



Ohio Administrative Code

Rule 1501:13-3-07 Procedures for designating areas unsuitable for coal mining operations.

Effective: October 28, 2010

(A) Petitions.

(1) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the chief to have an area designated as unsuitable for coal mining operations, or to have an existing designation terminated. A person having an interest which is or may be adversely affected must demonstrate how he or she meets the "injury in fact" test by describing the injury to the specific affected interests and demonstrating how he or she is among the injured.

(2) Designation. Information that a petitioner must provide is:

(a) The location and approximate size of the area covered by the petition and a U.S. geological survey topographical map outlining the perimeter of the petitioned areas;

(b) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of coal mining operations, assuming that contemporary mining practices required by these rules would be followed if the area were to be mined. Each allegation of fact shall be specific as to the mining operation, if known, the portion(s) of the petitioned area, and the petitioner's interests to which the allegation applies, and shall be supported by evidence that tends to establish the validity of each allegation for the mining operation or portion of the petitioned areas;

(c) A description of how mining of the area has affected or may adversely affect people, land, air, water or other resources;

(d) The petitioner's name, address, telephone number and notarized signature; and

(e) Identification of the petitioner's interest which is or may be adversely affected, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (A)(1) of this



rule.

(3) Termination. A petitioner must provide the following information to terminate a designation:

(a) The location and approximate size of the area covered by the petition and a U.S. geological survey topographical map outlining the perimeter of the petitioned areas to which the termination petition applies;

(b) Allegations of fact and supporting evidence covering all lands for which termination is proposed. Each allegation of fact shall be specific as to the mining operation, if any, the portions of the petitioned area, and the petitioner's interests to which each allegation applies. Each allegation shall be supported by evidence, not contained in the record of the proceeding in which the area was designated unsuitable, that tends to establish the validity of each allegation for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required by these rules would be followed were the area to be mined. Allegations and supporting evidence should also be specific with regard to the basis for which the designation was made and tend to establish that the designation should be terminated based on:

(i) The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in paragraph (A)(2) of rule 1501:13-3-05 of the Administrative Code; or

(ii) Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in paragraph (A)(1) of rule 1501:13-3-05 of the Administrative Code; or

(iii) The resources or condition not being affected by coal mining operations, or in the case of land use plans, not being incompatible with coal mining operations during and after mining, if the designation was based on the criteria found in paragraph (A)(2) of rule 1501:13-3-05 of the Administrative Code;

(c) The petitioner's name, address, telephone number and a notarized signature;

(d) Identification of the petitioner's interest which is or may be adversely affected by the



continuation of the designation, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (A)(1) of this rule; and

(e) For areas previously and unsuccessfully proposed for termination, significant new allegations of fact and supporting evidence must be presented in the petition.

(B) Initial processing, recordkeeping, and notification requirements.

(1) Promptly after a petition is received, the chief shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area.

(2) Within thirty days of receipt of a petition, the chief shall notify the petitioner by certified mail whether or not the petition is complete under paragraph (A)(2) or (A)(3) of this rule.

(3) The chief shall determine whether any identified coal resources exist in the area covered by the petition without requiring any showing from the petitioner. If the chief finds there are not any identified coal resources in that area, he or she shall return the petition to the petitioner with a statement of the findings.

(4) The chief may reject petitions for designations and terminations of designations which are frivolous. A "frivolous petition" is one in which the allegations of harm lack serious merit. Once the requirements of paragraph (A) of this rule are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the chief pursuant to the procedures of this rule.

(5) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the chief shall determine if the new petition presents new allegations of fact. If the petition does not contain new allegations of fact, the chief shall not consider the petition and shall return the petition to the petitioner, with a statement of his or her findings and a reference to the record of the previous designation proceedings where the facts were considered.

(6) If the chief determines that the petition is incomplete or frivolous, he or she shall return the



petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(7) The chief shall notify the person who submits a complete petition of any application for a permit received which proposes to include any area covered by the petition.

(8) The chief may determine not to process any petition received insofar as it pertains to lands for which a complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the chief may issue a decision on a complete and accurate permit application and shall inform the petitioner why the chief cannot consider the part of the petition pertaining to the proposed permit area.

(9) Within three weeks after the determination that a petition is complete, the chief shall make copies of the petition available to the public. He or she shall also circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the chief to have an interest in the property.

(10) Within three weeks after the determination that a petition is complete, the chief shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed in the newspaper providing broadest circulation in the region of the petitioned area once a week for two consecutive weeks in the locale of the area covered by the petition.

(11) Beginning immediately after a complete petition is filed, the chief shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the chief. The chief shall make the record available for public inspection, free of charge, and copying, at reasonable cost, during all normal business hours at the division's district office for the multi-county area in which the land petitioned is located, and at the main office of the chief.

(12) Until three days before the chief holds a hearing under paragraph (C) of this rule, any person may intervene in the proceeding by filing allegations of fact, with supporting evidence, describing how the designation determination directly affects the intervenor, a short statement identifying the



petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(C) Hearing requirements.

(a) Within ninety days after receipt of a complete petition, the chief shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held.

(b) The hearing may be conducted with cross-examination of expert witnesses only.

(c) The chief may delay the hearing for up to an additional two hundred ten days when necessary for adequate review.

(d) A record of the hearing shall be made and preserved according to state law. No person shall bear the burden of proof or persuasion. The record shall include all relevant parts of the data base and inventory system and all public comments received during the public comment period. The record shall be considered by the chief in his or her decision on the petition.

(e) The provisions of paragraph (B)(5) of this rule shall also apply to this hearing.

(2) The chief shall give notice of the date, time, and location of the hearing to:

(a) Local, state, and federal agencies which may have an interest in the decision on the petition;

(b) The petitioner and intervenors; and

(c) Any person with an ownership or other interest known to the chief in the area covered by the petition.

(3) Notice of the hearing shall be sent by certified mail and postmarked not less than thirty days before the scheduled date of the hearing.

(4) The chief shall notify the general public of the date, time, and location of the hearing by placing a



newspaper advertisement once a week for two consecutive weeks and once during the week prior to the hearing in the locale of the area covered by the petition. The advertisement shall begin between four to five weeks before the scheduled date of the public hearing.

(5) The chief may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(6) Prior to designating any land areas as unsuitable for coal mining operations, the chief shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(7) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

(D) Decision.

(1) In reaching his or her decision, the chief shall use:

(a) The information contained in the data base and inventory system;

(b) Information provided by other governmental agencies;

(c) The detailed statement prepared under paragraph (C)(6) of this rule; and

(d) Any other relevant information submitted during the comment period.

(2) A final written decision shall be issued by the chief, including a statement of reasons, within sixty days of completion of the public hearing, or if no public hearing is held, within twelve months after receipt of the complete petition. The chief shall simultaneously send the decision by certified mail to the petitioner, every other party of the proceeding, and to the state office of the United States office of surface mining.



(3) The decision of the chief with respect to a petition, or the failure of the chief to act within the time limits set forth in this rule, shall be subject to administrative and judicial review as provided by sections 1513.13 and 1513.14 of the Revised Code. The record made at the hearing pursuant to paragraph (C)(1) of this rule shall be considered and included in the record of this review.

(E) Data base and inventory system requirements.

(1) The chief shall develop a data base and inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of coal mining operations.

(2) The chief shall add to the data base and inventory system information:

(a) On potential coal resources of Ohio, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the chief to prepare the statements required by paragraph (C)(6) of this rule; and

(b) That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

(3) The chief shall include in the system information relevant to the criteria in paragraph (A) of rule 1501:13-3-05 of the Administrative Code, including, but not limited to, information from the United States fish and wildlife service, the Ohio historical preservation officer, and the agency administering section 127 of the Clean Air Act as amended (42 U.S.C. 7470 et seq.).

(F) Public information. The chief shall:

(1) Make the information and data base system developed under paragraph (E) of this rule available to the public for inspection free of charge and for copying at reasonable cost. However, specific information relating to location of properties proposed to be nominated to, or listed in, the "National Register of Historic Places," administered by the national parks service, U.S. department of the interior, need not be disclosed if the chief determines that the disclosure of such information would create a risk of destruction or harm to such properties. The website for the "National Register of



Historic Places" for Ohio sites is <http://www.nationalregisterofhistoricplaces.com/oh/state.html>; and

(2) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

(G) Implementation.

(1) The chief shall not issue permits which are inconsistent with designations made pursuant to Chapter 1501:13-3 of the Administrative Code.

(2) The chief shall maintain a map of areas designated as unsuitable for all or certain types of coal mining operations.

(3) The chief shall make available to any person any information within his or her control regarding designations, including mineral or elemental content that is potentially toxic in the environment, but not including proprietary information that pertains only to the analysis of the chemical and physical properties of the coal.

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