



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Brian Becker, Ohio Department of Natural Resources

FROM: Jacob Ritzenthaler, Business Advocate

DATE: March 21, 2024

RE: CSI Review – Industrial Minerals (OAC 1501:14-1-01, 1501:14-1-05, 1501:14-1-08, 1501:14-1-09, 1501:14-1-16, 1501:14-2-01, 1501:14-2-02, 1501:14-2-03, 1501:14-2-05, 1501:14-2-06, 1501:14-2-08, 1501:14-2-10, 1501:14-3-12, 1501:14-3-13, 1501:14-5-01, 1501:14-5-04, 1501:14-6-01, and 1501:14-6-02)

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 eighteen amended rules proposed by the Ohio Department of Natural Resources (ODNR) as part of the statutory five-year review requirement. This rule package was submitted to the CSI Office on March 1, 2024, and the public comment period was held open through March 16, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 1, 2024.

The rules in this package set forth requirements for the surface mining of industrial minerals (IM). Many of the amendments to the following rules have been made to remove unnecessary regulatory restrictions, but other amendments are noted below. Ohio Administrative Code (OAC) 1501:14-1-01 contains definitions relevant to the chapter. OAC 1501:14-1-05 concerns the transfer of permits, including the information required to be included on a transfer application, approval procedures, and notification of permit issuance. OAC 1501:14-1-08 and 1501:14-1-09 set forth requirements for certificates of public liability insurance, payment of fees, and filing of performance bonds. OAC 1501:14-1-16 lists the federal laws and regulations incorporated by reference and is amended to

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update the referenced versions of the Code of Federal Regulations (CFR) and United States Code (USC). OAC 1501:14-2-01 lists the federal safety laws and regulations incorporated by reference and is amended to update the referenced versions of the CFR and USC. OAC 1501:14-2-02 adopts CFR safety standards and notes that requirements relating to the Mine Safety and Health Administration's (MSHA) 7000-1 report are not incorporated into the rules. OAC 1501:14-2-03 and 1501:14-2-05 set forth performance evaluation and inspection standards for surface mining operations. OAC 1501:14-2-06 and 1501:14-2-08 establish training requirements and the requirements for providing training to qualified employees in lieu of employing certified mine forepersons.

OAC 1501:14-2-10 sets forth requirements for safety inspections of mining operations not inspected by MSHA. OAC 1501:14-3-12 concerns the use of lime mining wastes as quarry fill. OAC 1501:14-3-13 sets forth requirements for the controlled placement of lime mining wastes, including requirements for transportation, placement, and compaction of substances. OAC 1501:14-5-01 sets forth requirements for permit applications that propose to dewater an area, including the submission hydrologic maps, hydrogeologic descriptions, water supply indicators, and ground water models. OAC 1501:14-5-04 allows an operation to request a variance to conduct mining within fifty feet of the highwater mark of each bank of a watercourse. OAC 1501:14-6-01 sets forth the permit requirements for the beneficial use of lime mining wastes. OAC 1501:14-6-02 establishes the distance limitations for placing lime mining wastes.

During early stakeholder outreach, ODNR sent the proposed rules to industry stakeholders for feedback, including the Ohio Coal Association, Ohio Aggregates and Industrial Minerals Association (OAIMA), and Ohio Environmental Council. OAIMA made several comments which prompted revisions to the proposed rules. No comments were received during the CSI public comment period.

The business community impacted by the rules includes all IM surface mining operations in Ohio. The adverse impacts created by the rules include the payment of application fees and performance bonds for reclamation, completion of a permit application, maintenance of liability insurance, and compliance with mine safety requirements, performance standards (which may require extensive use of specialized equipment and time to meet), dewatering guidelines, and lime mining waste usage. ODNR states that the adverse impacts created by the rules are necessary to provide safeguards to protect the public and environment from potential adverse effects of surface mining.

Recommendations

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

Conclusion

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