



Ohio Administrative Code

Rule 1501:13-5-01 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Effective: November 26, 2020

(A) Public notices of filing of permit applications, applications for significant revisions to permits, and applications for permit renewal.

(1) After the chief determines an application for a permit, for a significant revision to a permit, or for a permit renewal to be complete, the applicant shall place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining and reclamation operations at least once a week for four consecutive weeks. The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant;

(b) A description which shall:

(i) Clearly describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

(ii) Clearly describe the exact location and boundaries of the proposed permit area; and

(iii) State the name of the U.S. geological survey 7.5 minute quadrangle map(s) which contains the area described;

(c) The location where a copy of the application is available for public inspection under paragraph (A)(4) of this rule;

(d) The address of the "Division of Mineral Resources Management, 2045 Morse Road, Building H, Columbus, Ohio 43229" to which written comments, objections, or requests for informal conferences on the application may be submitted under paragraph (B) of this rule and rule 1501:13-14-05 of the



Administrative Code;

(e) If the application includes a road permit, approved by the road authority, to conduct coal mining operations within one hundred feet of the outside right-of-way of a public road or to relocate or close a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the approximate timing and duration of the relocation or closing;

(f) If the application includes a request for an experimental practice under rule 1501:13-4-12 of the Administrative Code, a statement indicating that an experimental practice is requested and identifying the rule of the Administrative Code for which a variance is requested; and

(g) If the application includes a request for restoration off the permit area by means of mitigation pursuant to rule 1501:13-13-08 of the Administrative Code, a statement indicating that such restoration is requested.

(2) Upon receipt of a complete application for a permit, for a significant revision to a permit or for a permit renewal, the chief shall issue written notification of:

(a) The applicant's intention to conduct coal mining and reclamation operations at a particularly described tract of land;

(b) The application or permit number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under paragraph (B) of this rule.

(3) The written notification described in paragraph (A)(2) of this rule shall be sent to:

(a) Federal, state, and local government agencies with jurisdiction over or an interest in the area of the proposed operations;

(b) Government planning agencies with jurisdiction to act with regard to land use, air, or water



quality planning in the area of the proposed operations;

(c) Sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;

(d) The federal or state government agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application; and

(e) The board of county commissioners, the board of township trustees, the legislative authorities of municipal corporations, private water companies, regional councils of governments, and the boards of directors of conservancy districts in each county or part of a county in which the proposed operations are located.

(4) Availability of permit applications, applications for significant revisions to permits, and applications for permit renewal.

(a) The applicant shall make a full copy of the complete application for a permit, a significant permit revision, or a permit renewal available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the chief at the division of mineral resources management district office responsible for inspection of the proposed operation, or if no such office is maintained in the county where the mining is proposed to occur, the applicant shall file a copy of the application with the county recorder of that county or at the office of the natural resources conservation service of the United States department of agriculture located in the county where the mining is proposed to occur.

(b) The applicant shall file the copy of the complete application under paragraph (A)(4)(a) of this rule by the first date of newspaper advertisement of the application. The applicant shall file any subsequent changes to the application with the public office at the same time the change is submitted to the chief.

(B) Comments and objections on permit applications, applications for significant revisions to permits and applications for permit renewal.



(1) Within thirty days of notification by the chief, as provided under paragraph (A)(3) of this rule, written comments or objections on an application for a permit, significant revision to a permit, or permit renewal may be submitted to the chief by such public entities with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) Written comments regarding or objections to an application for a permit, significant revision to a permit, or permit renewal may be submitted to the chief by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any federal, state or local government agency or authority, within thirty days after the last publication of the newspaper notice required under paragraph (A) of this rule.

(3) The chief shall, upon receipt of such written comments or objections, transmit a copy of such written comments or objections to the applicant and file a copy for public inspection at the same public office where the application is filed.

(C) Informal conferences. Any person having an interest which is or may be adversely affected by the issuance of or significant revision to a permit, or by the renewal of a permit, or the officer or head of any federal, state or local government agency or authority may, in writing, within thirty days after the last publication of the newspaper notice required under paragraph (A) of this rule, request that the chief hold an informal conference in accordance with rule 1501:13-14-05 of the Administrative Code.

(D) Review of permit applications, applications for revisions to permits, and applications for permit renewals.

(1) Preliminary review by the chief.

(a) The chief shall review the complete application and any written comments or written objections submitted, and records of any informal conference held under rule 1501:13-14-05 of the Administrative Code.

(b) The applicant for a permit, revision to a permit, or permit renewal shall have the burden of



establishing that the application is in compliance with all of the requirements of Chapter 1513. of the Revised Code and these rules.

(2) Time frames for review.

(a) If there has been no informal conference held pursuant to section 1513.071 of the Revised Code, the chief shall submit to the applicant for a permit the written finding of the chief granting or denying the permit in whole or in part and stating the reasons therefor within the time frames established in paragraph (D)(2)(b) of this rule. If there has been an informal conference held pursuant to section 1513.071 of the Revised Code, the chief shall submit to the applicant for a permit the written finding of the chief granting or denying the permit in whole or in part and stating the reasons therefor within the time frames established in paragraph (B)(3) of rule 1501:13-14-05 of the Administrative Code and paragraph (D)(2)(b) of this rule.

(b) The chief shall grant or deny a permit not later than two hundred forty business days after the submission of a complete application for the permit. Any time during which the applicant is making revisions to the application or providing additional information requested by the chief regarding an application shall not be included in the two hundred forty business days. If the chief determines that a permit cannot be granted or denied within the two-hundred-forty-business-day time frame, the chief, not later than two hundred ten business days after the submission of a complete application for the permit, shall provide the applicant with written notice of the expected delay.

(3) If the chief decides to approve the application, he or she shall require that the applicant file the performance security before the permit is issued, in accordance with the requirements of Chapter 1513. of the Revised Code and division 1501:13 of the Administrative Code.

(4) The chief shall determine, based on the list of violation notices submitted as part of the application under paragraph (C)(3) of rule 1501:13-4-03 of the Administrative Code or on available information concerning federal or state failure-to-abate cessation orders, unabated federal or state imminent harm cessation orders, delinquent civil penalties issued pursuant to rule 1501:13-14-03 of the Administrative Code or section 518 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268), delinquent abandoned mine reclamation fees, or forfeitures of a coal mining bond, performance security, or similar security deposited in lieu of a bond in this or any other state or with



the United States where the violations upon which the forfeitures were based have not been corrected, that any coal mining operation owned or controlled by the applicant or by any person who owns or controls the applicant is not currently in violation of any law, rule, or regulation of the United States or any state law, rule or regulation enacted pursuant to federal law, rule or regulation pertaining to air or water environmental protection. If this determination cannot be made, the chief shall not issue the permit. The chief shall require the applicant, before the issuance of the permit, to either:

(a) Submit to the chief proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation, and submit to the chief proof that any civil penalties owed to the state for a violation not the subject of an appeal have been paid; or

(b) Establish for the chief that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial hearing authority affirms the violation, then any coal mining operations being conducted under a permit issued according to this paragraph shall be immediately terminated, unless and until the provisions of paragraph (D)(4)(a) of this rule are satisfied.

(5) For the purposes of paragraph (D)(4) of this rule, the chief may presume that, in the absence of a failure-to-abate cessation order, a notice of violation issued pursuant to paragraph (B) of rule 1501:13-14-02 of the Administrative Code or under any equivalent state or federal law, rule or regulation has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties.

(6) No permit shall be issued to an applicant if a determination is made by the chief that the applicant, anyone who owns or controls the applicant, or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of Chapter 1513. of the Revised Code and these rules of a nature and duration to result in irreparable damage to the environment as to indicate an intent not to comply with or a disregard of Chapter 1513. of the Revised Code or division 1501:13 of the Administrative Code.



(7) Any permit that is issued on the basis of proof submitted under paragraph (D)(4)(a) of this rule that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (D)(4)(b) of this rule, shall be conditionally issued.

(8) Subsequent to the effective date of this rule, the prohibitions of paragraph (D)(4) of this rule regarding the issuance of a new permit, shall not apply to any violation that:

(a) Occurs after that date;

(b) Is unabated; and

(c) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:

(i) Issued pursuant to paragraph (L) of rule 1501:13-4-12 of the Administrative Code; and

(ii) Held by the person making application for the new permit.

(d) For permits issued under paragraph (L) of rule 1501:13-4-12 of the Administrative Code, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it:

(i) Arose after permit issuance;

(ii) Was related to prior mining; and

(iii) Was not identified in the permit.

(E) Criteria for approval or denial of an application. No application for a permit, significant revision to a permit, or permit renewal shall be approved unless the application affirmatively demonstrates, and the chief finds, in writing, on the basis of information set forth in the application or from information otherwise available, that is documented in the approval and made available to the applicant, that:



- (1) The application is accurate and complete and that all requirements of Chapter 1513. of the Revised Code and all rules adopted thereunder have been complied with;
- (2) The applicant has demonstrated that coal mining and reclamation operations, as required by Chapter 1513. of the Revised Code and all rules adopted thereunder, can be feasibly accomplished under the mining and reclamation operations plan contained in the application;
- (3) The assessment of the probable cumulative hydrologic impacts of all anticipated coal mining in the general area on the hydrologic balance, as described in divisions (B)(1)(k) and (E)(2)(c) of section 1513.07 of the Revised Code, has been made by the chief and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area;
- (4) The proposed permit area is:
 - (a) Not included within an area designated unsuitable for coal mining operations under rule 1501:13-3-07 of the Administrative Code;
 - (b) Not within an area under study for designation as unsuitable for coal mining operations in an administrative proceeding begun under rule 1501:13-3-07 of the Administrative Code, unless the applicant demonstrates that, before January 4, 1977, substantial legal and financial commitments were made in relation to the operation for which the applicant is applying for a permit;
 - (c) Not on any lands subject to the prohibitions or limitations of paragraph (A)(1), (A)(2), (A)(6), (A)(7) or (A)(8) of rule 1501:13-3-03 of the Administrative Code;
 - (d) Not within one hundred feet of the outside right-of-way line of any public road, except as provided for in paragraph (C) of rule 1501:13-3-04 of the Administrative Code; and
 - (e) Not within three hundred feet from any occupied dwelling, except as provided for in paragraph (A)(5) of rule 1501:13-3-03 or paragraph (D) of rule 1501:13-3-04 of the Administrative Code;



(5) The proposed operations will not adversely affect any publicly owned parks or places included in the "National Register of Historic Places," administered by the national parks service, U.S. department of the interior, except as provided for in paragraph (A)(3) of rule 1501:13-3-03 of the Administrative Code. The website for the "National Register of Historic Places" for Ohio sites is www.nationalregisterofhistoricplaces.com/oh/state.html;

(6) For operations involving the mining of coal where the private mineral estate to be mined has been severed from the private surface estate and surface disturbance will result from the applicant's proposed use of a surface mining method, the applicant has submitted to the chief the documentation required under paragraph (D)(3) of rule 1501:13-4-03 of the Administrative Code;

(7) The applicant has either:

(a) Submitted the proof required by paragraph (D)(4)(a) of this rule; or

(b) Made the demonstration required by paragraph (D)(4)(b) of this rule;

(8) The applicant has submitted proof, by affidavit and supporting documentation, that all reclamation fees from previous and existing operations as required by Subchapter R of Chapter VII of Title 30 of the Federal Code of Regulations have been paid;

(9) The coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed during the same permit term in areas adjacent to the proposed permit area;

(10) The applicant will submit the performance security required under Chapter 1513. of the Revised Code and these rules prior to the issuance of the permit;

(11) The applicant has, with respect to prime farmland, obtained either a negative determination or satisfied the requirements of paragraph (F) of rule 1501:13-4-12 of the Administrative Code;

(12) The proposed postmining land use of the permit area has been approved by the chief in accordance with the requirements of rule 1501:13-9-17 of the Administrative Code;



- (13) The chief has made all specific approvals required under division 1501:13 of the Administrative Code;
- (14) The operations are not likely to jeopardize the continued existence of endangered or threatened species or are not likely to result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.);
- (15) The applicant has satisfied the applicable permit requirements for special categories of mining under requirements of rule 1501:13-4-12 of the Administrative Code;
- (16) The chief has taken into account the effect of the proposed permitting action on properties listed on or eligible for listing on the "National Register of Historic Places," as referenced in paragraph (E)(5) of this rule. Some of the ways in which the chief may take into account the effect of the proposed permitting action on such historic resources include, but are not limited to:
- (a) Imposing permit conditions which protect the historic resource;
 - (b) Requiring revision of the proposed operation plan before application approval; and
 - (c) Concluding in a written finding that no protection measures are necessary;
- (17) The applicant has demonstrated that any existing structure will comply with the requirements of paragraph (C) of rule 1501:13-1-01 of the Administrative Code and the applicable performance standards of division 1501:13 of the Administrative Code;
- (18) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of paragraph (L)(3) of rule 1501:13-9-14 of the Administrative Code, the site of the operation is a previously mined area as defined in rule 1501:13-1-02 of the Administrative Code; and
- (19) For operations which will include remining areas under paragraph (L) of rule 1501:13-4-12 of the Administrative Code, the application includes:



(a) Lands eligible for remining;

(b) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(c) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of Chapter 1513. of the Revised Code can be accomplished.

(F) Final compliance review. After an application is approved, but before the permit is issued, the chief shall reconsider his or her decision to approve the application, based on the compliance review required by paragraph (D)(4) of this rule in light of any new information submitted under paragraphs (B)(11) and (C)(5) of rule 1501:13-4-03 of the Administrative Code.

(G) Conditions of permits: general and right of entry. Each permit issued by the chief shall ensure and contain specific conditions requiring that:

(1) Except to the extent that the chief otherwise directs in the permit that specific actions be taken, the permittee shall conduct all coal mining and reclamation operations as described in the complete application;

(2) The permittee shall allow the authorized representatives of the secretary of the department of the interior, including, but not limited to, inspectors and fee compliance officers, and the chief and his or her authorized representatives, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to:

(a) Have the rights of entry provided for in paragraph (B) of rule 1501:13-14-01 of the Administrative Code; and

(b) Be accompanied by private persons for the purpose of conducting an inspection in accordance with rule 1501:13-14-01 of the Administrative Code when the inspection is in response to an alleged violation reported to the chief by the private person;



(3) The permittee shall conduct coal mining and reclamation operations only on those lands specifically designated on the maps submitted under rules 1501:13-4-04, 1501:13-4-05, 1501:13-4-07, 1501:13-4-08, 1501:13-4-08.1, 1501:13-4-13 and 1501:13-4-14 of the Administrative Code and approved for the term of the permit and which are subject to the performance security in effect pursuant to Chapter 1501:13-7 of the Administrative Code. The permit shall contain a specific condition to prohibit the commencement of coal mining operations on any land that is located within the permit area or the shadow area if the permittee has not provided to the chief documents that form the basis of the permittee's legal right to enter and conduct coal mining operations on that land;

(4) The permittee shall not operate without adequate performance security coverage in effect at all times; and

(5) Within thirty days after a cessation order is issued under rule 1501:13-14-02 of the Administrative Code or 30 C.F.R. 843.11, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall submit to the chief the following information, current to the date the cessation order was issued, or notify the chief in writing that there has been no change since the immediately preceding submittal of such information:

(a) Any new information needed to correct or update the information previously submitted to the chief by the permittee under paragraph (B)(5) of rule 1501:13-4-03 of the Administrative Code; or

(b) If not previously submitted, the information required from a permit applicant by paragraph (B)(5) of rule 1501:13-4-03 of the Administrative Code.

(H) Conditions of permits: environment, public health and safety. Each permit issued by the chief shall ensure and contain specific conditions requiring that:

(1) The permittee shall take all possible steps to minimize any adverse impacts to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

(a) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;



(b) Immediate implementation of measures necessary to comply; and

(c) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance;

(2) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Chapter 1513. of the Revised Code and all rules adopted thereunder and which prevents violation of any other applicable state or federal law;

(3) The permittee shall conduct his or her operations:

(a) In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health and safety of the public; and

(b) Utilizing any methods specified in the permit by the chief in approving alternative methods of compliance with the performance standards of Chapter 1513. of the Revised Code and all rules adopted thereunder;

(4) As applicable, the permittee shall comply with paragraph (C) of rule 1501:13-1-01 of the Administrative Code and with the permanent or interim program requirements of division 1501:13 of the Administrative Code for compliance, modification, or abandonment of existing structures; and

(5) The permittee shall pay all reclamation fees, as required by Subchapter R of Chapter VII of Title 30 of the Federal Code of Regulations for coal produced under the permit for sale, transfer or use.

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