



COALEX STATE COMPARISON REPORT - 184

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G. Milton McCarthy, Esquire
Alabama Surface Mining Commission
P.O. Box 2390
Jasper, Alabama 35502-2390

TOPIC: USE OF LETTERS OF CREDIT AS RECLAMATION BONDS

INQUIRY: This Report consists of a copy of the paper presented by G. Milton McCarthy (Assistant Attorney General, Alabama Surface Mining Commission) at the Seventh Annual Conference of Government Mining Attorneys and the survey on Letters of Credit Bonds conducted for him by the IMCC.

SEARCH RESULTS: Eleven IMCC members participated in the survey. A copy of the questionnaire sent to the states appears below. The summary of responses follows. Copies of state regulations are attached, as indicated.

QUESTIONNAIRE (Reformatted from original)

1. Does your state accept letters of credit ("LOC") in lieu of reclamation bonds?
2.
 - A. What is the approximate dollar amount of bonds currently held in the form of letters of credit?
 - B. What percentage of your state's total bond liability is in the form of letters of credit?
 - C. In dollar amounts and percentages, how is bonding distributed between the following forms: Surety; Certificates of Deposit; Cash; Letters of Credit; Self Bonds; Other (please specify)?
3. To what degree has the percentage of bonding in the form of letters of credit increased or decreased within the past five (5) years?
4. What requirements do you have that letter of credit bonds be issued for a specified term (e.g., one year, five years)?
5. Does your state require that letters of credit be confirmed (backed up) by an in-state bank as a condition to accepting a letter of credit from an out-of-state bank?
6.
 - A. Have you had occasion to demand payment on any letter of credit bond?
 - B. If so, what sort of problems have you encountered in this regard?



7.
 - A. Has payment ever been refused on any letter of credit bond presented by your state for payment?
 - B. If so, what were the reasons stated for such refusal and how was the matter resolved?
8. In what respect do your state's regulation authorizing the acceptance of letters of credit as bonds differ from the federal regulations found at 30 CFR 800.21? (Providing a copy of the relevant part of your state's regulation would be a more than satisfactory response.)

STATE RESPONSES

ALABAMA

QUESTIONS	RESPONSES
1. Accept LOC?	Yes
2. A. Amt held in LOC:	\$ 3,713,278 as of 9/30/90
2. B. Pct of total bond liability:	3.43% as of 9/30/90
2. C. Amt & pct of bonding forms:	Surety: \$ 99,899,891 [92.16%] Certificates of Deposit*: \$ 4,722,333 [4.36%] Cash: \$ 58,093 [0.05%] Letters of Credit: \$ 3,713,278 [3.43%] Self Bonds: \$ 0 [0%] Other: \$ 0 [0%] TOTAL DOLLARS: \$ 108,393,595 * Includes municipal bonds (minimal amount)
3. Pct LOC increased/decreased in last 5 years:	783.91% increase
4. Term for LOC bonds:	Term of 1 year (auto renewal)
5. Require confirmation (back up) of LOC:	Yes (internal policy)
6. A. Demanded payment on LOC?	Yes (2)
6. B. Any problems encountered?	We had no problems on one payment demanded. On the second, the bank returned the company's collateral and said they had no record of LOC. Collection is in process by legal division.
7. A. Payment ever refused?	See 6. B.
7. B. Reasons/resolutions	See 6. B.
8. State/federal regulation differences:	Sec. 880-X-9c-.03 attached



ARKANSAS

QUESTIONS	RESPONSES
1. Accept LOC?	Yes
2. A. Amt held in LOC:	\$ 965,722
2. B. Pct of total bond liability:	37%
2. C. Amt & pct of bonding forms:	Surety: \$ 1,266,174 [49%] Certificates of Deposit: \$ 197,553 [8%] Cash: \$ 0 [0%] Letters of Credit: \$ 965,722 [37%] Self Bonds: \$ 161,542 [6%] Other: \$ 0 [0%]
3. Pct LOC increased/decreased in last 5 years:	Over 50% increase: \$ 525,377
4. Term for LOC bonds:	Banking laws require one year only except we require automatic renewal each year unless we receive cancellation 180 days prior to next expiration date.
5. Require confirmation (back up) of LOC:	No
6. A. Demanded payment on LOC?	Yes
6. B. Any problems encountered?	FDIC has refused payment in one case, Bossier Bank of Louisiana. Bank of Portugal Atlantico took exception and required legal action, in another.
7. A. Payment ever refused?	Yes
7. B. Reasons/resolutions	See 6. B.
8. State/federal regulation differences:	None

ILLINOIS

QUESTIONS	RESPONSES
1. Accept LOC?	Yes
2. A. Amt held in LOC:	\$ 18,338,427
2. B. Pct of total bond liability:	3.11%
2. C. Amt & pct of bonding forms:	Surety: \$ 568,265,167 [96.36%] Certificates of Deposit: \$ 670,562 [0.11%] Cash: \$ 2,482,048 [0.42%] Letters of Credit: \$ 965,722 [37%] Self Bonds: \$ 0 [0%] Other: \$ 0 [0%]
3. Pct LOC increased/decreased in last 5 years:	None



4. Term for LOC bonds:	The LOC is issued for the life of the permit or for one year with a renewable clause that allows the Department to draw on the LOC if it is not renewed.
5. Require confirmation (back up) of LOC:	Yes
6. A. Demanded payment on LOC?	Yes
6. B. Any problems encountered?	None, such problems are precluded by our LOC format.
7. A. Payment ever refused?	Our LOC precludes refusal since we have a judgment clause against the bank.
7. B. Reasons/resolutions	N/A
8. State/federal regulation differences:	The regulations require the issuing bank and /or the confirming bank to have an office for payment in Illinois, the LOC has a judgment clause against the issuing bank, and a certification from the president of the issuing bank that the LOC and all other LOCs issued by the bank to the Department have a cumulative total less than 10% of the bank's total capital and surplus accounts. (Regulation attached.)

KENTUCKY

QUESTIONS	RESPONSES
1. Accept LOC?	Kentucky accepts 4 types of reclamation bonds, they are surety, certificates of deposit, letters of credit and cash.
2. A. Amt held in LOC:	\$ 66,384,616.20 as of 1/24/91
2. B. Pct of total bond liability:	See next item.
2. C. Amt & pct of bonding forms:	Surety: \$728,083,532 Certificates of Deposit: \$ 13,382,008 Cash: \$ 0 [0%] Letters of Credit: \$ 66,384,616 Self Bonds: \$ 0 [0%] Other (Bond Pool): \$ 12,128,830
3. Pct LOC increased/decreased in last 5 years:	Use of this form of reclamation bond has been about the same over the past several years.
4. Term for LOC bonds:	The LOC bonds are generally issued for one year but are automatically renewable and are irrevocable letters of credit.
5. Require confirmation (back up) of LOC:	Yes, our regulations 405 KAR 10:030 require a confirming in-state bank, on an out of state bank's LOC.
6. A. Demanded payment on LOC?	Yes
6. B. Any problems	On occasion, bank does not have collateral.



encountered?	
7. A. Payment ever refused?	Yes
7. B. Reasons/resolutions	Bank misunderstood that LOC was automatically renewed unless they sent the Department a letter of cancellation 30 days prior to cancellation.
8. State/federal regulation differences:	Copy of Kentucky bonding regulations are attached.

LOUISIANA

QUESTIONS	RESPONSES
1. Accept LOC?	Yes
2. A. Amt held in LOC:	\$ 787,950.50
2. B. Pct of total bond liability:	5%
2. C. Amt & pct of bonding forms:	Surety: \$ 16,085,083 [95%] Certificates of Deposit: \$ 0 [0%] Cash: \$ 0 [0%] Letters of Credit: \$ 89,950 [5%] Self Bonds: \$ 0 [0%] Other (Bond Pool): \$ 0 [0%]
3. Pct LOC increased/decreased in last 5 years:	None
4. Term for LOC bonds:	LOC expires one year from date of issuance, but is automatically renewed for an additional year, unless notification is received from the bank 120 days in advance.
5. Require confirmation (back up) of LOC:	No
6. A. Demanded payment on LOC?	No
6. B. Any problems encountered?	N/A
7. A. Payment ever refused?	No
7. B. Reasons/resolutions	N/A
8. State/federal regulation differences:	Attached.

MARYLAND

QUESTIONS	RESPONSES
1. Accept LOC?	Yes
2. A. Amt held in LOC:	\$ 1,084,400
2. B. Pct of total bond liability:	12%
2. C. Amt & pct of bonding	Surety: \$ 5,558,730 [63%]



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forms:	Certificates of Deposit: \$ 2,250,260 [25%] Cash: \$ 0 [0%] Letters of Credit: \$ 1,084,400 [12%] Self Bonds: \$ 0 [0%] Other: \$ 0 [0%]
3. Pct LOC increased/decreased in last 5 years:	Maryland did not accept LOC prior to 5 years ago. Therefore, percentage has gone from zero to 12%.
4. Term for LOC bonds:	Life of permit (see attached regulation)
5. Require confirmation (back up) of LOC:	Will accept LOC from banks out of state.
6. A. Demanded payment on LOC?	Yes
6. B. Any problems encountered?	No real problem. Bank was just slow.
7. A. Payment ever refused?	No
7. B. Reasons/resolutions	N/A
8. State/federal regulation differences:	See attached Maryland regulation.

NEW MEXICO

QUESTIONS	RESPONSES
1. Accept LOC?	Yes
2. A. Amt held in LOC:	\$ 53,431,980
2. B. Pct of total bond liability:	48%
2. C. Amt & pct of bonding forms:	Surety: \$ 6,128,997 [6%] Certificates of Deposit: \$ 0 [0%] Cash: \$ 0 [0%] Letters of Credit: \$ 53,431,980 [48%] Self Bonds: \$ 51,641,200 [46%] Other: \$ 0 [0%]
3. Pct LOC increased/decreased in last 5 years:	\$ 0 in 1986
4. Term for LOC bonds:	None
5. Require confirmation (back up) of LOC:	No
6. A. Demanded payment on LOC?	No
6. B. Any problems encountered?	N/A
7. A. Payment ever refused?	No
7. B. Reasons/resolutions	N/A
8. State/federal regulation differences:	Regulations attached.



OHIO

QUESTIONS	RESPONSES
1. Accept LOC?	Yes
2. A. Amt held in LOC:	\$ 14,530,000
2. B. Pct of total bond liability:	4.7%
2. C. Amt & pct of bonding forms:	Surety: \$ 175,325,000 [89.3%] Certificates of Deposit: \$ 5,935,000 [3.0%] Cash: \$ 495,000 [0.3%] Letters of Credit: \$ 14,530,000 [7.4%] Self Bonds: \$ 0 [0%] Other: \$ 0 [0%]
3. Pct LOC increased/decreased in last 5 years:	1986 LOC = 7.1% of bond deposited 1990 LOC = 26.8% of bond deposited
4. Term for LOC bonds:	None
5. Require confirmation (back up) of LOC:	No
6. A. Demanded payment on LOC?	Yes
6. B. Any problems encountered?	None
7. A. Payment ever refused?	No
7. B. Reasons/resolutions	N/A
8. State/federal regulation differences:	See attached.

OKLAHOMA

QUESTIONS	RESPONSES
1. Accept LOC?	Yes
2. A. Amt held in LOC:	\$ 7,606,034
2. B. Pct of total bond liability:	16.7%
2. C. Amt & pct of bonding forms:	Surety: \$ 34,328,963.20 [75.38%] Certificates of Deposit: \$ 891,652 [1.96%] Cash: \$ 20,590 [0.04%] Letters of Credit: \$ 7,606,034 [16.70%] Self Bonds: \$ 0 [0%] Other: \$ 2,695,479.50 [5.92%]
3. Pct LOC increased/decreased in last 5 years:	LOC bonding has increased from 6.62% in 1986 to 17.60% in 1991. An increase of 10.08%.
4. Term for LOC bonds:	We require LOC bonds to be valid for the life of the permit. Banks usually conform to this requirement by issuing the LOC for one year terms and automatically extending (renewing) the LOC for additional one year terms on the anniversary date.



5. Require confirmation (back up) of LOC:	No
6. A. Demanded payment on LOC?	Yes
6. B. Any problems encountered?	None
7. A. Payment ever refused?	No
7. B. Reasons/resolutions	N/A
8. State/federal regulation differences:	Our regulations do not differ from the federal regulations but add other conditions as evidenced by conditions (g)(4) through (g)(7) of the attached copy of our regulations.

TENNESSEE

QUESTIONS	RESPONSES
1. Accept LOC?	No
2. A. Amt held in LOC:	N/A
2. B. Pct of total bond liability:	N/A
2. C. Amt & pct of bonding forms:	Surety: \$ 1,258,725 [50%] Certificates of Deposit: \$ 981,805 [39%] Cash: \$ 25,000 [1%] Letters of Credit: \$ 0 [0%] Self Bonds: \$ 0 [0%] Other (municipal bond): \$ 251,745
3. Pct LOC increased/decreased in last 5 years:	N/A
4. Term for LOC bonds:	N/A
5. Require confirmation (back up) of LOC:	N/A
6. A. Demanded payment on LOC?	N/A
6. B. Any problems encountered?	N/A
7. A. Payment ever refused?	N/A
7. B. Reasons/resolutions	N/A
8. State/federal regulation differences:	N/A

VIRGINIA

QUESTIONS	RESPONSES
1. Accept LOC?	No
2. A. Amt held in LOC:	N/A
2. B. Pct of total bond liability:	N/A
2. C. Amt & pct of bonding forms:	Surety: \$ 151,600,960 [96.84%] Certificates of Deposit: \$ 4,903,600 [3.13%] Cash: \$ 46,600 [0.03%]



	Letters of Credit: \$ 0 [0%] Self Bonds: \$ 0 [0%] Other: \$ 0 [0%]
3. Pct LOC increased/decreased in last 5 years:	N/A
4. Term for LOC bonds:	N/A
5. Require confirmation (back up) of LOC:	N/A
6. A. Demanded payment on LOC?	N/A
6. B. Any problems encountered?	N/A
7. A. Payment ever refused?	N/A
7. B. Reasons/resolutions	N/A
8. State/federal regulation differences:	N/A

ATTACHMENTS

- A. G. Milton McCarthy, "Use Of Letters Of Credit As Reclamation Bonds" presented at the Seventh Annual Conference of Government Mining Attorneys, Bonding Issues Panel (1991).
- B. ALABAMA: Sec. 880-X-9c-.03
- C. ILLINOIS: 62 IAC Sec. 1800.21
- D. KENTUCKY: 405 KAR 10:030
- E. LOUISIANA: Sec. 206-12
- F. MARYLAND: Sec. 08.13.09.15C
- G. NEW MEXICO: CSMC Rule 80-1; Amendment No. 3; 14-21(b)
- H. OHIO: Copy of Irrevocable Letter of Credit
- I. OKLAHOMA: Sec. 800.21