

Origin of Draft 8 Corporate Guarantee Rules July 2020

06. Corporate Guarantees. (3-20-20)T

a. Up to fifty percent (50%) of required financial assurance for reclamation costs may be provided by a corporate guarantee. Post-closure costs for reclamation plans and permanent closure plans cannot be covered by a corporate guarantee. (3-20-20)T

b. Only operators who submit plans under Sections 070 or 071 of these rules may provide a corporate guarantee. (3-20-20)T

c. Operators who want to provide financial assurance through a corporate guarantee must provide an audited financial statement from a third-party certified public accountant ~~licensed in Idaho~~ that ~~meets the requirements of IDAPA 01.01.01. The audited financial statement must show~~ the operator meets two (2) of the following three (3) criteria and the criteria in paragraph d of this section: (3-20-20)T ()

i. Ratio of total liabilities to stockholder's equity is less than two (2) to one (1); (3-20-20)T

ii. Ratio of sum of net income plus depreciation, depletion, and amortization to total liabilities greater than ten one-hundredths (0.1) to one (1); or (3-20-20)T

iii. Ratio of current assets to current liabilities greater than one and fifty one-hundredths (1.5) to one (1). (3-20-20)T

d. The following financial criteria must also be met for a corporate guarantee: (3-20-20)T

i. Net working capital and tangible net worth are each equal to or greater than the total reclamation or permanent closure cost estimate; (3-20-20)T

ii. Tangible net worth of at least ten million dollars (\$10,000,000); and (3-20-20)T

iii. At least ninety percent (90%) of the corporation's total assets are in the United States, or the total assets in the United States are at least six (6) times greater than total reclamation or permanent closure cost estimate. (3-20-20)T

~~e. If the operator is a partnership or joint venture, each partner or member of the entity will sign an indemnity agreement in favor of the State of Idaho that binds each partner or member who has a beneficial interest, directly or indirectly, in the operator. The indemnity agreement must be signed by the partners or members who are authorized to bind their partnership or joint venture. The indemnity agreement will bind each partner or member jointly and severally. The operator must provide a copy of the agreement to the Department with an affidavit certifying that such an agreement is valid under all applicable federal and state laws. (3-20-20)T~~

~~f. A corporate guarantee can be provided by a parent company guarantor if that guarantor meets the conditions of paragraphs (c) and (d) in this section as if it were the operator. The terms of this corporate guarantee will provide for the following: (3-20-20)T~~

~~i. The operator and the parent company will submit to the Department an indemnity agreement signed by corporate officers from both companies who are authorized to bind their corporations. The operator or parent company must also provide an affidavit certifying that such an agreement is valid under all applicable federal and state laws. The indemnity agreement will bind each party jointly and severally; (3-20-20)T~~

~~ii. If the operator fails to complete reclamation or permanent closure, the parent company guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the Department sufficient to complete reclamation or permanent closure as per the plan, but not to exceed the financial assurance amount; (3-20-20)T~~

Commented [EW1]: Modified from Alaska R11-2-809(D)(2) and R11-2-811(C), and Nevada 519A.350(7)(b), and Pennsylvania 86.159(c), and Wyoming 020-0007.6(4)(c)(i)(B), and 40 CFR 264-143(f)(3)(ii), and 40 CFR 258-74(e)(2)(i)(B), and 40 CFR 800.23(b)(4)

Commented [EW2]: Criteria from Nevada 519A.350(7)(b)

Commented [EW3]: Criteria from Nevada 519A.350(7)(c) through (e)

Commented [EW4]: Modified from Wyoming 020-0007.6(4)(b)(ii)(A) through (C), and 40 CFR 800.23(e)(1) through (3)

Commented [EW5]: Modified from Alaska R11-2-811(l), and Pennsylvania 86.159(l) and (m), and Wyoming 020-0007.6(4)(a)(i)(H), and 40 CFR 800.23(c)(1), and 40 CFR 258-74(g)(1), and 40 CFR 264-143(f)(10)

Commented [EW6]: Modified from Pennsylvania 86.159(l) and (m), and Wyoming 020-0007.6(4)(b)(ii)(A) through (C), and 40 CFR 800.23(e)(1) and (2)

Commented [EW7]: Modified from Alaska R11-2-811(l)(1), and Wyoming 020-0007.6(4)(a)(i)(H), and 40 CFR 800.23(c)(1)(i), and 40 CFR 258-74(g)(3)(i), and 40 CFR 264-143(f)(10)

iii. The corporate guarantee will remain in force unless the parent company guarantor sends notice of cancellation by certified mail to the operator and to the Department at least ninety (90) days in advance of the cancellation date, and the Department accepts the cancellation; and (3-20-20)T

iv. The cancellation will be accepted by the Department only if the operator obtains replacement financial assurance before the cancellation date or if the lands for which the corporate guarantee, or portion thereof, was accepted have not been disturbed. (3-20-20)T

v. If the operator is a partnership or joint venture, the indemnity agreement will bind each partner or member who has a beneficial interest, directly or indirectly, in the operator. ()

g.f. The operator, or parent company guarantor, is required to either complete the approved reclamation or closure plan for the lands in default, or pay to the Department an amount necessary to complete the approved reclamation, not to exceed the amount established in Sections 120 or 121 of these rules. Any indemnity agreement under forfeiture will operate as a judgment against those parties liable under the indemnity agreement. (3-20-20)T ()

h.g. The operator or parent company guarantor will submit an annual update of the information required under paragraphs (c) and (d) of this section by April 1 following the issuance of the corporate guarantee. (3-20-20)T

h.h. If the operator or parent company guarantor's financial fitness falls below the eligibility for providing a corporate guarantee they will immediately notify the Department, and the Department will require the operator to submit replacement financial assurance within ninety (90) days of being notified. (3-20-20)T

h.j. The Department may require the operator or parent company guarantor to provide an update of the information in paragraphs (c) and (d) in this section at any time. The update must be provided within thirty (30) days of being requested. The requirements of paragraph (i) in this Section will then apply. (3-20-20)T

Commented [EW8]: Modified from Alaska R11-2-811(l)(2) and (3), and Pennsylvania 86.159(l), and Wyoming 020-0007.6(4)(a)(i)(H), and 40 CFR 800.23(c)(1), and 40 CFR 258-74(g)(3)(ii) and (iii), and 40 CFR 264-143(f)(10)

Commented [EW9]: Modified from Pennsylvania 86.159(l), and Wyoming 020-0007.6(4)(a)(i)(H)(i), and 40 CFR 800.23(e)(4),

Commented [EW10]: Alaska R11-2-809(G) and R11-2-811(D), and Pennsylvania 86.159(d), and Wyoming 020-0007.6(4)(c)(i), and 40 CFR 258-74(e)(2)(iii), and 40 CFR 264-143(f)(5), and 40 CFR 800.23(f)

Commented [EW11]: Modified from Alaska R11-2-809(E) and R11-2-811(E), and Pennsylvania 86.159(g) and (k)(1)(i), and Wyoming 020-0007.6(4)(e), and 40 CFR 258-74(e)(2)(v), and 40 CFR 264-143(f)(6), and 40 CFR 800.23(g)

Commented [EW12]: Modified from Alaska R11-2-809(F) and R11-2-811(F), and Pennsylvania 86.159(d), and 40 CFR 258-74(e)(2)(vi), and 40 CFR 264-143(f)(7)