

Coal Rules – effective 1/17/2016

Package 1: Definitions rule and Bonding rules

Most of the changes in these rules relate to DMRM's proposal to no longer accept self bonds.

1501:13-1-02 Definitions.

1501:13-7-01 General requirements for providing performance security for coal mining and reclamation operations.

1501:13-7-03 Form, conditions, and terms of performance security.

1501:13-7-04 Self-bonding. *Rule rescinded.*

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

1501:13-7-05.1 Procedures, criteria, and schedule for release of performance security for permits not reliant on the reclamation forfeiture fund.

1501:13-7-06 Performance security forfeiture criteria and procedures.

1501:13-7-07 Liability insurance.

TOTAL 8 rules

Draft Rule 1501:13-1-02, dated 8/23/2013.

This is a summary of the changes made to this rule.

(III) and (VVVVV). Amended to remove self bonds. The Division will no longer accept self bonds as performance security.

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Dated 8/23/2013. See amendments in (III) and (VVVVV); self bonds will no longer be accepted as performance security.

1501:13-1-02 **Definitions.**

As used in Chapters 1501:13-1 to 1501:13-14 of the Administrative Code:

- (A) "Abatement plan" means any individual technique or combination of techniques, the implementation of which may result in reduction of the base line pollution load. Abatement techniques may include but are not limited to best management practices such as: addition of alkaline material, daylighting old underground mines, special plans for managing toxic- and acid-forming material, regrading, and revegetation.
- (B) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned coal mine and reclamation operation or from an area affected by coal mining and reclamation operations.
- (C) "Acid-forming materials" means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will form acids that may create acid drainage.
- (D) "Acid water" means any waters, the pH of which, as determined by standard methods, is less than 6.0.
- (E) "Adjacent area" means the area outside the affected area or permit area where air, surface or ground water, fish, wildlife, vegetation or other resources protected by Chapter 1513. of the Revised Code, determined according to the context in which "adjacent area" is used, are or reasonably could be expected to be adversely affected by proposed coal mining and reclamation operations including probable impacts from underground workings. With respect to underground mining operations, "adjacent area" shall include, at a minimum, the surface areas above full coal recovery areas.
- (F) "Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations.
 - (1) The affected area includes:
 - (a) The disturbed area;
 - (b) Any area upon which coal mining and reclamation operations are conducted;
 - (c) Any adjacent lands the use of which is incidental to coal mining and reclamation operations;

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- (d) All areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and reclamation operations, but may not include public roadways, provided that:
 - (i) The public roadway was in existence prior to the application for the permit;
 - (ii) The effect on the public roadway from mining use will be minor; and
 - (iii) The public roadway is incidentally, rather than directly, part of the mining operation;
 - (e) Any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; and
 - (f) Any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations.
- (2) The affected area does not include surface disturbance attributable solely to underground mine subsidence, provided that this exception shall not be construed as a limitation on the authority of the chief or his or her authorized representative to require submission of information about, or take enforcement or other actions in regard to, subsidence disturbances and conditions existing in areas overlying underground workings before, during, and after mining, which areas are not within the permit or affected area.
- (G) "Angle of draw" means the angle with the vertical, made by a straight line extending away from the edge of the mined-out area to the ground surface, spanning the horizontal distance in which subsidence may occur.
- (H) "Applicant" means any person seeking a permit, permit renewal or revision to a permit, or a transfer, assignment or sale of permit rights from the chief to conduct coal mining and reclamation operations.
- (I) "Application" means the documents and other information filed with the chief under Chapter 1513. of the Revised Code, and rules adopted thereunder, for the issuance of a permit, permit renewal or revision to a permit, or for a transfer, assignment or sale of permit rights for coal mining and reclamation operations.
- (J) "Approximate original contour" means that surface configuration achieved by backfilling and grading of a mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the

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land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may remain where the chief determines that they are in compliance with division (A)(8) of section 1513.16 of the Revised Code.

- (K) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.
- (L) "Area mining" means a method of surface coal mining that involves making a series of parallel mining cuts against the highwall created from the initial mining cut. Spoil from each subsequent cut is placed in the preceding cut where coal has been removed and, as a result, area mining forms a series of parallel spoil ridges. Area mining along the contour differs from contour mining in that at least three successive parallel cuts are made from the initial cut.
- (M) "Auger mining" means a method of mining coal at a highwall by drilling holes or cutting into an exposed coal seam from the highwall and transporting the coal along an auger bit or by conveyors or other means to the surface.
- (N) "Backfill" or "backfilling" means to fill an excavation or pit with material to a predetermined configuration by reducing the peaks, valleys, and outslopes of the spoil, and filling the cut.
- (O) "Base line pollution load" means the characterization of the material being discharged from or on the pollution abatement area, described in terms of mass loading for net acidity, total iron, total manganese, and total suspended solids, including seasonal variations and variations in response to precipitation events.
- (P) "Best available technology economically achievable" means measures and practices which will abate or ameliorate to the maximum extent possible pollution discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.
- (Q) "Best management practice" means a practice implemented during the mining and reclamation of remining sites that is designed to reduce, if not completely eliminate, the pre-existing water pollution problems. Best management practices are tailored to specific mining operations based largely on pre-existing site conditions, hydrology, and geology. Best management practices are designed to function in a physical and/or geochemical manner to reduce pollution loadings. These best management practices may include engineering, geochemical materials handling, daylighting, regrading, revegetation, diversion ditches or other applicable practices.
- (R) "Best technology currently available" means equipment, devices, systems, methods, or techniques which:

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- (1) Will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws;
- (2) Will minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable; and
- (3) Are currently available anywhere as determined by the chief. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds.

(S) "Cemetery" means any area of land where human bodies are interred.

(T) "Chief" means chief of the division of mineral resources management.

(U) "Coal exploration" means the field gathering of environmental data and surface or subsurface geologic, physical, or chemical data by trenching, drilling or other techniques that disturb the natural land surface and that are necessary to determine the quality and quantity of overburden and coal of an area.

(V) "Coal exploration permit" means a permit to conduct coal exploration operations that substantially disturb the natural land surface, issued by the chief pursuant to section 1513.072 of the Revised Code.

(W) "Coal mine waste" means coal processing waste and underground development waste.

(X) "Coal mining and reclamation operations" means coal mining operations and all activities necessary and incidental to the reclamation of such operations.

(Y) "Coal mining operation" means:

- (1) Activities conducted on the surface of lands in connection with a coal mine, the removal of coal from coal refuse piles, and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal at or near the mine site. Such activities do not include the following:

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- (a) The extraction of coal incidental to the extraction of other minerals if the weight of coal extracted is less than one-sixth the total weight of minerals removed, including coal;
 - (b) The extraction of coal as an incidental part of federal, state, or local highway or other government-financed construction when approved by the chief; or
 - (c) Coal exploration subject to section 1513.072 of the Revised Code; and
- (2) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or improvement or use of existing roads to gain access to the site of such activities, and for hauling, excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. Separation by a stream, roadway, or utility easement does not preclude two or more contiguous tracts of land from being considered contiguous.
- (Z) "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.
- (AA) "Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with the coal preparation plant, including, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.
- (BB) "Coal processing waste" means earth materials which are wasted or otherwise separated from the product coal after physical or chemical processing, cleaning, or concentrating of coal.
- (CC) "Collateral bond" means an indemnity agreement in a sum certain payable only to the state and executed by the permittee or applicant as principal which is supported by one or more of the following:
- (1) The deposit of cash in one or more federally insured accounts, payable only to the state upon demand;
 - (2) Negotiable bonds of the United States or the state of Ohio endorsed to the order of, and placed in the possession of, the state;

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- (3) Negotiable certificates of deposit, payable to, and in possession of, the state; or
 - (4) An irrevocable letter of credit of any bank organized or authorized to transact business in the state of Ohio, payable only to the state upon presentation by the chief.
- (DD) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.
- (EE) "Community or institutional building" means any building other than a public building or an occupied dwelling, which:
- (1) Is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups;
 - (2) Functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or
 - (3) Is used for public services, including, but not limited to, water supply, power generation or sewage treatment.
- (FF) "Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.
- (GG) "Complete application" means an application for the issuance of a permit, permit renewal or revision to a permit, or for a transfer, assignment or sale of permit rights for coal mining and reclamation operations which contains all the information required under Chapter 1513. of the Revised Code and these rules and necessary to initiate processing and public review.
- (HH) "Contour mining" means a method of surface coal mining that involves making an initial mining cut along the contour of a hillside to the maximum highwall height and then making subsequent cuts along the same contour, placing spoil in the preceding cut where the coal has been removed.
- (II) "Cropland" means land used for the production of cultivated crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land will not be considered as having been used for the production of cultivated crops on the basis of use as woodland or rangeland, or where the only cultivation has been disking to establish or help maintain grass used as a forage, or where the only cultivation has been disking to plant small grain for a quick cover to be used as forage and not as a grain crop.

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- (JJ) "Cumulative hydrologic impact assessment" means the assessment of the probable cumulative impact of all anticipated mining in the general and adjacent area upon the hydrologic balance of the area and particularly upon water availability.
- (KK) "D permit" means a permit issued pursuant to an application filed with the division of mineral resources management pursuant to section 1513.07 of the Revised Code, effective September 1, 1981.
- (LL) "Developed spring" means a spring regularly being used for domestic or agricultural purposes.
- (MM) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance security or other assurance of performance required by section 1513.08 of the Revised Code is released.
- (NN) "Diversion" means a channel, embankment, or other man-made structure constructed for the purpose of diverting water from one area to another.
- (OO) "Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.
- (PP) "Drainage plan" means a description or illustration of the method of collection, treatment, and discharge of all or any of the waters within, flowing onto, or being discharged from the permit area.
- (QQ) "Effluent limitations" means a specific, numeric, measurable set of limits on the amount of various pollutants that are placed on point source discharges through the national pollutant discharge elimination system (NPDES). For a remaining NPDES permit that uses non-numeric limitations, "effluent limitations" means the best management practice as required under that NPDES permit.
- (RR) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.
- (SS) "Engineer" means a professional engineer registered in accordance with the requirements of Chapter 4733. of the Revised Code.
- (TT) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

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- (UU) "Excess spoil" means spoil material disposed of in a location other than the mined-out area, except that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in non-steep slope areas shall not be considered excess spoil, provided that the blending will be done in accordance with paragraph (E) of rule 1501:13-9-14 of the Administrative Code.
- (VV) "Existing structure" means a structure or facility used in connection with or to facilitate coal mining and reclamation operations for which construction began prior to August 16, 1982.
- (WW) "Forfeiture of performance security" means that the chief shall proceed against the permittee in the manner set forth in rule 1501:13-7-06 of the Administrative Code.
- (XX) "Fragile lands" means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, national natural landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.
- (YY) "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or coal mining and reclamation operations or both. During coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.
- (ZZ) "Full coal recovery" means recovery of a high percentage of the in-place coal reserve by pillar removal, longwall mining, or other underground mining method in which support is removed from the roof of the mine under a large enough area that a full or partial collapse or subsidence of the mine roof is planned as part of the method of mining.
- (AAA) "General area" means, with respect to hydrology, the topographic and ground-water basin in and surrounding a permit area which is of sufficient size to include the area to be affected by all anticipated mining activities, including one or more watersheds containing perennial streams and ground-water zones, and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground-water systems in the basins. Anticipated mining shall include, at a minimum, the entire projected lives, through performance security releases, of:
- (1) The proposed operation;

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(2) All existing operations; and

(3) Any operation for which a permit application has been submitted to the chief.

(BBB) "Grading" means the shaping of material to conform to the approved mining and reclamation plan.

(CCC) "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(DDD) "Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than twenty degrees or the average slope of the profile of the existing hollow from the toe of the fill to the top of the fill is greater than ten degrees. In head-of-hollow fills the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(EEE) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(FFF) "Highwall" means the face of exposed overburden and coal in an open cut of a coal mining operation or for entry to underground mining operations.

(GGG) "Highwall remnant" means that portion of a highwall that remains after backfilling and grading of a remining permit area.

(HHH) "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a state or national register of historic places, national historic landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

(III) "Historically used for cropland" means:

(1) Lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of coal mining and reclamation operations;

(2) Lands that the chief determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more

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years of cropland history only to increase the prime farmland acreage to be preserved; or

- (3) Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

(JJJ) "Hydrologic balance" means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

(KKK) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves then along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(LLL) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of Chapter 1513. of the Revised Code or these rules in a coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(MMM) "Impounding structure" means a dam, embankment or other structure used to impound sediment, water, slurry, or other liquid or semi-liquid material.

(NNN) "Impoundments" means all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

(OOO) "Incremental area" for a particular permit year applies only to 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 and means:

- (1) That area within the permit area which the permittee affects by coal mining and reclamation operations in the particular permit year and which the permittee does not intend to affect in the coming permit year; and
- (2) In the permit year in which mining operations are completed on the permit area, all of the affected area not already designated as an incremental area under paragraph (A)(6)(a) of rule 1501:13-7-01 of the Administrative Code.

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- (PPP) "Incremental mining unit" applies only to 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. Incremental mining unit means an area within a permit of sufficient size and configuration to provide for efficient mining and reclamation operations, subject to approval by the chief, where mining and reclamation activities are authorized by the chief and a specific amount of performance security has been determined by the chief pursuant to paragraph (B) of rule 1501:13-7-01 of the Administrative Code.
- (QQQ) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.
- (RRR) "Intermittent stream" means a stream that is below the local water table and flows for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.
- (SSS) "Knowing" or "knowingly" means, except where the context indicates otherwise, that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.
- (TTT) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under section 1513.37 of the Revised Code.
- (UUU) "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
- (VVV) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
- (WWW) "Mountaintop removal mining" means coal mining operations in which the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill except as otherwise provided for in paragraph (B)(1) of rule 1501:13-13-04 of the Administrative Code, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of paragraph (C) of rule 1501:13-4-12 of the Administrative Code.
- (XXX) "MSHA" means the mine safety and health administration.

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- (YYY) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing conditions suitable for germination and growth.
- (ZZZ) "National pollutant discharge elimination system" and "NPDES" means the national permit program authorized under the Clean Water Act, 33 U.S.C. 1251 et seq., that controls water pollution by regulating point sources that discharge pollutants into waters of the United States.
- (AAAA) "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.
- (BBBB) "Notice of intention to explore" means the documents and other information filed with the chief for coal exploration, pursuant to section 1513.072 of the Revised Code and rule 1501:13-4-02 of the Administrative Code.
- (CCCC) "Noxious plants" means species that have been included on the official list of noxious plants for the state of Ohio.
- (DDDD) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
- (EEEE) "Operation" means coal mining operation.
- (FFFF) "Operator" means any person conducting a coal mining operation and includes the permittee if the permittee is conducting the mining operation or a contract operator if a person under contract with the permittee is conducting the mining operation.
- (GGGG) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.
- (HHHH) "Perennial stream" means a stream or a part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.
- (III) "Performance security" means a form of financial assurance, including a surety bond; a collateral bond; a trust fund; ~~a self bond;~~ or a combination thereof, by which a permittee assures faithful performance of all the requirements of Chapter 1513. of the Revised Code, these rules, and the requirements of the permit and reclamation plan.

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(JJJJ) "Permanent diversion" means a diversion remaining after coal mining and reclamation operations are completed which has been approved for retention by the chief.

(KKKK) "Permanent impoundment" means an impoundment which is approved by the chief and, if required, by other state and federal agencies for retention as part of the postmining land use.

(LLLL) "Permit" means a permit to conduct coal mining and reclamation operations issued by the chief pursuant to section 1513.07 or 1513.074 of the Revised Code.

(MMMM) "Permit area" means the area of land to be affected indicated on the approved map submitted by the applicant or operator with the application required by section 1513.07 or 1513.074 of the Revised Code. This area shall include, at a minimum, all areas which are or will be affected by the coal mining and reclamation operations during the term of the permit. With respect to underground mining operations, "permit area" shall not include those surface areas overlying underground workings and not included within the affected area.

(NNNN) "Permit year" means the year beginning on the date on which the permit was issued or the year beginning on any yearly anniversary of the permit issuance. Permit years are identified by sequence. For example, the permit year beginning on the date the permit was issued is the "first permit year," the permit year beginning on the first yearly anniversary of the permit is the "second permit year," and so on.

(OOOO) "Permittee" means a person holding or required by Chapter 1513. of the Revised Code to hold a permit.

(PPPP) "Person" means an individual, partnership, corporation, business trust, estate, trust, association or other legal entity, or any political subdivision, instrumentality or agency of the state or the United States.

(QQQQ) "Person having an interest which is or may be adversely affected or person with a valid legal interest" means any person:

- (1) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the chief; or
- (2) Whose property is or may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the chief.

(RRRR) "Pit" or "strip mine pit" means that part of the operation prior to backfilling from which coal is being or has been removed from its natural state.

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(SSSS) "Point source discharge" means any discernible, confined or discrete conveyance from which a pollutant is, or may be, discharged to the waters of the state.

(TTTT) "Pollution abatement area" means that part or parts of the permit area which are causing or contributing to the base line pollution load, and which must be affected to bring about potential improvement of the base line pollution load, and which may include the immediate location of the discharge(s). The pollution abatement area shall include, to the extent practicable, areas within the permit area which are adjacent to and nearby the remaining operation and which also must be affected to reduce the pollution load of the pre-existing discharges, and may include the immediate location of the pre-existing discharges.

(UUUU) "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, hail, or that quantity of water emanating from snow cover as snowmelt in a limited period of time.

(VVVV) "Pre-existing discharge" means a discharge from surface or subsurface waters which is located on previously mined area as defined in this rule. This term shall include a pre-existing discharge that is relocated as a result of the implementation of best management practices in the permit.

(WWWW) "Previously mined area" means land affected by coal mining operations prior to August 3, 1977 that has not been reclaimed to the standards of Chapter 1513. of the Revised Code, as effective September 1, 1981 and thereafter.

(XXXX) "Prime farmland" means those lands that both:

- (1) Are defined by the secretary of agriculture in 7 C.F.R. 657; and
- (2) Have been historically used for cropland.

(YYYY) "Principal shareholder" means any person who is the record or beneficial owner of ten per cent or more of any class of voting stock.

(ZZZZ) "Probable hydrologic consequences" means the projected result of proposed coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water, the flow, timing, or pattern of the surface and ground water, and the stream channel conditions on the permit area and adjacent area.

(AAAA) "Productivity" means the vegetative yield produced by a unit area for a unit of time.

(BBBB) "Property to be mined" means the surface estates and mineral estates within the permit area. For those areas covered by underground workings, "property to be mined" means the mineral estates to be mined and the surface estates.

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(CCCCC) "Public building" means any building that is owned by a public agency or used primarily for public business or meetings.

(DDDDD) "Public park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

(EEEEEE) "Public roadway" means a road which is:

- (1) Designated as a public road in the jurisdiction within which it is located;
- (2) Constructed in a manner consistent with other public roads within the jurisdiction within which it is located;
- (3) Regularly maintained with public funds; and
- (4) Subject to, and available for, substantial use by the public.

(FFFFFF) "Publicly owned park" means a public park that is owned by a federal, state or local governmental entity.

(GGGGG) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area and in the immediate vicinity of the permit area that is accessible and available for use and that, when rehandled, will not cause a hazard to public safety or significant damage to the environment.

(HHHHH) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(IIIII) "Receiving water" means the specific water body of the waters of the state into which point and non-point sources flow.

(JJJJJ) "Reclamation" means those actions taken to restore mined land as required by Chapter 1513. of the Revised Code to a postmining land use approved by the chief.

(KKKKK) "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. Magnitude of such events are as defined by the "National Weather Service Technical Paper No. 40, Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom. This technical report is available from NOAA's national weather service website <http://www.nws.noaa.gov/ohd/hdsc/currentpf.htm>.

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(LLLLL) "Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

(MMMMM) "Remining" means conducting coal mining and reclamation operations which affect previously mined areas.

(NNNNN) "Remining NPDES permit" means a national pollutant discharge elimination system permit issued by the Ohio environmental protection agency for a discharge which is in compliance with the permit requirements of 33 U. S.C. section 1311(p).

(OOOOO) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(PPPPP) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes any access or haul road constructed, used, reconstructed, improved, or maintained for use in coal exploration or within the affected area of coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include ramps and routes of travel within the mining area or within spoil or coal mine waste disposal areas. The term may not include public roadways outside the permitted area, provided that the public roadway was in existence prior to the application for the permit, the effect on the public roadway from mining use will be minor, and the public roadway is incidentally, rather than directly, part of the mining operation.

(QQQQQ) "Rules promulgated thereunder," "rules adopted thereunder," or "these rules" means all rules contained in Chapters 1501:13-1 to 1501:13-14 of the Administrative Code.

(RRRRR) "Runoff" means the overland flow caused by excess rainfall.

(SSSSS) "Safety factor" means the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(TTTTT) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(UUUUU) "Sedimentation pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

~~(VVVVV) "Self bond" means an indemnity agreement in a sum certain payable upon demand to the state executed by the permittee or applicant and by each individual~~

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~~and business organization capable of influencing and controlling the investment or financial practices of the permittee or applicant by virtue of his or her authority as an officer or ownership of all or a significant part of the permittee or applicant.~~

~~(WWWWW)~~(VVVVV) "Shadow area" means the surface areas above the underground workings and surface areas that are within the angle of draw of such workings.

~~(XXXXXX)~~(WWWWW) "Significant, imminent environmental harm to land, air or water resources" means:

- (1) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.
- (2) An environmental harm is imminent, if a condition, practice, or violation exists which:
 - (a) Is causing such harm; or
 - (b) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under section 1513.02 of the Revised Code.
- (3) An environmental harm is significant if that harm is appreciable and not immediately repairable.

~~(YYYYY)~~(XXXXX) "Slope" means average inclination of a surface, measured from the horizontal.

~~(ZZZZZ)~~(YYYYY) "Soil horizons" means contrasting layers of soils parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

- (1) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;
- (2) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;
- (3) "B horizon." The layer that typically is immediately beneath the E horizon. This middle layer commonly contains more clay, iron, or aluminum than the A, E or C horizon; and

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(4) "C horizon." The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

~~(AAAAAA)~~(ZZZZZ) "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the national cooperative soil survey.

~~(BBBBBB)~~(AAAAAA) "Spoil" means overburden that has been removed during coal mining operations, including underground development materials, but does not include topsoil.

~~(CCCCCC)~~(BBBBBB) "Stabilize" means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes, but is not limited to, increasing bearing capacity, increasing shear strength, draining, compacting or revegetating.

~~(DDDDDD)~~(CCCCCC) "Subirrigation" means the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

~~(EEEEEE)~~(DDDDDD) "Subsoil" means the B and C horizons or, in instances where the area has been disturbed by agricultural practices, that soil below the soil ordinarily moved in the tillage or its equivalent in uncultivated soil.

~~(FFFFFF)~~(EEEEEE) "Substantial legal and financial commitments in a coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

~~(GGGGGG)~~(FFFFFF) "Substantially disturb" means, for purposes of coal exploration, to affect significantly land or water resources by blasting, by removal of vegetation, topsoil, or overburden, by construction of roads or other access routes, by placement of excavated earth or waste material on the natural land surface, or by other such activities.

~~(HHHHHH)~~(GGGGGG) "Support facilities" means those facilities resulting from or incident to coal mining and reclamation operations and the areas upon which such facilities are located. Support facilities may consist of, but are not limited to, the following facilities: mine buildings; bathhouses; coal loading facilities, coal crushing facilities; coal sizing facilities; coal storage facilities, equipment and storage facilities; fan buildings; hoist buildings; sheds, shops, and other buildings; facilities

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used to treat and store water for mine consumption; and railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities, but not including public roads. "Resulting from or incident to" an activity connotes an element of proximity to that activity.

~~(HHHH)~~(HHHHHH) "Surety bond" means an indemnity agreement in a sum certain payable only to the state, executed by the permittee or applicant as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in this state.

~~(JJJJ)~~(IIIIII) "Surface mining operations" means those coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

~~(KKKKKK)~~(JJJJJ) "Surface water" means water, either flowing or standing on the surface of the earth.

~~(LLLLL)~~(KKKKKK) "Surveyor" means a professional surveyor registered in accordance with the requirements of Chapter 4733. of the Revised Code.

~~(MMMMMM)~~(LLLLLL) "Suspended solids" or "nonfilterable residue," expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the environmental protection agency's regulations for wastewater and analyses (40 C.F.R. part 136).

~~(NNNNNN)~~(MMMMMM) "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or coal mining and reclamation operations and not approved by the chief to remain after reclamation as part of the approved postmining land use.

~~(OOOOOO)~~(NNNNNN) "Temporary impoundment" means an impoundment used during coal mining and reclamation operations, but not approved by the chief to remain as part of the approved postmining land use.

~~(PPPPPP)~~(OOOOOO) "Topsoil" means the A and E horizon layers, or in instances in which the area has been disturbed by agricultural practices, the soil ordinarily moved in tillage, or its equivalent in uncultivated soil.

~~(QQQQQQ)~~(PPPPPP) "Toxic forming materials" means earth materials or wastes having a pH of less than 4.0 or a calcium carbonate deficiency of five tons or more per one thousand tons of material. By order of the chief, such other earth materials or wastes shall be designated toxic which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

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~~(RRRRRR)~~(QQQQQQ) "Toxic-mine drainage" means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which, through chemical action or physical effects, is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

~~(SSSSSS)~~(RRRRRR) "Transfer, assignment, or sale of permit rights" means a change of a permittee, including, but not limited to, any fundamental legal change in the structure or nature of a permittee or a name change.

~~(TTTTTT)~~(SSSSSS) "Trust fund" means money, securities or other property held by a trustee for the benefit of the state that is devoted to the purpose of providing assurance that funds will be available when needed to comply with Chapter 1513. of the Revised Code and rules adopted thereunder and that irrevocably establishes the state as the primary beneficiary.

~~(UUUUUU)~~(TTTTTT) "Unanticipated event or conditions" as used in rule 1501:13-5-01 of the Administrative Code, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated in the applicable permit.

~~(VVVVVV)~~(UUUUUU) "Underground development waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining operations.

~~(WWWWWW)~~(VVVVVV) "Underground mining operations" means underground mining surface operations and underground workings.

~~(XXXXXX)~~(WWWWWW) "Underground mining surface operations" means the surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoists and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed.

~~(YYYYYY)~~(XXXXXX) "Underground workings" means underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing and underground mining, hauling, storage and blasting.

~~(ZZZZZZ)~~(YYYYYY) "Unwarranted failure to comply" means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of Chapter 1513. of the Revised Code or these rules, due to indifference, lack of

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diligence, or lack of reasonable care, or the failure to abate any violation of such permit or Chapter 1513. of the Revised Code or these rules due to indifference, lack of diligence, or lack of reasonable care.

~~(AAAAAAA)~~(ZZZZZZ) "Valid existing rights" means a set of circumstances under which a person demonstrates compliance with the standards under paragraph (A) or (B) of rule 1501:13-3-01 of the Administrative Code and may, subject to the chief's approval, conduct coal mining operations on lands where division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code would otherwise prohibit such operations.

~~(BBBBBBB)~~(AAAAAAA) "Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than twenty degrees, or where the average slope of the profile of the existing valley from the toe of the fill to the top of the fill is greater than ten degrees.

~~(CCCCCCC)~~(BBBBBBB) "Violation," for the purposes of rule 1501:13-4-03, paragraph (D) of rule 1501:13-5-01, and rule 1501:13-5-02 of the Administrative Code, means:

- (1) A failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or
- (2) A noncompliance for which the chief has provided one or more of the following types of notice, or the office of surface mining of the U.S. department of the interior or another state regulatory authority has provided equivalent notice under corresponding provisions of the federal regulatory program or a state regulatory program:
 - (a) A notice of violation;
 - (b) A cessation order;
 - (c) A final order, bill, or demand letter pertaining to a delinquent civil penalty;
 - (d) A bill or demand letter pertaining to delinquent reclamation fees owed to the office of surface mining of the U.S. department of the interior under 30 C.F.R. Part 870; or
 - (e) A performance security or bond forfeiture order.

~~(DDDDDDD)~~(CCCCCCC) "Violation notice," for the purposes of rule 1501:13-4-03, paragraph (D) of rule 1501:13-5-01, and rule 1501:13-5-02 of the Administrative Code, means any written notification from a regulatory authority or other

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governmental entity of a violation, as specified in the definition of "violation" in this rule.

~~(EEEEEEE)~~(DDDDDDD) "Water table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

~~(FFFFFFF)~~(EEEEEEE) "Water quality standards" means the rules set forth in Chapter 3745-1 of the Administrative Code establishing stream use designations and water quality criteria protective of such uses for the surface waters of the state.

~~(GGGGGGG)~~(FFFFFFF) "Willful violation" means an act or omission which violates a provision of Chapter 1513. of the Revised Code or these rules, other applicable state or federal laws, or a condition of a permit, committed by a person who intends the result which actually occurs.

~~(HHHHHHH)~~(GGGGGGG) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

Draft Rule 1501:13-7-01, dated 9/12/2013.

This is a summary of the changes made to this rule.

(E)(4). Amended to remove this paragraph. The Division will no longer accept self bonds as performance security.

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Dated 9/12/2013

1501:13-7-01 **General requirements for providing performance security for coal mining and reclamation operations.**

(A) Requirement to file performance security.

- (1) After an application for a permit to conduct coal mining and reclamation operations has been approved under these rules, the applicant shall file with the chief performance security in compliance with these rules.
 - (a) If the applicant provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule, the applicant shall file performance security for:
 - (i) The number of acres in the entire area to be permitted; or
 - (ii) The estimated number of acres to be affected in the first permit year in accordance with the requirements of paragraph (A)(6)(a) of this rule.
 - (b) If the applicant provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule, the applicant shall file performance security for:
 - (i) The entire area to be permitted; or
 - (ii) Each incremental mining unit to be affected in the first permit year in accordance with the requirements of paragraph (A)(6)(b) of this rule.
 - (c) Once coal extraction begins under an approved permit, a permittee providing performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule may not change to providing performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule.
- (2) No person shall disturb surface acreage, either by coal mining and reclamation operations conducted on the surface of land or as a result of surface impacts incidental to an underground coal mine, prior to filing with the chief performance security covering the areas of land to be affected.
- (3) Liability on the performance security shall cover all coal mining and reclamation operations to be conducted within the permit area until the end of the permittee's period of reclamation responsibility.

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- (4) No area affected by a coal mining and reclamation operation within a permit shall be identified with a specific performance security.
- (5) Performance security shall apply to the permit area and to all revisions to the permit, including incidental boundary revisions and adjacent area permits.
- (6) Providing incremental performance security. When an applicant elects to file performance security incrementally:
 - (a) The applicant that provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule shall as part of the permit application process:
 - (i) Submit to the chief a written estimate of the number of acres to be affected in the first permit year; and
 - (ii) Before the permit is issued, file with the chief performance security for the estimated number of acres to be affected in the first permit year;
 - (b) The applicant that provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule shall as part of the permit application process:
 - (i) Submit to the chief, on the map required under paragraph (D)(3) of rule 1501:13-4-01 of the Administrative Code, the boundaries for each incremental mining unit within the proposed permit area; and
 - (ii) Before the permit is issued, file with the chief performance security for each incremental mining unit that will be affected in the first permit year;
 - (c) Thirty days before affecting more than the number of acres or incremental mining units for which performance security has been filed with the chief, the permittee shall file additional performance security for the number of additional acres to be affected in the permit year or for the next incremental mining unit or units to be affected by the mining and reclamation operation;
 - (d) The permittee shall within thirty days after the end of every permit year:
 - (i) Identify on the annual map each incremental area or incremental mining unit for the first through most recent permit year in accordance with the requirements of these rules; and
 - (ii) File performance bond with the chief, concurrently with the submittal of the annual map, if one of the following circumstances applies:

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- (a) For permits for which performance security has been filed together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule, the number of acres shown as affected and estimated to be affected on the annual map exceeds the number of acres for which performance security has been provided; or
 - (b) For permits for which performance security has been filed without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule, the incremental mining units shown as affected and estimated to be affected on the annual map exceed the incremental mining units for which performance security has been provided;
 - (e) Performance security filed and not yet released for any incremental area or incremental mining unit can be forfeited, in whole or part, to perform the requirements of Chapter 1513. of the Revised Code, rules adopted thereunder, and the conditions of the permit on any area affected by the permittee pursuant to the permit;
 - (f) After a permit is issued, a permittee that has chosen to provide incremental performance security may elect instead to provide performance security for the entire permit area and file the entire performance security required during the term of the permit; and
 - (g) After a permit is issued, a permittee that provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule and that has filed the entire performance security required during the term of the permit may not change to incremental performance security.
- (7) A permittee that has filed performance security for the entire permit area instead of filing performance security incrementally shall identify an incremental area or incremental mining unit at the end of each permit year in the manner prescribed in paragraph (A)(6)(d)(i) of this rule and may obtain release of performance security by incremental area or by incremental mining unit, pursuant to rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code, as applicable.
- (B) Estimated cost 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 permittee.
- (1) The chief shall determine the estimated cost of reclamation using:

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- (a) The information contained in the permit application and in the approved mining and reclamation plan, as required by the chief and submitted by the applicant under rule 1501:13-4-05 of the Administrative Code, rule 1501:13-4-14 of the Administrative Code or paragraph (I) of rule 1501:13-4-12 of the Administrative Code; and
 - (b) After considering the topography, geology, hydrology, and revegetation potential of the area of the approved application, the probable difficulty of reclamation.
- (2) The chief shall provide the applicant a copy of the estimated cost of reclamation along with the unit costs used to support the estimated cost of reclamation.
- (3) The chief shall send written notice of the amount of the estimated cost of reclamation by certified mail to the applicant.
- (C) Method of providing performance security. The applicant shall send written notice to the chief indicating the method by which the applicant will provide the performance security. The method of providing performance security shall apply to the entire permit. The applicant shall provide the performance security in an amount using one of the following:
- (1) If the applicant provides performance security without reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code, the applicant shall provide as performance security the amount of the estimated cost of reclamation as determined by the chief under paragraph (B) of this rule and in accordance with paragraphs (B) and (C) of rule 1501:13-7-02 of the Administrative Code.
 - (2) If the applicant provides performance security together with reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code, the applicant shall, in addition to paying the tax on the severance of coal levied under division (A)(8) of section 5749.02 of the Revised Code, provide performance security in the amount required under paragraphs (A) and (C) of rule 1501:13-7-02 of the Administrative Code.
- (a) To be eligible to provide performance security in accordance with paragraph (C)(2) of this rule, 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.
 - (b) In the event of forfeiture of performance security that was provided in accordance with paragraph (C)(2) of this rule, the difference between the amount of that performance security and the estimated cost of reclamation as determined by the chief under paragraph (B) of this rule shall be obtained

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from the money in the reclamation forfeiture fund created in section 1513.18 of the Revised Code as needed to complete the reclamation.

(D) Release of excess performance security.

(1) For a permittee that provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of this rule:

(a) If, upon receipt by the chief of the annual map and annual report, the number of acres affected is less than the number of acres for which performance security has been provided, the permittee may obtain a release of the excess performance security by submitting a request for release of excess performance security to the chief on a form provided by the chief; and

(b) If, upon receipt by the chief of the final map and final report, the number of acres affected is less than the number of acres for which performance security has been provided, the chief shall release the excess performance security to the permittee.

(2) For a permittee that provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of this rule, if, upon receipt of the annual map and annual report, the chief determines that the required performance security for the next year is less than the performance security that has been provided, the permittee may obtain a release of the excess performance security by submitting a request for release of excess performance security to the chief on a form provided by the chief.

(E) Responsibilities of the chief.

(1) The chief shall prescribe and furnish forms for filing performance security.

(2) The chief shall determine the estimated cost of reclamation in accordance with paragraph (B) of this rule.

(3) The chief shall adjust the amount of the estimated cost of reclamation and the amount of a permittee's performance security provided for the permit area in accordance with paragraph (E) of rule 1501:13-7-02 of the Administrative Code.

~~(4) The chief may not accept a self bond in lieu of a surety or collateral bond unless the permittee meets the requirements of rule 1501:13-7-04 of the Administrative Code.~~

~~(5)~~(4) The chief shall release the permittee from his performance security obligations in accordance with rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code.

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~~(6)~~(5) The chief shall cause all or part of a performance security to be forfeited in accordance with rule 1501:13-7-06 of the Administrative Code.

~~(7)~~(6) The chief shall require as a condition of the permit that adequate performance security coverage be in effect at all times.

Draft Rule 1501:13-7-03, dated 9/13/2013.

This is a summary of the changes made to this rule.

(A)(3) and (C)(2). Amended to remove these paragraphs. The Division will no longer accept self bonds as performance security.

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Dated 9/13/2013

1501:13-7-03 **Form, conditions, and terms of performance security.**

(A) Form of the performance security. The performance security to be submitted by the applicant or permittee shall be on forms furnished by the chief. The chief shall allow for:

(1) A surety bond;

(2) A collateral bond;

~~(3) Self bonding;~~

~~(4)~~(3) A trust fund; or

~~(5)~~(4) A combination of any of these forms of performance security.

(B) Terms and conditions of the performance security.

(1) The performance security shall be in an amount determined by the chief, as provided in paragraphs (A) and (C) of rule 1501:13-7-02 of the Administrative Code for permits for which the applicant or permittee provides performance security together with reliance on the reclamation forfeiture fund, or as provided in paragraphs (B) and (C) of rule 1501:13-7-02 of the Administrative Code for permits for which the applicant or permittee provides performance security without reliance on the reclamation forfeiture fund.

(2) The performance security shall be payable to the state and conditioned upon the faithful performance of all the requirements of Chapter 1513. of the Revised Code, rules adopted thereunder, and the provisions of the applicant's approved mining and reclamation plan.

(3) Except for performance security provided in accordance with rule 1501:13-7-04 of the Administrative Code, the name of the permittee on the performance security shall be identical to the name of the permittee on the permit.

(4) The duration of the performance security shall be that described in paragraph (D) of rule 1501:13-7-02 of the Administrative Code.

(5) Surety bonds shall be subject to the following conditions:

(a) The chief shall not accept the bonds of a surety company unless the bond is noncancellable by the surety at any time for any reason including, but not

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limited to, non-payment of premium or bankruptcy of the permittee during the period of liability;

- (b) The chief shall not accept a surety bond in excess of ten per cent of the surety company's capital surplus account;
 - (c) The chief shall not accept a surety bond from a surety company for any operator if the sum of such bond and all other surety bonds issued by the surety company on any and all the permits of that operator is in excess of thirty percent of the surety company's capital surplus account;
 - (d) The surety bond shall be issued by a corporate surety licensed to do business in Ohio;
 - (e) The chief may provide in the bond that the amount shall be confessed to judgment upon forfeiture as provided in section 2323.13 of the Revised Code;
 - (f) The bond shall provide that the surety and the permittee shall be jointly and severally liable; and
 - (g) The bond shall provide that:
 - (i) The surety will give prompt notice to the permittee and the chief of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violation of regulatory requirements which could result in suspension or revocation of the surety's license to do business; and
 - (ii) In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the chief.
- (6) Collateral bonds, except for letters of credit, shall be subject to the following conditions:
- (a) The chief shall deliver to the treasurer of state all collateral deposited by the permittee or applicant to be held until authorized for release or replacement as provided in these rules. The treasurer shall hold it in trust for the purposes for which it has been deposited;
 - (b) The chief shall value collateral at their current market value, not face value;
 - (c) The chief shall not accept a certificate of deposit unless it is payable to the state, both in writing and upon the records of the bank issuing such certificates;

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- (d) The chief shall not accept an individual certificate or cash account for a denomination in excess of the maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C.;
 - (e) 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 Ohio;
 - (f) A certificate of deposit shall be automatically renewable and issued with a maturity date of not less than twelve months;
 - (g) At the time a certificate of deposit is being closed and rolled over into a new certificate of deposit, the permittee shall notify the chief of any change of account numbers by submitting a revised collateral bond indemnity agreement form;
 - (h) The chief shall require the applicant to deposit sufficient amounts of certificates of deposit to assure that upon forfeiture the chief will be able to liquidate those certificates prior to maturity for the amount of the performance security required by rules 1501:13-7-01 to 1501:13-7-06 of the Administrative Code; and
 - (i) Certificates of deposit may be substituted for a cash account with the approval of the chief.
- (7) Letters of credit shall be subject to the following:
- (a) The letter may only be issued by a bank organized or authorized to do business in Ohio;
 - (b) The initial term of the letter of credit shall be for not less than one year from the issue date and shall be automatically renewable for a period of not less than one year from the scheduled expiration date, unless the bank notifies the chief by certified or registered mail at least sixty days before the expiration date that the bank will not renew the letter of credit. Upon notice of a bank's intent not to renew the letter of credit, the permittee shall replace performance security at least thirty days before the expiration date of the letter of credit agreement with other letters of credit, other forms of security supporting the collateral bond indemnity agreement, or another form of performance security. If the letter of credit is not replaced at least thirty days prior to the expiration date, the chief shall demand and obtain payment on it before it expires;
 - (c) The letter shall be payable to the state, in part or in full, upon written demand by the chief and, except as provided in paragraph (B)(7)(b) of this rule,

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accompanied by a written statement signed by the chief declaring one or more of the following:

- (i) That the permittee has not faithfully performed all of the requirements of Chapter 1513. of the Revised Code, rules adopted thereunder, and the provisions of the permittee's approved mining and reclamation plan;
 - (ii) That the permittee has failed to replace performance security coverage in accordance with the requirements of paragraph (B)(7)(b) of this rule; or
 - (iii) That the permittee has failed to replace performance security at least thirty days prior to the expiration date of the letter of credit.
- (d) The chief may require in the indemnity agreement that the amount shall be confessed in judgment upon forfeiture as provided in section 2323.13 of the Revised Code; and
- (e) The letters of credit shall provide that:
- (i) The bank will give prompt notice to the permittee and the chief 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; and
 - (ii) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the chief.
- (8) The estimated bond value of all collateral provided as performance security assurance under paragraphs (B)(6) and (B)(7) of this rule shall be subject to a margin, which is the ratio of bond value to market value, as determined by the chief. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the chief in performing reclamation. The bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and if necessary, the performance security amount increased or decreased.
- (9) Persons with an interest in a collateral bond provided as performance security, and who desire notification of actions pursuant to the collateral bond, shall request the notification in writing to the chief at the time collateral bond is offered.
- (10) Trust funds for performance security under this rule shall be subject to the following conditions:

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- (a) The trust fund shall be in an amount 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 excluding all cost of administration of the trust fund;
 - (b) The trust fund agreement shall be in a form approved by the chief and shall contain all terms and conditions required by the chief;
 - (c) The chief shall specify the investment objectives of the trust fund;
 - (d) Termination of the trust fund may occur only as specified by the chief upon a determination that no further reclamation is necessary, that replacement performance security has been filed, or that the administration of the trust fund in accordance with its purpose requires termination;
 - (e) Release of money from the trust fund may be made only upon written authorization of the chief or according to a schedule established in the agreement accompanying the trust fund; and
 - (f) A financial institution or other company serving as a trustee must be a bank, trust company or other financial institution with trust powers that is organized or authorized to do business in Ohio.
- (11) If a surety, bank, savings and loan association, trust company, or other financial institution that holds the performance security required under this rule becomes incapacitated by reason of bankruptcy, insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without performance security coverage in violation of paragraph (A) of rule 1501:13-7-01 of the Administrative Code and shall promptly notify the chief. The chief shall notify, in writing, any permittee who is without performance security to submit a plan for replacement performance security within thirty days after receipt of such notice from the chief. If performance security is not replaced within the period set forth in paragraph (B)(11)(a) or (B)(11)(b) of this rule, the permittee shall cease all coal extraction being conducted under the permit and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining shall not resume until the chief has determined that an acceptable performance security has been filed in accordance with paragraph (A) of rule 1501:13-7-01 of the Administrative Code.
- (a) For a permit for which performance security is provided without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of rule 1501:13-7-01 of the Administrative Code, the permittee shall provide the replacement performance security within ninety days after receipt of written notice from the chief that the permittee is without performance security.

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- (b) For a permit for which performance security is provided together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of rule 1501:13-7-01 of the Administrative Code, the permittee shall continue to pay the severance tax levied under division (A)(8) of section 5749.02 of the Revised Code and shall provide the replacement performance security within one year after receipt of written notice from the chief that the permittee is without performance security.

(C) Replacement of performance security.

- (1) The chief may allow the permittee to replace existing performance security with other performance security, if the liability which has accrued against the permittee on the permit area is transferred to such replacement performance security and the replacement performance security meets the requirements of these rules.
- ~~(2) The chief may allow the permittee to replace existing surety or collateral bonds with a self bond, provided that the permittee meets the requirements of self-bonding as provided in these rules.~~
- ~~(3)~~(2) The chief shall not release existing performance security until the permittee has submitted and the chief has approved acceptable replacement performance security. A replacement of performance security pursuant to paragraph (C) of this rule shall not constitute a release of performance security.

Rule 1501:13-7-04, *rescinded, effective 1/17/2016*.

This rule was proposed for rescission because the Division of Mineral Resources Management does not wish to accept self bonds as performance security.

Self-bonding has never been utilized in Ohio. ORC section 1513.08(H) gives the Chief of DMRM the discretion to accept the bond of an applicant without separate surety. However, other coal mining states and the Office of Surface Mining have become concerned about the use of self-bonding due to a decline in the coal industry's financial health. The Chief has determined that self-bonding will no longer be an option in Ohio. The Ohio Coal Association reviewed this proposed change and voiced no concerns relative to not allowing self-bonding in Ohio.

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This rule was rescinded, effective 1/17/2016.

1501:13-7-04 **Self-bonding.**

(A) Definitions for the purposes of this rule only:

- (1) "Current assets" means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.
- (2) "Current liabilities" means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.
- (3) "Fixed assets" means plants and equipment, but does not include land or coal in place.
- (4) "Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.
- (5) "Net worth" means total assets minus total liabilities and is equivalent to owners' equity.
- (6) "Parent corporation" means a corporation which owns or controls the applicant.
- (7) "Tangible net worth" means net worth minus intangibles such as goodwill and rights to patents or royalties.

(B) If the performance security is a bond, the chief may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

- (1) The applicant designates a suitable agent to receive service of process in the state where the proposed coal mining operation is to be conducted.
- (2) The applicant has been in continuous operation as a business entity for a period of not less than five years. "Continuous operation" shall mean that business was conducted over a period of five years immediately preceding the time of application.
 - (a) The chief may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application.

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- (b) When calculating the period of continuous operation, the chief may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed coal mining and reclamation operations.
- (3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:
 - (a) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either "Moody's Investor Service" or "Standard and Poor's Corporation";
 - (b) The applicant has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of two and one-half times or less, and a ratio of current assets to current liabilities of one and one-fifth times or greater; or
 - (c) The applicant's fixed assets in the United States total at least twenty million dollars, and the applicant has a ratio of total liabilities to net worth of two and one-half times or less, and a ratio of current assets to current liabilities of one and one-fifth times or greater.
- (4) The applicant submits:
 - (a) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;
 - (b) Unaudited financial statements for completed quarters in the current fiscal year; and
 - (c) Additional unaudited information as requested by the chief.
- (C) The chief may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of paragraph (B) of this rule as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:
 - (1) If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the chief sufficient to complete the reclamation plan, but not to exceed the

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performance security amount required under rule 1501:13-7-02 of the Administrative Code.

- (2) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the chief at least ninety days in advance of the cancellation date, and the chief accepts the cancellation.
 - (3) The cancellation may be accepted by the chief if the applicant obtains suitable replacement performance security before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.
- (D) The chief may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (B)(1), (B)(2) and (B)(4) of this rule, and the guarantor meets the conditions of paragraphs (B)(1) to (B)(4) of this rule. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of paragraph (C) of this rule. The chief may require the applicant to submit any information specified in paragraph (B)(3) of this rule in order to determine the financial capabilities of the applicant.
- (E) For the chief to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for coal mining and reclamation operations shall not exceed twenty-five per cent of the applicant's tangible net worth in the United States. For the chief to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for coal mining and reclamation operations shall not exceed twenty-five per cent of the guarantor's tangible net worth in the United States. For the chief to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed twenty-five per cent of the guarantor's tangible net worth in the United States.
- (F) If the chief accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:
- (1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.
 - (2) A corporation applying for a self-bond, and a parent or non-parent corporation guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporation. A copy of such authorization shall be provided to the chief along with an affidavit certifying that such an agreement is valid under all applicable federal and state laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

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- (3) A limited liability company shall submit an indemnity agreement signed by at least one member who is authorized to bind the company. A copy of such authorization shall be provided to the chief along with an affidavit certifying that such an agreement is valid under all applicable federal and state laws.
- (4) A partnership, joint venture or syndicate shall submit an indemnity agreement that binds each partner or party who has a beneficial interest, directly or indirectly, in the applicant.
- (5) Pursuant to rule 1501:13-7-06 of the Administrative Code, the applicant or parent or non-parent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the chief an amount necessary to complete the approved reclamation plan, not to exceed the performance security amount required under rule 1501:13-7-02 of the Administrative Code. The indemnity agreement shall be confessed to judgment to the amount of the bond as provided in section 2323.13 of the Revised Code.
- (G) The chief may require self-bonded applicants and parent and non-parent corporate guarantors to submit an update of the information required under paragraphs (B)(3) and (B)(4) of this rule within ninety days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.
- (H) If at any time during the period when a self-bond is provided, the financial conditions of the applicant or parent or non-parent corporate guarantor change so that the criteria of paragraphs (B)(3) and (D) of this rule are not satisfied, the permittee shall notify the chief immediately and shall within ninety days provide an alternate form of performance security in the same amount as the self-bond. Should the permittee fail to provide an adequate substitute performance security pursuant to rule 1501:13-7-03 of the Administrative Code, then the permittee or operator shall cease coal extraction and shall immediately begin to conduct reclamation operations in accordance to the reclamation plan. Mining operations shall not resume until the chief has determined that an acceptable performance security has been provided.

Draft Rule 1501:13-7-05, dated 9/13/2013.

This is a summary of the changes made to this rule.

(B)(4)(a). Amended to remove this paragraph. The Division will no longer accept self bonds as performance security.

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Dated 9/13/2013

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

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;

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- (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.

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- (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.

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- (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.

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(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.

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- (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

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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) Self bond submitted under rule 1501:13-7-04 of the Administrative Code;~~

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

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

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

Draft Rule 1501:13-7-05.1, dated 9/13/2013.

This is a summary of the changes made to this rule.

(B)(4)(a). Amended to remove this paragraph. The Division will no longer accept self bonds as performance security.

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Dated 9/13/2013

1501:13-7-05.1 **Procedures, criteria, and schedule for release of performance security for permits not reliant on the reclamation forfeiture fund.**

This rule applies to a permittee that 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.

(A) Procedures for seeking approval of a reclamation phase and release of performance security.

(1) Request for approval of reclamation.

(a) 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 entire incremental mining unit, 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 for the entire permit area or for an entire incremental mining unit shall include a request for release of performance security.

(b) After all reclamation, restoration, and abatement work in reclamation phase I or reclamation phase II, as defined by paragraph (B)(1) of this rule, is completed on a designated area within a permit area or incremental mining unit, the permittee may file a request for approval of reclamation phase I or reclamation phase II for that designated area. A request for approval under this paragraph shall not include a request for release of performance security.

(c) 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) A notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements

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of Chapter 1513. of the Revised Code, the rules adopted thereunder and the approved reclamation plan; and

- (iv) If the request for approval of reclamation includes a request for release of performance security, the amount of performance security for the area subject to the request and the phase of reclamation sought to be released.
- (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 approval 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 approval 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 approval and 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 request for reclamation phase approval and, when included, the permittee's request for release of performance security.
- (3) At the time that a request for approval of a reclamation phase or a request for release of performance security is filed with the chief, the permittee shall

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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 reclamation phase approval conference or 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 a reclamation phase approval conference or a performance security release conference must be sent. Within thirty days after filing a request for approval of a reclamation phase or a request for approval of a 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 approval of the reclamation phase or 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 reclamation phase approval 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.

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(6) Objections to approval of reclamation phase or to release of performance security and request for reclamation phase approval conference or performance security release conference.

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

(i) A person with a valid legal interest that might be adversely affected by approval of the reclamation phase or 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 reclamation phase approval conference on the proposed approval or 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 a reclamation phase or a 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 approval of a reclamation phase or for release of performance security and complied with the requirements of paragraphs (A)(1), (A)(2), and (A)(3) of this rule, if no reclamation phase approval conference or performance security release conference is held pursuant to paragraph (A)(6)(b) of this rule; or

(ii) Within sixty days after the reclamation phase approval conference or performance security release conference, if a reclamation phase

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approval conference or performance security release conference is held pursuant to paragraph (A)(6)(b) of this rule.

- (b) If the chief disapproves a reclamation phase or a request for release, the chief shall notify the permittee in writing, stating the reasons for disapproval, recommending corrective action necessary to secure approval or 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 reclamation phase or 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;

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- (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 request for release of performance security.
- (a) The chief may approve a request for release of performance security and may 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 mining unit or the entire permit area.
 - (b) The chief may approve release of performance security for an incremental mining unit when reclamation in a particular phase is complete on that incremental mining unit even though such reclamation is not complete on other incremental mining units within the same permit, provided that no release of performance security for any acreage within an incremental mining unit may be approved until reclamation in the applicable phase is complete for all acres within that incremental mining unit.
 - (c) A portion of an incremental mining unit 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

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from the rest of the incremental mining unit and have performance security provided separately. Before determining that extended liability should apply to only a portion of the incremental mining unit, 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 mining unit 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 mining unit requiring a reduced period of liability because of its classification as a remaining area shall be separated from the rest of the incremental mining unit 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 mining unit or the entire permit area, the chief shall release performance security liability in an amount of up to fifty per cent of the performance security for the incremental mining unit 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 mining unit or the entire permit area, the chief shall release performance security liability in an amount of up to thirty-five per cent of the original performance security for the incremental mining unit or the entire permit area on which the reclamation phase II is complete.

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- (c) When reclamation phase III is approved by the chief for an incremental mining unit or the entire permit area, the chief shall release the remaining performance security liability for the incremental mining unit 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)~~ ~~Self bond submitted under rule 1501:13-7-04 of the Administrative Code;~~
- ~~(b)~~(a) The surety bond filed earliest in the permit term, followed by surety bond filed later in the permit term;
- ~~(c)~~(b) The letter of credit filed earliest in the permit term, followed by letters of credit filed later in the permit term; and
- ~~(d)~~(c) Any remaining collateral bond, in the order in which it was filed.

Draft Rule 1501:13-7-06, dated 1/2/2014.

This is a summary of the changes made to this rule.

(C)(4)(b). "or" added to the end of this paragraph, since current paragraph (c) is proposed to be removed.

(C)(4)(c). Amended to remove this paragraph. The Division will no longer accept self bonds as performance security.

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Dated 1/2/2014 Amendment in (C)(4)(c).

1501:13-7-06 **Performance security forfeiture criteria and procedures.**

(A) Performance security forfeiture criteria. The chief shall forfeit performance security under the procedures contained in paragraph (C) of this rule whenever any of the following criteria applies:

- (1) The permittee failed to comply with a notice of violation issued for failure to complete any phase of reclamation within the time required by the mining and reclamation plan and any time extensions given for good cause; or
- (2) The coal mining and reclamation operations on the area under performance security are abandoned; or
- (3) The permittee lacks the ability to continue to operate in compliance with the requirements of Chapter 1513. of the Revised Code, these rules, or the permit; or
- (4) The permittee defaults on the conditions under which the performance security was accepted.

(B) Opportunity to show cause why performance security should not be forfeited.

(1) Before performance security is forfeited under the criteria of paragraph (A)(2) or (A)(3) of this rule, because of abandonment of the coal mining and reclamation operation or inability of the permittee to comply, the chief shall order the permittee to show cause why the operation should not be deemed abandoned or why the permittee has the ability to comply with the requirements of Chapter 1513. of the Revised Code.

(2) The show cause order shall:

- (a) Identify the coal mining and reclamation operations covered by the performance security to be forfeited;
- (b) Give notice of the time, date, place, and purpose of the show cause hearing at which the permittee may show cause why the operation should not be deemed abandoned or why the permittee has the ability to comply with the requirements of Chapter 1513. of the Revised Code; and
- (c) Be issued at least twenty-one days before the show cause hearing is held.

(3) If the chief determines that the show cause order sent by certified mail is not received by the permittee within seven days after the order is mailed, the chief shall, as soon as possible, publish notice of the date, time, place, and purpose of

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the show cause hearing in a newspaper of general circulation in the locality of the operation.

- (C) Forfeiture procedures. When performance security is to be forfeited, the chief shall issue a performance security forfeiture order to the permittee.
- (1) The chief shall identify in the performance security forfeiture order the entire permit area or, when applicable, the incremental area or the incremental mining unit, for which performance security is to be forfeited. The order shall forfeit all remaining performance security on deposit for the permit.
 - (2) The performance security forfeiture order may include the terms of a reclamation agreement with the chief which, if complied with, shall result in avoidance of the forfeiture. The terms of the agreement shall include performance of reclamation operations and abatement of all unabated violations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, Chapter 1513. of the Revised Code and these rules, and a timetable specified by the chief.
 - (a) If the permittee fails to enter into a reclamation agreement within twenty days of the issuance of a performance security forfeiture order containing such agreement, the chief shall immediately forfeit the performance security and notify the permittee's surety, if applicable, of the permittee's failure to comply.
 - (b) If the permittee demonstrates to the chief's satisfaction within twenty days of the issuance of a performance security forfeiture order that the permittee has the ability to meet the terms and conditions of the reclamation agreement contained in the performance security forfeiture order, the chief shall monitor compliance with the terms and conditions of the reclamation agreement.
 - (i) Upon the permittee's satisfactory performance under the terms and conditions of the reclamation agreement, the chief shall rescind the performance security forfeiture order.
 - (ii) Upon the permittee's failure to comply with any of the terms or conditions of the reclamation agreement, the chief shall immediately forfeit the performance security and notify the permittee's surety, if applicable, of the permittee's failure to comply.
 - (c) The surety's time to elect to reclaim under paragraph (E) of this rule shall not begin to run until the permittee has failed to enter into an agreement under paragraph (C)(2) of this rule or has failed to comply with the terms of such agreement, and the surety has been notified of such failure.

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- (3) The performance security forfeiture order shall be sent by certified mail, return receipt requested, and shall inform the permittee and surety of the reasons for the forfeiture.
 - (4) In the event that the permittee does not enter into a reclamation agreement or fails to comply with the terms of a reclamation agreement under paragraph (C)(2) of this rule, when the performance security filed with the division of mineral resources management is supported by or in the form of:
 - (a) Cash, certificates of deposit or negotiable government bonds, then the order shall declare the cash, certificates of deposit, or negotiable government bonds property of the state;
 - (b) A letter of credit, then the order shall inform the permittee that the state will immediately draw on the letter of credit; [or](#)
 - ~~(c) A self bond, then the order shall inform the permittee that the state will immediately take appropriate collection actions on the self bond; or~~
 - ~~(d)~~[\(c\)](#) A trust fund, then the order shall inform the permittee that the state will proceed as set forth in the terms of the trust agreement.
 - (5) If the performance security filed with the division of mineral resources management is in the form of a surety bond, the chief shall also issue a performance security forfeiture order to all sureties involved, and, in addition to the requirements of paragraphs (C)(1) and (C)(3) of this rule, the order shall inform each surety of its rights and the extent of its obligations and liabilities for the entire permit area or, when applicable, for the incremental area or the incremental mining unit.
- (D) Issuance of a performance security forfeiture order does not relieve a permittee from the responsibility for complying, and does not prevent the permittee from being subject to civil penalties for not complying with any order or notice of violation issued for conditions existing on the entire permit area or, when applicable, on the incremental area or the incremental mining unit.
- (E) Reclamation by the surety.
- (1) Within sixty days after it receives a performance security forfeiture order, or within sixty days of notification of the permittee's failure to elect to enter into a reclamation agreement under paragraph (C)(2) of this rule or the permittee's failure to comply with the terms of a reclamation agreement under paragraph (C)(2) of this rule, each surety:

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- (a) Shall notify the chief that it will not complete reclamation and shall make payment under the surety bond for the full amount of its liability under the surety bond; or
 - (b) Shall notify the chief that it will complete reclamation and shall submit to the chief a plan, including a timetable for performing reclamation in accordance with the reclamation plan and the requirements of Chapter 1513. of the Revised Code and these rules.
- (2) The chief may allow the surety to complete reclamation if the surety can demonstrate an ability to complete reclamation in accordance with Chapter 1513. of the Revised Code, these rules and the reclamation plan.
- (3) A surety completing a reclamation phase on the entire permit area or, when applicable, on the incremental area or incremental mining unit, may obtain a release of its performance security obligation in the same manner as a permittee or operator pursuant to division (F) of section 1513.16 of the Revised Code.
- (4) The rights of a surety to perform reclamation shall be terminated if the surety fails to:
- (a) Notify the chief within sixty days after receipt of the performance security forfeiture order, or within sixty days of notification of the permittee's failure to elect to enter into a reclamation agreement under paragraph (C)(2) of this rule or the permittee's failure to comply with the terms of a reclamation agreement under paragraph (C)(2) of this rule, that it will or will not perform reclamation.
 - (b) Submit a reclamation timetable at the same time it notifies the chief that it will perform reclamation; or
 - (c) Commence, continue, or complete reclamation in accordance with the reclamation timetable.
- (5) When the chief determines that the rights of a surety shall be terminated, the chief shall issue an order terminating the rights of the surety and demanding payment from the surety for the entire amount of performance security filed with the chief by the surety for the entire permit area or, when applicable, for the incremental area or incremental mining unit.
- (F) Reclamation by the chief.
- (1) After receiving the moneys collected under paragraph (C) or (E) of this rule, the chief shall proceed to reclaim the entire permit area or, when applicable, the incremental area or the incremental mining unit, in accordance with:

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- (a) The requirements of section 1513.18 of the Revised Code if the permit that was forfeited was not a permanent program permit; or
 - (b) In accordance with Chapter 1513. of the Revised Code, these rules and the approved reclamation plan if the permit that was forfeited was a permanent program permit.
- (2) Any revisions that the chief wishes to make to the approved reclamation plan of a permanent program permit on which the performance security has been forfeited shall be made in accordance with paragraph (E) of rule 1501:13-4-06 of the Administrative Code. As used in paragraph (F) of this rule, "permanent program permit" means any permit issued after August 16, 1982, and any permit issued between September 1, 1981 and August 16, 1982 that was subsequently revised to meet the criteria of the approved program.

Draft Rule 1501:13-7-07, dated 10/4/2013.

This is a summary of the changes made to this rule.

(A). Amended to specify that, for an application to satisfy the liability insurance requirement of this rule, the application can contain a notarized certification acknowledging that a current proof of liability insurance and rider is part of the applicant's Central File for Identity Information. Having the liability insurance information in the Central File for Identity Information will avoid duplication of paperwork; the Central File contains up-to-date application information about a coal operator in one place in the Division, rather than requiring the coal operator to submit such information repeatedly in each individual application.

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Dated 10/4/2013

1501:13-7-07 **Liability insurance.**

- (A) An application for a permit shall contain a certificate issued by an insurance company authorized to do business in this state certifying that the applicant has a public liability insurance policy in force for those coal mining and reclamation operations for which the permit is sought, or a notarized certification acknowledging that a current proof of liability insurance and rider required by paragraph (B)(3) of this rule is part of the central file for identity information authorized by paragraph (J) of rule 1501:13-4-03 of the Administrative Code, or evidence that the applicant has satisfied other state self-insurance requirements or, for reclamation operations, evidence that an agent performing reclamation for the applicant has a public liability insurance policy.
- (B) The public liability insurance policy shall:
- (1) Be in effect during the term of the permit or any renewal, including the length of all reclamation operations;
 - (2) Provide for personal injury and property damage protection in amounts adequate to compensate any persons injured or property damaged as a result of coal mining and reclamation operations, including the use of explosives. The minimum insurance coverage for bodily injury and property damage shall be three hundred thousand dollars for each occurrence and five hundred thousand dollars in the aggregate; and
 - (3) Include a rider requiring that the insurer notify the chief whenever substantive changes are made in the policy, including any termination or failure to renew.