



## Ohio Administrative Code

### Rule 1501:13-5-02 Improvidently issued permits.

Effective: December 30, 2011

---

(A) If the chief has reason to believe that a coal mining and reclamation permit was improvidently issued, the chief shall review the circumstances under which the permit was issued using the criteria in this rule.

(1) The chief shall make a preliminary finding that a coal mining and reclamation permit was improvidently issued if:

(a) Under the permit eligibility criteria in effect at the time the permit was issued:

(i) The chief should not have issued the permit because of an unabated or uncorrected violation; or

(ii) The permit was issued on the presumption that a violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation; and

(b) The violation:

(i) Remains unabated or uncorrected; and

(ii) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the regulatory authority, department or agency which has jurisdiction over the violation; and

(c) Through an ownership or control link, the permittee was linked to the violation under the permit eligibility criteria in effect at the time the permit was issued, and the ownership or control link between the permittee and the person responsible for the violation still exists, or, where the link was severed, the permittee continues to be responsible for the violation.

(2) When the chief makes a preliminary finding under paragraph (B)(1) of this rule, the chief shall



serve the permittee with a written notice of the preliminary finding, which shall be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued.

(3) Within thirty days of receiving a notice under paragraph (B)(2) of this rule, the permittee may request an informal review of the preliminary finding pursuant to division (A)(3) of section 1513.13 of the Revised Code and may provide evidence to the chief as to why the permit was not improvidently issued under the criteria in paragraph (B)(1) of this rule.

(C) If, in accordance with paragraph (B) of this rule and after considering any evidence submitted under paragraph (B)(3) of this rule, the chief finds that, because of an unabated or uncorrected violation, a permit was improvidently issued, the chief shall use one or more of the following remedial measures:

(1) Implement, with the cooperation of the permittee or other person responsible, and with the cooperation of the agency with jurisdiction over the violation, a plan for the abatement or correction of the violation;

(2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate or correct the violation;

(3) Suspend the permit pursuant to paragraph (D) of this rule until the violation is abated or corrected; or

(4) Rescind the permit pursuant to paragraph (D) of this rule.

(1) If, in accordance with paragraph (B) of this rule, the chief finds that a permit was improvidently issued, and if, under paragraph (C)(3) or (C)(4) of this rule, the chief elects to suspend or rescind the permit, the chief shall serve on the permittee notice of proposed suspension and rescission which includes the reasons for the finding and states that in sixty days the permit will be suspended, or in one hundred and twenty days the permit will be rescinded, unless, within either of those periods of time, the permittee submits proof, and the chief finds that:

(a) The chief's finding under paragraph (B) of this rule was erroneous;



- (b) The permittee or other person responsible has abated or corrected the violation on which the finding was based to the satisfaction of the agency with jurisdiction over the violation;
  - (c) The violation is the subject of a good faith administrative or judicial appeal and there does not remain in force an initial judicial decision affirming the violation;
  - (d) The violation is the subject of an abatement or correction plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the agency with jurisdiction over the violation;
  - (e) The permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, and this link was severed subsequent to the chief's finding pursuant to paragraph (B) of this rule; or
  - (f) The permittee is pursuing a good faith appeal of the relevant ownership or control listing or finding and there does not remain in force an initial judicial decision affirming the listing or finding.
- (2) When the chief suspends or rescinds a permit pursuant to this rule, the chief shall:
- (a) Immediately order the cessation of coal mining and reclamation operations under the permit; and
  - (b) Post written notice of the cessation order at the division of mineral resources management district office closest to the permit area.
- (3) After permit suspension or rescission, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement or correction and for reclamation and other environmental protection measures as required by the chief.
- (E) Any person having an interest that is or may be adversely affected by a decision of the chief made pursuant to this rule may appeal by filing a notice of appeal with the reclamation commission pursuant to section 1513.13 of the Revised Code.