

Ohio Department of Natural Resources  
Division of Mineral Resources Management

**\*\* Procedure Directive\*\***

Performance Security 2007-01

**SUBJECT:** Preliminary Implementation of Performance Security provisions of House Bill 443

**EFFECTIVE:** March 2, 2007

**PURPOSE:** The Ohio legislature passed House Bill 443 in 2006, which changes the Performance Security requirements for coal mining operations, including coal preparation plants and refuse disposal facilities. The Performance Security requirements for coal mining operations become effective on April 4, 2007.

**NOTE:** A copy of the bill can be found on the Web at:

[http://www.legislature.state.oh.us/bills.cfm?ID=126\\_HB\\_0443](http://www.legislature.state.oh.us/bills.cfm?ID=126_HB_0443)

The Division has completed a review of House Bill 443 and has determined that certain provisions require immediate implementation due to the effective date of the law. There are numerous provisions that will require rule making at a later date in cooperation with the regulated community and the Office of Surface Mining. In the meantime the Division will proceed with implementation of the following provisions as outlined below.

**Background:**

**Ohio Revised Code (ORC) 5749.02 Severance Taxes:** The effective date for the severance tax provisions of the bill is April 1, 2007. As of that date all coal mines will pay a base rate of 10 cents per ton of coal. This tax will be used to support the geologic mapping fund, the coal mining regulatory program and the Unreclaimed Lands Fund (aka state abandoned mine land fund).

Surface coal mining operations will pay an additional 1.2 cents per ton, which will be directed, to the Unreclaimed Lands Fund (aka state abandoned mine land fund).

Surface and underground mine operations providing performance security at the rate of \$2500 per acre supplemented by the reclamation forfeiture fund (bond pool) will pay an additional severance tax of 14 cents per ton.

**ORC 1513.08 (B) Estimated Cost of Reclamation:** The Chief is required to provide an estimate of the cost for the Division to reclaim the proposed mine site if the operator defaults. The Chief must provide this estimate to the applicant once an application is approved. The applicant then must choose how they will provide performance security for the proposed mine site. This estimate, and future adjustments to it, is very important

because it forms the basis for the amount of money that may be available to the Division to reclaim the site in the event of forfeiture.

**ORC 1513.01(W) Types of Performance Security:** Performance security is defined to include a surety bond, certificate of deposit, trust account, and other forms of financial assurance acceptable to the Chief.

For the interim period, until the anticipated rulemaking is completed, the Division will continue to accept all forms of performance security, which have previously been accepted (e.g., surety bond, cash, negotiable certificate of deposit, etc.). Pending the completion of rule making, the Division may accept new forms of performance security (e.g., an annuity; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States, this state, or a municipal corporation in this state; a trust fund of which the state is named a conditional beneficiary; or other form of financial guarantee or financial assurance) on a case-by-case basis as is determined to be acceptable by the Chief.

**Performance Security for Existing Permits:**

Existing Permits: The bond pool covers all existing operations that posted performance security of \$2500 per acre prior to April 4, 2007. All active (final map not submitted) permits that will produce coal after April 4, 2007, will continue to be covered by the bond pool, except in those instances where the permittee elects to provide full cost performance security.

**All surface and underground mines that will produce coal after April 4, 2007, and choosing to remain in the bond pool, must pay the additional 14 cents per ton severance tax for all coal production after April 1, 2007.**

The performance security for existing operations that remain in the bond pool will remain at \$2500 per acre, supplemented by the reclamation forfeiture fund.

Operators that elect to provide full cost performance security may transition to full cost performance security according to the procedures outlined below.

Existing Coal Prep Plants and Coal Refuse Areas Not at a Mine Site: ORC 1513.08 (C) - Existing coal prep plants and coal refuse areas not at a mine site, are required to transition to full cost performance security. Existing coal prep plants and coal refuse areas have until April 4, 2008, to provide the full cost performance security.

Existing Active Permits that Elect to Remain in the Bond Pool: Existing coal mining permits producing coal after April 4, 2007 must notify DMRM in writing (attached form) to remain covered by the bond pool. DMRM will provide a listing to the Department of Taxation of all active permits remaining in the bond pool that are required to pay the 14¢ per ton severance tax.

Existing Active Permits that Elect to Provide Full Cost Performance Security: Operators of existing permits that will produce coal after April 4, 2007, and that wish to cease participation in the bond pool must provide notice (attached form) to the DMRM of this decision by April 4, 2007. Such operations will be required to provide full cost performance security and will not pay any additional severance tax into the bond pool.

**Performance Security for Existing Inactive (final map submitted) Permits:**

Those operations where mining has been completed as of April 4, 2007, i.e. a final map submitted, will not be required to post additional performance security. In the event such operations default on their obligation to reclaim, the existing reclamation forfeiture fund will be used as needed to complete reclamation in accordance with the operator's mining plan.

**Adjacent Area Applications and Incidental Boundary Revisions:**

Applications to increase the size of an existing operation will be required to provide performance security in the same manner as the original permit. The application must include an estimated cost of reclamation. The Chief will make a final determination of the cost of reclamation to the Division prior to issuance of the application.

**New Permits**

**ORC 1513.08(C)(1)(2)** Subsequent to April 4, 2007, surface and underground mine applicants that have held a permit in this state for at least five years (eligible applicant) will have the choice of one of two alternatives to provide performance security when applying for a new permit. Surface and underground mine applicants choosing to provide performance security at the rate of \$2500 per acre supplemented by the reclamation forfeiture fund (bond pool) will pay an additional severance tax of 14 cents per ton. Applicants choosing to provide full cost performance security in an amount determined by the Division will not pay any additional severance tax into the bond pool.

New Permits for Coal Preparation Plants and Coal Refuse Disposal Areas: ORC 1513.08 (C) - Coal preparation plants and coal refuse disposal areas regulated pursuant to OAC 1501:13-4-12 (I) & 1501:13-13-06, but not located within the permitted area of a mine shall provide performance security at full cost in an amount determined by the Division.

**Procedures:**

**Existing Permits:**

All existing coal mines that will produce coal after April 4, 2007 will continue to participate in the bond pool, unless they choose to provide full cost performance security.

**Each coal mine permittee must provide notice to the Division of their choice of performance security using the attached form by April 4, 2007. The form is to be submitted to Sue Grant at the Cambridge regional office.**

Permittees electing to provide full cost performance security in lieu of remaining in the bond pool must notify the Division of their decision by April 4, 2007; otherwise they will remain in the bond pool and pay the additional severance tax of 14 cents per ton for all coal produced subsequent to April 1, 2007.

A permittee electing the full cost option must provide an Application to Revise a Permit (ARP) revising the type of performance security by April 30, 2007. The ARP shall include a revised estimated cost of reclamation and the basis for that estimate. The Chief will review the ARP, and make a final determination of the cost to the Division to complete the reclamation, by May 30, 2007. The Chief will provide this final cost determination to the operator by certified mail. The revised performance security must be provided to the Division by June 30, 2007. A permittee who fails to provide the full cost performance security to the Division by that date will revert to the bond pool and will be required to pay the additional severance tax of 14 cents per ton for all coal produced subsequent to April 1, 2007.

### **Adjacent Area Applications, Incidental Boundary Revisions and other Revisions to Existing Permits**

The applicant must provide a reclamation cost estimate for any application to extend the permit area, or any revision that may impact the cost of reclamation at an existing permit. DMRM will review such cost estimates, and will provide a final determination of the reclamation cost to the Division prior to permit issuance. Such applications will require providing performance security in the same manner as the original permit, i.e. at full cost or at the rate of \$2500/acre along with an additional severance tax of 14 cents per ton.

### **Coal Preparation Plants and Refuse Disposal Facilities not located within a permit for a mine.**

A permittee of such a facility must provide an ARP to include a revised estimated cost of reclamation and the basis for that estimate by June 30, 2007. The Chief will review the ARP, and make a final determination by September 30, 2007 of the cost to the Division of performing the reclamation. Those facilities that are in operation as of April 4, 2007 are required to post full cost security not later than April 4, 2008 pursuant to ORC 1513.08 (C).

### **New Permits:**

Subsequent to April 4, 2007 whenever an eligible applicant applies for a new permit, the Division will determine the estimated cost of reclamation pursuant to 1513.08(B). Subsequent to providing notice to the applicant of such cost, the applicant will have the choice of one of two alternatives to provide performance security for their operations. Coal mine applicants must notify the Division of their choice of providing performance security for their new permit in accordance with the following options:

Option 1: An applicant may choose to provide performance security, in the full amount of the Chief's estimated cost for the Division to reclaim the site if the operator defaults, for increments of land where conducting coal mining and reclamation operations under the initial term of the permit, as indicated in the application. The Chief's estimate may be adjusted as the land affected by mining or the cost of reclamation increases or decreases and will be reviewed periodically in accordance with ORC 1513.08 (E).

Option 2: An applicant may provide performance security at the rate of \$2500/acre, and pay an additional 14 cents per ton severance tax into the bond pool. In order to utilize this option of providing performance security, an applicant must have held a coal mining permit for a period of five years prior to April 4, 2007 pursuant to ORC 1513.08(C)(2).

The Division interprets the law to require the performance security to be provided using the same option for an entire permit, therefore an applicant will not be able to combine full cost performance security and bond pool performance security within the same permit.

In addition once an applicant has posted full cost performance security on a permit and that permit has been mined, the full cost performance security cannot be replaced with bond pool security at later date. Thus applicants are cautioned to make their initial choice of performance security with these limitations in mind.

**Applicants Not Eligible for Bond Pool:**

Mining companies that are not eligible for participation in the bond pool will be notified subsequent to application approval that they must provide full cost performance security in the full amount of the Chief's estimated cost for the Division to reclaim the site if the operator defaults. The full cost performance security required must be posted prior to permit issuance.

**Informal Conference:**

Pursuant to 1513.08 (E) a permittee may request an informal conference concerning the proposed cost estimate for performance security. The Chief may increase, decrease or retain the original estimate subsequent to a review of the information provided at the informal conference.

Summary:

**Surface and Underground Coal Mines Active as of April 4, 2007:**

Permittees choosing to remain in the bond pool:

Notify DMRM by April 4, 2007 of that election.

No change to posted performance security at rate of \$2500/acre.

Commence paying additional severance tax of 14 cents per ton on April 1, 2007.

Permittees choosing to provide full cost performance security:

Notify DMRM by April 4, 2007 of that election.

Provide revised cost estimate and full cost performance security by June 30, 2007.

**Active Coal Refuse Disposal/Preparation Plant:**

Provide full cost performance security, by April 4, 2008, in the full amount of the Chief's estimated cost for the Division to reclaim the site if the operator defaults.

**Surface and Underground Coal Mines Inactive as of April 4, 2007**

No additional performance security required. In the event such operations default on their obligation to reclaim, the existing reclamation forfeiture fund will be used as needed to complete reclamation in accordance with the operator's mining plan.

**Surface and Underground Coal Mines applying for a new permit subsequent to April 4, 2007:**

**Applicants Eligible for and choosing to use the Bond Pool:**

Provide performance security at the rate of \$2500/acre.

Commence paying additional severance tax of 14 cents per ton.

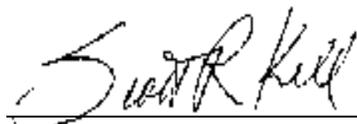
**Applicants Not Eligible for Bond Pool or choosing to provide full cost performance security:**

Provide performance security in the full amount of the Chief's estimated cost for the Division to reclaim the site if the operator defaults.

**Adjacent Area Applications and IBR's**

Provide cost estimate of reclamation subject to approval by DMRM. **NOTE – THIS COST ESTIMATE WILL BE FOR THE ENTIRE PERMIT AREA.**

Provide performance security in same manner as original permit (bond pool or full cost).



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Scott R. Kell, Acting Chief

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