

**MEMORANDUM**

TO: Ashley Montgomery-Hively, Ohio Department of Natural Resources

FROM: Christopher Smyke, Lt. Governor's Office

DATE: June 29, 2017

RE: **CSI Review – Division of Mineral Resources Management 2016 Rules- Industrial Minerals (OAC 1501:14-1-02, 1501:14-1-03, 1501:14-1-04, 1501:14-1-09, 1501:14-1-12, 1501:14-1-14, 1501:14-1-16, 1501:14-2-01, 1501:14-2-07, 1501:14-3-02, 1501:14-3-03, 1501:14-3-04, 1501:14-3-05, 1501:14-3-06, 1501:14-3-07, 1501:14-3-08, 1501:14-3-09, 1501:14-3-10, 1501:14-3-11, 1501:14-4-01, 1501:14-4-02, 1501:14-4-03, 1501:14-4-04, 1501:14-5-02 and 1501:14-5-03)**

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

Analysis

This rule package consists of 25 rules – 13 amended and 12 no-change – submitted pursuant to the statutorily-required five-year rule review by the Ohio Department of Natural Resources (ODNR). It was submitted to the CSI Office on April 7, 2017, and the comment period remained open until April 28, 2017.

The 25 rules regulate the surface mining of industrial minerals (IM), which is overseen by the Division of Mineral Resources Management (DMRM). The proposed amended rules include small changes, additions, clarifications and updates to rule references. The General Provisions chapter includes changes to update DMRM's address, minor changes to color code and symbols for IM surface mining maps, and an update to incorporation by reference. The chapter on mine safety contains reference updates and a correction to the proper fund into which mine foreman certification fees are deposited. The chapter which governs drainage and soil standards would incur a change in rule reference, small changes to safety rules on blast sites, and several corrections based on Legislative Service Commission rule-drafting protocol. The Geological Data

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Report chapter includes a clarification that the report named in the rule is the Geological Data Report and fixes an error that currently mistakes “Administrative Code” for “Revised Code.” On April 25, 2017 ODNR notified CSI staff that an additional rule change had been made to Ohio Administrative Code 1501:14-3-04(D)(8) to reference the most recent edition of the International Society of Explosive Engineers performance specifications for blasting seismographs and to update the information on how to obtain a copy of the performance specifications.

According to the BIA, the business community that is impacted by these rules includes all IM surface mining operators in Ohio. The rules governing IM surface mining have a significant overall adverse impact on the industry due to a statutory mandate to protect Ohio’s natural resources and public health and safety from the potentially harmful effects of IM surface mining. The BIA breaks down the adverse impacts by each of the five chapters that this package covers. The impacts cited include the submission of information to ODNR, fees for permits, inspections, record-keeping, annual reports (which require a \$500 filing fee), performance standards and environmental regulations. The BIA states that the net effect of this particular rule package is negligible, as the proposal mostly pertains to small changes, corrections and updates. The rules have a considerable impact on the impacted businesses, but the regulations are necessary in order to provide safeguards protecting the public and the environment from the potential harms of IM surface mining.

ODNR conducted early stakeholder outreach with relevant entities and individuals from September 2016 to January 2017 via email, conference call, in-person meeting and by letter. As a result of input from the Ohio Aggregates and Industrial Minerals Association, DMRM made several revisions to the proposed IM blasting rule to clarify procedures for controlling access to a blast site and reporting off-site flyrock incidents. In addition, DMRM opted to remove a provision that would have eliminated the temporary mine foreperson certification; this change was proposed due to concerns that state law does not specifically permit such a certification, however instead of eliminating the rule, DMRM plans to work to expand statutory authority on this subject. No comments were received during the CSI public comment period.

After reviewing the draft rules, BIA, and stakeholder outreach, the CSI Office has determined that the rule package is justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that Ohio Department of Natural Resources should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Emily Kaylor, Lt. Governor’s Office