

(ii) Provide an executed assignment of the required acceptable bond made payable to "The United States or The State of Tennessee."

(c) *Special consideration for sites with long-term postmining pollutional discharges.* With the approval of the Office, the permittee may establish a trust fund, annuity or both to guarantee treatment of long-term postmining pollutional discharges in lieu of posting one of the bond forms listed in §800.12 of this chapter for that purpose. The trust fund or annuity will be subject to the following conditions:

(1) The Office will determine the amount of the trust fund or annuity, which must be adequate to meet all anticipated treatment needs, including both capital and operational expenses.

(2) The trust fund or annuity must be in a form approved by the Office and contain all terms and conditions required by the Office.

(3) The trust fund or annuity must provide that the United States or the State of Tennessee is irrevocably established as the beneficiary of the trust fund or of the proceeds from the annuity.

(4) The Office will specify the investment objectives of the trust fund or annuity.

(5) Termination of the trust fund or annuity may occur only as specified by the Office upon a determination that no further treatment or other reclamation measures are necessary, that a replacement bond or another financial instrument has been posted, or that the administration of the trust fund or annuity in accordance with its purpose requires termination.

(6) Release of money from the trust fund or annuity may be made only upon written authorization of the Office or according to a schedule established in the agreement accompanying the trust fund or annuity.

(7) A financial institution or company serving as a trustee or issuing an annuity must be one of the following:

(i) A bank or trust company chartered by the Tennessee Department of Financial Institutions;

(ii) A national bank chartered by the Office of the Comptroller of the Currency;

(iii) An operating subsidiary of a national bank chartered by the Office of the Comptroller of the Currency;

(iv) An insurance company licensed or authorized to do business in Tennessee by the Tennessee Department of Commerce and Insurance or designated by the Commissioner of that Department as an eligible surplus lines insurer; or

(v) Any other financial institution or company with trust powers and with offices located in Tennessee, provided that the institution's or company's activities are examined or regulated by a State or Federal agency.

(8) Trust funds and annuities, as described in this paragraph, must be established in a manner that guarantees that sufficient moneys will be available to pay for treatment of postmining pollutional discharges (including maintenance, renovation, and replacement of treatment and support facilities as needed), the reclamation of the sites upon which treatment facilities are located and areas used in support of those facilities.

(9) When a trust fund or annuity is in place and fully funded, the Office may approve release under §800.40(c)(3) of this chapter of conventional bonds posted for a permit or permit increment, provided that, apart from the pollutional discharge and associated treatment facilities, the area fully meets all applicable reclamation requirements and the trust fund or annuity is sufficient for treatment of pollutional discharges and reclamation of all areas involved in such treatment. The portion of the permit required for postmining water treatment must remain bonded. However, the trust fund or annuity may serve as that bond.

[49 FR 38892, Oct. 1, 1984, as amended at 72 FR 9636, Mar. 2, 2007]

§ 942.815 Performance standards—Coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person who conducts coal exploration.

§ 942.816 Performance standards—Surface mining activities.

(a) Except as modified by paragraphs (b) through (h) of this section, part 816