



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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Instruction Memorandum No. 2014-015 ^{5.01/1A}
Expires: 09/30/2015

To: All District Managers, Field Managers, and Deputy State Directors

From: State Director

Subject: Guidance on reclamation bonding for Plans and Notices on BLM managed lands in Alaska.

Program Area: Mining Law Administration (1990) – Surface Management

Purpose: This Instructional Memorandum (IM) provides Alaska-specific direction, in specific instances, to require detailed Reclamation Cost Estimates (RCE) for mining Plans of Operations and Notices intending to use the State of Alaska Mining Reclamation Bond Pool and explains how the BLM-Alaska will release financial guarantees as reclamation is completed.

Policy/Action: Where an operator intends to use the Bond Pool as a financial guarantee of reclamation for activities generally considered to have high reclamation costs or prohibited by the Cooperative Agreement, BLM will prohibit the use of the Bond Pool until an acceptable RCE is calculated, per 43 CFR 3809.552 – 554. The detailed RCE will be used to determine if the proposed activities pose a risk to the solvency and thereby the adequacy of the Bond Pool.

A. When will a detailed Reclamation Cost Estimate be required?

Operators submitting new or modified Plans or Notices, proposing any of the following activities on BLM-managed lands, will be *required* to submit a detailed Reclamation Cost Estimate in accordance with 3809.552(a), -3809.552(c), and 3809.554(a) before their Notice is acknowledged or their Plan approved:

- Operations proposing to mine (other than suction dredging) in or within 100 feet of a perennial stream channel,
- Operations on uplands with slopes greater than 33% or with the potential for significant slope failure related to mining activities,
- Operations at a site where demobilization can only be completed by air or during frozen conditions (winter months),

- Operators with greater than 25 acres of unreclaimed disturbance, or
- Operations that have an unresolved noncompliance order at the time of bond payment or operators that have a history of noncompliance with BLM regulations.

The Authorized Officer may waive the detailed RCE requirement at the request of an applicant, on a case-by-case basis, for small or low impact activities. Likewise, the BLM may use its discretion (Section J of the Cooperative Agreement) to restrict the use of the Bond Pool and require a detailed RCE for any operation proposing activities beyond those listed. If an operator's proposal falls into the category of requiring a detailed RCE, they will be notified by letter, within 30 days of the BLM receiving their completed Plan or 15 days for Notices (§3809.572).

Under §3809.552-554 RCEs will be calculated as if BLM were hiring a third-party contractor to perform the reclamation described in the approved reclamation plan after it is vacated. An RCE will include detailed documentation on how the costs were determined and include indirect and administrative costs as specified in Handbook H-3809-1 Section 6.2 – Reclamation Cost Estimates.

After review and acceptance of the detailed RCE, the Authorized Officer will determine if the Bond Pool is an appropriate form of financial guarantee or if an alternate financial guarantee will be required. In addition to the current restrictions on the use of the Bond Pool, operators will be required to post an individual financial guarantee if an RCE indicates that the cost of reclamation will exceed 33 percent of the currently available funds in the Bond Pool.

The amount of funds available in the Bond Pool will be calculated at the beginning of BLM's fiscal year although the amount will be recalculated if the amount of funds available in the Bond Pool drops. As per the BLM/ADNR agreement, BLM will be informed of any expenditure from the Bond Pool.

B. Bond Review

Operations using the Bond Pool are subject to annual review of their financial guarantee due to the annual fee requirements. All financial guarantees are subject to individual review at least every two years for Notices or every three years for Plans. If BLM becomes aware of significant changes to a site's condition (BLM Handbook 3809-1) or the amount of available funds in the Bond Pool drops an operation may be subject to an individual review. If an operation's financial guarantee is reviewed and it is determined that a detailed RCE is required to substantiate the current financial guarantee amount, the operator will be notified (43 CFR 3809.301 and 3809.401). The operation may then be required to adjust their financial guarantee according to the RCE.

C. Maintenance of Bond Pool Fees

Participation in the bond pool must be actively maintained for all disturbances made under the Bond Pool. Operations with remaining liabilities that do not pay their annual fees are in default because a Notice or Plan requires the operator to maintain an approved financial guarantee. Operations failing to maintain an adequate financial guarantee are subject to issuance of a noncompliance order or an immediate temporary suspension order under BLM mining regulations at 43 CFR 3809.601(b).

Following the State's deadline for paying annual fees, all 'Authorized' and 'Pending' Plans and Notices may be reviewed to determine if all operators have paid their annual fees. After review, all delinquent operators will be sent a noncompliance order. Enforcement actions will proceed toward revocation and further enforcement until the operations come into compliance.

D. Release of Financial Guarantee

Under an individual financial guarantee, partial release (up to 60%) of the guarantee can be made in a prorated manner, based on progress toward the desired final reclamation conditions. However, any acre covered by the Bond Pool must be fully reclaimed before the refundable portion is released to the operator. Regardless of the form of financial guarantee held, its release shall comply with 43 CFR 3809.590 and 3809.591 requirements, including inspection and public notice.

For those operations within the Bond Pool, release of a financial guarantee may be requested through the following year's Bond Pool submittal. Where individual financial guarantees are provided, a written request for final release is required from the operator to the local Field Office. A notice of the pending final release will be posted for 30 days in the local Field Office or published in a local newspaper, with public comments accepted, prior to final release of all financial guarantees related to Plans of Operations (See Attachment 4: Notice for Proposed Final Financial Guarantee Release Template.).

Under CFR 3809.592, the release of a financial guarantee does not release the operator from responsibility for reclamation of the operation should reclamation fail to meet the standards of this subpart. Text to this effect shall be included with the Authorized Officer's release of any portion of the individual financial guarantee.

Timeframe: Effective October 1, 2014.

Budget Impact: Additional labor expenses will be incurred in the State, District, and Field Offices for reviewing RCEs, annual bond fee review, and periodic reviews.

Background: Under BLM Regulation 43 CFR 3809.200(b) and through a Cooperative Agreement between the BLM and ADNR, miners operating on BLM-managed lands may use the Alaska State Reclamation Bond Pool to provide a reclamation bond. The APMA Bond Form's acreage-based calculation of reclamation costs does not enable the BLM to determine if the State Bond Pool provides an equivalent level of protection as an individual financial guarantee when a Plan or Notice proposes activities with potentially high reclamation costs (43 CFR 3809.571(2)).

The Cooperative Agreement requires that all operators use the State of Alaska's Annual Placer Mining Application (APMA) to apply for Bond Pool usage. The Cooperative Agreement also specifies the following situations when the Bond Pool cannot be used:

1. Where an operator's violation of their reclamation plan has resulted in bond forfeiture, and the operator has not repaid the BLM or ADNR for funds expended to remedy the violation;
2. An operator proposes using cyanide or chemical leachates;
3. Any operator proposing a disturbance exceeding 40 acres in size where the cost of

reclamation would exceed 33 percent of the currently available funds in the Bond Pool;

4. Where ADNDR or BLM, in their sole discretion, determines that the Bond Pool shall not be used.

Currently, BLM sometimes denies use of the Bond Pool when an operator has an ongoing non-compliance issue. In these cases an individual financial guarantee is required.

Manual/Handbook Sections Affected None

Coordination: The Alaska State Office (Division of Energy and Minerals) coordinated with the Fairbanks and Anchorage District Offices and the Washington Office.

Contact: If you have additional questions or comments regarding this issue, please contact; John Hoppe, Geologist, at 271-3218; or Wayne Svejnoha, Energy and Minerals Branch Chief, at 271-4407.

Signed by:

Authenticated by:

- 4 Attachments
 1. 43 CFR 3809.200- 3809.539 regulations (1 p)
 2. Excerpts from BLM Surface Management Handbook – 3809-1 (1p)
 3. Cooperative Agreement Between the Commissioner, Alaska State Department of Resources, State of Alaska and the Alaska State Director, Bureau of Land Management, U.S. Department of Interior, 2003 (6 pp)
 4. Notice for Proposed Final Financial Guarantee Release Template