

§490-RR. Financial assurance

1. Duration of financial assurance. A permittee shall maintain financial assurance during mining operations until the department determines that all reclamation has been completed and during the post-closure monitoring period except that financial assurance must be reduced or released immediately upon termination of a mining permit under section 490-PP, subsection 2, paragraph A. The department may require financial assurance to remain in effect for as long as the mining operation and any associated waste material could create an unreasonable threat to public health and safety or the environment.

[PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

2. Coverage and form of financial assurance. The financial assurance required under subsection 1 applies to all mining and reclamation operations that are subject to a mining permit.

A. The amount of the financial assurance must be sufficient to cover the cost for the department to administer, and hire a 3rd party to implement, all necessary investigation, monitoring, closure, post-closure, treatment, remediation, corrective action, reclamation, operation and maintenance activities under the environmental protection, reclamation and closure plan, including, but not limited to:

(1) The cost to investigate all possible releases of contaminants at the site, monitor all aspects of the mining operation, close the mining operation in accordance with the closure plan, conduct treatment activities of all expected fluids and wastes generated by the mining operation for a minimum of 100 years, implement remedial activities for all possible releases and maintenance of structures and waste units as if these units have released contaminants to the groundwater and surface water, conduct corrective actions for potential environmental impacts to groundwater and surface water resources as identified in the environmental impact assessment and conduct all other necessary activities at the mine site in accordance with the environmental protection, reclamation and closure plan; and

(2) The cost to respond to a worst-case catastrophic mining event or failure, including, but not limited to, the cost of restoring, repairing and remediating any damage to public facilities or services, to private property or to the environment resulting from the event or failure. [PL 2017, c. 142, §9 (NEW).]

B. An applicant for a mining permit must include with its application a review of the proposed financial assurance amounts required under this section as performed by a qualified, independent 3rd-party reviewer approved by the department. The costs of the 3rd-party review must be paid by the applicant. Estimates of the costs of a worst-case catastrophic mining event or failure under paragraph A, subparagraph (2) provided by the applicant may not include costs to the applicant associated with loss of use of any mining operation or facility or the costs of repairing any damaged mining operation or facility to restore operations or other functionality. [PL 2017, c. 142, §9 (NEW).]

C. The department shall require the applicant to provide financial assurance in the amount determined by the 3rd-party reviewer under paragraph B to be sufficient for the department to conduct all activities listed under paragraph A. Financial assurance estimates provided by the applicant and reviewed by the 3rd-party reviewer under this section must use the highest cost option for all estimates and include a minimum 20% contingency to account for unexpected expenses. [PL 2017, c. 142, §9 (NEW).]

D. The financial assurance required by the department under this subsection must consist of a trust fund that is secured with any of the following forms of negotiable property, or a combination thereof, as approved by the department:

(1) A cash account in one or more federally insured accounts;

(2) Negotiable bonds issued by the United States or by a state or a municipality having a Standard and Poor's credit rating of AAA or AA or an equivalent rating from a national securities credit rating service; or

(3) Negotiable certificates of deposit in one or more federally insured depositories. [RR 2017, c. 1, §34 (COR).]

E. The financial assurance required by the department under this section must be posted by the applicant before the department issues a permit to mine under this article. [PL 2017, c. 142, §9 (NEW).]

[RR 2017, c. 1, §34 (COR).]

3. Form of financial assurance.

[PL 2017, c. 142, §10 (RP).]

4. Updates to financial assurance. A permittee shall provide to the department an annual statement of financial responsibility, and the department may require that the financial assurance be adjusted to ensure that the financial assurance is sufficient for the purposes of subsection 2.

[PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

5. Failure to provide financial assurance. Failure to provide financial assurance under this section constitutes grounds for the department to order immediate suspension of mining activities pursuant to section 490-TT, including, but not limited to, the removal of metallic product from the mining area.

[PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

SECTION HISTORY

PL 2011, c. 653, §23 (NEW). PL 2011, c. 653, §33 (AFF). PL 2017, c. 142, §§9, 10 (AMD). RR 2017, c. 1, §34 (COR).

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