

**MEMORANDUM**

TO: Brian Becker, Ohio Department of Natural Resources

FROM: Christopher Smyke, Regulatory Policy Advocate

DATE: January 14, 2019

RE: **CSI Review – Industrial Minerals (OAC 1501:14-1-01, 1501:14-1-09, 1501:14-1-16, 1501:14-2-01, 1501:14-2-03, and 1501:14-2-05)**

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

Analysis

This rule package consists of six amended rules submitted by the Ohio Department of Natural Resources (ODNR) for their statutorily-required five-year review. It was submitted to the CSI Office on August 23, 2018 and the comment period remained open until September 14, 2018. No comments were received during this time.

This rule package contains select rules from the Ohio Administrative Code (OAC) Chapters governing general provisions and mine safety, which are subject to five-year review and changes enacted by House Bill (HB) 49 of the 132nd General Assembly. The rules address definitions, payment of fees, incorporations by reference, annual safety performance evaluations, and mine safety inspections. Amendments to the rules include updating definitions, changing the fund name to the "mining regulation and safety fund", and updating reference publishing dates and website addresses. Substantive changes to OAC 1501:14-2-03 include statutory updates to collection of violation data, safety performance evaluations, notifications, reconsideration of determination, and appeals.

Prior to filing with CSI, ODNR contacted representatives of the Ohio Coal Association, Ohio Aggregates and Industrial Minerals Association (OAIMA), and the Ohio Environmental Council in

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November 2017, December 2017, and March 2018. In addition, ODNR staff met with representatives of OAIMA in April, 2018. The only comment came from OAIMA, expressing concern that the phrase “unrelated to mining process” in OAC 1501:14-2-03 is undefined and may lead to conflicts upon implementation. As a result, ODNR removed the phrase in question. No comments were received during the CSI public comment period.

According to the BIA, these rules impact all of Ohio’s Industrial Minerals surface mining operators. OAC Chapter 1501:14-1 imposes administrative costs, as an operator must submit detailed information regarding the proposed mining operation. In addition, an operator must submit fees, obtain liability insurance, and a performance bond in order to obtain a permit, permit renewal, or to amend a permit. OAC Chapter 1501:14-2 imposes requirements on inspections, investigations, accident reporting, safety audits, and training. These requirements translate to operator costs on safety measures, staff certification, reporting, and record-keeping.

The BIA justifies the proposed rules as necessary safeguards to protect the public and the environment from the potential dangers of industrial minerals surface mining. They implement the regulatory program to oversee industrial mineral surface mining operations, and the land reclamation after mining operations are concluded. They also implement the Mine Safety Program, which protects surface mining workers through required audits, training, certification, and inspections. In addition, the rules are necessary to implement statutory requirements outlined in ORC Chapter 1514, as well as the changes enacted by HB 49.

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

Recommendations

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

Conclusion

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

cc: Emily Kaylor, Lt. Governor’s Office