

Chapter 3

Surface Mine Permits

Background

The State of Ohio requires each surface mining operation to operate under the Ohio Surface Mine Law. The Ohio Surface Mine Law was passed in 1975 to govern industrial mine sites and was modified by the passage of Senate Bill 83 (SB 83), which became law on March 15, 2002. The law is further identified as Section 1514 of the Ohio Revised Code and can be found at

<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>. The law was created to:

- Govern the extraction of minerals from the surface of the land.
- Require a performance bond from the operator for the insurance of reclamation.
- Require reclamation practices consistent with the requirements of ORC 1514.
- Provide a mechanism for the resolution of disagreements between landowners, government officials and the mining operator.

As part of the law each site is required to obtain a Surface Mining Permit. These permits are administered by:

The Ohio Department of Natural Resources
Division of Mineral Resources Management
1855 Fountain Square, Building H-2
Columbus, Ohio 43224

You can contact the permitting division at (614) 265-6633

The following is a general guideline to the requirements of the Division of Mineral Resources Management for the purposes of obtaining a permit and operating a surface mining operation in the State of Ohio.

Surface Mining

Section 1514.01(a) offers a lengthy definition of surface mining activity. Surface mining as partly defined by ORC 1514 means “all of any part of a process followed in the production of minerals from the earth or from the surface of the land by 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 quality of mineral deposits.”

Not currently included under the definition, and therefore not needing a permit are those activities related to:

1. Test or exploration boring.
2. Mining operations carried out beneath the surface by means of shafts, tunnels, or similar mine openings.
3. Excavating materials used on the same tract of land for noncommercial use.

4. Excavating materials from borrow pits for highway construction, provided that the excavation is performed under bond and require reclamation consistent with ORC 1514.
5. Excavating materials incidental to construction where a building permit has been issued.
6. Excavating materials less than 5 feet deep and at a rate of less than 1.0 acre/year.
7. Routine dredging of a watercourse for the purposes of navigational or flood control.
8. Excavation or movement of soil and/or minerals in a solid waste facility.

Exemptions to In-Stream Mining permits

No person shall engage in in-stream mining or conduct an in-stream mining operation without an in-stream mining permit issued by the chief. However, a person who, on the effective date of this amendment, holds a valid permit to conduct in-stream mining that is issued under section 10 of the “Rivers and Harbors Appropriation Act of 1899,” 30 Stat. 1151, 33 U.S.C. 403, as amended, shall not be required to obtain an in-stream mining permit from the chief under this section until the existing permit expires.

Surface Mine and In-Stream Mining Permits

As stated above, each operator is required to obtain a Surface Mine Permit or In-Stream Mining Permit from the Division of Mineral Resources Management before beginning operation. Existing permits are exempt from some of the provisions in regard to zoning compliance, in-stream and near-stream mining and groundwater modeling. Some new provisions under SB 83 for new permits or amendments require notification of the county engineer regarding streets and roads under the county engineer jurisdiction, groundwater modeling for operations that have the potential to dewater and public notification if amendment or changes in the permit are deemed significant.

To obtain a Surface Mine Permit, an operator must submit the following items to the Division:

The multi-page application: see Section 1514.02(A) for details. The application includes in part a list of officers, minerals to be extracted, annual production, description of location, number of acres affected, surface ownership, list of similar permits held and, any permits forfeited by the company.

Name of each county, township or municipal corporation that has zoning that would affect the operation. In addition, a statement by the company explaining how the operation intends to comply with any applicable zoning resolutions. If no zoning is in effect, a statement to that effect.

Reclamation plan shall include a statement of intended future use, sequence and approximate timing of mining and reclamation measures. In addition, measures the operator will perform to prevent damage to adjoining property owners and achieve general

performance standards for mining and reclamation. Reclamation standards shall insure grading, re-soiling, vegetation, drainage control, and contamination prevention and insure groundwater quality and quantity.

If the operator intends to mine less than 10,000 tons of material per year and no incidental coal (except an applicant for an in-stream mining permit), the map does not need to be prepared by a registered engineer or surveyor. Instead, the operator can submit a notarized copy of a current tax map and a copy of the 7.5 minute U.S.G.S. map showing the operator's location and area affected. All other permit requirements remain the same.

A map prepared by a registered professional engineer or registered surveyor. The exact requirements of the map are given in Chapter 1514.02(A)(12) and in section 1501:14-1-11, 1501:14-1-12 and 1501:14-1-13 of the Ohio Administrative Code. It is recommended that the entire property be permitted to the property lines thus enabling an operator to mine within setbacks anywhere on the property without amending the permit. All properties, which are contiguous, can be included in one permit even if those properties are separated by a road or stream. If the entire property is permitted without the 50-foot consents, then the map should include a notation stating that consents will be obtained before the 50-foot strips are mined.

A copy of the lease, deed or other instrument allowing the operator entry and operation on premises not owned by the operator.

Geological Data Report showing the results of test borings that have been conducted on the area, or that are readily available. Information to be included in the report includes the nature and depth of overburden and the thickness and extent of each mineral to be mined. For operations located in coal regions, materials to be spoiled have to be tested for acidity; see Rules 1501:13-01(B). All information is to be kept confidential with the exception of legal action to determine validity of the information.

Certificate of Insurance showing public liability insurance for property damage and for bodily injury in the minimum amounts of \$100,000 for the bodily injury and \$300,000 for all damages because of bodily injury for any one occurrence. In addition \$100,000 for all claims arising from damage to property with an aggregate of \$300,000 for all property damage to which the policy applies for any one occurrence.

Any application that may result in dewatering must include a compilation of data as prescribed by the chief in order to conduct groundwater modeling.

Include a statement by the applicant that the applicant has communicated with the county engineer in regard to any streets or roadways that will be utilized by vehicles entering or exiting the operation.

Cross-sections showing existing topography and proposed limits of

excavation or quarrying. The depth shown in the cross sections must agree with the depth shown in the Geological Data Report. No permit or application will be approved if the chief finds that reclamation will not be performed in full compliance with ORC 1514 or that the measures set forth are inadequate to prevent damage to adjoining property owners. If the chief denies the permit, the chief shall state the reasons for denial.

In-Stream Mining Permit applications must include a hydraulic evaluation of the watercourse prepared by a professional engineer, in addition to the information requested in a standard Surface Mine Permit Application. This evaluation must include the information requested in 1514.02(A)(18).

Operators wishing to engage in in-stream mining from a stream having a drainage area greater than 100 acres must apply for an In-Stream Mining Permit. Those operators currently holding a permit from the U.S. Army Corps of Engineers for in-stream mining are not required to obtain an In-Stream Mining Permit under Chapter 1514 until their existing Army Corps Permit expires. In-Stream Mining Permits are issued for 2 years with annual reports and maps submitted within 30 days of the anniversary date of the permit issuance. See 1514.03 for additional requirements to be included in the annual reports.

Upon approval of the application, an invoice is sent to the operator for any fees and Reclamation Bond due for those acres that will be affected by mining activity. Each surface mining permit shall be for a period of 15 years from the date of issuance with a fee of \$500 for filing. Annual reports and maps need to be submitted within 30 days of the anniversary date of the permit issuance.

Annual Reports

All Surface Mine Permits are issued for 15 years and In-Stream Mining Permits are issued for 2 years. Within 30 days after each anniversary date of the issuance of a permit an operator must submit an annual report to the appropriate District Office of the Division of Mineral Resources Management. These reports, printed on pink forms, require information on the acres affected, acres proposed to be reclaimed and tons of product produced during the 12-month period between the anniversary dates of the permits. Attached to the forms, the operator must include an annual map showing the area affected during the previous year, the total area affected during the life of the permit, outlined in orange, and the area proposed to be affected during the next permit year, outlined in dashed red lines. An annual map is not required if no additional acres are affected beyond those shown on previous annual maps. If the operator has done any reclamation such as grading or re-vegetating, the reclaimed areas should be shown on the annual map, outlined in a solid red line, cross-hatched with purple cross-hatches for grading and green cross-hatches for re-vegetating. The annual maps require certification by the operator or his authorized representative. It is not necessary for an engineer or surveyor to sign the map.

If the proposed future land use for a sand and gravel pit or a quarry is a lake, then when a lake has been dug, in the case of a gravel pit, or the bottom of the quarry has been reached, the operator can show these areas as reclaimed. The Division will not release a 50-foot strip next to the lake bank or next to the quarry high wall, unless the lake bank or area above the quarry high wall has first been reclaimed. Care should be taken in showing lakes and quarries as reclaimed.

If at a later date the reclaimed lake or quarry is affected by going deeper the Division will again charge the \$75 acreage fee.

Annual Report Fees

When the Division approves the annual map the operator will be invoiced an annual filing fee of \$500. For a small operator or a mining permit extracting less than 10,000 tons per year, the annual fee is \$250. Additionally, an acreage fee of \$75/acre is assessed for each additional acre affected, or proposed to be affected. This fee is billed only once for an individual acre unless the operator reclaims an acre and then re-affects the land at a later date. A Reclamation Bond of \$1,000/acre is assessed for each additional acre affected or proposed to be affected. The annual filing fee for In-Stream Permits is \$250.

Permit Renewal

At least 90 days before the expiration of a permit the operator must submit a Notice of Intent to Renew to the Division. The filing fee for this notice is \$1,000. The fee for the renewal of an In-Stream Mining Permit is \$500. The Division will then notify the operator to submit the renewal package. This package includes a multi-page application, which is intended to update the original application. In addition, an annual renewal map must be submitted that is certified by a professional engineer or land surveyor. An annual report will also be submitted. This package must be submitted within 60 days of notification from the chief that the Intent to Renew form and fees has been received.

The chief shall approve the permit unless the operation is not in substantial or material compliance with this chapter, rules adopted and orders issued under the permit or mining and reclamation plan under the existing permit or renewal. In addition, the renewal may not be approved if the operator has not provided evidence of a performance bond to cover lands affected.

Within 60 days of receiving the information the chief shall approve the permit, deny the application or notify the applicant that the time has been extended. If the operator neglects or forgets to submit the renewal application operations must cease on the expiration date of the original permit. However, if the operator submits the information within 30 days of the expiration of the permit operations can again commence once the renewal has been approved for another 15 years. If the operator does not submit the information required by the chief a final map and report are required within 30 days of the prescribed period.

If the permit is denied the operator can appeal the decision to the Reclamation Commission. The decision of the Commission can then be appealed to the Court of

Appeals. The operator can continue to operate until the Commission and the Court of Appeals confirm the decision of the chief.

Final Reports

Within 30 days of completion or abandonment of an operation a final report must be submitted, in lieu of an annual report, showing the same information as the annual report. A final map must be submitted showing all acres affected during the life of the permit. An engineer or surveyor must certify this map.

There is no filing fee associated with a final report but acreage fees and bond are assessed at \$75/acre and \$1,000/acre respectively unless excess fees and/or bonds have been paid in which case funds are released.

A mining operation can be declared abandoned by the Division if less than 250 tons have been produced for a year. If declared abandoned the operator has 30 days to submit evidence to the Division that an area has not been abandoned. When an area is abandoned it must be completely reclaimed within 3 years.

Amendment Application

An amendment application may be filed for either increasing the amount of land that is contiguous to the existing permit or for amending the mining and reclamation plan. In the case of the filing to increase the permit size, a 3-page form and map will need to be submitted to the mine inspector. Upon approval additional fees and bond will need to be submitted. The map must include the new areas to be affected and be certified by a professional engineer or surveyor. As stated in the zoning section, if the amendment is deemed significant the chief may, at his discretion, display the document for public comment from various governmental agencies and the public at large. Additional attachments include an Engineer Communication Letter, a sworn zoning statement, and possible advertisements for significant amendments.

An operator may also change various measures in the reclamation and mining plan. These measures may include the sequence in which mining and reclamation will occur, mining previous acreage that had been reclaimed, or modifying the reclamation measures. Again, if the chief determines these to be significant these measures may be open to public comment.

The chief may propose additional amendments within 90 days of the fifth anniversary of the date of issuance of the Surface Mining Permit or 90 days within the first anniversary of the In-Stream Mining Permit. These may be due to an alternate method that more economically meets the performance standards, a development in reclamation technology, changes in the future use of adjoining land that requires changes in the land affected to prevent possible damage to adjoining properties, or changes in the use of adjoining properties.

The amendment map may be combined with an annual map to save preparation and review time. There is a \$500 filing fee for this application.

Zoning

The ODNR considers zoning for two items: the application and the determination of whether or not amendments or modifications are significant. In the application, the applicant needs to name the county, township or municipal entity that governs zoning. If no zoning exists the applicant needs to state that as well. In addition, the application requires a statement attesting to how the applicant intends to comply with applicable zoning or ordinances.

If no zoning has been adopted or the application is determined to be significant the chief shall take the following actions:

Provide written notice to governmental agencies. The agencies shall provide comment within 30 days of the date that the chief sends written notice.

If requested by a governmental agency, the chief may hold an informal conference within 35 days of the date on which the governmental agency receives the written notice from the chief. For governmental agencies, the comments or objections shall be filed no later than the chief specified in the notice. The chief may, at his discretion, adopt comments after that date if those comments are deemed to be in the interest of the public.

New applicants and/or significant amendment applications must publish an advertisement in a newspaper of general circulation once a week for 4 consecutive weeks. All comments from interested parties shall be received within 30 days of the last publication of the notice.

These provisions will not be applicable if zoning has been adopted for the area in which the site is in operation or is proposed to be in operation. In addition, the operation must have obtained a variance or conditional use certificate within 365 days prior to the submission of an application. This time should also allow for the opportunity for public comment and mining to occur.

Setbacks

ODNR has set up the following setbacks for mineral extraction adjacent to property owners and roadways:

An operator cannot mine within 50 feet of an adjoining property line or within 50 feet of a road right-of-way without obtaining consent from the property owner or the road authority. Overburden can be stored as a berm in the 50-foot strip next to adjoining properties without the consent of the property owners. But, consent must be obtained to store overburden in the 50-foot strip next to road right-of-ways.

An operator cannot mine within 120 feet of the high water mark on each bank of an area designated as wild, scenic, or recreational river. However, other surface mining activities can be conducted up to 75 feet from the high water mark.

An operator cannot mine within 75 feet of the high water mark on each bank that drains a surface area of more than 100 square miles.

An operator cannot mine within 50 feet of the high water mark on each bank that drains a surface are of more than 25 square miles and less than 100 square miles.

A person who has been issued a surface mining permit prior to the effective date of this amendment may continue to operate under that permit and shall not be subject to the prohibitions established in divisions (E) and (F) of Section 1514.10 until the permit is renewed. (The number of square miles of surface area that a watercourse drains shall be determined by consulting the "Gazetteer of Ohio Streams," which is a portion of the Ohio water plan inventory published in 1960 by the DNR water division or its successor, if any.)

In addition, new setbacks have been imposed for rivers and watercourses. Operations are not subject to the new standards until the permit is renewed.

Permit Fees

At the time the Division approves the permit application it will invoice the operator for the following fees:

1. An application fee of \$500 is required. This is a non-refundable fee. For In-Stream Mining Permits the application fee is \$250.
2. The operator is assessed an acreage fee of \$75/acre for each acre proposed to be affected or actually affected. The affected areas will often be less than the entire permitted area. This fee is non-refundable unless the operator does not affect the total number of acres for which the acreage fee was paid. Fees for additional acres not affected will be refunded at the time the final permit is filed.
3. A reclamation bond for Surface Mine Permits is assessed at a rate of \$10,000 plus \$1,000 per acre of land proposed to be affected. In the case of In-Stream Mining Permits, the bond rate is the same and the bond must be filed for the total number of acres of land within the limits of the permit for the entire permit period.

Transferring Permits

If a mining operation is sold the Surface Mine Permit can be transferred in one of 2 ways:

When the new operator retains the name of the operation and the operation is a corporation, a Request to Modify a Mining and Reclamation Plan may be submitted showing the names of the new officers of the corporation. In this case, the Division will retain the bond of the original owner. Additionally, the bond rate of the original permit will remain the same. For example, the bond rate prior to 3/15/02 was \$500/acre. Under transfer method 1 this bond rate remains the same for those acres shown as affected prior to 3/15/02. If the buyer changes the name of the operation the permit is transferred to the buyer with a Request for Transfer of a Surface Mine Permit form. In this case, the buyer must submit the following:

a new bond to substitute for the one on file from the original owner (the original bond is returned to the original owner). The bond for the new owner is charged at a rate of \$1,000/acre for all acres affected under the

permit to date, plus the flat amount of \$10,000.
new leases, if any, and new certificates of insurance.

Detonation of Explosives

A thorough understanding of the blasting regulations is essential before undertaking the detonation of any explosives. Few issues generate as much interest from adjoining property owners. The blasting regulations have changed with the passage of SB 83. The Scaled Distance Formula is no longer being used to determine allowable explosive weights. When they become available, see 1514.12 of the ORC and the new Blasting Rules for a detailed discussion of the new regulations. The principal changes in regard to blasting regulations are the following:

The ground vibrations resulting from the use of explosives shall not exceed the frequency-dependent particle velocity limits listed in the Report of Investigations 8507, Appendix B Alternative Blasting Level Criteria, published by the former U.S. Bureau of Mines (1980).

The air blasts resulting from the use of explosives shall not exceed a level of 133 decibels.

After 7/01/03 all blasting in surface mines was required to be conducted by certified persons who are trained and competent in blasting.

The chief of the Division shall adopt rules establishing requirements and standards governing all aspects of blasting.

Reclamation Requirements

The law requires that an area that has been affected and will not be re-affected must be reclaimed within 3 years after completion of mining on that area. This means re-soiling where the existing soil or rock will not support growth, grading, and re-vegetating with a seeding mixture including grasses, legumes, and annual grasses or grains. See Rules 1501:14-3-08, 1501:14-3-09, and 1501:14-3-10.

When an area has been graded and re-soiled a request can be made in the next annual map or a separate reclamation map in order to release 75% of the bond being held for that area. Then, after the graded area has been reseeded and a thick cover of vegetation has been established for at least two growing seasons, the remaining 25% of the bond can be released. In lieu of a vegetative cover, agricultural crops can be planted to satisfy vegetative requirements if grown for 2 years. Grading and vegetation bond release requests are made on a blue form entitled Request for Approval of Reclamation.

Unconsolidated materials, such as sand and gravel, must be graded to 3:1 (18° slopes) to achieve reclamation requirements. See Rule 1501:14-3-06. On the other hand, steeper slopes will be accepted if they are stabilized and if a thick vegetative cover is achieved.

Consolidated materials, such as limestone, can be left as final high walls with only a few reclamation requirements:

1. The remaining overburden above the high walls must be graded to 3:1 slopes.

2. The high wall must be stabilized. This can be done by several methods such as pre-splitting the final high walls or by scrapping the final wall with a backhoe to knock off loose rock.
3. Access to the top must be restricted in some way to insure public safety.
4. See Rule 1501:14-3-07.

To achieve final reclamation on a lake, the banks of the lake must be stabilized below water table and graded to 3:1 slopes and vegetated about the water table. The Division looks for the Natural Angle of Repose (37E) below the water table. In addition, the 3:1 slope must be extended to a depth of 6 feet below the water table. The lake must be at least 6 feet deep unless the future intended use is designated as a wildlife refuge or a wetland.

Reclamation Bond

The regulations require a bond in the amount of \$500 per acre for each affected acre shown as affected prior to 3/15/02. Acres affected after 3/15/02 and/or proposed affected acres are bonded at a rate of \$1,000/acre. In addition, new permits approved after 3/15/02 are assessed an additional \$10,000. The bond may be in the form of a/n:

1. Surety bond from an insurance company,
2. Certificate of deposit from a bank, assigned to the Division of Mineral Resources Management. The CD will be issued in the name of the operator so the operator retains the interest,
3. Cash bond (this is not recommended in the State of Ohio where the State holds the cash and retains the interest.), or
4. Irrevocable Letter of Credit from a bank.

Reclamation Commission

Any action taken by the Division of Mineral Resources Management can be appealed to the Reclamation Commission. This Commission hears only appeals taken from actions of the Division of Mineral Resources Management. The definition of an action is a term of great legal significance, as it will determine whether or not the Commission has jurisdiction to hear an appeal. Appeals from decisions of the Commission may be taken to the Court of Common Pleas either in the county of the operation or in Franklin County, where the Commission is located.