

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

COLLATERAL BOND AGREEMENT

A Collateral Bond is hereby given by _____ hereinafter referred to as "Permittee") to the Arkansas Department of Environmental Quality ("Department") pursuant to the following terms and conditions.

It is understood by the parties that this Collateral Bond Agreement shall be considered a Security Agreement for purposes of any UCC filing the Department deems necessary. The undersigned Permittee hereby grants to the Department a Security Interest in the Collateral described below, and agrees to sign on demand, any UCC documents the Department may require regarding this Bond.

The Permittee has been granted a permit by the Department to conduct surface coal mining and reclamation operations within the State of Arkansas subject to the terms and conditions of the application and Permit No. _____ (both of which are incorporated herein as the "Permit"), a copy of said Permit being on file with the Department, and within the area of land indicated on the approved map submitted by the Permittee with his application (the "Permit Area"); and

The granting of this Permit is, and shall continue to be, conditioned on the Permittee giving and maintaining adequate Bond in an amount which shall be determined in the sole discretion of the Director to insure the reclamation of the Permit Area pursuant to the following terms and conditions.

RECITALS:

1. The Permittee has agreed to grant a security interest in certain collateral consisting of cash, negotiable bonds of the United States, the State of Arkansas, or political subdivisions of the State of Arkansas, negotiable Certificates of Deposit or Irrevocable Letters of Credit of any bank organized or authorized to transact business in the United States (the "Collateral") to secure the performance by the Permittee of all duties and obligations in accordance with all the requirements of the Arkansas Surface Coal Mining and Reclamation Act of 1979 (Act 134 of 1979)(the "Act"), the regulations promulgated pursuant to the Act (the "Regulations"), the program developed by the State of Arkansas to administer the Surface Coal Mining and Reclamation Operations Permanent Regulatory Program (the "State Program") and the provisions of the Permit; and

2. The Department has agreed to accept this Collateral Bond (hereinafter "Bond") as sufficient surety of performance by the Permittee, subject to the Department's right, if in its sole discretion it deems it necessary to adjust the amount of the Bond as the acreage in the permit area is revised, methods of mining operations change, standards of reclamation change, or when the cost of future reclamation, restoration, or abatement work changes;

Now, therefore it is hereby agreed between the Permittee and the Department that:

1. The Permittee shall be bound by Bond to the Department in the sum of \$ _____.

2. To secure performance and payment in accordance with this Bond, the Permittee shall, and hereby does, create a security interest in favor of the Department in the Collateral described in "Exhibit A", attached hereto and incorporated herein by this reference. Said Collateral has been deposited with the Department contemporaneously with the execution of this Bond Agreement. Further, all other property previously, presently or in the future deposited with the Department as Collateral by the Permittee, and

the proceeds of such Collateral, shall be governed by this agreement.

3. The aggregate value of the Collateral shall at no time be less than the required Bond Amount. The "value" of the collateral shall be defined as the fair market value and not face value. In the event the Director notifies the Permittee that the value of the Collateral has become less than the Bond Amount, the Permit shall be automatically suspended, and the Permittee shall immediately discontinue mining operations until the Director, in his sole discretion, is satisfied that additional Collateral has been deposited of value sufficient to cause the aggregate value of the Collateral to be equal to, or greater than, the Bond Amount, or alternatively until new bond coverage is approved. The suspended Permit shall not become valid, nor shall mining operations recommence until the Director informs the Permittee in writing of the Director's satisfaction with the new, or additional collateral, or that the new bond coverage has been approved.

4. The Bond Amount shall be in an amount sufficient to cover all reclamation operations within the entire Permit Area for full bonding or the identified portion of the permit for an incremental bond. The Department shall be entitled to possession of the Collateral and shall continue to have the rights granted herein in the Collateral until all reclamation, restoration and abatement work on the entire Permit Area has been completed to the satisfaction of the Director, and the Permit has terminated by release of the Permittee from further liability by the Department in accordance with the Act, the Regulations, and the State Program.

5. The Director may refuse to accept negotiable instruments as Collateral which violate the following criteria, and, if they are inadvertently accepted, shall have the right to demand replacement by acceptable Collateral. Pending such replacement, the Permit shall be suspended, and the Permittee shall immediately cease mining operations within the Permit Area, further:

(a) Certificates of Deposit shall be assigned to the Department in writing, and shall so indicate in the official records of the bank issuing such certificates.

(b) Individual Certificates of Deposit shall not be in excess of the maximum insurable amount as determined by FDIC or FSLIC.

(c) The bank issuing Certificates shall execute, and provide to the Department, a written waiver of setoff or liens which it has, or may have, against the Certificates issued as Collateral to the Department.

(d) Certificates shall be automatically renewable in the Department's name until the Collateral is released by the Director.

(e) Letters of Credit shall be irrevocable (hereafter "Irrevocable Letter of Credit") prior to a release by the Director, and shall be payable to the Department in part or in full upon presentment and demand by the Director.

(f) The Irrevocable Letter of Credit shall not be in excess of 10 percent of the bank's capital surplus account. A statement duly executed and so certified by a Certified Public Accountant shall be issued to the Department within thirty (30) days of such request being made by the Department to the bank. In any event, a bank shall not submit Irrevocable Letter of Credit for any person, if the aggregate amount of the Letter of Credits on all permits held by that person, or legal entity is excess of three times the bank's maximum single obligation as provided by the law or laws governing the bank.

(g) An Irrevocable Letter of Credit shall be in a form proscribed by the Department, and state that the bank shall give ten (10) days notice to the Permittee and the Director of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of requirements which could result in suspension or revocation of the bank's charter or license to do business; or in the event the bank becomes unable to fulfill its obligations under the Irrevocable Letter of Credit for any reason. In the event of the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the Permittee shall be deemed to be without adequate bond, his Permit suspended, and the Permittee shall discontinue surface coal mining operations until new bond coverage is approved.

6. This Bond and the Collateral shall be forfeited in full or in part at the discretion of the Director upon the Director determining that:

(a) The Permittee has violated any term(s) or condition(s) of this Bond; or,

(b) The Permittee has failed to conduct one or more mining and/or reclamation operations in accordance with and within the time required by the Act, the Regulations, the State Program, and the Permit; or,

(c) The Permit for the Permit Area has been revoked, unless an individual Permittee assumes sole liability for completion of reclamation work within a time period, and pursuant to terms and conditions as determined in the sole discretion of the Director; or,

(d) The Permittee has been notified of its failure to meet the conditions of this Bond, and a compliance schedule has been agreed to by the Permittee and the Director in his sole discretion, determines that the Permittee has failed to comply with the compliance schedule; or,

(e) The Permittee has become insolvent, failed in business, filed a petition in bankruptcy or for a Receiver, or has had a Receiver appointed by any court; or has been adjudicated as Bankrupt; or,

(f) A creditor of the Permittee has attached or executed a judgement against the Permittee's equipment, materials, or facilities at the Permit Area, and the Permittee cannot demonstrate to the Director's satisfaction that the Permittee has the ability to continue to operate in compliance with the Act, the Regulations, the State Program, and the Permit.

8. Upon forfeiture, the Director may sell the Collateral either all at one time or in separate sales; in such lots and at such times as the Director, in his sole discretion, may determine; either by public or private sale; and at such prices and on such terms as the Director may deem proper. Whether or not all or any part of the Collateral is sold, the Director may in his sole discretion either:

(a) Determine the amount of the Bond to be forfeited on the basis of the estimated cost to the Department or its contractor (including administrative expenses) to complete the reclamation plan and other regulatory requirements in accordance with the Act, the Regulations, the State Program, and the Permit; or

(b) Forfeit the entire amount of the Bond for which liability is outstanding and deposit the Collateral or the proceeds thereof in an interest bearing escrow account for use in the payment of all costs and administrative expenses associated with the conduct of all reclamation, restoration or abatement activities by the Department as they come due.

(c) In the event the value of the Collateral is in excess of the Bond Amount, the Director may keep such excess and apply it toward the payment of all such costs and expenses of reclamation work, if in his sole discretion, the Director determines that the excess will be needed to meet the payment of such costs and expenses. Otherwise, the excess will be refunded to the Permittee.

9. With the consent of the Director, given in accordance with the Act, the Regulation, and the State Program, all or part of the Permit Area may be released from coverage of this Bond, and the Bond Amount may be reduced, or other Collateral may be substituted in a new amount as determined by the Director.

10. All notices required herein shall be in writing and delivered personally or mailed by first-class mail, postage prepaid to the following addresses:

Permittee:

Department: ARKANSAS DEPT. OF ENVIRONMENTAL QUALITY
5301 NORTSHORE DRIVE
NORTH LITTLE ROCK, AR 72118-5317

unless otherwise specifically stated herein or in the Act, the Regulations, the Program, or the Permit.

11. This agreement has been executed in multiple copies, each of which shall be deemed an original.

12. This agreement shall be construed in accordance, with and governed by Arkansas law.

13. The term "Director" shall include any person authorized by the Director to act on their behalf.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____, _____.

PERMITTEE:

Title

Signature

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY BY:

Director/Representative.

EXHIBIT A
COLLATERAL BOND AGREEMENT

Permit Number: _____

Description of Collateral: _____

Financial Institution: _____

Identification Number of Collateral: _____

Amount: \$ _____