



Ohio Department of Natural Resources

JOHN R. KASICH, GOVERNOR

JAMES ZEHRINGER, DIRECTOR

Lanny E. Erdos, Chief
Ohio Department of Natural Resources
Division of Mineral Resources Management
2045 Morse Road, Building II-2
Columbus, OH 43229-6693
Phone: (614) 265-6893; Fax: (614) 265-7999

MEMORANDUM

To: Christopher Smyke
Lieutenant Governor's Office

From: Lanny Erdos, Chief *LE by [signature]*
ODNR, Division of Mineral Resources Management

Date: August 22, 2017

Subject: CSI Review – 2016 Industrial Minerals Rules

Thank you for your thorough review and analysis of the Division of Mineral Resources Management's (DMRM's) 2016 industrial minerals rules. The Common Sense Initiative (CSI) review memorandum states that this rule package is justified, CSI has no recommendations regarding this package, and the Ohio Department of Natural Resources should proceed with its formal filing.

The DMRM intends to now move forward with the original filing of these rules with the Joint Committee on Agency Rule Review.

In addition to filing the 2016 Industrial Minerals Rules package, DMRM will also file two rules in order to make an important amendment: to correct the phone number of the ODNR Emergency Operations Center -- crucial information for industrial minerals operators that recently changed and needs to be updated. This correction will not have an adverse impact on business but will in fact be beneficial to the industrial minerals industry. Note that these two rules were part of the 2015 Industrial Minerals Rules package that CSI reviewed and approved on May 16, 2016. Copies of these rules with this proposed amendment are attached.

If you have any questions, please contact Ann Laubach at 614-265-1092 or Ashley Montgomery-Hively at 614-265-6861.

cc: Bob Boyles, Deputy Director - ODNR
Brock Miskimen, Acting Chief Legal Counsel - ODNR
Dave Crow, Deputy Chief - ODNR, DMRM
Sue Grant, Deputy Chief - ODNR, DMRM
Sandy Ramos, Legal Counsel - ODNR, DMRM
Howard Dyer, Mine Safety Manager - ODNR, DMRM

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

Dated 8/22/2017

1501:14-2-04 Requirements governing the reporting and investigation of accidents for surface mining operations that are inspected by MSHA.

This rule applies to surface mining operations that are inspected by MSHA.

(A) Accidents requiring reporting.

- (1) An accident that is required to be reported to MSHA pursuant to 30 C.F.R. 50.10 shall be reported to the division of mineral resources management. Accidents requiring notification shall be reported to the division of mineral resources management within one hour, once the operator knows or should know that the accident has occurred, by contacting the emergency operations center of the Ohio department of natural resources by telephone at (614) 799-~~9574~~9538.
- (2) If the operator thinks that the accident reported under paragraph (A)(1) of this rule did not occur as a result of an unsafe condition or a practice at the operation, then the operator may, within twenty-four hours after the accident is reported, provide the chief with a written explanation of the reason(s) upon which the operator bases such opinion. The operator may provide this explanation by U.S. mail, facsimile, or electronic mail to the attention of: manager, mine safety program, Columbus office, division of mineral resources management.

(B) Injuries and illnesses not requiring reporting. An occupational injury or occupational illness that is required to be reported to MSHA pursuant to 30 C.F.R. part 50, subpart C or D, is not required to be reported to the division of mineral resources management.

(C) Investigation of fatalities and life-threatening injuries.

- (1) Upon receipt of notice that a fatality or a life-threatening injury has occurred at an operation, the chief shall conduct an investigation to determine the events surrounding and causes of the fatality or life-threatening injury. To the extent practical, the chief shall coordinate the investigation with MSHA.
- (2) If the chief conducts an investigation pursuant to this rule, the operator shall, during the investigation, provide the chief, in writing, the name of the organization identified as the authorized representative of the miners for the operation, if applicable.
- (3) The chief shall prepare a report of the investigation, which shall include a determination of whether such fatality or injury occurred as a result of an unsafe condition or a practice at the operation. Within seven days of the completion of the fatality or life-threatening injury investigation report, the chief shall provide the operator and, if applicable, the authorized representative of the miners at the operation, with a copy of the investigation report.

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(D) Notification of determination to conduct inspections.

- (1) If the chief determines that a fatality or a life-threatening injury of a miner has occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation, the chief shall immediately provide the operator with written notice that the operation will be inspected once every three months for a period of two years for a fatality in accordance with division (C) of section 1514.41 of the Revised Code or that the operation will be inspected once every three months for a period of one year for a life-threatening injury in accordance with division (D) of section 1514.41 of the Revised Code. The notice shall contain:
 - (a) A citation of the relevant provision(s) of the Revised Code and the Administrative Code that require the inspections;
 - (b) A statement that the one-year or two-year time frame for the inspections, as applicable, will begin immediately;
 - (c) The number of inspections the surface mining operation will receive; and
 - (d) The procedure, pursuant to paragraph (E) of this rule, whereby the operator may request that the chief reconsider the decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation.
- (2) If a fatality or a life-threatening injury of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, the chief shall, as soon as practicable, conduct a mine safety inspection of the operation in accordance with sections 1514.41 and 1514.43 of the Revised Code and these rules. A request for reconsideration pursuant to paragraph (E) of this rule shall not cause a delay in the conduct of this mine safety inspection.

(E) Reconsideration by the chief.

- (1) Within thirty days of receipt of the notification required by paragraph (D) of this rule, a surface mining operator may submit a written request to the chief asking him or her to reconsider the decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation.
- (2) Within fourteen days of receipt of an operator's request for reconsideration under paragraph (E)(1) of this rule, the chief shall provide the operator and, if applicable, the authorized representative of the miners at the surface mining operation, with written notice of his or her decision.
- (3) Within thirty days after receipt of the chief's decision under paragraph (E)(2) of this rule, the operator may appeal the chief's decision to the reclamation commission in accordance with section 1514.09 of the Revised Code. An operator shall not file an

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appeal with the reclamation commission of the chief's decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation without first requesting reconsideration as provided by paragraph (E)(1) of this rule. The filing of a notice of appeal to the reclamation commission does not operate as a stay of any order, determination, or decision of the chief.

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

Dated 8/22/2017

1501:14-2-09 Requirements governing the reporting and investigation of accidents and injuries for surface mining operations that are not inspected by MSHA.

This rule applies to surface mining operations that are not inspected by MSHA.

(A) Accidents and injuries requiring reporting.

(1)

- (a) A fatality or a life-threatening injury that occurs at a surface mining operation that is not inspected by MSHA shall be reported to the division within one hour, once the operator knows or should know that the fatality or life-threatening injury has occurred, by contacting the emergency operations center of the Ohio department of natural resources by telephone at (614) 799-~~9574~~9538.
- (b) If the operator thinks that the accident reported under paragraph (A)(1)(a) of this rule did not occur as a result of an unsafe condition or a practice at the operation, then the operator may, within twenty-four hours after the accident is reported, provide the chief with a written explanation of the reason(s) upon which the operator bases such opinion. The operator may provide this explanation by U.S. mail, facsimile, or electronic mail to the attention of: manager, mine safety program, Columbus office, division of mineral resources management.

- (2) A lost-time accident other than a life-threatening injury that occurs at a surface mining operation that is not inspected by MSHA shall be reported to the chief, in writing on a form provided by the chief, within ten days after the lost-time accident occurs. The accident report form shall be sent to "Mine Safety Section, Division of Minerals Resources Management, Ohio Department of Natural Resources, 2045 Morse Road, Building H, Columbus, OH 43229."

(B) Investigation of fatalities and life-threatening injuries.

- (1) Upon receipt of notice that a fatality or a life-threatening injury has occurred at an operation, the chief shall conduct an investigation to determine the events surrounding and causes of the fatality or life-threatening injury.
- (2) If the chief conducts an investigation pursuant to this rule, the operator shall, during the investigation, provide the chief, in writing, the name of the organization identified as the authorized representative of the miners for the operation, if applicable.
- (3) The chief shall prepare a report of the investigation, which shall include a determination of whether such fatality or injury occurred as a result of an unsafe condition or a practice at the operation. Within seven days of the completion of the fatality or life-threatening injury investigation report, the chief shall provide the operator and, if applicable, the authorized representative of the miners at the operation, with a copy of the investigation report.

(C) Notification of determination to conduct inspections.

- (1) If the chief determines that a fatality or a life-threatening injury of a miner has occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation, the chief shall immediately provide the operation with written notice that the operation will be inspected once every three months for a period of two years for a fatality in accordance with division (C) of section 1514.41

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of the Revised Code or that the operation will be inspected once every three months for a period of one year for a life-threatening injury in accordance with division (D) of section 1514.41 of the Revised Code. The notice shall contain:

- (a) A citation of the relevant provision(s) of the Revised Code and the Administrative Code that require the inspections;
- (b) A statement that the one-year or two-year time frame for the inspections, as applicable, will begin immediately;
- (c) The number of inspections the surface mining operation will receive; and
- (d) The procedure, pursuant to paragraph (D) of this rule, whereby the operator may request that the chief reconsider the decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation.

- (2) If a fatality or a life-threatening injury of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, the chief shall, as soon as practicable, conduct a mine safety inspection of the operation in accordance with sections 1514.41 and 1514.43 of the Revised Code and these rules. A request for reconsideration pursuant to paragraph (D) of this rule shall not cause a delay in the conduct of this mine safety inspection.

(D) Reconsideration by the chief.

- (1) Within thirty days of receipt of the notification required by paragraph (C) of this rule, a surface mining operator may submit a written request to the chief asking him or her to reconsider the decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation.
- (2) Within fourteen days of receipt of an operator's request for reconsideration under paragraph (D)(1) of this rule, the chief shall provide the operator and, if applicable, the authorized representative of the miners at the surface mining operation, with written notice of his or her decision.
- (3) Within thirty days after receipt of the chief's decision under paragraph (D)(2) of this rule, the operator may appeal the chief's decision to the reclamation commission in accordance with section 1514.09 of the Revised Code. An operator shall not file an appeal with the reclamation commission of the chief's decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation without first requesting reconsideration as provided by paragraph (D)(1) of this rule. The filing of a notice of appeal to the reclamation commission does not operate as a stay of any order, determination, or decision of the chief.