



POLICY GUIDELINES

UNCONDITIONAL PERFORMANCE BONDS

This paper summarises policy guidelines used by the Department for the registration and retirement of Unconditional Performance Bonds.

What is an Unconditional Performance Bond

An Unconditional Performance Bond is a contract between the Minister for State Development and a third party of financial standing acceptable to the Minister, providing for the third party to unconditionally pay an agreed sum to the Minister upon his request following the failure of the tenement holder to meet the previously agreed environmental commitments.

No mining operation will be given the State Mining Engineer's approval to commence or expand until a satisfactory Bond is held on the Department's Bond register. The Bond must be in the form of a guarantee by a bank or other approved financial institution and must show the name/s of the lessee/licensee.

Why bonds are guaranteed by Financial Institutions

Bonds are intended to provide the State with a guaranteed access to funds so that necessary rehabilitation can be undertaken on mining tenements in cases where tenement holders fail to comply with environmental conditions placed on their tenements.

The third party providing the Bond remains liable to the Minister even when the tenement holder(s) is/are in bankruptcy or liquidation. Cash bonds are not acceptable in lieu of Unconditional Performance Bonds.

A Bond remains registered and enforceable until it is retired by the Minister, ie. when he is satisfied that the relevant obligations have been met by the tenement holder(s). The Bond document is then returned to the relevant financial institution and written notification of the retirement is sent to the tenement holder(s) listed on the Bond document.

Operation of a Bond

Bonds are set at a level which is intended to encourage the rehabilitation of mining disturbance on the tenement in question to a satisfactory standard. They are generally based on a set of predetermined criteria/rates that relate to the estimated cost of remediation and rehabilitation, and do not necessarily reflect the actual cost of rehabilitation.

(Link to Bond Calculation Guidelines www.dmp.wa.gov.au)

The Bond will cover all land required to be rehabilitated and could include waste dumps, tailings storage facilities, stockpile areas, backfilled pits, hardstand areas, plant sites, haulroads, airstrips, accommodation areas and the safety zone around any abandoned open pit. Open pit floors and walls will not normally be included as land required to be rehabilitated.

Where operations are expected to progressively expand over the life of the project, the initial Bond will be estimated on the basis of the area of land that will be disturbed in the first one to two years of operation.

The Bonds placed on operations will be reviewed annually and increased or decreased dependent on the total areas disturbed and areas successfully rehabilitated. This process is designed to encourage progressive rehabilitation.

Bond requirements

All Bonds must conform to the following rules:

- The Department's standard pro forma.
- The Department's standard bond cover letter is to be used.
- Include the names of all registered tenement holder(s).
- Include the tenement type and number as per the register.
- Be fully completed and correctly executed.
- A separate Bond must be filed for each tenement.
- Bonds are not transferable from one party to another.

A Bond is a continuing unconditional liability and as such no termination date is acceptable. There is no time limit on a Bond and it is not terminated upon the death of a tenement.

Share ratio of tenement holders is not required where the tenement is held by more than one party.

Bond Pro Forma

Bond pro forma documents (each relevant to a particular tenement type or land status) are available at www.dmp.wa.gov.au. These documents have been drafted in consultation with the State Solicitor's Office. Unconditional Performance Bonds must be in the format and text of these pro forma documents. All Bonds must be submitted with the Bond Cover Letter proforma.

Transfer of Tenement or Conversions

Prior to the registration of any transfer of interest or conversion of a 'bonded' mining tenement, a substitute Bond in the name(s) of the new holder(s) or for the converted tenement must be provided. The replacement Bond must comply with the conditions of the tenement. The previous Bond will only be retired following the registration of the new Bond and the transfer of interest or conversion.

Change of credit facility

When a credit facility is changed, the replacement Bonds(s) must be for the amount stated in the tenement conditions. It should be noted that this may be different than the Bond currently held on the tenement. The previous Bond will be retired following the registration of the replacement Bonds. Again it is in your interest to check for any potential changes in bond amount to avoid excess fees.

Changes to Bond Amounts

When there is an increase in the Bond amount required for a tenement, a new Bond for the total amount can be lodged and the previous Bond will be retired. Alternatively, a Bond for the additional amount can be lodged on the proviso that the combined sum of the Bonds held for the tenement equals the total amount required.

When there is a reduction in the Bond amount required for a tenement, a new Bond in the lower amount must be lodged before the existing Bond can be retired.

Retirement of Bonds Following Rehabilitation

When the Department is satisfied that the agreed mine closure standards have been met, the Department will make a recommendation to the Minister that the Unconditional Performance Bond be retired.

A request for retirement of a Bond will be considered only when the tenement holder has submitted a compliance report to the Department for assessment and closure of minesite standards are shown to have met the commitment made in approval documents and agreed to by the Department. The report should confirm that all conditions have been complied with and that all commitments in the Notice of Intent document have been carried out. The Department may require an independent audit of the reported compliance.

Bond reductions will also be considered if progressive rehabilitation has been carried out satisfactorily.

Bond Enforcement

Action will be initiated for the recovery of a Bond should an inspection of the tenement by an Environmental Inspector from the Safety Health and Environment Division of the Department confirm that the tenement obligations have not been met by the tenement holder(s).

Stamp Duty Exemption

As an Unconditional Performance Bond is a requirement of the *Mining Act 1978* it is exempt from stamp duty pursuant to item 7(6) of the Third Schedule to the *Stamp Act 1921*.