



Ohio Revised Code

Section 1513.08 Filing performance bond or deposit of cash or securities.

Effective: June 15, 2009

Legislation: Senate Bill 73 - 128th General Assembly

(A) After a coal mining and reclamation permit application has been approved, the applicant shall file with the chief of the division of mineral resources management, on a form prescribed and furnished by the chief, the performance security required under this section that shall be payable to the state and conditioned on the faithful performance of all the requirements of this chapter and rules adopted under it and the terms and conditions of the permit.

(B) Using the information contained in the permit application; the requirements contained in the approved permit and reclamation plan; and, after considering the topography, geology, hydrology, and revegetation potential of the area of the approved permit, the probable difficulty 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 applicant. The chief shall send written notice of the amount of the estimated cost of reclamation by certified mail to the applicant. The applicant shall send written notice to the chief indicating the method by which the applicant will provide the performance security pursuant to division (C) of this section.

(C) The applicant shall provide the performance security in an amount using one of the following:

(1) If the applicant elects to provide performance security without reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code, the amount of the estimated cost of reclamation as determined by the chief under division (B) of this section for the increments of land on which the operator will conduct a coal mining and reclamation operation under the initial term of the permit as indicated in the application;

(2) If the applicant elects to provide performance security together with reliance on the reclamation forfeiture fund through payment of the additional tax on the severance of coal that is levied under division (A)(8) of section 5749.02 of the Revised Code, an amount of twenty-five hundred dollars per acre of land on which the operator will conduct coal mining and reclamation under the initial



term of the permit as indicated in the application. However, in order for an applicant to be eligible to provide performance security in accordance with division (C)(2) of this section, 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. In the event of forfeiture of performance security that was provided in accordance with division (C)(2) of this section, the difference between the amount of that performance security and the estimated cost of reclamation as determined by the chief under division (B) of this section shall be obtained from money in the reclamation forfeiture fund as needed to complete the reclamation.

The performance security provided under division (C) of this section for the entire area to be mined under one permit issued under this chapter shall not be less than ten thousand dollars.

The performance security shall cover areas of land affected by mining within or immediately adjacent to the permitted area, so long as the total number of acres does not exceed the number of acres for which the performance security is provided. However, the authority for the performance security to cover areas of land immediately adjacent to the permitted area does not authorize a permittee to mine areas outside an approved permit area. As succeeding increments of coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the chief additional performance security to cover the increments in accordance with this section. If a permittee intends to mine areas outside the approved permit area, the permittee shall provide additional performance security in accordance with this section to cover the areas to be mined.

If an applicant or permittee has not held a permit issued under this chapter for any coal mining and reclamation operation for a period of five years or more, the applicant or permittee shall provide performance security in accordance with division (C)(1) of this section in the full amount of the estimated cost of reclamation as determined by the chief for a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine. If an applicant for a permit for a coal preparation plant or coal refuse disposal area or a permittee of a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine has held a permit issued under this chapter for any coal mining and reclamation operation for a period of five years or more, the applicant or permittee may provide performance security for the coal preparation plant or coal refuse disposal area either in accordance with division (C)(1) of this section



in the full amount of the estimated cost of reclamation as determined by the chief or in accordance with division (C)(2) of this section in an amount of twenty-five hundred dollars per acre of land with reliance on the reclamation forfeiture fund. If a permittee has previously provided performance security under division (C)(1) of this section for a coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine and elects to provide performance security in accordance with division (C)(2) of this section, the permittee shall submit written notice to the chief indicating that the permittee elects to provide performance security in accordance with division (C)(2) of this section. Upon receipt of such a written notice, the chief shall release to the permittee the amount of the performance security previously provided under division (C)(1) of this section that exceeds the amount of performance security that is required to be provided under division (C)(2) of this section.

(D) A permittee's liability under the performance security shall be limited to the obligations established under the permit, which include completion of the reclamation plan in order to make the land capable of supporting the postmining land use that was approved in the permit. The period of liability under the performance security shall be for the duration of the coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements under section 1513.16 of the Revised Code.

(E) The amount of the estimated cost of reclamation determined under division (B) of this section and the amount of a permittee's performance security provided in accordance with division (C)(1) of this section shall be adjusted by the chief as the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases. If the performance security was provided in accordance with division (C)(2) of this section and the chief has issued a cessation order under division (D)(2) of section 1513.02 of the Revised Code for failure to abate a violation of the contemporaneous reclamation requirement under division (A)(15) of section 1513.16 of the Revised Code, the chief may require the permittee to increase the amount of performance security from twenty-five hundred dollars per acre of land to five thousand dollars per acre of land.

The chief shall notify the permittee, each surety, and any person who has a property interest in the performance security and who has requested to be notified of any proposed adjustment to the performance security. The permittee may request an informal conference with the chief concerning the proposed adjustment, and the chief shall provide such an informal conference.



If the chief increases the amount of performance security under this division, the permittee shall provide additional performance security in an amount determined by the chief. If the chief decreases the amount of performance security under this division, 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.

(F) A permittee may request a reduction in the amount of the performance security by submitting to the chief documentation proving 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 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. Adjustments in the amount of performance security under this division shall not be considered release of performance security and are not subject to section 1513.16 of the Revised Code.

(G) If the performance security is a bond, it shall be executed by the operator and a corporate surety licensed to do business in this state. If the performance security is a cash deposit or negotiable certificates of deposit of a bank or savings and loan association, the bank or savings and loan association shall be licensed and operating in this state. The cash deposit or market value of the securities shall be equal to or greater than the amount of the performance security required under this section. The chief shall review any documents pertaining to the performance security and approve or disapprove the documents. The chief shall notify the applicant of the chief's determination.

(H) If the performance security is a bond, the chief may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the chief the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.



(I) Performance security provided under this section may be held in trust, provided that the state is the primary beneficiary of the trust and the custodian of the performance security held in trust is a bank, trust company, or other financial institution that is licensed and operating in this state. The chief shall review the trust document and approve or disapprove the document. The chief shall notify the applicant of the chief's determination.

(J) If a surety, bank, savings and loan association, trust company, or other financial institution that holds the performance security required under this section becomes insolvent, the permittee shall notify the chief of the insolvency, and the chief shall order the permittee to submit a plan for replacement performance security within thirty days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(1) of this section, the permittee shall provide the replacement performance security within ninety days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(2) of this section, the permittee shall provide the replacement performance security within one year after receipt of notice from the chief, and, for a period of one year after the permittee's receipt of notice from the chief or until the permittee provides the replacement performance security, whichever occurs first, money in the reclamation forfeiture fund shall be the permittee's replacement performance security in an amount not to exceed the estimated cost of reclamation as determined by the chief.

(K) If a permittee provided performance security in accordance with division (C)(1) of this section, the permittee's responsibility for repairing material damage and replacement of water supply resulting from subsidence shall be satisfied by either of the following:

(1) 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 supply resulting from subsidence.

(2) The provision of additional performance security in the amount of the estimated cost to the division of mineral resources management to repair material damage and replace water supplies resulting from subsidence until the repair or replacement is completed. However, if such 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. In addition, 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 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 supply within ninety days of the occurrence of the subsidence would be unreasonable.

(L) If the performance security provided in accordance with this section exceeds the estimated cost of reclamation, the chief may authorize the amount of the performance security that exceeds the estimated cost of reclamation together with any interest or other earnings on the performance security to be paid to the permittee.

(M) A permittee that held a valid coal mining and reclamation permit immediately prior to April 6, 2007, shall provide, not later than a date established by the chief, performance security in accordance with division (C)(1) or (2) of this section, rather than in accordance with the law as it existed prior to that date, by filing it with the chief on a form that the chief prescribes and furnishes. Accordingly, for purposes of this section, "applicant" is deemed to include such a permittee.

(N) As used in this section:

(1) "Affiliate of the applicant" means an entity that has a parent entity in common with the applicant.

(2) "Owner and controller of the applicant" means a person that has any relationship with the applicant that gives the person authority to determine directly or indirectly the manner in which the applicant conducts coal mining operations.