

Collateral Bonding Information

CERTIFICATES OF DEPOSIT

For Certificates of Deposit, Federal Deposit Insurance Corporation limits are currently \$250,000.

REAL PROPERTY

Montana

Real property can be used for their sand and gravel type operations processed as Opencut mines:

<http://deq.mt.gov/Land/opencut/opencutPermitForms>

New Mexico

19.10.12.1208.C.3 allows the use of real property as collateral bonds upon these conditions:

- (a) the real property must be located in the state of New Mexico. The real property cannot be within the permit or affected area of a mining operation;
- (b) the permittee shall grant the state of New Mexico a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell in accordance with state law or otherwise dispose of the property in the event of forfeiture under 19.10.12.1211 NMAC;
- (c) for the director to evaluate the adequacy of the real property, the permittee must submit the following information for the real property, unless the director, for good cause, waives any of the requirements:
 - (i) a description of the property, which shall include a site improvement survey plat to verify legal descriptions of the property and to identify the existence of recorded easements;
 - (ii) the fair market value as determined by a current appraisal conducted by an independent qualified appraiser, previously approved by the director;
 - (iii) proof of ownership and title to the real property;
 - (iv) a current title binder which provides evidence of clear title containing no exceptions, or containing only exceptions acceptable to the director; and
 - (v) phase I environmental assessment.

Wyoming

Real property is allowed as a type of collateral bond in Rule 020-0007, Chapter 6, Subsection 5.a.iii. The following information must be provided:

- (A) The value of the real property. The property shall be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value shall be determined by a market analysis that may be conducted by an appraiser or qualified agent proposed by the operator. The appraiser shall be selected by the Administrator. The Administrator has the option to reject any appraiser proposed by the operator.

The expense of the appraisal shall be borne by the operator. The real property shall be appraised every three (3) years; and

(B) A description of the property satisfactory for deposit to further assure that the operator shall faithfully perform all requirements of the Act. The Administrator shall have full discretion in accepting any such offer.

(I) Real property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands within the permit boundary which have received phase 3 bond release or which will not be disturbed while pledged as collateral. The acceptance of real property within the permit boundary shall be at the discretion of the Administrator.

(C) Evidence of ownership of the real property shall be in the form of a clear and unencumbered title.

(D) If the Administrator accepts any real property as collateral, the Administrator shall require possession by the Department of the mortgage agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be sufficient to vest such interest in the property in the Department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the Act. Any mortgage shall be executed and duly recorded as required by law so as to be first in time and constitute notice to any prospective subsequent purchaser of the same real property or any portion thereof.

(E) Any security interest created by a security agreement shall be perfected by filing a financing statement or taking possession of the collateral in accordance with W.S. §§ 34.1-9-401 through 406. The Department shall have all rights and duties set forth in W.S. § 34.1-9-207 when the collateral is in its possession as a secured party, as defined in W.S. § 34.1-9-102(a)(lxxv). Any money received from the collateral during this period of time shall be remitted to the operator. When the collateral is left in the possession of the operator, the security agreement shall require that, upon default, the operator shall assemble the collateral and make it available to the Department at a place to be designated by the Department which is reasonably convenient to both parties.

(F) The operator may, with written approval by the Administrator, substitute for any of the real property held hereunder other real property upon submittal of all information required under this section.

(G) All parties with a claim subordinate to the Department in property held as collateral under this section shall be notified by the operator of all actions affecting the collateral.

Office of Surface Mining

CFR 30-800.21.c allows the use of real property as collateral bonds upon these conditions:

(1) The applicant shall grant the regulatory authority a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under §800.50.

(2) In order for the regulatory authority to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include—

- (i) A description of the property;
- (ii) The fair market value as determined by an independent appraisal conducted by a certified appraiser; and
- (iii) Proof of possession and title to the real property.

References

Federal Deposit Insurance Corporation, 2018. Deposit Insurance FAQs; 3 pages, website at <https://www.fdic.gov/deposit/deposits/faq.html>

Idaho, 2019. Title 55, Chapter 1, Section 55-101, “Real Property Defined”; 1 page.

Montana, 2013. Title 82, Chapter 4, Part 4; Montana Code Annotated 2017, 82-4-433, “Opencut Mining Regulation – Bond”. Last modified 2013.

Montana, 2018. “Property Bond for Opencut Mining Permit”, Montana Department of Environmental Quality, 3 pages, updated 2018.

New Mexico, 2003. New Mexico Administrative Code 19.10.12, “Financial Assurance Requirements”; adopted 10/15/03, 10 pages.

Office of Surface Mining, 2017. “Reclamation Performance Bonds”; Office of Surface Mining, U.S. Department of the Interior, website at <https://www.osmre.gov/resources/bonds/BondsOverview.shtm>, last updated April 24, 2017, 3 pages.

United States Government, 2019. 30 CFR (800) “Part 800 – Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs”; Code of Federal Regulations, March 8, 2019, 12 pages.

Wyoming, 2019. Wyoming Administrative Rules 020-0007, Chapter 6; “Financial Assurance”, 11 pages, adopted 5/03/2019.