

## §9.46

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high water or other causes, and such wastes must be stored and disposed of or removed from the area as quickly as practicable in such a manner as to prevent contamination, pollution, damage or injury to the lands, water (surface and subsurface), facilities, cultural resources, wildlife, and vegetation of or visitors of the unit.

### §9.46 Accidents and fires.

The operator shall take technologically feasible precautions to prevent accidents and fires, shall notify the Superintendent within 24 hours of all accidents involving serious personal injury or death, or fires on the site, and shall submit a full written report thereon within ninety (90) days. This report supersedes the requirement outlined in 36 CFR 2.17, but does not relieve persons from the responsibility of making any other accident reports which may be required under State or local laws.

### §9.47 Cultural resource protection.

(a) Where the surface estate of the site is owned by the United States, the operator shall not, without written authorization of the Superintendent, injure, alter, destroy, or collect any site, structure, object, or other value of historical, archeological, or other cultural scientific importance in violation of the Antiquities Act (16 U.S.C. 431-433 (See 43 CFR part 3).

(b) Once approved operations have commenced, the operator shall immediately bring to the attention of the Superintendent any cultural or scientific resource encountered that might be altered or destroyed by his operation and shall leave such discovery intact until told to proceed by the Superintendent. The Superintendent will evaluate the discoveries brought to his attention, and will determine within ten (10) working days what action will be taken with respect to such discoveries.

### §9.48 Performance bond.

(a) Prior to approval of a plan of operations, the operator shall be required to file a suitable performance bond with satisfactory surety, payable to the Secretary or his designee. The bond shall be conditioned upon faithful com-

pliance with applicable regulations, and the plan of operations as approved, revised or supplemented. This performance bond is in addition to and not in lieu of any bond or security deposit required by other regulatory authorities.

(b) In lieu of a performance bond, an operator may elect to deposit with the Secretary or his designee, cash or negotiable bonds of the U.S. Government. The cash deposit or the market value of such securities shall be at least equal to the required sum of the bond. When bonds are to serve as security, there must be provided to the Secretary a power of attorney.

(c) In the event that an approved plan of operations is revised or supplemented in accordance with §9.40, the Regional Director may adjust the amount of the bond or security deposit to conform to the modified plan of operations.

(d) The bond or security deposit shall be in an amount:

(1) Equal to the estimated cost of reclaiming the site, either in its entirety or in phases, that has been damaged or destroyed as a result of operations conducted in accordance with an approved, supplemented, plan of operations; plus

(2) An amount set by the Superintendent consistent with the type of operations proposed, to bond against the liability imposed by §9.51(a); to provide the means for rapid and effective cleanup; and to minimize damages resulting from an oil spill, the escape of gas, wastes, contaminating substances, or fire caused by operations. This amount shall not exceed twenty-five thousand dollars (\$25,000) for geophysical surveys when using more than one field party or five thousand dollars (\$5,000) when operating with only one field party, and shall not exceed fifty thousand dollars (\$50,000) for each wellsite or other operation.

(3) When an operator's total bond or security deposit with the National Park Service amounts to two hundred thousand dollars (\$200,000) for activities conducted within a given unit, no further bond requirements shall be collected for additional activities conducted within that unit, and the operator may substitute a blanket bond of two hundred thousand dollars (\$200,000)

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for all operations conducted within the unit.

(e) The operator's and his surety's responsibility and liability under the bond or security deposit shall continue until such time as the Superintendent determines that successful reclamation of the area of operations has occurred and, where a well has been drilled, the well has been properly plugged and abandoned. If all efforts to secure the operator's compliance with pertinent provisions of the approved plan of operations are unsuccessful, the operator's surety company will be required to perform reclamation in accordance with the approved plan of operations.

(f) Within thirty (30) days after determining that all reclamation requirements of an approved plan of operations are completed, including proper abandonment of the well, the Regional Director shall notify the operator that the period of liability under the bond or security deposit has been terminated.

[43 FR 57825, Dec. 8, 1978; 44 FR 37915, June 29, 1979]

### § 9.49 Appeals.

(a) Any operator aggrieved by a decision of the Regional Director in connection with the regulations in this subpart may file with the Regional Director a written statement setting forth in detail the respects in which the decision is contrary to, or is in conflict with the facts, the law, or these regulations, or is otherwise in error. No such appeal will be considered unless it is filed with the Regional Director within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of such written statement from the aggrieved operator, the Regional Director shall promptly review the action or decision and either reverse his original decision or prepare his own statement, explaining that decision and the reasons therefor, and forward the statement and record on appeal to the Director for review and decision. Copies of the Regional Director's statement shall be furnished to the aggrieved operator, who shall have thirty (30) days within which to file exceptions to the Regional Director's decision. The Department has the discre-

tion to initiate a hearing before the Office of Hearing and Appeals in a particular case (See 43 CFR 4.700).

(b) The official files of the National Park Service on the proposed plan of operations and any testimony and documents submitted by the parties on which the decision of the Regional Director was based shall constitute the record on appeal. The Regional Director shall maintain the record under separate cover and shall certify that it was the record on which his decision was based at the time it was forwarded to the Director of the National Park Service. The National Park Service shall make the record available to the operator upon request.

(c) If the Director considers the record inadequate to support the decision on appeal, he may provide for the production of such additional evidence or information as may be appropriate, or may remand the case to the Regional Director, with appropriate instructions for further action.

(d) On or before the expiration of forty-five (45) days after his receipt of the exceptions to the Regional Director's decision, the Director shall make his decision in writing; provided however, that if more than forty-five (45) days are required for a decision after the exceptions are received, the Director shall notify the parties to the appeal and specify the reason(s) for delay. The decision of the Director shall include: (1) A statement of facts; (2) conclusions; and (3) reasons upon which the conclusions are based. The decision of the Director shall be the final administrative action of the agency on a proposed plan of operations.

(e) A decision of the Regional Director from which an appeal is taken shall not be automatically stayed by the filing of a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the Director. The Director shall promptly rule on requests for stays. A decision of the Director on request for a stay shall constitute a final administrative decision.

(f) Where, under this subpart, the Superintendent has the authority to make the original decision, appeals may be taken in the manner provided by this section, as if the decision had