

The EIS process must afford the public an opportunity to comment on the adequacy of the financial assurances that are developed between the agency and the company. The U.S. Environmental Protection Agency, charged with reviewing EISs prepared by other federal agencies under the Clean Air Act, recently affirmed its policy to include bonding as a requirement of the NEPA process for mining operations. See EPA's Hardrock Mining Framework September 1997 (with Attachments) (incorporated herein by reference).

In light of this discussion, the EIS must present a more detailed discussion of the bonding and water treatment issues associated with the Rock Creek project. The Agencies must address the following issues in that discussion: a) the mine reclamation plan; b) adit closure plan; and c) the potential for operator abandonment.

Page 2-75 of the SEIS says that ASARCO needs to do a soil survey to assure they have enough soil for reclamation of the tailings impoundment, and that their detailed reclamation/revegetation plan would need to be submitted for agency review and approval before implementation.

Page 2-76 says ASARCO would be required to submit a detailed design, regrading, and revegetation plan for all mine facilities for Agencies approval in conjunction with the final design of the paste facility.

The final reclamation plans must be submitted during the EIS process to assure compliance with the MMRA, and to allow accurate bonding predictions. Pages 2-11 and 4-54 admit that "at mine closure, collected seepage would be routed through the wastewater treatment facility and discharged to the Clark Fork River. Seepage would continue to be treated until it met ambient ground water quality without a mixing zone." The final reclamation and revegetation plan will directly influence long-term water treatment costs, and more detailed information on those plans must be presented.

Page 2-38 of the SDEIS states that "ASARCO's mine permit application is not clear as to whether or not the mine adits would be sealed or left free-draining; but probably all mine adits and the ventilation adit would be plugged."

Page 2-74 states "the adit closure plan would need to be finalized and submitted to the Agencies for review and approval prior to mine closure." The discussion goes on to say the preliminary plan is to plug service and conveyor adits at ore body, and that discharges from the evaluation adit aren't expected.

The EIS must present more details on the proposed adit closure plan. If the adits are in fact sealed, discharges will still occur. Page S-16 states "if the adits were sealed after mine closure, mine water would eventually discharge into bedrock, and possibly out through springs whose location cannot be determined at this time. Water draining from the adits would drain into mine wastes at the mill site and into the alluvium beneath it and then possibly Rock Creek."

The EIS must discuss long-term management and treatment of seeps and springs that sealing the adits will create, and the bond needed to assure it occurs.

The possibility of operator abandonment of the site prior to the completion of reclamation is a real possibility. Thus, under NEPA, this reasonably foreseeable event must be discussed in the EIS. While the company will certainly not state that it intends to abandon the site, the likelihood that the agencies will be forced to complete the reclamation must be discussed. The long-term financial assurances must provide the government with sufficient funds to reclaim the site, and provide environmental protection should the operator abandon the project.

According to Forest Service regulations, reclamation includes such measures as will prevent or control onsite and offsite damage to the environment and forest surface resources. 36 CFR 228.8(g). Thus, since the agency can only approve an operation that ensures that this mandate will be met, the SDEIS' failure to analyze and include the final and full project financial assurances cannot stand. (S6318)

Response: NEPA and MEPA do not require there be final details of the reclamation bond presented in the EIS. In Chapter 1, under Agency Roles and Responsibilities, there is a discussion and table

outlining the estimated bond calculations. The final bond calculations would be available for public review at the respective Agency offices in an action alternative is selected. The final bond would include funding for the necessary resource monitoring (water, wildlife etc) that would be required from Sterling at the time of closure. If a monitoring requirement stated that monitoring must continue for a specified number of years after closure, then the bond would reflect that cost. The public may choose to respond or contact the appropriate parties at the Agencies if the public feels it is warranted. The Agencies have the authority to bond for reasonable contingencies, such as collecting tainted water from seeps or springs. The Agencies also have the authority to require long-term funding for the operation, replacement and maintenance of a water treatment system. Final plans and designs are not necessary for adequate analysis in an EIS as long as all assumptions about design requirements and criteria are defined.

Final designs do not need to be included in the EIS process and are not necessary to estimate a reclamation bond. Any final designs must be within the limits of the conceptual plans as outlined in the EIS and reflect any mitigation that may have been included in the Record of Decision. Premature closing costs would be included into the final bond.

Adit closure and mine water management including springs and seeps has been re-evaluated in the final EIS. The reader is referred to sections in Chapter 4 discussing Hydrology, Wetlands, and the plant portion in Biodiversity Section.

Forest Service regulation 36 CFR 228.8(g) states:

“Reclamation: Upon exhaustion of the mineral deposit or at the earliest time practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control on-site and off-site damage to the environment and forest surface resources including:

1. Control of erosion and landslides
2. Control of water run-off
3. Isolation, removal or control of toxic materials
4. Reshaping and revegetation of disturbed areas, where reasonably and practicable and
5. Rehabilitation of fisheries and wildlife habitat”

In addition, 36 CFR 228,8(h) states: “Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as compliance with similar or parallel requirements of these regulations.” The KNF has determined that the above federal regulations would be met by the preferred alternative, Alternative V.

18. Page 1-8 2nd full paragraph "KNF may require an additional bond ..." How is this bond invested/used? (S4832)(S4833)

Response: The Kootenai National Forest (KNF) would accept a cash bond to include negotiable securities, letters of credit, assignable savings certificates and corporate surety bonds. In all of these, the KNF or the appropriate federal entity would be named as a co-payee.

19. Page 1-10 first partial paragraph "DEQ can issue ... up to \$1,000/day ...". Is this amount sufficient to offset long-term irreparable environmental damage? See CDA basin and EPA superfund site (Bunker Hill). 2nd paragraph "DEQ has responsibility ..." Are civil penalties of \$25,000/day sufficient to offset long-term irreparable environmental damage? See CDA basin and EPA superfund site (Bunker Hill). (S4832)(S4833)

Response: The Agencies are bound by the penalty limits set under the law. While penalties are punitive for violations of applicable laws, the reclamation bond is a mandatory requirement before any permit can be awarded, and is intended to provide the financial resources and assurance to prevent and repair any potential long-term environmental damage. Customarily, the bonds for large mining operations run in the tens of millions of dollars. In estimating the bond the Agencies have the discretion to bond for contingencies to prevent environmental degradation. Contingencies such as alternative water treatment processes, or additional monitoring requirements are typical of the kinds of safeguards added to the reclamation bond. The reader is referred to Chapter 1 and the monitoring plan for the grizzly bear.

20. Page 4-35. Para.4 "therefore, the perimeter seepage collection system could potentially...." Has there been a financial analysis that determines that the cost of operating this system could/should be if it needs to be maintained for several decades? Mine water currently discharged from the (closed) Troy mine does not meet water quality criteria as established for the Rock Creek project. This infers the discharges from Rock Creek would also need long range treatment. Will projected bonding cover these expenses, and have they in any way shape or form been calculated? Asarco currently takes care of this problem at its Troy mine by using the ground water as an unauthorized mixing zone, which the state conveniently ignores as treatment. What is to keep Asarco from doing the same at Rock Creek? (S614)

Response: The financial calculations would be performed when the level of bonding required for the selected alternative is determined. The excess water for the proposed project would be treated to meet MPDES permit requirements. The Troy Mine is currently operating within its permitted authority.

MISC-1602 Health and Safety

1. Two social well-being issues the EIS should consider: One major concern about social well-being raised by people in the area should have been addressed in the DEIS. People in the area have repeatedly, and intensely, expressed their concern about potential health and safety conditions at the mine and how they affect mine-workers, their families, and the social and economic well-being of the community as a whole. The EIS might examine how the health and safety practices of a mine affect a community, its mine workers and their families. The EIS might identify the health and safety requirements and standards a mine is supposed to meet; who has implementation, monitoring and enforcement responsibilities; and how those responsibilities are to be carried out. The EIS might identify measures that must, or might, be taken (by ASARCO, by enforcement agencies, or by local entities) to try to forestall potential health and safety hazards; to monitor and try to ensure compliance with health and safety requirements; and to identify and deal with a ctual, unanticipated hazards. In order to mitigate potential employee and community anxiety about mine-related health and safety hazards, the EIS might suggest ways of ensuring that the proposed ASARCO Rock Creek mine will consistently adhere to the highest health and safety standards for its workers. (S6759)

Response: Issues concerning worker health and safety are outside the scope of an EIS. NEPA and MEPA rules require agencies to consider potential impacts to the natural and physical environment and the relationship of people to that environment. An underground mine is not the natural environment of people. In addition, neither NEPA nor the Part 228 mining regulations provide direct authority for including worker safety and health in the EIS or in the operating plan/permit process. The same is true of MEPA and other corresponding Montana laws.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA), and the Montana Department of Labor and Industry, Safety Bureau, regulate worker safety and health at mines. The Federal Mine Safety and Health Act of 1977 applies to the project and includes provisions for inspections, training, penalties for noncompliance, worker health and safety standards, ventilation and air quality inside underground mines, and approval of diesel-powered equipment for noncoal mines (30 USC, 801 et seq.; 30 CFR parts 32 and 57). Corresponding Montana laws/regulations are MCA 50-72-101 et seq. and ARM 24.30.1301. These standards have been subject to public review through both state and federal rule-making processes.

Sterling would be required by MSHA to meet its regulatory requirements designed to protect worker health and safety during mine construction and operation.

Electric haul trucks as well as lower emission diesel engines are proposed for underground use in Alternative V, thus minimizing the concern expressed by some regarding underground air quality. Worker health should not be compromised.