



Ohio Revised Code

Section 1513.27 Reclaiming land at state expense.

Effective: December 19, 2016

Legislation: House Bill 471 - 131st General Assembly

As used in this section and sections 1513.28, 1513.30, 1513.31, and 1513.32 of the Revised Code, "damage to adjacent property" means physical injury or harm to nearby property caused by the unreclaimed condition of lands mined prior to April 10, 1972, or pursuant to a license issued prior to April 10, 1972, including, without limitation, injury or harm to vegetation on adjacent property, pollution of surface or underground waters on adjacent property, loss or interruption of water supply on adjacent property, flow of acid water onto or across adjacent property, flooding of adjacent property, landslides onto or across adjacent property, erosion of adjacent property, or deposition of sediment upon adjacent property. Damage to adjacent property does not include any diminution of the market value of adjacent property caused exclusively by the visual or aesthetic appearance of such unreclaimed lands.

The chief of the division of mineral resources management, with the approval of the director of natural resources, may enter into a written agreement, which may be in the form of a contract, with the owner of any unreclaimed land affected by mining before April 10, 1972, or pursuant to a license issued before April 10, 1972, that causes or may cause pollution of the waters of the state or damage to adjacent property, is not likely to be mined in the foreseeable future, and lies within the boundaries of a project area approved by the chief under section 1513.30 of the Revised Code, under which the state or its agents may enter the land to reclaim it at state expense with moneys from the unreclaimed lands fund by establishing vegetative cover and substantially reducing or eliminating erosion, sedimentation, landslides, pollution, accumulation or discharge of acid water, flooding, and damage to adjacent property. The agreement may include provisions pertaining to liability for damages and any other provisions necessary or desirable to achieve the purposes of this section.

If the chief makes a finding of fact that land or water resources have been adversely affected by past coal mining practices; if the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent the adverse effects should be taken; and if the owners of the affected land or water resources either are not known or readily available or will not give permission for the state, political subdivisions, or their agents, employees, or contractors to enter on



the property to restore, reclaim, abate, control, or prevent the adverse effects, the chief or the chief's agents, employees, or contractors may enter on the affected property in order to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Prior to entering on the property, the chief or the chief's agents, employees, or contractors shall give notice by mail to the owners, if known, or, if not known, by posting notice on the premises and advertising once in a newspaper of general circulation in the county or municipal corporation in which the land lies. Such an entry shall be construed as an exercise of the police power for the protection of public health, safety, and welfare and shall not be construed as an act of condemnation of property or of trespass. The moneys expended for the work and the benefits accruing to any premises so entered upon shall be chargeable against land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry. This provision is not intended to create new rights of action or eliminate existing immunities.

Each agreement entered into pursuant to this section shall contain provisions for the reimbursement of a portion of the costs of the reclamation that is commensurate with the increase in the fair market value of the property attributable to the reclamation work thereon, as determined by appraisals made before and after reclamation in the manner stated in the agreement, unless the determination discloses an increase in value that is insubstantial. For reimbursement of the portion, the agreement may include provisions for any of the following:

- (A) Public use for soil, water, forest, or wildlife conservation or public recreation purposes;
- (B) Payment to the state of the share of the income from the crops or timber produced on the land that is stated in the agreement;
- (C) Imposition of a lien in the amount of the increase in fair market value payable upon transfer or conveyance of the property to a new owner. All such reimbursements and payments shall be credited to the unreclaimed lands fund.
- (D) Payment to the state in cash of the amount of the increase in fair market value, payable upon completion of the reclamation.

For the purpose of selecting lands to be reclaimed within the boundaries of approved project areas,



the chief shall consult the owners of unreclaimed lands, may consult with local officials, civic and professional organizations, and interested individuals, and shall consider the feasibility, cost, and public benefits of reclaiming particular lands, their potential for being mined, and the availability of federal or other assistance for reclamation. Before entering into the agreement, the chief shall prepare or approve a detailed plan with topographic maps indicating the reclamation improvements to be made. The plan may include improvements recommended by the owner, but may not include improvements that the chief finds are not necessary to establish vegetative cover or substantially reduce or eliminate erosion, sedimentation, landslides, pollution, accumulation or discharge of acid water, flooding, or damage to adjacent property.

With the approval of the director and upon entering into the agreement with the owner, the chief may carry out the plan of reclamation or any part thereof with the employees and equipment of any division of the department of natural resources, or the chief may carry out the plan or any part thereof by contracting therefor.

The chief, with the approval of the director and written consent of the owner, may enter into a contract with an operator mining adjacent land under a current, valid permit to carry out the plan of reclamation on the unreclaimed land or any part of the plan without advertising for bids. Contracts entered into with operators mining adjacent land are not subject to division (B) of section 127.16 of the Revised Code.

The chief shall require every operator mining adjacent land who performs reclamation work pursuant to this section to pay workers at the greater of their regular rate of pay, as established by contract, agreement, or prior custom or practice, or the average wage rate paid in this state for the same or similar work performed in the same or similar locality by private companies doing their own reclamation work. Each contract awarded by the chief to other than an operator mining adjacent land shall be awarded to the lowest responsible bidder after sealed bids are received, opened, and published at the time and place fixed by the chief. The chief shall publish notice of the time and place at which bids will be received, opened, and published, at least once at least ten days before the date of the opening of the bids, in a newspaper of general circulation in the county in which the area of land to be reclaimed under the contract is located. If, after so advertising for bids, no bids are received by the chief at the time and place fixed for receiving them, the chief may advertise again for bids, or, if the chief considers the public interest will be best served, the chief may enter into a



contract for the reclamation of the area of land without further advertisement for bids. The chief may reject all bids received and again publish notice of the time and place at which bids for contracts will be received, opened, and published. The chief, with the approval of the director and written consent of the owner, may enter into a contract with a licensed mine operator mining adjacent land under a valid permit to carry out the plan of reclamation on the unreclaimed land or any part of the plan without advertising for bids.