond submittal form and a copy of the Application and Agreement for the LMFG as a
24 replacement bond.
- 25 5. When the bond release approval is confirmed by the notice from CL & B, then the DMO will
26 reissue the Part C with the LMFG as the bond.
- 27 6. The LMFG cannot be increased after it is initially approved. The permittee must provide
28 additional bond if subsequent changes to reclamation costs increase the permittee's bonding
29 obligation.
- 30 7. Fee payments are not refundable and will be deposited into the Land Maintenance Financial
31 Guarantee Account. Fees will be used to satisfy the requirements of the bonding program including
32 to underwrite the issued LMFGs; to reclaim sites up to the face value of the permit-specific LMFG;
33 to pay for the public notice of the final bond release and to pay the Department costs to administer
34 the LMFG program.

35 Existing sites

36 Qualified permittees with sites that have complete Stage 2 bond release approval prior to the
37 effective date of this guidance may apply for LMFG.

38 Tracking:

39 When the request for assistance is approved, the DMO will input the amount of the LMFG (in
40 cases with multiple stage 3 eligibility dates, this amount will be the initial total stage 3 liability), the

1 payment , and the expected final bond release date in the database located on the Department's local
2 area network. This database is similar to the one used for tracking Remining Financial Guarantees.

3 The DMO will record the history of the LMFG in the database. The history will include
4 payment received, the date of the payment, and any reductions or releases of the LMFG.

5 **Bond Release:**

6 The LMFG will be reduced or released prior to any other bond on that permit unless the bonds
7 on the permit include Remining Financial Guarantees. In that case the Remining Financial Guarantee
8 will be released first.

9 Since the administrative fee includes the cost of publication of the notice of application for bond
10 release, as required by law, the Department will pay for the publication. [*The District Mining Office*
11 *will make the arrangements in the same way that they do for public notice of public meetings. The*
12 *District would make the publication arrangements upon receipt of the final bond release application.*
13 *This needs to be charged to the LMFG account in the "20 fund."*]

14 **Termination of the Land Maintenance Financial Guarantee:**

15 There are three situations that cause the LMFG to terminate:

- 16 • The LMFG terminates when it is released through the usual bond release mechanism.
- 17 • The LMFG terminates if the permittee submits a replacement bond in an appropriate amount.
- 18 • The LMFG terminates if the permittee fails to make timely application (i.e. within 60 days of
19 the final eligibility date) for final stage 3 bond release.

20 In the case where the final bond release cannot be accomplished when it is expected (i.e. upon
21 expiration of the five-year liability period), then the LMFG must be replaced or may be renewed. The
22 fee for renewal will be calculated based upon the remaining reclamation liability (the reason that the site
23 is not eligible for release when expected should be considered). An additional administrative fee will
24 also be due.

25 Termination of the LMFG, without release, replacement or renewal, will result in the initiation of
26 enforcement action for the failure to maintain a proper bond. Alternative enforcement action, if
27 necessary, (i.e. individual civil penalties, etc.) should be taken to assure compliance and recover cost
28 incurred by the Department.

Appendix A
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

APPLICATION AND AGREEMENT
FOR
LAND MAINTENANCE FINANCIAL
GUARANTEE

To be completed by Permittee:

- (1) Name of Permittee:
- (2) License Number:
- (3) Permit Number:
- (4) County:
- (5) Township:

To be completed by Department of Environmental Protection:
Issuance Date of Financial Guarantee: _____
Amount of Land Maintenance Financial Guarantee: _____
Fee: _____
Date(s), Amount(s) of Releases, adjusted annual fee: _____
<u>Expected final Stage 3 bond release date:</u> _____

We, _____ ("Permittee"),
(Name of Permittee)

- (1) a Corporation, incorporated under the laws in the State of _____, or
(Name of State)

- (2) a(n) _____,
(Limited/General Partnership, Registered Fictitious Name Business or Individual)

with its principal place of business at _____,
(Permittee Address)

have completed mining operations on the surface coal mining permit identified above. In order to provide the bond necessary to satisfy the bonding requirement under the Surface Mining Conservation and Reclamation Act, the Coal Refuse Disposal Control Act and 25 Pa. Code Chapter 86 (collectively called "the Law") for the Stage 3 liability period for this permit, we, the Permittee, request a Land Maintenance Financial Guarantee in the amount of \$ _____.

- 1. **Conditions of Assistance.** We, the Permittee, agree to the following:
 - (a) Payment of the nonrefundable fee initially upon application
 - (b) Upon the occurrence of a post-mining discharge on, or hydrologically connected to, this permit;
 - (i) Replacement of this Land Maintenance Financial Guarantee, with a financial assurance suitable to the Department, or
 - (ii) Establishment of a fully funded financial assurance to cover long-term treatment of the discharge.
 - (c) The submission of the final bond release application no more than 60 days after the permit becomes eligible for final bond release.

- 2. **Amount of Fee.** The amount of the fee is to be determined by multiplying the amount of the necessary Land Maintenance Financial Guarantee by 0.015 and the number of years. The number of acres used to calculate the fee will be reduced proportionally based upon the expected stage 3 bond release eligibility

1 date(s). [An administration fee of \$XXX will be added. This will include the fee to cover the Department costs
2 and the publication fee.]

3 3. **Amount and Duration of Land Maintenance Financial Guarantee.** Liability upon this Land
4 Maintenance Financial Guarantee shall be for the amount specified herein, and that amount shall become a part
5 of the total bond for this permit, such liability shall apply to the remaining acreage for the permit. Liability upon
6 this Land Maintenance Financial Guarantee shall continue for the duration of the reclamation activity as provided
7 in the Law, the regulations and the conditions of the permit, at the operation conducted hereunder, unless
8 released in whole or in part by the Department prior thereto, as provided by the Law. The amount of this Land
9 Maintenance Financial Guarantee cannot be increased.

10
11 4. **Liability and Obligations.** This Land Maintenance Financial Guarantee is submitted pursuant to
12 Surface Mining Permit No. _____, originally issued on
13 _____ . This Land Maintenance Financial
14 Guarantee assumes and covers the Stage 3 bond liability and obligations accrued and to be accrued under the
15 Law from the above permit issuance date until such time as the Department shall release, in writing, the bond and
16 this Land Maintenance Financial Guarantee of such liability and obligations.

17
18 5. **Bond Release.** This Land Maintenance Financial Guarantee shall be released before any other
19 remaining bond, except Remining Financial Guarantees, for this permit.

20
21 6. **Termination.** This agreement and Land Maintenance Financial Guarantee shall terminate (a) upon
22 the release of the entire amount of the Land Maintenance Financial Guarantee, (b) upon the Permittee replacing
23 the Land Maintenance Financial Guarantee with an appropriate bond, or (c) upon failure of the Permittee to apply
24 for final bond release for the permit within 60 days after the permit becomes eligible for final bond release.

25
26 IN WITNESS WHEREOF, We, the Permittee, set our hands and seals, intending to be legally bound
27 hereby, as of the _____ day of _____, 20__.

28 PERMITTEE:

(Print Permittee Name)

By: _____
(Signature of Permittee or Responsible Official and Title)