



# Common Sense Initiative

Mike DeWine, Governor

Joseph Baker, Director

Jon Husted, Lt. Governor

## MEMORANDUM

**TO:** Brian Becker, Ohio Department of Natural Resources

**FROM:** Jacob Ritzenthaler, Business Advocate

**DATE:** October 5, 2023

**RE:** CSI Review – 2022 Industrial Minerals Rules (OAC 1501:14-1-02, 1501:14-1-03, 1501:14-1-04, 1501:14-1-12, 1501:14-1-14, 1501:14-1-16, 1501:14-2-01, 1501:14-2-04, 1501:14-2-07, 1501:14-2-09, 1501:14-3-02, 1501:14-3-03, 1501:14-3-04, 1501:14-3-05, 1501:14-3-06, 1501:14-3-07, 1501:14-3-08, 1501:14-3-09, 1501:14-3-10, 1501:14-3-11, 1501:14-4-01, 1501:14-4-02, 1501:14-4-03, 1501:14-4-04, 1501:14-5-02, and 1501:14-5-03)

On behalf of Lt. Governor Jon Husted, 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 Department as provided for in ORC 107.54.

### Analysis

This rule package consists of twenty amended rules and six no-change rules proposed by the Ohio Department of Natural Resources, Division of Mineral Resources Management (Division). This rule package was submitted to the CSI Office on May 15, 2023, and the public comment period was held open through June 6, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on May 15, 2023.

The rules in this package set forth requirements for the surface mining of industrial minerals. Many of the amendments to the following rules have been made to remove unnecessary regulatory restrictions. Ohio Administrative Code (OAC) 1501:14-1-02, 1501:14-1-03, and 1501:14-1-04 set forth rule validity and severability, successorship of the rules within the Chapter, and the procedures for filing an application for an industrial minerals surface mining permit. OAC 1501:14-1-12 establishes requirements for maps that are submitted with applications and reports, including necessary figures, design, color coding, and uniform symbols. OAC 1501:14-1-14 states that reports

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required to be submitted to ODNR must contain all substantial information. OAC 1501:14-1-16 lists the regulations incorporated by reference and is amended to update relevant dates. OAC 1501:14-2-01 incorporates mine safety standards by reference and is amended to update reference dates. OAC 1501:14-2-04 concerns reporting and investigating accidents for operations inspected by the Mine Safety and Health Administration (MSHA) and is amended to change the location of the Division's Mine Safety Program office to Cadiz, Ohio. OAC 1501:14-2-07 concerns the duties of a certified mine foreperson, including the process for certification, and is amended to remove fees for examinations and reissuance of a certificate. OAC 1501:14-2-09 sets forth requirements for reporting and investigating accidents for operations that are not inspected by MSHA.

OAC 1501:14-3-02 includes procedures for minimizing acid drainage and acid water accumulation and is proposed without changes. OAC 1501:14-3-03 requires the construction of permanent water impoundments to prevent harm to the surrounding environment. OAC 1501:14-3-04 regulates the use of explosives, including permitted times, signage, and control of adverse effects. OAC 1501:14-3-05 concerns the methods preventing contamination of underground water supplies. OAC 1501:14-3-06 and 1501:14-3-07 establish requirements for final slopes and final highwalls for mined lands. OAC 1501:14-3-08 and 1501:14-3-09 contain requirements for resoiling and applying soil amendments to areas that are used for surface mining and are proposed without changes. OAC 1501:14-3-10 sets forth requirements for revegetation of mining areas. OAC 1501:14-3-11 requires the construction of dams, dikes, diversions, impoundments, and drainage channels to prevent damage to adjoining properties from flooding, landslides, and hazards resulting from mining operations.

OAC 1501:14-4-01 contains the information required in a geological data report submitted as part of a surface mining permit application. OAC 1501:14-4-02 sets forth requirements for cross sections submitted along with maps for the permit application. OAC 1501:14-4-03 requires operators to specify the dates on which mining operations were completed, terminated, or abandoned on annual and final reports. This rule is proposed without changes. OAC 1501:14-4-04 establishes the circumstances under which the Division may declare a mining area to be abandoned or inactive. OAC 1501:14-5-02 and 1501:14-5-03 set forth requirements for submitting an analysis of alternative water supplies and designation of a cone of depression for water supply replacement.

During early stakeholder outreach, the Division sent the proposed rules to industry stakeholders for feedback, including the Ohio Coal Association, Ohio Aggregates and Industrial Minerals Association, and Ohio Environmental Council. No comments were received during that time. During the CSI public comment period, ODNR received comments from two stakeholders. The Ohio Aggregates & Industrial Minerals Association (OAIMA) objected to amendments that seemed to change the location of the Mine Safety Program office. During discussions between ODNR and OAIMA, ODNR pointed out that the change was made to apply only to the mailing address for the office and would not affect in person services provided by the office.. The Ohio Farm Bureau also

provided several recommendations to ODNR regarding the rules, including adding language to permanent water impoundment requirements, adopting the United States Department of Agriculture (USDA) Conservation Steward Program practices concerning crops grown in rotation as part of revegetation, adopting Ohio Power Siting Board requirements for permit holder financing of repairs and remediations, and examining the source and chemical compositions of topsoil used for the surface layer of vegetative remediation. In response to these comments, ODNR stated that the addition of “livestock” and “irrigation” is prevented by statute and unnecessary, since the rule already limits concentration limits to those that are not harmful to persons, fish, and waterfowl. ODNR also responded that, concerning revegetation requirements, the suggested changes are unnecessary as the rule currently only requires companies to establish ground cover for two years, after which the landowner is free to make land management decisions. Finally, ODNR stated that remediation regulations are already in place, but that after reclamation and the release of a bond, the private property is no longer within ODNR’s jurisdiction.

The business community impacted by the rule includes all industrial mineral surface mining operators in Ohio. The adverse impacts created by the rules include requirements to submit surface mining applications and annual reports, comply with mine safety and employee training standards, submit accident reports and comply with ODNR inspections, and conduct mining and build structures that mitigate harm to the surrounding environment. Regulations that seek to mitigate harm to adjacent areas require businesses to prevent water from mining activities from reaching other areas through constructing water impoundments, using explosives in supervised and safely marked environments, and constructing slopes and highwalls in a manner that stabilizes soil and controls for landslides or erosion. Businesses must also revegetate the reclaimed land for future use, which includes planting vegetative cover and trees that are consistent with the mining and reclamation plan. The Division states that these adverse impacts are necessary to mitigate the potentially harmful effects of surface mining on public health and the environment.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.