



Ohio Revised Code

Section 1513.02 Chief of division of mineral resources management - powers and duties.

Effective: April 6, 2007

Legislation: House Bill 443 - 126th General Assembly

(A) The division of mineral resources management shall administer, enforce, and implement this chapter. The chief of the division of mineral resources management shall do all of the following:

(1) Adopt, amend, and rescind rules:

(a) To administer and enforce this chapter;

(b) To implement the requirements of this chapter for the reclamation of lands affected by coal mining, including such rules governing mining practices and procedures, segregation and placement of soil and topsoil, backfilling, grading, terracing, resoiling, soil conditioning and reconditioning, planting, establishment of drainage patterns, construction of impoundments, and the construction, maintenance, and disposition of haul roads, ditches, and dikes, as may be necessary or desirable, under varying conditions of slope, drainage, physical and chemical characteristics of soil and overburden, erodability of materials, season, growth characteristics of plants, and other factors affecting coal mining and reclamation, to facilitate the return of the land to a condition required by this chapter; to prevent pollution or substantial diminution of waters of the state, substantial erosion, substantial deposition of sediment, landslides, accumulation and discharge of acid water, and flooding, both during mining and reclamation and thereafter; to restore the recharge capacity of the mined area to approximate premining conditions; and to ensure full compliance with all requirements of this chapter relating to reclamation, and the attainment of those objectives in the interest of the public health, safety, and welfare to which these reclamation requirements are directed;

(c) To meet the requirements of the "Surface Mining Control and Reclamation Act of 1977," 91 Stat. 445, 30 U.S.C. 1201.

(2) Issue orders to enforce this chapter and rules adopted under it;



- (3) Adopt rules for the internal management of the division that do not affect private rights;
- (4) Adopt programs, rules, and procedures designed to assist the coal operator in this state with the permitting process and complying with the environmental standards of this chapter. Upon request of the applicant for a permit, the chief shall make a determination of the probable hydrologic consequences required in division (B)(1)(k) of section 1513.07 of the Revised Code within sixty days after a permit has been submitted to the division for those applications requesting the chief to perform the study. The chief shall perform the chemical analysis of test borings or core samplings for operators who have a total annual production of coal at all locations that does not exceed one hundred thousand tons.
- (5) Adopt programs, rules, and procedures designed to ensure that reclamation is performed on operations for which the performance security has been forfeited pursuant to section 1513.16 of the Revised Code;
- (6) Receive, administer, and expend moneys obtained from the United States department of the interior and other federal agencies to implement the state's permanent coal regulatory program;
- (7)(a) Regulate the beneficial use of coal combustion byproducts at coal mining and reclamation operations and abandoned mine lands that are regulated under this chapter and rules adopted under it. The beneficial use of coal combustion byproducts at such coal mining and reclamation operations and abandoned mine lands is subject to all applicable performance standards and requirements established under this chapter and rules adopted under it, including, without limitation, standards and requirements established under section 1513.16 of the Revised Code and rules adopted pursuant to it.

The beneficial use of coal combustion byproducts that is authorized at coal mining and reclamation operations and abandoned mine lands that are regulated under this chapter and rules adopted under it is not subject to the following provisions of Chapters 3734. and 6111. of the Revised Code and rules adopted under those provisions:

- (i) Permit and license requirements for solid waste facilities established under sections 3734.02 and



3734.05 of the Revised Code;

(ii) The prohibition against the open dumping of solid wastes established in section 3734.03 of the Revised Code;

(iii) Solid waste generation and disposal fees established under sections 3734.57 to 3734.574 of the Revised Code;

(iv) Permit to install and plan approval requirements established under sections 6111.03, 6111.44, and 6111.45 of the Revised Code.

Nothing in division (A)(7) of this section shall be construed to limit any other requirements that are applicable to the beneficial use of coal combustion byproducts and that are established under Chapter 3704., 3714., 3734., or 6111. of the Revised Code or under local or federal laws, including, without limitation, requirements governing air pollution control permits, hazardous waste, national pollutant discharge elimination system permits, and section 401 water quality certifications.

(b) As used in division (A)(7) of this section:

(i) "Coal combustion byproducts" means fly ash, bottom ash, coal slag, flue gas desulphurization and fluidized bed combustion byproducts, air or water pollution control residues from the operation of a coal-fired electric or steam generation facility, and any material from a clean coal technology demonstration project or other innovative process at a coal-fired electric or steam generation facility.

(ii) "Beneficial use" means the use of coal combustion byproducts in a manner that is not equivalent to the establishment of a disposal system or a solid waste disposal facility and that is unlikely to affect human health or safety or the environment adversely or to degrade the existing quality of the land, air, or water. "Beneficial use" includes, without limitation, land application uses for agronomic value; land reclamation uses; and discrete, controlled uses for structural fill, pavement aggregate, pipe bedding aggregate, mine sealing, alternative drainage or capping material, and pilot demonstration projects.



(iii) "Structural fill" means the discrete, controlled use of a coal combustion byproduct as a substitute for a conventional aggregate, raw material, or soil under or immediately adjacent to a building or structure. "Structural fill" does not include uses that involve general filling or grading operations or valley fills.

(iv) "Pavement aggregate" means the discrete, controlled use of a coal combustion byproduct as a subbase material or drainage layer under or immediately adjacent to a paved road or a paved parking lot where the coal combustion byproduct is a substitute for a conventional aggregate, raw material, or soil.

(v) "Pipe bedding aggregate" means the discrete, controlled use of a coal combustion byproduct as a substitute for a conventional aggregate, raw material, or soil under, around, or immediately adjacent to a water, sewer, or other pipeline.

(vi) "Coal-fired electric or steam generation facility" includes any boiler that is fired with coal or with coal in combination with petroleum coke, oil, natural gas, or any other fossil fuel.

(vii) "Solid waste disposal facility" means a facility for the disposal of solid wastes as provided in Chapter 3734. of the Revised Code and rules adopted under it.

(viii) "Disposal system" has the same meaning as in section 6111.01 of the Revised Code.

(8) Establish programs and adopt rules and procedures governing terms, limitations, and conditions for the use of diesel equipment in an underground coal mine.

(B) The chief, by rule, may designate as unsuitable for coal mining natural areas maintained on the registry of natural areas of the department of natural resources pursuant to Chapter 1517. of the Revised Code, wild, scenic, or recreational river areas designated pursuant to that chapter, publicly owned or dedicated parks, and other areas of unique and irreplaceable natural beauty or condition, or areas within specified distances of a public road, occupied dwelling, public building, school, church, community, or institutional building, public park, or cemetery. Such a designation may include land adjacent to the perimeters of those areas that may be necessary to protect their integrity.



(C)(1) The adoption, amendment, and rescission of rules under divisions (A)(1), (4), (5), and, (8), (B), and (J) of this section are subject to Chapter 119. of the Revised Code.

(2) The issuance of orders under division (A)(2) of this section and appeals therefrom are not governed by or subject to Chapter 119. of the Revised Code, but are governed by this chapter.

(D)(1) When the chief or an authorized representative of the chief determines that any condition or practice exists or that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, which condition, practice, or violation creates an imminent danger to the health or safety of the public or is causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources, the chief or the authorized representative immediately shall order the cessation of coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. The cessation order shall remain in effect until the chief or the authorized representative determines that the condition, practice, or violation has been abated or until the order is modified, vacated, or terminated by the chief or the authorized representative pursuant to division (D)(4) of this section or by the reclamation commission pursuant to section 1513.13 of the Revised Code. When the chief or the authorized representative finds that the ordered cessation of coal mining and reclamation operations or any portion thereof will not completely abate the imminent danger to the health or safety of the public or the significant, imminent environmental harm to land, air, or water resources, the chief or the authorized representative, in addition to the cessation order, shall order the operator to take whatever steps the chief or the authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When the chief or an authorized representative of the chief determines that any person is in violation of any requirement of this chapter or any permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or cannot reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the chief or the authorized representative shall issue a notice of violation to the person or the person's agent fixing a reasonable time for the abatement of the violation, provided that the time afforded a person to abate the violation shall not exceed the time limitations prescribed by the secretary of the interior in 30 C.F.R. Part 843 for an approvable state regulatory program under the "Surface Mining Control and Reclamation Act of 1977," 91 Stat. 445, 30 U.S.C. 1201.



If, upon expiration of the period of time as originally fixed or subsequently extended for good cause shown and upon the written finding of the chief or the authorized representative, the chief or the authorized representative finds that the violation has not been abated, the chief or the authorized representative immediately shall order the cessation of coal mining and reclamation operations or the portion thereof relevant to the violation. The cessation order shall remain in effect until the chief or the authorized representative determines that the violation has been abated or until the order is modified, vacated, or terminated by the chief or the authorized representative pursuant to division (D)(4) of this section or by the reclamation commission pursuant to section 1513.13 of the Revised Code. In a cessation order issued under division (D)(2) of this section, the chief or the authorized representative shall prescribe the steps necessary to abate the violation in the most expeditious manner possible.

(3) When in the judgment of the chief or an authorized representative of the chief a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed and the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this chapter or any permit conditions or are willfully caused by the permittee, the chief or the authorized representative immediately shall issue an order to the permittee to show cause why the permit should not be suspended or revoked. If a hearing is requested, the chief shall inform all interested parties of the time and place of the hearing and conduct the hearing pursuant to division (D) of section 1513.13 of the Revised Code. Upon the permittee's failure to show cause why the permit should not be suspended or revoked, the chief or the authorized representative immediately shall suspend or revoke the permit.

(4) Notices of violation and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the alleged violator or the agent of the alleged violator by the chief or an authorized representative of the chief who issues the notice or order. Notices and orders shall be in writing and shall be signed by the chief or the authorized representative and may be modified, vacated, or terminated by the chief or the authorized representative. Any notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within



thirty days after actual notice to the operator unless a public hearing pursuant to section 1513.13 of the Revised Code is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing.

(E)(1) A person who violates a permit condition or any other provision of this chapter may be assessed a civil penalty by the chief, except that if the violation leads to the issuance of a cessation order under division (D) of this section, the civil penalty shall be assessed for each day until the person initiates the necessary corrective steps. The penalty shall not exceed five thousand dollars for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the person's history of previous violation at the particular coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the person was negligent; and the demonstrated diligence of the person charged in attempting to achieve rapid compliance after notification of the violation.

(2) A civil penalty shall be assessed by the chief only after the person charged with a violation under division (E)(1) of this section has been given an opportunity for a public hearing. If a person charged with such a violation fails to avail oneself of the opportunity for a public hearing, a civil penalty shall be assessed by the chief after the chief has determined that a violation did occur, and the amount of the penalty that is warranted, and has issued an order requiring that the penalty be paid.

(3) Upon the issuance of a notice or order charging that a violation of this chapter has occurred, the chief shall inform the operator within thirty days of the proposed amount of the penalty and provide opportunity for an adjudicatory hearing pursuant to section 1513.13 of the Revised Code. The person charged with the penalty then shall have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, file a petition for review of the proposed assessment with the secretary of the reclamation commission pursuant to section 1513.13 of the Revised Code. If, after the hearing, the commission affirms or modifies the proposed amount of the penalty, the person charged with the penalty then shall have thirty days after receipt of the written decision to pay the amount in full or file an appeal with the court of appeals in accordance with section 1513.14 of the Revised Code. At the time the petition for review of the proposed assessment is filed with the secretary, the person shall forward the



amount of the penalty to the secretary for placement in the reclamation penalty fund, which is hereby created. The fund shall be in the custody of the treasurer of state, but shall not be a part of the state treasury. Pursuant to administrative or judicial review of the penalty, the secretary, within thirty days, shall remit the appropriate amount of the penalty to the person, with interest, if it is determined that no violation occurred or that the amount of the penalty should be reduced, and the secretary shall forward the balance of the penalty or, if the penalty was not reduced, the entire amount of the penalty, with interest, to the chief for deposit in the reclamation forfeiture fund created in section 1513.18 of the Revised Code. Failure to forward the money to the secretary within thirty days after the chief informs the operator of the proposed amount of the penalty shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. Within fifteen days after being informed of the penalty, the person charged with the penalty may request in writing an informal assessment conference to review the amount of the penalty. The conference shall be presided over by the chief or an individual appointed by the chief other than the inspector that issued the notice of violation or order upon which the penalty is based. The chief shall adopt rules governing procedures to be followed in informal conferences. Time allowed for payment of the penalty or appeal to the commission shall be tolled while the penalty is being reviewed in an informal conference.

(4) An operator who fails to correct a violation for which a notice of violation or order has been issued under division (D) of this section within the period permitted for its correction shall be assessed a civil penalty of not less than seven hundred fifty dollars for each day during which the failure or violation continues. However, a civil penalty shall not be assessed under division (E)(4) of this section if the commission orders the suspension of the abatement requirement after determining, based upon the findings of an expedited hearing held under section 1513.13 of the Revised Code at the request of the operator, that the operator will suffer irreparable loss or damage from the application of the abatement requirement or if the court orders suspension of the abatement requirement pursuant to review proceedings held under section 1513.14 of the Revised Code at the request of the operator.

(F) The chief may enter into a cooperative agreement with the secretary of the interior to provide for state regulation of coal mining and reclamation operations on federal lands within the state.

(G) The chief may prohibit augering if necessary to maximize the utilization, recoverability, or



conservation of the solid fuel resources or to protect against adverse water quality impacts.

(H) The chief shall transmit copies of all schedules submitted under section 1513.07 of the Revised Code pertaining to violations of air or water quality laws and rules adopted and orders issued under those laws in connection with coal mining operations to the director of environmental protection for verification.

(I) For the purposes of sections 1513.18, 1513.24, 1513.37, and 1514.06 of the Revised Code, the chief triennially shall determine the average wage rate for companies performing reclamation work for the division under those sections by averaging the wage rate paid by all companies performing such reclamation work during the three years immediately preceding the determination. However, in making the initial determination under this division, the chief shall average the wage rate paid by all companies performing such reclamation work during the ten years immediately preceding October 29, 1995.

(J) If this state becomes covered by a state programmatic general permit issued by the United States army corps of engineers for the discharge of dredged or fill material into the waters of the United States by operations that conduct surface and underground coal mining and reclamation operations and the restoration of abandoned mine lands, the chief may establish programs and adopt rules and procedures designed to implement the terms, limitations, and conditions of the permit. The purpose of the programs, rules, and procedures shall be to enable the state to reduce or eliminate duplicative state and federal project evaluation, simplify the regulatory approval process, provide environmental protection for aquatic resources that is equivalent to federal protection, and satisfy the requirements of the United States army corps of engineers regulatory program under which the permit is issued and that is established under section 404 of the "Federal Water Pollution Control Act," 86 Stat. 48 (1972), 33 U.S.C. 1344, as amended by the "Clean Water Act of 1977," 91 Stat. 1600, 33 U.S.C. 1344; section 10 of the "Rivers and Harbors Act of 1899," 30 Stat. 1151, 33 U.S.C. 403; and section 103 of the "Marine Protection, Research, and Sanctuaries Act of 1972," 86 Stat. 1055, 33 U.S.C. 1413.