

Legislative Options

Hopefully, this report has identified for the legislature existing and potential problems with metal mine reclamation and performance bonds. Numerous solutions to the problems were suggested. How does the legislature want to proceed from this point? This section summarizes the solutions and provides options for the legislature to consider.

Solution Summary

The following is a summary of all the solutions offered above.

Adequacy of Performance Bonds

1. Amend statute to allow contingencies for uncertainties and unexpected events to be included in reclamation cost calculations and the bond amount
2. Require a comprehensive bond review and recalculation of the reclamation costs sooner than the current five years (some states perform the review every two years)
3. After any bond review (or other events) indicates an increase in bond is needed:
 - A. require DEQ to give the mine operator notice of the additional bond within 30 days and require the posting of additional bond within 30 days of notice from DEQ and before consultation with the operator
 - B. require the posting of additional bond prior to any contested case hearing
4. If judicial decisions or statutory changes make either the reclamation plan or the performance bond outdated, require a comprehensive bond review and update of all reclamation and operating plans, and a recalculation of reclamation costs within a specified time period
5. Hire staff knowledgeable about financial matters (separate from the engineers) to provide financial expertise in complex reclamation and bonding calculations; present and future values of money; annual and comprehensive five-year reviews; overhead amounts and percentages; and determining financial soundness of mining companies
6. As recommended by the Legislative Auditor to reduce the state's risk of inadequate financial assurance, duties of bond management should be separated from the technical review of reclamation or corrective action proposals. Options include:
 - A. Use the mine reclamation expertise in the Mine Waste Clean-up Bureau in the Remediation Division rather than the Environmental Management Bureau in the Permitting and Compliance Division
 - B. As in other states, rely more on the bonding expertise of the U.S. Forest Service, Bureau of Land Management, and the Environmental Protection Agency. Often, federal agencies take the lead in developing bonding requirements which are then reviewed and approved by the state.
 - C. Contract for reclamation cost estimates
 - D. Hire staff knowledgeable about financial matters to assist with the financial complexities of bonding
7. Eliminate the small miner bonding maximum and require reclamation and bonding in the amount of the estimated cost of reclamation for all mining activities, except that exempt under 82-4-310, MCA

Ability to Get the Money

1. Even though reclamation has been completed, allow all or a portion of the bond to be held as "retainage" until certain conditions have been met or until the risk to the state from any potential problems in the future has been eliminated
2. Establish a "pool" of money paid by mining companies to be used for reclamation in cases when bonds are insufficient to cover costs. The money could originate from:
 - A. a substantially higher permit fee than the current \$25;
 - B. allocation of a portion of metalliferous mines license tax proceeds;
 - C. an increase in the metalliferous mines license tax, dedicated to mine reclamation;
 - D. a non-refundable percentage tax applied to the total amount of the required bond;
 - E. a percentage applied to the total amount of the required bond that is refunded upon successful completion of reclamation, but kept otherwise; or
 - F. interest earnings on cash, interest-bearing financial instruments, or bond proceeds.
3. Require all or a portion of the performance bond to be in cash or in a form that is more easily convertible to cash such as certificate of deposits, savings certificate assignments, irrevocable letters of credit, or negotiable securities. This could take the form of:
 - A. requiring a certain percentage of the required performance bond be in cash;
 - B. phasing out of surety bonds and into these other forms if and when a mine's cash flow increases over time;
 - C. requiring more of these other forms if the total amount of a performance bond is greater than a certain amount;
 - D. requiring the first year of performance bonds be posted in one of these other forms; or
 - E. requiring that certain items, such as contingencies, potential costs, and interim operations and management costs, be covered by a cash bond.
4. To allow the state greater flexibility over bond amounts:
 - A. prohibit line-iteming of bond amounts;
 - B. require any and all portions of a bond to cover any and all costs of reclamation for that permitted mine; and
 - C. require that any and all bonds associated with a permitted mine apply to any and all costs of reclamation for that mine.
5. Review and change the surety agreement and/or statute. For examples:
 - A. upon default or forfeiture by the principal, require that the full amount of the surety bond be made available immediately;
 - B. in the absence of substitute surety, require the original surety to remain liable for pre-cancellation disturbances even if mining continues after the effective date of the surety bond cancellation;
 - C. to allow the state more time to pursue legal avenues, increase the time that a surety is still obligated after it cancels a surety bond from the current 30 days to 120 days;
 - D. require any reasonable legal fees that the state may incur to recover the security to be the obligation of the surety; and
 - E. for mines all or in part on federal land, require DEQ to consult with the applicable federal agency about becoming an obligee on the surety bond along with the state
6. Because of access to more resources, the Attorney General's office may be better equipped to bring an action on behalf of the state or to represent the state in matters of litigation and negotiation concerning payment, release, default, or forfeiture of