

Idaho Department of Lands

Rulemaking Information for Docket 20-0302-1901

Trust Funds

Arizona

R11-2-806 allows the use of trust funds for financial assurance. Initial funding is at least the cost of reclamation on existing disturbance and that planned over the next year. Annual payments are then required equal to the cost of reclamation for lands disturbed over the next year.

Trustee must be regulated by a federal or state agency.

Montana

A trust fund for Zortman-Landusky was established in Montana Code § 82-4-367. It must be invested according to Montana Code 17-6-2. Section 17-6-201(2)(a) only allows retirement funds to be invested in common stocks.

Nevada

NAC 519A.350 allows the use of a trust fund for financial assurance. Initial payment is required within 60 days of permit issuance, and must be a sum sufficient to reclaim the initial disturbance. Payments must then be made at least annually.

New Mexico

19.10.12.1203 allows the use of a trust fund for financial assurance. 19.10.12.1208.E has the specific requirements for the use of a trust:

(1) The director may approve the use of a trust to hold and manage funds for the purpose of implementing reclamation as prescribed in the closeout plan. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency and which has been approved by the director. The director must be notified of any change of trustee and any successor trustees must be approved by the director.

(2) The trust fund is also subject to the following conditions:

(a) the initial payment into the trust must be made by the date established by the director;

(b) the trust shall be funded in accordance with the terms of the permit;

(c) investments of the trust shall be reviewed and approved by the director and may include fixed income investments such as U.S. treasury obligations, state issued securities, time deposits and other investments of similar risk as approved by the director;

(d) income accrued on trust funds shall be retained in the trust, except as otherwise agreed by the director under the terms of an agreement governing the trust;

(e) the trustee may be compensated under terms defined by the director, upon approval of the director;

(f) the trust may be terminated by the permittee only if the permittee substitutes, with the approval of the director, alternate financial assurance as specified in this section or the permittee has completed reclamation in accordance with Subsection E of 19.10.12.1210 NMAC;

(g) a copy of the trust agreement, as well as quarterly and annual reports of the trustee on the trust fund balance shall be provided to the director upon request;

(h) any disbursement of funds from the trust shall be approved by the director in writing.

Pennsylvania

Trust funds are authorized in PAC 86.156(a). Specific conditions are in PAC 86.158(f):

(1) The amount of the trust fund or annuity shall be determined and set by the Department. The amount shall be that amount determined by the Department as necessary to meet the bonding requirements established by the Department for a permittee.

(2) The trust fund or annuity shall be in a form and contain terms and conditions as required by the Department. At a minimum, trust fund or annuity shall provide that:

(i) The Department is irrevocably established as the beneficiary of the trust fund or of the proceeds from the annuity.

(ii) Investment objectives of the trust fund or annuity shall be specified by the Department.

(iii) Termination of the trust fund or annuity may occur only as specified by the Department.

(iv) Release of money to the permittee from the annuity or trust fund may be made only upon written authorization of the Department.

(3) A financial institution serving as a trustee or issuing an annuity shall be a State-chartered or National bank or other financial institution with trust powers or a trust company with offices located in this Commonwealth and whose activities are examined or regulated by a State or Federal agency. An insurance company issuing an annuity shall be licensed or authorized to do business in this Commonwealth by the Insurance Commissioner or be designated by the Insurance Commissioner as an eligible surplus lines insurer.

(4) Trust funds and annuities, as described in this subsection, are established under government authority for the public purpose to guarantee that moneys are available for the Department to pay for treatment of postmining pollutional discharges or reclamation of the mine site or both. Trust funds and annuities constitute property of the Commonwealth and, as such, any earnings, profits and distributions shall have the same tax status accorded the Commonwealth.

Wyoming

Trusts are allowed as a type of collateral bond in Rule 020-0007, Chapter 6, Subsection 5.a.ii. Only bonds of the United States, a state, or a municipality can be used. The following requirements are specified:

(A) The wording of the irrevocable trust must be identical to the wording specified on the Wyoming Department of Environmental Quality Irrevocable Trust for Coal Reclamation Form and be signed by

the operator or guarantor as principal, the financial institution as Trustee and be made payable to the Department;

(B) The Trustee must be a bank organized to do business in the United States that has the authority to act as a trustee and whose trust operations is regulated and examined by a Federal or State Agency;

(C) The irrevocable trust must be cash funded for the full amount of the reclamation obligation to be provided in the irrevocable trust before it may be approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of this subsection, “the full amount of the reclamation obligation to be provided” means the amount of coverage for reclamation required to be provided for the permit, less the amount of financial assurance for reclamation obligation that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the operator or guarantor;

Bureau of Land Management

43 CFR 3809.552(c) allows BLM to require a trust fund or other funding mechanism to ensure the continuation of post closure water treatment or site maintenance.

“...The funding must be adequate to provide for construction, long term operation, maintenance, or replacement of any treatment facilities and infrastructure, for as long as the treatment and facilities are needed after mine closure. BLM may identify the need for a trust fund or other funding mechanism during plan review or later.”

43 CFR 3809.555(e) describes the requirements for the contents of a trust that is an acceptable financial guarantee for BLM:

Either of the following instruments having a market value of not less than the required dollar amount of the financial guarantee and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of the Secretary of the Interior, acting by and through BLM:

- (1) Negotiable United States Government, State and Municipal securities or bonds; or
- (2) Investment-grade rated securities having a Standard and Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service.

43 CFR 3809.556 has additional requirements:

(a) If you choose to use the instruments permitted under § 3809.555(e) in satisfaction of financial guarantee requirements, you must provide BLM, before you begin operations and by the end of each calendar year thereafter, a certified statement describing the nature and market value of the instruments maintained in that account, and including any current statements or reports furnished by the brokerage firm to the operator or mining claimant concerning the asset value of the account.

(b) You must review the market value of the account instruments by December 31 of each year to ensure that their market value continues to be not less than the required dollar amount of the financial guarantee. When the market value of the account instruments has declined by more than 10 percent of the required dollar amount of the financial guarantee, you must, within 10 calendar

days after its annual review or at any time upon the written request of BLM, provide additional instruments, as defined in § 3809.555(e), to the trust account so that the total market value of all account instruments is not less than the required dollar amount of the financial guarantee. You must send a certified statement to BLM within 45 calendar days thereafter describing your actions to raise the market value of its account instruments to the required dollar amount of the financial guarantee. You must include copies of any statements or reports furnished by the brokerage firm to you documenting such an increase.

(c) If your review under paragraph (b) of this section demonstrates that the total market value of trust account instruments exceeds 110 percent of the required dollar amount of the financial guarantee, you may ask BLM to authorize a written release of that portion of the account that exceeds 110 percent of the required financial guarantee. BLM will approve your request only if you are in compliance with the terms and conditions of your notice or approved plan of operations.

Section 6.3.4 of the BLM Surface Management Handbook has specific guidance on how trust funds should be set up and used by an operator. Some highlights include:

The operator's cost estimate for the activities covered by the trust must also cover all anticipated third party fees or other costs of maintaining the trust (6.3.4.3.1).

A present value determination is also needed (6.3.4.3.3).

A written Trust Fund Agreement is required (6.3.4.4), and is reviewed by BLM's legal counsel (6.3.4.4.3).

6.3.4.5 describes the acceptable financial instruments for trust funds:

Stock funds or stock index funds are acceptable equities, but not individual stocks.

Bond funds or bond index funds are acceptable.

Direct investment in the operator's company or a parent company or their assets through stocks or bonds is NOT allowed.

Real property, equipment, or other non-liquid assets are NOT allowed.

Stock market instruments may not exceed 70 percent of the asset mix.

Payments may be made over time according to a schedule in the Trust Fund Agreement, but the post closure costs must be fully funded by the time the post closure period occurs (6.3.4.6).

Trust fund must be reviewed at least annually, and cost estimates are reviewed at least every three years.

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