



Ohio Administrative Code

Rule 1501:13-7-02 Amount and duration of performance security.

Effective: October 28, 2010

(A) Performance security amount for permits for which the applicant or permittee provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of rule 1501:13-7-01 of the Administrative Code.

(1) The amount of the performance security shall be two thousand five hundred dollars per acre of land on which the permittee will conduct a coal mining and reclamation operation under the initial term of the permit as indicated in the application.

(2) A permittee's responsibility for repairing material damage and replacement of water supplies resulting from subsidence may be satisfied by liability insurance required under Chapter 1513. of the Revised Code if the liability insurance policy contains terms and conditions that specifically provide coverage for repairing material damage and replacement of water supplies resulting from subsidence.

(B) Performance security amount for permits for which the applicant or permittee provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of rule 1501:13-7-01 of the Administrative Code.

(1) The amount of performance security shall be equal to the estimated cost of reclamation, as determined by the chief under paragraph (B) of rule 1501:13-7-01 of the Administrative Code, for:

(a) The land on which the permittee will conduct a coal mining and reclamation operation under the initial term of the permit; or

(b) The incremental mining units that will be affected in the first permit year, if the permittee or applicant elects to provide performance security separately for each incremental mining unit in accordance with paragraph (A)(6)(b) of rule 1501:13-7-01 of the Administrative Code.

(2) A permittee's responsibility for repairing material damage and replacement of water supplies



resulting from subsidence shall be satisfied by either of the following:

(a) The purchase prior to mining of a noncancelable premium-prepaid liability insurance policy in lieu of the permittee's performance security for subsidence damage. The insurance policy shall contain terms and conditions that specifically provide coverage for repairing material damage and replacement of water supplies resulting from subsidence; or

(b) The provision of additional performance security in the amount of the estimated cost to the division of mineral resources management to repair material damage resulting from subsidence, if the permittee will be repairing material damage, or to replace the water supplies resulting from subsidence, if the permittee will be replacing the water supplies, until the repair or replacement is completed.

(i) If repair or replacement is completed, or compensation for structures that have been damaged by subsidence is provided, by the permittee within ninety days of the occurrence of the subsidence, additional performance security is not required.

(ii) The chief may extend the ninety-day period for a period not to exceed one year if the chief determines that the permittee has demonstrated in writing that subsidence is not complete and that probable subsidence-related damage to lands or protected structures likely will continue to occur or that reasonably anticipated changes affecting the water supplies likely will occur and, as a result, the completion of repairs of subsidence-related material damage to lands or protected structures or the replacement of water supplies within ninety days of the occurrence of the subsidence would be unreasonable.

(C) Minimum amount. The amount of the performance security for coal mining and reclamation operations shall be ten thousand dollars at a minimum for the entire area under one permit and the minimum amount shall be maintained on deposit until such time as the permittee is released from all liability in accordance with rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code.

(D) Period of liability

(1) Liability under a performance security or securities applicable to a permit shall continue until all



reclamation and restoration work under the requirements of Chapter 1513. of the Revised Code, these rules, and the provisions of the mining and reclamation plan has been completed, the period of extended responsibility for revegetation has expired in accordance with rule 1501:13-9-15 of the Administrative Code, and the permittee is released from liability in accordance with rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code.

(2) The performance security liability of the permittee shall include only those actions which the permittee is obligated to take under the permit, Chapter 1513. of the Revised Code and these rules, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved in the permit under rule 1501:13-9-17 of the Administrative Code.

(3) Implementation of an alternative postmining land use approved under paragraph (D) of rule 1501:13-9-17 of the Administrative Code which is beyond the control of the permittee, need not be covered by the performance security.

(E) Adjustment of amount.

(1) The chief shall adjust the amount of the estimated cost of reclamation determined under paragraph (B) of rule 1501:13-7-01 of the Administrative Code if the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases.

(2) For permits for which the permittee provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of rule 1501:13-7-01 of the Administrative Code, the chief shall adjust the amount of a permittee's performance security provided in accordance with this rule if the land that is affected by mining increases or if the cost of reclamation increases and shall allow the permittee the option of reducing the amount of performance security provided in accordance with this rule if the land that is affected by mining decreases or if the cost of reclamation decreases.

(3) The chief may review at any time during the term of the permit the estimated cost of reclamation determined under paragraph (B) of rule 1501:13-7-01 of the Administrative Code and the amount of a permittee's performance security provided in accordance with this rule to determine whether an adjustment is needed, but at a minimum the chief shall review the estimated cost of reclamation and



the amount of a permittee's performance security at the following times:

- (a) When a permittee files an annual report and annual map with the chief in accordance with paragraphs (A) and (B) of rule 1501:13-4-07 of the Administrative Code, a letter to the chief in accordance with paragraph (C) of rule 1501:13-4-07 of the Administrative Code, or a final report to the chief in accordance with paragraph (D) of rule 1501:13-4-07 of the Administrative Code;
 - (b) When a permittee files an application for revision of a permit under rule 1501:13-4-06 of the Administrative Code which contains information that affects the estimated cost of reclamation;
 - (c) When a permittee files an application for renewal of a permit under rule 1501:13-4-06 of the Administrative Code;
 - (d) When a permittee files additional performance security in accordance with paragraphs (A)(6)(c) of rule 1501:13-7-01 of the Administrative Code;
 - (e) When a permittee's operation advances into any succeeding incremental area or incremental mining unit, or begins any new operational stage;
 - (f) When any event occurs on or results from a mining and reclamation operation, including subsidence, discharges, or contamination, diminution or interruption of a water supply, that affects the estimated cost of reclamation;
 - (g) When the chief issues a cessation order for failure to abate a violation for non-contemporaneous reclamation under paragraph (A)(3) of rule 1501:13-14-02 of the Administrative Code; and
 - (h) When the chief issues a show cause order to a permittee to show cause why the performance security should not be forfeited under rule 1501:13-7-06 of the Administrative Code.
- (4) The chief shall notify, in writing, persons involved in performance security coverage of any performance security adjustments. For purposes of this rule a person involved in performance security coverage shall include the permittee, the surety, and any other person with a property interest in collateral posted under these rules who has in writing to the chief requested such



notification at the time the collateral is posted or the interest is acquired, whichever occurs later.

(5) The permittee may request an informal conference with the chief concerning a performance security adjustment made under paragraph (E) of this rule, and the chief shall provide such an informal conference in accordance with rule 1501:13-14-05 of the Administrative Code.

(a) If the chief increases the amount of performance security under paragraph (E) of this rule, the permittee shall provide additional performance security in an amount determined by the chief.

(b) If the chief decreases the amount of performance security under paragraph (E) of this rule, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount of reduction to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief.

(7) A permittee may request a reduction in the amount of the performance security by submitting to the chief documentation proving that the permittee's method of operation or other circumstances have changed such that the amount of the performance security provided by the permittee exceeds the estimated cost of reclamation if the reclamation would have to be performed by the division of mineral resources management in the event of forfeiture of the performance security. The chief shall examine the documentation and determine whether the permittee's performance security exceeds the estimated cost of reclamation. If the chief determines that the performance security exceeds that estimated cost, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief.

(8) An adjustment in the amount of performance security under paragraph (E) of this rule shall not be considered release of performance security and is not subject to division (F) of section 1513.16 of the Revised Code.