

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Department of Natural Resources

Regulation/Package Title: Division of Mineral Resources Management -- 2016 Package, Industrial Minerals rules (25 rules)

Rule Number(s): 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.

Date: April 7, 2017

**Rule Type:**

☐ New

☒ 5-Year Review

☒ Amended

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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## **Regulatory Intent**

### **1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

The Division of Mineral Resources Management (DMRM) is submitting 25 rules that regulate industrial minerals (IM) surface mining to the Common Sense Initiative pursuant to Ohio Revised Code (ORC) section 107.52. DMRM proposes to continue 12 of these rules with no changes and amend 13 rules as follows:

- The mapping rule, 1501:14-1-12, needs several small additions and changes to update the requirements.
- The blasting rule, 1501:14-3-05, needs numerous changes, additions, and clarifications to update the requirements.
- One rule needs a clarification.
- Eight rules need small corrections.
- Two rules are incorporation by reference rules that need to be updated as the publication dates of the Code of Federal Regulations and the United States Code change.

All 25 rules have been reviewed by DMRM pursuant to section 106.03; thus, the JCARR filing will indicate that they have undergone their five-year-review.

The following is a list of the rules, their key provisions, and the significant changes proposed for them. (Note: Attachments 1 and 2 contain all the rules as they will be submitted to JCARR. Each of the 13 rules with proposed amendments is accompanied by a summary of all the changes proposed for the rule. The rules that will be continued with no changes are included in Attachment 2.)

**Chapter 1501:14-1 of the Ohio Administrative Code (OAC).** This chapter contains the general provisions for the regulation of surface IM mining, including permit applications, liability insurance, performance bonds, mapping and reporting.

#### **Four rules from this chapter are proposed for revision:**

- **1501:14-1-04 Procedure for filing applications.** This rule contains the procedures for filing an application for a surface mining permit or for an amendment to a surface mining permit. The rule is proposed for amendment to correct DMRM's address.
- **1501:14-1-09 Payment of fees and filing of performance bond.** This rule contains the requirements for the payment of fees and the filing of performance bonds related to industrial minerals surface mining. The rule is proposed for amendment to correct DMRM's address.

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- **1501:14-1-12 Maps: general requirements, uniform color code and map symbols.** This rule contains the general requirements and the uniform color code and uniform symbols for industrial minerals surface mining maps. It is proposed for amendment to make numerous small changes, additions, and clarifications.
- **1501:14-1-16 Incorporation by reference.** This rule contains the dates of publication of the Code of Federal Regulations and the United States Code for those federal regulations and federal laws that are incorporated by reference in the IM rules, other than the IM mine safety rules of OAC Chapter 1501:14-2, and tells the public where these regulations and laws can be found. The proposed amendments would update of the editions of the Code of Federal Regulations and the United States Code.

**Three rules from this chapter are proposed to be continued with no changes:**

- **1501:14-1-02 Severability.** This rule establishes the severability of the rules adopted pursuant to Chapter 1514. of the Revised Code, so that the invalidity of one rule or part of a rule does not affect the validity of the other rules.
- **1501:14-1-03 Successor division.** This rule provides for the continued administration and enforcement of Chapter 1514. of the Revised Code and Chapters 1501:14-1 to 1501:14-6 of the Administrative Code if there is a reorganization or a consolidation of the divisions of the Ohio Department of Natural Resources.
- **1501:14-1-14 Reports.** This rule establishes a requirement regarding the filing of reports related to industrial minerals surface mining and what must be included in a filing.

**Chapter 1501:14-2 of the Ohio Administrative Code.**

This chapter contains the requirements for mine safety for surface IM operations.

**Two rules from this chapter are proposed for amendment.**

- **1501:14-2-01 Incorporation by reference of mine safety standards.** This rule contains the dates of publication of the Code of Federal Regulations for those federal regulations that are incorporated by reference in the IM mine safety rules of OAC Chapter 1501:14-2, and tells the public where these regulations can be found. The proposed amendments would update of the edition of the Code of Federal Regulations.
- **1501:14-2-07 Certified mine foreperson.** This rule implements the provisions of ORC section 1514.47 that are related to certified mine forepersons. The proposed amendment will correct an error: the mine foreperson certification fees are deposited into the Mine Safety Fund created in ORC section 1561.24, not into the Surface Mining Fund of section 1514.06.

## **Chapter 1501:14-3 of the Ohio Administrative Code.**

This chapter contains performance standards for surface IM mining and reclamation.

### **Five rules from this chapter are proposed for amendment.**

- **1501:14-3-02 Minimizing acid drainage and acid water accumulation.** This rule contains the requirements for isolating and covering acid-producing refuse material in order to minimize acid drainage and the accumulation of acid water. It is proposed for amendment to make small corrections per the rule-drafting protocol of the Legislative Service Commission.
- **1501:14-3-03 Permanent water impoundments.** This rule contains the requirements for permanent water impoundments on industrial minerals surface mining sites. The proposed amendment would correct a rule reference.
- **1501:14-3-04 Use of explosives in industrial mineral operations.** This rule contains the requirements for blasting for industrial minerals surface mining. The rule is proposed for amendment to make multiple changes, additions, and clarifications to maintain blasting safety on surface mining sites.
- **1501:14-3-06 Final slopes.** This rule contains the requirements regarding slope angles and diversion ditches for final slopes on industrial minerals surface mined lands. The proposed amendment would make a correction per the rule-drafting protocol of the Legislative Service Commission.
- **1501:14-3-11 Construction of dams, dikes, diversions, impoundments, and drainage channels.** This rule contains Ohio's requirements for the construction and reclamation of dams, dikes, drainage channels, impoundments and diversion channels related to the surface mining of industrial minerals. It is proposed for amendment to make small corrections per the rule-drafting protocol of the Legislative Service Commission.

### **Five rules from this chapter are proposed to be continued with no changes:**

- **1501:14-3-05 Underground water supplies.** This rule contains the requirements an industrial minerals surface mining operator must follow to ensure that contamination, resulting from mining, of underground water supplies is prevented and to prevent the impacts of dewatering from the drilling of boreholes or test holes that have groundwater flowing to the surface.
- **1501:14-3-07 Final highwalls.** This rule contains the requirements for highwalls that are to be retained as part of the intended future use of a site that has been surface mined for industrial minerals.
- **1501:14-3-08 Resoiling.** This rule contains the requirements for removing and segregating topsoil or subsoil, storing or stockpiling segregated topsoil or subsoil, and resoiling areas affected by industrial minerals surface mining.
- **1501:14-3-09 Soil amendments.** This rule contains the requirements for applying soil amendments to areas being reclaimed after industrial minerals surface mining.

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- **1501:14-3-10 Revegetation.** This rule contains the requirements for the revegetation of industrial minerals surface mined areas.

#### **Chapter 1501:14-4 of the Ohio Administrative Code.**

This chapter contains two rules with additional application requirements, one rule with additional reporting requirements, and a rule regarding abandoned and inactive mining areas.

##### **Two rules from this chapter are proposed for amendment.**

- **1501:14-4-01 Geological data report.** This rule contains the requirements for the geological data report that must be included with each application for an industrial minerals surface mining application. The proposed amendment is to add a clarification that the report referred to in (A) is the Geological Data Report.
- **1501:14-4-04 Abandoned and inactive mining areas.** This rule contains the procedure that the Chief of DMRM follows when considering whether an industrial minerals surface mining area is abandoned or inactive. The proposed amendment would correct an error in (E)(2): “Administrative” Code should be “Revised” Code.

##### **Two rules from this chapter are proposed to be continued with no changes:**

- **1501:14-4-02 Cross sections.** This rule requires that one or more cross sections be submitted with the application map for an industrial minerals mining application, and contains the requirements for these cross sections.
- **1501:14-4-03 Completion dates.** This rule requires that the operator specify, on each annual report and on the final report, the date on which industrial minerals surface mining was completed, terminated or abandoned for each area of land affected by the operation during the reporting period.

**Chapter 1501:14-5 of the Administrative Code.** This Chapter contains rules to implement ORC section 1514.13, regarding IM surface mining operations that may result in dewatering, as well as a rule regarding obtaining a variance from the distance limitations for mining near a watercourse.

##### **Two rules from this chapter are proposed to be continued with no changes:**

- **1501:14-5-02 Alternative water supply information.** This rule applies to industrial minerals operators who are applying for a permit or an amendment to a permit that includes dewatering and contains the requirements for submitting information about alternative water supply sources.
- **1501:14-5-03 Water Supply Replacement.** This rule establishes the applicability of the water replacement provisions of section 1514.13 of the Revised Code.

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**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

<u>Ohio Administrative Code</u>	<u>Statutory Authority</u>
OAC Chapter 1501:14-1:	ORC section 1514.08
OAC Chapter 1501:14-2:	ORC section 1514.40
Rules 1501:14-3-02, 1501:14-3-05, 1501:14-3-06, 1501:14-3-08, 1501:14-3-09, 1501:14-3-10, and 1501:14-3-11:	ORC section 1514.08
Rule 1501:14-3-03:	ORC sections 1514.08 and 1514.081
Rule 1501:14-3-04:	ORC section 1514.12
Rule 1501:14-3-07:	ORC sections 1514.08, 1514.081, and 1514.12
Rules 1501:14-4-01, 1501:14-4-02, 1501:14-4-03:	ORC section 1514.08
Rule 1501:14-4-04:	ORC sections 1514.02 and 1514.08
Rules 1501:14-5-02 and 1501:14-5-03:	ORC section 1514.13

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No, Ohio's IM surface mining regulations are not related to a federal regulatory program. The federal government does not regulate the mining and reclamation of industrial minerals sites in terms of their impact on the environment and adjoining properties, and there are no federal laws or regulations that are comparable to Ohio's IM Regulatory Program.

With regard to IM surface mine safety, Ohio's IM Mine Safety Program is separate from the federal Mine Safety and Health Administration (MSHA)'s program and the federal government has no oversight authority over Ohio's program. The Federal and Ohio surface IM Mine Safety programs do have elements in common, however. For example, HB 443 required the Chief of DMRM to incorporate by reference certain federal MSHA regulations related to surface IM mine safety and limited the Chief's authority to inspect those surface IM operations that are inspected by MSHA. HB 443 also required the Chief to minimize duplication with federal reporting and investigation of accidents. In the field, State Mine Safety personnel work in concert with federal MSHA personnel when needed.

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- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose of OAC Division 1501:14 is to protect Ohio's land and water resources, the public, and mine employees from the potential negative impacts of IM surface mining. The IM Regulatory Program oversees active IM surface mining operations and the reclamation of the land by mining companies after extraction of minerals. The IM Mine Safety Program protects Ohio's IM surface mine workers from the potential hazards of mining through audits, training, certification, and inspections. These programs ensure that the requirements of ORC Chapter 1514. are being followed.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

DMRM has the unique and challenging responsibility of regulating the IM surface mining industry in a way which strikes a balance between protecting society and the environment from the potential adverse effects of mining operations and satisfying the nation's need for industrial minerals as essential resources for economic growth. In addition, DMRM has the responsibility to protect mine workers from the occupational hazards of mining.

DMRM will measure the success of the IM Regulatory Program rules by seeing that IM surface mining continues to be carried out in Ohio in an environmentally protective manner and that all mined lands are reclaimed and restored to a productive postmining land use.

DMRM will measure the success of the surface IM mine safety rules by the degree of safety they provide. The Mine Safety Program receives reports of all accidents and fatalities at Ohio's IM surface mines and investigates each serious accident and fatality. DMRM's written report of such an accident includes a recommendation concerning appropriate remedial measures to prevent the reoccurrence of the accident. The DMRM uses the information from these investigations to improve mine safety audits, training and inspections so as to prevent such accidents from happening again.

### **Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

In September 2016, DMRM Deputy Chief Dave Crow e-mailed an advance copy of the proposed rule changes to the following persons, requesting their review:

Brian Barger, Attorney at Law, Eastman & Smith, Ltd.

Pat Jacomet, Executive Director, Ohio Aggregates and Industrial Minerals Association (OAIMA).

On October 25, 2016, DMRM Chief Erdos and Deputy Chief Crow met with members of the OAIMA to discuss the rules.

On December 6, 2016, Deputy Chief Crow and DMRM Blasting Specialist Mike Mann had a conference call with several OAIMA members.

The Certified mine foreperson rule and IM blasting rule were revised based on the OAIMA's comments. (See the answer to Question 8, below, for more information.)

By letter dated January 26, 2017, DMRM Chief Erdos provided these rules with their proposed changes, by e-mail, to Brian Barger, Pat Jacomet, and Trent A. Dougherty, General Counsel, Ohio Environmental Council. Chief Erdos requested comments on the rules by February 27, 2017. DMRM received no further comments on the rules.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

As a result of discussions with the OAIMA:

- DMRM removed a proposed change to the Certified Mine Foreperson rule, 1501:14-2-07, that would have eliminated the temporary mine foreperson certification. The reason DMRM proposed eliminating temporary mine foreperson certification is because this certification is not specifically supported under the law. However, instead of eliminating the certification, DMRM will seek to add further statutory authority to Chapter 1514 regarding such certification.
- DMRM made several revisions to the proposed IM blasting rule to clarify and improve existing procedures for controlling access to the blasting area and reporting off-site flyrock incidents.

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**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

The rule changes are being proposed in order to provide for better clarity and consistency, to maintain blasting safety, and to correct errors. The proposed updates are supported by law.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No alternative regulations were considered; ORC Chapter 1514. does not allow for alternative means of compliance with these rules.

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

No, because ORC Chapter 1514. dictates the parameters of the regulations.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The ODNR Division of Mineral Resources Management is the sole agency with authority under the ORC to regulate industrial minerals surface mining. The other laws and rules under the authority of the ODNR DMRM were reviewed to avoid conflict.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

Most of the changes proposed to these rules are corrections and clarifications that will not change the way that IM surface mining is regulated.

The mapping changes proposed in rule 1501:14-1-12 and the blasting changes proposed in rule 1501:13-3-04 will be implemented consistently across Ohio via DMRM's permitting and blaster training and certification programs, as well as through other interactions between DMRM and industry staff. Updates will be given to the regulated industry by DMRM staff during blaster certification training classes, via mailings to all Ohio certified blasters, during audits and inspections, as well as on DMRM's website. The Ohio Aggregates and Industrial Minerals Association will also be advised of the implementation so they can update their members.

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### **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

Answer to question a: The affected business community is all of Ohio’s IM surface mining operators.

Answer to questions b and c: The rules presented in this Business Impact Analysis that are proposed to be changed will not have any greater adverse impact on business than the statute and rules already impose, since the changes are small corrections, clarifications, and updates. The currently effective rules of Ohio Administrative Code Division 1501:14 have a significant adverse impact on Ohio’s surface mining operators due to the statutory mandate that Ohio’s land and water resources and public health and safety be protected from the negative effects of industrial minerals surface mining. These adverse impacts are explained below, chapter by chapter.

Chapter 1501:14-1. The rules in this chapter require the operator to submit a great deal of detailed information regarding the proposed mining operation, as well as fees, liability insurance, and a performance bond, in order to be granted a permit to mine, a permit renewal, or an amendment to a permit.

Chapter 1501:14-2. These rules contain requirements related to DMRM inspections and investigations; accident reporting; safety audits and training; certified mine forepersons; and persons who are qualified to conduct safety examinations of surface IM operations. These rules impose certification, reporting and record-keeping requirements on mine operators in addition to the costs that all mining operations must incur to maintain a safe working environment.

Chapter 1501:14-3. The performance standards established in these rules require IM surface mining operators to mine and reclaim in a manner that protects the environment and neighboring properties. These rules contain many specific requirements that require a great deal of time and equipment: to prevent runoff onto adjoining property and to isolate acid-producing materials; create safe permanent ponds and final slopes and highwalls; control the adverse effects of blasting; protect underground water supplies; properly handle lime mining wastes; and, when mining of an area is completed, to replace soil and subsoil and re-plant. The blasting

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rule contains detailed requirements for conducting blasting in a safe manner, and documenting compliance with seismographic monitoring and the records that must be maintained for each blast.

Chapter 1501:14-4. The rules in this chapter require additional information from the operator, either in the application to mine or in the annual report. The rule regarding abandoned and inactive mining areas requires the operator to remain in compliance with all the requirements of Ohio Revised Code.

Chapter 1501:14-5. These rules require operators of IM surface mining operations that will dewater to submit a great deal of supplemental information in the permit application, including a hydrogeologic description and map, as well as ground water data that will allow the Chief to establish a projected cone of depression. The chapter also contains a rule that requires more detailed information to be submitted by operations that are requesting a variance to mine close to certain size watercourses.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

ORC Chapter 1514. establishes the parameters for these rules. The chapter provides many safeguards to protect the public and the environment from the potential adverse effects of industrial minerals surface mining.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

ORC Chapter 1514. does not contain any small business exemptions but does provide one alternative means of compliance for small operators. ORC section 1514.02(A)(12) allows operators (other than in-stream mining operators) who intend to extract less than 10,000 tons of minerals annually and no incidental coal to submit a tax map and USGS topographic map in lieu of a map prepared and certified by a surveyor or engineer.

Ohio law also provides for a reduced filing fee for small operators. ORC section 1514.03 requires small operators (those who intend to extract less than 10,000 tons of minerals annually and no incidental coal) and in-stream mining operators to submit a filing fee of \$250 each year with their annual report rather than the \$500 filing fee required of larger operators.

In addition, the definition of “surface mining” in ORC 1514.01(A) provides exceptions to regulation under Chapter 1514. for certain circumstances, e.g., test or exploration boring, construction operations, routine dredging, and sanitary landfills, as well as “the extraction of

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minerals, other than coal, by a landowner for the landowner's own noncommercial use where such material is extracted and used in an unprocessed form on the same tract of land" and "the removal of minerals to a depth of not more than five feet, measured from the highest original surface elevation of the area to be excavated, where not more than one acre of land is excavated during twelve successive calendar months."

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

DMRM does not normally assess penalties for paperwork violations unless, for example, a pattern of violations develops, or the issue goes into non-compliance, or an operator knowingly or willingly fails to submit required reports. Further, section 119.14 is not applicable to the regulation of IM surface mining because a violation of ORC Chapter 1514. or OAC Division 1501:14:

- Has the potential to cause serious harm to the public interest that DMRM is charged to protect.
- Presents a direct danger to the public health or safety, or the risk of severe environmental harm.

**18. What resources are available to assist small businesses with compliance of the regulation?**

DMRM's IM Program staff are available to help anyone who needs guidance or assistance in complying with these rules.

13 Rules with Revisions:

- 1501:14-1-04 Procedure for filing applications. DMRM's address corrected in (B).
- 1501:14-1-09 Payment of fees and filing of performance bond. DMRM's address corrected in (D).
- 1501:14-1-12 Maps: general requirements, uniform color code and map symbols. Small additions or changes in (C), (D) and (E).
- 1501:14-1-16 Incorporation by reference. Update needed.
- 1501:14-2-01 Incorporation by reference of mine safety standards. Update needed.
- 1501:14-2-07 Certified mine foreperson. Correction in (B)(8) regarding fund into which certification fees are to be deposited.
- 1501:14-3-02 Minimizing acid drainage and acid water accumulation. Small corrections per LSC rule-drafting protocol.
- 1501:14-3-03 Permanent water impoundments. Rule reference corrected in (D).
- 1501:14-3-04 Use of explosives in industrial mineral operations. Multiple changes, additions, and clarifications in (A), (C), (D) and (E).
- 1501:14-3-06 Final slopes. Small correction per LSC rule-drafting protocol.
- 1501:14-3-11 Construction of dams, dikes, diversions, impoundments, and drainage channels. Small corrections per LSC rule-drafting protocol.
- 1501:14-4-01 Geological data report. Clarification added to (A).
- 1501:14-4-04 Abandoned and inactive mining areas. Revised Code reference corrected in (E)(2)

12 No Change Rules:

- 1501:14-1-02 Severability.
- 1501:14-1-03 Successor division.
- 1501:14-1-14 Reports.
- 1501:14-3-05 Underground water supplies.
- 1501:14-3-07 Final highwalls.
- 1501:14-3-08 Resoiling.
- 1501:14-3-09 Soil amendments.
- 1501:14-3-10 Revegetation.
- 1501:14-4-02 Cross sections.
- 1501:14-4-03 Completion dates.
- 1501:14-5-02 Alternative water supply information.
- 1501:14-5-03 Water Supply Replacement.

Draft Rule 1501:14-1-04, dated 4/7/2016.

This is a summary of the changes made to this rule.

(B). Division's address corrected.



# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

**Dated 4/7/2016**

## **1501:14-1-04 Procedure for filing applications.**

- (A) An application for a surface mining permit or for an amendment to a surface mining permit shall not be deemed filed when it is received by the chief unless the application contains all substantial information required by Chapter 1514. of the Revised Code and rules adopted pursuant thereto.
- (B) Each application for a surface mining permit or for an amendment to a surface mining permit shall be in the format required by the chief and shall be filed at the address, "Division of Mineral Resources Management, 2045 Morse Road, Building H-3, Columbus, Ohio 43229."
- (C) Each application for a surface mining permit or for an amendment to a surface mining permit shall contain such attachments as are required by Chapter 1514. of the Revised Code and rules adopted pursuant thereto.
- (D)
  - (1) An application for a surface mining permit or an amendment to a surface mining permit or any other form that requires a signature of an applicant or permittee shall be signed by:
    - (a) The operator, if the applicant or permittee is a sole proprietorship;
    - (b) Any partner, if the applicant or permittee is a partnership;
    - (c) Any officer or director, if the applicant or permittee is a corporation;
    - (d) Any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant, if such person is so designated in the permit application as having such authority; or
    - (e) Any other person who is the authorized agent of the applicant or permittee for purpose of signing and is so designated in the application.
  - (2) One copy of any form that requires a signature of an applicant or permittee shall have an original signature in ink of a person who meets the requirements of paragraph (D)(1) of this rule.

Draft Rule 1501:14-1-09, dated 4/14/2016.

This is a summary of the changes made to this rule.

(D). Division's address corrected.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**Dated 4/14/2016**

**1501:14-1-09      Payment of fees and filing of performance bond.**

- (A) The applicant shall file the required fees and surety bond, cash, an irrevocable letter of credit, or certificates of deposit within the time prescribed by the chief in the notification of intention to issue an order granting a surface mining permit, a renewal of a surface mining permit, or an amendment to a surface mining permit.
  - (1) The requirement of division (A) of section 1514.04 of the Revised Code that the applicant file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of ten thousand dollars shall not apply to permits of twenty or fewer acres issued prior to August 15, 2002. These permits shall instead file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of two thousand dollars, or five hundred dollars per acre of land to be affected, whichever is greater.
  - (2) The requirement of division (A) of section 1514.04 of the Revised Code that, if the amount of land to be affected is more than twenty acres, the applicant file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of five hundred dollars per acre of land to be affected that exceeds twenty acres shall apply to all surface mining applications and to all existing permits regardless of issuance date.
- (B) If the applicant fails to file the required fees and/or surety bond, cash, letter of credit, or certificates of deposit within the time prescribed by the chief pursuant to paragraph (A) of this rule, the chief shall issue an order denying the issuance of the surface mining permit, renewal of the surface mining permit, or amendment to the surface mining permit, except that the chief may extend such time for good cause shown.
- (C) All performance bond shall be filed in the name of the applicant or permittee and in a format prescribed by the chief and shall meet the requirements for signature specified in paragraph (D) of rule 1501:14-1-04 of the Administrative Code.
- (D) All performance bond shall be filed at the address, "Division of Mineral Resources Management, Bonding Section, 2045 Morse Road, Building H-3, Columbus, Ohio 43229."
- (E) If the performance bond is in the form of a certificate of deposit, the applicant shall submit to the chief the original certificate of deposit and the assignment for the certificate of deposit.
- (F) The required fees shall be deposited with the treasurer of state to the credit of the surface mining fund created under section 1514.06 of the Revised Code.

Draft Rule 1501:14-1-12, dated 8/29/2016.

This is a summary of the changes made to this rule.

(C)(1). Proposed to require two copies of the application map at the time of initial filing of the application, instead of only one copy, because the Division needs a copy of the map in both the main office and the district office to promote efficient review of the application.

(C)(4). Proposed to be revised to allow for two-foot contour intervals.

(C)(8)(e). Proposed to be revised to allow the map coordinates to be derived from latitude and longitude.

(C)(8)(i). Proposed to be revised to require the map to include any dates that the map was revised, in addition to the date when the map was originally prepared.

(D)(3). Proposed to add two listings to maps under this rule: the acres that have had a planting release, and the acres previously released that are now reaffected.

(E)(5). Proposed to require areas to be reaffected to be shown on the map shaded in orange.

(E)(10). Proposed to require that maps show any area upon which a permanent water impoundment has been completed and a performance bond release request is being submitted.

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**Dated 8/29/2016**

## **1501:14-1-12 Maps: general requirements, uniform color code and map symbols.**

- (A) Maps shall be submitted along with permit applications, renewal applications, and annual and final reports, as required by Chapter 1514. of the Revised Code and these rules, except that a map need not be submitted along with the annual report if there has been no affectment of the land surface or the mining area has not expanded laterally during the year, and no additional affectment of the land surface or lateral expansion of the mining area is expected during the next year.
- (B) All acreage figures required to be reported or estimated by Chapter 1514. of the Revised Code or these rules shall be to the nearest one-tenth of an acre.
- (C) All maps required by Chapter 1514 of the Revised Code and these rules shall conform to the following standards:
- (1) The map shall be submitted in triplicate, except that at the time of initial filing of an application for a surface mining permit, only ~~one copy~~ two copies of the application map need be submitted;
  - (2) The north direction shall be at the top of the map. The north direction shall be designated by an arrow in the upper left hand corner of the map;
  - (3) The scale of the map shall be either one inch equals one hundred feet, one inch equals two hundred feet, one inch equals three hundred feet, or one inch equals four hundred feet, as is sufficient for the map to show the requirements of division (A)(11) of section 1514.02 of the Revised Code;
  - (4) The contour interval of the map shall be either two feet, five feet, ten feet, or twenty feet, as is adequate to show the topographic relief of the proposed area;
  - (5) The quadrangle sketch, not to exceed six inches by six inches, shall be placed in the upper right hand corner of the map and shall have sufficient landmarks to locate the permit area or the proposed permit area, and include the name of the quadrangle utilized;
  - (6) A legend shall be placed below the quadrangle sketch, which legend shall utilize the symbols described in paragraph (F) of this rule;
  - (7) A notarized certification shall be made by the preparer of the map. This certification shall be placed below the legend and shall read: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the surface mining laws of the state." The certification shall be signed and attested before a notary public; and
  - (8) A title block shall be placed in the lower right hand corner of the map, and shall contain the following information if applicable:
    - (a) The title of the map, i.e. application, amendment, renewal, annual, progress, final, or reclamation;
    - (b) The name of the applicant or permittee;
    - (c) The permit number;
    - (d) The township and range designation;

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- (e) The location coordinates of the approximate geographical center of the proposed or existing permit site. Such coordinates shall be given in state plane coordinates, derived from the appropriate 7.5 minute U.S.G.S. topographic map, or latitude and longitude;
  - (f) The name of the township and county;
  - (g) The section, lot, or survey numbers;
  - (h) The scale and contour interval of the map;
  - (i) The date ~~on which~~ when the map was prepared or, when applicable, the dates when it was prepared and revised; and
  - (j) The municipal corporation.
- (D) In addition to the requirements of paragraph (C) of this rule, all annual maps, final maps, and renewal maps shall contain:
- (1) A summary, by mining area and for the permit area, in the chronological order in which it occurred, the number of acres affected to date and the number of acres to be reclaimed;
  - (2) A listing, for each mining area and for the permit area, of the acres estimated to be affected during the next year; and
  - (3) A listing for the permit area of: the acres that have had a grading release but not a planting release, ~~and~~; the acres that have had a planting release; the acres that have had a total bond release; and the acres previously released that are now reaffected.
- (E) All maps required by Chapter 1514. of the Revised Code or these rules shall utilize the following uniform color code:
- (1) The proposed or existing permit area shall have its perimeter designated with a solid black line highlighted in yellow;
  - (2) The area proposed in an amendment shall have its perimeter designated by a solid black line, and shall have its area shaded yellow, and the perimeter of the existing permit area shall be designated by a solid black line highlighted in yellow;
  - (3) The perimeter of the cumulative area actually affected shall be designated by a solid orange line;
  - (4) The perimeter of the area to be reclaimed, i.e., area on which mining has been completed during the permit year, shall be designated with a solid red line;
  - (5) The perimeter of the area estimated to be affected during the next permit year, including areas to be reaffected, shall be designated by a dashed red line, and the areas to be reaffected shall be shaded in orange;
  - (6) Any area which has been shown to be reclaimed on a previous map but has not had a performance bond release shall be shaded pink;
  - (7) When more than one mining area exists within a permit area, each shall be identified by name or number;



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- (8) The number of the permit year in which an area was reported to be reclaimed, in paragraph (E)(4) of this rule, shall be recorded in such area;
- (9) Any area upon which grading, contouring or terracing, and resoiling has been completed and a performance bond release request is being submitted shall be designated by purple cross-hatching;
- (10) Any area upon which permanent planting or a permanent water impoundment has been completed and a performance bond release request is being submitted shall be designated by green cross-hatching;
- (11) Any area upon which grading has been released, but not planting, shall be shaded purple;
- (12) Any area upon which all performance bond has been released shall be designated by black cross-hatching;
- (13) Any area to be deleted from the permit shall be shaded green;
- (14) Any area of topsoil, subsoil, or suitable substitute resoiling material storage shall have its perimeter designated with a dashed black line, and the area included therein shall be shaded brown; and
- (15) Existing and proposed sediment ponds and permanent impoundments shall be shown on the map and identified by name or number.
- (F) All maps and drawings required by Chapter 1514. of the Revised Code or these rules shall utilize the following uniform symbols:

Permanent impoundments



Sediment ponds



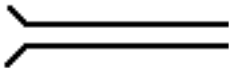
Shaded Blue

Existing bodies of water



Existing Limits  
Highlight Blue

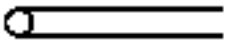
Spillway



SPLWY

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

Overflow pipe (show inside diameter)



I.D. = 10"

Electric distribution line



Electric transmission line (5kv or greater)

HV



Telephone

TELEPHONE



Gas line

GAS



Oil line

OIL



**\*\*\*DRAFT - NOT FOR FILING\*\*\***

Water line

WATER

— — — — —

Occupied building



Unoccupied building



Mineral outcrop line

. . . . . #8

(Identify the seam)

Final highwall

— ■ — ■ — ■ —

Beginning point

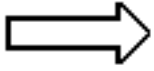
BEGIN (IF TWO AREAS ARE  
TO BE MINED  
SIMULTANEOUSLY,  
INDICATE BY NUMBER)

Ending point

END

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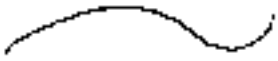
Direction arrow (to show how mining will proceed)



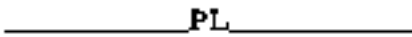
Test holes



Contour lines



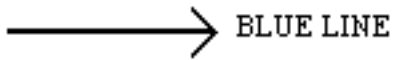
Property lines



Dike



Diversion ditch



Natural drainage

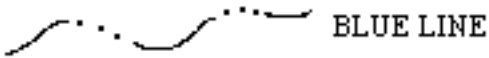


Pumped drainage

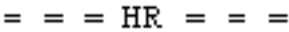


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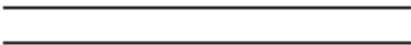
Natural drainage (intermittent flow)



Haul road



Hard surface road



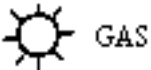
Gravel road or driveway



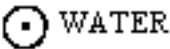
Oil well



Gas well



Water well



Deep mine shaft



# \*\*\*DRAFT - NOT FOR FILING\*\*\*

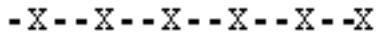
Drift or slope mine entry



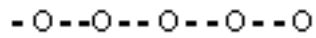
Areas to be planted in trees (only needed if entire area is not to be planted in trees)



Existing highwall or active mining face



Toe of spoil or overburden



Cross section



Proposed spoil area



Sump





Draft Rule 1501:14-1-16, dated 4/14/2016

This is a summary of the changes made to this rule.

(A) and (B). Updates of the editions of the Code of Federal Regulations and the United States Code that are incorporated by reference.

*Before this rule is filed with JCARR, the dates in the rule will be updated with the most recent federal publication dates.*

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

Dated 4/14/2016

**1501:14-1-16      Incorporation by reference.**

- (A) The Code of Federal Regulations (C.F.R.) references listed in Chapter 1501:14-1 and Chapters 1501:14-3 to 1501:14-6 of the Administrative Code are, for Title 40, those published in the July 1, ~~2013~~2015, C.F.R., and for Title 30, those published in the July 1, ~~2014~~2015, C.F.R. These regulations can generally be found in public libraries or electronically at the website <http://www.gpo.gov/fdsys/>. These regulations are:
- (1) 30 C.F.R. 50.2.
  - (2) 30 C.F.R. parts 56 and 58, as amended.
  - (3) 40 C.F.R. parts 122, 123, and 136, as amended.
- (B) The federal laws listed in these rules are those published in the 2012 edition of the United States Code (U.S.C.), dated January 15, 2013, as supplemented in ~~2013~~2014, effective January ~~165~~, ~~2014~~2015. These laws can generally be found in public libraries or electronically at the website <http://www.gpo.gov/fdsys/>. These laws are:
- (1) Section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq., as amended.
  - (2) The Clean Water Act, 33 U.S.C. 1251 et seq., as amended.
  - (3) The Rivers and Harbors Act of 1899, 33 U.S.C. 403, as amended.

*Note: before this rule is filed with JCARR, it will be updated with the most recent dates of publication, which will probably be the 2016 editions.*

Draft Rule 1501:14-2-01, dated 4/14/2016

This is a summary of the changes made to this rule.

(A). Updates the edition of the Code of Federal Regulations that is incorporated by reference.

*Before this rule is filed with JCARR, the date in the rule will be updated with the most recent federal publication date.*

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**Dated 4/14/2016**

**1501:14-2-01      Incorporation by reference of mine safety standards.**

- (A) The Code of Federal Regulations (C.F.R.) references listed in Chapter 1501:14-2 of the Administrative Code are those published in the July 1, ~~2014~~2015, C.F.R. These regulations can generally be found in public libraries or electronically at the website <http://www.gpo.gov/fdsys/>. These regulations are 30 C.F.R. parts 46, 47, 50, 56, 58, and 62, as amended.
- (B) This rule shall be reviewed and updated as pertinent changes take place in 30 C.F.R. and as the publication date of the C.F.R. is updated. This review shall take place at least annually.

*Note: before this rule is filed with JCARR, it will be updated with the most recent date of publication, which will probably be the 2016 edition.*

Draft Rule 1501:14-2-07, dated 10/25/2016

This is a summary of the changes made to this rule.

(B)(8). Correction of fund into which mine foreperson certification fees are deposited.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**Dated 10/25/2016 Amendment in (B)(8).**

**1501:14-2-07 Certified mine foreperson.**

- (A)
- (1) The operator of a surface mining operation shall employ a certified mine foreperson to be in charge of the conditions and practices at the mine and to be responsible for conducting examinations of the surface mining operation under 30 C.F.R. part 56, as amended.
  - (2) Examinations of surface mining operations for the purposes of 30 C.F.R. part 56, as amended, shall be conducted by one of the following:
    - (a) A certified mine foreperson;
    - (b) A person who is qualified to conduct such examinations as provided in division (D) of section 1514.47 of the Revised Code and paragraph (C) of rule 1501:14-2-08 of the Administrative Code;
    - (c) A person designated by the certified mine foreperson as a competent person.
  - (3) For purposes of this rule, a competent person is a person who has been trained in accordance with 30 C.F.R. part 46 and been determined by a certified mine foreperson to have demonstrated the ability, training, knowledge, or experience necessary to perform the duty to which the person is assigned. A person is not a competent person if the chief demonstrates, with good cause, that the person does not have the ability, training, knowledge, or experience necessary to perform that duty.
  - (4) The operator of a surface mining operation shall maintain records demonstrating that a competent person designated by a certified mine foreperson has the ability, training, knowledge, or experience to perform the duty to which the person is assigned as well as records of the competent person's training in accordance with 30 C.F.R. part 46. The operator shall make the records available to the chief upon request.
- (B) Qualifications, fees and procedures governing the examination for certification as a mine foreperson for surface mines.
- (1) A person who applies for certification as a mine foreperson shall be able to read and write the English language and shall have at least two years' experience working with or under the direction of a certified mine foreperson.
  - (2) Persons may be certified for either or both of the following:
    - (a) Sand and gravel mine foreperson for surface mining operations permitted under Chapter 1514. of the Revised Code and these rules which do not use explosives.
    - (b) Quarry mine foreperson, which shall be valid for all surface mining operations permitted under Chapter 1514. of the Revised Code and these rules.



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- (3) An applicant for certification as a mine foreperson shall file an application for certification with the chief, including a notarized affidavit establishing the applicant's qualifications as set forth in paragraph (B)(1) of this rule, to take the certified mine foreperson examination. An applicant may apply for certification as both a sand and gravel foreperson and a quarry mine foreperson. Such application and affidavit shall be made on a form prescribed by the chief.
  - (4) The chief shall conduct mine foreperson certification examinations as often as practical in accordance with these rules.
  - (5) The chief shall grade each examination, and certify an applicant attaining a grade of seventy per cent or higher on each portion of the examination.
  - (6) An applicant not attaining a passing grade on one part of the examination may apply to be retested on that part only.
  - (7) An applicant not attaining a passing grade on two or more parts of the examination shall wait at least thirty days before reapplying for examination. An applicant not attaining a passing grade on two or more parts of the examination shall retake the entire examination.
  - (8) Each applicant for examination shall pay a non-refundable fee of twenty-five dollars, submitted with each application for examination. This fee shall be paid by check or money order payable to "Ohio Treasurer of State." Any moneys collected under this rule shall be paid into the state treasury to the credit of the ~~surface mining~~mine safety fund created in section ~~1514.06~~1561.24 of the Revised Code.
  - (9) A certificate issued under paragraph (B) of this rule after September 29, 2015, shall not expire unless, as provided in division (C)(1) of section 1514.47 of the Revised Code and paragraph (E)(3) of this rule, the certificate holder has not been employed in a surface mining operation for five consecutive years.
- (C) Temporary certification of mine foreperson. An operator may submit a request to the chief, on a form provided by the chief, asking for temporary certification for one of his or her employees who is within six months of having accumulated the required experience for certification as a sand and gravel foreperson or a quarry mine foreperson so that the employee may act in the capacity of a certified sand and gravel foreperson or a certified quarry mine foreperson on a temporary basis until such time as the applicant has accumulated the minimum necessary experience.
- (1) The recipient of a temporary certification may apply for and take the examination for certification, administered under paragraph (B) of this rule, during the period within which the individual has a temporary certification. If the applicant passes the examination and, upon completion of all eligibility requirements, submits the required information on a notarized form provided by the chief documenting the accrual of the balance of the required experience, the chief shall issue the applicant a mine foreperson certification.
  - (2) Temporary certification as a mine foreperson shall be valid for a maximum of six months. If the individual holding a temporary certification does not pass the examination by the end of the six-month period, the temporary certification shall expire and the applicant shall cease performing all duties of a certified mine foreperson.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

- (3) If the individual holding a temporary certification has applied to take the examination for certification and the application to take the examination has been postmarked by midnight of the expiration date of the temporary certification, the temporary certification shall remain in effect until the date of the next certification examination scheduled by the division of mineral resources management. The division will notify the applicant of the examination date. If the applicant does not take the next scheduled examination or does not pass that examination, the temporary certification shall expire and the applicant shall cease performing all duties of a certified mine foreperson.
  - (4) No person shall be eligible to receive temporary certification more than one time unless the chief determines that exigent circumstances warrant otherwise.
  - (5) The chief may waive any part of the requirements for temporary certification if the chief determines exigent circumstances so warrant.
- (D) A copy of each mine foreperson certificate and temporary certificate shall be kept at the mine site and made available to the chief upon request.
- (E) Qualifications, fees and procedures governing the reissuance and expiration of mine foreperson certification.
- (1) If a person holds a certificate issued under paragraph (B) of this rule that has not expired prior to September 29, 2015, the chief, upon request, shall reissue to the person a certificate that does not expire.
  - (2) If a person holds a certificate issued under this rule that expired on or after April 7, 2012, and has not been issued a new certificate prior to September 29, 2015, the chief, upon request, shall issue to that person a certificate that does not expire, provided that the person is in compliance with all other applicable requirements established in Chapter 1514. of the Revised Code and rules adopted under it. An applicant for reissuance of a mine foreperson certification pursuant to this paragraph shall file an application for reissuance with the chief, on a form prescribed by the chief, and pay a non-refundable fee of twenty-five dollars. This fee shall be paid by check or money order payable to "Ohio Treasurer of State."
  - (3) A mine foreperson certificate issued pursuant to section 1514.47 of the Revised Code and this rule shall not expire unless the certificate holder has not been employed in a surface mining operation for five consecutive years. If the certificate holder has not been employed in a surface mining operation for five consecutive years, the certificate holder may retake the mine foreperson examination and fulfill the other certification requirements of division (B) of section 1514.47 of the Revised Code and paragraph (B) of this rule, or may petition the chief to accept past employment history in lieu of being employed in a surface mining operation for five consecutive years. The petition shall be made on a form prescribed by the chief and shall include a notarized affidavit establishing the certificate holder's qualifications as set forth in paragraph (B)(1) of this rule. The certificate holder shall submit with the petition copies of training records verifying that within the past twelve months the certificate holder has received annual refresher training as required in rules adopted and incorporated by reference pursuant to division (A) of section 1514.40 of the Revised Code. The chief shall grant or deny the petition by issuance of an order. If the chief grants the petition, the certificate holder shall pay a non-refundable fee of twenty-five dollars, paid by check or money order payable to "Ohio Treasurer of State," and the chief shall reissue the certificate. If the chief denies the petition, the certificate holder may apply for a new certificate by retaking the mine foreperson examination and fulfilling the other certification requirements of division (B) of section 1514.47 of the Revised Code and paragraph (B) of this rule.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

- (4) If a certificate holder has not been employed in a surface mining operation for five consecutive years, he or she shall not perform the duties of a certified mine foreperson unless the chief reissues his or her certificate pursuant to division (C)(1) of section 1514.47 of the Revised Code and paragraph (E)(3) of this rule or the chief issues him or her a new certificate pursuant to division (B) of section 1514.47 of the Revised Code and paragraph (B) of this rule.

(F)

- (1) If a certificate, including a temporary certificate, issued under this rule is suspended, the certificate shall not be renewed or reissued until the suspension period expires and the person whose certificate is suspended successfully completes all actions required by the chief. If an applicant's license, certificate, or similar authority that is issued by another state to perform specified mining duties is suspended or revoked by that state, the applicant shall be ineligible for a certification test or for renewal or reissuance of a certificate, including a temporary certificate, in this state during that period of suspension or revocation.

- (2) A certificate, including a temporary certificate, issued under this rule that has been revoked shall not be renewed or reissued.

- (G) If a person who has been certified by the chief under section 1514.47 of the Revised Code and this rule purposely violates Chapter 1514. of the Revised Code or Chapters 1501:14-1 to 1501:14-6 of the Administrative Code, the chief may suspend or revoke the certificate after an investigation and hearing conducted in accordance with Chapter 119. of the Revised Code are completed.

Draft Rule 1501:14-3-02, dated 4/7/2016.

This is a summary of the changes made to this rule.

Two small corrections in accordance with the Legislative Service Commission's rule-drafting protocol.

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

Dated 4/7/2016

## 1501:14-3-02      Minimizing acid drainage and acid water accumulation.

To minimize acid drainage and the accumulation of acid water, the operator shall, unless otherwise approved in the ~~Mining and Reclamation Plan~~[mining and reclamation plan](#), isolate any acid producing refuse material in a location that will minimize acid water formation and that will prevent such material from coming into contact with surface water, and promptly cover the acid producing refuse material with a minimum of three ~~(3)~~ feet of non-acid producing material.

Draft Rule 1501:14-3-03, dated 6/21/2016.

This is a summary of the changes made to this rule.

(D). Reference corrected.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**Dated 6/21/2016**

**1501:14-3-03      Permanent water impoundments.**

- (A) To insure that upon completion of reclamation any lake or pond located within the area of land affected is free of substances resulting from mining in amounts or concentrations that are harmful to persons, fish, waterfowl, or other beneficial species of aquatic life, the operator shall:
- (1) Construct dams or otherwise provide that the water level within any permanent water impoundment is maintained at no less than four feet above any acid producing materials within the impoundment;
  - (2) Cover with non-acid producing material to a minimum depth of three feet, any acid producing material resulting from mining located within the drainage area of the lake or pond;
  - (3) Prevent surface water resulting from mining which contains substances in amounts or concentrations that are harmful to persons, fish, waterfowl, or other beneficial species of aquatic life from flowing into any permanent impoundment;
  - (4) Maintain all impounded water at a pH of 6.0 or above; and
  - (5) Maintain a minimum water depth of six feet in each impoundment, unless otherwise required by the future intended use and approved in the mining and reclamation plan.
  - (6) Lime mining waste may be employed as a component of developing fish spawning zones or reef zones within a permanent impoundment. These zones shall be constructed in consultation with accredited wildlife biologists. The designated areas shall be sufficiently covered with a minimum cover of four feet of non-toxic earthen material, unless an alternative plan for cover or treatment is approved by the chief based upon a showing by the applicant that the alternative plan is as effective for protecting water quality and sustaining vegetative growth, before other materials such as sand, stone or rock are employed to create the spawning or reef surfaces.
- (B) To insure public safety the operator shall:
- (1) Stabilize the banks of the impoundments;
  - (2) Provide egress from the impoundment;
    - (a) Lime mining waste may be employed in final reclamation of a highwall to provide additional egress from the impounded area. The egress area shall be no steeper than fifteen degrees in accordance with paragraph (C) of this rule beginning at the anticipated low water level and extending beyond the highest level of normal annual fluctuation at least twelve feet. A minimum of four feet of non-toxic earthen material shall cover the submerged slope, with an additional six inches of topsoil used to cap any exposed slope, unless an alternative plan for cover or treatment is approved by the chief based upon a showing by the applicant that the alternative plan is as effective for protecting water quality and sustaining vegetative growth. The earthen cover shall be planted with a diverse vegetative cover in accordance with this chapter.

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- (3) Restrict access to the impoundment where access is not required for the future intended use; and
  - (4) Perform other measures as are necessary to insure public safety because of the particular site conditions.
- (C) To assure safe access where permanent impoundments are intended for recreational use, the operator shall construct designated access areas consistent with the intended recreational use, which access areas shall be no steeper than fifteen degrees beginning at the anticipated low water level and extending beyond the highest level of normal annual water fluctuation at least twelve feet.
- (D) To prevent hazards to adjoining properties, the operator shall construct any dams that are part of a permanent impoundment in accordance with the requirements of rule ~~1501:14-3-02~~1501:14-3-11 of the Administrative Code and all other applicable federal, state, or local laws.



This is a summary of the changes made to this rule.

(A)(1). Proposed insertion and new sentence to clarify that the rule will apply to surface blasting incidental to underground mining relative to: box and contour cuts used to develop underground mine entries (i.e., “face-ups”); and the first 25 feet of vertical shafts and drift or slope entries associated with underground mining. The above clarification and addition will formalize the way the Division of Mineral Resources Management (DMRM) has verbally interpreted such instances, and is necessary because the number of underground limestone mines associated with Industrial Minerals permits has increased from one to five since 2000, with two more pending.

(A)(2). Blasting operations already must meet all applicable state and federal laws and regulations. The proposed change to add “federal” is just for clarification.

(A)(4). The effective date in this provision is proposed to be removed because it is long past and no longer needed.

(C)(4) and sub-paragraphs (a) to (j). Language added to clarify the roles of the blaster-in-charge and the certified mine foreperson in determining and controlling access to the blasting area. The more general term, “permittee,” in these paragraphs is proposed to be changed to “certified mine foreperson or his or her designee” in order to improve blasting safety. With this change, the certified blaster will know that at all Ohio mines—coal and quarries—the certified mine foreperson, or his or her designee, is the employee of the permittee who will be securing the blasting area and with whom the blaster must communicate before and after a blast is detonated. Language also added to define “blasting area,” along with a list of the primary factors to be considered in determining the blasting area.

(C)(6). A definition of “blast site” added for clarification. The duration of the all-clear signal increased from five to ten seconds, to better distinguish it from the five-second sounds of the warning signal.

(D)(2). “or detonation byproducts” proposed to be removed because it refers to fumes, which are now included under “other blasting hazards” in proposed new language in (C)(4).

(D)(2)(a). Revised to specify that it is the blaster-in-charge who is responsible for notifying DMRM when there is a flyrock incident. Also revised to add this safety and health provision:

Neither the permittee nor the certified blaster shall conduct another blast directly beside or behind the blast site where the flyrock originated until the report is properly completed and the division of mineral resources management has acknowledged its receipt.

(D)(8). Revised to reference the most recent edition of the ISEE performance specifications for blasting seismographs and to update the information on how a copy of the performance specs can be obtained.

(E)(3)(s). Language modified to reflect the frequent use of programmable electronic (digital) detonators, which are now widely available and cost-effective.

(E)(3)(v). Revised to reduce from 14 days to 5 business days the amount of time allowed to attach seismographic records to a blast record, when the seismographic records are required for compliance. This time frame is proposed to be revised because current technology provides access to third-party seismographic data within minutes after a blast, making it possible to easily print the seismographic record, or seismogram, and attach it to the blast record within a day or two of the blast. The 5 business days would bring consistency to blasters statewide, because the shorter time frame would match what has been in the coal rule for decades.

(E)(3)(v)(ii). “instrument” replaced by “seismograph” for clarification.

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

Dated 4/18/2017

## 1501:14-3-04 Use of explosives in industrial minerals operations.

### (A) General.

- (1) The provisions of this rule shall apply to all surface blasting operations, including surface blasting operations incidental to underground mining, on all industrial minerals mining and reclamation operations. For box or contour cuts associated with development of underground mine entries, this rule shall apply to all material above the final floor level of the cut. For vertical shafts and drift or slope entries associated with underground mining, this rule shall apply only to the first twenty-five feet of material excavated below or beyond the original ground surface or point of entry.
- (2) Blasting operations shall be conducted in accordance with all applicable state and federal laws and regulations.
- (3) For purposes of this rule, "certified blaster" shall mean a blaster who possesses a valid certificate obtained pursuant to rule 1501:13-9-10 of the Administrative Code and "blaster-in-charge" shall mean, for each blast, the certified blaster responsible for the loading of the blastholes (including delay detonator connections), detonation of the blast, and completion of the blast record required under paragraph (E) of this rule.
- (4) ~~On and after July 1, 2003, blasting~~ Blasting operations shall be conducted only under the supervision of a certified blaster. Only a certified blaster, or a member of the blasting crew under the direct supervision of the certified blaster, may detonate a blast. Any certified blaster who is responsible for conducting blasting operations at a blasting site shall give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives at that site.
- (5) Certified blasters, and other persons responsible for blasting operations at a blasting site, shall review and know the permittee's blasting plan and site-specific blasting requirements. The permittee shall keep a copy of the current blasting plan and permit map at the permit site for use by employees, contract blasters, and any other persons responsible for blasting operations.

### (B) Blasting times.

- (1) Blasts may be detonated only between sunrise and sunset. The chief may further limit the time periods for blasting if necessary and reasonable in order to protect the public health and safety.
- (2) Blasts may be detonated at other times only in emergency situations where rain, lightning, other atmospheric conditions, or operator or public safety so requires. When a blast is detonated under any of those circumstances, the blaster-in-charge shall document the reason for the late or unscheduled blast in the blast record required under paragraph (E) of this rule.

### (C) Blasting signs, warnings, and access control.

- (1) All blasting signs required to be posted shall be of uniform design throughout the operation, easily visible, and made of durable material. These signs shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes.

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- (2) The permittee shall conspicuously place signs reading "BLASTING AREA" along the edge of any blasting area that comes within one hundred feet of any public road right-of-way, and at the edge of blasting areas along access and haul roads within the permit area. In addition to "BLASTING AREA," such signs may include supplemental words or phrases such as "danger" or "do not enter."
- (3) At all entrances to the permit area from any road, the permittee shall conspicuously place signs that state "WARNING! EXPLOSIVES IN USE" which clearly explain the meaning of the audible warning and all-clear signals in use.
- (4) For each blast, the blaster-in-charge shall ~~define~~determine the limits of the blasting area ~~where danger from flyrock exists~~and communicate those limits to the certified mine foreperson or to his or her designee. The ~~permittee~~certified mine foreperson or his or her designee shall be responsible for controlling access to the blasting area to prevent the presence of livestock or unauthorized persons at least ten minutes before each blast, and until the blaster-in-charge has determined that no unusual hazards, such as imminent slides or undetonated charges, exist, and access to and travel within the blasting area can safely resume. The ~~permittee~~certified mine foreperson or his or her designee shall not allow anyone to re-enter the blasting area until the blaster-in-charge has confirmed that the all-clear signal has been sounded. "Blasting area" means the area in which airblast (concussion or shock wave), flyrock, or other blasting hazards might cause injury to persons or damage to property. In determining the blasting area, the following factors shall be considered:
- (a) Geology of the material to be blasted;
  - (b) Orientation of the blast bench and rock face(s);
  - (c) Blast pattern layout, delay system and timing;
  - (d) Burden, depth, diameter and angle of the blastholes;
  - (e) Blasting experience of the mine;
  - (f) Powder factor and pounds of explosives per delay;
  - (g) Type and amount of explosive material;
  - (h) Type and amount of stemming;
  - (i) Atmospheric conditions; and
  - (j) Topography.
- (5) At least one minute, but not more than two minutes before the detonation of a blast, the blaster-in-charge, or someone directed by the blaster-in-charge, shall give an audible warning signal. If the blast is not detonated within two minutes of the audible warning signal, the warning signal shall be repeated as required by this paragraph before the blast is detonated. After the blast has been detonated and the blaster-in-charge has confirmed that the blast area is safe to re-enter, an audible all-clear signal shall be given.

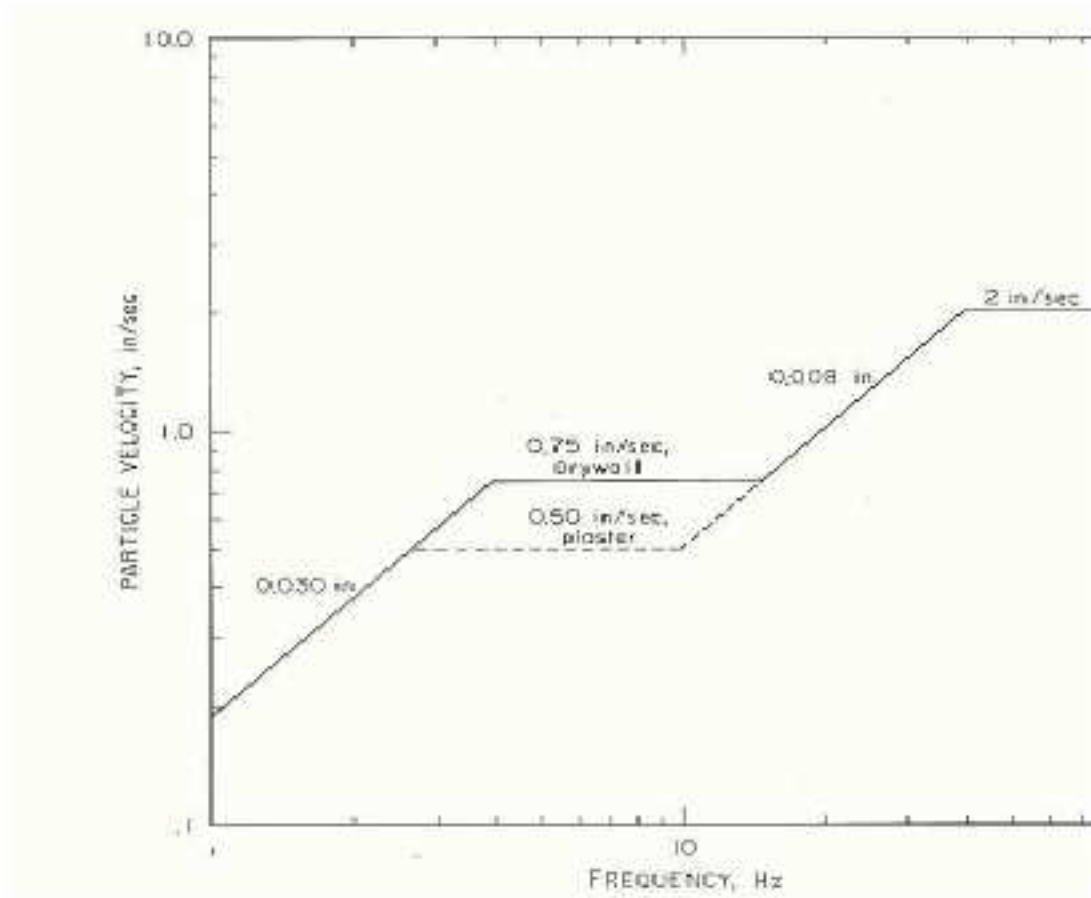
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- (6) Warning and all clear signals, to be produced by an airhorn, siren or similar device, shall be audible to at least one thousand feet in all directions from the blast site. "Blast site" means the area formed by the perimeter of the loaded blastholes and fifty feet in all directions from loaded blastholes. The warning signal shall consist of three long sounds, each lasting at least five seconds. The all-clear signal shall consist of one long sound lasting at least ~~five~~ten seconds.

## **(D) Control of adverse effects.**

- (1) Blasting shall be conducted in a manner that prevents injury to persons and damage to public or private property outside the area for which a permit was issued.
- (2) "Flyrock," defined as rock, mud or debris (excluding dust ~~or detonation byproducts~~) ejected from the blast site by the force of a blast, shall not be cast beyond the permit boundary.
- (a) If flyrock is cast beyond the permit boundary, the ~~certified~~ blaster in-charge shall notify the division of mineral resources management by telephone within two hours after learning of the flyrock incident, and submit a flyrock incident report to the division within three business days after learning of the incident. Neither the permittee nor the certified blaster shall conduct another blast directly beside or behind the blast site where the flyrock originated until the report is properly completed and the division of mineral resources management has acknowledged its receipt. The report shall be signed by the blaster-in-charge who conducted the blast. The report shall include, at a minimum, a copy of the blast record and all available seismographic data, a sketch of the blast site and rock deposition area, and a detailed explanation of: how the blasts were designed and loaded; who witnessed the blast and where they were located and what they observed; the location and nature of the flyrock deposition (including property owners, type and approximate number of rocks, size and distance range), property damages (if any) and personal injuries (if any); what measures have been taken to repair all property damages (if any) and address all personal injuries (if any); the probable cause of the flyrock incident; and the corrective measures to be taken to prevent another flyrock incident.
- (3) Ground vibration, when measured at any dwelling, public or commercial building, school, church, or community or institutional building located outside the permit area and not owned by the permittee, shall not exceed the frequency-dependent particle velocity limits illustrated below, from the "Report of Investigations 8507, Appendix B: Alternative Blasting Level Criteria (1980)," published by the former U.S. Bureau of Mines. When applying the frequency-dependent particle velocity limits, the lower plateau at 0.50 inches per second shall apply at its corresponding frequencies to the nearest dwelling or building listed above, unless the permittee submits to the chief site-specific technical evidence to support application of the higher plateau at 0.75 inches per second, and the chief approves a blast plan modification to that effect.

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[Figure]

Maximum Allowable Particle Velocities Based on Blast Vibration Frequencies, from RI 8507 (1980).

- (4) Airblast, when measured at any dwelling or building listed in paragraph (D)(3) of this rule shall not exceed one hundred thirty-three decibels.
- (5) A seismograph shall be used beside the nearest dwelling or building in paragraph (D)(3) of this rule to demonstrate compliance with the ground vibration and airblast limits of paragraphs (D)(3) and (D)(4) of this rule. As an alternative to seismographic monitoring, the blast shall comply with the scaled distance equation,  $W = (D/90)^2$ , where W is the maximum weight of explosives, in pounds, that can be detonated within any period less than eight milliseconds, D is the distance, in feet, from the nearest blasthole to the nearest dwelling or building in paragraph (D)(3) of this rule, and ninety is the applicable scaled distance factor.

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- (6) For structures not listed in paragraph (D)(3) of this rule, such as oil or gas wells, oil or gas transmission and distribution lines, high-voltage steel transmission towers, public water lines, dams, silos, and unoccupied barns and pole buildings, located outside the permit area and not owned by the permittee, a seismograph shall be used beside the nearest structure to demonstrate that the peak particle velocity did not exceed 2.0 inches per second. As an alternative to seismographic monitoring, the blast shall comply with the scaled distance equation,  $W = (D/40)^2$ , where W is the maximum weight of explosives, in pounds, that can be detonated within any period less than eight milliseconds, D is the distance, in feet, from the nearest blasthole to the nearest structure, and forty is the applicable scaled distance factor. A higher peak particle velocity limit may be approved for a specific structure if the permittee submits to the chief site-specific technical evidence to support the higher limit, and the chief approves a blast plan modification to that effect.
- (7) Any or all of the ground vibration and airblast limits in paragraphs (D)(3), (D)(4) and (D)(6) of this rule may be waived by the current owner or controlling authority of the dwelling, building or structure, provided such waiver is in the form of a written consent, submitted to the division of mineral resources management upon application for a new permit or an amendment to add acreage to an existing permit, or with a request to modify a mining and reclamation plan, and approved by the chief.
- (8) All seismographs used to prove compliance with the ground vibration and airblast limits required by this rule shall have seismic and acoustic systems with a minimum frequency range of two to two hundred fifty hertz, with accuracies that meet or exceed the performance specifications for blasting seismographs adopted by the international society of explosives engineers ~~on February 17, 2000, "ISEE Performance Specifications for Blasting Seismographs, 2011 Edition," available as a digital download from the "International Society of Explosives Engineers", Blast Vibrations and Seismograph Section, 30325-Bainbridge Road, Cleveland, OH 44139" or~~ <http://isee.org/sections/2SeisPerfSpecs00.pdf> [www.isee.org](http://www.isee.org). The ground vibration shall be measured as the particle velocity and recorded in three mutually perpendicular directions. The maximum allowable frequency-dependent particle velocity limits and peak particle velocity limits in this rule shall apply in each of the three directions of measurement. Whenever possible, the seismographic measurement shall be made within ten feet of the building or structure being monitored, on the side of the building or structure closest to the blast site.
- (9) Any person who operates a seismograph for the purpose of demonstrating compliance with the ground vibration and airblast limits of this rule shall have received appropriate training, for the specific seismograph model(s) in use, in: programming the seismograph(s) to record the blast; positioning the geophone and microphone; coupling the geophone to the ground; extracting the data after the blast in digital and printed form; and understanding the results. Such training shall be received from a representative of the seismograph manufacturer or distributor, or other competent person. A record of such training shall be maintained by the seismograph operator or his or her employer, and made available for inspection by the chief or his or her authorized representative upon request.
- (E) Blast records.
- (1) The permittee shall retain a record of all blasts for at least three years, and shall make those records

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available for inspection upon request by the chief or an authorized representative of the chief.

- (2) Where blast records are normally kept at an office of the permittee not located on the permit site, the record for each blast shall be on file at that office within five business days after the blast is detonated.
- (3) Blast records shall be accurately completed at the mine site by the blaster-in-charge, and shall contain the following data for each blast:
  - (a) Name of the permittee and permit number;
  - (b) Name of the firm conducting the blast, if different from the permittee;
  - (c) Location, date, and time of blast;
  - (d) Printed name, signature, and certification number of the blaster-in-charge, and the name of each person on the blasting crew;
  - (e) Relative to the nearest blasthole, the identification of, distance to, direction to, and method used to determine the distance and direction to, the nearest dwelling, public or commercial building, school, church, or community or institutional building outside the permit area that is not owned by the permittee. The direction shall be stated in degrees, as an azimuth from zero to three hundred sixty degrees. The distance shall be stated in feet, as derived from an aerial photo, a topographic map, conventional field measurement devices (e.g., measuring tape or transit), or electronic devices (e.g., laser-ranging or global positioning system units);
  - (f) Weather conditions, including temperature and approximate wind direction and velocity;
  - (g) Type of material blasted;
  - (h) Number, diameter, and depth of holes;
  - (i) Depth of subdrilling, where applicable;
  - (j) Burden and spacing dimensions;
  - (k) Type, manufacturer, and amount of explosives used, including bulk, bagged, or cartridge explosives, detonating cord, primers, and surface and in-hole delay detonators;
  - (l) Total weight of explosives used;
  - (m) Weight of explosives used per hole;
  - (n) Maximum number of holes and maximum weight of explosives detonated within any period less than eight milliseconds;
  - (o) The actual scaled distance factor, expressed as the distance from the nearest blasthole to the nearest dwelling or building in paragraph (E)(3)(e) of this rule, divided by the square-root of the maximum weight of explosives detonated in any period less than eight milliseconds;
  - (p) Type of initiation system used, including the type of blasting machine or other power source, and the types of trunkline and downline systems, if not readily apparent from other information in the blast



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record;

- (q) Sequential timer setting, in milliseconds, if applicable;
- (r) Type and length of stemming used per hole;
- (s) Sketch of the blast pattern showing all holes, delay pattern (including initiation hole, ~~and~~ hole-to-hole and row-to-row delay detonator locations and periods, where applicable, or electronically programmed hole and deck firing times, where applicable), location of free faces and previously blasted material, and a north arrow;
- (t) Sketch of a typical blasthole cross-section showing the depth and location of stemming and explosive decks, primers, and delay detonators;
- (u) Mats or other special protections used;
- (v) Seismographic records, when required for compliance, shall be attached to the blast record within ~~fourteen~~five business days of the blast, and shall include:
  - (i) Make, model and serial number of the seismograph, seismic and acoustic trigger levels, and most recent annual calibration date;
  - (ii) Exact location of the ~~instrument~~seismograph and distance from the blast, and the date and time of the recorded blast event;
  - (iii) Name of the person and firm operating the seismograph;
  - (iv) Full waveform printout, including: three mutually perpendicular channels of ground vibration and an airblast channel; dynamic calibration results; a plot of particle velocity versus frequency with a comparison to the frequency-dependent blast vibration limits in paragraph (D)(3) of this rule, based on a half-cycle zero-crossing analysis method; and the peak particle velocity and airblast levels; and
  - (v) If the seismograph fails to be triggered by the blast, a printout showing the date and time the seismograph was armed and ready to record a blast and the date and time the seismograph was disarmed or shut down, or a written statement including the above information, signed by the seismograph operator and attached to the blast record; and
- (w) Reasons and conditions for a late or unscheduled blast.

Draft Rule 1501:14-3-06, dated 4/7/2016.

This is a summary of the changes made to this rule.

(A). One small correction in accordance with the Legislative Service Commission's rule-drafting protocol.

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**Dated 4/7/2016**

**1501:14-3-06      Final slopes.**

The operator shall:

- (A) Grade, contour, or terrace the final slopes to a slope angle sufficient to achieve soil stability and control landslides, erosion, and sedimentation. Slopes with a slope angle of eighteen ~~(18)~~ degrees or less shall be presumed sufficient. Highwalls retained as part of the intended future use shall not be regarded as final slopes; and
- (B) Establish diversion ditches with controlled outlets on any final slopes sufficient to achieve soil stability and control landslides, erosion, and sedimentation.

Draft Rule 1501:14-3-11, dated 4/7/2016.

This is a summary of the changes made to this rule.

(B)(3). Punctuation corrected.

(C), (E), and (F). Small corrections in accordance with the Legislative Service Commission's rule-drafting protocol.

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

Dated 4/7/2016

## 1501:14-3-11 Construction of dams, dikes, diversions, impoundments, and drainage channels.

To prevent damage to adjoining property from flooding, landslides, and flood hazards resulting from mining operations, the operator shall:

(A) Construct necessary sediment and flood control impoundments that shall:

- (1) Have a minimum storage capacity below the crest of the principal spillway of 0.2 acre-feet per acre of disturbed area within the watershed;
- (2) Be located within each affected watershed;
- (3) Have primary and secondary spillway systems capable of safely passing the required peak design flows without endangering the safety of the dam;
- (4) Include means of dissipating the energy of flow at the spillway outlets without eroding the dam or the downstream channel;
- (5) Have vegetation established on the slopes of the impoundments and the dam to prevent erosion; and
- (6) Be cleaned out whenever sediment fills half the minimum storage capacity of the impoundment, which sediment shall be disposed of in a manner consistent with the intended future use of the area;

(B) Construct dikes, diversions, and drainage channels that shall:

- (1) Direct drainage from the affected area to sediment and flood control impoundments and divert runoff around or away from the affected areas;
- (2) Protect existing natural streams; and
- (3) Be constructed with sufficient capacity to safely carry peak design flows;

(C) Use impervious materials to construct all dams, dikes, and drainage channels. Where impervious materials are not available at the site, the ~~Chief~~chief may approve use of alternate materials, designs, or methods;

(D) Assure that water controlled by pumping or other mechanical methods is controlled in a manner that will prevent damage to adjoining property;

(E) Comply with all ~~Federal, State~~federal, state, or local laws applicable to the design, construction, operation, and maintenance of dams, dikes, diversions, drainage channels, and impoundments; and

(F) Reclaim all dams, dikes, diversions, drainage channels, and impoundments unless specified as permanent structures in the ~~Mining and Reclamation Plan~~mining and reclamation plan.

Draft Rule 1501:14-4-01, dated 4/7/2016.

This is a summary of the changes made to this rule.

(A). “geological data” added to clarify.

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

Dated 4/7/2016

## 1501:14-4-01 Geological data report.

- (A) Each application for a surface mining permit shall contain a [geological data](#) report, on forms prescribed by the chief, of the results of test borings for each mining area that the operator has conducted or otherwise has readily available. The location from which the test boring results are determined shall include the complete stratigraphic column to be affected and shall be shown on all maps. More than one test boring report may be required where necessary to adequately show the stratigraphic column in the mining area. The report shall include the following information for each stratum to be affected:
- (1) The thickness of each stratum of overburden, mineral or coal deposit as it occurs in its natural state, from the surface to at least five feet below the deepest level of mining;
  - (2) The name and geologic description of each stratum; and
  - (3) An identification of the strata to be produced.
- (B) For those operations located in coal bearing regions of Ohio, each stratum to be excavated within the permit area, with the exception of topsoil, subsoil, limestone, and any other mineral to be produced, shall be designated as acid producing or non-acid producing. Strata designated as acid producing shall be handled in accordance with rule 1501:14-3-02 of the Administrative Code. Any strata designated as non-acid producing shall be analyzed by a competent commercial laboratory or its equivalent, as approved by the chief, for the pH and the calcium carbonate deficiency according to the following procedures:
- (1) For pH: The contents of all samples shall be reduced to such size as will permit the particles of the entire sample to pass through a 250 micron sieve, size 60 ASTM. All samples shall be tested by measuring the pH of a 2:1 soil (or pulverized rock) distilled water mixture, or a saturated paste of the soil using distilled water, with a glass electrode pH meter. The method used shall be described on an attachment to the test boring report; and
  - (2) For the calcium carbonate deficiency:
    - (a) Sulfur content: The content of all samples shall be reduced to such size as will permit the particles of the entire sample to pass through a 250 micron sieve, size 60 ASTM. Samples shall be analyzed for either total sulfur content or pyritic sulfur content by standard recognized analytical methods such as ASTM International methods of analyses for total sulfur content. The website for ASTM international is <http://www.astm.org>.  
  
If samples are not fractionated to provide analyses of only pyritic sulfur content, analyses showing total sulfur content will be presumed to indicate pyritic sulfur content;
    - (b) Neutralization potential: The contents of all samples shall be reduced to such size as will permit the particles of the entire sample to pass through a 250 micron sieve, size 60 ASTM. Samples shall be analyzed by standard recognized analytical methods; and
    - (c) Calcium carbonate deficiency: Multiply the percentage of sulfur content by 31.24 and subtract from the product the total neutralization potential expressed in units of tons per thousand tons of material.
- (C) Results of tests conducted in accordance with paragraph (B) of this rule shall be submitted with the geological data report.
- (D) If test borings have not been conducted or are not readily available in an area that is being or has been mined, the information required in paragraphs (A) and (B) of this rule may be determined from an existing mining face where the strata to be affected are exposed.

Draft Rule 1501:14-4-04, dated 3/8/2017.

This is a summary of the changes made to this rule.

(E)(2). “Administrative” Code corrected to “Revised” Code.



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**Dated 3/8/2017**

## **1501:14-4-04      Abandoned and inactive mining areas.**

- (A) A mining area may be considered abandoned if the chief finds, as a result of an inspection, evidence to indicate that the permittee does not have the ability to continue the mining operation.
- (B) If the chief finds evidence pursuant to paragraph (A) of this rule, the chief shall notify the permittee through certified mail that the mining area may be declared abandoned.
- (C) The permittee may, within thirty days after receipt of notification by the chief declaring that the mining area may be declared abandoned, submit sufficient evidence to the chief that the surface mining operation on such mining area is in fact not abandoned.
- (D) If the permittee fails to submit sufficient evidence in accordance with paragraph (C) of this rule, the chief shall issue an order declaring the mining area abandoned.
  - (1) If a mining area is declared to be abandoned under paragraph (D) of this rule and there has been no incidental production of coal, the permittee shall comply with the requirements of Chapter 1514. of the Revised Code.
  - (2) If a mining area that has been declared to be abandoned under paragraph (D) of this rule has involved the incidental production of coal, and the permittee has complied with the requirements for and conditions of exemption for coal extraction incidental to the extraction of other minerals under rule 1501:13-4-16 of the Administrative Code, the permittee shall comply with the requirements of Chapter 1514. of the Revised Code. If the permittee has failed to comply with the requirements for and conditions of exemption for coal extraction incidental to the extraction of other minerals under rule 1501:13-4-16 of the Administrative Code, the chief shall revoke the exemption and take enforcement in accordance with rule 1501:13-5-03 of the Administrative Code.
- (E) The chief may consider a mining area inactive and not abandoned if:
  - (1) The permittee submits an annual report indicating that the surface mining operation is inactive; and
  - (2) The permittee remains in compliance with all requirements of Chapter 1514. of the ~~Administrative~~[Revised](#) Code.

## **2016 IM No Change Rule Package**

### **12 No Change Rules:**

- 1501:14-1-02 Severability.
- 1501:14-1-03 Successor division.
- 1501:14-1-14 Reports.
- 1501:14-3-05 Underground water supplies.
- 1501:14-3-07 Final highwalls.
- 1501:14-3-08 Resoiling.
- 1501:14-3-09 Soil amendments.
- 1501:14-3-10 Revegetation.
- 1501:14-4-02 Cross sections.
- 1501:14-4-03 Completion dates.
- 1501:14-5-02 Alternative water supply information.
- 1501:14-5-03 Water Supply Replacement.

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**1501:14-1-02      Severability.**

The validity of any rule or portion thereof, adopted or amended by the Chief, pursuant to Chapter 1514. of the Revised Code, shall not be affected by the invalidity of any other rule or portion thereof adopted or amended thereunder by the Chief.

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**1501:14-1-03      Successor division.**

Unless expressly provided to the contrary by any rule or any section of the Revised Code, any rule adopted or amended by the chief pursuant to Chapter 1514. of the Revised Code shall apply to, and be the rule of, any division or other unit of the department of natural resources, which by virtue of a consolidation or reorganization pursuant to section 121.07 of the Revised Code, or by legislative action, shall succeed to the responsibility of the division of mineral resources management to administer and enforce Chapter 1514. of the Revised Code.

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**1501:14-1-14      Reports.**

Any reports required to be filed by Chapter 1514. of the Revised Code shall not be deemed filed when received by the chief unless the reports contain all substantial information required by Chapter 1514. of the Revised Code and rules adopted pursuant thereto.

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**1501:14-3-05      Underground water supplies.**

- (A) To insure that contamination, resulting from mining, of underground water supplies is prevented, the operator shall comply with the following conditions and requirements:
- (1) Promptly seal all auger holes with non-acid producing, impervious material to a compacted depth of four feet above the top of the mineral or coal seam, which seal shall be maintained until the auger hole is permanently sealed as approved in the mining and reclamation plan, provided that auger holes that are not located near the base of the highwall are not required to be sealed;
  - (2) Cover any acid producing materials located in the bottom of the pit and any coal seam located near the base of the highwall with non-acid producing material to a minimum depth of three feet;
  - (3) Seal all shafts, boreholes, wells and other openings that are intercepted during mining in such a manner that contamination of underground water supplies shall be prevented; and
  - (4) When an underground mine is intercepted and the operator does not intend to mine the underground works, seal the opening with compacted, impervious materials to a depth of three times the greater dimension of the opening unless otherwise approved in an amended mining and reclamation plan. Such seal shall be inspected and approved by the chief or his or her representative before backfilling the area.
- (B) To prevent impacts of dewatering from the drilling of boreholes or test holes that have groundwater flowing to the surface, the operator shall, for any borehole or test hole that contains groundwater which is flowing to the surface, plug the borehole or test hole within thirty days of drilling to cease the flowing of groundwater to the surface.

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**1501:14-3-07 Final highwalls.**

To insure public safety when highwalls are retained as part of the intended future use, the operator shall:

- (A) Design the procedures to detonate explosives in a manner that the final highwall will not be fractured to an unstable condition;
- (B) Stabilize any unstable final highwalls;
  - (1) Lime mining waste used to backfill highwalls. An angle of eighteen degrees or less, in accordance with paragraph (A) of rule 1501:14-3-06 of the Administrative Code, from the top of the highwall to the quarry floor shall be deemed acceptable with a minimum of four feet of non-toxic earthen material covering the submerged slope, with an additional six inches of topsoil used to cap any exposed slope, then planted to a diverse vegetative cover in accordance with Chapter 1501:14-3 of the Administrative Code. An alternative plan for cover or treatment may be approved by the chief based upon a showing by the applicant that, at a minimum, the alternative plan is as effective as four feet of cover for protecting water quality and sustaining vegetative growth.
- (C) Provide egress from the pit area;
- (D) Restrict access to the highwall as approached from the top; and
- (E) Perform other measures as are necessary to insure public safety because of the particular site conditions.

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## **1501:14-3-08      Resoiling.**

To raise and maintain a diverse growth of vegetative cover capable of self-regeneration and plant succession, the operator shall comply with the following requirements and conditions:

- (A) Remove and segregate topsoil or subsoil in sufficient quantities to redistribute over the surface of the affected area in accordance with paragraphs (C) and (D) of this rule;
- (B) Store or stockpile the segregated topsoil or subsoil in a manner and location so that it will be protected from contamination or loss and be maintained in a condition suitable to establish and maintain a diverse vegetative cover;
- (C) Resoil with topsoil or subsoil the surface of each affected area where the surface is not capable of establishing and maintaining a diverse growth of vegetation;
- (D) Resoil with topsoil or subsoil to a minimum compacted depth of eight inches on any surface which contains acid producing materials, and to a compacted depth of six inches on all other surfaces required to be resoiiled by paragraph (C) of this rule;
- (E) If resoiling is required in accordance with paragraph (C) of this rule but topsoil and subsoil are not present on the area or are present in insufficient quantities to comply with paragraph (D) of this rule, the operator shall segregate and store in accordance with paragraphs (A), (B) and (D) of this rule, all available topsoil, available subsoil, and the substitute resoiling material as approved in the mining and reclamation plan; and
- (F) Condition the surface of the affected area to be planted to establish a suitable seedbed.



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## **1501:14-3-09      Soil amendments.**

To establish and maintain a diverse growth of permanent vegetation adequate to bind the soil and to control soil erosion and sedimentation, the operator shall:

- (A) Apply lime to the surface of the area to be planted in the amounts and analyses recommended by the results of standard soil tests for acidity, consistent with the land-management objectives and the type of vegetation to be established;
- (B) Apply fertilizer to the surface of the area to be planted in the amounts and analyses recommended by the results of standard soil tests, consistent with the land-management objectives and the type of vegetation to be established;
- (C) Apply soil stabilizers and/or mulch where necessary to promote seed germination and where necessary for reasons of the slope length or slope angle to control erosion or sedimentation; and
- (D) Apply soil amendments other than lime, fertilizer, or mulch, consistent with the requirements of paragraphs (A), (B), and (C) of this rule, as approved in the mining and reclamation plan.

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## **1501:14-3-10      Revegetation.**

To establish a diverse permanent vegetative cover capable of self-regeneration, plant succession, and to control soil erosion, the operator shall comply with the following conditions and requirements:

- (A) Permanent planting shall be completed on the surface of the affected area immediately upon the completion of any required grading or resoiling except when the grading and resoiling are completed within a season that is not suitable for planting, in which case the permanent planting shall be completed at the earliest possible time within the next appropriate planting season;
- (B) The permanent planting shall contain species of perennial grasses and legumes unless otherwise required by the future intended use and approved in the mining and reclamation plan. Small grains or fast-growing annual grasses may be used to provide adequate cover to control erosion and shall later be replaced by perennial species;
- (C) Trees shall be planted in the species, amounts and spacing as are consistent with the intended future use and approved in the mining and reclamation plan;
- (D) The permanent vegetation shall be deemed to be a successful diverse vegetative cover capable of self-regeneration and plant succession if the vegetation planted in accordance with paragraph (B) of this rule has survived two growing seasons and if the permanent vegetative cover has been established and maintained in accordance with the following standards:
  - (1) Any individual barren area shall not exceed 0.3 per cent of the total affected area for which the "Request for Approval of Planting and All Other Reclamation" has been submitted;
  - (2) The total barren area shall not exceed 1.0 per cent of the total affected area for which the "Request for Approval of Planting and All Other Reclamation" has been submitted;
  - (3) The total sparse area shall not exceed 10 per cent of the total affected area for which the "Request for Approval of Planting and All Other Reclamation" has been submitted; and
  - (4) For purposes of this rule, barren area means any area with permanent vegetative cover equal to or less than 30 per cent, and sparse area means any area with permanent vegetative cover greater than 30 per cent but less than 75 per cent; and
- (E) If agricultural crops required by the future intended use are planted in lieu of the permanent planting required in paragraph (B) of this rule and as approved in the mining and reclamation plan, such crops shall be raised and managed for two years in accordance with good farming practices.

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**1501:14-4-02      Cross sections.**

A cross section or cross sections shall be submitted with the application map for each mining area to be affected. Such cross section shall:

- (A) Be sufficient to show the proposed land form of each mining area; and
- (B) Be submitted in sufficient detail and quantity and be located in such a manner to show any significant dissimilar final land configurations in the mining area.

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**1501:14-4-03      Completion dates.**

The operator shall specify, on each annual report and on the final report, the date on which surface mining operations were completed, terminated, or abandoned, if any such operations were completed, terminated, or abandoned, for each area of land affected during the reporting period.

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**1501:14-5-02      Alternative water supply information.**

- (A) An applicant for a permit or an amendment that will be dewatering shall submit, as part of the application, an analysis of the availability and suitability of alternative water supply sources that will be utilized to fulfill the water supply replacement provisions of section 1514.13 of the Revised Code.
- (B) The absence of suitable replacement water supply sources will be grounds for denial of an application for a permit or amendment as provided in division (B) of section 1514.02 of the Revised Code.

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**1501:14-5-03 Water Supply Replacement.**

- (A) For the purposes of section 1514.13 of the Revised Code, unless otherwise determined by the chief, water replacement provisions shall be applicable within the geographic area defined by the ten foot contour line of the cone of depression established under rule 1501:14-5-01 of the Administrative Code. The chief may, however, designate a different contour line based upon water resource availability, seasonal variations, other water users in the hydrologic study area as well as other ground water data available.