



Ohio Administrative Code Rule 1501:13-14-02 Enforcement.

Effective: June 28, 2018

(A) Cessation orders.

(1) Imminent danger; significant harm.

(a) An authorized representative of the chief shall immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if he or she finds on the basis of any inspection, any condition or practice, or any violation of Chapter 1513. of the Revised Code or rules adopted thereunder, or any condition of a coal exploration approval or permit or a coal mining and reclamation permit, which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(b) If the cessation ordered under paragraph (A)(1)(a) of this rule will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the chief shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice or violation. The order shall specify the time by which abatement shall be accomplished.

(2) Coal mining operations conducted by any person without a valid permit issued pursuant to these rules constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

(3) Failure to abate violation.



(a) An authorized representative of the chief shall immediately order the cessation of coal exploration or coal mining and reclamation operations, or of the relevant portion thereof, when a notice of violation has been issued under paragraph (B) of this rule and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

(b) A cessation order issued under paragraph (A)(3) of this rule shall require the person to whom it is issued to take all steps the authorized representative of the chief deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the chief shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this rule, and shall issue an order to show cause as appropriate pursuant to paragraph (C) of this rule.

(4) A cessation order issued under paragraph (A)(1) or (A)(3) of this rule shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(a) The nature of the condition, practice, or violation;

(b) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

(c) The time established for abatement, if appropriate, including the time for meeting any interim steps; and

(d) A reasonable description of the portion of the coal exploration or coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until the order is vacated, modified or terminated in writing by an authorized representative of the chief.



- (5) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.
- (6) An authorized representative of the chief may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.
- (7) An authorized representative of the chief shall terminate a cessation order, by written notice to the person to whom the order was issued, when he or she determines that all conditions, practices, or violations listed in the order have been abated. Termination shall not affect the right of the chief to assess civil penalties for those violations under rule 1501:13-14-03 of the Administrative Code.
- (8) Within thirty days after a cessation order is issued, the permittee shall submit to the chief the information required pursuant to paragraph (G)(5) of rule 1501:13-5-01 of the Administrative Code. Within sixty days after issuing a cessation order, the chief shall notify in writing any person who has been identified under paragraph (B)(5) or (B)(7) of rule 1501:13-4-03 or paragraph (G)(5) of rule 1501:13-5-01 of the Administrative Code as owning or controlling the permittee that the cessation order was issued and that the person has been identified as an owner or controller.
- (9) If performance security was provided together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of rule 1501:13-7-01 of the Administrative Code and the chief has issued a cessation order under paragraph (A)(3) of this rule for failure to abate a violation of the contemporaneous reclamation requirement under rule 1501:13-9-13 of the Administrative Code, the chief may require the permittee to increase the amount of performance security for the permit from twenty-five hundred dollars per acre of land to five thousand dollars per acre of land.
- (a) If the cessation order is for failure to abate a violation of the contemporaneous reclamation requirement for backfilling and/or grading and permittee has not abated the violation within thirty days of the issuance of the cessation order, the chief may, in writing, order the permittee to increase, within ten days, the amount of performance security to five thousand dollars per acre of land.
- (b) If the cessation order is for failure to abate a violation of the contemporaneous reclamation requirement for any reason other than backfilling and/or grading and permittee has not abated the



violation within thirty days of the issuance of the cessation order, the chief may determine the amount of performance security increase and may, in writing, order the permittee to increase, within ten days, performance security by the amount specified in the order, not to exceed a total of five thousand dollars per acre of land.

(c) If the chief orders the permittee to increase the amount of performance security under paragraph (A)(9)(a) or (A)(9)(b) of this rule, the chief shall also order the permittee to show cause why the permittee has the ability to comply with the requirements of Chapter 1513. of the Revised Code in accordance with paragraph (B) of rule 1501:13-7-06 of the Administrative Code.

(d) If the chief orders the permittee to increase the amount of performance security under paragraph (A)(9)(a) or (A)(9)(b) of this rule, the increased performance security shall remain in effect for the permit, including all future acreage of the permit, until the chief determines that the amount of performance security may be reduced. When the permittee abates the violation contained in the cessation order that resulted in the increase in performance security, the permittee may request the chief, in writing, to reduce the amount of performance security per acre. The chief shall determine, in writing, whether or not the performance security may be reduced and the amount of performance security reduction, if any, based on the overall site conditions of the permit, the success of the reclamation performed, the permittee's compliance with other enforcement actions, and the outcome of the show cause hearing held pursuant to paragraph (B) of rule 1501:13-7-06 of the Administrative Code or of any show cause hearing requested under paragraph (C) of this rule.

(e) A reduction in the amount of performance security under paragraph (A)(9)(d) of this rule shall not be considered release of performance security and is not subject to division (F) of section 1513.16 of the Revised Code.

(B) Notices of violation.

(1) An authorized representative of the chief shall issue a notice of violation, if, on the basis of an inspection, he or she finds a violation of Chapter 1513. of the Revised Code or rules adopted thereunder or any condition of a permit or an exploration permit, which does not create an imminent danger or harm for which a cessation order must be issued under paragraph (A) of this rule.



(2) A notice of violation issued under this rule shall be in writing, signed by the authorized representative of the chief who issued it, and shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, which may include interim steps;

(c) A reasonable time for abatement, which may include time for accomplishment of interim steps;
and

(d) A reasonable description of the portion of the coal exploration or coal mining and reclamation operation to which it applies.

(3) An authorized representative of the chief may extend the time set for the abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed ninety days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within ninety calendar days due to one or more of the circumstances listed in paragraph (B)(3) of this rule. An extended abatement date pursuant to this rule shall not be granted when the permittee's failure to abate within ninety days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required. Circumstances which may qualify a coal mining operation for an abatement period of more than ninety days are:

(a) When a permittee has applied in a timely manner for, and diligently pursued, a permit renewal or other necessary approval of designs or plans but such renewal or approval has not been issued within ninety days after the permittee's valid permit expires for reasons not within the control of the permittee;

(b) When there is a valid judicial order precluding abatement within ninety days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;



- (c) When the permittee cannot abate within ninety days due to a labor strike;
- (d) When climatic conditions preclude abatement within ninety days or when, due to climatic conditions, abatement within ninety days clearly would cause more environmental harm than it would prevent; or
- (e) When abatement within ninety days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977, 30 U.S.C. 801 to 965, as amended.
- (4) Whenever an abatement time in excess of ninety days is granted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.
- (5) If any of the conditions in paragraph (B)(3) of this rule exist, the permittee may request the authorized representative to grant an abatement period exceeding ninety days. The authorized representative shall not grant or deny such an abatement period without the concurrence of the chief and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of paragraph (B)(3) of this rule. In determining whether or not to grant an abatement period exceeding ninety days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.
- (6) Any determination made under paragraph (B)(5) of this rule shall be in writing and shall contain a right of appeal to the reclamation commission.
- (7) No extension granted under paragraph (B)(5) of this rule may exceed ninety days in length. If the condition or circumstance which prevented abatement within ninety days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (B)(5) of this rule.



(8) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under paragraph (A) of this rule.

(9) An authorized representative of the chief shall terminate a notice of violation by written notice to the person to whom it was issued, when he or she determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the chief to assess civil penalties for those violations under rule 1501:13-14-03 of the Administrative Code.

(C) Show cause orders.

(1) If the chief determines that, for any permit, there exists or has existed a pattern of violations of any requirements of Chapter 1513. of the Revised Code, these rules, or any permit condition, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions, then the chief shall issue an order to the permittee requiring him or her to show cause why his or her permit and right to mine should not be suspended or revoked. Violations by any person conducting coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The chief shall determine that a pattern of violations exists, if he or she finds that there were violations of the same or related requirements of Chapter 1513. of the Revised Code, these rules, or the permit during three or more inspections of the permit area within any twelve-month period.

(3) The chief may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any twelve-month period, after considering the circumstances, including:

(a) The number of violations, cited on more than one occasion, of the same or related requirements of Chapter 1513. of the Revised Code, these rules, or the permit;

(b) The number of violations, cited on more than one occasion, of different requirements of Chapter



1513. of the Revised Code, these rules, or the permit; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(4) A show cause order shall set forth in the order itself or in attachments to the order:

(a) A list of the unwarranted or willful violations which contribute to a pattern of violations;

(b) A copy of each order or notice which contains one or more of the violations listed as contributing to a pattern of violations;

(c) A brief statement indicating the basis for determining that the violations were caused by the permittee willfully or through unwarranted failure to comply;

(d) The chief's intent to either revoke or suspend the permit, including the length and terms of a suspension; and

(e) A statement advising the permittee that if he or she wishes a show cause hearing, he or she must, within thirty days from receipt of the show cause order, file an answer to the show cause order and request a hearing.

(5) The permittee's answer to a show cause order shall contain a statement setting forth:

(a) The reasons in detail why a pattern of violations does not exist or has not existed including all the reasons for contesting:

(i) The fact of any of the violations alleged by the chief as constituting a pattern of violations;

(ii) The willfulness of such violations; or

(iii) Whether such violations were caused by the unwarranted failure of the permittee;

(b) All mitigating factors the permittee believes exist in determining the terms of the revocation or the



length of terms of the suspension; and

(c) Any other alleged relevant facts.

(6) If the permittee files an answer to the show cause order and requests a show cause hearing, the chief shall give thirty days written notice of the date, time and place of the hearing to all interested parties. The chief shall publish notice of the hearing, if practicable, in a newspaper of general circulation in the area of the coal mining and reclamation operations, and shall post it at the division of mineral resources management district office closest to the coal mining and reclamation operations.

(7) If the permittee files an answer and requests a hearing, the chief or his or her representative shall hold a show cause hearing, which shall be a public adjudicatory hearing of record. The permittee issued the order to show cause shall appear at the hearing. The chief or his or her representative may accept oral or written statements and any other relevant information. An electronic or stenographic record shall be made of the hearing. The record shall be maintained and shall be accessible to the parties of the hearing until final release of the permittee's performance security required by Chapter 1513. of the Revised Code and rules adopted thereunder.

(8) In a show cause hearing, the chief shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(9) Within sixty days following the show cause hearing:

(a) The chief shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order for the suspension or revocation of the permit.

(i) In making a determination that a pattern of violations exists, the chief need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern;

(ii) If the permit is suspended, the minimum suspension period shall be three working days unless



the chief finds that imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of Chapter 1513. of the Revised Code; and

(b) The chief shall furnish the permittee and all other parties of the hearing with the written determination, which shall state the reasons for this determination issued pursuant to paragraph (C)(9)(a) of this rule.

(10) Whenever the chief orders the revocation or suspension of the permit in the determination issued pursuant to paragraph (C)(9)(a) of this rule, the permittee shall immediately cease coal mining operations on the permit area and shall:

(a) If the permit and the right to mine are revoked, complete reclamation within the time specified in the order or the chief shall declare as forfeited the performance security for the operation; or

(b) If the permit and right to mine are suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(D) Service of notices and orders.

(1) Any notice or order shall be served on the person to whom it is directed or his or her designated agent promptly after issuance, as follows:

(a) By tendering a copy at the coal exploration or coal mining and reclamation operation to the person to whom it is directed or to the designated agent, or to the individual who, based upon reasonable inquiry by the chief's authorized representative, appears to be in charge of the coal exploration or coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. In the event a notice or order is tendered to anyone other than to whom it is directed or his or her designated agent, service shall also be made by certified mail. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept; or

(b) As an alternative to paragraph (D)(1)(a) of this rule, service may be made by sending a copy of



the notice or order by certified mail to the address shown as current on the permit in accordance with paragraph (B)(1)(a) of rule 1501:13-4-03 of the Administrative Code or by hand to the person to whom it is issued or his or her designated agent. Service shall be complete upon tender of the notice or order of the mail and shall not be deemed incomplete because of refusal to accept.

(c) In the event that attempts to deliver the notice or order by hand or by certified mail are unsuccessful, service of the notice or order may be made by first class mail to the most current address on file with the division of mineral resources management.

(2) Designation by any person of an agent for service of notices and orders shall be made in writing to the division of mineral resources management.

(E) Expiration of order of cessation.

(1) Except as provided in paragraph (E)(2) of this rule, a notice of violation or order which requires cessation of mining shall expire within thirty days after it is served unless a hearing has been held pursuant to section 1513.13 of the Revised Code within that time.

(2) A notice of violation or cessation order shall not expire as provided in paragraph (E)(1) of this rule, if the condition, practice, or violation in question has not been abated or if the hearing has been waived by the person to whom the notice or order was issued.

(F) Review of citations.

(1) A person issued a notice of violation or cessation order under this rule, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order may request review of that action by filing an application for review and request for hearing under section 1513.13 of the Revised Code within thirty days after receiving notice of the action. Such person may also request temporary relief under division (C) of section 1513.13 of the Revised Code.

(2) The filing of an application for review and request for a hearing under paragraph (F) of this rule shall not operate as a stay of any notice or order, or of any modification, termination or vacation of



either.

(G) Lack of information. No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated because it is subsequently determined that the chief did not have information sufficient, under these rules, to justify an inspection.

(H) Inability to comply.

(1) No cessation order or notice of violation issued under these rules may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining whether a pattern of violations exists pursuant to paragraph (C) of this rule.

(3) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under rule 1501:13-14-03 of the Administrative Code and of the duration of the suspension of a permit under paragraph (C) of this rule.

(I) Injunctive relief. The chief may request the attorney general of the state of Ohio to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order in the court of common pleas for the county in which the coal exploration or coal mining and reclamation operation is located or in which the person to whom the notice of violation or order has been issued has his or her principal office whenever that person or his or her agent, in violation of Chapter 1513. of the Revised Code or rules adopted thereunder, or any condition of a coal exploration permit or a coal mining and reclamation permit:

(1) Violates or fails or refuses to comply with any order or decision of the chief or any authorized representative of the chief under Chapter 1513. of the Revised Code or rules adopted thereunder;

(2) Interferes with, hinders or delays the chief or an authorized representative in carrying out the provisions of Chapter 1513. of the Revised Code or rules adopted thereunder;

(3) Refuses to admit an authorized representative of the chief to a mine;



- (4) Refuses to permit inspection of a mine by an authorized representative of the chief;
 - (5) Refuses to furnish any required information or report;
 - (6) Refuses to permit access to or copying of any required records; or
 - (7) Refuses to permit inspection of monitoring equipment.
- (J) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.