

# Reclamation & Bonding in the North

**D**ue to the recently launched Mine Site Reclamation Policies promulgated by the federal Department of Indian and Northern Affairs (DIAND), the three northern territories lead the way in the stringent application of mine reclamation and closure standards, particularly when it comes to the requirement to post financial security.

## RECLAIM model

That requirement is to post 100 per cent of the total outstanding reclamation liability for land and water calculated to cover the highest liability, based upon the “RECLAIM” model (a conservative model used to calculate the cost of reclamation) or a similar model. The problem with the RECLAIM model is the conservative assumptions it uses, resulting in security of 50 per cent or more than what it should reasonably be, in the absence of those assumptions.

The Land and Water Boards sets the amount of security, the form of which may consist of cash, letters of credit, guarantees by parent corporations, bonds, or a combination thereof, with the latter being very difficult to obtain now from insurers. Security is deposited with DIAND and held until reclamation and closure is completed to the satisfaction of DIAND. A period of post-closure monitoring is usually required to ensure that reclamation is effective.

While the Minister of DIAND may release portions of the security, significant sums are usually maintained until post closure monitoring demonstrates that the fix has worked. In the meantime, while 100 per cent of the cost of reclamation is held by DIAND as security, another 100 per cent is spent to actually fund reclamation and closure. The result is that a mining company will have funded, at a particular point in time, in excess of 200 per cent of the real cost of reclamation before it receives a refund of a portion of the security.

Hardship is experienced most dramatically by existing mines nearing or at the end of their lives that usually have posted a nominal amount of security based upon the rules, as they were. Upon announcement of closure and approval of their final reclamation and closure plan, the new policy on reclamation is triggered.

Small and mid-size mining companies that may not be able to obtain bonding or a letter of credit (or cannot continue to operate with their bank holding as collateral for the letter of credit) are most dramatically affected. In such circumstances they're left with no alternative but to post cash. Failing that, they may face prosecution or receivership proceedings.

In the event of having to post cash (assuming that cash is available), the mining company may be well advised to consider using a Reclamation Trust, which may even have tax advantages (though not always). Coupled with the Reclamation Trust there must be a “Draw Down Agreement” between the mining company and DIAND. The documentation should include inspection reports, assessments (of work done and also of work yet to be done), and directions from DIAND to the Trustee to pay out funds held in the Reclamation Fund as work progresses.

The advantage of this combination of agreements is that it enables the funds posted as security for reclamation to be drawn down and used for that purpose as well as their investment prior to their use. There is, however, a cost as trustees do not work for free and usually require that a fee be paid based upon the amount of the funds under management. The trick is for the funds earned on investment to equal or exceed the fees payable to the trustee, including the cost of inspections.

While these security requirements (to post security set at 100 per cent of the cost of reclamation) are undoubtedly a big disincentive to mining investment in Canada's north, there's one advantage to new mines. That is the incentive to engage in progressive reclamation throughout the mine life in order, through annual reviews, to keep the amount of security as low as possible. This ensures that reclamation is not left entirely to the end, and it's in the public interest and that of the mining company in today's regulatory environment.

This DIAND policy was born out of necessity. The public purse cannot be left to bear the cost of reclamation and closure due to the irresponsible conduct of some mining companies. All that we now need is the sensible application of the policy, specifically to new mines.

It's the author's view that the DIAND policy should apply only to new mines, where the need to post 100 per cent of the cost of reclamation and closure can be factored in at the time of feasibility, to be funded as part of the original project cost. ♦



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