



S.B. 386

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(As Passed by the Senate)

Sens. Grendell, Wilson, Carey, Cafaro, Padgett, Schaffer, Seitz, Niehaus, Austria, Harris, Patton, Schuler

BILL SUMMARY

- Transfers from the Director of Environmental Protection to the Chief of the Division of Mineral Resources Management in the Department of Natural Resources the authority to issue section 401 water quality certifications regarding dredge and fill operations at coal mining and reclamation operations.
- Establishes requirements and procedures governing the issuance or denial of section 401 water quality certifications by the Chief, and requires the chief to adopt rules governing the issuance of those certifications.
- Transfers from the Director of Environmental Protection to the Chief of the Division of Mineral Resources Management the authority to issue permits to install disposal systems at coal mining and reclamation operations.
- Establishes requirements and procedures governing the issuance or denial of permits to install by the Chief, and requires the Chief to adopt rules governing the issuance of those permits.
- Transfers from the Director of Environmental Protection to the Chief of the Division of Mineral Resources Management the authority to issue national pollutant discharge elimination system (NPDES) permits for coal mining and reclamation operations.
- Requires the Chief to submit to the United States Environmental Protection Agency (USEPA) a program for the issuance of those permits, and provides that the authority of the Chief to issue NPDES permits is contingent on approval from the USEPA.

- Establishes requirements and procedures governing the issuance of NPDES permits, including general NPDES permits, requires the Chief to establish terms and conditions of NPDES permits in accordance with rules, and requires the Chief to adopt rules governing the issuance of NPDES permits.
- Provides for enforcement of section 401 water quality certifications, permits to install, and NPDES permits through orders, adjudication hearings, injunctive relief, and civil and criminal penalties.
- Eliminates a requirement in the Water Pollution Control Law that an application for a section 401 water quality certification concerning which the Director of Environmental Protection retains jurisdiction include a use attainability analysis if the project includes a stream for which a specific aquatic life use designation has not been made.
- Generally declares that a coal mining and reclamation operation permit must be issued or denied by the Chief of the Division of Mineral Resources Management not later than 180 days after a complete application for a permit is submitted.
- Declares that an application for a coal mining and reclamation operation permit is deemed complete as submitted to the Chief unless the Chief, within 14 days of the submission, identifies deficiencies in the application in writing and submits them to the applicant.
- Revises several existing requirements and establishes several new procedures governing the issuance or denial of coal mining and reclamation operation permits.
- Authorizes the Chief to hire independent contractors to review applications for coal mining and reclamation operation permits under specified circumstances and to approve staff overtime for that purpose.
- Requires money in the Coal Mining Administration and Reclamation Reserve Fund to be used by the Division of Mineral Resources Management to hire additional full-time review staff for the purpose of meeting mandatory review deadlines established by the bill for applications for coal mining and reclamation operation permits.

- Authorizes the Chief to request an increase in the coal severance tax in order to offset the costs of additional full-time technical permit review staff.
- Declares that the beneficial use of coal combustion byproducts is not subject to the Water Pollution Control Law rather than declaring, as in current law, that the beneficial use of coal combustion byproducts is not subject to the provisions of that Law governing permits to install for and plan approval of disposal systems.

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CONTENT AND OPERATION

Introduction

The Coal Mining and Reclamation Law governs all coal mining and reclamation operations in the state. The Law includes provisions requiring the issuance of an operation permit for each coal mining and reclamation operation. The Chief of the Division of Mineral Resources Management in the Department of Natural Resources issues those coal mining and reclamation permits. However, under current law, coal mining and reclamation operations also may be required to obtain certain environmental permits from the Director of Environmental Protection.

With respect to coal mining and reclamation operations, the bill transfers the authority to issue certain environmental permits from the Environmental Protection Agency to the Division of Mineral Resources Management. Specifically, the bill transfers the authority to issue section 401 water quality certifications, which govern dredging and filling of waters of the state; permits to install disposal systems, which govern the construction of waste water disposal systems; and NPDES permits, which govern discharges of waste water into the waters of the state.

The bill also alters the procedures associated with coal mining and reclamation operation permits. Specifically, the bill establishes certain new procedures and timelines governing the issuance and denial of those permits.

Finally, the bill amends the law related to the Coal Mining Administration and Reclamation Reserve Fund. It establishes certain requirements regarding the hiring of additional staff by the Division of Mineral Resources Management for the purpose of meeting the new permit issuance timelines established by the bill.

Transfer of authority to issue section 401 water quality certifications

Under current law, the Director of Environmental Protection is required to administer the section 401 water quality certification program, which is established under the authority of the Federal Water Pollution Control Act. The section 401 water quality certification program governs the dredging and filling of waters of the state, particularly the dredging and filling of wetlands. Under the Federal Water Pollution Control Act, persons who propose to dredge or fill the waters of the state, including wetlands, must apply to the United States Army Corps of Engineers for a permit under section 404 of that Act. The permit commonly is referred to as a section 404 permit. Generally, a section 404 permit is required before a person may dredge or fill waters of the state. In addition, the Act requires persons to receive a water quality certification under section 401 of

the Act from the state in which the dredging or filling will take place. The state certification must certify to the Army Corps of Engineers that the dredging or filling will not result in a violation of certain water quality standards. The receipt of the certification from a state is a precondition to the issuance of a section 404 permit by the Army Corps. The certification is commonly referred to as a section 401 water quality certification. In Ohio, the Environmental Protection Agency issues section 401 water quality certifications in accordance with rules adopted under the state Water Pollution Control Law.

The bill transfers the authority to issue section 401 water quality certifications¹ with respect to coal mining and reclamation operations from the Director of Environmental Protection to the Chief of the Division of Mineral Resources Management in the Department of Natural Resources. On and after the effective date of the rules adopted by the Chief under the bill (see "**Rules governing section 401 water quality certifications**," below), the operator of a coal mining and reclamation operation that is required to obtain a federal license or permit for which a section 401 water quality certification is a prerequisite must obtain that certification from the Chief. After the rules are adopted, if a coal mining and reclamation operation includes a project for which a section 401 water quality certification is required, the Director of Environmental Protection cannot issue the certification. Instead, the certification must be issued by the Chief in accordance with the bill and rules adopted under it. (R.C. 1513.51.)

Requirements governing application and issuance

The operator of a coal mining and reclamation operation that includes a project for which a section 401 water quality certification is required must submit an application for the certification on a form provided by the Chief. If a section 401 water quality certification is required in order for a person to receive a coal mining and reclamation permit, the application for the section 401 water quality certification must be submitted contemporaneously with the application for the coal mining and reclamation permit. The application for the section 401 water quality certification must include all information that is required on the form as well as all of the following:

¹ For purposes of the bill, "section 401 water quality certification" is defined as a certification issued pursuant to section 401 of the Federal Water Pollution Control Act and the bill and rules adopted under it that any discharge related to a coal mining and reclamation operation will comply with specified provisions of the Federal Water Pollution Control Act (R.C. 1513.50(E)).

(1) A copy of a letter from the United States Army Corps of Engineers documenting its jurisdiction over the wetlands, streams, or other waters of the state that are the subject of the application;

(2) If the project involves impacts to a wetland, a wetland characterization analysis consistent with the Ohio Rapid Assessment Method;

(3) A specific and detailed mitigation proposal, including the location and proposed legal mechanism for protecting the property in perpetuity;

(4) Applicable fees;

(5) Site photographs;

(6) Adequate documentation confirming that the applicant has requested comments from appropriate divisions in the Department of Natural Resources and the United States Fish and Wildlife Service regarding threatened and endangered species, including the presence or absence of critical habitat;

(7) Descriptions, schematics, and appropriate economic information concerning the applicant's preferred alternative, nondegradation alternatives, and minimum degradation alternatives for the design and operation of the project;

(8) The applicant's investigation report of the waters of the United States in support of a section 404 permit application concerning the project; and

(9) A copy of the United States Army Corps of Engineers' public notice regarding the section 404 permit application concerning the project. (R.C. 1513.52(A).)

Not later than 15 business days after the receipt of an application for a section 401 water quality certification, the Chief must review the application to determine if it is complete and must notify the applicant in writing as to whether the application is complete. If the Chief fails to notify the applicant within 15 business days regarding the completeness of the application, the application is considered complete. If the Chief determines that the application is not complete, the Chief must include with the written notification an itemized list of the information or materials that are necessary to complete the application. If the applicant fails to provide the information or materials within 60 days after the Chief's receipt of the application, the Chief may return the incomplete application to the applicant and take no further action on it. If the application is returned to the applicant because it is incomplete, the Chief must return any application fee levied by rules. (R.C. 1513.52(B).)

Not later than 21 days after a determination that an application is complete, the applicant must publish public notice of the Chief's receipt of the complete application in a newspaper of general circulation in the county in which the project that is the subject of the application is located. The public notice must be in a form acceptable to the Chief. The applicant must promptly provide the Chief with proof of publication.

The bill requires the Chief to apply the antidegradation policy adopted by the Director of Environmental Protection under the state Water Pollution Control Law to certifications issued under the bill to the same degree and under the same circumstances as it applies to permits issued under that Law. (R.C. 1513.52(C).)

If the Chief determines that there is significant public interest in a public hearing as evidenced by the public comments received concerning the application and by other requests for a public hearing on the application, the Chief or the Chief's representative must conduct a public hearing concerning the application. Notice of the public hearing must be published by the applicant, subject to review and approval by the Chief, at least 30 days prior to the date of the hearing in a newspaper of general circulation in the county in which the project is to take place. If a public hearing is requested, the Chief must accept comments concerning the application until five business days after the public hearing. A public hearing is not permitted to take place later than 100 days after the application is determined to be complete. (R.C. 1513.52(D).)

The Chief must forward all public comments that are received concerning an application to the applicant not later than five business days after their receipt (R.C. 1513.52(E)). The applicant must respond in writing to written comments or to deficiencies identified by the Chief during the course of reviewing the application not later than 15 days after receiving or being notified of them (R.C. 1512.52(F)).

Not later than 180 days after the complete application for a section 401 water quality certification is received, the Chief must issue or deny the certification. The Chief must provide an applicant for a certification with an opportunity to review the certification prior to its issuance. (R.C. 1513.55(G).)

The bill requires the Director of Environmental Protection to provide the Chief with access to the database administered by the Director that includes environmentally beneficial water restoration and protection projects that may serve as potential mitigation projects for projects in the state for which a section 401 water quality certification is required (R.C. 1513.52(H)).

Any appeals of actions of the Chief regarding section 401 water quality certifications must be made to the Reclamation Commission created under current law (R.C. 1513.52(I)).

Rules governing section 401 water quality certifications

Under the bill, the Chief is required to adopt rules in accordance with the Administrative Procedure Act concerning the section 401 water quality certification program. First, the Chief must adopt rules establishing requirements and procedures for the issuance of section 401 water quality certifications to coal mining and reclamation operations, including procedures for public notice and public hearings in addition to those established in the bill (see above). Those rules must be substantially similar to rules governing section 401 water quality certifications adopted by the Director of Environmental Protection under the state Water Pollution Control Law. In addition, the rules must establish a schedule of fees to be charged for the issuance of section 401 water quality certifications. (R.C. 1513.57(A).)

Additionally, the Chief must adopt rules that establish any procedures and requirements necessary for the transfer of the section 401 water quality certification program with respect to coal mining and reclamation operations from the Environmental Protection Agency to the Division of Mineral Resources Management. The Chief must adopt those rules in consultation with the Director of Environmental Protection, the United States Army Corps of Engineers, and the United States Environmental Protection Agency. (R.C. 1513.57(B).)

Transfer of authority to issue permits to install

Current law authorizes the Director of Environmental Protection to issue, revoke, modify, or deny permits for the installation or modification of disposal systems or any parts of those systems in compliance with all federal requirements (R.C. 6111.03(J)). Such permits are often referred to as installation permits or permits to install.

The bill transfers the authority to issue permits to install for disposal systems, and components of those systems, at coal mining and reclamation operations from the Director of Environmental Protection to the Chief of the Division of Mineral Resources Management. Not later than 180 days after the effective date of the bill, the Chief must prepare a program for the issuance of permits to install for disposal systems at coal mining and reclamation operations. On and after the date on which the Chief has finalized the program, no person is permitted to modify an existing or construct a new disposal system at a coal mining and reclamation operation without first obtaining a permit to install issued by the Chief. (R.C. 1513.53(A).)

On and after the date on which the Chief has finalized the program, the authority to enforce terms and conditions of installation permits that previously were issued to coal mining and reclamation operations must be transferred from the Director of Environmental Protection to the Chief. Thereafter, the Director of Environmental Protection will have no authority to enforce the terms and conditions of those installation permits. On and after the date on which the Chief has finalized the program, an installation permit concerning which enforcement authority has been transferred is deemed to have been issued under the bill. (R.C. 1513.54(A).) Not later than two years after the date on which the Chief has finalized the program, the Chief must review the installation permit that previously was issued to a coal mining and reclamation operation and must inspect the operation to determine if it is in compliance with that permit (R.C. 1513.54(B)). The bill defines "installation permit" as a permit for the installation or modification of a disposal system issued by the Director of Environmental Protection under the Water Pollution Control Law (R.C. 1513.50(B)).

On the date on which the Chief has finalized the permit to install program under the bill, the Director of Environmental Protection must provide the Chief with both of the following:

(1) Copies of all permits issued by the Director under the Water Pollution Control Law for the installation of disposal systems at coal mining and reclamation operations that were issued on or before that date together with any related information that the Chief requests; and

(2) All permit applications and accompanying information for the installation of disposal systems at coal mining and reclamation operations that were submitted to the Director under the Water Pollution Control Law prior to that date. (Section 6(A).)

Requirements governing application and issuance

The Chief or the Chief's authorized representative may help an applicant for a permit to install during the permitting process by providing guidance and technical assistance (R.C. 1513.53(B)). An applicant for a permit to install must submit an application to the Chief on a form that the Chief prescribes and provides together with a fee in an amount established by rule (see "**Rules governing permits to install**," below). The applicant must include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) Designs and plans for the proposed construction of the disposal system that include the proposed location of the construction, design and construction plans and specifications, anticipated beginning and ending dates for work performed, and any other information that the Chief requires by rule;

(3) A statement of the quantity of water that the disposal system will utilize on an average daily and annual basis, a detailed description of the basis for the calculation utilized in determining the quantity of water utilized, and a statement identifying the source for the water; and

(4) Any other information required by rule. (R.C. 1513.53(C).)

Information required to be included in an application for the modification of a permit to install, together with the applicable fee amount, is required to be established in rules (R.C. 1513.53(C)).

The Chief must issue permits to install in accordance with rules. The Chief is required to deny a permit to install if the permit application contains misleading or false information or the designs and plans fail to conform to best management practices. Additional grounds for the denial of a permit to install must be established in rules. (R.C. 1513.53(D).)

A permit to install must expire after a period specified by the Chief unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time. The Chief may extend the expiration date of a permit to install upon request of the applicant. (R.C. 1513.53(E).)

The Chief may modify, suspend, or revoke a permit to install in accordance with rules (R.C. 1513.53(F)). Appeals of actions of the Chief regarding permits to install must be made to the Reclamation Commission (R.C. 1513.53(G)).

Rules governing permits to install

Under the bill, the Chief is required to adopt rules in accordance with the Administrative Procedure Act that establish all of the following concerning permits to install:

(1) A description of what constitutes a modification of a disposal system at a coal mining and reclamation operation;

(2) The amount of the fee that must be submitted with each application for a permit to install and each application for a modification of a permit to install;

(3) Information that must be included in the designs and plans required to be submitted with an application for a permit to install and criteria for approving, disapproving, or requiring modification of the designs and plans;

(4) Information that must be included in an application for the modification of a permit to install;

(5) Any additional information that must be included with an application for a permit to install;

(6) Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install; and

(7) Grounds for the denial, modification, suspension, or revocation of permits to install in addition to the grounds established in the bill (see above). (R.C. 1513.57(C).)

Transfer of authority to issue NPDES permits

Current law authorizes the Director of Environmental Protection to oversee the issuance of permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state under the national pollutant discharge elimination system (NPDES) program. That program is established under the authority of the Federal Water Pollution Control Act and regulations adopted under it. (R.C. 6111.03(J).) The permits issued under the program are referred to as NPDES permits. A NPDES permit is required to be issued for each point source² of waste water discharged from a facility. The Director also is authorized to issue general NPDES permits, rather than individual NPDES permits, for the discharge of storm water and the installation or modification of storm water disposal systems consistent with federal requirements (R.C. 6111.035). The Director may attach terms and conditions to any NPDES permit.

The bill transfers the authority to issue NPDES permits for coal mining and reclamation operations from the Environmental Protection Agency to the Division of Mineral Resources Management and requires the Division to administer a NPDES program in a manner consistent with the Federal Water Pollution Control

² "Point source" is generally defined in federal regulations to mean any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft from which pollutants are or may be discharged (40 C.F.R. 122.2).

Act.³ It defines "NPDES permit" as a permit issued under the national pollutant discharge elimination system under that Act, including the renewal of such a permit (R.C. 1513.50(C)). Under the bill, the Chief of the Division of Mineral Resources Management is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act with respect to coal mining and reclamation operations. Not later than 180 days after the effective date of the bill, the Chief must prepare a state program in accordance with specified regulations adopted under the Federal Water Pollution Control Act for coal mining and reclamation operations at which point sources are located. The Chief must then submit the program to the United States Environmental Protection Agency (USEPA) for approval. (R.C. 1513.55(A)(1) and (M).)

The bill declares that the authority to enforce terms and conditions of NPDES permits previously issued to operators of coal mining and reclamation operations by the Director of Environmental Protection is transferred from the Director to the Chief. The transfer is effective on and after the date on which the USEPA approves the NPDES program submitted by the Chief. Thereafter, the Director of Environmental Protection will have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority, the NPDES permits concerning which authority has been transferred must be considered to have been issued by the Chief. (R.C. 1513.55(A)(2).)

On the date on which the USEPA approves the NPDES program submitted by the Chief, the Director of Environmental Protection must provide the Chief with all of the following:

(1) Copies of all NPDES permits issued under the Water Pollution Control Law by the Director applicable to coal mining and reclamation operations that were issued on or before that date together with any related information that the Chief requests;

(2) All NPDES permit applications and accompanying information that pertain to coal mining and reclamation operations that were submitted under the Water Pollution Control Law prior to that date; and

(3) Information identifying all coal mining and reclamation operations that are covered by or have applied for coverage under a general permit issued by the Director under the Water Pollution Control Law on or prior to that date. (Section 6(B).)

³ The bill defines "Federal Water Pollution Control Act," by reference to R.C. 6111.01, to include regulations adopted under it (R.C. 1513.50(A)).

Individual NPDES permits

On and after the date on which the USEPA approves the NPDES program submitted by the Chief, no coal mining and reclamation operation can discharge wastes of any sort from a point source into the waters of the state without first obtaining a NPDES permit issued by the Chief. The bill declares that the Chief is authorized to issue, revoke, modify, or deny an individual NPDES permit or issue, revoke, or deny coverage under a general NPDES permit as defined in rules (see "**Rules governing NPDES permits**," below) in compliance with all requirements of the Federal Water Pollution Control Act. Violation of the prohibition against discharging without a permit is declared by the bill to be a public nuisance for enforcement purposes. (R.C. 1513.55(B)(1).) Coal mining and reclamation operations that have been issued a NPDES permit by the Director of Environmental Protection for discharges into the waters of the state prior to the date on which the USEPA approves the NPDES program submitted by the Chief may continue to operate under that NPDES permit until it expires or is modified or revoked. Such a NPDES permit is required to be enforced by the Chief upon the transfer of authority to enforce the terms and conditions of the NPDES permit as discussed above. (R.C. 1513.55(B)(2).)

NPDES permits for discharge of storm water

The bill prohibits anyone, on and after the date on which the USEPA approves the NPDES program submitted by the Chief, from discharging storm water resulting from a coal mining and reclamation operation without first obtaining a NPDES permit issued by the Chief in accordance with rules when such a NPDES permit is required by the Federal Water Pollution Control Act. Failure to comply with that requirement is declared by the bill to be a public nuisance for enforcement purposes. (R.C. 1513.55(C)(1).) Persons that have been issued a NPDES permit by the Director of Environmental Protection for the discharge of storm water from a coal mining and reclamation operation prior to the date on which the USEPA approves the NPDES program submitted by the Chief may continue to operate under that NPDES permit until it expires or is modified or revoked. The Chief must enforce such a NPDES permit upon the transfer of authority to enforce the terms and conditions of the NPDES permit under the bill as discussed above. (R.C. 1513.55(C)(2).)

General NPDES permits

To the extent consistent with the Federal Water Pollution Control Act, the Chief is required to issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources from coal mining and reclamation operations for which the Chief determines that all of the following apply:

(1) Any discharges authorized by a general NPDES permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually;

(2) The discharges are more appropriately authorized by a general NPDES permit than by an individual NPDES permit; and

(3) Each category of point sources satisfies the criteria established in rules.

A person who is required to obtain a NPDES permit must submit to the Chief a notice of the person's intent to be covered under an existing general NPDES permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general NPDES permit, the Chief must notify the applicant in writing that the person is covered by the general NPDES permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general NPDES permit, the Chief must require the submission of an application for an individual NPDES permit. (R.C. 1513.55(F).)

Permit terms and conditions

Under the bill, the Chief is required to establish terms and conditions of NPDES permits in accordance with rules. Terms and conditions must be designed to achieve and maintain full compliance with the most current water quality standards adopted by the Director of Environmental Protection under the state Water Pollution Control Law, the most current antidegradation policy adopted under that Law, national effluent limitations, national standards of performance for new sources, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the Chief, to the extent consistent with that Act, must consider technical feasibility and economic costs and must allow a reasonable period of time for coming into compliance with the NPDES permit. (R.C. 1513.55(G).)

Permit application, issuance, denial, renewal, and transfer

In accordance with rules, an applicant for a NPDES permit, other than a general permit, issued under the bill must submit a fee in an amount established by rule together with an application. The applicant must submit the application to the Chief on a form prescribed by the Chief. The application must include any information required by rule. The Chief or the Chief's authorized representative may help an applicant during the application process by providing guidance and technical assistance. (R.C. 1513.55(D).)

Prior to issuing or modifying a NPDES permit, the Chief must issue a draft NPDES permit. The Chief or his representative must mail notice of the issuance of a draft NPDES permit to the applicant. Further, the Chief or his representative must publish the notice once in a newspaper of general circulation in the county in which the coal mining and reclamation operation is located or proposed to be located. The Chief must mail notice of the issuance of a draft NPDES permit and a copy of the draft NPDES permit to the board of county commissioners of the county and the board of township trustees of the township in which the operation is located or proposed to be located. The Chief or his representative also must provide notice of the issuance of a draft NPDES permit to any other persons that are entitled to notice under the Federal Water Pollution Control Act. Notice of the issuance of a draft NPDES permit must include the address where written comments concerning the draft NPDES permit may be submitted and the period of time during which comments will be accepted as established by rule.

If the Chief receives written comments in an amount that demonstrates significant public interest, as defined by rule, in the draft NPDES permit, the Chief must schedule one public meeting to provide information to the public and to hear comments pertinent to the draft NPDES permit. The notice of the public meeting must be provided in the same manner as the notice of the issuance of the draft NPDES permit. (R.C. 1513.56(A).)

The bill requires the Chief to apply the antidegradation policy adopted by the Director of Environmental Protection under the Water Pollution Control Law to NPDES permits issued under the bill to the same degree and under the same circumstances as it applies to permits issued under the Water Pollution Control Law. The Chief must hold one public meeting to consider antidegradation issues when such a meeting is required by the antidegradation policy. When allowed by the antidegradation policy, the Chief must hold the public meeting on antidegradation issues concurrently with any public meeting held for the draft NPDES permit. (R.C. 1513.56(B).)

The Chief or the Chief's representative must publish notice of the issuance of a final NPDES permit once in a newspaper of general circulation in the county in which the coal mining and reclamation operation is located or is proposed to be located (R.C. 1513.56(C)). Under the bill, the failure of the Chief to provide notice of a public meeting will invalidate a NPDES permit only if the failure is raised by, and was relied upon to the detriment of, a person who is entitled to appeal the NPDES permit. The bill declares that notice of a public meeting is not required for the modification of a NPDES permit made with the consent of the permittee for the correction of typographical errors. (R.C. 1513.56(D).)

The Chief must deny an application for a NPDES permit if any of the following applies:

- (1) The application contains misleading or false information;
- (2) The Administrator of the USEPA objects in writing to the issuance of the NPDES permit in accordance with the Federal Water Pollution Control Act; or
- (3) The Chief determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with the Federal Water Pollution Control Act. (R.C. 1513.55(E).)

Additional grounds for the denial of a NPDES permit are to be those established in rules (R.C. 1513.55(E)).

The denial, modification, suspension, or revocation of a NPDES permit without the consent of the applicant or permittee must be preceded by a proposed action stating the Chief's intention to issue an order with respect to the NPDES permit and the reasons for it (R.C. 1513.56(E)) (see also "*Permit modification, suspension, or revocation*," below). The Chief must mail to the applicant or the permittee notice of the Chief's proposed action to deny, suspend, or revoke a NPDES permit. The Chief also must provide notice in the same manner in which notice is provided for the issuance of a draft permit (see above). (R.C. 1513.56(F).)

The Chief cannot issue an order that makes the proposed action final until the applicant or permittee has had an opportunity for an adjudication hearing in accordance with the Administrative Procedure Act, except that certain provisions of that Act dealing with the appeals of persons adversely affected by an administrative order do not apply (R.C. 1513.56(G)). Appeals of actions of the Chief regarding NPDES permits must be made to the Reclamation Commission (R.C. 1513.55(K)(2)).

A NPDES permit may be issued for a period not to exceed five years and may be renewed. An application for renewal must be submitted to the Chief at least 180 days prior to the expiration date of the NPDES permit and must comply with the requirements governing applications for NPDES permits established under the bill and by rule. (R.C. 1513.55(H) and (I).)

In the case of the transfer of ownership of a coal mining and reclamation operation for which a NPDES permit has been issued, the NPDES permit must be transferred in accordance with rules (R.C. 1513.56(H)). Applications for NPDES permits for the discharge of storm water resulting from a coal mining and reclamation operation that are pending before the Director of Environmental Protection on the date on which the USEPA approves the NPDES program submitted by the Chief must be transferred to the Chief (R.C. 1513.56(I)).

Permit modification, suspension, or revocation

The Chief may modify, suspend, or revoke a NPDES permit issued under the bill for cause as established by rules. No NPDES permit issued under the bill can be modified, suspended, or revoked without a written order stating the findings that led to the modification, suspension, or revocation. In addition, the permittee has a right to an administrative hearing in accordance with the Administrative Procedure Act, except that certain provisions of that Act dealing with the appeals of persons adversely affected by an administrative order do not apply. (R.C. 1513.55(K)(1).)

Prohibitions

The bill prohibits any person from making any false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report required to be submitted to the Chief pursuant to terms and conditions established in a NPDES permit issued under the bill. Additionally, it prohibits anyone from rendering inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued under the bill. (R.C. 1513.55(J).) Finally, the bill prohibits any person from violating any effluent limitation established by rules or violating any other provision of a NPDES permit issued under the bill. Compliance with a NPDES permit issued under the bill constitutes compliance with the bill. (R.C. 1513.55(L).)

Rules governing NPDES permits

The bill requires the Chief to adopt rules in accordance with the Administrative Procedure Act, and consistent with the Federal Water Pollution Control Act, that establish all of the following concerning NPDES permits:

(1) The designation of coal mining and reclamation operations that are subject to NPDES permit requirements. The designation must include only those point sources for which the issuance of NPDES permits is required under the Federal Water Pollution Control Act.

(2) Effluent limitations governing discharges into waters of the state that are authorized by NPDES permits;

(3) Variances from effluent limitations and other NPDES permit requirements to the extent that the variances are consistent with the Federal Water Pollution Control Act;

(4) Terms and conditions to be included in a NPDES permit, including, as applicable, best management practices, installation of discharge or water quality monitoring methods or equipment, creation and retention of records, submission of

periodic reports, schedules of compliance, and authorized duration and frequency of any discharges into waters of the state;

(5) Procedures for the submission of applications for NPDES permits and notices of intent to be covered by general NPDES permits, including information that must be included in the applications and notices;

(6) The amount of the fee that must be submitted with an application for a NPDES permit;

(7) Procedures for processing NPDES permit applications, including public notice and participation requirements;

(8) Procedures for notifying the USEPA of the submission of NPDES permit applications, the Chief's action on those applications, and any other reasonable and relevant information;

(9) Procedures for notifying and receiving and responding to recommendations from other states whose waters may be affected by the issuance of a NPDES permit;

(10) Procedures for the transfer of NPDES permits to new operators;

(11) Grounds and procedures for the issuance, denial, modification, suspension, or revocation of NPDES permits, including general NPDES permits; and

(12) A definition of "general NPDES permit" that establishes categories of sources to be covered under such a permit and a definition of "individual NPDES permit" together with the criteria for issuing a general NPDES permit and the criteria for determining a person's eligibility to discharge under a general NPDES permit. (R.C. 1513.57(D).)

The bill also requires the Chief to adopt rules that establish public notice and participation requirements, in addition to those established in other rules as discussed above, for the issuance, denial, modification, transfer, suspension, and revocation of NPDES permits, including a definition of what constitutes significant public interest for the purposes of holding public meetings under the bill and procedures for those meetings. The rules must require that information that is presented at such a public meeting be limited to the criteria that are applicable to the NPDES permit application that is the subject of the meeting. (R.C. 1513.57(E).)

Enforcement and procedural rules governing certifications and permits

The bill requires the Chief to adopt rules in accordance with the Administrative Procedure Act addressing issues applicable to section 401 water quality certifications, permits to install, and NPDES permits. First, the bill requires the Chief to adopt rules establishing civil penalties for violations of the bill's provisions governing those certifications and permits (R.C. 1513.57(F)). Second, the bill requires the Chief to adopt rules establishing procedures for streamlining and combining procedures for the issuance of section 401 water quality certifications, permits to install, and NPDES permits when appropriate (R.C. 1513.57(G)). Finally, the Chief is required to adopt rules establishing any other procedures or requirements that the Chief determines necessary to implement the bill's provisions governing section 401 water quality certifications, permits to install, and NPDES permits (R.C. 1513.57(H)).

Enforcement

The bill establishes procedures for the enforcement of its requirements with respect to the section 401 water quality certification, permit to install, and NPDES permit programs. Under the bill, the Attorney General, upon the request of the Chief of the Division of Mineral Resources Management, must prosecute to termination or bring an action for injunction against any person who has violated, is violating, or is threatening to violate the bill's provisions governing those certifications or permits, rules, or terms or conditions of a certification, permit, or order of the Chief issued under the bill. The court of common pleas in which an action for injunction is filed has the jurisdiction to and must grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated, is violating, or is threatening to violate any of those provisions, rules, the terms or conditions of a certification or permit, or an order of the Chief. (R.C. 1513.58(A).)

If the Chief determines that any person has violated or is violating those provisions, a rule, or a term or condition of a certification, permit, or order of the Chief, the Chief may request in writing that the Attorney General bring an action for civil penalties in a court of competent jurisdiction. The court may impose on the person a civil penalty in an amount established in rules (see above) for each day of each violation. (R.C. 1513.58(B).)

Money resulting from civil penalties imposed as a result of an enforcement action brought under the bill must be deposited in the state treasury to the credit of the Coal Mining Administration and Reclamation Reserve Fund created in current law (see "**Coal Mining Administration and Reclamation Reserve Fund**," below) (R.C. 1513.58(C)). That Fund is generally used for the purpose of administering and enforcing the Coal Mining and Reclamation Law.

The enforcement procedures and requirements established in the bill apply to the enforcement of the bill's provisions governing section 401 water quality certifications, permits to install, and NPDES permits. No other enforcement procedures and requirements established in the Coal Mining and Reclamation Law apply to violations of those provisions, applicable rules, terms or conditions of those certifications or permits, or an order of the Chief issued under those provisions. (R.C. 1513.58(D).)

Criminal penalties

The bill provides that any person that modifies or constructs a new disposal system at a coal mining and reclamation operation without a permit to install issued by the Chief is guilty of a third degree misdemeanor on a first offense, a second degree misdemeanor on the second offense, and a first degree misdemeanor on the third or subsequent offense. Each ten-day period that an offense continues constitutes a separate offense. (R.C. 1513.99(D).)

The bill also provides that whoever violates the terms and conditions of a permit to install or the provisions of a NPDES permit issued under the bill must be fined not more than \$25,000. The bill declares that each day of violation constitutes a separate offense. (R.C. 1513.99(E).)

Finally, the bill provides that whoever violates the bill's prohibition against making a false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report concerning a NPDES permit or against rendering inaccurate any required monitoring method or device (see above) must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (R.C. 1513.99(F).)

Use of fees for certifications and permits

The bill specifies that all money from fees associated with section 401 water quality certifications, permits to install, or NPDES permits issued under the bill must be deposited in the state treasury to the credit of the Coal Mining Administration and Reclamation Reserve Fund created under current law (see below) (R.C. 1513.59).

Conforming changes in environmental and mining statutes

In order to effect the transfer of the authority to issue section 401 water quality certifications, permits to install, and NPDES permits from the Director of Environmental Protection to the Chief of the Division of Mineral Resources Management, the bill amends various statutes in the Water Pollution Control Law and the Coal Mining and Reclamation Law. Those amendments generally exempt

coal mining and reclamation operations from the laws administered by the Director of Environmental Protection governing section 401 water quality certifications, permits to install, and NPDES permits. The bill then clarifies in the laws administered by the Director and the Chief that those certifications and permits are required to be issued to coal mining and reclamation operations by the Chief. (R.C. 1513.02, 1513.07, 3745.114, 6111.03, 6111.035, 6111.04, 6111.30, and 6111.44.)

Change in general section 401 water quality certification statute

Under the provisions of the Water Pollution Control Law governing section 401 water quality certifications that will continue to be administered by the Director of Environmental Protection, the bill effectuates one additional change. That Law currently requires applications for section 401 water quality certifications to include certain information. One such item of information is a use attainability analysis if a project involves a stream for which a specific aquatic life use designation has not been made. The bill eliminates the requirement to submit the use attainability analysis. (R.C. 6111.30(A)(3).)

Coal mining and reclamation operation permits

Current law establishes requirements and procedures for the issuance of coal mining and reclamation operation permits. Those requirements and procedures include the process by which the Chief of the Division of Mineral Resources Management must approve or deny a permit. Under current law, the time frame for approving or disapproving a coal mining and reclamation permit applies only when the Chief receives a complete application. At that point the Chief must grant, require modification of, or deny the permit application in a reasonable time set by the Chief. The bill provides that a submitted application is deemed complete as submitted to the Chief unless the Chief, within 14 days of the submission, identifies deficiencies in the application in writing and subsequently submits a copy of a written list of deficiencies to the applicant. It also requires the Chief to grant or deny the permit application in accordance with the time frames established by the bill (see below) and eliminates the authority for the Chief to require modification of an application. (R.C. 1513.07(E)(1).)

Current law authorizes certain persons that may be affected by the issuance of a coal mining and reclamation permit or certain government officials to request an informal conference concerning the permit (R.C. 1513.071, not in the bill). Under current law, if an informal conference has been held, the Chief must issue and furnish the permit applicant, persons who participated in the informal conference, and persons who filed written objections to the permit application with the Chief's written finding granting or denying the permit in whole or in part and stating the Chief's reasons within 60 days of the conference. The bill instead

requires the Chief to grant or deny the permit within 14 days of the conference and not later than 180 days after the submission of a complete application. The bill then declares that if the Chief fails to grant or deny the application not later than 180 days after a complete application was submitted, the application is deemed to be approved unless the Chief's failure to grant or deny the application was caused by the applicant's failure to supply information to the Chief as required by the Coal Mining and Reclamation Law. (R.C. 1513.07(I)(1).)

Current law provides that if no informal conference is held, the Chief must notify the applicant for a permit whether the permit will be issued or denied within a reasonable time as provided by rules adopted by the Chief. In determining what is a reasonable time, the Chief must take into account the time needed for proper investigation of the site, the complexity of the permit application, whether or not a written objection to the application has been filed, and whether the application has been approved or disapproved in whole or in part.

The bill instead provides that if there is no informal conference, the Chief must submit to the applicant for a permit the Chief's written finding granting or denying the permit in whole or in part as soon as possible, but not later than 180 days after the applicant's submission of a complete application. If the Chief fails to grant or deny the application not later than 180 days after a complete application was submitted, the application is deemed to be approved unless the Chief's failure to grant or deny the application was caused by the applicant's failure to supply information to the Chief as required by the Coal Mining and Reclamation Law. (R.C. 1513.07(I)(2).)

The bill also requires a decision of the Chief denying a permit to state in writing the specific reasons for the denial. After the denial and if the applicant has amended the application and resubmitted it to the Chief, the Chief must grant or deny the amended application not later than 30 days after the application is resubmitted. If the Chief fails to grant or deny the resubmitted application not later than 30 days after it is resubmitted, the application is deemed to be approved unless the Chief's failure to grant or deny the application was caused by the applicant's failure to supply information to the Chief as required by the Coal Mining and Reclamation Law. (R.C. 1513.07(E)(1).)

Current law precludes a permit application or application for revision of an existing permit from being approved unless the application affirmatively demonstrates and the Chief finds in writing that specified statutory requirements governing the application and the operation have been met. The bill instead requires such an application to be approved if the application affirmatively demonstrates and the Chief finds in writing that those requirements have been met. (R.C. 1513.07(E)(2).)

Independent contractors for review of applications; staff overtime

The bill requires the Chief, when necessary to meet the mandatory deadlines for granting or denying an application for a permit under the bill, to approve staff overtime and, if necessary, enter into contracts with persons having the requisite experience to assist with the review of permit applications. With respect to a permit application, persons with whom the Chief contracts cannot have been employed by the permit applicant for a period of 180 days prior to the time when the complete permit application was submitted. Such persons cannot be employed by the permit applicant during the permit application process. (R.C. 1513.07(I)(2).)

Coal Mining Administration and Reclamation Reserve Fund; coal severance tax

Current law creates the Coal Mining Administration and Reclamation Reserve Fund. The Fund is generally required to be used for the administration and enforcement of the Coal Mining and Reclamation Law. The bill requires that money in the Fund also be used to hire additional full-time technical review staff for the purpose of meeting mandatory deadlines established by the bill for granting or denying coal mining and reclamation operation permits. Under the bill, if the Chief determines it to be necessary, the Chief may request the General Assembly to increase the coal severance tax that is levied under current law by up to 4¢ per ton if the Chief determines that additional funding is necessary to ensure compliance with those mandatory deadlines. Any money derived from an increase in the coal severance tax that is so requested by the Chief must be used only to hire additional full-time technical review staff for the purpose of meeting those mandatory deadlines. (R.C. 1513.181(B).)

Beneficial use of coal combustion byproducts

Current law requires the Chief of the Division of Mineral Resources Management to regulate the beneficial use of coal combustion byproducts at coal mining and reclamation operations and abandoned mine lands. Current law then declares that the beneficial use of coal combustion byproducts is not subject to specified statutes, including provisions governing permits to install for and plan approval of disposal systems under the Water Pollution Control Law. The bill instead declares that the beneficial use of coal combustion byproducts is not subject to the Water Pollution Control Law in its entirety.⁴ (R.C. 1513.02(A)(7).)

⁴ The Water Pollution Control Law includes provisions governing National Pollutant Discharge Elimination Permits and section 401 water quality certifications.

HISTORY

ACTION	DATE
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Reported, S. Environment & Natural Resources	12-10-08
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