



Ohio Administrative Code

Rule 1501:13-7-05 Procedures, criteria, and schedule for release of performance security for permits reliant on the reclamation forfeiture fund.

Effective: January 17, 2016

This rule applies to a permittee that 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.

(A) Procedures for seeking release of performance security.

(1) Request for approval of reclamation. After all reclamation, restoration, and abatement work in a reclamation phase, as defined in paragraph (B)(1) of this rule, is completed on the entire permit area or on an incremental area, the permittee, or any person authorized to act on his or her behalf, shall file a request with the chief for approval of that reclamation. A request for approval of a reclamation phase shall include a request for release of performance security. A request for approval of reclamation may be filed only at times or during seasons that allow the chief to evaluate properly the reclamation reported to be completed.

(2) Contents of request for approval of reclamation.

(a) Every request for approval of reclamation for a particular reclamation phase shall include:

(i) The location and the number of acres of land subject to the request;

(ii) The permit number;

(iii) The amount of performance security for the area subject to the request and the phase of reclamation sought to be released; and

(iv) A notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of Chapter 1513. of the Revised Code, the rules adopted thereunder and the approved reclamation plan.



(b) The request for approval of reclamation phase II or any attachments to the request shall also include:

(i) The results of tests on the soil of the area requested for release for such vegetation-sustaining factors as potassium, phosphorus, and lime, and a lime recommendation;

(ii) The planting report required under rule 1501:13-9-15 of the Administrative Code;

(iii) The number of acres of the area requested for release that are reclaimed as prime farmland; and

(iv) Yield data for those acres reclaimed as prime farmland, if appropriate.

(c) The request for approval of reclamation phase III or any attachments to the request shall also state:

(i) The number of acres of the area requested for release that are reclaimed as prime farmland;

(ii) Yield data for those acres reclaimed as cropland, prime farmland, pasture or grazing land, if appropriate; and

(iii) The number of acres of the area requested for release that are reclaimed as lands eligible for remining.

(d) With every request for approval of reclamation for a particular reclamation phase, the permittee shall submit copies of the letters the permittee has sent to adjoining property owners, local government bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the coal mining and reclamation activities took place, notifying them of the permittee's intention to seek release of performance security.

(3) At the time that a request for release of performance security is filed with the chief, the permittee shall publish an advertisement, described in division (F)(1) of section 1513.16 of the Revised Code, at least once a week for four successive weeks in a newspaper of general circulation in the locality of



the coal mining operation. In addition to the requirements specified in division (F)(1) of section 1513.16 of the Revised Code, the advertisement shall contain the permittee's name and shall state that written comments, objections, and requests for a performance security release conference may be submitted to the chief pursuant to rule 1501:13-7-08 of the Administrative Code. The advertisement shall also provide the address to which, and closing date by which, written comments, objections and requests for performance security release conferences must be sent. Within thirty days after filing a request for release with the chief, the permittee shall submit a copy of this advertisement to the chief.

(4) After the publication required by paragraph (A)(3) of this rule and prior to the release of performance security, the permittee shall submit to the chief a notarized proof of publication from the newspaper that published the advertisement.

(5) Inspection by the chief.

(a) Within thirty days after the permittee has complied with the requirements of paragraphs (A)(1), (A)(2), and (A)(3) of this rule, the chief shall conduct an inspection and evaluation of the reclamation work involved. The surface owner, or agent or lessee of the surface owner, shall be given notice of such inspection and may participate with the chief or his or her authorized representative in making the performance security release inspection.

(b) The chief shall consider during inspection and evaluation of the reclamation:

(i) Whether the permittee has met the requirements of Chapter 1513. of the Revised Code, these rules, any orders issued during mining and reclamation, and the specifications of the approved mining and reclamation plan;

(ii) The degree of difficulty to complete any remaining reclamation;

(iii) Whether pollution of surface and subsurface water is occurring;

(iv) The probability the pollution will continue or occur again; and



(v) The estimated cost of abating the pollution.

(6) Objections to release of performance security and request for performance security release conference.

(a) Within thirty days after the last newspaper publication of the filing of the request for release, written objections to the proposed release of performance security may be filed with the chief by the following persons:

(i) A person with a valid legal interest that might be adversely affected by release of the performance security;

(ii) The responsible officer or head of any federal, state, or local government agency that:

(a) Has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation; or

(b) Is authorized to develop and enforce environmental standards with respect to the operation.

(b) Persons who may file objections under paragraph (A)(6)(a) of this rule may also request a performance security release conference on the proposed release of performance security pursuant to rule 1501:13-7-08 of the Administrative Code.

(7) Decision of the chief; notice of review.

(a) The chief shall notify in writing the permittee and any other interested parties of his or her decision to approve or disapprove the request for release and his or her decision to release or not to release all or part of the performance security:

(i) Within sixty days after the permittee has filed a request for release and complied with the requirements of paragraphs (A)(1), (A)(2), and (A)(3) of this rule, if no performance security release conference is held pursuant to paragraph (A)(6)(b) of this rule; or



(ii) Within sixty days after the performance security release conference, if a performance security release conference is held pursuant to paragraph (A)(6)(b) of this rule.

(b) If the chief disapproves a request for release, the chief shall notify the permittee in writing, stating the reasons for disapproval, recommending corrective action necessary to secure release, and informing the permittee of his or her right to appeal this decision to the reclamation commission.

(c) Within thirty days after notification of the final decision of the chief regarding the performance security release, the permittee or any person with an interest that is or may be adversely affected may file an appeal of that decision with the reclamation commission.

(d) If the chief intends to release the performance security, the chief shall notify the municipal corporation in which the coal mining operation is located by certified mail at least thirty days before release of all or part of the performance security.

(e) The chief shall not release performance security until proceedings in review of a decision to release are terminated or, if rights to administrative and judicial review have not been exercised, until periods allowed for filing applications for review have expired.

(B) Criteria and schedule for release of performance security.

(1) Reclamation phases defined.

(a) Reclamation phase I shall be determined to be completed when, in accordance with the approved mining and reclamation plan:

(i) Backfilling and regrading have been completed; and

(ii) Drainage controls have been established.

(b) Reclamation phase II shall be determined to be completed when:

(i) Resoiling is completed and revegetation meets the standards for success for a phase II



performance security release in accordance with rule 1501:13-9-15 of the Administrative Code;

(ii) The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of division (A)(10) of section 1513.16 of the Revised Code, these rules, permit conditions, or the mining and reclamation plan;

(iii) With respect to prime farmlands, soil replacement has been carried out in accordance with the requirements of rule 1501:13-13-03 of the Administrative Code and division (A)(7) of section 1513.16 of the Revised Code, and soil productivity has returned to the levels of yield required by rule 1501:13-4-12 of the Administrative Code;

(iv) The provisions of a plan approved by the chief for the sound future management of any permanent impoundment by the permittee or landowner are implemented to the satisfaction of the chief; and

(v) Any permanent structures to be maintained as part of the postmining land use are included in the approved reclamation plan.

(c) Reclamation phase III shall be determined to be completed when:

(i) The permittee has successfully completed all coal mining and reclamation operations in accordance with the approved reclamation plan and has met the phase III revegetation success standards in accordance with rule 1501:13-9-15 of the Administrative Code;

(ii) The permittee has achieved compliance with the requirements of Chapter 1513. of the Revised Code, these rules, and the permit; and

(iii) The applicable liability period under rule 1501:13-7-02 of the Administrative Code has expired.

(2) Approval of reclamation phase.

(a) The chief may approve a request and release liability under performance security according to the schedule set forth in paragraph (B)(3) of this rule only upon the chief's determination that



reclamation in a particular phase is complete on an incremental area or the entire permit area.

(b) The chief may approve release of performance security for an incremental area when reclamation in a particular phase is complete on that incremental area even though such reclamation is not complete on other incremental areas within the same permit, provided that no release of performance security for any acreage within an incremental area may be approved until reclamation in the applicable phase is complete for all acres within that incremental area.

(c) A portion of an incremental area requiring extended liability because of augmentation or failure to achieve the crop yields for prime farmland required for phase II performance security release by rule 1501:13-9-15 of the Administrative Code may, upon approval by the chief, be separated from the rest of the incremental area and have performance security provided separately. Before determining that extended liability should apply to only a portion of the incremental area, the chief shall determine such portion:

(i) Is not significant in extent in relation to the entire area under the performance security; and

(ii) Is limited to isolated, distinguishable, and contiguous portions of the area for which performance security has been provided and does not comprise scattered or intermittent occurrences throughout the area for which performance security has been provided.

(d) If an area is separated under paragraph (B)(2)(c) of this rule, that portion shall have performance security provided separately and the applicable period of liability, in accordance with rule 1501:13-7-02 of the Administrative Code, shall commence anew. The period of liability for the remaining area shall continue in effect without extension. The amount of performance security on the original incremental area may be adjusted in accordance with rule 1501:13-7-02 of the Administrative Code.

(e) The chief may approve a request for release of performance security for reclamation phase II on areas from which temporary sedimentation ponds have not yet been removed, provided all requirements for a phase II performance security release are met.

(f) A portion of an incremental area requiring a reduced period of liability because of its classification as a remaining area shall be separated from the rest of the incremental area and shall be



eligible for phase III performance security release pursuant to paragraph (O) of rule 1501:13-9-15 of the Administrative Code.

(3) Schedule for release.

(a) When reclamation phase I is approved by the chief for an incremental area or the entire permit area, the chief shall release performance security liability in the amount of fifty per cent of the performance security for the incremental area or the entire permit area on which the reclamation phase I is complete.

(b) When reclamation phase II is approved by the chief for an incremental area or the entire permit area, the chief shall release performance security liability in an amount not exceeding thirty-five per cent of the original performance security for the incremental area or the entire permit area on which the reclamation phase II is complete.

(c) When reclamation phase III is approved by the chief for an incremental area or the entire permit area, the chief shall release the remaining performance security liability for the incremental area or entire permit area.

(4) Order of release. With the exception of certificates of deposit, trust funds, and cash, which shall be released in any manner and order as determined by the chief, other forms of performance security shall be released under paragraph (B)(3) of this rule in the order in which they were filed, and according to the following order by form of performance security:

(a) The surety bond filed earliest in the permit term, followed by surety bond filed later in the permit term;

(b) The letter of credit filed earliest in the permit term, followed by letters of credit filed later in the permit term; and

(c) Any remaining collateral bond, in the order in which it was filed.