

Ohio Department of Natural Resources
Division of Mineral Resources Management

****Procedure Directive ****

Performance Securities 2010-1

SUBJECT: Performance Securities Procedures

EFFECTIVE: November 5, 2010

PURPOSE: To provide a description of the various types of performance securities acceptable to the division and instructions to complete these forms properly.

This procedure directive replaces PPD Bonding 93-1. Addressed in this directive are the types of performance securities acceptable to the Ohio Division of Mineral Resources Management and information that must be completed for the security to be acceptable. Forms are located on the Division's website at: <http://www.ohiodnr.com/mineral/forms/tabid/10405/Default.aspx>.

Please verify that current forms from the website are submitted ~ older versions will be returned.

- A. **Surety Bond** – All surety bonds submitted for a coal application/permit must be written on a form provided by the Chief. The only surety bond form accepted is located at the division website address here: http://www.dnr.state.oh.us/portals/11/mining/forms/BONDING/SURETY_BOND_NO.doc.

The following items must be completed on each bond form.

1. The bond number must be listed on both page 1 and 2. If not completed or numbers do not match the bond will be returned.
2. The bond designation box located at the top of the form is important in identifying the purpose for submitting the bond. The bond designation must be completed correctly. Please note that the bond form provides three designations. The first designation should be used for applications that have not yet been issued permit numbers. The second designation should be used once the permit number has been established. This would include the submittal of additional bond for an existing permit, bond substitution or an Incidental Boundary Revision. The third designation should be used for adjacent area permit applications. If the proper designation is not checked, the bond will be returned.
3. A Certificate of Authority, stating the Surety Company is licensed to do business in the State of Ohio, must accompany the bond.
4. An original Power of Attorney must be included with current notary dates.
5. The bond must be issued in the name of the permittee or applicant; it cannot be in a different name.
6. The address of the permittee/applicant must be included. The name and address on the *bond* must match the name and address on the *application*.

7. The surety company's name must be included.
8. The surety company's address must be included.
9. The amount of bond must be written out (e.g., seven hundred fifty dollars).
10. The amount of bond must be listed in its numeric form (e.g., \$750.00).
11. The principal must sign the surety bond. The principal name must appear the same wherever shown and be the same as the name of the permittee/applicant. The legal capacity of the principal must be stated in the caption of the bond (e.g., corporation, partnership, sole proprietorship). If the principal is jointly owned, all owners must sign the bond. The person signing on behalf of the corporate principal must state his/her legal capacity and he/she must be the president if it is a corporation. If the officer or person signing on behalf of the corporate principal is other than the president, there must be attached to the bond a resolution or certified evidence of authority that each officer or person has authority to sign on behalf of the principal. The signature of the principal must be witnessed or attested to if it is a corporate principal. Each party is required to sign his/her own name. The corporate principal must be registered with the Ohio Secretary of State's Office.
12. The bond must be written by a surety company with a rating of A or better by A.M. Best (www.ambest.com). Any insurance company not currently rated A or equivalent by a major national rating agency shall provide annually within 30 days of receipt such insurance company's National Association of Insurance Commissioner (NAIC) Insurance Regulatory Information System (IRIS) ratios as calculated by NAIC from the current Annual Statement filed with the NAIC.
13. The bond is not cancelable by the surety at any time for any reason including, but not limited to, non-payment of premium or bankruptcy of the principal.

B. Letters of Credit - All letters of credit must be completed on a form provided by the Chief. (located at the division website address http://www.dnr.state.oh.us/portals/11/mining/forms/BONDING/IRREVOCABLE_STANDBY_LETTER_CREDIT.doc)

A copy of the current Irrevocable Standby Letter of Credit form is attached with reference to the following items that must be completed on each letter of credit form.

1. The letter may only be issued by a bank organized or authorized to do business in Ohio.
2. The date of issuance must appear on the letter of credit.
3. The letter of credit must have an identifying number listed in the body.
4. The name, address and telephone number of the bank issuing the letter of credit must be included.
5. The name of the person or business directing the bank to issue the letter of credit (usually, but not necessarily, the permittee) must be included if other than the permittee.

6. The amount of bond must be written out (e.g., seven hundred fifty dollars).
7. The amount of bond must be listed in its numeric form (e.g., \$750.00).
8. The name of the applicant/permittee, and no other name, must be listed here.
9. The application number is to be listed if the application has not yet been issued a permit number.
10. The name of the applicant/permittee, and no other name, must be listed here.
11. The effective date of the letter of credit must be indicated.
12. The maturity date of the letter of credit must be indicated.
13. The automatic renewal clause should read "not less than (12) twelve months".
14. The location and date where the letter of credit must be presented for payment is indicated here.
15. The name of the issuing bank is indicated here.
16. The signature of an authorized officer of the issuing bank must be on the letter of credit. This signature validates the letter of credit.
17. An Ohio valid and current notary must notarize the letter of credit as well as provide an original seal.

C. Certificates of Deposit - All certificates of deposit must follow the format provided by the Chief. Certificates of deposit must follow the criteria listed below:

1. Certificates of deposit must be made payable only to the State of Ohio, Department of Natural Resources, Division of Mineral Resources Management.
2. Certificates of deposit must be issued by a bank authorized to do business in the State of Ohio and must have an operating branch in Ohio.
3. Certificates of deposit must be irrevocable.
4. Certificates of deposit must be automatically renewable.
5. Certificates of deposit must have an expiration date of not less than 12 months.
6. Certificates of deposit must not exceed the amount of the FDIC insurable amount.
7. The tax ID number on the certificate of deposit must be the permittee. All interest accrued against the certificate of deposit must go directly to the permittee.

8. An original Collateral Bond Indemnity Agreement form must accompany the original certificate of deposit or an original receipt of deposit when applicable. The Indemnity Agreement form can be found at:
http://www.dnr.state.oh.us/portals/11/mining/forms/BONDING/COLLATERAL_BOND_INDEMNITY_AGREEMENT.doc

D. Government Bonds – The bonds that are acceptable to the Division are U.S. Treasury bonds issued by the Bureau of the Public Debt and municipal bonds and other obligations of any county, township, school district, municipal corporation, or other legally constituted taxing subdivision of this state, which is not at the time of such deposit, in default of the payment of principal or interest on any of its bonds or other obligations, for which the full faith and credit of the issuing subdivision is pledged. For additional requirements on government bonds, please contact the coal bonding section of the Division of Mineral Resources Management at (614) 265-6633.

All government bonds must follow the criteria listed below:

1. All government bonds must be authorized by the U.S. Treasury.
2. All government bonds must be accompanied by a Federal Assignment.

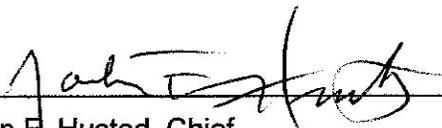
E. Cash Bond – Cash bonds must be a certified, personal or business check from an Ohio bank. A Collateral Bond Indemnity Agreement form dedicating the funds to a specific permit must accompany all checks. The Indemnity Agreement form can be found at:
http://www.dnr.state.oh.us/portals/11/mining/forms/BONDING/COLLATERAL_BOND_INDEMNITY_AGREEMENT.doc

F. Trust Agreement - When establishing a Trust the following criteria must be met:

1. The trust must be established with a bank certified by the Department of Insurance to be a trust bank in the State of Ohio.
2. The trust must be irrevocable.
3. The trust must be comprised of cash or securities acceptable to the Chief.
4. The trust must be created and conform to the laws of the State of Ohio governing trusts.
5. The trust must maintain a balance equal to the current Performance Security Estimate, excluding all fees and costs associated with administering and maintaining the trust.
6. The trust must report monthly to the Division of Mineral Resources Management, Bonding Section with account balances.
7. Officers of the company holding the mining permit, the Trustee and the Chief of the Division of Mineral Resources Management must sign the trust agreement.
8. All signatures must be original.

9. The State of Ohio, Department of Natural Resources, Division of Mineral Resources Management must be irrevocably established as the beneficiary of the trust.
10. The applicant must obtain prior approval from the Chief of the Division of Mineral Resources Management of the Trust Agreement.

G. Federal Land Bond Forms – If the permit for which performance security is being submitted includes federal land, performance security must be payable to the State of Ohio AND the United States of America. To obtain Federal Land Bond Forms or if you have any questions, please contact the coal bonding section at (614) 265-6633.



John F. Husted, Chief
Division of Mineral Resources Management



Ohio Department of Natural Resources
Division of Mineral Resources Management
2045 Morse Road, Bldg. H-3
Columbus, OH 43229-6693

- New L.O.C. No. _____³
Issue Date ____/____/____²
Amount \$ _____
 Renewal of Expiration Date ____/____/____
 Substitution for L.O.C. No. _____
From Bank _____

Please check appropriate boxes

Irrevocable Standby Letter of Credit Coal Mining

Beneficiary:

Ohio Department of Natural Resources
Division of Mineral Resources Management
2045 Morse Road, Bldg. H-3
Columbus, OH 43229-6693

Applicant:⁵

Phone _____

_____¹, located at _____⁴; _____;
(Name of Financial Institution) (Address) (City/State/ Zip)

_____³, hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor
(Telephone)

and agree to pay the State of Ohio, Department of Natural Resources, Division of Mineral Resources Management, upon receipt of a

written demand by the Chief of the Division of Mineral Resources Management, up to an aggregate amount of

_____⁶ dollars (\$ _____⁷) when such written demand is accompanied by a

written statement signed by the Chief, that:

1. The coal mine permittee, _____⁸ has not faithfully performed all requirements of Chapter 1513. of the Revised Code, rules adopted pursuant thereto, or the provisions of the operator's permit and mining and reclamation plan pursuant to:
(Check one and complete the necessary identification number)

- Coal Mining Permit No. _____ or;
 Permit Application No. _____ or;
 Adjacent Area Application No. _____ or;
 Incidental Boundary Revision No. _____ or,

Any area of land immediately adjacent to the permit area or adjacent area permit whether or not such areas are mined pursuant to a valid permit.

2. The coal mine permittee, _____¹⁰ has failed to replace performance security coverage in accordance with the provisions of Rule 1501:13-7-03 (B)(7)(b) of the Administrative Code on or before the thirtieth (30th) day prior to the expiration of this letter of credit.

This letter of credit is effective _____¹¹, 20____, and will expire at the close of business on _____¹², 20____; but such expiration date will automatically be extended for periods of not less than twelve (12) months from any scheduled¹³ expiration date (as originally scheduled or automatically extended) unless the Chief of the Division of Mineral Resources Management is notified by the bank, by certified or registered mail sixty (60) days prior to the expiration date, that the bank does not intend to extend this letter of credit beyond the current expiration date.

The issuing bank will give prompt written notice to the permittee and to the Chief of the Division of Mineral Resources Management and to the Office of Surface Mining Reclamation and Enforcement of any notice received or action filed alleging the insolvency or bankruptcy of the Bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the Bank's charter or license to do business.

In the event the issuing Bank becomes unable to fulfill its obligations under this letter of credit for any reason, written notice shall be given immediately to the permittee and the Chief of the Division of Mineral Resources Management.



We hereby agree that drafts drawn under and in strict compliance with the terms of this credit will be duly honored by us upon presentation at _____¹⁴ on or before the close of business on ____/____/____ or automatically extended date of expiration.

This credit is subject to the most recent edition of the "Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce.

Signed:

_____¹⁵
Name of Issuing Bank (Please type or print)

_____¹⁶
Signature of Authorized Officer of Issuing Bank

Name of Authorized Officer of Issuing Bank (Print)

Official Position (Please Print)

Contact Phone Number- * must be completed

ss: _____¹⁷
Sworn to before me and subscribed in my presence
this ____ DAY OF _____, 20____.

(Notary Public)