

Mineral Resources Division

Rehabilitation Security Deposit Requirements for Mining and Petroleum Titles

ESB20
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NSW DEPARTMENT OF
PRIMARY INDUSTRIES

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1 Introduction

This guideline has been prepared by the Environmental Sustainability Branch of the Department of Primary Industries – Mineral Resources (DPI) to assist the NSW mining and petroleum industries to comply with the new DPI Rehabilitation Security Deposits Policy (EDP11). This document is intended for use by mining and petroleum production titleholders only (i.e. mining lease, mining purpose lease, mineral claim and production leaseholders). Exploration titleholders (i.e. exploration licence and assessment lease holders) should refer to Rehabilitation Security Deposit Requirements for Exploration Titles (ESB21).

This document and all associated documents can be downloaded from <http://www.dpi.nsw.gov.au> (go to “Mining and Petroleum” and then “Environment”).

2 Rehabilitation security deposits policy

DPI policy requires that security deposits must cover the full rehabilitation costs of activities on exploration, mining and petroleum titles. This long-standing requirement is intended to minimise potential liabilities to the State in the event that a titleholder defaults on their rehabilitation obligations.

DPI introduced a new Rehabilitation Security Deposits Policy (EDP11) in November 2005 for implementation from 1 July 2006. The new policy aims to encourage progressive rehabilitation through the regular review of rehabilitation liabilities and progressive release of security deposits where applicable. The key policy change in EDP11 was the addition of a requirement for titleholders to provide DPI with an estimate of rehabilitation costs. DPI will then take this estimate into account when determining the amount of the rehabilitation security deposit.

The titleholder's rehabilitation cost estimate is required:

- at the grant, renewal, transfer or expiry of a title;
- as a component of all Mine Operations Plans (MOPs) and Petroleum Production Operations Plans (PPOPs) submitted after 1 July 2006;
- as a component of all subsequent Annual Environmental Management Reports (AEMRs);
- at the request of DPI, and;
- at the discretion of the titleholder.

DPI aims to ensure that equitable, flexible and efficient mechanisms are available for managing the environmental liabilities on mining titles. The administrative requirements of the new policy are intended to be commensurate with the nature and scale of these liabilities. Any problems attributable to the new policy are intended to be resolved on a case-by-case basis for individual titleholders pending the development of further guidance material.

3 Legislative requirements

DPI is responsible for the regulation of exploration, mining and petroleum activities within titles issued under the *Mining Act 1992* and *Petroleum (Onshore) Act 1991*. Both of these Acts allow the Minister for Mineral Resources (or delegated officers) to require security deposits to cover the obligations of titleholders.

3.1 Mining Act 1992

s.169 *Retention and forfeiture of security deposit*

- (1) *A security in relation to an authority may be retained by the Minister until the Minister is satisfied that the holder of the authority has fulfilled the obligations arising under this Act in relation to the authority, whether the obligations concerned are required to be fulfilled during or after the period for which the authority remains in force.*
- (2) *Obligations required to be fulfilled after the period for which the authority remains in force do not cease merely because the authority has ceased to be in force, and the relevant security may be retained under subsection (1) even though the authority is no longer in force.*
- (3) *Such part of any security in relation to an authority as the Minister may determine is to be forfeited to the Crown if the holder of the authority fails to fulfil the obligations arising under this Act in relation to the authority.*
- (4) *Money realised from the forfeiture of any such security is to be applied for the purpose of fulfilling the obligations arising under this Act in relation to the authority.*
- (5) *The functions of the Minister under this section may be exercised with or without the benefit of a finding by a court or tribunal that the holder of the authority concerned has failed to fulfil any obligations arising under this Act in relation to the authority.*

3.2 Petroleum (Onshore) Act 1991

s.16 *Security required to be given*

- (1) *On granting a petroleum title, the Minister may impose a condition requiring the holder of the title to give and maintain security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the holder's obligations under this Act in respect of the title and to maintain that security until those obligations are fulfilled or no longer apply.*
- (2) *A condition requiring security to be given and maintained by the holder of a petroleum title may be expressed so as to require the security given and maintained in relation to some other petroleum title to be extended to the firstmentioned petroleum title.*

- (3) *If the Minister proposes to grant a petroleum title to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.*
- (4) *The Minister may at any time impose a condition of a kind referred to in subsection (1) on an existing petroleum title that is not subject to any such condition by causing a written notice to be served on the holder of the petroleum title.*
- (5) *The Minister may, by causing a written notice to be served on the holder, amend any 2 or more petroleum titles held by the same holder that contain a condition of a kind referred to in subsection (1) so as to require a single security to be given and maintained.*
- (6) *The Minister may, by causing a written notice to be served on the holder, vary a condition imposed under this section, so as to vary the amount and form of security that is required to be given and maintained.*
- (7) *A condition imposed or varied under this section takes effect on the date the written notice of the condition or variation is served on the holder concerned, or on such later date as may be specified in the notice.*

3.3 Security condition

A condition addressing security requirements is attached to all titles issued under the *Mining Act 1992* or *Petroleum (Onshore) Act 1991*. For current titles this will be similar to the following example:

- (a) *A security in the sum of \$#### must be given and maintained by the lease holder for the purpose of ensuring the fulfilment by the lease holder of obligations under this lease. If the lease holder fails to fulfil any one or more of such obligations the said sum may be applied at the discretion of the Minister towards the cost of fulfilling such obligations. For the purpose of this clause the lease holder shall be deemed to have failed to fulfil the obligations of this lease if the lease holder fails to comply with any condition or provision hereof, any provision of the Act or regulations made thereunder or any condition or direction imposed or given pursuant to a condition or provision hereof or of any provision of the Act or regulations made thereunder.*
- (b) *The lease holder must provide the security required by sub-clause (a) in one of the following forms:*
 - (i) *cash, or*
 - (ii) *a security certificate in a form approved by the Minister and issued by an authorised deposit-taking institution.*

The security condition is amended when the \$ amount of the security deposit requirement is revised by DPI (see heading [9 Determination of DPI security deposit requirements](#)).

4 Form of security deposit

Security deposits are usually required to be submitted in one of the following forms:

- cash, or;
- a security certificate in a form approved by the Minister and issued by an authorised deposit-taking institution.

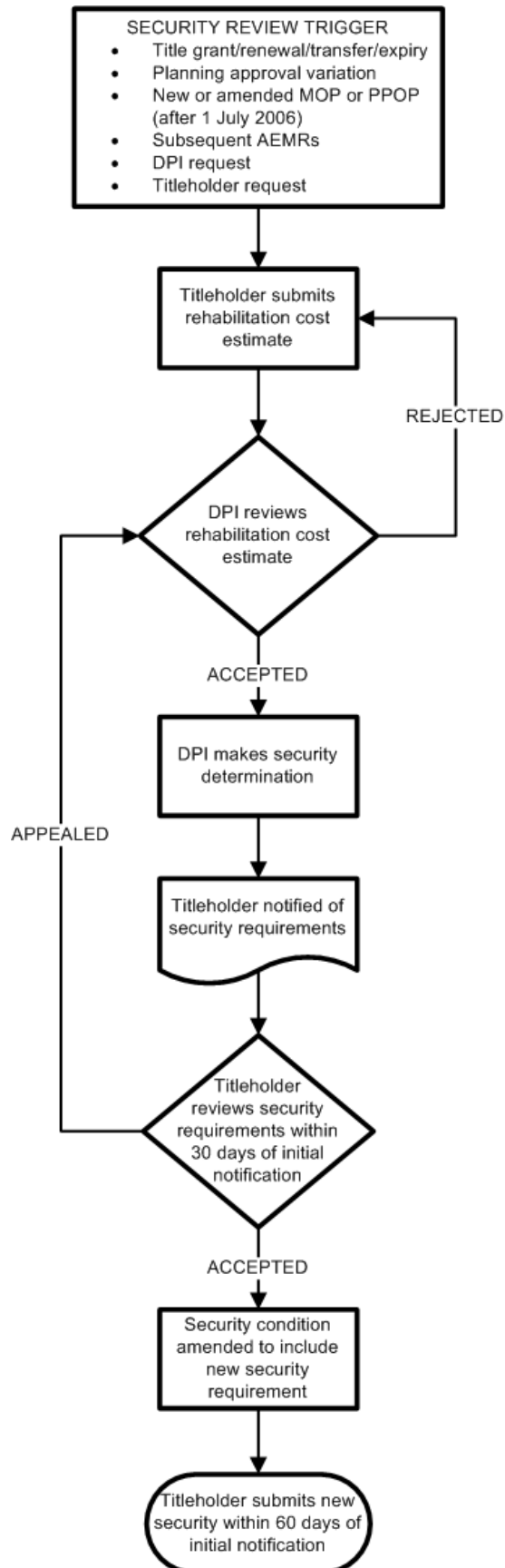
This is defined in the security condition attached to all titles (see heading [3.3 Security condition](#)). DPI is willing to consider other forms of security deposit proposed by industry, provided that alternative schemes meet the following requirements:

- no additional risk to the NSW Government;
- funds are available when required by the Minister, and;
- not dependent on subsequent actions by industry (e.g. periodic insurance instalments).

5 Flexibility

In some instances, the new Rehabilitation Security Deposits Policy (EDP11) may result in large increases in the amount of security required for certain operations. This will only be the case where the existing security assessment is deficient. If particular circumstances of hardship are identified, DPI will work with titleholders on a case-by-case basis to define an individual implementation plan that addresses the needs of DPI while ensuring that the viability of operations is not jeopardised. DPI will continue to be flexible with regard to security arrangements, providing that there is no transfer of risk from the industry to government.

6 Security process



7 Rehabilitation cost estimate requirements

7.1 Rehabilitation planning

Titleholders must document all proposed site disturbance and rehabilitation requirements as part of their MOP/PPOP. The rehabilitation cost estimate must refer to an applicable plan and fully address these rehabilitation requirements to the satisfaction of DPI.

7.2 DPI rehabilitation and closure criteria

DPI requires that all rehabilitation on mining and petroleum production titles meets DPI rehabilitation and closure criteria as defined in the following guidelines:

DOCUMENT ID	DOCUMENT NAME
EDG01	Borehole Sealing Requirements on Land: Coal Exploration
EDG02	Borehole Sealing Requirements on the Beds of Water Bodies: Coal Exploration
EDG03	Guidelines to the Mining, Rehabilitation and Environmental Management Process
EDG14	Reporting Requirements for Mine Closure and Lease Relinquishment

A key DPI requirement is that titles must be rehabilitated to meet an agreed end land use. Where an end land use has not been defined, the titleholder must confer with government to establish or modify an end land use as soon as reasonably practical:

- where an end land use has been defined by an approval under the *Environmental Planning and Assessment Act 1979*, the end land use can only be modified by a variation to this approval;
- where an end land use has not been defined by an approval under the *Environmental Planning and Assessment Act 1979*, the end land use can be modified by a MOP/PPOP variation.

The end land use must be detailed in the MOP/PPOP. Any modification to an end land use will trigger a security review.

7.3 Relationship to title area

Rehabilitation cost estimates (and security deposit requirements) must relate to a single title unless arrangements have been made with DPI for a group of titles to be covered by a joint security. The rehabilitation cost estimate must cover all disturbance or rehabilitation liabilities related to activities undertaken within this title(s).

Where a title for underground mining excludes the surface area above that title, the rehabilitation cost estimate must include any exploration- or mining-

related disturbances on the surface which have, or are likely to, result from activities undertaken within that title.

Where titles overlap (e.g. for different minerals/petroleum or for the same mineral at different depths), each area of disturbance/rehabilitation must be allocated to a specific title (unless arrangements have been made with DPI for a joint security) to avoid either overlooking or double-counting of rehabilitation costs.

7.4 Basis for calculation

The rehabilitation cost estimate must be based on a specified stage of disturbance as defined below:

- Option 1: Maximum disturbance within a MOP/PPOP term. The rehabilitation cost estimate is normally based on the maximum disturbance or greatest rehabilitation liability at any one point in time as described in the MOP/PPOP.
- Option 2: Snapshot of current disturbance. DPI will accept rehabilitation cost estimates calculated as a “snapshot” of current liabilities for the titleholder’s internal accounting purposes (as required by Australian Accounting Standards). Titleholders selecting this option must clearly identify any proposed variations in rehabilitation liabilities between the time of the “snapshot” and the next AEMR reporting period.

The applicability of these options to particular operations should be discussed with DPI. In either case, an interim rehabilitation plan (equivalent to Plan 6 in the MOP format section of EDG03) must be provided as supporting documentation to cover the period of the calculation.

7.5 Methodology

DPI has prepared a Rehabilitation Cost Calculation Tool to assist titleholders in the preparation of rehabilitation cost estimates. This Tool can be downloaded from the DPI website.

Alternatively, titleholders may choose to use another rehabilitation cost estimate methodology, subject to acceptance by DPI. At a minimum, acceptable methodologies must include a detailed, quantified schedule of rehabilitation works (similar to that which would be provided to an external contractor for quotation), including:

- costs against each line item;
- subtotals and total costs, and;
- a separate schedule of unit costs.

All titleholder rehabilitation cost estimates must refer to the current DPI Schedule of Rehabilitation Costs (the Schedule can be downloaded from the DPI website and is also incorporated within the DPI Rehabilitation Cost Calculation Tool). Any variation from these costs must be substantiated in a form acceptable to DPI.

7.6 DPI costs

The rehabilitation cost estimate must be based on likely costs to DPI in the event that a titleholder defaults. In these cases, DPI must engage a contractor to rehabilitate the title. For this reason, the following costs must be included as a component of all rehabilitation cost estimates:

- mobilisation costs;
- project management costs (add 10%);
- monitoring costs (add 5%);
- contingency (add 10%), and;
- indexation for inflation (applicable only if costs are not to be reviewed annually and the maximum rehabilitation liability is more than 12 months in the future).

These costs are included in the DPI Rehabilitation Cost Calculation Tool. If the titleholder chooses to use an alternative methodology, they must demonstrate how these costs have been incorporated in the rehabilitation cost estimate.

7.7 Goods and Services Tax (GST)

GST should not be included in rehabilitation cost estimates.

7.8 Review

Rehabilitation liabilities are reviewed as part of the AEMR. This may trigger a review of the rehabilitation cost estimate if there have been significant changes in liability or rehabilitation costs.

Titleholders must specify a review date when submitting a rehabilitation cost estimate.

8 Submission of rehabilitation cost estimates

All rehabilitation cost estimates submitted to DPI must be accompanied by a completed submission form (see Appendix A). This form specifies several lodgement options.

One electronic copy and one hard copy of any documentation must be supplied to DPI.

9 Determination of DPI security deposit requirements

Rehabilitation cost estimates will be reviewed by DPI following submission by the titleholder. DPI may:

- accept the rehabilitation cost estimate as a basis for a determination of security deposit requirements;
- reject the rehabilitation cost estimate;
- request further information from the titleholder, or;
- request a third-party review.

The DPI Titles Branch will notify the titleholder in writing when a security determination has been made. This notification will normally require lodgment of the new or amended security deposit within 60 days of the date of determination.

The titleholder has the right to appeal a DPI security determination within 30 days of the date of the security notification letter. Appeals must be in writing and detail the grounds on which the security determination is contested. DPI will make every effort to ensure that appeals are finalised within 60 days of the date of the security notification letter.

If the security determination has not been appealed within 30 days of the date of the security notification letter, the security condition attached to the title (see heading 3.3 Security condition) will be amended after 30 days to include the revised security deposit requirement.

If the security determination is subject to an appeal, the security condition will not be amended to include the revised security deposit requirement until after the appeal has been finalised.

10 Threshold levels for resubmission of security deposits

Where a new security determination has been made by DPI, a threshold for resubmission of security deposits has been established to minimise administrative costs to both government and industry. Where DPI determines that a change in the amount of security deposit of less than 5% is required, DPI will not require amendment to the existing security.

11 Release of security deposits

Securities will be released when DPI is satisfied that the titleholder has demonstrated that rehabilitation and closure criteria have been met. DPI encourages progressive rehabilitation and titleholders may request a security review to reflect a decrease in rehabilitation liabilities.

A new DPI guideline on rehabilitation and closure criteria is currently being developed to provide further clarification on the requirements for mine closure and the release of security deposits.

12 Transitional arrangements

- Self-assessment of rehabilitation costs is to be implemented from 1 July 2006 for all new or amended MOPs or PPOPs and subsequent AEMRs.
- In the interim, titleholders are encouraged to use the new self-calculation system in order to identify any issues at the earliest opportunity.
- New operations must submit the full security prior to commencing operations.
- For existing operations, staged payments of security deposits will be considered where substantial increases on existing securities are required and titleholders can demonstrate that this would result in significant financial hardship. Titleholders are requested to contact DPI to discuss their particular circumstances on a case-by-case basis.

13 Revisions to this guideline

It is expected that this guideline and associated documentation will be revised:

- after finalisation of the proposed amendments to the Mining Act 1992, and;
- by 1 July 2008 or as-needed.

The DPI Rehabilitation Cost Calculation Tool will be subject to ongoing review in response to stakeholder input.

The DPI Schedule of Rehabilitation Costs will be regularly reviewed to ensure that the Schedule reflects realistic rehabilitation costs.

14 Definitions

Agreed end land use

The post-mining land use, either as defined in an approval under the Environmental Planning and Assessment Act 1979, or where this has not been defined, as formally agreed with the NSW Government.

Annual Environmental Management Report (AEMR)

The AEMR is required as a condition of title for mining and petroleum production activities. It details compliance against regulatory requirements and reports on the titleholder's environmental performance against targets set in the MOP or PPOP.

Disturbed Area

The surface area affected during any mining or petroleum production activities. It includes all infrastructure, access routes, topsoil, waste rock, tailings and product stockpile areas, water diversion and storage structures etc.

DPI

The Department of Primary Industries.

End land use

See agreed end land use.

Mine Closure Plan (MCP)

An integral component of the MOP or PPOP which specifically deals with mine closure.

Mine Operations Plan (MOP)

The MOP is required as a condition of title for mining activities. The MOP covers a period of up to 7 years and details the manner in which the titleholder proposes to conduct mining, processing and rehabilitation activities consistent with planning approvals and conditions imposed by DPI and other agencies.

Petroleum Production Operations Plan (PPOP)

The PPOP is required as a condition of title for petroleum production activities. The PPOP covers a period of up to 7 years and describes the manner in which the titleholder proposes to conduct petroleum production and rehabilitation activities consistent with planning approvals and conditions imposed by DPI and other agencies.

Rehabilitation cost estimate

The titleholder's estimate as to the likely costs of rehabilitation of a title by DPI at a nominated point in time.

Rehabilitation security deposit

Financial assurance which must be provided to DPI as a condition of title for the purpose of ensuring the fulfilment of the titleholder's obligations.

Security

See "rehabilitation security deposit"

Security bond

See "rehabilitation security deposit"

Security deposit

See "rehabilitation security deposit"

Security determination

The Minister for Mineral Resources or delegated officers determine the amount of the rehabilitation security deposit that a titleholder is required to submit to DPI.

Title

Leases, licences or authorities granted by the Minister for Mineral Resources under the Mining Act 1992, Petroleum (Onshore) Act 1991 or any previous mining or petroleum legislation.

Titleholder

Holder of a lease, licence or authority granted by the Minister for Mineral Resources under the Mining Act 1992, Petroleum (Onshore) Act 1991 or any previous mining or petroleum legislation.

Title relinquishment

Titleholder request to DPI to extinguish a title.

Title cancellation

Action undertaken by DPI to extinguish a title.

APPENDIX A: Rehabilitation Cost Estimate Submission Form

This form can be downloaded from <http://www.minerals.nsw.gov.au/environment/ems>