



Ohio Administrative Code

Rule 1501:13-13-08 Restoration off the permit area by means of mitigation.

Effective: February 14, 2022

(A) General requirements.

(1) The permittee shall restore on the permit area streams and wetlands affected by mining operations unless the chief approves restoration off the permit area by means of mitigation pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule.

(2) An applicant's or permittee's request for restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule, submitted to the chief as part of an application for a permit or a revision to a permit, shall be subject to the requirements of these rules for applications for permits and revisions to permits.

(3) Areas off the permit area proposed for restoration shall be in compliance with paragraph (E) of rule 1501:13-9-04 of the Administrative Code.

(B) Hydrologic and engineering assessment. An applicant or permittee seeking approval of restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule shall submit a hydrologic and engineering assessment of the affected lands to the chief, on a form provided by the chief, as part of an application for a permit or revision to a permit. The hydrologic and engineering assessment of the affected lands shall include, as applicable, the following information:

(1) Identification of the stream (in linear feet) or the wetland (in acreage) that cannot be restored on the permit area;

(2) A detailed explanation of why restoration of the stream or wetland on the permit area is not possible, including the following:

(a) A description of available water sources and their potential for restoration;



(b) A description of methods such as compaction or lining of the streambed that have been considered and an assessment of why those methods are not viable options to reduce infiltration and restore the stream;

(c) One or more reclamation cross sections showing that each stream and wetland, or portion thereof, cannot be restored on the permit area. The cross section shall include the location of the final highwall and any aquifers;

(3) A discussion of how the permanent loss of the quality and quantity of the stream or wetland on the permit area will be addressed through the mitigation plan, including a description of the pre-mining uses of the stream or wetland and how disturbance to the hydrologic balance within the permit and adjacent areas will be minimized and how material damage outside the permit area will be prevented;

(4) A detailed explanation of how the permit area will not contribute to sediment load downstream without a defined stream; and

(5) Any other information needed for the chief to make a determination pursuant to paragraph (E)(1) of this rule.

(C) Proposed mitigation plan. An applicant or permittee seeking approval of restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule shall submit to the chief the proposed mitigation plan and proposed mitigation activities that the applicant or permittee intends to perform pursuant to a permit issued under sections 401 and 404 of the "Federal Water Pollution Control Act" as defined in section 6111.01 of the Revised Code or an isolated wetland permit issued under Chapter 6111. of the Revised Code or pursuant to a no-cost reclamation contract for the restoration of water resources affected by past mining activities pursuant to section 1513.37 of the Revised Code. The mitigation plan shall describe the mitigation activities for the stream or wetland, or the portion of the stream or wetland, for which restoration on the permit area is not possible and, as applicable, identify the location where mitigation activities off the permit area are to be constructed.



(D) Landowner notification. The applicant or permittee shall notify the owner of record of the surface of the permit area by certified mail or other method able to track receipt of delivery, on a form provided by the chief, that the applicant or permittee intends to request restoration off the permit area by means of mitigation for a stream or wetland or a portion of a stream or wetland that cannot be restored on the portion of the permit area owned by the owner of record. The applicant or permittee shall submit a copy of the landowner notification to the chief as part of the application for a permit or revision to a permit.

(E) Review by the chief.

(1) No request for restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule shall be approved unless the application affirmatively demonstrates, and the chief makes written determinations, on the basis of information set forth in the application or from information otherwise available, that is documented in the approval and made available to the applicant, that:

(a) The hydrologic and engineering assessment submitted under paragraph (B) of this rule demonstrates that restoration on the permit area is not possible;

(b) The proposed mitigation plan under which mitigation activities described in paragraph (C) of this rule will be conducted is limited to a stream or wetland, or a portion of a stream or wetland, for which restoration on the permit area is not possible;

(c) The mitigation activities off the permit area, including mitigation banking, payment of in-lieu mitigation fees or other alternative approved mitigation activities, will be performed pursuant to a permit issued under sections 401 and 404 of the "Federal Water Pollution Control Act" as defined in section 6111.01 of the Revised Code or an isolated wetland permit issued under Chapter 6111. of the Revised Code or pursuant to a no-cost reclamation contract for the restoration of water resources affected by past mining activities pursuant to section 1513.37 of the Revised Code; and

(d) The proposed mitigation plan and mitigation activities comply with the standards established in section 1513.16 of the Revised Code and these rules.



(2) The chief shall review any comments and any other relevant information received about the proposed restoration off the permit area.

(3) Review and approval or disapproval by the chief of a request for restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule is subject to the requirements of these rules for applications for permits and revisions to permits.

(F) Restoration off the permit area.

(1) If the chief approves restoration off the permit area by means of mitigation in accordance with division (A)(25) of section 1513.16 of the Revised Code and this rule, the permittee shall complete all mitigation construction or other activities required by the mitigation plan in the approved permit.

(2) Release of performance bond.

(a) If the chief approves restoration off the permit area by means of mitigation in accordance with division (A)(25) of section 1513.16 of the Revised Code and this rule, the chief shall release performance security for reclamation activities on the permit area pursuant to division (F) of section 1513.16 of the Revised Code, except that the chief shall not release the remaining portion of performance security under division (F)(3)(c) of section 1513.16 of the Revised Code prior to completion of construction, to the satisfaction of the chief, of the required mitigation activities off the permit area, as specified in the approved mitigation plan.

(b) If the approved mitigation plan includes only mitigation activities which require no construction, such as mitigation banking or payment of in-lieu mitigation fees or alternative mitigation approved in a permit issued under section 401 and 404 of the "Federal Water Pollution Control Act" as defined in section 6111.01 of the Revised Code or an isolated wetland permit issued under Chapter 6111. of the Revised Code, the chief, upon his or her approval of restoration off the permit area in accordance with division (A)(25) of section 1513.16 of the Revised Code and this rule, shall release performance security pursuant to division (F) of section 1513.16 of the Revised Code.