



## Ohio Administrative Code

### Rule 1501:13-4-12 Requirements for permits for special categories of mining.

Effective: February 14, 2022

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(A) Scope. This rule establishes the minimum requirements for permits for certain categories of coal mining and reclamation operations. These requirements are in addition to the general permit requirements contained in Chapter 1501:13-4 of the Administrative Code. All of the provisions of Chapter 1501:13-4 of the Administrative Code apply to such operations, unless otherwise specifically provided in this rule.

(B) Experimental mining practices.

(1) "Experimental practices," as used in this rule, means the use of alternative coal mining and reclamation operation practices for experimental or research purposes. Experimental practices need not comply with specific environmental protection performance standards of these rules, if approved pursuant to paragraph (B) of this rule.

(2) No person shall engage in or maintain any experimental practice, unless that practice is first approved in a permit by the chief and the director of the office of surface mining.

(3) Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the chief and the director of the office of surface mining. The permit application shall contain descriptions, maps, plans, and data which show:

(a) The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and the special monitoring which will be conducted;

(b) How use of the experimental practice:

(i) Encourages advances in mining and reclamation technology; or



(ii) Allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under Chapter 1513. of the Revised Code and rules adopted thereunder;

(c) That the mining and reclamation operations proposed for using an experimental practice are not larger nor more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice;

(d) That the experimental practice:

(i) Is potentially more, or at least as, environmentally protective during and after the proposed mining and reclamation operations as those practices otherwise required under division 1501:13 of the Administrative Code; and

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of division 1501:13 of the Administrative Code; and

(e) That the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved. The monitoring program shall:

(i) Ensure the collection, analysis and reporting of sufficient and reliable data to enable the chief and the director of the office of surface mining to make adequate comparisons with other coal mining and reclamation operations employing similar experimental practices; and

(ii) Include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the experimental practice.

(4) Each application shall set forth the environmental protection performance standards of division 1501:13 of the Administrative Code which will be implemented in the event the objective of the experimental practice is a failure.

(5) All experimental practices for which variances are sought shall be specifically identified through newspaper advertisements by the applicant and the written notifications by the chief required in



sections 1513.07 and 1513.071 of the Revised Code.

(6) No permit authorizing an experimental practice shall be issued, unless the chief first finds, in writing, upon the basis of both a complete application filed in accordance with the requirements of paragraph (B) of this rule and the concurrence of the director of the office of surface mining that:

(a) The experimental practice meets all of the requirements of paragraph (B)(3) of this rule;

(b) The experimental practice has been specifically approved, in writing, by the director of the office of surface mining based on the director's findings that all of the requirements of paragraph (B)(3) of this rule will be met;

(c) The experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved; and

(d) The permit contains conditions which specifically:

(i) Limit the experimental practice authorized to that granted by the chief and the director of the office of surface mining;

(ii) Impose enforceable alternative environmental protection requirements; and

(iii) Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application, with such additional requirements as the chief or the director of the office of surface mining may require.

(7) Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety by the chief at a frequency set forth in the approved permit but no less frequently than every two and one-half years. After review, the chief may require such reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety. Copies of the decision of the chief shall be provided to the permittee and be subject to review as provided by section 1513.13 of the Revised Code.



(C) Mountaintop removal mining.

(1) Any person who conducts or intends to conduct surface mining operations by mountaintop removal mining shall apply for a variance from approximate original contour restoration requirements in accordance with the requirements of paragraph (C) of this rule.

(2) The chief may issue a permit for mountaintop removal mining, including a variance from the requirements of rule 1501:13-9-14 of the Administrative Code regarding approximate original contour, if he or she first finds, in writing, on the basis of a complete application, that the following requirements are met:

(a) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and if:

(i) After consultation with the appropriate land use planning agencies, if any, the proposed land use is deemed by the chief to constitute an equal or better economic or public use of the affected land compared with the premining use;

(ii) The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of rule 1501:13-9-17 of the Administrative Code;

(iii) The proposed use would be compatible with adjacent land uses and existing state and local land use plans and programs; and

(iv) The chief has provided, in writing, an opportunity of not more than sixty days to review and comment on such proposed use to the local government in whose jurisdiction the land is located and any state or federal agency which the chief, in his or her discretion, determines to have an interest in the proposed use;

(b) The applicant has demonstrated that, in place of restoration of the land to be affected to the approximate original contour under rule 1501:13-9-14 of the Administrative Code, the operation will be conducted in compliance with the requirements of rule 1501:13-13-04 of the Administrative Code;



(c) The requirements of rule 1501:13-13-04 of the Administrative Code are made a specific condition of the permit;

(d) All other requirements of Chapter 1513. of the Revised Code and these rules are met by the proposed operations; and

(e) The permit is clearly identified as being for mountaintop removal mining.

(3) Review of special permits.

(a) Any permits incorporating a variance issued under paragraph (C) of this rule shall be reviewed by the chief to evaluate the progress and development of the mining operations to establish that the operator is proceeding in accordance with the terms of the variance:

(i) Within the sixth month preceding the third year from the date of its issuance;

(ii) Before each permit renewal; and

(iii) Not later than the middle of each permit term.

(b) Any review required under paragraph (C)(3) of this rule need not be held if the permittee has demonstrated and the chief finds, in writing, within three months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of Chapter 1513. of the Revised Code and division 1501:13 of the Administrative Code.

(c) The chief may modify the terms and conditions of a permit for mountaintop removal mining at any time if he or she determines that more stringent measures are necessary to ensure that the operation involved is conducted in compliance with the requirements of Chapter 1513. of the Revised Code and division 1501:13 of the Administrative Code.

(D) Steep slope mining.



(1) Any person who conducts or intends to conduct steep slope coal mining and reclamation operations shall comply with the requirements of paragraph (D) of this rule except in any of the following situations:

(a) An operator proposes to conduct coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(b) A person obtains a permit under the provisions of paragraph (C) of this rule; or

(c) To the extent that a person obtains a permit incorporating a variance under paragraph (E) of this rule.

(2) Any application for a permit for coal mining and reclamation operations covered by paragraph (D) of this rule shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of rule 1501:13-13-05 of the Administrative Code.

(3) No permit shall be issued for any operations covered by paragraph (D) of this rule unless the chief finds, in writing, that in addition to meeting all other requirements of this rule, the operation will be conducted in accordance with the substantive requirements of rule 1501:13-13-05 of the Administrative Code.

(E) Permits incorporating variances from approximate original contour restoration requirements. The chief may, under paragraph (E) of this rule, issue a permit for non-mountaintop removal, steep slope, mining which includes a variance from the requirements of rules 1501:13-9-14 and 1501:13-13-05 of the Administrative Code regarding approximate original contour restoration requirements.

(1) The chief may issue a permit for coal mining incorporating a variance under paragraph (E) of this rule only if he or she first finds, in writing, on the basis of a complete application, that all of the following requirements are met:

(a) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public postmining land



use (including recreational facilities);

(b) The proposed use, after consultation with the appropriate land use planning agencies, if any, constitutes an equal or better economic or public use;

(c) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of rule 1501:13-9-17 of the Administrative Code;

(d) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if:

(i) There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges prior to mining, so as to improve public or private uses or the ecology of such waters, or there will be reduced flood hazards within the watershed containing the permit area by reduction of peak flow discharges from precipitation events or thaws;

(ii) The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and

(iii) The appropriate Ohio environmental agency approves the plan;

(e) The proposed use is designed and certified by an engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(f) The highwall is to be completely backfilled with spoil material, in a manner which results in a static safety factor of at least 1.3, using standard geotechnical analysis;

(g) Only the amount of spoil necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of Chapter 1513. of the Revised Code and rules adopted thereunder is to be placed off the mine bench. All spoil not retained on the bench



shall be placed in accordance with rule 1501:13-9-07 of the Administrative Code;

(h) Federal, state and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use;

(i) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under paragraph (D) of rule 1501:13-4-03 of the Administrative Code and shall show an understanding that the variance could not be granted without the surface owner's request; and

(j) All other requirements of Chapter 1513. of the Revised Code and rules adopted thereunder will be met by the proposed operations.

(2) If a variance is granted under paragraph (E) of this rule:

(a) The requirements of paragraph (E) of this rule shall be made a specific condition of the permit; and

(b) The permit shall be specifically marked as containing a variance from approximate original contour.

(3) Any permits incorporating a variance issued under paragraph (E) of this rule shall be reviewed by the chief to evaluate the progress and development of the mining operations and to establish that the operator is proceeding in accordance with the terms of the variance:

(a) Within the sixth month preceding the third year from the date of its issuance;

(b) Before each permit renewal; and

(c) Not later than the middle of each permit term.

(4) If the permittee demonstrates to the chief at any of the times specified in paragraph (E)(3) of this





rule that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of Chapter 1513. of the Revised Code and division 1501:13 of the Administrative Code, the review required at that time need not be held.

(5) The terms and conditions of a permit incorporating a variance under paragraph (E) of this rule may be modified at any time by the chief if he or she determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of Chapter 1513. of the Revised Code and rules adopted thereunder.

(F) Prime farmlands.

(1) Paragraph (F) of this rule applies to any person who conducts or intends to conduct coal mining and reclamation operations on prime farmlands used for cropland. It does not apply to lands included in any existing coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(a) Such lands are part of a single continuous coal mining operation begun under a permit issued before August 3, 1977;

(b) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(c) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit or multiple pits if the lands are proven to be part of a single continuous coal mining operation begun under a permit issued prior to August 3, 1977.

(d) For purposes of paragraph (F) of this rule:

(i) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing; and

(ii) A single continuous coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if



the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds, or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one coal mining operation.

(2) Application contents for prime farmland. If land within the proposed permit area is identified as prime farmland under paragraph (J) of rule 1501:13-4-04 or paragraph (J) of rule 1501:13-4-13 of the Administrative Code, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum:

(a) A soil survey of the permit area according to the standards of the national cooperative soil survey and in accordance with the procedures set forth in the United States department of agriculture handbooks 436 ("Soil Taxonomy," second edition, 1999) and 18 ("Soil Survey Manual," fourth edition, 2017);

(i) These publications are hereby incorporated by reference. Agriculture handbooks 436 ("Soil Taxonomy") and 18 ("Soil Survey Manual") are available under technical references on the natural resources conservation service website:

<https://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/ref/?cid=stelprdb1247805>. Copies of these documents are also available from "NRCS Distribution Center" at <https://nrcspad.sc.egov.usda.gov/DistributionCenter/>; e-mail [nrcsdistributioncenter@ia.usda.gov](mailto:nrcsdistributioncenter@ia.usda.gov); or call (888) 526-3227;

(ii) The soil survey shall include a description of soil mapping units and a representative soil profile description as determined by the U.S. natural resources conservation service, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil profile descriptions from the locality, prepared in conjunction with the national cooperative survey, may be used if their use is approved by the state conservationist, U.S. natural resources conservation service;

(b) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with rule 1501:13-13-03 of the Administrative Code;



- (c) The method to be employed in avoiding excessive compaction in the replacement of soil;
- (d) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;
- (e) Plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and to restore an adequate soil moisture regime, during the period from completion of regrading until release of the performance security as required by Chapter 1513. of the Revised Code and these rules. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions;
- (f) Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining;
- (g) A demonstration that the applicant has the technological capability to restore the prime farmland to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and
- (h) In all cases, soil productivity for prime farmlands shall be returned to equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to paragraph (F)(2)(a) of this rule.
- (3) Consultation with the United States secretary of agriculture. Before any permit is issued for areas that include prime farmlands, the chief shall consult with the United States secretary of agriculture. The United States secretary of agriculture shall provide for review of and comment on the proposed method of soil reconstruction in the plan submitted under paragraph (F)(2) of this rule. If the United States secretary of agriculture considers those methods to be inadequate, he or she shall suggest revisions resulting in more complete and adequate reconstruction. The United States secretary of agriculture has assigned his or her responsibilities under this rule to the administrator of the United



States natural resources conservation service. The natural resources conservation service shall carry out consultation and review through the conservationist for the state of Ohio.

(4) Issuance of permit. A permit for the mining and reclamation of prime farmland may be granted by the chief, if he or she first finds, in writing, upon the basis of a complete application, that:

(a) The approved proposed post-mining land use of these prime farmlands will be cropland;

(b) The permit incorporates as specific conditions the contents of the plan submitted under paragraph (F)(2) of this rule, after consideration of any revisions to that plan suggested by the secretary of agriculture under paragraph (F)(3) of this rule;

(c) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management;

(d) The proposed operations will be conducted in compliance with all of the requirements of rule 1501:13-13-03 of the Administrative Code and other environmental performance and reclamation standards for mining and reclamation of prime farmland; and

(e) The aggregate total prime farmland acreage will not be decreased from that which existed prior to mining. Permanent water bodies, if any, to be constructed during mining and reclamation operations will be located within the post-reclamation non-prime farmland portions of the permit area.

If the prime farmland acreage is to be restored in a location other than the premining location, the relocation must be approved by the chief and the permittee must obtain the consent of all affected surface owners.

(G) Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining operations.

(1) Scope. Any person who conducts or intends to conduct combined surface mining and underground coal mining operations, where contemporaneous reclamation as required by rule



1501:13-9-13 of the Administrative Code is not practicable and a delay is requested to allow underground mining operations to be conducted before the reclamation operation for the surface mining operations can be completed, shall meet the requirements of paragraph (G) of this rule.

(2) The chief may allow the delay in reclaiming where the delay will allow underground mining operations to be conducted to ensure both maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or waters.

(3) Application contents for variances. Any person who desires to obtain a variance under paragraph (G) of this rule shall file with the chief complete applications for both the surface mining and underground mining operations which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps and plans, which:

(a) Show why the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of coal;

(b) Show how the multiple future disturbances of surface lands or waters will be avoided;

(c) Identify the specific surface areas for which a variance is sought and the particular provisions of Chapter 1513. of the Revised Code and these rules from which a variance is being sought;

(d) Show how the operations will comply with rule 1501:13-9-08 of the Administrative Code;

(e) Show why the variance sought is necessary for the implementation of the proposed underground mining operations;

(f) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of coal mining operations is delayed; and

(g) Show how off-site storage of spoil will be conducted to comply with the applicable requirements of rule 1501:13-9-07 of the Administrative Code.

(4) Issuance of permit. A permit incorporating a variance under paragraph (G) of this rule may be



issued by the chief if he or she first finds, in writing, upon the basis of a complete application filed in accordance with paragraph (G) of this rule, that:

(a) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(b) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

(c) The applicant has satisfactorily demonstrated that the applications for the surface mining and underground mining operations conform to the requirements of Chapter 1513. of the Revised Code and division 1501:13 of the Administrative Code, and that all other permits necessary for the underground mining operations have been issued by the appropriate authority;

(d) The surface area of the surface mining operations proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining operations;

(e) No substantial adverse environmental damage, either off-site or on-site, will result from the delay in completion of reclamation otherwise required by division (A)(15) of section 1513.16 of the Revised Code and Chapters 1501:13-9 to 1501:13-11 of the Administrative Code;

(f) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of Chapter 1513. of the Revised Code and rule 1501:13-9-08 of the Administrative Code;

(g) Provisions for the placement of excess spoil will comply with the requirements of division (A)(21) of section 1513.16 of the Revised Code and rule 1501:13-9-07 of the Administrative Code;

(h) Liability under the performance security required to be filed by the applicant with the chief pursuant to Chapter 1513. of the Revised Code and these rules shall be for the duration of the underground mining operations and until all requirements of Chapter 1513. of the Revised Code and rules adopted thereunder have been complied with; and



(i) The permit for the surface mining operations contains specific conditions:

(i) Delineating the particular surface areas for which a variance is authorized; and

(ii) Providing a detailed schedule for compliance with the particular requirements of this rule.

(5) Review of permits containing variances. Variances granted under permits issued under paragraph (G) of this rule shall be reviewed by the chief no later than three years from the dates of issuance of the permit and any permit renewals.

(H) Augering.

(1) Paragraph (H) of this rule applies to any person who conducts or intends to conduct coal mining and reclamation operations utilizing augering operations.

(2) Any application for a permit for operations covered by paragraph (H) of this rule shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with the provisions of rule 1501:13-13-02 of the Administrative Code.

(3) No permit shall be issued for any operations covered by paragraph (H) of this rule unless the chief finds, in writing, that in addition to meeting all other applicable requirements of this rule, the operation will be conducted in compliance with rule 1501:13-13-02 of the Administrative Code.

(I) Coal preparation plants or support facilities not located within the permit area of a specified mine.

(1) Paragraph (I) of this rule applies to any person who operates or intends to operate a coal preparation plant or support facility outside the permit area of any mine, other than such plants or facilities which are located at the site of ultimate coal use. Any person who operates such a preparation plant or support facility shall have obtained a permit from the chief in accordance with the requirements of paragraph (I) of this rule.



(2) Any application for a permit for operations covered by paragraph (I) of this rule shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and cross sections of the construction, operation, maintenance and removal of the preparation plants and support facilities. The plan shall demonstrate that those operations will be conducted in compliance with rule 1501:13-13-06 of the Administrative Code. Each application shall contain the information required under Chapter 1501:13-4 of the Administrative Code for the proposed permit area in sufficient detail for the chief to determine the estimated cost of reclamation, pursuant to paragraph (B) of rule 1501:13-7-01 of the Administrative Code, if the reclamation has to be performed by the division of mineral resources management in the event of forfeiture of the performance security by the permittee. This estimate shall include:

(a) Operational detail sufficient to determine the greatest potential reclamation cost liability to the state; and

(b) Any other operational detail required by the chief that may affect the cost of reclamation by the division of mineral resources management in the event of forfeiture of the performance security by the permittee.

(3) No permit shall be issued for any operation covered by paragraph (I) of this rule, unless the chief finds, in writing, that, in addition to meeting all other applicable requirements of Chapter 1501:13-4 of the Administrative Code, the operations will be conducted in compliance with the requirements of rule 1501:13-13-06 of the Administrative Code.

(J) In situ processing activities.

(1) Paragraph (J) of this rule applies to any person who conducts or intends to conduct coal mining and reclamation operations utilizing in situ processing activities.

(2) Any application for a permit for operations covered by paragraph (J) of this rule shall be made according to all requirements of these rules applicable to underground mining operations. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing that those operations will be conducted in compliance with the applicable requirements of rule 1501:13-13-07 of the Administrative Code,





including:

- (a) Delineation of proposed holes and wells and production zone for approval of the chief;
  - (b) Specifications of drill holes and casings proposed to be used;
  - (c) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids or liquids constituting a fire, health, safety, or environmental hazard caused by the mining and recovery process; and
  - (d) Plans for monitoring surface and ground water and air quality, as required by the chief.
- (3) No permit shall be issued for operations covered by paragraph (J) of this rule unless the chief first finds, in writing, upon the basis of a complete application made in accordance with paragraph (I)(2) of this rule, that the operation will be conducted in compliance with all requirements of Chapter 1501:13-4 of the Administrative Code relating to underground mining operations and the requirements of Chapters 1501:13-9 to 1501:13-12 and rule 1501:13-13-07 of the Administrative Code.
- (K) Permits incorporating variances from approximate original contour restoration requirements for remining operations on previously mined areas. The chief may issue a permit for remining operations on previously mined lands which includes a variance from the requirements of rule 1501:13-9-14 of the Administrative Code requiring elimination of highwalls, provided requirements of paragraph (K) of this rule are met.
- (1) The operator of the remining operation shall demonstrate in writing to the chief that the volume of all reasonably available spoil is insufficient to completely backfill the reaffected or enlarged highwall.
- (2) If the operator makes the proper demonstration to the chief under paragraph (K)(1) of this rule and the chief issues a permit with a variance for previously mined areas, the remining operation shall be conducted in accordance with the requirements of paragraph (L)(3) of rule 1501:13-9-14 of the Administrative Code.



(L) Lands eligible for re-mining. Paragraph (L) of this rule applies to any person who proposes to conduct coal mining and reclamation operations on areas eligible for re-mining. The requirements of this paragraph shall apply until September 30, 2004, or any later date authorized by federal law. The application for a permit containing areas proposed to be re-mined must include the following:

(1) A description of the proposed lands eligible for re-mining and a demonstration, to the satisfaction of the chief, how such lands meet the eligibility requirements specified by section 1513.37 of the Revised Code.

(2) Identification, to the extent not otherwise addressed in the permit application, of any potential environmental and safety problems related to the prior mining activity at the site which could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

(3) A description, with regard to potential environmental and safety problems identified in paragraph (L)(2) of this rule, of the mitigative measures that will be taken to ensure that the applicable reclamation requirements of Chapter 1513. of the Revised Code and rules adopted thereunder can be met.