Eric Vendel *Legislative Service Commission*

S.B. 276

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(As Introduced)

Sen. White

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, 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.
- 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; establishes an informal conference requirement by which the Chief of the Division of Mines and Reclamation must hold an informal conference concerning an application for a proposed surface mining operation upon request; and makes an exemption under certain circumstances to those requirements.
- Increases the annual report filing fee for operators other than small operators, and generally increases the amounts of the performance bond and the surety bond required for 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.[1] In addition, current law requires that an application for a permit must 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.

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

1514.01(I)). Further, the bill defines "cone of depression" as a depression or low point in the water table or potentiometric surface of a body of ground water that has the shape of an inverted cone and 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 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. (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 both of the following apply: (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, and (2) the permit holder has not provided evidence that a required performance bond applicable to lands affected under the existing permit will remain effective. 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).)

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 informal conference requirements, 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)).

Informal conference requirement

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 and may request the Chief to hold an informal conference on the application. In the case of interested persons who are not governmental agencies, the comments or objections must be filed and the informal conference must be requested 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 and the informal conference must be requested 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).)

If an informal conference is requested, the Chief or the Chief's representative must hold the conference, within 30 days after the Chief receives the request, in the county where the largest portion of the mining operation is or is proposed to be located. The Chief must notify the person or governmental agency that requested the informal conference of the date, time, and location of the conference. In addition, at least two weeks prior to the scheduled conference date, the Chief must advertise that date, time, and location in a newspaper of general circulation in the locality of the operation or proposed operation. An electronic or stenographic record must be made of the informal conference proceeding unless waived by each party requesting the informal conference. The record must be maintained and accessible to the parties. If, prior to the holding of a requested informal conference, all parties requesting the conference stipulate to an agreement to withdraw their request for the conference, the conference need not be held. (Sec. 1514.022(C).)

Plan of zoning

The above advertisement and informal conference requirements 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 public notice and comment period preceding the granting in that area of a zoning variance or conditional use certificate for a mining operation has been completed 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 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. (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 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 this to $1,000 per affected acre unless otherwise provided by rule. Similarly, 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 must 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, current law retained by the bill requires the Treasurer of State to pay refunds of excess acreage fees out of the Surface Mining Reclamation Fee Fund. Further, the Treasurer must place $20,000 from permit fees in that Fund and, as the Fund is depleted, 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 $1,000 per acre of land to be affected plus a lump sum of $10,000, 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.)

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 any required reclamation that did not occur in the first or second phase. (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, within ten days 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 completed 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. The Chief must proceed as in existing law, except that if the Chief has issued an order declaring that the operator has failed to reclaim, the Chief must order the release of the performance bond in the amount of $1,000 per acre, rather than $500 per acre, for the acres that the Chief finds to have been reclaimed in the required manner. (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. (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)).

High volume 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 high volume water user may affect the projected cone of depression established for the operation. The bill defines "high volume water user" as any person or governmental entity with the capacity to withdraw 100,000 gallons or more of ground water per day (sec. 1514.13(F)). The operator must submit additional data that reflect the high volume water user's impact on the ground water. The Chief

may perform ground water modeling using the additional data to 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 of "actual or constructive" 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 Chief makes a finding 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 Chief evidence showing that the operation is not the proximate cause of the loss of the owner's water supply. If the Chief finds that the operator failed to rebut the presumption, the Chief immediately must issue an order stating the finding. Not later than 14 days after receipt of that order, 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 Chief finds that the operator rebuts the presumption, the Chief immediately must issue an order stating the finding, and, upon receipt of the order, 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 Chief evidence 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 of Mines and Reclamation 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 an operator to use explosives 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 maximum 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, 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 noise 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 measuring methods for purposes of 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) Certification of authorities for the purpose of certifying persons as trained and competent in blasting;

(5) Standard blast warning and all-clear signals; 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 (sec. 1514.071(A)). Civil penalties cannot exceed $1,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. (Sec. 1514.071(B).)

Upon issuance of notice of noncompliance with an order, the Chief, within 30 days, 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 to pay the proposed penalty in full or, if the person wishes to contest the amount of the penalty or the fact of the violation, file a petition for review of the proposed 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 proposed amount of the penalty results in a waiver of all legal rights to contest the violation or the amount of the penalty. If, after a hearing, the Commission affirms or modifies the proposed amount of the penalty, the person has 30 days after receipt of the written decision to pay the amount in full or 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; 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 (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 for relief, including a permanent or temporary injunction, 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.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
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