

Mine Reclamation Trust Funds in Alaska

IMCC
Western Region Noncoal/Hardrock
Minerals Symposium
Salt Lake City, March 27-28, 2013

Tom Crafford
Director, Off. of Project Management & Permitting
Alaska Dept. of Natural Resources

Cameron Leonard
November 9, 2012

- Basic Idea: State-held Trust Fund
 - Miner Pays \$ In Over Time
 - State Manages Fund
 - Earnings are Tax-free*, roll into Fund
 - Suitable for Long-Term Cash Flows
- * (or are they?)

- Law: AS 37.14.800-.840
- Bill passed in 2004
- Impetus for Bill was Red Dog Mine
(when need for long term post
closure obligations were recognized)

AS 37.14.800 Mine Reclamation Trust Fund

- **(a)** The mine reclamation trust fund is established as a separate trust fund of the state. The principal and earnings of the fund shall be held by the state for the purpose of protecting the public interest in reclaiming mine sites in the state. The fund is composed of the mine reclamation trust fund income account and the mine reclamation trust fund operating account.
- **(b)** The mine reclamation trust fund income account consists of payments and deposits made by miners to satisfy the miners' reclamation bonding or financial assurance obligation under AS [27.19.040](#) or AS [27.21.160](#) and earnings on the income account. The mine reclamation trust fund operating account consists of appropriations by the legislature of the annual balance of the mine reclamation trust fund income account and any earnings on those appropriations while in the operating account.
- **(c)** Before payments are accepted into the mine reclamation trust fund income account for a particular mining operation, the commissioner of natural resources and the miner may execute a memorandum of understanding that outlines a schedule of expected payments into the trust fund and the relationship of the payments and accumulated earnings in the trust fund to reclamation obligations of the miner under AS [27.19.040](#) or AS [27.21.160](#) . The memorandum of understanding may also address expected use of the fund under AS [37.14.820](#) . If the memorandum of understanding addresses investment of the fund with respect to payments made by the miner, the commissioner of revenue must also sign the memorandum.
- **(d)** Nothing in this section creates a dedicated fund.

Bonding Requirements:

- DNR's: AS 27.19.040
- DEC's: AS 46.03.100(f)
- Trust Fund can Satisfy Both Laws

AS 27.19.040 Reclamation Financial Assurance

- **(a)** The commissioner shall require an individual financial assurance in an amount not to exceed an amount reasonably necessary to ensure the faithful performance of the requirements of the approved reclamation plan. The commissioner shall establish the amount of the financial assurance to reflect the reasonable and probable costs of reclamation. The assurance amount may not exceed \$750 for each acre of mined area, except that the \$750 an acre limitation does not apply to the assurance amount required for a lode mine.
- **(b)** The commissioner shall establish a statewide bonding pool for mining operations as an alternative to individual financial assurance. The commissioner may determine which mining operations are eligible to participate in the bonding pool based on the projected cost of reclamation in relation to the size of the bonding pool; however, a mining operation may not be allowed to participate in the bonding pool if the mining operation will chemically process ore or has the potential to generate acid. A miner participating in the bonding pool shall contribute an initial deposit not to exceed 15 percent of the financial assurance amount plus an additional nonrefundable annual fee not to exceed five percent of the financial assurance amount. The commissioner shall refund the 15 percent deposit upon satisfactory completion of the approved reclamation plan. If requested by the miner, the commissioner may apply the deposit to a new reclamation plan. In addition to its use for mining operations under this chapter, the commissioner shall allow the bonding pool to be used to meet the requirements of AS [27.21.160](#) . Income and other earnings on the bonding pool shall be added to the bonding pool.
- **(c)** If the commissioner determines that a miner has violated or permitted a violation of the approved reclamation plan and has failed to comply with a lawful order of the commissioner, the commissioner shall forfeit the financial assurance and deposit it in the statewide bonding pool. The commissioner shall use the reclamation and administrative costs recovered under AS [27.19.070](#) (a) to supplement the forfeited financial assurance deposited in the statewide bonding pool for reclamation of the site subject to the forfeiture. If the commissioner is unable to recover the full cost of reclamation under AS [27.19.070](#)(a), the commissioner may use the bonding pool to reclaim the site to the standards of this chapter, except that the commissioner may not use a deposit that is refundable under (b) of this section to fulfill another miner's reclamation obligation.
- **(d)** A miner not required to post a financial assurance may submit a reclamation plan under AS [27.19.030](#) (a) and participate in the bond pool.
- **(e)** A miner may satisfy the requirement under this section for an individual financial assurance by providing, in a form acceptable to and approved by the commissioner, any of the following:
 - **(1)** a surety bond;
 - **(2)** a letter of credit;
 - **(3)** a certificate of deposit;
 - **(4)** a corporate guarantee that meets the financial tests set in regulation by the commissioner;
 - **(5)** payments and deposits into the trust fund established in AS [37.14.800](#); or
 - **(6)** any other form of financial assurance that meets the financial test or other conditions set in regulation by the commissioner.

AS 46.03.100(f) Waste management, disposal and discharge authorization

- AS 46.03.100(f) f) A person who applies for an authorization to operate a solid waste disposal facility that accepts hazardous waste or a mining waste disposal facility for an operation that chemically processes ores or has the potential to generate acid shall furnish to the department proof of financial responsibility to manage and close the facility in a manner that the department finds will control or minimize the risk of the release of unauthorized levels of pollutants from the facility to waters. The department may require that a municipal solid waste disposal facility furnish proof of financial responsibility. Proof of financial responsibility may be demonstrated by self-insurance, insurance, surety bond, corporate guarantee, letter of credit, certificate of deposit, or other proof of financial responsibility approved by the department, under regulations adopted by the department. Regulations adopted under this subsection must set financial tests for the acceptance of corporate guarantees and other forms of financial responsibility that the department determines would be required for an independent showing of financial capability. For a mining waste disposal facility, the department may accept as adequate to satisfy the requirement of this subsection financial assurance for reclamation provided to a state or federal land management agency if it otherwise meets the requirements of this subsection. The department's acceptance of proof of financial responsibility under this subsection expires

Structure of Fund: Two Accounts

- ‘Income’ account & ‘operating’ account
- This is to avoid “Dedicated Fund” issue
- Alaska Constitution, Article IX, Sec.7
 - § 7. **Dedicated Funds** The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs.

- Don't worry about it!
- Follows model of other Trust Funds
- Legislature routinely appropriates \$ from income account into operating account
- No instance of Legislature "raiding" a Trust Fund

- Trust Funds for different mines are segregated
- State cannot spend \$ deposited for one mine at another mine
- AS 37.14.820(c)

Sec. 37.14.820. - Use of the mine reclamation trust fund operating account.

- (a) The commissioner of natural resources may make expenditures from the mine reclamation trust fund operating account for the following purposes:
 - (1) reclamation of mining operations for which a payment or deposit has been made into the fund;
 - (2) maintenance of dams and other permanent features related to a mining operation;
 - (3) monitoring of site stability and water quality related to a mining operation;
 - (4) control and treatment of acid rock drainage and other leachate related to a mining operation;
 - (5) protection and treatment of surface water and groundwater related to a mining operation;
 - (6) long-term site management of a mining operation;
 - (7) refunds to miners of the deposits to the fund upon satisfactory completion of reclamation tasks as determined by the Department of Natural Resources.
- (b) Subject to appropriation, the mine reclamation trust fund operating account may be used to pay the expenses incurred by the commissioner of revenue in managing the fund and administrative expenses incurred by the Department of Natural Resources in administering the fund and programs under AS 27.19 and AS 27.21.
- (c) The Department of Natural Resources may not spend money deposited in the fund for one mining operation at another mining operation.
- (d) In accordance with AS 37.14.800 (b), and except as provided in (b) of this section, earnings on the mine reclamation trust fund operating account are added to that account
 - and are available for expenditure without further appropriation.

DOR is a Fiduciary

- That triggers certain duties under other laws
- “Prudent investor rule”
- DOR can be held liable for breach of those duties
- AS 37.10.071

What \$ Can Be Used For:

- Reclamation
- Dam Maintenance
- Site Stability/Water Quality Monitoring
- ARD Management and Water Treatment
- Refunds to Miners
- AS 37.14.820(a)

Key Issues (DOR)

- Amount of Initial Payment into Fund
- Timing and Amount of Subsequent Payments
 - 5 Year Environmental Audits would gauge “adequacy”
- Interest Rate
- Application of fund to actual conduct of reclamation; contracting; State procurement/contracting rules; other