



*Jill Rowland**Bill Analysis*

*Legislative Service Commission***H.B. 702**

123rd General Assembly
(As Introduced)

Reps. Widener, Peterson, Harris

BILL SUMMARY

- Revises the application requirements for a surface mining (aggregates mining) permit, including the addition of new requirements.
- Increases the fee for a surface mining permit from \$250 to \$500, increases the fee that must be paid for each acre affected under a permit from \$30 to \$75, eliminates the \$1,000 cap on such acreage fees, and extends the duration of a permit from ten to 15 years.
- Makes changes to the renewal permit requirements for a surface mining permit, including a revision in the renewal fee, and extends the renewal permit period from ten to 15 years.
- Requires an advertisement to be published for an initial surface mining permit and for a significant amendment to a permit, to the plan of mining and reclamation, and to a renewal permit for a surface mining operation, allows the submission of written comments and objections, and establishes an exemption under certain circumstances from those provisions.
- Increases the annual report filing fee for operators other than small operators, increases the acreage fee that must be included with an annual report, eliminates the \$1,000 cap on such acreage fees, and eliminates the requirement that excess acreage fees be released.
- Generally increases the amounts of the performance bond and the surety bond required for a surface mining operation, and specifies that certain governmental entities cannot require an operator to file a surety bond for the reclamation of land affected by a surface mining operation.

- Revises the reclamation and bond release procedures for surface mining operations by establishing phased reclamation.
- Requires the Chief to adopt rules to implement certain provisions under the bill.
- Establishes requirements and procedures concerning impacts to ground water that may result from a surface mining operation, including requirements for the replacement of water supplies under specified circumstances.
- Establishes requirements for the use of explosives in a surface mining operation.
- Establishes civil penalties and provides for civil actions for relief for violation of the Surface Mining Law.

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CONTENT AND OPERATION

Surface mining permits

Application requirements

Current law prohibits an operator from engaging in surface mining or conducting a surface mining operation without a permit issued by the Chief of the Division of Mines and Reclamation in the Department of Natural Resources (see **COMMENT**).¹ In addition, current law requires that an application for a permit be on a prescribed form and contain specified information. Included in that information are a complete plan for mining and reclamation of the area to be affected and the measures that the operator will perform to achieve general performance standards for mining and reclamation. The bill eliminates one of those standards and establishes a new one.

Under current law, one of the general performance standards specifies that where a plan of zoning or other comprehensive plan has been adopted that governs land uses or the construction of public improvements and utilities for an area that includes the area sought to be mined, an operator must ensure that future land uses within the site will not conflict with the plan. The bill eliminates that general performance standard. (Sec. 1514.02(A)(9)(b).) In addition, the bill adds a new general performance standard requiring that during mining and reclamation, an operator ensure that the effect of any reduction of the quantity of ground water is minimized (sec. 1514.02(A)(9)(i)). The bill defines "ground water" as all water occurring in an aquifer (sec. 1514.01(J)).

The bill also adds two additional items that must be included with an application for a permit. First, if applicable, an applicant must provide a copy of the advertisement that the applicant is required to have published under the bill (see "Advertisement requirement," below) (sec. 1514.02(A)(13)). Second, for any applicant whose operation may result in dewatering, an applicant must provide a compilation of data in a form that is prescribed by the Chief and that is suitable to conduct ground water modeling in order to establish a projected cone of depression for purposes of the bill's provisions governing dewatering (see "Dewatering," below) (sec. 1514.02(A)(14)). The bill defines "dewatering" to mean the withdrawal of ground water from an aquifer or saturated zone that may result in the lowering of the water level within the aquifer or saturated zone or a decline of the potentiometric surface within that aquifer or saturated zone (sec. 1514.01(I)). Further, the bill

¹ For these purposes, surface mining generally refers to the mining of minerals other than coal, often called aggregates.

defines "cone of depression" as a depression or low point in the water table or potentiometric surface of a body of ground water that develops around a location from which ground water is being withdrawn (sec. 1514.01(K)). Under the bill, the Chief must adopt rules that establish the minimum requirements and standards governing the data that are required to conduct ground water modeling (sec. 1514.02(A)(14)).

Permit fee and permit duration

Current law requires the Chief to issue an order granting a permit upon the Chief's approval of an application, the filing of a required performance bond, and payment of a permit fee in the amount of \$250 and an acreage fee of \$30 per acre estimated in the application that will comprise the area of land to be affected within the first year of operation under the permit. However, the acreage fee cannot exceed \$1,000 per year. The bill increases the permit fee from \$250 to \$500, increases the acreage fee from \$30 to \$75 per acre, and eliminates the \$1,000 cap on acreage fees. (Sec. 1514.02(B).)

In addition, current law provides that if the Chief approves the application for a permit, the permit expires ten years after the date of issuance of the permit, or on the date when the Chief orders the release of any remaining performance bond deposited, whichever occurs earlier. The bill extends the permit period from ten to 15 years. (Sec. 1514.02(C).)

Renewal permits

Current law provides that a permit holder who wishes to continue surface mining operations after the expiration of an existing permit or renewal permit must file with the Chief an application for renewal at least 90 days before the expiration date of the existing permit or renewal permit. The application must be on a prescribed form and be accompanied by a fee in the amount of \$250 and an acreage fee of \$30 per acre calculated in the same manner as for the original permit. The bill changes the renewal fees to one fee of \$1,000, thus eliminating the acreage fee. (Sec. 1514.021(A).)

Existing law requires an applicant for a renewal permit to submit a map that is a composite of the information required in the most recent annual report map required under current law and of all surface mining and reclamation activities conducted under the existing permit or renewal permit. In addition, the applicant must include the annual report required under current law and additional maps, plans, and revised or updated information that the Chief determines to be necessary for permit renewal. The bill adds an additional requirement that in the case of an applicant proposing a significant change to the plan of mining and reclamation (see "**Rules**," below), the applicant must submit a copy of the advertisement that the

applicant is required to have published under the bill (see "Advertisement requirement," below). (Sec. 1514.021(B).)

Current law provides that upon receipt of the required information, the Chief may approve the application for renewal if the Chief finds that: (1) the permit holder's application is in compliance with the Surface Mining Law, rules adopted and orders issued under it, and the plan of mining and reclamation under the existing permit or renewal permit, and (2) the permit holder has provided evidence that a required performance bond applicable to lands affected under the existing permit will remain effective until released. (Sec. 1514.021(C).)

The bill instead provides that upon receipt of the required information, the Chief must approve the application and issue a renewal permit unless the Chief finds that any of the following applies: (1) the permit holder's operation is not in substantial or material compliance with the Surface Mining Law, rules adopted and orders issued under it, and the plan of mining and reclamation under the existing permit or renewal permit, (2) the permit holder has not provided evidence that a required performance bond applicable to lands affected under the existing permit will remain effective, or (3) the permit holder, any partner if the applicant is a partnership, any officer or director if the applicant is a corporation, or any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant has substantially or materially failed or continues to fail to comply with the Surface Mining Law. However, the bill provides that if the application for renewal proposes significant changes to the plan of mining and reclamation (see "Rules," below), the Chief may, but is not required to, approve the application for renewal. (Sec. 1514.021(C).)

Under current law, the approval of an application for renewal authorizes the continuation of an existing surface mining permit or renewal permit for a term of ten years from the expiration date of the existing permit. The bill extends the renewal permit period to 15 years. (Sec. 1514.021(H).)

Advertisement requirement

Except as discussed below (see "Plan of zoning," below), the bill requires an applicant to submit to the Chief a copy of the applicant's advertisement that is required to be published of the ownership, precise location, and boundaries of the land to be affected by the surface mining operation or proposed surface mining operation that is the subject of the application. (Sec. 1514.022(B)(1).)

Upon receipt of the application and advertisement, the Chief must designate a location at which the application will be available for public inspection and must assign to the application an application number. When the Chief determines that the application is substantially complete, the Chief must notify the applicant of the

determination. At that time, the applicant must place the advertisement, together with the application identification number and the notice of the location at which the application will be available for inspection, in a newspaper of general circulation in the locality of the operation or proposed operation at least once a week for four consecutive weeks. (Sec. 1514.022(B)(1).)

Except as otherwise provided under the bill (see "Plan of zoning," below) and upon determining that an application is substantially complete, the Chief must provide written notice to governmental agencies. The notice must include all of the information required to be published that is discussed above together with the date by which any written comments or objections must be received by the Chief for consideration in the review of the application. That date must be 30 days following the date on which the Chief sends the notice to the governmental agencies. (Sec. 1514.022(B)(2).)

For purposes of the above advertisement requirements, the provisions regarding an opportunity to file written comments (see below), and the plan of zoning provisions (see below), the bill defines the following terms:

(1) "Application" means an application filed for an initial permit for a proposed surface mining operation, for a significant amendment to a permit, for a significant amendment to the plan of mining and reclamation that is proposed by the operator, or for the renewal of a permit if the application proposes a significant change to the plan of mining and reclamation. In all cases, "significant" means "significant" as defined by rule (see "Rules," below). (Sec. 1514.022(A)(1).)

(2) "Applicant" means a person who files an application (sec. 1514.022(A)(2)).

(3) "Governmental agency" means each board of county commissioners, each board of township trustees, each legislative authority of a municipal corporation, and the planning commissioners having jurisdiction over all or part of the area of a surface mining operation or a proposed surface mining operation together with any other federal, state, or local governmental entities that the Chief reasonably believes will be interested in an application (sec. 1514.022(A)(3)).

Opportunity to file written comments or objections

Except as otherwise provided under the bill (see "Plan of zoning," below), any person having an interest that is or may be adversely affected by the proposed operation and any governmental agency may file written comments or objections to an application with the Chief. In the case of interested persons who are not governmental agencies, the comments or objections must be filed not later than 30 days after the last publication of the required notice (see above). In the case of

governmental agencies, the comments or objections must be filed not later than the date that the Chief specified in the notice, except that at the Chief's discretion, the Chief may accept comments or objections from the agencies after that date if the Chief considers doing so to be in the public interest. The Chief immediately must transmit comments or objections to the applicant and must make them available to the public at the same location at which the application is available for inspection. (Sec. 1514.022(C).)

Plan of zoning

The above advertisement requirement and the written comments provisions do not apply if a plan of zoning has been adopted for the area that includes the location at which the operation is conducted or is proposed to be conducted and either of the following applies:

(1) The plan of zoning allows mining at the location at which the mining operation is or is proposed to be conducted; or

(2) A zoning variance or conditional use certificate for a mining operation, for which public notice and opportunity for comment have been provided, has been received within 365 days prior to submittal of an application. In such a situation, an applicant must provide the Chief with a copy of the notice, certified by the publisher, that was previously published. (Sec. 1514.022(D).)

Annual report filing fee and performance bond

Current law requires an operator of a surface mining operation to file with the Chief an annual report within 30 days after each anniversary date of issuance of the surface mining permit. Each annual report must contain specified information and be accompanied by a filing fee in the amount of \$250 and an acreage fee in the amount of \$30 multiplied by the number of acres estimated in the report to be affected during the next year of operation under the permit. The acreage fee must be adjusted by subtracting a credit of \$30 per excess acre paid for the preceding year if the acreage paid for the preceding year exceeds the acreage actually affected or by adding an additional amount of \$30 per excess acre affected if the acreage actually affected exceeds the acreage paid for the preceding year. The acreage fee cannot exceed \$1,000 per year. Except for a small operator, the bill increases the filing fee from \$250 to \$500. A small operator, which the bill defines as a surface mine operator who intends to extract fewer than 10,000 tons of minerals and no coal during the next year of operation under the permit, must include a filing fee of \$250 with each annual report. The bill retains the acreage fee requirement for any operator and increases the acreage fee from \$30 to \$75 per acre. Accordingly, the bill also increases the amount that an acreage fee must be adjusted due to overpayment or underpayment of the acreage fee in the preceding year from \$30 to

\$75 per acre and changes all references to the amount of acreage fees to \$75. In addition, the bill eliminates the provision stating that an acreage fee cannot exceed \$1,000 per year (see **COMMENT**). (Sec. 1514.03.)

Current law also requires the operator to file with each annual report a performance bond in the amount of \$500 multiplied by the number of acres estimated to be affected during the next year of operation under the permit for which no performance bond previously was filed. The bond must be adjusted by subtracting a credit of \$500 per excess acre if the acreage for which the bond was filed for the preceding year exceeds the acreage actually affected or by adding an amount of \$500 per excess acre affected if the acreage actually affected exceeds the acreage for which the bond was filed for the preceding year. The bill largely retains those adjustment provisions, but adds that they apply unless otherwise provided by rule. In addition, the bill increases the performance bond amount and the credit amount from \$500 to \$1,000 per acre unless otherwise provided by rule. (Sec. 1514.03.)

Under existing law, if the required final report and certified map show that the number of acres affected under the permit is larger than the number of acres for which the operator has filed a performance bond, the operator must pay an additional acreage fee in the amount of \$30 multiplied by the difference between the number of acres affected under the permit and the number of acres for which the operator has paid an acreage fee and must file an additional bond in the amount of \$500 multiplied by the difference between the number of acres affected under the permit and the number of acres for which bond was filed. The bill increases the additional acreage fee from \$30 to \$75 per affected acre and also increases, unless otherwise provided by rule, the additional bond from \$500 to \$1,000 per affected acre. Similarly, under current law, if the report and map show that the number of acres affected under the permit is smaller than the number of acres for which the operator has paid an acreage fee or performance bond, the Chief must order release of the excess acreage fee and the excess bond. However, the Chief must retain a performance bond in a minimum amount of \$2,000 irrespective of the number of acres affected under the permit. The bill increases the amount of the retained performance bond from \$2,000 to \$10,000. In addition, current law requires that the release of the excess bond be in an amount equal to \$500 multiplied by the difference between the number of acres affected under the permit and the number of acres for which the operator has filed bond. The bill increases the amount from \$500 to \$1,000 for release of the excess bond unless otherwise provided by rule. Finally, the bill eliminates the provision that requires the Chief to order the release of excess acreage fees (see **COMMENT**). Accordingly, the bill also eliminates current law that requires the Treasurer of State to pay refunds of excess acreage fees out of the Surface Mining Reclamation Fee Fund and that requires the Treasurer to place \$20,000 from permit fees in that Fund and, as the Fund is depleted, to place to

the credit of the Fund an amount sufficient to make the total \$20,000 at the time of each credit. (Sec. 1514.03.)

Surety bond

Current law provides that upon receipt of notification from the Chief of the Chief's intent to issue an order granting a surface mining permit, the applicant must file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of \$2,000 or \$500 per acre of land to be affected, whichever is greater. The bill changes those amounts to \$10,000 plus \$1,000 per acre of land to be affected unless otherwise provided by rule. Existing law also provides that upon receipt of notification from the Chief of the Chief's intent to issue an order granting an amendment to a surface mining permit, the applicant must file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of \$500 per acre of land to be affected. The bill increases that amount to \$1,000 per acre unless otherwise provided by rule. (Sec. 1514.04.)

The bill specifies that a governmental agency, or a board or commission that derives its authority from a governmental agency, cannot require a surface mining operator to file a surety bond or any other form of financial assurance for the reclamation of land to be affected by a surface mining operation authorized under the Surface Mining Law (see "**Advertisement requirement**," above, for the bill's definition of "governmental agency") (sec. 1514.04).

Reclamation and bond release

Current law

Existing law provides that at any time within the period allowed an operator under the requirements for a surface mining permit to reclaim an area of land affected by surface mining, the operator may file a request, on a form provided by the Chief, for inspection of the area of land on which reclamation is completed. A request must include all of the following:

- (1) The location of the area and the number of acres;
- (2) The permit number;
- (3) The amount of performance bond on deposit to ensure reclamation of the area;
- (4) A prepared and certified map showing the location of the acres reclaimed; and

(5) In the case of any required planting, the type and date of the required planting of vegetative cover and the degree of success of growth. (Sec. 1514.05(A) and (B).)

The Chief must make an inspection and evaluation of the reclamation of the area of land for which the request was submitted within 90 days after receipt of the request or, if the operator fails to complete the reclamation or file the request as required, as soon as the Chief learns of the default. If the Chief approves the reclamation as meeting the requirements of the Surface Mining Law, rules adopted under it, any orders issued during the mining or reclamation, and the specifications of the plan for mining and reclaiming, the Chief must issue an order to the operator and the operator's surety releasing them from liability for one-half the total amount of their surety bond on deposit to ensure reclamation for the area on which reclamation is completed or, in the case of reclamation that includes the successful establishment of any required planting, releasing the remaining performance bond. If the operator has deposited cash, an irrevocable letter of credit, or certificates of deposit in lieu of a surety bond to ensure reclamation, the Chief must issue an order to the operator releasing one-half of the total amount or the remaining amount so held, as applicable, and promptly must transmit a certified copy of the order to the Treasurer of State.

However, if the Chief does not approve the reclamation, the Chief must notify the operator by certified mail. The notice must be an order stating the reasons for unacceptability, ordering further actions to be taken, and setting a time limit for compliance. If the operator does not comply with the order within the time limit specified, the Chief may order an extension of time for compliance after determining that the operator's noncompliance is for good cause resulting from developments partially or wholly beyond the operator's control. If the operator complies within the time limit or the extension of time granted for compliance, the Chief must order release of the performance bond in the same manner as in the case of approval of reclamation as discussed above. If the operator does not comply within the time limit and the Chief does not order an extension, or if the Chief orders an extension of time and the operator does not comply within the extension of time, the Chief must issue another order declaring that the operator has failed to reclaim and, if the operator's permit has not already expired or been revoked, revoking the operator's permit. (Sec. 1514.05(A) and (B).)

Upon issuing an order declaring that the operator has failed to reclaim, the Chief must make a finding of the number and location of the acres of land that the operator has failed to reclaim. The Chief then must order the release of the performance bond in the amount of \$500 per acre for those acres that the Chief finds to have been reclaimed. The Chief must order the release in the same manner as in the case of approval of reclamation as discussed above, and the Treasurer of

State must proceed as in that case. If the operator has on deposit cash, an irrevocable letter of credit, or certificates of deposit to ensure reclamation of the area of the land affected, the Chief at the same time must issue an order declaring that the remaining cash, irrevocable letter of credit, or certificates of deposit are the property of the state and are available for use by the Chief in performing reclamation of the area. (Sec. 1514.05(C).)

The bill

The bill revises the existing requirements in part by establishing phased reclamation. Under the bill, at any time within the period allowed an operator under the requirements for a surface mining permit to reclaim an area of land affected by surface mining, the operator may file a request, on a form provided by the Chief, for inspection of the area of land on which reclamation is completed. For purposes of inspections and subsequent releases of performance bonds or cash, irrevocable letters of credit, or certificates of deposit deposited in lieu of bonds, reclamation must be considered to occur in three phases. The first phase involves grading, contouring, terracing, and preparation for resoiling. The second phase involves resoiling and required planting. The third phase involves the completion of all reclamation required under the statutes governing surface mining and rules adopted under them. (Sec. 1514.05(A).)

A request for inspection at the completion of a phase of reclamation must include all of the following:

- (1) The location of the area and number of acres;
- (2) The permit number;
- (3) The amount of performance bond on deposit at the time of the request to ensure reclamation of the area; and
- (4) A prepared and certified map showing the location of the acres reclaimed.

In addition to the above requirements, a request for inspection of the second phase of reclamation must include a description of the type and date of any required planting. A request for inspection of the third phase of reclamation must include a statement regarding the degree of success of the growth of any required planting. (Sec. 1514.05(A).)

As under existing law, the Chief must make an inspection and evaluation of the reclamation of the area for which a request was submitted within 90 days after receipt of the request or, if the operator fails to complete the reclamation or file the

request as required, as soon as the Chief learns of the default. If the Chief approves the first or second phase of the reclamation as meeting the requirements of the Surface Mining Law, rules adopted under it, any orders issued during the mining or reclamation, and the specifications of the plan for mining and reclamation, the Chief must issue an order to the operator and the operator's surety releasing them from liability for the applicable percentage of their surety bond on deposit to ensure reclamation for the area on which reclamation is completed (see below). If the Chief likewise approves the third phase of the reclamation and decides to release any remaining performance bond on deposit to ensure reclamation of the area on which reclamation is completed, the Chief must order release of the remaining performance bond, after completing the inspection and evaluation, in the same manner as in the case of approval of the first or second phase of reclamation, and the Treasurer of State must proceed as in existing law. (Sec. 1514.05(B).)

On approval of the first phase of reclamation, the Chief must release 50% of the amount of the surety bond on deposit. On approval of the second phase, the Chief must release an additional 35% of the amount of the surety bond that originally was on deposit. On approval of the third phase and if the Chief so decides, the Chief must release the remaining amount of the surety bond. If the operator has deposited cash, an irrevocable letter of credit, or certificates of deposit in lieu of a surety bond to ensure reclamation, the Chief must issue an order to the operator releasing the amount so held in the same manner and in the same percentages that apply to the release of a surety bond as discussed above and must promptly transmit a certified copy of the order to the Treasurer of State who must proceed as in existing law. (Sec. 1514.05(B).)

If the Chief does not approve a phase of the reclamation, the Chief must notify the operator by certified mail. In the case of disapproval of the third phase of reclamation, the notification must occur not later than 90 days after the filing of the application for inspection or after the date when the Chief learns of the default. Upon issuing an order declaring that an operator has failed to reclaim, the Chief must retain all or part of the performance bond on deposit for reclamation of the affected mine site. (Sec. 1514.05(C) and (D).)

Rules

The bill requires the Chief to adopt rules in accordance with the Administrative Procedure Act defining when any of the following may be considered "significant" for purposes of its provisions: (1) an amendment to a permit issued for a surface mining operation, (2) an amendment to the plan of mining and reclamation that must be filed with an application for a surface mining permit, and (3) changes to the plan of mining and reclamation that are proposed in a permit renewal application. In defining "significant," the Chief must focus on changes that increase the

likelihood that the mining operation may have a negative impact on the public. (Sec. 1514.08.)

In addition, the bill requires the Chief to adopt rules establishing a framework and procedures under which the amount of any bond required to be filed under the Surface Mining Law to ensure the satisfactory performance of the reclamation measures required under that law may be reduced by subtracting a credit based on the operator's past compliance with that law and rules adopted and orders issued under it. The rules also must apply to cash, an irrevocable letter of credit, or a certificate of deposit that is on deposit in lieu of a bond. In establishing the amount of credit that an operator or applicant may receive based on past compliance, the Chief may consider past compliance with respect to any permit for a surface mining operation that has been issued in Ohio to the operator or applicant. (Sec. 1514.08.)

Dewatering

Under the bill, the Chief of the Division of Mines and Reclamation must use the compilation of data for ground water modeling submitted with a permit application (see above) to establish a projected cone of depression for any surface mining operation that may result in dewatering. The bill allows the operator of such an operation to submit modeling that shows a projected cone of depression for that operation to the Chief, provided that the modeling complies with rules adopted by the Chief regarding ground water modeling. However, the Chief must establish the projected cone of depression for purposes of the bill's provisions governing dewatering and the replacement of water supplies. The bill requires the Chief to adopt rules in accordance with the Administrative Procedure Act establishing requirements and standards governing ground water modeling for establishing a projected cone of depression and the replacement of water supplies. The rules must require a ground water model to be generally accepted in the scientific community. (Sec. 1514.13(A).)

Finally, the bill provides that its provisions related to dewatering, a projected cone depression, and the replacement of water supplies cannot be construed as creating, modifying, or affecting any right, liability, or remedy of surface riparian owners (sec. 1514.13(E)).

Ground water user

The bill allows an operator to request the Chief to amend the plan of mining and reclamation filed with the permit application (see above) when a ground water user may affect the projected cone of depression established for the operation. The operator must submit additional data that reflect the ground water user's impact on the ground water. The Chief must perform ground water modeling using the

additional data and may establish a revised projected cone of depression for that operation. (Sec. 1514.13(D).)

Complaints from owners of real property located within the projected cone of depression

If an owner of real property who obtains all or part of that owner's water supply for domestic, agricultural, industrial, or other legitimate use from ground water has a diminution, contamination, or interruption (loss) of that water supply and the owner's real property is located within the projected cone of depression of a surface mining operation (see above), the owner may submit a written complaint to the operator of that operation informing the operator that there is a loss of the water supply. The complaint must include the owner's name, address, and telephone number. The operator immediately must send to the Chief a copy of the complaint and include a statement that explains how the operator resolved or will resolve the complaint. Not later than 72 hours after receipt of the complaint, the operator must provide the owner a supply of water that is comparable, in quantity and quality, to the owner's water supply prior to the loss of the owner's water supply. The operator must maintain that water supply until the operator provides a permanent replacement water supply to the owner (see below) or until the Division of Mines and Reclamation completes the evaluation concerning the rebuttable presumption that the operation caused the loss (see below), whichever is applicable. (Sec. 1514.13(B)(1).)

The bill states that a rebuttable presumption exists that the operation caused the loss of the owner's water supply. However, not later than 14 days after receipt of the complaint, the operator may submit to the Division information showing that the operation is not the proximate cause of the loss of the owner's water supply. The Division must evaluate the information submitted by the operator to determine if the presumption is rebutted. If the operator fails to rebut the presumption, the Division immediately must notify the operator that the operator failed to rebut the presumption. Not later than 14 days after receipt of that notice, the operator must provide the owner a permanent replacement water supply that is comparable, in quantity and quality, to the owner's water supply prior to the loss of the owner's water supply. If the operator rebuts the presumption, the Division immediately must notify the operator that the operator rebutted the presumption, and, upon receipt of that notice, the operator may cease providing a supply of water to the owner. (Sec. 1514.13(B)(2).)

However, if, within 14 days after receipt of the complaint, the operator does not submit to the Division information showing that the operation is not the proximate cause of the loss of the owner's water supply, the operator must provide the owner, not later than 28 days after receipt of the complaint, a permanent

replacement water supply that is comparable, in quantity and quality, to the owner's water supply prior to the loss of the owner's water supply (sec. 1514.13(B)(3)). Finally, the bill authorizes the Division to investigate a complaint from an owner whose real property is located inside the projected cone of depression (sec. 1514.13(B)(4)).

Complaints from owners of real property located outside the projected cone of depression

If an owner of real property who obtains all or part of that owner's water supply for domestic, agricultural, industrial, or other legitimate use from ground water has a loss of that water supply and the owner's real property is not located within the projected cone of depression of a surface mining operation (see above), the owner may submit a written complaint to the operator of that operation or to the Chief informing the operator or the Chief that there is a loss of the water supply. The complaint must include the owner's name, address, and telephone number. If the operator receives a written complaint, the operator immediately must send the Chief a copy. Likewise, if the Chief receives a written complaint, the Chief immediately must send the operator a copy. The Chief must investigate any complaint submitted when the real property is located outside the projected cone of depression. Upon completion of the investigation, the Chief immediately must send the results to the operator and to the owner that filed the complaint. An owner that submits such a written complaint may resolve the loss of the owner's water supply with the operator of that operation or may commence a civil action for that purpose. (Sec. 1514.13(C).)

Blasting

The bill requires explosives to be used in a manner that prevents injury to persons and damage to public or private property that is located outside the area for which a permit was issued (sec. 1514.12(A)). It specifies that the ground vibration resulting from the use of explosives cannot exceed the frequency-dependent particle velocity limits listed in the "Report of Investigations 8507, Appendix B--Alternative Blasting Level Criteria (1980)," published by the former United States Bureau of Mines, when measured at any dwelling, commercial building, school, church, community or institutional building, or other private or public building that is located outside the area for which a surface mining permit was issued and that is not owned by the operator (sec. 1514.12(B)). In addition, the airblast resulting from the use of explosives at any of the above locations cannot exceed a level of 133 decibels when measured with a two hertz high-pass system (sec. 1514.12(C)).

On and after July 1, 2002, all blasting in surface mining must be conducted by persons who are trained and competent in blasting as certified by the Chief or a certifying authority that is approved by the Chief (sec. 1514.12(D)). Finally, the bill

requires the Chief to adopt rules in accordance with the Administrative Procedure Act establishing requirements and standards governing all of the following:

- (1) Seismographic monitoring and alternate methods to prove compliance with the ground vibration limits and the airblast limits discussed above;
- (2) Protection of any building or structure not listed above;
- (3) Training, examination, and certification of persons conducting blasting in surface mining and suspension or revocation of certifications;
- (4) Standard blast warning and all-clear signals;
- (5) Blasting records and flyrock reporting requirements; and
- (6) Safety measures for blasting in surface mining (sec. 1514.12(E)).

Civil penalties and civil actions for relief

The bill provides that in addition to any other penalties established under the Surface Mining Law, the Chief may assess a civil penalty against any person who fails to comply with an order issued by the Chief by the date specified in the order or as subsequently extended by the Chief (sec. 1514.071(A)). Civil penalties cannot exceed \$1,000 for each occurrence of noncompliance with an order. Each day of continuing noncompliance, up to a maximum of 30 days, may be deemed a separate occurrence for purposes of penalty assessments. In determining the amount of the assessment, the Chief must consider the seriousness of the noncompliance, the effect of the noncompliance, and the operator's history of noncompliance. (Sec. 1514.071(B).)

Upon issuance of notice of noncompliance with an order, the Chief must inform the person to whom the notice is issued of the amount of any civil penalty to be assessed and provide an opportunity for an adjudicatory hearing with the Reclamation Commission. The person has 30 days from receipt of the assessment to pay the penalty in full or, if the person wishes to contest the amount of the penalty, file a petition for review of the assessment with the Commission and forward the amount of the penalty to the secretary of the Commission as required by the bill (see below). Failure to forward the money to the secretary within 30 days after the Chief informs the person of the amount of the penalty results in a waiver of all legal rights to contest the amount of the penalty. If, after a hearing, the Commission affirms or modifies the amount of the penalty, the person has 30 days after receipt of the written decision to file an appeal from the Commission's order. (Sec. 1514.071(C).)

At the time that the petition for review is filed with the secretary, the person must forward the amount of the penalty to the secretary for placement in the Reclamation Penalty Fund created in existing law. Pursuant to administrative or judicial review of the penalty, the secretary must do either of the following:

(1) If it is determined that the amount of the penalty should be reduced, within 30 days, remit the appropriate amount of the penalty to the person, with interest, and forward any balance of the penalty, with interest, to the Chief for deposit in the Surface Mining Administration Fund created in existing law for reclamation of abandoned surface mining operations in the state; or

(2) If the penalty is not reduced, forward the entire penalty, with interest, to the Chief for deposit in the Surface Mining Administration Fund for reclamation of abandoned surface mining operations in the state (sec. 1514.071(C)).

Any civil penalties assessed by the Chief that are owed may be recovered in a civil action brought by the Attorney General upon the request of the Chief (sec. 1514.071(D)).

The bill provides that whenever a person fails to comply with an order issued by the Chief, the Chief, in addition to any other remedy under the Surface Mining Law, may request the Attorney General to institute a civil action to compel compliance with the order, including a permanent or temporary injunction, a restraining order, or any other appropriate order in the court of common pleas of the county in which the noncompliance is occurring or has occurred. The court must grant the relief requested upon a demonstration that noncompliance with an order of the Chief is occurring or has occurred. (Sec. 1514.072.)

COMMENT

The "As Introduced" version of H.B. 702 of the 123rd General Assembly and this analysis do not reflect changes to the Surface Mining Law that were made by Sub. H.B. 601 of the 123rd General Assembly, which became effective on June 14, 2000. The changes made by Sub. H.B. 601 that affect H.B. 702 include replacing references to the "Division of Mines and Reclamation" with references to the "Division of Mineral Resources Management" due to the merger of the former Division of Mines and Reclamation with the former Division of Oil and Gas (Chapter 1514.). Sub. H.B. 601 also already has made two changes that are made by the "As Introduced" version of H.B. 702. Those changes include eliminating the \$1,000 cap on acreage fees that must be included with annual reports that an operator of a surface mining operation must file and eliminating a provision that required the Chief of the Division of Mines and Reclamation to order the release of excess acreage fees that were paid by such an operator (sec. 1514.03).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-11-00	p. 1948
H0702-C.123/jc		