

WAC 332-18-145 Blanket performance security—Rules to obtain and maintain a blanket performance security for multiple surface mines.

(1) A permit holder or landowner may use a blanket performance security for multiple surface mines if authorized by DNR under RCW 78.44.350 and this rule. The amount must equal the sum of the estimated reclamation cost calculated by DNR for the two covered surface mines with the largest performance security obligations. The process for obtaining DNR's approval includes a preliminary review, submittal of a complete request, and DNR review of a complete request.

(2) A permit holder or landowner must first request DNR's preliminary review of eligibility and the state of the proposed surface mines. The request shall identify permit holders and proposed surface mines by permit number, if any. DNR will issue a preliminary review decision on each mine indicating which mines would be eligible within sixty days. The preliminary review period may be extended by DNR with written notice to the applicant. If any requested sites are denied after the preliminary review, the DNR will state in writing why the site was denied and the applicant may request a meeting and/or reapply for preliminary review.

(a) A permit holder must meet the following conditions for it or the landowner to be eligible to submit and continue to use a blanket performance security:

(i) The permit holder must not be in violation of any final order of DNR;

(ii) The permit holder must have held at least one valid reclamation permit for longer than ten years;

(iii) The permit holder must demonstrate exemplary mining and reclamation practices that have been accepted by DNR. For purposes of this rule, "exemplary" means that the permit holder is substantially complying with chapters 78.44 RCW and 332-18 WAC, its effective reclamation permit and plan, and department orders for each of its surface mines and that the permit holder has not received more than two enforcement orders within the most recent calendar year;

(iv) The permit holder must, before obtaining a blanket performance security and every other year thereafter, submit a sworn statement by a responsible company official under penalty of perjury for false or misleading statements that the permit holder is financially able to pay for the DNR-approved estimated reclamation cost of all covered surface mines within one year; and

(v) The permit holder must before obtaining and every other year thereafter, submit an updated reclamation cost estimate on DNR's Standard Performance Security Calculation Form (SM-10) for each covered surface mine.

(b) Proposed sites must not include metal or fuel surface mines.

(c) To determine the likelihood of approval, DNR shall consider the permit holder's current and past compliance history in addition to the state of the existing surface mines of the permit holder. DNR may deem a surface mine "inappropriate" for coverage if inconsistent with (b) of this subsection or any of the following factors:

(i) The reclamation plan for the surface mine should be appropriate for the site's conditions and chapter 78.44 RCW;

(ii) The surface mine should be in substantial compliance with its effective reclamation permit and plan;

(iii) The surface mine condition should satisfy all of the top-soil requirements stated in the applicable reclamation permit and plan.

(3) If eligible, a permit holder or landowner may request DNR's acceptance of a blanket performance security by submitting all of the following items:

(a) An acceptable and adequate performance security on a DNR-approved form that equals the sum of the reclamation security calculated by the DNR for the two covered surface mines with the largest performance security obligations.

(b) A DNR Risk of Lien Form, signed by all landowners; and

(c) The estimated reclamation cost on a DNR Standard Performance Security Calculation Form (SM-10) for each included surface mine. Thereafter, the permit holder providing the blanket performance security shall submit documentation per subsection (2)(a)(iv) and (v) of this section. DNR shall review and confirm or correct each estimated reclamation cost according to its form and RCW 78.44.087.

(4) DNR may only approve a request for a blanket performance security when the request contains all required documents, is accurate, complete, and is submitted by or on behalf of eligible permit holders. DNR shall further consider the factors identified in subsection (2)(b) and (c) of this section. DNR will provide a written decision approving or disapproving the request, which is appealable.

(5) If surface mine conditions change so that the cumulative estimated reclamation cost for any two covered surface mines is greater than the initially calculated amount, the blanket performance security must be increased. DNR may recalculate estimated reclamation costs and may require a new blanket performance security under RCW 78.44.087 and 78.44.350.

(6) DNR may require substitute individual performance securities for all covered surface mines if the permit holder loses eligibility under subsection (2) of this section. Further, DNR may require a substitute individual performance security for each surface mine that becomes inappropriate for blanket coverage. The permit holder shall comply with the DNR written substitute performance security demand within thirty days of notice. DNR may require the substitute performance security until the permit holder regains eligibility or the surface mine is restored to an appropriate condition for blanket coverage. DNR may use the blanket security for the reclamation of any originally covered surface mine unless DNR approves cancellation of the original blanket performance security or approves a substitute blanket performance security excluding that surface mine.

[Statutory Authority: RCW 78.44.350 and 78.44.040. WSR 08-01-006, § 332-18-145, filed 12/6/07, effective 1/6/08.]