



## Ohio Administrative Code

### Rule 1501:13-7-01 General requirements for providing performance security for coal mining and reclamation operations.

Effective: February 14, 2022

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(A) Requirement to file performance security.

(1) After an application for a permit to conduct coal mining and reclamation operations has been approved under these rules, the applicant shall file with the chief performance security in compliance with these rules.

(a) If the applicant provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule, the applicant shall file performance security for:

(i) The number of acres in the entire area to be permitted; or

(ii) The estimated number of acres to be affected in the first permit year in accordance with the requirements of paragraph (A)(6)(a) of this rule.

(b) If the applicant provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule, the applicant shall file performance security for:

(i) The entire area to be permitted; or

(ii) Each incremental mining unit to be affected in the first permit year in accordance with the requirements of paragraph (A)(6)(b) of this rule.

(c) Once coal extraction begins under an approved permit, a permittee providing performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule may not change to providing performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule.



- (2) No person shall disturb surface acreage, either by coal mining and reclamation operations conducted on the surface of land or as a result of surface impacts incidental to an underground coal mine, prior to filing with the chief performance security covering the areas of land to be affected.
- (3) Liability on the performance security shall cover all coal mining and reclamation operations to be conducted within the permit area until the end of the permittee's period of reclamation responsibility.
- (4) No area affected by a coal mining and reclamation operation within a permit shall be identified with a specific performance security.
- (5) Performance security shall apply to the permit area and to all revisions to the permit, including incidental boundary revisions and adjacent area permits.
- (6) Providing incremental performance security. When an applicant elects to file performance security incrementally:
  - (a) The applicant that provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule shall as part of the permit application process:
    - (i) Submit to the chief a written estimate of the number of acres to be affected in the first permit year; and
    - (ii) Before the permit is issued, file with the chief performance security for the estimated number of acres to be affected in the first permit year;
  - (b) The applicant that provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule shall as part of the permit application process:
    - (i) Submit to the chief, on the map required under paragraph (D)(3) of rule 1501:13-4-01 of the Administrative Code, the boundaries for each incremental mining unit within the proposed permit area; and



(ii) Before the permit is issued, file with the chief performance security for each incremental mining unit that will be affected in the first permit year;

(c) Thirty days before affecting more than the number of acres or incremental mining units for which performance security has been filed with the chief, the permittee shall file additional performance security for the number of additional acres to be affected in the permit year or for the next incremental mining unit or units to be affected by the mining and reclamation operation;

(d) The permittee shall within thirty days after the end of every permit year:

(i) Identify on the annual map each incremental area or incremental mining unit for the first through most recent permit year in accordance with the requirements of these rules; and

(ii) File performance bond with the chief, concurrently with the submittal of the annual map, if one of the following circumstances applies:

(a) For permits for which performance security has been filed together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule, the number of acres shown as affected and estimated to be affected on the annual map exceeds the number of acres for which performance security has been provided; or

(b) For permits for which performance security has been filed without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule, the incremental mining units shown as affected and estimated to be affected on the annual map exceed the incremental mining units for which performance security has been provided;

(e) Performance security filed and not yet released for any incremental area or incremental mining unit can be forfeited, in whole or part, to perform the requirements of Chapter 1513. of the Revised Code, rules adopted thereunder, and the conditions of the permit on any area affected by the permittee pursuant to the permit;

(f) After a permit is issued, a permittee that has chosen to provide incremental performance security may elect instead to provide performance security for the entire permit area and file the entire



performance security required during the term of the permit; and

(g) After a permit is issued, a permittee that provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule and that has filed the entire performance security required during the term of the permit may not change to incremental performance security.

(7) A permittee that has filed performance security for the entire permit area instead of filing performance security incrementally shall identify an incremental area or incremental mining unit at the end of each permit year in the manner prescribed in paragraph (A)(6)(d)(i) of this rule and may obtain release of performance security by incremental area or by incremental mining unit, pursuant to rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code, as applicable.

(B) Estimated cost of reclamation. The chief shall determine the estimated cost of reclamation under the initial term of the permit if the reclamation has to be performed by the division of mineral resources management in the event of forfeiture of the performance security by the permittee.

(1) The chief shall determine the estimated cost of reclamation using:

(a) The information contained in the permit application and in the approved mining and reclamation plan, as required by the chief and submitted by the applicant under rule 1501:13-4-05 of the Administrative Code, rule 1501:13-4-14 of the Administrative Code or paragraph (I) of rule 1501:13-4-12 of the Administrative Code; and

(b) After considering the topography, geology, hydrology, and revegetation potential of the area of the approved application, the probable difficulty of reclamation.

(2) The chief shall provide the applicant a copy of the estimated cost of reclamation along with the unit costs used to support the estimated cost of reclamation.

(3) The chief shall send written notice of the amount of the estimated cost of reclamation by certified mail or other method able to track receipt of delivery to the applicant.



(C) Method of providing performance security. The applicant shall send written notice to the chief indicating the method by which the applicant will provide the performance security. The method of providing performance security shall apply to the entire permit. The applicant shall provide the performance security in an amount using one of the following:

(1) If the applicant provides performance security without reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code, the applicant shall provide as performance security the amount of the estimated cost of reclamation as determined by the chief under paragraph (B) of this rule and in accordance with paragraphs (B) and (C) of rule 1501:13-7-02 of the Administrative Code.

(2) If the applicant provides performance security together with reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code, the applicant shall, in addition to paying the tax on the severance of coal levied under division (A)(8) of section 5749.02 of the Revised Code, provide performance security in the amount required under paragraphs (A) and (C) of rule 1501:13-7-02 of the Administrative Code.

(a) To be eligible to provide performance security in accordance with paragraph (C)(2) of this rule, the applicant, an owner and controller of the applicant, or an affiliate of the applicant shall have held a permit issued under this chapter for any coal mining and reclamation operation for a period of not less than five years.

(b) In the event of forfeiture of performance security that was provided in accordance with paragraph (C)(2) of this rule, the difference between the amount of that performance security and the estimated cost of reclamation as determined by the chief under paragraph (B) of this rule shall be obtained from the money in the reclamation forfeiture fund created in section 1513.18 of the Revised Code as needed to complete the reclamation.

(D) Release of excess performance security.

(1) For a permittee that provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule:



(a) If, upon receipt by the chief of the annual map and annual report, the number of acres affected is less than the number of acres for which performance security has been provided, the permittee may obtain a release of the excess performance security by submitting a request for release of excess performance security to the chief on a form provided by the chief; and

(b) If, upon receipt by the chief of the final map and final report, the number of acres affected is less than the number of acres for which performance security has been provided, the chief shall release the excess performance security to the permittee.

(2) For a permittee that provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule, if, upon receipt of the annual map and annual report, the chief determines that the required performance security for the next year is less than the performance security that has been provided, the permittee may obtain a release of the excess performance security by submitting a request for release of excess performance security to the chief on a form provided by the chief.

(E) Responsibilities of the chief.

(1) The chief shall prescribe and furnish forms for filing performance security.

(2) The chief shall determine the estimated cost of reclamation in accordance with paragraph (B) of this rule.

(3) The chief shall adjust the amount of the estimated cost of reclamation and the amount of a permittee's performance security provided for the permit area in accordance with paragraph (E) of rule 1501:13-7-02 of the Administrative Code.

(4) The chief shall release the permittee from his performance security obligations in accordance with rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code.

(5) The chief shall cause all or part of a performance security to be forfeited in accordance with rule 1501:13-7-06 of the Administrative Code.



(6) The chief shall require as a condition of the permit that adequate performance security coverage be in effect at all times.