



## MEMORANDUM

**TO:** Ann P. Laubach, Ohio Department of Natural Resources

**FROM:** Sean T. McCullough, Regulatory Policy Advocate, Lt. Governor's Office

**DATE:** February 6, 2015

**RE:** **CSI Review – Industrial Minerals (OAC § 1501:14-1-01; 1501:14-1-05; 1501:14-1-09; 1501:14-1-16; 1501:14-2-01; 1501:14-3-12; 1501:14-3-13; 1501:14-5-04; 1501:14-6-01 and 1501:14-6-02)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (R.C.) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in R.C. § 107.54.

### I. INTRODUCTION AND BACKGROUND

On December 10, 2014, the Ohio Department of Natural Resources ("ODNR") submitted a rule package containing ten (10) amended rules, which were submitted as a result of the five-year review requirement contained in state statute. The rules regulate various aspects of industrial minerals surface mining. ODNR cites R.C. §§ 1514.08, 1514.081 and 1514.10 as authority to establish these rules. The official public comment period closed on December 23, 2014. No comments were submitted.

### II. ANALYSIS

#### A. ADVERSE IMPACT ON BUSINESS

As indicated by ODNR in the BIA, the scope of the business community impacted by this rule consists of all operators of industrial minerals surface mining operations in Ohio.

According to ODNR, all operators wishing to conduct industrial minerals surface mining operations must obtain a mining permit from ODNR. If an operator wishes to transfer that permit to another operator, an application must be filed with ODNR containing identification information. An applicant must also provide proof of performance bond and liability insurance, along with providing copies of certain deeds and lease agreements related to the real property. The rules also establish fee levels for permits and minimum requirements for bond amounts. If the requirements for fees and bond minimums are not met, the rules allow ODNR the discretion to deny the issuance or renewal of a mining permit. The rules also enumerate specific requirements for disposition of lime mining wastes (LMW)<sup>1</sup> for beneficial use,<sup>2</sup> including an application and permit. Finally, the rules require operators to apply for a variance when that operator wishes to conduct mining within certain statutory proximity limits of watercourses.

The above provisions require the submission of applications, reporting of information, and payment of fees as a condition of compliance, along with possible penalties for non-compliance. All of these requirements are enumerated in R.C. § 107.52, and therefore, these provisions are considered adverse impacts to business.

#### B. JUSTIFICATION FOR ADVERSE IMPACT

According to ODNR, the Department reached out to and met with stakeholders early in the rule-review process. As indicated in the BIA, stakeholders (i.e., the Ohio Aggregates and Industrial Minerals Association) made requests for clarification and suggested changes to the rules. ODNR incorporated the suggested changes and clarified the proposed rules to the satisfaction of stakeholders. Also, as indicated by ODNR through the revised BIA and discussions with CSI, the Department has worked closely with and consulted stakeholders to craft rules regulating industrial minerals mining operations that strike a balance between encouraging economic opportunity and protecting Ohio's soil, water and public health from unwanted and hazardous byproducts from mining and other adverse effects. The regulation is a product of federal and state statutory requirements, along with the consultation of scientific and industry experts.

CSI is satisfied with the Department's justification because (1) ODNR included stakeholders from an early stage of rule review, (2) ODNR incorporated changes to the rules suggested by stakeholders, (3) CSI has received no stakeholder comments, and (4) ODNR has created these rules pursuant to statute, and they are necessary and appropriate to protect Ohioans from hazardous effects and byproducts of industrial minerals mining operations. Accordingly, these rules have been sufficiently justified by ODNR.

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<sup>1</sup> According to the definition section in the rules, LMW is residual material resulting from the mining of lime or limestone.

<sup>2</sup> Beneficial use of LMW is essentially land reclamation, for example as fill material in mining quarries.

### **III. RECOMMENDATIONS**

For the reasons explained above, this office has no recommendations regarding this rule package.

### **IV. CONCLUSION**

ODNR may proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office