



Jill Rowland

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Sens. Carnes, Robert Gardner, Mumper

Reps. Aslanides, Collier, Niehaus, Peterson, Grendell, Seitz, Schmidt, Barnes, Kearns, Olman, Fessler, Hagan, Flowers, Womer Benjamin, Young, Callender

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ACT SUMMARY

- Applies the Surface Mining Law to in-stream mining operations, and establishes additional requirements governing those operations.
- Revises the application requirements for a surface mining (aggregates mining) permit, including the addition of new requirements, and generally applies those requirements to an application for an in-stream mining permit.
- Increases the fee for a surface mining permit from \$250 to \$500, establishes a \$250 fee for an in-stream mining permit, increases the fee that must be paid for each acre affected under a surface mining permit from \$30 to \$75, eliminates the \$1,000 cap on such acreage fees, applies the acreage fees to an in-stream mining permit, extends the duration of a surface mining permit from ten to 15 years, and establishes a two-year duration for an in-stream mining permit.
- Makes changes to the renewal permit requirements for a surface mining permit, applies the requirements to an in-stream mining permit, revises the renewal fee for a surface mining permit, establishes a \$500 renewal fee for an in-stream mining permit, extends the renewal period for a

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

surface mining permit from ten to 15 years, and establishes a two-year renewal period for an in-stream mining permit.

- Requires an advertisement to be published for an initial surface or in-stream 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 or in-stream 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 surface mining 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 applies these requirements to in-stream mining operators.
- Generally increases the amounts of the performance bond and the surety bond required for a surface mining operation, 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, and applies the bond provisions to an in-stream mining operation.
- Revises the reclamation and bond release procedures for surface mining operations by establishing phased reclamation, and applies the procedures to in-stream mining operations.
- Requires the Chief of the Division of Mineral Resources Management to adopt rules to implement certain provisions under the act.
- 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 or in-stream mining operation.
- Establishes additional prohibitions and penalties for violations of them.
- Establishes civil penalties and provides for civil actions for relief for violations of the Surface Mining Law.

- Eliminates authorization for the Chief to use any moneys in the Surface Mining Fund for mine safety and first aid classes that are provided to miners through the Division of Mineral Resources Management; eliminates the requirement that the Chief, with the approval of the Director of Natural Resources, determine annually the amounts to be expended from the Fund for those classes; and instead authorizes the Chief to use the portion of the Fund that consists of moneys collected from severance taxes levied on certain natural resources for the classes.
- Revises the requirements governing qualifications for the position of deputy mine inspector of surface mines.

TABLE OF CONTENTS

Overview.....	4
In-stream mining definitions	4
Surface and in-stream mining permits	5
Application requirements	5
Permit fee and permit duration	8
Permit amendments.....	9
Elimination of permit denial procedures; transfer of permits.....	10
Renewal permits	10
Advertisement requirement	11
Opportunity to file written comments or objections	13
Plan of zoning.....	13
Other provisions.....	13
Annual and final report, annual report filing fee, and performance bond.....	14
Surety bond.....	16
Reclamation and bond release.....	17
Former law.....	17
The act.....	18
Rules.....	20
Dewatering.....	21
Ground water user	21
Complaints from owners of real property located within the projected cone of depression.....	22
Complaints from owners of real property located outside the projected cone of depression.....	23
Blasting	23
Additional prohibitions	24
Civil penalties and civil actions for relief	26
Miscellaneous.....	27

Expenditure of moneys for safety and first aid classes for miners..... 27
Qualifications of deputy mine inspectors of surface mines 28

CONTENT AND OPERATION

Overview

The Surface Mining Law requires operators of surface mining operations to obtain a surface mining permit and to comply with certain bonding requirements, specific reclamation requirements, and other provisions established under it.¹ The act generally retains that Law, but makes numerous changes in the permitting, bonding, and reclamation requirements and in other aspects of it. In addition, the act generally applies the Surface Mining Law to in-stream mining operations except as otherwise discussed in this analysis.

In-stream mining definitions

For purposes of adding in-stream mining operations to the Surface Mining Law, the act makes changes in several definitions in that Law. Under continuing law, "operation" or "surface mining operation" is defined to mean all of the premises, facilities, and equipment used in the process of removing minerals, or minerals and incidental coal, by surface mining from a mining area in the creation of which mining area overburden or minerals, or minerals and incidental coal, are disturbed or removed, such surface mining area being located upon a single tract of land or upon two or more contiguous tracts of land. In addition, the act provides that when the context indicates, "operation" or "in-stream mining operation" means all of the premises, facilities, and equipment used in the process of removing minerals by in-stream mining from a mining area. (Sec. 1514.01(F).) The act also adds to the definition of "operator" by providing that an operator includes any person engaged in in-stream mining who removes minerals from the bottom of the channel of a watercourse by in-stream mining (sec. 1514.01(G)). Finally, the act adds the following definitions:

(1) "In-stream mining" means all or any part of a process followed in the production of minerals from the bottom of the channel of a watercourse that drains a surface area of more than 100 square miles. "In-stream mining" may be accomplished by using any technique or by using surface excavation methods, such as open pit mining, dredging, placering, or quarrying, and includes the removal of overburden for the purpose of determining the location, quantity, or

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

quality of mineral deposits. "In-stream mining" does not include either of the following:

(a) Routine dredging for purely navigational or flood control purposes during which materials are removed for noncommercial purposes; or

(b) The extraction of minerals, other than coal, by a landowner for the landowner's own noncommercial use when the material is extracted and used in an unprocessed form on the same tract of land.

Furthermore, the act provides that for purposes of the definition of "in-stream mining," the number of square miles of surface area that a watercourse drains must be determined by consulting the "Gazetteer of Ohio Streams," which is a portion of the Ohio Water Plan Inventory published in 1960 by the Division of Water in the Department of Natural Resources, or its successor, if any. (Sec. 1514.01(M).)

(2) "High water mark" means the line on the shore that is established by the fluctuations of water and indicated by physical characteristics such as a natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding area (sec. 1514.01(L)).

(3) In provisions concerning in-stream mining, when the context is appropriate, "land" is deemed to include an area of a watercourse (sec. 1514.01(N)).

(4) "Watercourse" means any naturally occurring perennial or intermittent stream, river, or creek flowing within a defined stream bed and banks (sec. 1514.01(O)).

Surface and in-stream mining permits

Application requirements

Continuing 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 Mineral Resources Management in the Department of Natural Resources. For the purposes of the Surface Mining Law, the act excludes from the definition of "surface mining," and therefore from the permit requirements, the routine dredging of a watercourse for purely navigational or flood control purposes during which materials are removed for noncommercial purposes and the extraction or movement of soil or minerals within a sanitary landfill when the soil or minerals are used exclusively for the construction, operation, closure, and post-closure care of the landfill or for maintenance activities at the landfill (sec.

1514.01(A)). The act also prohibits anyone from engaging in in-stream mining or conducting an in-stream mining operation without an in-stream mining permit issued by the Chief. However, a person who, on the effective date of the act, holds a valid permit to conduct in-stream mining that is issued under section 10 of the federal Rivers and Harbors Appropriation Act of 1899 is not required to obtain an in-stream mining permit from the Chief until the existing permit expires. (Sec. 1514.02(A).)

Continuing 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 act applies those requirements to in-stream mining permit applications, limits one of the performance standards, and establishes two new ones.

Under law retained in part by the act, 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 act limits that general performance standard by providing that on and after the act's effective date, the standard does not apply to any surface or in-stream mining permit or applications for such a permit, any renewal of an existing surface or in-stream mining permit or application for a renewal of such a permit, any amendment or application for an amendment to an existing surface or in-stream mining permit, or any modification or application for a modification of a mining and reclamation plan of an existing surface or in-stream mining permit unless the application for such a permit, renewal, amendment, or modification is a resubmission, revision, or reconsideration of an application that was pending before the Chief or was first approved prior to the effective date of the act. (Sec. 1514.02(A)(10)(b).) One of the new general performance standards requires 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)(10)(j)). The act defines "ground water" as all water occurring in an aquifer (sec. 1514.01(J)). The second new performance standard applies in the case of in-stream mining. An operator must do all of the following: limit access to the channel of a watercourse to a single point of entry on one bank of the watercourse, maintain riparian vegetation to the fullest extent possible, and, upon cessation of in-stream mining, stabilize and reclaim to the pre-mined condition the banks of a watercourse affected by in-stream mining. (Sec. 1514.02(A)(10)(o).)

The act also adds all of the following items that must be included with an application for a permit:

(1) An application must contain the name of each county, township, or municipal corporation, if any, that has in effect a zoning resolution or ordinance that would affect the proposed surface or in-stream mining operation or, if no such zoning resolution or ordinance is in effect, a statement attesting to that fact. The application also must contain an explanation of how the applicant intends to comply with any applicable provisions of a zoning resolution or ordinance. (Sec. 1514.02(A)(3).)

(2) Continuing law requires a report of the results of test borings that the operator has conducted on the area to be mined. The act adds that in the case of an application for an in-stream mining permit, the report must also include sufficient information to show the approximate depth to bedrock. (Sec. 1514.02(A)(9).)

(3) Continuing law requires an applicant who intends to extract at least 10,000 tons of minerals per year or who intends to extract incidental coal in any amount to include a map of the area to be mined containing specified information. The act clarifies that this requirement applies to applications for surface mining permits and requires each application for an in-stream mining permit to include a map of the area to be mined regardless of the tons of minerals that the applicant intends to extract. (Sec. 1514.02(A)(12).)

(4) An application must contain a sworn statement by the applicant that, during the term of any permit issued under the Surface Mining Law or of any renewal of such a permit, the applicant will comply with all applicable zoning resolutions or ordinances that are in effect at the time the application is filed unless the resolutions or ordinances subsequently become invalid during the term of the permit or renewal (sec. 1514.02(A)(14)).

(5) If applicable, an applicant must provide a copy of the advertisement that the applicant is required to have published under the act (see "Advertisement requirement," below) (sec. 1514.02(A)(15)).

(6) 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 act's provisions governing dewatering (see "Dewatering," below) (sec. 1514.02(A)(16)). The act 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 act 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 act, 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)(16)).

(7) An application must include a statement by the applicant certifying that the applicant has communicated with the county engineer of the county in which the proposed surface or in-stream mining operation will be located regarding any streets and roads under the county engineer's jurisdiction that will be used by vehicles entering and leaving the proposed mining operation (sec. 1514.02(A)(17)).

(8) In the case of an application for an in-stream mining permit, an application is required to contain a hydraulic evaluation of the watercourse prepared by a registered professional engineer. The hydraulic evaluation must include at least soundings that depict the cross-sectional views of the channel bottom of the watercourse and water elevations for the watercourse; a profile of the channel bottom; an analysis of design flows and water surface profiles for the watercourse prior to in-stream mining and the proposed final mining condition; an analysis of the expected changes in the roughness coefficient, resistance to water flow velocity, and hydraulic gradient in the channel bottom due to the proposed mining; and any additional information that the Chief requires in order to evaluate the potential impact of in-stream mining on the watercourse and to determine if any additional performance standards are required to protect the environment and property outside the limits of the operation as established in the permit. (Sec. 1514.02(A)(18).)

The act precludes the Chief from approving an application or amendment to a permit (see "Permit amendments," below) if the approval would result in a violation of the prohibitions established under the act concerning the location of mining activities (see "Prohibitions," below) (sec. 1514.02(B)).

Permit fee and permit duration

Continuing law requires the Chief to issue an order granting a surface mining permit upon the Chief's approval of an application, the filing of a required performance bond, and payment of a permit fee and an acreage fee. Under former law, the permit fee was \$250, and the acreage fee was \$30 per acre estimated in the application that would comprise the area of land to be affected within the first year of operation under the permit. However, the acreage fee could not exceed \$1,000 per year. The act increases the permit fee for a surface mining permit to \$500 and establishes a permit fee of \$250 for an in-stream mining permit. The act also increases the acreage fee to \$75 per acre, eliminates the \$1,000 cap on

acreage fees, and applies the acreage fees to in-stream mining permits. (Sec. 1514.02(B).)

In addition, law retained in part by the act 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 act extends the permit period from ten to 15 years and applies the period to surface mining permits only. In the case of an in-stream mining permit, the act provides that if the Chief approves an application, the permit expires two years after the date of the issuance of the permit, or on the date when the Chief, after inspection, orders the release of any remaining bond, cash, irrevocable letters of credit, or certificates of deposit that were deposited to ensure satisfactory performance of the required reclamation, whichever occurs earlier. (Sec. 1514.02(C).)

Permit amendments

Continuing law requires an operator, before engaging in a surface mining operation on land not described in the permit, but that is contiguous to the land described in the permit, to file an application for an amendment to the permit. Before approving an amendment, the Chief must require the information, maps, fees, and performance bond as required for an original application. The act generally retains those requirements and applies them to in-stream mining permits, but provides that the amount of the performance bond that is required for an original application must be submitted except as otherwise provided by rule. In addition, an applicant for a significant amendment to a permit, as "significant" is defined by rule, must include a copy of the advertisement that the applicant is required to have published under the act (see "**Advertisement requirement**," below). Continuing law provides that upon the approval of an amendment by the Chief, the operator is authorized to engage in surface mining on the land described in the original permit plus the land described in the amendment. The act adds that the operator is authorized to engage in in-stream mining in the watercourse described in the original permit plus the area of the watercourse described in the amendment. (Sec. 1514.02(D).)

Continuing law provides that an operator, at any time and upon application to and approval by the Chief, may amend the plan of mining and reclamation filed with the application for a permit. The act provides that an application for a significant amendment to a plan, as "significant" is defined by rule, must include a copy of the advertisement that the applicant is required to have published under the act (see "**Advertisement requirement**," below). Under continuing law, the Chief may propose one or more amendments to the plan in writing within 90 days after the fifth anniversary of the date of issuance of the permit upon a finding of certain conditions. The act adds that the Chief may propose one or more

amendments to the plan in writing within 90 days after the first anniversary of the date of issuance of an in-stream mining permit. (Sec. 1514.02(E).)

Elimination of permit denial procedures; transfer of permits

Former law required the Chief to issue an order granting or denying an operating permit or amendment to a permit or approving or denying an amendment to the operator's plan of mining and reclamation within 90 days after the filing of an application for it. If the Chief failed to act within that period with respect to a surface mining operation that existed prior to the initial date by which the Chief required a permit to be obtained, the operator could have continued in operation until the Chief issued an order denying a permit for the operation and, if the operator appealed the order, until the Reclamation Commission affirmed the order of the Chief denying the permit and, if the operator appealed the Commission's order, until the court of common pleas affirmed the order.

The act eliminates those provisions. It then requires the holder of a surface or in-stream mining permit who desires to transfer the rights granted under the permit to another person at any time during the term of the permit or its renewal to file with the Chief an application for the transfer of the permit. The Chief must issue an order approving or disapproving the transfer of the permit in accordance with criteria and procedures established by rule. (Sec. 1514.02(F).)

Renewal permits

Continuing 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. Former law required the application to 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 act changes the renewal fees to one fee of \$1,000 for renewal of a surface mining permit, thus eliminating the acreage fee. In addition, the act applies these provisions to in-stream mining operations, except that the act's fee for renewal of an in-stream mining permit is \$500. (Sec. 1514.021(A).)

Continuing 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 continuing law and of all surface mining and reclamation activities conducted under the existing permit or renewal permit (see "**Annual and final report . . .**," below). In addition, the applicant must include the annual report required under continuing law and additional maps, plans, and revised or updated information that the Chief determines to be necessary for permit renewal. The act

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 act (see "Advertisement requirement," below). It also applies these provisions to in-stream mining activities. (Sec. 1514.021(B).)

Former law provided that upon receipt of the required information, the Chief could approve the application for renewal if the Chief found that: (1) the permit holder's application was 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 had provided evidence that a required performance bond applicable to lands affected under the existing permit would remain effective until released (sec. 1514.021(C)).

The act 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 act 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 law unchanged in part by the act, 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 act extends the renewal permit period to 15 years. In addition, the act provides that the renewal permit period for an in-stream mining permit is two years. (Sec. 1514.021(H).)

Advertisement requirement

Except as discussed below (see "Plan of zoning," below), the act 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 or in-stream mining operation or proposed

surface or in-stream 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 identification 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 act (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. If requested by a governmental agency within 35 days following the date on which the agency receives the written notice, the Chief may hold an informal conference to aid in the public understanding of the permitting process. The conference must be held within two weeks after the Chief determines to hold such a conference and must be held in the county in which the surface or in-stream mining operation is or is proposed to be located. (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 act defines the following terms:

(1) "Application" means an application filed for an initial permit for a proposed surface or in-stream 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 or in-stream mining operation or a proposed surface or in-stream 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 act (see "**Plan of zoning**," below), an operation or any person having an interest that is or may be adversely affected by the operation or proposed operation and any governmental agency may file written comments about 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).)

Other provisions

The act states that nothing in the Surface Mining Law or rules adopted under it can be construed to prevent any county, township, or municipal corporation from enacting, adopting, or enforcing zoning resolutions or

ordinances. However, the Chief cannot enforce such zoning resolutions or ordinances. (Sec. 1514.023.)

Under the act, a local authority may enter into an agreement with the operator of a surface or in-stream mining operation or a proposed surface or in-stream mining operation for the improvement of roads under the jurisdiction of that local authority that may be affected by the operation or for other improvements within the jurisdiction of that local authority. However, the surface or in-stream mining operator is not required to enter into such an agreement. (Sec. 1514.024.)

Annual and final report, annual report filing fee, and performance bond

Continuing 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. The act adds that each annual report for an in-stream mining operation must include a statement of the total tonnage removed by in-stream mining for each month and of the surface acreage and depth of material removed by in-stream mining. The report must include a map that identifies the area affected by the in-stream mining, soundings that depict the cross-sectional views of the channel bottom of the watercourse, and water elevations for the watercourse. (Sec. 1514.03.)

Continuing law requires each annual report to be accompanied by a filing fee and an acreage fee. Under former law, the filing fee was \$250, and the acreage fee was \$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 was required to be adjusted by subtracting a credit of \$30 per excess acre paid for the preceding year if the acreage paid for the preceding year exceeded the acreage actually affected or by adding an additional amount of \$30 per excess acre affected if the acreage actually affected exceeded the acreage paid for the preceding year. Except for a small operator or an in-stream mining operator, the act increases the filing fee to \$500. A small operator, which the act 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, or an in-stream mining operator must include a filing fee of \$250 with each annual report. The act retains the acreage fee requirement for any operator and increases the acreage fee from \$30 to \$75 per acre. Accordingly, the act 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. (Sec. 1514.03.)

Law generally unchanged by the act also requires the operator to file with each annual report a performance bond in a specified amount 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 a specified amount per excess acre if the acreage for which the bond was filed for the preceding year exceeds the acreage actually affected or by adding a specified amount per excess acre affected if the acreage actually affected exceeds the acreage for which the bond was filed for the preceding year. Under former law, the amount of the performance bond and of the credit was \$500 per acre. The act largely retains the adjustment provisions, but adds that they apply unless otherwise provided by rule. In addition, the act increases the performance bond amount and the credit amount from \$1,000 per acre unless otherwise provided by rule. (Sec. 1514.03.)

Continuing law requires an operator, within 30 days after the expiration of a permit, to submit a final report containing the same information that is required in an annual report. The final report must include a map indicating the location of the area of land affected during the period of the report and the location of the total area of land affected under the permit. The act applies the final report requirements to in-stream mining permits and adds that the required map also must include a hydraulic evaluation of the watercourse prepared by a registered professional engineer as required under the act. (Sec. 1514.03.)

Under continuing 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 a specified amount 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 a specified amount multiplied by the difference between the number of acres affected under the permit and the number of acres for which bond was filed. Under prior law, the additional acreage fee was \$30 per affected acre, and the additional bond was \$500 per affected acre. The act increases the additional acreage fee to \$75 per affected acre and also increases, unless otherwise provided by rule, the additional bond to \$1,000 per affected acre. Similarly, under continuing 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 bond. However, the Chief must retain a performance bond in a minimum specified amount irrespective of the number of acres affected under the permit. Under former law, that amount was \$2,000. The act increases it to \$10,000. In addition, continuing law requires that the release of the excess bond be in a specified amount 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. Formerly, that amount was \$500 per acre. The act increases it to \$1,000 per acre for release of the excess bond unless otherwise provided by rule. (Sec. 1514.03.)

Surety bond

Law generally unchanged by the act 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 a specified amount. Formerly, that amount was \$2,000 or \$500 per acre of land to be affected, whichever was greater. The act changes the amount to \$10,000 plus \$1,000 per acre of land to be affected unless otherwise provided by rule. Continuing 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 a specified amount. Under former law, that amount was \$500 per acre of land to be affected. The act increases the amount to \$1,000 per acre unless otherwise provided by rule. In addition, the act applies the provisions to in-stream mining permits. (Sec. 1514.04.)

Continuing law specifies that in the case of a surface mining permit, the bond must be filed for the number of acres estimated to be affected during the first year of operation under the permit. In the case of an amendment to a surface mining permit, the bond must be filed for the number of acres estimated to be affected during the balance of the period until the next anniversary date of the permit. The act provides that in the case of an in-stream mining permit, the bond must be filed for the number of acres of land within the limits of the in-stream mining permit for the entire permit period. In the case of an amendment to an in-stream mining permit, the bond must be filed for the number of any additional acres of land to be affected within the limits of the in-stream mining permit. (Sec. 1514.04.)

The act specifies that a governmental agency, or a board or commission that derives its authority from a governmental agency, cannot require a surface or in-stream 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 or in-stream mining operation authorized under the Surface Mining Law (see "**Advertisement requirement**," above, for the act's definition of "governmental agency") (sec. 1514.04).

Reclamation and bond release

Former law

Former law provided 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 could file a request, on a form provided by the Chief, for inspection of the area of land on which reclamation was completed. A request was required to 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 was required to 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 failed to complete the reclamation or file the request as required, as soon as the Chief learned of the default. If the Chief approved 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 was required to 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 was completed or, in the case of reclamation that included the successful establishment of any required planting, releasing the remaining performance bond. If the operator had deposited cash, an irrevocable letter of credit, or certificates of deposit in lieu of a surety bond to ensure reclamation, the Chief was required to issue an order to the operator releasing one-half of the total amount or the remaining amount so held, as applicable, and promptly had to transmit a certified copy of the order to the Treasurer of State.

However, if the Chief did not approve the reclamation, the Chief was required to notify the operator by certified mail. The notice was required to be an order stating the reasons for unacceptability, ordering further actions to be taken,

and setting a time limit for compliance. If the operator did not comply with the order within the time limit specified, the Chief could order an extension of time for compliance after determining that the operator's noncompliance was for good cause resulting from developments partially or wholly beyond the operator's control. If the operator complied within the time limit or the extension of time granted for compliance, the Chief was required to order release of the performance bond in the same manner as in the case of approval of reclamation as discussed above. If the operator did not comply within the time limit and the Chief did not order an extension, or if the Chief ordered an extension of time and the operator did not comply within the extension of time, the Chief was required to issue another order declaring that the operator had failed to reclaim and, if the operator's permit had 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 had failed to reclaim, the Chief was required to make a finding of the number and location of the acres of land that the operator had failed to reclaim. The Chief then had to order the release of the performance bond in the amount of \$500 per acre for those acres that the Chief found had been reclaimed. The Chief had to order the release in the same manner as in the case of approval of reclamation as discussed above, and the Treasurer of State was required to proceed as in that case. If the operator had 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 was required to issue an order declaring that the remaining cash, irrevocable letter of credit, or certificates of deposit were the property of the state and were available for use by the Chief in performing reclamation of the area. (Sec. 1514.05(C).)

The act

The act retains many of the requirements governing reclamation and bond release, but revises them in part by establishing phased reclamation. It also applies them to in-stream mining operations. Thus, under the act, at any time within the period allowed an operator under the requirements for a surface or in-stream mining permit to reclaim an area of land affected by the mining, the operator may file a request, on a form provided by the Chief, for inspection of the area of land on which a phase of 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 two phases. The first phase involves grading, contouring, terracing, resoiling, and initial planting. The second phase involves the establishment of vegetative cover together with the maintenance and the completion of all reclamation required under the Surface Mining Law and rules adopted under it. (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 the case of an in-stream mining operation, the map also must include a hydraulic evaluation of the watercourse prepared by a registered professional engineer.

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 and a statement regarding the degree of success of the growth. (Sec. 1514.05(A).)

As under former 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 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 second phase of the reclamation, 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 phase of reclamation, and the Treasurer of State must proceed as in former law. (Sec. 1514.05(B).)

On approval of the first phase of reclamation, the Chief must release 75% of the amount of the surety bond on deposit. On approval of the second phase, the Chief must release the remaining amount of the surety bond that originally was on deposit. 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 former 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. 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 surface or in-stream mine site. (Sec. 1514.05(C) and (D).)

Rules

The act requires the Chief to adopt rules in accordance with the Administrative Procedure Act, with respect to in-stream mining, determining, in consultation with the Chief of the Division of Water, periods of low flow, which are the only time periods during which in-stream mining is allowed, and developing and implementing any criteria, in addition to the criteria required under the Surface Mining Law as amended by the act, that the Chief determines are necessary for the permitting of in-stream mining (sec. 1514.08(B)(1)). In addition, the act requires the Chief to adopt rules establishing criteria and procedures for approving or disapproving the transfer of a surface or in-stream mining permit under the act's provisions (see above) (sec. 1514.08(B)(2)).

The Chief also must adopt rules defining when any of the following may be considered "significant" for purposes of the act's provisions: (1) an amendment to a permit issued for a surface or in-stream mining operation, (2) an amendment to the plan of mining and reclamation that must be filed with an application for a surface or in-stream 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(B)(3).)

In addition, the act 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 or in-stream mining operation that has been issued in Ohio to the operator or applicant. (Sec. 1514.08(B)(4).)

Finally, the Chief must adopt rules establishing criteria and procedures for granting a variance from compliance with certain prohibitions established under the act concerning the location of mining activities (see ***Prohibitions***," below). The criteria must ensure that an operator may obtain a variance only if compliance with the applicable prohibition is not necessary to prevent damage to the watercourse or surrounding area as described in the prohibition. (Sec. 1514.08(B)(5).)

Dewatering

Under the act, the Chief 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 Chief must consult with the Chief of the Division of Water when projecting a cone of depression. The act allows an applicant for a surface mining permit for 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 act's provisions governing dewatering and the replacement of water supplies. The act 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 act provides that its provisions related to dewatering, a projected cone of 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 act 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 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 Chief receives a written complaint, the Chief immediately must send a copy of the complaint to the operator, and the operator immediately must respond by sending the Chief a statement that explains how the operator resolved or will resolve the complaint. If the operator receives a written complaint, 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 Mineral Resources Management completes the evaluation concerning the rebuttable presumption that the operation caused the loss (see below), whichever is applicable. (Sec. 1514.13(B)(1).)

The act 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 act 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 act 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 surface or in-stream mining 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, or other limits established by rule when measured at any dwelling, public or commercial building, school, church, or community or institutional building that is located outside the area for which a surface or in-stream 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, 2003, 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 act 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)).

The act also authorizes the Chief to adopt rules that establish limits on the amount of ground vibration resulting from the use of explosives that is permissible when measured at the locations described above (sec. 1514.12(F)).

Additional prohibitions

In addition to the continuing prohibitions in the Surface Mining Law, the act establishes several new ones. First, it prohibits a person from engaging in in-stream mining or conducting an in-stream mining operation without an in-stream mining permit issued by the Chief. The act reiterates that a person who, on the act's effective date, holds a valid permit to conduct in-stream mining that is issued under section 10 of the federal Rivers and Harbors Appropriation Act of 1899 is not required to obtain an in-stream mining permit from the Chief until the existing permit expires (see above). (Sec. 1514.10(A)(2).) Whoever violates this prohibition may be fined up to \$5,000 plus up to \$1,000 per acre of land affected and is responsible for achieving reclamation of the land as required under the Surface Mining Law (sec. 1514.99(A)).

Second, the act prohibits a person from conducting surface excavations of minerals or any surface mining activity within any of the following:

- (1) One hundred twenty feet horizontal distance outward from the highwater mark on each bank of an area designated as a wild, scenic, or recreational river area under state law or of a portion of a river designated as a

component of the national wild and scenic river system under the federal Wild and Scenic Rivers Act;

(2) Seventy-five feet horizontal distance outward from the highwater mark on each bank of a watercourse that drains a surface area of more than 100 square miles; or

(3) Fifty feet horizontal distance outward from the highwater mark on each bank of a watercourse that drains a surface area of more than 25 square miles, but fewer than 100 square miles unless a variance is obtained under rules adopted by the Chief (see above). (Sec. 1514.10(E) and (F).)

A person who has been issued a surface mining permit prior to the act's effective date may continue to operate under that permit and is not subject to the surface excavations or surface mining activity prohibitions discussed above until the permit is renewed. For the purposes of those prohibitions, the number of square miles of surface area that a watercourse drains must be determined by consulting the "Gazetteer of Ohio Streams." (Sec. 1514.10(F).)

Finally, the act prohibits a person from engaging in any part of a process that is followed in the production of minerals from the bottom of the channel of a watercourse in any of the following circumstances or areas:

(1) In an area designated as a wild, scenic, or recreational river area under state law, in a portion of a river designated as a component of the national wild and scenic river system under the federal Wild and Scenic Rivers Act, or within one-half mile upstream of any portion of such an area or component;

(2) During periods other than periods of low flow, as determined by rules adopted under the act (see above);

(3) During critical fish or mussel spawning seasons as determined by the Chief of the Division of Wildlife in the Department of Natural Resources under the Division of Wildlife Law and rules adopted under it; or

(4) In an area known to possess critical spawning habitat for a species of fish or mussel that is on the federal endangered species list established in accordance with the Endangered Species Act of 1973 or the state endangered species list established in rules adopted under the Division of Wildlife Law. (Sec. 1514.10(G).)

The act states that the above prohibition does not apply to routine dredging for purely navigational purposes during which materials are removed for noncommercial purpose or to the extraction of minerals, other than coal, by a landowner for the landowner's own noncommercial use when the material is

extracted and used in an unprocessed form on the same tract of land (sec. 1514.10(G)).

Whoever violates the above two prohibitions may be fined not less than \$100 nor more than \$1,000 for a first offense. For each subsequent offense, on one or more permits, a person may be fined not less than \$200 nor more than \$5,000, imprisoned up to six months, or both. The permit of any person convicted of a third offense may be revoked by the court at the time of that conviction, and the court at that time may further order that no permit or amendment to a permit may be issued to that person under the Surface Mining Law for five years from the date of the conviction. (Sec. 1514.99(D).)

Civil penalties and civil actions for relief

The act 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 a 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 act (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 continuing 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 Fund created in continuing law for reclamation of abandoned surface or in-stream 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 Fund for reclamation of abandoned surface or in-stream 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 act 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.)

Miscellaneous

The act provides that no party to an appeal brought before the Reclamation Commission under the Surface Mining Law is eligible for an award of attorney's fees, costs, or expenses from the Commission or any court (sec. 1514.09).

Expenditure of moneys for safety and first aid classes for miners

Continuing law requires certain employees of the Division of Mineral Resources Management to provide for and conduct safety, first aid, and rescue classes at any mine or for any group of miners who apply for the classes (sec. 1561.26, not in the act). The act eliminates former law that authorized the Chief to use moneys in the Surface Mining Fund for those classes and also eliminates former law that required the Chief, with the approval of the Director of Natural Resources, to determine annually the amounts to be expended for safety and first aid classes from the Fund. Instead, the act specifies that the Chief may use the portion of the Surface Mining Fund that consists of moneys collected from the severance taxes levied on specified natural resources for the classes. (Sec. 1514.11.)

Qualifications of deputy mine inspectors of surface mines

Continuing law requires an applicant for the position of deputy mine inspector of surface mines to have had actual practical mining experience of not less than six years. Under former law at least two of those years had to have been in surface coal mines in Ohio. The act instead requires at least two years of the requisite experience to have been in surface mines in Ohio, thus authorizing that experience to have been in either coal surface mines or noncoal surface mines. (Sec. 1561.12(B).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-29-01	p. 259
Reported, S. Energy, Natural Resources & Environment	05-16-01	p. 376
Passed Senate (24-8)	05-22-01	pp. 386-387
Reported, H. Agriculture & Natural Resources	10-24-01	p. 983
Passed House (81-8)	10-25-01	pp. 988-990
Senate concurred in House amendments (24-6)	11-14-01	p. 1116

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