



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Brian Becker, Ohio Department of Natural Resources

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: November 9, 2021

RE: CSI Review – 2021 Coal Rules (OAC 1501:13-1-01, 1501:13-1-10, 1501:13-1-13, 1501:13-1-14, 1501:13-3-01, 1501:13-4-04, 1501:13-4-05, 1501:13-4-08, 1501:13-4-08.1, 1501:13-4-09, 1501:13-4-10, 1501:13-4-11, 1501:13-4-12, 1501:13-4-13, 1501:13-4-14, 1501:13-6-03, 1501:13-7-01, 1501:13-7-03, 1501:13-7-05, 1501:13-7-05.1, 1501:13-7-06, 1501:13-7-07, 1501:13-8-01, 1501:13-9-01, 1501:13-9-02, 1501:13-9-04, 1501:13-9-07, 1501:13-9-08, 1501:13-9-11, 1501:13-9-12, 1501:13-9-15, 1501:13-9-16, 1501:13-9-17, 1501:13-10-01, 1501:13-11-02, 1501:13-12-01, 1501:13-13-03, and 1501:13-14-01)

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 Agency as provided for in ORC 107.54.

Analysis

This Ohio Department of Natural Resources (Department) rule package consists of eight amended rules, and 30 no change rules. It was submitted to the CSI Office on March 26, 2021, and the public comment period was open through April 16, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 26, 2021.

The proposed rules in this package cover requirements for coal mining and reclamation. The rules cover record keeping requirements, permits to mine coal, permit applications, plans and mapping requirements, security requirements, liability insurance, exploration standards, protections standards, inspections, and use of lands. Amendments are being made to update references, and language updates for consistency.

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During the early stakeholder outreach period, the Department shared proposed rules with the Ohio Coal Association, the Ohio Environmental Council, and the U.S. Office of Surface Mining Reclamation and Enforcement, with a request for comments on the rules. No comments were submitted during this period. During the CSI public comment period, the Department received a comment from the Ohio Environmental Council. This comment included suggestions that coal permit applications include climate impact statements, plans for emissions monitoring, that the Department update its public engagement process for permit approval, and to include more specific language to protect ephemeral water bodies. The Department responded by stating that requiring climate impacts and further monitoring beyond current analysis would exceed the Department's scope, requiring a statutory change. Additionally, the Department clarified its current public engagement process, and that ephemeral streams in Ohio are regulated by the Army Corp of Engineers.

Impacted communities include all coal mining operators in Ohio. Potential impacts include conducting coal mining in allowed areas, administrative costs associated with reporting required information, meeting application and permitting requirements, costs related to meeting performance security financial requirements, maintaining proper permits for coal exploration, and meeting performance standards and inspection requirements. The Department argues that the proposed rules are necessary to fulfill both statutory requirements of Ohio, and Federal requirements.

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.