

**Department of
Energy and Environmental Protection**

Public Act 11-80, effective July 1, 2011, established the Department of Energy and Environmental Protection as the successor agency to the Department of Environmental Protection, the Department of Public Utility Control, and the energy group within the Office of Policy and Management.

See next page for Directive content.

Department of
Environmental Protection

DIRECTIVE FORM

SUBJECT: PERFORMANCE SURETY - CUTTING ON STATE LANDS

A performance surety or performance deposit is not an advance or deposit on stumpage. It represents a financial incentive for purchasers of forest products to fulfill the requirements of sale contracts. A performance surety may be either a legal document guaranteed by an insurance company or may be a sum of money deposited directly with the Department of Environmental Protection. A check, presented by the contractor, will be the most common type of performance surety. Upon successful completion of a wood products sale, the amount of the deposit will be returned to the operator. Where a bonding company is involved, notification will be sent by the State Forester's Office releasing the obligation.

Since most sales will require a payment for stumpage at the same time as the performance surety is posted, care must be taken to receive and deposit each amount separately.

The type and amount of performance deposit required will vary with the kind of sale involved. Unless an operator has a State-approved credit rating, some type of surety is desirable even for Regional sales. The amount should be sufficient to cover the cost of repairing damages or fulfilling particular contract specifications should they not be completed by the operator. Examples might include repairing fences, access road construction or repairs, erosion control, cull removal, tree planting or fire lane construction. Cost estimates for this type of follow-up work should be liberal. The operator must feel it is financially worthwhile to complete the job specifications.

A true bond or surety requires a contract with specific terms of compliance. For Regional sales, formal contract and bonding procedures may not be necessary or desirable, and advance payment for stumpage may suffice as surety. A formal contract is recommended, however, to minimize the chance of misunderstanding between the operator and the State representative. Surety deposits are not transferrable.

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Distribution:

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& Forestry Personnel

Special Instructions:

Generally the performance deposit will be held until the sale is completed and all contract conditions have been met. Partial repayments, approved in advance by the State Forester, would be allowable in unusual cases, but would be discouraged.

PROCEDURE

1. Upon successful bid on a sale offer, or upon an agreement to cut on Department of Environmental Protection lands, the operator will present a surety bond or a deposit in the form of a certified check made payable to the Department of Environmental Protection. The amount of the deposit and the terms of the agreement will be determined by contract specifications.
2. All forest products sales administered by the Hartford Office will require a performance deposit. An original copy of the signed contract, plus the performance deposit, will be forwarded to the Hartford Office.
3. Regional sales should involve a surety deposit but the requirement may be waived at the discretion of the Regional Forester. When a performance deposit is accepted, the check and a signed contract copy will be sent to the Hartford Office. CASH SURETIES ARE NOT ACCEPTABLE.
4. Deposit Forfeiture: At the discretion of the Regional Director and the Regional Forester, failure to fulfill contract obligations or to complete a sale area satisfactorily will be cause for a warning letter to be written to the operator, with a copy sent to the State Forester.

After such notification, failure to respond to, or comply with contract specifications within a reasonable period of time will result in forfeiture of the performance deposit.

In such cases, the operator will cease operations. If possible, the remainder of the sale will be awarded the second high bidder. The performance surety will be used to fulfill the original contract specifications. Any monies not expended will be turned into the General Fund.

Performance deposit funds may be expended only on the specific sale area involved. Use of funds for other purposes is prohibited.

5. Partial Deposit Rebate: To maintain incentive to complete cutting obligations, partial rebates are to be discouraged. If, however, in the opinion of the Regional Director and the Regional Forester, a partial payment is desirable, a letter of explanation will be sent to the State Forester's Office requesting a specified amount.
6. Deposit Remittal: Upon completion of a sale contract or agreement, a "Forest Products Report" will be sent by the Regional Forester to the State Forester requesting remittal of the performance deposit. The State Forester will then make arrangements through the Business Office.

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7. No-Deposit: Operations may be conducted without a performance deposit if the operator has an approved credit rating established by the Department Business Office. In such instances, however, periodic payments for products removed will be made, and the operation will be closely supervised to insure compliance with State requirements. Payment will be completed within 30 days of sale termination.

At the discretion of the Regional Director and Regional Forester, small-volume sales may be made without a performance bond to individuals not having State-approved credit. In such cases, pre-payment of stumpage will be required. At no time should the operator owe stumpage for products removed.

8. Advance Stumpage Payments: Except where an approved credit rating has been established, operators on Department of Environmental Protection lands must pay for forest products before they are removed. Payment will normally precede cutting and should be received within 60 days of contract signing.

In cases where sales are made on a continuing basis or where exceptionally large volumes are involved, partial payments may be arranged. The amount to be prepaid will be determined at the Regional level, and will depend on the type of cutting operation and on product value. In general, the initial payment should cover either 50 percent of the stumpage value involved, or the value of the stumpage expected to be removed over a period not to exceed one month or other mutually-agreed payment period.

Example 1: 20 MBF Hardwood logs sold for \$50/MBF (\$1,000 total value) Pre-payment minimum (50%) - \$500.00. Performance deposit may be required.

Example 2: Sawtimber stumpage: 300 MBF sold at \$80/MBF. Total Due \$24,000. Acceptable payment schedule: \$12,000 prepayment (50%); \$6,000 in 30 days after first payment; \$6,000 after 60 days after first payment. Performance deposit required.

Careful supervision and control is necessary to prevent cutters from getting behind in their payments where no performance bond is required.

9. Financial records must be kept up-to-date and in a form easily understood by the State Forester's office and/or a State Auditor. Sales memos, and/or receipts must be clearly identifiable with a particular sale.

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