



Ohio Administrative Code

Rule 1501:13-4-15 Authorization to conduct coal mining on pollution abatement areas.

Effective: June 28, 2018

(A) Applicability.

(1) This rule shall apply to applicants who seek authorization to conduct coal mining operations under modified effluent limitations of a remining NPDES permit on certain previously mined areas in which the earlier coal mining operations have resulted in continuing water pollution, and sets forth the terms and conditions under which the chief may release performance security to permittees who have received the authorization. Receipt of the authorization entitles the permittee to obtain release of performance security, in accordance with this rule, for areas which continue to discharge polluttional material.

(2) All of the provisions of Chapter 1513. of the Revised Code and these rules shall apply to operations with authorizations to mine areas with pre-existing polluttional discharges, unless otherwise specifically provided in this rule.

(B) No authorization may be granted under this rule unless such authorization is requested at the time of permit application and is part of a permit issued by the chief after the effective date of this rule.

(C) Application for authorization. Any applicant who requests authorization under this rule shall comply with the permit application requirements of Chapters 1501:13-4 to 1501:13-6 of the Administrative Code unless otherwise specifically provided in this rule. The applicant shall also:

(1) Delineate on a map the proposed pollution abatement area, including the location of the pre-existing discharge(s);

(2) Except as provided in paragraph (C)(4) of this rule, provide data necessary to determine the base line pollution load of the proposed pollution abatement area. The sampling locations from which the data is collected shall be selected from among all surface-water bodies such as lakes and



impoundments at points within and, for streams, at points upstream and downstream of the proposed pollution abatement area, all ground-water sites, and all discharges from the proposed pollution abatement area into surface-water bodies. The applicant shall submit data from a minimum of twelve samples taken at regular intervals at each selected sampling location and collected over a period of twelve months, unless these sampling requirements are modified by the chief to increase the number of samples or to lengthen the sampling period;

(3) Subject to paragraph (D)(5) of this rule, be exempt from meeting the numeric requirements of total suspended solids and settleable solids if the chief determines that it is infeasible or impractical to set numeric limits on total suspended solids and settleable solids based on the site specific conditions of the soil, climate, topography, steep slopes, or other baseline conditions, provided the applicant demonstrates that significant reductions of total suspended solids and settleable solids will be achieved through the incorporation of sediment control best management practices into the pollution abatement plan as required under paragraph (C)(6) of this rule;

(4) Be exempt from meeting numeric effluent limitations for the pollution abatement area if:

(a) The chief determines that it is infeasible for the applicant to collect samples for establishing the baseline pollution load and that remaining will result in significant improvement that would not otherwise occur. Pre-existing discharges for which it is infeasible to collect samples for determination of baseline pollutant levels include, but are not limited to, a discharge that exists as a diffuse groundwater flow that cannot be assessed via sample collection; a base flow to a receiving stream that cannot be monitored separate from the receiving stream; a discharge on a steep or hazardous slope that is inaccessible for sample collection; or a number of discharges so extensive that monitoring of individual discharges is infeasible; and

(b) The chief recommends and the Ohio environmental protection agency issues a non-numeric remaining NPDES permit. Under this permit, the operator shall implement a pollution abatement plan incorporating best management practices designed to reduce the pollutant levels of acidity, iron, manganese, and settleable and suspended solids in pre-existing discharges. The monitoring plan shall be determined by the chief. An operator who is issued a non-numeric remaining NPDES permit shall not be subject to paragraphs (F)(2) to (F)(6) or paragraphs (H)(2)(c) and (H)(3)(c) of this rule;



(5) Provide a description of the hydrology and geology of the proposed pollution abatement area that includes the plans for and results of:

(a) A detailed water quality and quantity sampling program including seasonal variations and variations in response to precipitation events, for pH, total alkalinity, total acidity, total iron, total manganese, total aluminum, total suspended solids, hardness, flow rates, and other water quality parameters the chief deems relevant. The base line pollution load shall be determined from the data collected using this sampling program; and

(b) Testing of the overburden and spoil in accordance with paragraph (C) of rule 1501:13-4-04 of the Administrative Code. The test holes shall be representative of the pollution abatement area with at least one test hole drilled through spoil.

(6) Provide a description of the abatement plan that represents best available technology economically achievable and includes:

(a) Plans, cross sections, and schematic drawings describing the abatement plan proposed to be implemented; and

(b) A description and explanation of each best management practice in the proposed abatement plan.

(D) Approval or denial by the chief.

(1) No authorization shall be granted under this rule unless the applicant seeking the authorization affirmatively demonstrates to the satisfaction of the chief on the basis of information set forth in the application that:

(a) Neither the applicant; any partner if the applicant is a partnership; any officer, principal shareholder, or director, if the applicant is a corporation; any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant; nor any contractor or subcontractor of the applicant has any of the following:

(i) Responsibility or liability under Chapter 1513. of the Revised Code or these rules as a permittee



for treating the discharges of water pollutants from or on the proposed pollution abatement area;

(ii) Any responsibility or liability under Chapter 1513. of the Revised Code or these rules for reclaiming the proposed pollution abatement area;

(iii) During the eighteen months prior to submittal of the request for authorization under this rule, had a permit suspension or revocation based on a determination by the chief of a demonstrated pattern of willful violation of Chapter 1513. of the Revised Code or rules adopted thereunder, with respect to water quality, effluent limitations, or surface- and ground-water monitoring; or

(iv) Ever forfeited a coal or surface mining bond, performance security, or similar security deposited in lieu of bond in this state or any other state or with the United States;

(b) The proposed abatement plan represents the best available technology economically achievable and will potentially reduce the base line pollution load;

(c) The surface mining operation on the proposed pollution abatement area will not cause any additional ground water degradation; and

(d) All requirements of paragraph (E) of rule 1501:13-5-01 of the Administrative Code that are not inconsistent with paragraph (D) of this rule have been met.

(2) An authorization may be denied under this rule if granting the authorization will, or is likely to, affect any legal responsibility or liability under Chapter 1513. of the Revised Code or these rules, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

(3) No authorization may be granted under this rule unless there are one or more pre-existing discharge(s) from or on the pollution abatement area.

(4) The authorization allowed under this rule is only for the pollution abatement area and does not apply to other areas of the permit.



(5) No authorization may be granted under this rule until a remaining NPDES permit has been issued by the Ohio environmental protection agency and a copy of the remaining NPDES permit has been provided to the chief.

(E) Performance standards. Any permittee who receives an authorization under this rule shall comply with Chapters 1501:13-9 to 1501:13-13 of the Administrative Code unless otherwise specifically provided in this rule. The permittee shall also:

(1) Implement and maintain the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of paragraph (H) of this rule are met;

(2) Implement the approved abatement plan; and

(3) As required in the authorization, submit a certification by the supervising professional engineer of the proper construction of certain steps of the abatement plan which may include, but not be limited to, the completion of mine seals, compaction tests, subsurface drains and, where necessary, stability analyses.

(F) Treatment of discharges.

(1) For any pre-existing discharges from or on the pollution abatement area that are commingled with active mining wastewater, the permittee shall comply with paragraph (B) of rule 1501:13-9-04 of the Administrative Code until the pollution abatement plan is implemented and the commingling has ceased.

(2) The permittee shall treat the pre-existing discharges from or on the pollution abatement area in the event that the numeric effluent limitations established in the remaining NPDES permit are exceeded as determined by using procedures contained in Appendix B of 40 C.F.R. Part 434.

(3) Treatment shall be initiated if necessary to meet the numeric effluent limitations established in the remaining NPDES permit, and shall be continued or reinitiated as long or as often as necessary to meet the numeric effluent limitations established in the remaining NPDES permit prior to final performance security release pursuant to paragraph (H)(3) of this rule.



(4) Sampling sites for water samples collected to ensure compliance with 40 C.F.R. Part 434 shall be determined by the chief.

(5) A permittee required to treat pre-existing discharges pursuant to paragraph (F)(2) of this rule will be allowed to discontinue treating the discharges when the permittee affirmatively demonstrates to the chief's satisfaction that:

(a) The untreated pre-existing discharges are no longer exceeding the effluent limitations established in the remaining NPDES permit, as shown by all surface-water monitoring conducted by the permittee or the division of mineral resources management;

(b) Coal mining activities pursuant to the permit, including the pollution abatement area, are being or were conducted in accordance with all of the requirements of the permit and the authorization, Chapter 1513. of the Revised Code and rules adopted thereunder, unless otherwise specifically provided in this rule;

(c) The permittee has satisfactorily implemented each step of the abatement plan as approved in the authorization; and

(d) The permittee is not causing or contributing to any additional ground water degradation by re-affecting the pollution abatement area.

(6) Any discontinuance of treatment pursuant to paragraph (F)(5) of this rule shall not be deemed or construed to be or to authorize a release of performance security under rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code.

(G) Request for performance security release. Paragraph (H) of this rule shall apply to the release of performance security for pollution abatement areas authorized by this rule. Paragraph (B) of rule 1501:13-7-05 and paragraph (B) of rule 1501:13-7-05.1 of the Administrative Code shall be inapplicable to such release of performance security.

(H) Criteria and schedule for release of performance security on pollution abatement areas.



(1) Phase I performance security release. The chief shall release up to fifty per cent of the amount of performance security for the authorized pollution abatement area if the permittee demonstrates and the chief finds that:

(a) The coal mining operations were conducted on the permit area, including the pollution abatement area, in accordance with all of the requirements of the permit and the authorization, Chapter 1513. of the Revised Code and these rules, unless otherwise specifically provided in this rule; and

(b) The permittee has satisfactorily completed backfilling, regrading, and drainage control in accordance with the approved reclamation plan and each pertinent step of the approved abatement plan;

(2) Phase II performance security release. The chief shall release an additional amount not to exceed thirty-five per cent of the amount of performance security for the authorized pollution abatement area if the permittee demonstrates and the chief finds that:

(a) The permittee has replaced the topsoil or material conserved pursuant to rule 1501:13-9-03 of the Administrative Code, completed planting and established revegetation in accordance with the approved reclamation plan, and achieved the standards of success for such revegetation set forth in rule 1501:13-9-15 of the Administrative Code;

(b) The permittee is not causing or contributing to any surface water pollution or ground water degradation by re-affecting or mining the pollution abatement area;

(c) For a period of twelve months after discontinuance of treatment pursuant to paragraph (F)(5) of this rule, the permittee has not exceeded the numeric effluent limitations established in the remaining NPDES permit as shown by all ground- and surface-water monitoring conducted by the permittee or the division of mineral resources management; and

(d) The permittee has implemented all pertinent steps provided in the approved abatement plan.

(3) The chief shall release the remaining portion of the amount of performance security on the



authorized pollution abatement area if the permittee demonstrates and the chief finds that:

- (a) The permittee has successfully completed all of the approved abatement plan and the reclamation plan, and the pollution abatement area is capable of supporting the postmining land use approved under rule 1501:13-9-17 of the Administrative Code;
- (b) The permittee has complied with all of the requirements of the permit and the authorization, Chapter 1513. of the Revised Code and these rules, unless otherwise specifically provided in this rule;
- (c) For a period of two years after discontinuance of treatment pursuant to paragraph (F)(5) of this rule, the permittee has not exceeded the numeric effluent limitations established in the remaining NPDES permit as shown by all ground- and surface-water monitoring conducted by the permittee or the division of mineral resources management; and
- (d) The applicable period of extended responsibility for revegetation under rule 1501:13-9-15 of the Administrative Code has expired.
- (I) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.