



Ohio Administrative Code

Rule 1501:13-3-04 Procedures for identifying areas where mining is prohibited or limited.

Effective: October 28, 2010

(A) Upon receipt of a complete application for a coal mining and reclamation operation permit, or a complete application for revision of the boundaries of a coal mining and reclamation operation permit, the chief shall review the application to determine whether coal mining operations are limited or prohibited under rule 1501:13-3-03 of the Administrative Code on the lands which would be disturbed by the proposed operation.

(1) Where the proposed operation would be located on any lands listed in paragraph (A)(1), (A)(6), (A)(7) or (A)(8) of rule 1501:13-3-03 of the Administrative Code, the chief shall disapprove the application if the applicant cannot establish valid existing rights for the area.

(2) If the chief is unable to determine whether the proposed operation is located within the boundaries of any of the lands in paragraph (A)(1) of rule 1501:13-3-03 of the Administrative Code or closer than the limits provided in paragraphs (A)(6), (A)(7), and (A)(8) of rule 1501:13-3-03 of the Administrative Code, the chief shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within thirty days of receipt of the request.

(3) The national park service or the U.S. fish and wildlife service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty days from receipt of the notification in which to respond.

(4) The chief, upon request by the appropriate agency, shall grant an extension to the thirty-day period of an additional thirty days. If no response is received within the thirty-day period or within the extended period granted, the chief may make the necessary determination based on the information he or she has available.

(B) Where the proposed operation would include federal lands within the boundaries of any national



forest and the applicant seeks a determination that mining is permissible under paragraph (A)(2) of rule 1501:13-3-03 of the Administrative Code, the applicant shall submit a permit application to the director of the office of surface mining of the U.S. department of the interior for processing under 30 C.F.R. subchapter D or a request to the director of the office of surface mining of the U.S. department of the interior for processing under 30 C.F.R. subchapter F.

(C) Where the proposed permit area includes area within one hundred feet measured horizontally of the outside right-of-way line or includes a portion or all of the right-of-way of a public road, including where the applicant proposes to relocate or close a public road, the applicant shall submit a road permit for the road or portion thereof. The issuance of a road permit shall require:

(1) The applicant to provide notice, in a newspaper of general circulation in the county of the proposed operation at least two weeks prior to the hearing required under paragraph (C)(1)(c) of this rule, that the proposed operation includes area within one hundred feet of the outside right-of-way line of the public road or includes a portion or all of the right-of-way of a public road, or that the applicant proposes to relocate or close a public road. The notice shall include:

(a) A description of the road, to include road number, location and length of road for which the road permit is being requested;

(b) A description of how the proposed mining operation will affect the road; and

(c) The date, time, and location at which the public agency with jurisdiction over the road will hold a public meeting to consider issuing the road permit;

(2) The public authority with jurisdiction over the road to provide an opportunity for a public hearing prior to issuing the road permit and, in issuing the road permit, to make a written finding within thirty days of the completion of the public hearing, based on information gathered at the hearing, that the interests of the public and the affected landowners will be protected; and

(3) The chief's approval of the procedures followed and the decision issued by the public authority.

(D) Occupied dwellings.



(1) Where the proposed permit area includes area within three hundred feet measured horizontally of any occupied dwelling, the applicant shall submit with the application, a written waiver from the owner of the dwelling consenting to such operations within a closer distance of the dwelling. The waiver must state that the owner had the legal right to deny mining and knowingly waived that right. The waiver shall be separate from a lease or deed if the lease or deed does not contain language that authorizes mining within three hundred feet of the occupied dwelling either by an explicit waiver or by a legal description of the area to be mined that contains the area within three hundred feet. The waiver shall specifically state the distance for which the waiver is being granted.

(2) Where the applicant for a permit had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within three hundred feet of such dwelling, a new waiver shall not be required.

(3) Where the applicant for a permit had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

(4) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to Ohio laws or if the mining has proceeded to within the three hundred foot limit prior to the date of purchase.

(E) Historic places.

(1) Where the chief determines that the proposed coal mining operation will adversely affect any publicly owned park or any place included on the "National Register of Historic Places," the chief shall notify the federal, state, or local agency with jurisdiction over the park or place. The "National Register of Historic Places" is administered by the national parks service, U.S. department of the interior; its website for Ohio sites is <http://www.nationalregisterofhistoricplaces.com/oh/state.html>. The notification shall include:

(a) A copy of the applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation; and



(b) A notice that the agency has thirty days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval.

(2) The chief, upon request by the appropriate agency, may grant an extension to the thirty-day period of an additional thirty days. Failure to interpose an objection within thirty days or the extended period granted shall constitute an approval of the proposed permit.

(3) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(F) If the chief determines that the proposed coal mining operation is not prohibited under section 1513.073 of the Revised Code and rules adopted thereunder, he or she may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of coal mining operations.

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