

6132.1200 FINANCIAL ASSURANCE.

Subpart 1. **Purpose.** The purpose of financial assurance is to ensure that there is a source of funds to be used by the commissioner if the permittee fails to perform:

A. reclamation activities including closure and postclosure maintenance needed if operations cease; and

B. corrective action as required by the commissioner if noncompliance with design and operating criteria in the permit to mine occurs.

Subp. 2. **Contingency reclamation cost estimates.** Persons intending to conduct a mining operation shall submit, as part of the application for a permit to mine, a documented estimate of costs necessary to implement the contingency reclamation plan under part 6132.1300, subpart 4. This estimate shall include closure and postclosure maintenance activities required if operations cease within the first calendar year.

A. The permittee shall annually adjust the contingency reclamation cost estimate under part 6132.1300, subpart 4.

B. Cost estimates shall be based on the following:

(1) current dollar value at the time of the estimate; and

(2) the cost to the commissioner of administering and hiring a third party to implement the contingency reclamation plan.

C. No salvage value attributed to the sale of wastes, facility structures, equipment, land, or other assets shall be used for estimating purposes.

Subp. 3. **Corrective action cost estimates.** When the commissioner determines that a corrective action plan is required under part 6132.3100, subpart 2, item B, subitem (2), the permittee shall submit a documented estimate of costs to perform the corrective action before implementation.

A. The permittee shall annually adjust cost estimates for corrective action undertaken according to an approved corrective action plan under part 6132.1300, subpart 5.

B. Cost estimates shall be based on the following:

(1) current dollar value at the time of the estimate; and

(2) the cost to the commissioner of administering and hiring a third party to conduct corrective action activities.

Subp. 4. **Management of financial assurance.** Financial assurance shall be managed according to items A to H.

A. The commissioner shall evaluate all financial assurance cost estimates and adjustments to cost estimates using individuals with documented experience in material handling and construction and mining costs. Costs incurred by the commissioner in hiring third parties to perform the evaluation must be paid by the applicant.

B. Financial assurance in the amount equal to the contingency reclamation cost estimate under subpart 2 shall be:

(1) submitted to the commissioner for approval before issuance of a permit to mine and before granting an amendment to the permit;

(2) continuously maintained by the permittee; and

(3) annually adjusted as follows:

(a) if the new cost estimate approved by the commissioner is greater than the amount of the existing financial assurance, the permittee shall provide additional financial assurance in an amount equal to the increase; or

(b) if the new cost estimate approved by the commissioner is less than the amount of existing financial assurance, the permittee shall be released from maintaining financial assurance in an amount equal to the decrease.

C. Financial assurance in the amount equal to the corrective action cost estimate under subpart 3 shall be:

(1) submitted to the commissioner for approval as part of the corrective action cost estimate under subpart 3;

(2) continuously maintained by the permittee until the commissioner determines it is no longer necessary; and

(3) annually adjusted as follows:

(a) if the new cost estimate approved by the commissioner is greater than the amount of the existing financial assurance, the permittee shall provide additional financial assurance in an amount equal to the increase; or

(b) if the new cost estimate approved by the commissioner is less than the amount of existing financial assurance, the permittee shall be released from maintaining financial assurance in an amount equal to the decrease.

D. Financial assurances may be canceled by the permittee, on approval by the commissioner, only after it is replaced by an alternate mechanism or after the permittee is released from financial assurance according to item H.

E. The permittee must ensure that the provider of financial assurance gives the commissioner 120 days' notice prior to cancellation of the financial assurance mechanism. Upon receipt of this notice, the commissioner shall initiate a proceeding to access the financial assurance according to part 6132.1200, subpart 6.

F. If the permit to mine is assigned under part 6132.4700, the new permittee must be in compliance with requirements of this part before the commissioner approves the assignment. On the assignee's demonstration of compliance with this part, the former permittee shall be released from the requirements of this part.

G. Financial assurance must meet the criteria of subpart 5.

H. The commissioner shall release the permittee from the responsibility to maintain financial assurance when the commissioner determines, through inspection of the mining area, that:

(1) all reclamation activities have been completed according to this part and the permit to mine;

(2) conditions necessitating postclosure maintenance no longer exist and are not likely to recur; and

(3) corrective actions have been successfully accomplished.

Subp. 5. **Criteria for financial assurance.** Financial assurance for reclamation and for corrective action must meet the following criteria:

A. assurance of funds sufficient to cover the costs estimated under subparts 2 and 3;

B. assurance that the funds will be available and made payable to the commissioner when needed;

C. assurance that the funds will be fully valid, binding, and enforceable under state and federal law;

D. assurance that the funds will not be dischargeable through bankruptcy; and

E. all terms and conditions of the financial assurance must be approved by the commissioner. The commissioner, in evaluating financial assurance, shall use individuals with documented experience in the analysis. The reasonable cost of the evaluation shall be paid by the applicant.

Subp. 6. **Forfeiture of financial assurance.** Financial assurance must be made available to the commissioner under items A to C when the operator is not in compliance with either the contingency reclamation plan or the corrective action plan.

A. A proceeding to access financial assurance shall be commenced by:

(1) serving an order to forfeit the financial assurance on the person, institution, or trustee holding the financial assurance; and

(2) serving a notice of measures required to correct the situation and the time available for correction on the permittee.

B. If conditions that provided grounds for the order are corrected within a period established by the commissioner and if measures approved by the commissioner are taken to ensure that the conditions do not recur, the order shall be canceled.

C. If the conditions that provided grounds for the order are not corrected, the commissioner shall proceed with accessing and expending the funds provided by this part to implement the contingency reclamation or corrective action plans.

Subp. 7. **Failure to comply.** The commissioner may take one or more of the following actions if failure to comply with any portion of this part occurs:

A. deny the permit to mine;

B. suspend the permit to mine under part 6132.4500;

C. assess civil penalties under part 6132.5100;

D. revoke the permit to mine under part 6132.4600; or

E. modify the permit to mine under part 6132.4300.

Statutory Authority: *MS s 93.44 to 93.51; 103G.222*

History: *17 SR 2207*

Published Electronically: *June 11, 2008*