**Section 326.150 Parent Company Guarantee as a Financial Assurance Arrangement**

Each licensee electing to use a parent company guarantee as a financial assurance arrangement shall be subject to the following requirements:

a) The guarantor shall be a direct parent holding more than 50 percent of the voting stock of the licensee. A company shall not serve as a guarantor to a division of the company.

b) Each licensee electing to use a parent company guarantee as a financial assurance arrangement shall submit a financial test, independently audited financial statements and other documents demonstrating that it passes the financial tests prescribed in Section 326.160 of this Part. At a minimum, documentation shall include all of the following:

1) A parent company guarantee agreement, as described in subsection (b) of Appendix F of this Part, signed by the chief executive officer of the guarantor, that states in part that, if the licensee fails to conduct required reclamation activities, the parent company shall either:

A) Conduct the required activities, or

B) Pay the guaranteed amount to the Agency as directed by the Director;

2) A copy of corporate bylaws, a letter, or other evidence indicating that the guarantor is the parent company of the licensee and that the guarantor has majority control of the licensee's voting stock;

3) A letter, as described in subsection (a) of Appendix F of this Part, from the parent company's chief executive officer;

4) A letter from the parent company's chief financial officer, as described in subsection (a) of Appendix F of this Part, demonstrating that the company passes the financial tests specified in Section 326.160 of this Part;

5) The parent company's audited financial statements for the most recently completed fiscal year, including an independent auditor's report on the financial statements; and

6) An independent auditor's special report, as described in subsection (d) of Appendix F of this Part, stating that the certified public accountant has compared the amounts specified in the letter from the chief financial officer with corresponding amounts in the audited year-end financial statements, and found no reason to believe that the amounts in the letter from the chief financial officer need to be adjusted.

c) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which shall be derived from the independently audited year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Agency within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the parent company no longer passes the test.

d) After the initial financial test, the parent company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year, and shall provide the documentation specified in subsection (b) of this Section.

e) If the licensee's parent company no longer meets the requirements of the applicable financial tests in Section 326.160 of this Part, the licensee shall send notice to the Agency of its intent to establish alternative financial assurance as specified in Section 326.170 of this Part. The notice shall be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data demonstrates that the parent company no longer meets the financial test requirements. The licensee shall secure alternative financial assurance within 120 days after the end of that fiscal year.

f) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the Agency. Cancellation shall not occur until either a replacement financial assurance arrangement is submitted in accordance with Section 326.170 of this Part or the Agency confirms that the licensee has performed reclaiming in accordance with 32 Ill. Adm. Code 330.

g) The guarantee and financial test provisions specified in Section 326.160 of this Part shall remain in effect until the Agency has terminated the license, or until a replacement financial assurance arrangement is accepted by the Agency in accordance with Section 326.170 of this Part.

(Source: Amended at 29 Ill. Reg. 20781, effective December 16, 2005)