

Overview of New York State's Mined Land Reclamation Financial Security Determination

The Environmental Conservation (ECL) Law Title 27, Article 23, known as the New York State Mined Land Reclamation Law (MLRL), was enacted in 1974, went into effect in 1975, and was phased in over three years. The corresponding regulations, 6 New York Code of Rules and Regulations (6NYCRR) Parts 420 to 425 went into effect in 1976. Both have been revised several times. Part of the declaration of policy for the MLRL (ECL §23-2703.1) includes the legislative mandate, *“for reclamation of affected lands; to encourage productive use including but not restricted to the planting of forests, the planting of crops for harvest, the seeding of grass and legumes for grazing purposes, the protection and enhancement of wildlife and aquatic resources, the establishment of recreational, home, commercial, and industrial sites.”* The MLRL further provides that reclamation financial security be in place before a permit is issued and shall remain in full force and effect until the Department has approved reclamation of the site ECL§23-2715.2. The regulation further expand the basis for determining the reclamation financial security in 6NYCRR §423.1.c, *“The amount of the bond shall be determined by the department and shall be based upon the total estimated cost to the state for completion of reclamation consistent with the minimum basic reclamation requirements as described in section 422.3(b) of this Title. This cost and the corresponding amount of the bond shall be determined by the department on the basis of an evaluation of the following factors: the type of mine; the number of acres of affected land; the geographic location of the mine; the proposed land-use objective and basic reclamation requirements; the length of the permit period; the proposed method and schedule of reclamation; and other criteria which may be considered relevant to the estimate. The bond shall be maintained for a period of two years after completion of reclamation as provided in section 423.3(c) of this Part.”*

The clear intent of the MLRL and the implementing regulations is to provide for a means of determining, establishing, and maintaining sufficient reclamation financial security to ensure that a mine could be reclaimed by the Department if the permittee is unable to do so.

The initial program guidance for determining the appropriate financial security was issued on July 11, 1977. The initial rates were based on data from other states, correspondence with the National Association of State Land Reclamation Specialists, sources within the New York State Department of Environmental Conservation, and bid prices from the New York State Department of Transportation Bid Price Index. Based on the information a figure of \$1,500 per acre, with a minimum financial security of \$5,000, was arrived at. The guidance also provided an alternative method to determine the financial security by making adjustments based to the \$1,500 per acre flat rate based on a variety of factors such as geographic location in the state, complexity of the operation (ground conditions) and the reclamation goal.

At the time the guidance was issued the Mined Land Reclamation Program was in its infancy and the process of bringing on staff had just begun. In addition, most of the initial Mined Land staff soon went on to other positions. The alternative calculation guidance was not effectively promulgated to the next wave of staff. As a result the program standard for the financial security rate remained at \$1,500 for nearly 20 years.

By the late 1990s it was recognized that there were insufficient resources available to reclaim mines where the financial security had been seized. At this point some regions raised the flat rate to \$2,000 per acre or more. The Program's experience continued to be that there was insufficient financial security on hand to reclaim most sites when the reclamation responsibility devolved upon the Department. The financial security determination needed to be calculated based on the actual proposed reclamation of the mine rather than a flat acreage rate.

Around 2004 the Mined Land Reclamation Program began an earnest effort to update and standardize the approach to calculating the financial security based on a site specific review of the resources required to reclaim each site. Central Office staff looked at a variety of means used to determine rates. In particular, staff reviewed the Office of Surface Mining Handbook for Calculation of Reclamation Bond Amounts. Regional staff in each of the eight DEC Regions with mining programs were given examples and asked to calculate reclamation financial security amounts. The results came in around \$6,000 per acre.

As a result the decision was made to shift the financial security determination to an Excel based worksheet containing the various reclamation activities and estimates of the quantity of each to be done (template and an example attached). Using Excel a quantity and projected cost for each activity could be calculated and then summed at the end of the worksheet. The FS Calculation Worksheet was developed using costs derived from the RS Means Site Work & Landscape Cost date book published annually. Each January the worksheet template is adjusted to reflect changes in unit costs for each reclamation activity.

In order to gradually phase in the change and to prevent overwhelming the staff, the change was phased in using two approaches. First, the financial security rate was raised to a flat \$3,000 an acre in March 2005, then increased to \$5,000 per acre in March 2006, and finally a complete switchover to the FS Calculation Worksheet by 2008 for all regions. Between March 2006 and January 2008 staff was given the option of the \$5,000 flat rate or using the worksheet. Secondly, each permit has the financial security calculated at the time of permit issuance, the time of permit renewal (normally every 5 years), or upon a major modification of the permit. This way the financial security for each site is captured every five years at a maximum and the amount adjusted for inflation or any changes at the site. In 2005 the financial security rate per acre varied from \$1,794 per acre to \$3,084 per acre. In 2007 the statewide average was \$4,359 per acre. In 2012 it is \$5,367 per acre. New York currently holds approximately \$233 million in reclamation financial security.

In addition to bonds, an application may also fulfill the financial security requirement by substituting cash or certified check, negotiable bonds of the United States government, United States treasury notes, United States treasury certificates of indebtedness, United States treasury bills, bonds or notes of the State of New York, bonds of any political subdivision in the State of New York, bonds of the New York State Housing Finance Agency or of other New York State agencies or authorities, or bonds of public corporations of the State of New York, an irrevocable bank letter of credit, a certificate of deposit, or other forms of financial security acceptable to the department.

The entire MLRL can be accessed at the New York State Legislature website:

<http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLENV0A23T27+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=45616075+&TARGET=VIEW>

6NYCRR Parts 420 to 425 can be found at the New York State Department of Environmental Conservation's website: <http://www.dec.ny.gov/lands/5405.html>.