

APPENDIX F

FINANCIAL ASSURANCE

The objective of financial assurance is to ensure that the regulatory authority has access to funds necessary to implement site reclamation in the event that the operator does not perform the agreed-upon duties. The funds shall accurately reflect the cost for the RA to hire outside help to perform reclamation. The main purpose of financial assurance is to ensure that the operator will faithfully execute the requirements of the approved reclamation plan, the applicable reclamation ordinance and Ch. NR 135. Refer specifically to s. NR 135.40 for details of state wide financial assurance requirements, as well as the applicable county or municipal reclamation ordinances.

The mine reclamation plan should be structured to keep the number of unreclaimed acres to a minimum at any given point in time. This can be accomplished by mining in phases: extract the material and promptly perform reclamation prior to initiating mining elsewhere. Generally, a smaller amount of acreage being effected by mining will result in less financial assurance to be posted. It is even plausible that one bond (or other means of financial assurance) could be posted to cover the various mining phases (intermittent mining) dictated in the mine reclamation plan.

Because much of the financial assurance is dependent upon the mine reclamation plan, it is important for an operator who has drafted a plan to contact the RA and bring them up to date. At this point, the RA shall decide if the plan will require revisions or if it can be accepted as is. In any case, the plan must meet the requirements of Ch. NR 135.

The following list has been created to serve as a flow chart for operators to follow when drafting their financial assurance. The list is only a summary of the requirements of s. NR 135.40 and users should refer to the official code or contact their regulatory authority for specific requirements.

1. The operator contacts the regulatory authority and discusses their plans for a post-mining land use. Eventually, both parties shall reach consensus.
2. The operator prepares the reclamation plan, accounting and tallying the costs as the plan is being drafted. In the reclamation plan, the operator should suggest an amount to put-up for financial assurance.
3. The reclamation plan is submitted to the regulatory authority.
4. If the plan is approved, the RA must provide written notification to the operator specifying the amount of financial assurance required per s. NR 135.40(1).
5. As a condition of the permit, financial assurance, which must be payable exclusively to the regulatory authority, is filed with the RA per s. NR 135.40(2).
6. A bond or an alternate option must be established to cover financial assurance per s. NR 135.40(4). (A short list with a brief description shall follow).
7. The amount of financial assurance is reviewed periodically by the RA to assure that it equals

outstanding reclamation costs per s. NR 135.40(3).

8. The length of financial assurance is dictated by the period of time required to establish the post-mining land use specified in the approved mine reclamation plan. This may extend beyond the permit if required to accomplish reclamation per s. NR 135.40(3).
9. Any interest from the financial assurance must be paid to the operator per s. NR 135.40(4).

A few options that may benefit smaller operators in satisfying financial assurance requirements have been included within the administrative code. For instance, it is possible that, at the discretion of the RA, a combination of financial assurance methods, including a lien on the property on which the nonmetallic mining site occurs, may be selected. The RA may also accept a lesser initial amount of financial assurance, provided the permittee initiates a process that continuously increases the amount until it is adequate to reflect the costs of reclamation.

Brief Description of Financial Assurance Options

- Bond - collateral; also known as a performance or forfeiture bond; an instrument provided by a surety company; a 3-party agreement that serves as a guarantee that the provider will pay costs associated with fulfilling the permittee's obligations in the event of a default
- Cash - collateral; a deposit with the RA to guarantee performance of obligations under a reclamation permit
- Certificate of deposit - collateral; a deposit with the RA to guarantee performance of obligations under a reclamation permit
- Irrevocable letter of credit - similar to a bond with the bank or financial institution taking the place of a surety; established solely for the purpose of guaranteeing performance of obligations under a reclamation permit
- Irrevocable trust - trust created by the permittee solely for the purpose of guaranteeing performance of obligations under a reclamation permit
- Escrow account - account with a bank or financial institution established by the permittee to satisfy the financial assurance requirements (i.e. to guarantee the performance of the reclamation activities described in a reclamation permit)
- Net worth test - Method in which a permittee provides sufficient financial data to demonstrate compliance with minimum financial standards, which is accompanied with the opinion of an independent certified public accountant in order to establish proof of financial responsibility
- Government securities - a deposit with the RA to guarantee performance of obligations under reclamation permit

- Alternative methods for small operators - A blend of different options that could include a regular payment (based on production or gross sales) to an escrow account or other financial instrument designed to grow to the amount necessary to guarantee reclamation at the expected time of final reclamation. This probably would be set up along with a lien on the property that would serve as collateral to guarantee performance of reclamation obligations.

Some Items to Consider in Calculating Financial Assurance

Item	Cost per Unit	Number of Units	Amount (\$)
Grading and Regrading Activities necessary to ensure soil and slope stabilization Erosion control materials Equipment and labor			
Topsoil Prep Scarification of subsoil or underlying materials prior to topsoil redistribution Equipment and labor			
Topsoil Creating or purchasing substitute topsoil (if necessary) Application of substitute topsoil Reapplying stockpiled topsoil Soil amendments, lime and/or fertilizer Equipment and labor			
Revegetation and Seeding Seeding/transplanting Seed costs and misc. materials Seeding and transplanting Costs Equipment and labor			
Vegetation Stabilization Mulching, netting or other stabilization materials Equipment and labor			
Short-term Site Maintenance Covers period until declaration of completion (DOC): Additional seed, vegetation, etc. Equipment and labor			
Long-term Site Maintenance Covers period between DOC and certificate of completion of reclamation (near time when financial assurance may be returned): Additional seed, vegetation, etc. Equipment and labor			
TOTAL			