

Ohio Department of Natural Resources
Division of Mineral Resources Management

****Procedure Directive****

Inspection & Enforcement 2008-02

SUBJECT: Performance Security Increase As A Result of Non-Contemporaneous Reclamation

EFFECTIVE: August 19, 2008

PURPOSE: Procedures affecting performance security pool permits in the event a permittee fails to comply with a Notice of Violation issued for non-contemporaneous reclamation

Background:

Changes to Ohio Revised Code (ORC) 1513.08(E) resulting from House Bill 443 were effective on April 6, 2007. This section states:

"If the performance security was provided in accordance with division (C)(2) of this section and the Chief has issued a cessation order under division (D)(2) of section 1513.02 of the Revised Code for failure to abate a violation of the contemporaneous reclamation requirement under division (A)(15) of section 1513.16 of the Revised Code, the Chief may require the permittee to increase the amount of performance security from twenty-five hundred dollars per acre of land to five thousand dollars per acre of land."

Procedures:

Upon issuance of a Notice of Violation (NOV) by the Division of Mineral Resources Management (DMRM) for non-contemporaneous reclamation, a written notice will accompany the NOV notifying the permittee that if the permittee does not abate the NOV within the allotted time for remediation, resulting in DMRM issuing a Failure to Abate Cessation Order (FTACO), the permittee will be subject to an increased performance security of up to \$5000 per acre.

If DMRM issues a Failure to Abate Cessation Order (FTACO) for failure to comply with an NOV issued for non-contemporaneous reclamation for backfilling and/or grading, a written notice will accompany the FTACO to notify the permittee that the performance security rate will be increased to \$5000 per acre unless the Order is corrected within 30 days. If the enforcement action was issued for non-contemporaneous reclamation for any reason other than backfilling and grading on areas where Phase 1 performance security has been released, the Chief will determine the amount of increase in performance security considering site conditions, field staff recommendations, and other factors deemed appropriate. The notice to the permittee accompanying the FTACO will

identify the amount of increase established by the Chief.

The following steps will proceed:

- ◆ If the FTACO is completely abated within thirty days of issuance, the performance security will not be increased. Normal assessment and enforcement procedures will proceed.

- ◆ If the permittee does not abate the FTACO within thirty days of issuance, DMRM will immediately issue a Chief's Order requiring the permittee to post the additional performance security within 10 days. The Chief's Order will describe the amount of additional performance security the permittee must provide. The amount will be calculated based on the number of acres affected on the permit that have not obtained a Phase I performance security release at \$5000 per acre. If the FTACO addresses areas with Phase 1 performance security released, the increase will be the number of acres at an amount established by the Chief, not to exceed \$5000.

- ◆ At the same time the Order described above is issued, DMRM shall issue another Chief's Order per Ohio Administrative Code (OAC) 1501: 13-7-06 for the permittee to show cause why they have the ability to comply with the requirements of the ORC 1513.

- ◆ Any future areas affected on this permit will be subject to the \$5000 per acre rate.

- ◆ The increased performance security rate will remain in effect, at a minimum, until the permittee complies with the reclamation requirements that are the subject of the enforcement action. Following compliance with the enforcement action, the permittee may request that the Chief refund all, or a portion of, the amount of the increased performance security. The Chief will review the permittee's request and determine the amount, if any, of the increased performance security that may be refunded considering overall site conditions, the success of the reclamation performed, the permittee's compliance with other enforcement actions, and the outcome of the show-cause hearing, if one is requested.



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