

3 July 2008

Mr Doug Sceney
Manager, Sustainable Development Unit
Minerals and Petroleum Regulation Branch
Department of Primary Industries
GPO Box 4440
Melbourne, Vic, 3001

Dear Doug,

Re: Submission on the Draft Guideline: Establishment and Management of Rehabilitation Bonds for the Mining and Extractive Industries

The Minerals Council of Australia, Victorian Division is pleased to comment on the Department of Primary Industries' *Draft Guideline: Establishment and Management of Rehabilitation Bonds for the Mining and Extractive Industries*, dated November 2007.

The Minerals Council of Australia (MCA) is the peak industry association that represents the corporate minerals companies in Australia. The members of the MCA are engaged in mineral processing, mining, exploration, or the provision of services to the industry and account for more than 85 percent of mineral industry output in Australia. The MCA advocates public policy and operational practice for a world-class minerals industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

The Victorian Division of the MCA represents the interests of members operating, exploring and providing services to the industry in Victoria. Policy positions of the Victorian Division are one and the same with the entire Australian minerals industry. The MCA operates on a platform of national consistency and therefore considers that minerals operations in all jurisdiction should be subject to consistent efficient and effective polices and legislative frameworks.

MCA members have used the time between the release of the draft Guideline and bond-calculator and we are now in a position to provide meaningful feedback. In this regard we congratulate the Department for facilitating a lengthy and hence worthwhile trial period for the assessment of the calculator.

Industry Position on Rehabilitation Bonds

The minerals industry is more than prepared to sustainably manage the land under its custodianship, which includes rehabilitation to a long-term sustainable land use. It does this through meeting or exceeding regulations and is an important part of maintaining its social licence to operate. Rehabilitation plans (and bonds) are a statutory requirement for all mineral operations; the bond or financial surety is held by

the government against the operator to ensure that the site is rehabilitated after mining ceases. It is industry policy that the financial surety matches the liability for rehabilitation. This is a significant investment by most companies especially as the site is rehabilitated as an operational expense which is in addition to the financial surety held by the government. Bonds apply equally to work on private land and public land irrespective of who owns the land.

A copy of the MCA policy on financial assurance for rehabilitation (bonds) is attached for information.

Government Policy on Rehabilitation Bonds

DPI issued a position paper on “Rehabilitation Bonds for the Mining and Extractive Industries” in 2004 following a period of extensive consultation on a discussion paper issued in 2002. The Manager, Minerals and Petroleum Regulation confirmed the position paper as current DPI policy as recently as 2006.

Whilst the position paper closely matches the policy contained in the new guideline there are a few very fundamental differences. For example the original position was to set the initial bond to cover the work to be undertaken prior to the first review (conclusion xi). This is at odds with the position put in the Guideline, which is for the initial bond to be set at the maximum liability for the project. Also, the original position details issues associated with bank guarantees and cash bonds. The new Guideline fails to cover the issue of the form of the rehabilitation bond, which is a critically important issue for people managing the finances of mining projects. It is disappointing that the Guideline is silent in this regard.

Importantly, the original position paper discussed the need for comprehensive guidelines for the establishment of rehabilitation bonds. The draft Guideline that is the subject of this submission is presumably a response to that goal. If this is the case then the Guideline only partly meets that goal.

There is no mention of the previous policy position paper in the new Guideline and the position paper has been removed from the DPI web site. It is concerning that fundamental policy previously presented to industry is unilaterally discarded without discussion.

The MCA seeks further discussion on the status of the DPI position paper and the process by which changes to this position were made as reflected by the Guideline.

General comments on the Guideline

Setting the Bond Amount

We are concerned that the proposed policy of setting the initial bond amount at the maximum disturbance is far too onerous for large, long life mining projects. It is entirely unreasonable to set the bond at a limit to cover the disturbance on the site that may not be reached for 10 or more years, surely the bond must be set to match the liability of the current disturbance. This could be extended to say a two year forward

projection and then reassessed annually. We reject the notion of setting the initial bond to cover the maximum liability and request that the original DPI policy position of setting the initial bond to cover the period to the first 'formal' review period be reinstated.

Whilst the discussion on the bond review period partly resolves the above concern, 10 years between start-up and the first 'formal' review can require a greater bond than is reasonable for new mines.

Some members have experienced difficulty in making the assumptions needed to suit the level of detail of the calculator, in particular, the life of a mine is largely determined in relation to economic indicators and demand for products, and this changes regularly. Similarly, changing community and environmental expectations over time, makes it impossible to determine the future use for the land with absolute certainty. Therefore, the final rehabilitation plan and bond only reflects liability anticipated at a particular point in time.

Bond Reviews

MCA supports the concept of periodic 'formal' bond reviews to test the liability against the surety. This is good policy and as stated is an encouragement for progressive rehabilitation. However, the policy has a flaw. If the bond is initially set at the maximum disturbance then there is no possibility of a reduction with progressive rehabilitation. In fact, setting the bond at the maximum disturbance ahead of that disturbance being realised is a disincentive for progressive rehabilitation until the project is in the declining years.

The Guideline needs to clarify the relationship between self-assessment and formal reviews. It needs to clearly state that annual self-assessments are completed using the Bond Calculator and submitted to DPI. If DPI doesn't agree with the self-assessment it can initiate a formal review. If self-assessments are considered suitable by DPI, formal review will occur only as outlined in Appendix 1: The Assessment Matrix for Bond Reviews.

Having said that, the self-assessment seems to be over simplified and should take a more comprehensive risk based approach to the likelihood of the company going into default, not just based on the size of MIN and the commodity. For example, a company with a small MIN and low capital backing is potentially a higher risk than a large MIN with high capital value. The Guideline attempts to accommodate this likelihood in Appendix A. However, there is no explanation on how 'likelihood' is determined.

The assessment matrix suggests the interval for the review of bonds should be 10 years for a large mine. The guidelines also mention a number of other potential triggers such as a Work Plan variation, a change in rehabilitation liability or even at the department's discretion. However, there is no definition of the magnitude of change in Work Plans or rehabilitation liability that would initiate a bond review nor what would trigger the Department to undertake a bond review. This creates an unacceptable level of uncertainty; as to set up the financial instruments for the bond value is costly and takes considerable time.

Bond Management Consultation Matrix

The Guideline discusses the parties the Minister must consult when setting, reviewing and returning bonds. There is no discussion on what role each party plays or how they participate, which is consistent with the MR(SD)A 1990. However, the Guideline must make it clear that consultation does not mean agreement.

Bond return

Rehabilitation is considered ‘successful’ when the respective area is safe and stable, the biological system (whether for agricultural purposes or native vegetation) is shown to be self-sustainable and pest plants and animals are controlled to an appropriate level. Limiting rehabilitation ‘success’ to agriculture or native vegetation does not take into account the many alternate future uses, e.g. at some sites industrial or residential development will be the preferred use of land.

The calculator presumes all buildings and plant on a mine site will eventually be demolished, removed, and the site rehabilitated. In some cases buildings, equipment and roads may be retained to support future land use. Therefore, Section 13.7’s (of the Guideline) acknowledgment that some buildings and plant may have resale value will not apply.

General Comments on the Calculator

Generally, members have found the calculator largely functional and easy to use and they welcome the streamlined process with standardised costing for comparison and data capture. It is quite thorough in the methodology presented and useable for differing domains. The overall size of the worksheets, however, posed a problem as they were too large to view on standard computer screens.

The calculator outlines the rehabilitation commitments of a site in a higher detail than perhaps previously considered and therefore the initial completion of the bond assessment requires a substantial time commitment. However, this detailed format produces an estimate that should be quickly and easily updated for future annual reporting and formal reviews.

The industry is however concerned that the pricings for revegetation and environmental monitoring are too low, particularly if a third party will implement work.

There is a possible limitation to the usefulness of the calculator as the underlying assumptions made for the treatment and standards for rehabilitation activities can lead to generic outcomes rather than site-relevant outcomes. This may in turn discourage innovation in rehabilitation and closure plans.

Determining who a company should engage to assess the adequacy of self-assessments and rehabilitation liability is very difficult as there are no widely acknowledged standards across the industry. The assumptions within the calculator look to be pre-empting some expectation of standard. We do not seek to accredit rehabilitation consultants so some form of standard is warranted.

We also noted that for large operations, the method outlined in the calculator is not flexible enough to suit the variation and complexities of these sites.

Specific Comments on the Calculator Work Sheets

Worksheet: Open Pit Domain 5

Under the Active Mining Pit or Other Voids Management Precinct, there is an Activity that has combined the items construct safety berm, catch bench and barrier around the pit perimeter. For new operations or new open pits the combination of these items may be applicable however for operations with existing open pits that are operational or non-operational, often only one or two of the items are required to be added to the rehabilitation bond and therefore require the consultation with external contractors to decide upon an alternative unit rate.

Worksheet: Infrastructure

The addition of a drop down box for distance to EPA approved landfill. Rather than add \$50/m³. The source, cart, spread and rip top soil seems to be very low cost \$1.65-3.40.

Worksheet: TSF, Overburden & Waste Pits

Source, cart, spread and rip top soil seems to be very low cost \$2.10-4.00.

Direct seeding of native trees and grasses \$2000 Ha

A minimum seed cost for Acacia species is \$200/kg and most grasses are \$600-1000/kg. In the calculator pricing structure there is very little left for labour and follow up work, even if the 4kg/Ha rate is used.

An allocation for weed control is required, particularly in high rainfall areas and consideration of the topsoil being used. The use of Biosolids verses nutrient-poor onsite soil for example will require completely different seeding and maintenance rates for successful outcomes.

Consultation with external rehabilitation experts suggests that to achieve a self-sustaining final landscape requires a number of year's maintenance. This typically will cost in the range of \$4000-\$12,000 if there are weed contamination and mortality issues.

The calculator would benefit from the addition of a forestry option, e.g. Softwood, Blue gum or mixed species.

Management and Contingency

The post closure monitoring is based on 5% of the total calculated bond. This is considered sufficient for the initial bond calculations; however, there is not necessarily a correlation between the need for environmental monitoring and closure. In fact significant funds for environmental monitoring may be required for a long period of time post closure. For instance one sampling round of groundwater \$1000, surface water \$500, hire of equipment \$500 and labour \$400 would use the total monitoring budget based on a \$50,000 bond. The bond calculator also assumes there are bores in place - these are a minimum of \$10,000 each. A better estimation may be

a number of samples based on the monitoring schedule in the approved work plan.

Pest and Weed management is based on \$2,500 per item. There is no clarification of what the 'item' refers to (Ha, m³, burrows or dens etc). The amount is very low considering it would only purchase 25- 40hrs (no materials) of weed/pest control. An alternate figure that DSE used on the Gorse weed project was 0.50c/m³, which would be \$25,000 for 100% coverage of an average hectare of Gorse or similar weed.

Recommendations

The MCA seeks further discussion on the status of the original 2004 DPI Position Paper on Rehabilitation Bonds for the Mining and Extractive Industries and how this is reflected in the Guideline.

The Guideline makes no mention of the form of financial surety. This is a critical issue that requires addressing unless the 2004 Position Paper is reinstated.

The Guideline should clearly enable the initial bond to match the liability of the 'formal' review period not the maximum liability for the life of the project.

The Guideline requires clarity around the difference between self-assessments using the Calculator and formal bond reviews. There is also a need to clarify what is involved in a 'formal' bond review.

The Guideline needs to clearly articulate how the Department will assess the 'likelihood' factor in determining the risks in setting the 'formal' review period.

Nevertheless, the overall assessment from members is positive and it is agreed that the bond calculator will assist in streamlining the process for the estimation of rehabilitation bonds. But flexibility and common sense should always prevail to ensure appropriate outcomes.

We would welcome the opportunity of discussing this submission with you.

Yours sincerely,



Chris Fraser
Executive Director, Victoria



MCA POSITION ON FINANCIAL ASSURANCE

The Minerals Council of Australia recognises that financial surety is necessary in order to provide assurance to governments and the public that environmental rehabilitation goals post closure will be achieved. Financial assurance mechanisms should be viewed as the final step in the hierarchy of available mechanisms, to be activated when all other mechanisms to achieve environmental rehabilitation for closure have been exhausted, and the operator is unable to achieve the closure and completion requirements. The industry's objective on the financial provisions for rehabilitation after mine closure is to ensure the cost of environmental rehabilitation for closure is adequately represented in company accounts and that the community is not left with a liability.

In addition to this overriding objective, the MCA also sees a valuable role for financial surety mechanisms in promoting progressive rehabilitation and associated leading practice approaches to environmental rehabilitation for closure. Progressive rehabilitation describes a process where land is rehabilitated as it becomes available, rather than waiting for the cessation of mining. In addition to the direct benefit of promoting and supporting rehabilitation works while the mine is still generating income, progressive rehabilitation provides a range of other benefits, including:

- the ability to take advantage of on-site contractors and services;
- the ability to integrate rehabilitation activities with other operational responsibilities/activities;
- the trial and refinement of rehabilitation techniques; and
- demonstrate good rehabilitation performance to regulators and wider stakeholders.

Principles for Financial Assurance

The MCA supports the following principles for managing the responsibility for setting, implementing and maintaining financial assurance mechanisms for Australian operations.

The Operator's responsibility

The operator should demonstrate how it will ensure that adequate funds for closure and rehabilitation will be available, and therefore that the public will not be left with a liability. The operator should have a clearly defined process for development of a closure plan with provision for review and update, as required. For new operations, this plan should be developed at the feasibility stage and have adequate technical validity and financial resources on which to base future updates and reviews. It should be consistent with the legal requirements of the particular jurisdiction and should include the following considerations:

- The use of risk analysis methods in the closure plan development and to establish the design criteria, for example to address the possibility of major events (e.g. earthquake, flooding, drought);
- A clearly identified sequence and schedule of closure activities that accounts for where you are in the mine life cycle;
- Ongoing and effective input from key stakeholders in plan development and modification;
- Closure costs calculations which are consistent and transparent, and based on reasonable estimates of actual costs taking into account local conditions and cost structures;
- The application of, where possible, progressive (i.e. concurrent) rehabilitation of areas during the operating life of the mine to reduce the environmental footprint of the site;
- The review and adjustment of closure plans on a regular basis and after changes in operations or conditions;

- A defined post-closure use for the site, with respect to safety and environmental standards;
- Explicit consideration of potential social impacts and benefits associated with environmental quality and potential future land use alternatives for the site (including consideration of possible uses for site infrastructure);
- A good understanding of a site's background and baseline conditions (for new operations); and
- Periodic monitoring and audits that provide a measure of actual versus planned rehabilitation.

The Regulator's responsibility

The primary responsibility of regulators in developing financial assurance arrangements is to ensure that the expectations of governments and the wider community can be met in the event that the current operator of the site is unable to meet closure requirements. It is also important that this assurance is provided at the lowest practical cost to both industry and governments.

The development of financial assurance approaches should include:

- the development of assurance mechanisms that provide positive incentives for progressive rehabilitation wherever possible;
- adequate protection for the community and governments from closure liabilities;
- sufficient flexibility to ensure that changes to the project can be reflected in assurance mechanisms;
- clear linkage to the conditions for lease relinquishment and relief from future liabilities for companies;
- transparent and effective processes for including the views of all relevant stakeholders in the development, implementation and review of assurance mechanisms;
- a phased approach to the application of any changes to the assurance regime for existing operations; and
- public reporting of outcomes.

Allowing flexibility in financial assurance

Flexibility should be provided in terms of the level and form of assurance required, based on a risk assessment of the proposed project.

In the Australian context, financial assurance mechanisms will overwhelmingly take the form of a third party guarantee, usually in the form of a bank guarantee or insurance bond that is unconditional and/or irrevocable.

The key advantage of this approach is that:

- the guarantee has the full backing of a financial institution, providing a high level of assurance that cannot be unilaterally withdrawn by the issuer;
- provide a transparent, operation-specific mechanism that can be altered as requirements change; and
- has a good capacity to support progressive rehabilitation; and
- are relatively inexpensive to establish (although they are considered working capital, and can affect access to financial capital).

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