



Ohio Legislative Service Commission

Final Analysis

Eric Vendel

Am. Sub. H.B. 163 129th General Assembly (As Passed by the General Assembly)

- Reps.** Balderson, Carey, Derickson, Boose, J. Adams, Blessing, Combs, Hackett, Stebelton, Buchy, Amstutz, Anielski, Barnes, Beck, Blair, Bubb, Burke, Dovilla, Gardner, Garland, Gerberry, Grossman, C. Hagan, Hayes, Hottinger, Letson, Lundy, Maag, Mallory, Martin, McClain, Mecklenborg, Newbold, Peterson, Roegner, Ruhl, Slaby, Stautberg, Szollosi, Thompson, Uecker, Wachtmann
- Sens.** Schaffer, Brown, Coley, Daniels, Hite, Hughes, Jordan, Lehner, Manning, Niehaus, Oelslager, Sawyer, Schiavoni, Seitz, Stewart, Tavares, Turner, Wagoner, Widener, Wilson

Effective date: September 30, 2011

ACT SUMMARY

- Requires an applicant for a coal mining operation permit, when the private mineral estate has been severed, to submit either the surface owner's written consent or a conveyance only if surface disturbance will result from the applicant's proposed use of strip mining.
- Requires that the written consent be to surface disturbance that will result from the extraction of coal instead of to the extraction of coal.
- Requires that the conveyance grant the right to extract coal by strip mining methods that cause surface disturbance rather than the right to use strip mining.
- Requires that if the conveyance does not grant that right, the surface-subsurface legal relationship concerning surface disturbance be determined under state law.
- Requires specified set-backs for coal mining operations to be measured horizontally.
- Alters the calculation for determining whether an area has the potential to create acid or other toxic mine drainage.
- Authorizes a permittee to provide for the funding of alternative financial security, as necessary to provide long-term water treatment or alternative water supply as

required in law unchanged by the act, incrementally over a period of time, not exceeding five years, regardless of how the security is funded.

- Requires a permittee semiannually to pay to the Division a fee that is 7.5% of the average balance of the alternative financial security if the security is being provided by reliance on the Reclamation Forfeiture Fund.
- Authorizes the Chief to use money from alternative financial security as discussed above to complete reclamation that the operator failed to do.
- Adds reclamation of water resources to the detailed accounting of expenditures from the Reclamation Forfeiture Fund that the Chief must maintain under law unchanged by the act.
- Authorizes the Chief to collect through the Attorney General any additional amount applicable to water resources that the Chief believes will be necessary for reclamation in excess of the amount of the forfeited alternative financial security.
- States that the Division of Mineral Resources Management has a priority lien against the assets of a permittee if the permittee fails to provide alternative financial security.
- Authorizes the Chief of the Division of Mineral Resources Management to enter into a contract to provide long-term water treatment or alternative water supply on areas affected by coal mining on which a permittee has defaulted or not fully funded the alternative financial security.
- Requires the Chief to use money in the Reclamation Forfeiture Fund to pay for the cost to complete reclamation to the standards established by the Coal Mining Law and rules adopted under it rather than the cost of the reclamation of the land as in former law.
- Revises the purposes for which money in the Mined Land Set Aside Fund may be used.

CONTENT AND OPERATION

Permit application

Under continuing law, the Chief of the Division of Mineral Resources Management in the Department of Natural Resources cannot approve a coal mining operation permit application or an application for revision of an existing permit unless the application demonstrates specified information and factors. One of those

demonstrations addresses cases where the private mineral estate has been severed from the private surface estate. In such a case, under law revised in part by the act, the applicant must submit to the Chief either the written consent of the surface owner to the extraction of coal by strip mining or a conveyance that expressly grants or reserves the right to extract the coal by strip mining methods.¹

The act instead applies the requirement only to cases where the private mineral estate has been so severed and surface disturbance will result from the applicant's proposed use of a strip mining method.² It then requires the applicant to submit either the written consent of the surface owner to the surface disturbance that will result from the extraction of coal, rather than to the extraction of coal by strip mining, or a conveyance that expressly grants or reserves the right to extract the coal by strip mining methods that cause surface disturbance.³

Law retained in part by the act also states that if the above conveyance does not expressly grant the right to extract coal by strip mining methods, the surface-subsurface legal relationship must be determined under state law. The act instead states that the surface-subsurface legal relationship concerning surface disturbance must be so determined.

Set-back requirements

Continuing law generally prohibits coal mining operations, except those that existed on August 3, 1977, from being within 100 feet of the outside right-of-way line of any public road, within 300 feet from any occupied dwelling, within 300 feet of any public building, school, church, community, institutional building, or public park, or within 100 feet of a cemetery. The act specifies that those distances must be measured horizontally.⁴

Acid or other toxic mine drainage calculation

Under the act, a proposed permit area for a coal mining operation may not be considered to have the potential to create acid or other toxic mine drainage if the numeral that indicates the neutralization potential subtracted from the numeral that indicates the potential acidity results in a remainder that is equal to or less than

¹ R.C. 1513.07(E)(2)(e)(i) and (ii).

² R.C. 1513.07(E)(2)(e).

³ R.C. 1513.07(E)(2)(e)(i) and (ii).

⁴ R.C. 1513.073(D)(4) and (5).

negative ten. Former law stated instead that the remainder had to be equal to or less than either of the following:

(1) Negative five in the case that the total sulfur content of rock strata was used to calculate potential acidity; or

(2) Negative ten in the case that the pyritic sulfur content of rock strata was used to calculate potential acidity.⁵

Alternative financial security

Background

Under ongoing law, the Chief of the Division of Mineral Resources Management may determine that a permittee is responsible for mine drainage that requires water treatment or that the permittee must provide an alternative water supply after reclamation is completed. If the Chief makes that determination, the permittee must provide alternative financial security in an amount determined by the Chief prior to the release of the remaining portion of the performance security provided for reclamation. The alternative financial security must include a contract, trust, or other agreement or mechanism that is enforceable under law to provide long-term water treatment or a long-term alternative water supply or both.

Funding

The act states that the contract, trust, or other agreement or mechanism included with the alternative financial security may provide for the funding of the alternative financial security incrementally over a period of time, not to exceed five years, with reliance on guarantees or other collateral provided by the permittee and approved by the Chief for the balance of the alternative financial security until it has been fully funded by the permittee.⁶

Reliance on Reclamation Forfeiture Fund

Under the act, if the Chief determines that a permittee must provide alternative financial security as discussed above and the performance security for the permit was provided in part with reliance on the Reclamation Forfeiture Fund as provided in continuing law, the permittee may fund the alternative financial security incrementally over a period of time, not to exceed five years, with reliance on the Fund for the balance of the alternative financial security until it has been fully funded by the permittee. The

⁵ R.C. 1513.075(E).

⁶ R.C. 1513.16(F)(8)(c).

permittee semiannually must pay to the Division of Mineral Resources Management a fee that is equal to 7.5% of the average balance of the alternative financial security that is being provided by reliance on the Reclamation Forfeiture Fund over the previous six months. All money received from the fee must be credited to the Fund.⁷

Stay of requirement

Additionally, the act removes a provision in former law under which the Chief's determination of the need for alternative financial security did not apply while the Chief's determination was the subject of a good faith administrative or judicial appeal contesting the validity of the determination. If after completion of the appeal there was an enforceable administrative or judicial decision affirming or modifying the Chief's determination, the permittee was required to provide the alternative financial security in an amount established in the decision.⁸

Use

The act incorporates the use of alternative financial security for its specified purposes in the statutes governing expenditures by the Chief to complete reclamation using performance security, the Reclamation Forfeiture Fund, or both.⁹

Detailed accounting of expenditures; collection of additional money

Continuing law requires the Chief to keep a detailed accounting of the expenditures from the Reclamation Forfeiture Fund to complete reclamation of land. The Chief may collect through the Attorney General additional amounts that are needed for reclamation in excess of forfeited performance security. The act adds reclamation of water resources to those provisions and includes forfeited alternative performance security.¹⁰

Lien

The act states that the Division has a priority lien in front of all other interested creditors against the assets of the permittee if an alternative financial security to provide long-term water treatment or a long-term alternative water supply, or both, is not provided. The Chief must file a statement in the office of the county recorder of each county in which the mined land lies of the cost to provide long-term water treatment or

⁷ R.C. 1513.16(F)(8)(c) and 1513.18(B).

⁸ R.C. 1513.16(F)(8)(c).

⁹ R.C. 1513.18(D).

¹⁰ R.C. 1513.18(E).

a long-term alternative water supply, or both, if applicable. The Chief promptly must issue a certificate of release of a lien upon the repayment in full of the money that is necessary to develop and implement mine drainage plans or provide alternative financial security for water treatment or to provide and maintain an alternative water supply.¹¹

Contracts

The act authorizes the Chief with the approval of the Director of Natural Resources to enter into a contract, without advertising for bids, with a contractor hired by the trust administrator of an alternative financial security to provide long-term water treatment or a long-term alternative water supply on areas affected by coal mining on which a permittee has defaulted or not fully funded an alternative financial security.¹²

Reclamation Forfeiture Fund

The act authorizes the Chief to use money in the Reclamation Forfeiture Fund from the forfeiture of performance securities to pay for the cost of completing reclamation to the standards established by the Coal Surface Mining Law and rules adopted under it. Under former law, the Chief was required to use such money to pay for the cost of reclamation of the applicable land.¹³

Mined Land Set Aside Fund

The act revises the purposes for which the Mined Land Set Aside Fund must be used. It authorizes it to be used for the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation facilities, and conservation facilities adversely affected by coal mining practices. Under the act, the Fund also may be used for the development of publicly owned land adversely affected by mining practices. Finally, the act eliminates authority for the Fund to be used for research and development projects relating to the development of coal mining reclamation and water quality control program methods and techniques.¹⁴

¹¹ R.C. 1513.081(A) and (B).

¹² R.C. 1513.18(C).

¹³ R.C. 1513.18(D).

¹⁴ R.C. 1513.371 (by reference to R.C. 1513.37, not in the act).

HISTORY

ACTION	DATE
Introduced	03-16-11
Reported, H. Agriculture & Natural Resources	05-26-11
Passed House (98-0)	06-08-11
Reported, S. Agriculture, Environment, and Natural Resources	06-21-11
Passed Senate (33-0)	06-21-11

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