

# Mine Reclamation and Closure Policy

**DRAFT**

## **Financial Assurance Guidelines For Mine Site Reclamation and Closure Security Instruments**

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## 1. Introduction

These guidelines to financial assurance are written as guidance on how the administration of the financial provisions of the Yukon Mine Reclamation and Closure Policy will be applied. These guidelines include sections on: principles, forms and amount of financial security, changes to security, reporting requirements and default provisions.

These guidelines have no legislative sanction.

These guidelines apply only to quartz hardrock mining operations.

## 2. Principles for Reclamation Security

The following is a list of principles that the Yukon government should seek in any form of financial security. While it is recognized that no security will offer all these features (depending on the financial ability of the company, the nature of the work to be done and level of risk), regulators will determine security requirements on a case by case basis, guided by these principles.

- The amount of security should cover all outstanding liability, for a third party to carry out the work, at any time. It should increase as liability increases and decrease as liability decreases;
- Security should be in place until the required remediation work is completed;
- Security should provide government with immediate and unencumbered access to the full amount;
- Security should only be payable to the government so that there is no question as to who is entitled to the security;
- Security should be clearly identified with the reclamation and post closure monitoring required. This would allow for drawdown of security as each site component is remediated;
- If a security deposit is to lapse, a company must post a satisfactory replacement security within a limited amount of time prior to lapsing, otherwise government should seize the original security;
- Where there is an increase of financial assurance required at the site, the proponent must submit the required amount in one of the acceptable forms within prescribed timelines.

### 3. Forms of Financial Security

Adequate financial assurance is required to ensure that funds will be available for the eventual reclamation and closure of a minesite. Financial assurance shall be in one of the following forms:

- 3.1.1 Cash or Equivalent
- 3.1.2 Mining Reclamation Trust Fund
- 3.1.3 Letter of Credit or Bank Letter of Guarantee
- 3.1.4 Surety bond
- 3.1.5 Pledge of Assets
- 3.1.6 Insurance

Acceptable financial assurance may include any combination of the above forms of security as determined on a case by case basis and by the regulator, in consultation with the owner/operator.

In determining the form of financial security, consideration will be given to the following:

- More liquid forms of security should be used to secure high risk activities and less readily accessible forms of security can be used for lower risk activities;
- The past corporate performance of the proponent; and
- The corporate credit worthiness of the proponent

#### 3.1.1 Cash or Equivalent

Cash or equivalent forms of security are the most liquid and acceptable forms for government. These types of security can include:

- Cash account;
- Term deposit certificate;
- Guaranteed Investment Certificate;
- bank drafts,
- bonds and
- certified cheques

Cash will be deposited into a mine reclamation fund special purpose account.

The rate of interest to be applied shall be the same rate as is allowed from time to time on deposits with the Territory of Yukon and the interest payable shall be calculated on the daily balance and credited to the accounts on June 30 and December 31 of each year. The deemed interest rate shall be deemed to be a reference to a rate of interest established by Yukon Department of Finance as a proxy for that rate.

In determining the appropriate amount of cash required to secure the liability resulting from future reclamation obligations (e.g. ongoing monitoring and treatment), consideration should be given to the expected rates of inflation and real return on investment generated by the cash account.

Post dated cheques are normally not acceptable, unless there are compelling reasons on a case by case basis.

Cheques shall be made out to the Government of Yukon. Flexibility in payment forms is allowed provided that at no time is the available security less than the outstanding liability. Payment options include monthly, quarterly or other periodic deposits.

Bonds issued by Canadian Province or Canada are acceptable

### **3.1.2 Mining Reclamation Trust Fund**

A Mining Reclamation Trust now defined as a qualifying environmental trust under the Income Tax Act (Canada) is an acceptable form of security for financial assurance.

A Mining Reclamation Trust is an agreement between the trust company and the proponent to cover specific reclamation costs which are contained in the decommissioning plan. The fund amount will be a function of the expected annual reclamation costs, investment policy and expected real rates of return.

In addition to the trust, there will be a signed agreement between the proponent and Yukon that stipulates the proponent's responsibility with regard to the trust.

The trust must be maintained by a trust company licensed under *Trust and Loans Companies Act* (Canada).

The proponent is responsible for all fees and charges associated with the fund.

### **3.1.3 Irrevocable Letter of Credit and Bank Letter of Guarantee**

An irrevocable letter of credit from a bank (and a bank letter of guarantee) is an acceptable form of financial assurance. An irrevocable letter or credit is an agreement between a financial institution (bank, savings & credit union, trust company) and a company authorizing the bank to pay funds to a third party. The beneficiary must be the Yukon government, subject to certain conditions stipulated in the letter of credit.

For as long as the letter of credit remains irrevocable, the financial institution must honour any legitimate requests made by the beneficiary in keeping with the terms of the letter of credit. Any changes in these terms must be approved by all parties involved. The letter of credit is normally valid for one year, although this period may be longer under certain conditions. The agreement must provide for the automatic renewal of the letter of credit until a certificate of release is issued.

The bank must notify the Yukon government in writing within 90 days prior to any such date should they elect not to renew the letter of credit.

In the event that such notice is given by the bank that it will not be renewing the letter of credit, government will request the proponent to provide the financial insurance in another acceptable form.

If this is not provided to the government at least 10 days prior to the expiration of the letter of credit the government will proceed to call for payment of the full outstanding amount of the letter of credit.

The letter of credit should make reference to the closure plan between the proponent and the government and the name and location of the site in question.

Amendments to a letter of credit may be made:

- for adjustments made to increase or decrease the amount of security in the letter of credit based on amendments to the closure plan or progressive rehabilitation reports;
- if there is a change in the name of the proponent;
- for adjustments made to increase the amount of security required as a result of a review of closure cost.

#### **3.1.4 Surety Bond**

A surety bond by an insurer licensed under the Insurance Act to write surety and fidelity insurance is an acceptable form of security for financial assurance. A surety bond is an agreement between the insurance company and a proponent in order to provide funds to a beneficiary under certain circumstances. In this case the beneficiary will be the Yukon government under certain conditions stipulated in the surety bond agreement. Any change to the terms of the surety bond agreement requires the written consent of all parties involved.

The following conditions must be included before a surety bond will be accepted:

- A surety bond is issued for one year with automatic renewal clause

- The insurer must provide at least 90 days notice in writing to the Yukon government if they decide to terminate their obligation under the surety bond agreement.
- If the proponent has not provided an acceptable form of financial assurance in the same amount as the surety bond within 2 months of this notification, the government may proceed to call for payment of the full outstanding amount of the surety bond
- The proponent is responsible for all insurance fees and charges associated with the bond.

A rider endorsement to a surety bond may be made:

- For adjustments made to increase or decrease the amount of security in the letter of credit based on amendments to the closure plan or progressive rehabilitation reports;
- If there is a change in the name of the proponent;
- For adjustments made to increase the amount of security required as a result of a review of closure cost.

### **3.1.5 Pledge of Assets**

A pledge of assets in the form of surplus equipment and scrap metal may be acceptable under certain circumstances.

Surplus equipment includes stationary equipment and buildings.

Several factors should be considered when determining the acceptability of determining this form of assurance including:

- Assets are free and clear of all encumbrances;
- Values estimation by a third party;
- Cost of retrieval and transportation of assets; and
- Market demand of assets and sale price;

The Yukon government, after discussion with a proponent, will determine what percentage of a specific sites' financial assurance requirements may be fulfilled by a pledge of assets on a case by case basis.

The value allocated must be secured by the Yukon government as first ranking creditor. The proponent is responsible for this action and the associated costs.

In the case of a remediation order the proponent must obtain consent from the Yukon before diminishing or reducing the assets.

### 3.1.6 Insurance

Under certain circumstances, insurance may be an acceptable form of financial security.

There are a wide variety of ways in which insurance as security could be structured and provided. Any potential insurance proposal should ensure that several conditions are met before being considered acceptable. These conditions include:

- (a) the policy must describe the remedial work to be undertaken, including monitoring and maintenance of any remedial action taken;
- (b) the policy must include the Yukon Government as an additional named insured;
- (c) the policy must cover claims related to remedial action undertaken not only in relation to the remedial plan, but in relation to any regulatory action that may be required pursuant to Yukon law;
- (d) the policy must prescribe the steps to be followed by the insured and the insurance company should either party be facing bankruptcy or insolvency during the term of the policy and specifically in relation to the insurance company, the policy should ensure that there are provisions to protect government should the insurance company experience a decline in its financial viability;
- (e) the policy must confirm the ability of the Yukon Government to be notified of, and given standing with regards to, any dispute between the insured and the insurance company;
- (f) the policy cannot be amended, revoked or terminated by the insured without written consent of the Yukon Government;
- (g) the policy cannot be revoked or terminated by the insurance company without notice to the Yukon Government;
- (h) the policy (or a companion policy) must cover the situation of the contractor undertaking the work (i.e. the insured party or their contractor) adversely affecting environmental conditions through their work;
- (i) the policy must be broad enough in scope to address all known (potential and actual) pollutants (e.g. acid mine drainage) and unknown pollutants, including those arising from the interaction of known pollutants;
- (j) the policy must not enable assignment of the policy to another party or insurance company without the consent of the Yukon Government; and
- (k) when disputes occur, the policy should, ideally, enable claims to be paid so that the necessary work can be undertaken when required, with arrangements put in place to address the possibility of a claim being determined to be invalid or otherwise not accepted.

In addition to the above, consideration should be given to the exclusions that form part of the insurance policy. Some exclusions can prove problematic



and may significantly effect the ability of the insured, and therefore the Yukon Government, to recover under a policy.

#### **4. Amount of Financial Security Required**

Adequate financial assurance will be provided by mine owners to ensure that the cost of reclamation is borne by the mine owner rather than the Yukon government. The total financial assurance for reclamation and closure required will be equal to the total outstanding reclamation liability for land and water combined, as determined by government, on the basis of the approved reclamation and closure plan and at the time of the periodic site assessments.

Estimates of reclamation costs, for the purpose for financial security, will be based on the cost of having the necessary reclamation work done by a third-party contractor. These estimates will also include contingency factors appropriate to the particular work to be undertaken.

In preparing an assessment of the site liability, consideration should be given, but not necessarily limited to, reclamation and closure costs associated with the following minesite components:

- Mine Area Reclamation
  - Open pits and waste rock dumps
  - Mine Water ponds
  - Surface reclamation and revegetation
  - Stream crossings, diversion ditches
  - Haulroads
- Tailings ponds, including sedimentation and polishing ponds
- Site Facilities Removal and Reclamation
- Process plant removal and reclamation
- Concentrate and ore stockpiles
- Leach pad detoxification
- Leach pad reclamation
- Manpower costs
- General and Administrative costs
- Process and Water Treatment
- Shaft caps, buildings and other safety hazards
- Post Closure Monitoring and Maintenance
- Mitigative Contingencies

Ongoing government administrative and legal costs necessary to administer the ongoing reclamation and closure planning and liability determination review process should not be considered in the liability estimate.

The liability estimate will:

- consider whether there are benefits to be derived from sale of assets.
- consider whatever measures are required to maintain the site in compliance with the terms and conditions of any legislative and regulatory requirement.
- allow for appropriate holdback of security to ensure that reclamation has occurred satisfactorily.
- provide for a schedule showing the expected change in liability for each year of the reclamation and closure plan. This schedule should be updated with each revision of liability estimates.
- The schedule showing the expected change in liability should reflect constant dollars of the year in which the schedule is completed.

## **5. Requesting Change of Financial Assurance**

Financial assurance must be held for all approved reclamation and closure plans, however, the form and amount may vary during the life of the reclamation and closure plan.

A proponent may request to change the amount and forms of financial security that are held by the Yukon. This is permissible provided that the forms of financial security are acceptable ones and agreeable to Yukon and the total amount of financial security held after the conversion is equal to the amount held prior to the conversion. The current financial security will not be released until the new financial security is received by the Yukon.

## **6. Reporting to Mine Proponents**

Yukon shall provide the mine proponent with an annual confirmation of the amount and forms of financial assurance being held by Yukon on their behalf, including any interest earned on cash financial assurance for that year.

## **7. Default Considerations**

The conditions that can cause financial security to be called are specified under applicable legislation and regulations pursuant to these acts, including the *Quartz Mining Act*, the *Waters Act* and the *Territorial Lands (Yukon Act)*.

The following actions can trigger the conversion of a non-cash security to a cash form of security by Yukon:

- Notice is received of the proposed cancellation or non-renewal of a letter of credit or of some other form of financial security and an alternative form of security has not been arranged that is acceptable to the Yukon; or,

- Notice is received of the impending insolvency of the responsible party or the surety.

In the instance of a default, the Yukon must prepare documentation that specifies the circumstances of the default as soon as possible after determination of a default.

- The documentation is to be provided to the mine owner/operator.
- Except in emergency situations, communication should be made to the mine owner/operator at least six weeks prior to taking the aforementioned action.

In the instance of a default under the circumstances outlined in the preceding section, the Yukon must:

- document steps leading to the default and steps taken to call, obtain and use the security;
- ensure that the mine owner/operator has been given adequate notice of the conditions of the default together with opportunities to rectify these deficiencies. Where possible the Yukon shall give the proponent at least 30 days notice of any action to use the financial security;
- the Yukon may claim all or part of the security. The security will be placed in a designated account. Any interest that is earned on this money will accrue to the benefit of the responsible person;
- Where security is to be used to complete the remediation required, the Yukon shall authorize such expenditure;
- Where it is not feasible to use outside contractors to complete activities, the Yukon shall realize the security and withhold any funds until compliance is achieved. In the meantime, other enforcement actions and sanctions (e.g. prosecutions) may be applied.