



Ohio Administrative Code

Rule 1501:13-3-02 Submission and processing of requests for valid existing rights determinations.

Effective: October 28, 2010

(A) Except for federal lands subject to 30 C.F.R. Part 761, any person who intends to conduct coal mining operations on the basis of valid existing rights under division (D) of section 1513.073 of the Revised Code and rules adopted thereunder shall file with the chief a request for a valid existing rights determination. This request shall be submitted before preparing and submitting an application for a permit or boundary revision for the land for which the determination is sought.

(B) Requirements for property rights demonstration. If the request relies upon one of the standards of paragraph (A)(2) of rule 1501:13-3-01 of the Administrative Code, the person claiming valid existing rights shall provide a property rights demonstration under paragraph (A)(1) of rule 1501:13-3-01 of the Administrative Code which shall include the following items:

- (1) A legal description of the land to which the request pertains;
- (2) Complete documentation of the character and extent of the requestor's current interests in the surface and mineral estates of the land to which the request pertains;
- (3) A complete chain of title for the surface and mineral estates of the land to which the request pertains;
- (4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;
- (5) A description of the type and extent of coal mining operations that the requestor claims to have the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Ohio property law;
- (6) Complete documentation of the nature and ownership, as of the date the land came under the



protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, of all property rights for the surface and mineral estates of the land to which the request pertains;

(7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

(8) If the coal interests have been severed from other property interests, documentation that the requestor has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of requestors property rights claims; and

(9) Any comments the requestor receives in response to the notification required under paragraph (B)(8) of this rule.

(C) Additional requirements for the good faith/all permits standard. If the request relies upon the good faith/all permits standard under paragraph (A)(2)(a) of rule 1501:13-3-01 of the Administrative Code, the request shall also include the following information about coal mining operations on the land to which the request pertains:

(1) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the person requesting the determination or a predecessor in interest obtained before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code;

(2) Application dates and identification numbers for any permits, licenses, and authorizations for which the person requesting the determination or a predecessor in interest submitted an application before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code; and

(3) An explanation of any other good faith effort that the person requesting the determination or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of division (D) of section 1513.073 of the Revised Code



or rule 1501:13-3-03 of the Administrative Code.

(D) Additional requirements for the needed for and adjacent standard. If the request relies upon the needed for and adjacent standard under paragraph (A)(2)(b) of rule 1501:13-3-01 of the Administrative Code, the request shall also include:

(1) An explanation of how and why the land is needed for and immediately adjacent to the operation upon which the request is based; and

(2) A demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(E) Requirements for roads. If the request relies upon one of the standards for roads under paragraphs (B)(1) to (B)(3) of rule 1501:13-3-01 of the Administrative Code, the request shall include satisfactory documentation that:

(1) The road existed when the land upon which it is located came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and the requestor has a legal right to use the road for coal mining operations;

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and, under the document creating the right of way or easement, and under any subsequent conveyances, the requestor has a legal right to use or construct a road across that right of way or easement to conduct coal mining operations; or

(3) A valid permit for use or construction of a road in that location for coal mining operations existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(F) Initial review of request.



(1) The chief shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements of paragraphs (B) to (E) of this rule. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

(2) If the request does not include all applicable components of the submission requirements of paragraphs (B) to (E) of this rule, the chief shall notify the requestor and establish a reasonable time for submission of the missing information.

(3) When the request includes all applicable components of the submission requirements of paragraphs (B) to (E) of this rule, the chief shall notify the requestor that the public notice required under paragraph (G) of this rule can be published.

(4) If the information requested under paragraph (F)(2) of this rule is not provided within the time specified or as subsequently extended, the chief shall issue a determination that valid existing rights have not been demonstrated on the land upon which the request is based, as provided in paragraph (H)(4) of this rule.

(G) Public notice and opportunity to comment.

(1) After the chief determines that a request for a valid existing rights determination is complete, the requestor shall publish a notice inviting comment on the merits of the request in a newspaper of general circulation in the locality of the land to which the request pertains, and shall provide the chief with a copy of the published public notice. The notice shall include:

(a) The location of the land to which the request pertains;

(b) A description of the type of coal mining operations planned;

(c) A reference to and brief description of the applicable standard or standards for demonstrating valid existing rights under rule 1501:13-3-01 of the Administrative Code, and the following:



- (i) If the request relies upon one of the standards of paragraph (A)(2) of rule 1501:13-3-01 of the Administrative Code, a description of the property rights that the requestor claims and the basis for this claim;
- (ii) If the request is for a road and relies upon the standard in paragraph (B)(1) of rule 1501:13-3-01 of the Administrative Code, a description of the basis for the claim that the road existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and a description of the basis for the claim that the requestor has a legal right to use that road for coal mining operations; or
- (iii) If the request is for a road and relies upon the standard in paragraph (B)(2) of rule 1501:13-3-01 of the Administrative Code, a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the requestor has a legal right to use or construct a road across the right of way or easement to conduct coal mining operations;
- (d) If the request relies upon one or more of the standards in paragraph (A), (B)(1) or (B)(2) of rule 1501:13-3-01 of the Administrative Code, a statement that the chief will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required under paragraph (G)(3) of this rule, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim;
- (e) A description of the procedures the chief will follow in processing the request;
- (f) The closing date of the comment period, which must be a minimum of thirty days after the publication date of the notice;
- (g) A statement that interested persons may obtain a thirty-day extension of the comment period upon request to the chief; and



(h) The name and address of the district office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

(2) Upon receipt of a complete request for a valid existing rights determination and a copy of the published public notice, the chief shall provide a copy of the published public notice to:

(a) All reasonably locatable owners of surface and mineral estates in the land included in the request.

(b) The owner of the feature causing the land to come under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(3) The letter transmitting the notice required under paragraph (G)(2) of this rule shall provide a thirty-day comment period, starting from the date of service of the letter, and specify that another thirty days is available upon request. The chief may grant additional time for good cause upon request. The chief need not necessarily consider comments received after the closing date of the comment period.

(H) Determination of the chief.

(1) The chief shall review the materials submitted under paragraphs (B) to (E) of this rule, comments received under paragraph (G) of this rule, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the chief shall notify the requestor in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information the chief deems necessary to remedy the inadequacy.

(2) Once the record is complete and adequate, the chief shall determine whether the requestor has demonstrated valid existing rights. The chief's decision shall explain how the requestor has or has not satisfied all applicable elements of the standards set forth in rule 1501:13-3-01 of the Administrative Code, contain findings of fact and conclusions, and specify the reasons for the



conclusions.

(3) Impact of property rights disagreements. This paragraph applies only when a request relies upon one or more of the standards in paragraphs (A), (B)(1), and (B)(2) of rule 1501:13-3-01 of the Administrative Code.

(a) The chief shall issue a determination that the requestor has not demonstrated valid existing rights if the requestor's property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The chief shall make this determination without prejudice, meaning that the requestor may re-file the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (G)(1) or (G)(3) of this rule.

(b) If the record indicates disagreement as to the accuracy of the requestor's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the chief shall evaluate the merits of the information in the record and determine whether the requestor has demonstrated that the requisite property rights exist under paragraph (A)(1), (B)(1), or (B)(2) of rule 1501:13-3-01 of the Administrative Code, as appropriate. The chief shall then proceed with the decision process under paragraph (H)(2) of this rule.

(4) The chief shall issue a determination that the requestor has not demonstrated valid existing rights if the requestor does not submit information that the chief requests under paragraph (F)(2) or (H)(1) of this rule within the time specified or as subsequently extended. The chief shall make this determination without prejudice, meaning that the requestor may re-file a revised request at any time.

(5) After making a determination, the chief shall:

(a) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the requestor, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that



caused the land to come under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(b) Publish notice of the determination in a newspaper of general circulation in the locality in which the land is located.

(I) Administrative and judicial review. A determination by the chief that the requestor has or does not have valid existing rights is subject to administrative and judicial review under sections 1513.13 and 1513.14 of the Revised Code.

(J) Availability of records. The chief shall make a copy of a request for a determination of valid existing rights, as well as any records associated with that request and any subsequent determination under paragraph (H) of this rule, available to the public in accordance with rule 1501:13-1-10 of the Administrative Code.

(K) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.