

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1501:14-1-09

Rule Type: Amendment

Rule Title/Tagline: Payment of fees and filing of performance bond.

Agency Name: Department of Natural Resources

Division: Division of Mineral Resources Management-Industrial Mineral

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I. Rule Summary

1. **Is this a five year rule review? Yes**
 - A. **What is the rule's five year review date? 1/31/2019**
2. **Is this rule the result of recent legislation? Yes**
 - A. **If so, what is the bill number, General Assembly and Sponsor? HB 49 - 132
- Ryan Smith**
3. **What statute is this rule being promulgated under? 119.03**
4. **What statute(s) grant rule writing authority? 1514.08**
5. **What statute(s) does the rule implement or amplify? 1514.011, 1514.02, 1514.021, 1514.03, 1514.04**
6. **What are the reasons for proposing the rule?**

To update the rule with the changes made by HB 49 of the 132nd General Assembly and to comply with Ohio's five-year-review requirement pursuant to Ohio Revised Code section 106.03.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule contains the requirements for the payment of fees and the filing of performance bonds related to industrial minerals surface mining. The Division of Mineral Resources Management has fully reviewed this rule consistent with ORC section 106.03, and has determined that the following revision is needed:

(F). Fund changed per HB 49 of the 132nd General Assembly, effective 9/29/2017. HB 49 amended ORC section 1514.03 to state that all fees collected under that section and section 1514.02 shall be deposited in the Mining Regulation and Safety Fund created under ORC section 1513.30. Sections 1514.02 and 1514.03 address permit fees, filing fees and acreage fees.

8. **Does the rule incorporate material by reference? No**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

\$0

Fiscal impact of rule in its entirety: This rule is significant to the Industrial Minerals regulatory program because it amplifies Revised Code Chapter 1514, which requires the operator to file all required fees and performance bond before beginning industrial minerals mining under a surface mining permit. Taken together, this rule and the sections of the Ohio Revised Code that establish the fees and performance bond amounts provide important revenues to the Division of Mineral Resources Management and important reclamation safeguards to the public.

The required fees are permit filing fees and acreage fees. The amount of these fees is established by ORC 1514.02(B); these monies are deposited in a fund used to pay for the IM regulatory program. The performance bond amount established by ORC 1514.04(A) is held by the State until reclamation of the mined area is completed; should an operator fail to complete reclamation, the bond money is used for this purpose. The revenues associated with this rule have been absorbed into the Division's budget; no change to ODNR's revenues or expenditures will be caused by this proposed amendment.

Fiscal impact of the proposed amendment(s) to the rule: The amendment proposed in this rule will change the fund into which fees are deposited, per HB 49 of the 132nd General Assembly. This change does not change the dollar amount of the fees or performance bond and therefore will not have a fiscal impact on the Division.

12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

Fiscal impact of rule in its entirety: This rule is significant to industrial minerals surface mine operators because it amplifies Revised Code Chapter 1514., which requires the operator to file all required fees and performance bond before beginning industrial minerals mining under a surface mining permit. Taken together, this rule and the sections of the Ohio Revised Code that establish the fees and performance bond amounts have a significant fiscal impact on IM surface mine operations and provide important revenues to the Division of Mineral Resources Management and important reclamation safeguards to the public.

The required fees are permit filing fees and acreage fees. The amount of these fees is established by ORC 1514.02(B); these monies are deposited in a fund used to pay for the IM regulatory program. The performance bond is held by the State until reclamation of the mined area is completed; should an operator fail to complete reclamation, the bond money is used for this purpose.

ORC 1514.02(B) establishes a permit filing fee of \$500 for surface mining permits and \$250 for in-stream mining permits and an acreage fee of \$75 for each acre proposed to be affected. ORC 1514.04(A) establishes a minimum reclamation performance bond of \$10,000 for up to 20 acres affected plus \$500 per acre above 20 acres affected. For permits of 20 acres or less issued before August 15, 2002, this rule contains a "grandfather" provision with a lower bond amount of \$2,000 or \$500 per acre of affected land, whichever is greater.

The increased costs of compliance caused by this rule were incurred by industry when the first surface industrial minerals permit filing fees, acreage fees, and performance bonds were enacted by HB 95 in 1974 and this rule was first promulgated in 1975 -- and when subsequent increases in these fees and/or bonds were passed by the Ohio General Assembly in 1979, 1985, 1987, and 2002. The proposed amendments to the rule do not change these costs.

Fiscal impact of the proposed amendment(s) to the rule: The amendment proposed in this rule will change the fund into which fees are deposited, per HB 49 of the 132nd General Assembly. This change will impose no additional cost of compliance upon any directly affected persons.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).** No
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).** Yes

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office?** Yes
16. **Does this rule have an adverse impact on business?** Yes
 - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business?** Yes

This rule amplifies ORC sections 1514.02, 1514.021, 1514.03, and 1514.04, which require a performance bond and fees to be submitted before a permit to mine is issued.

- B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms?** Yes

This rule amplifies ORC sections 1514.02, 1514.021, 1514.03, and 1514.04, which require a performance bond and fees to be submitted before a permit to mine is issued. This rule requires the Chief to issue an order denying the issuance of a surface mining permit, permit renewal, or amendment to a permit if the required fees and or performance bond are not filed, except that the Chief may extend the time required for filing such fees or bond for good cause shown.

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

This rule amplifies ORC sections 1514.02, 1514.021, 1514.03, and 1514.04, which require a performance bond and fees to be submitted before a permit to mine is issued.

Rule Summary and Fiscal Analysis

Part C - Environmental Rule Questions

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted? Yes

Please list each contact.

Ohio Coal Association
Ohio Aggregates and Industrial Minerals Association
Ohio Environmental Council

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? Yes

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

Ohio Revised Code sections 1514.011, 1514.02, 1514.021, 1514.03, 1514.04, and 1514.08.

- (C) **Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program? No**

Is the proposed rule or rule amendment more stringent than its federal counterpart?
Not Applicable

- (D) **If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? No**