

As Passed by the Senate

**128th General Assembly
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S. B. No. 73

Senators Niehaus, Wilson

**Cosponsors: Senators Carey, Seitz, Patton, Cafaro, Schuler, Schaffer,
Gibbs, Stewart, Buehrer, Faber, Harris, Hughes**

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A BILL

To amend sections 1513.01, 1513.07, 1513.08, 1513.18, 1
and 5749.02 of the Revised Code to revise the laws 2
governing coal mining with regard to the 3
imposition of a portion of the severance tax on 4
coal and performance security and reclamation, and 5
to declare an emergency. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1513.01, 1513.07, 1513.08, 1513.18, 7
and 5749.02 of the Revised Code be amended to read as follows: 8

Sec. 1513.01. As used in this chapter: 9

(A) "Approximate original contour" means that surface 10
configuration achieved by backfilling and grading of a mined area 11
so that the reclaimed area, including any terracing or access 12
roads, closely resembles the general surface configuration of the 13
land prior to mining and blends into and complements the drainage 14
pattern of the surrounding terrain, with all highwalls and spoil 15
piles eliminated; water impoundments may be permitted where the 16
chief of the division of mineral resources management determines 17
that they are in compliance with division (A)(8) of section 18

1513.16 of the Revised Code. 19

(B) "Coal mining and reclamation operations" means coal 20
mining operations and all activities necessary and incident to the 21
reclamation of such operations. 22

(C) "Degrees" means inclination from the horizontal. 23

(D) "Deposition of sediment" means placing or causing to be 24
placed in any waters of the state, in stream beds on or off the 25
land described in an application for a coal mining permit, or upon 26
other lands any organic or inorganic matter that settles or is 27
capable of settling to the bottom of the waters and onto the beds 28
or lands. 29

(E) "Imminent danger to the health and safety of the public" 30
means the existence of any condition or practice or violation of a 31
permit or other requirement of this chapter or rule adopted 32
thereunder in a coal mining and reclamation operation, which 33
condition, practice, or violation could reasonably be expected to 34
cause substantial physical harm to persons outside the permit area 35
before the condition, practice, or violation can be abated. A 36
reasonable expectation of death or serious injury before abatement 37
exists if a rational person subjected to the same conditions or 38
practices giving rise to the peril would not expose oneself to the 39
danger during the time necessary for abatement. 40

(F) "Lands eligible for remining" means those lands that 41
otherwise would be eligible for expenditures under division (C)(1) 42
of section 1513.37 of the Revised Code. 43

(G) "Mountain top removal" means a coal mining operation that 44
will remove an entire coal seam or seams running through the upper 45
fraction of a mountain, ridge, or hill by removing all of the 46
overburden and creating a level plateau with no highwalls 47
remaining instead of restoring to approximate original contour, 48
and is capable of supporting postmining uses in accordance with 49

the requirements established by the chief. 50

(H) "Operation" or "coal mining operation" means: 51

(1) Activities conducted on the surface of lands in 52
connection with a coal mine, the removal of coal from coal refuse 53
piles, and surface impacts incident to an underground coal mine. 54
Such activities include excavation for the purpose of obtaining 55
coal, including such common methods as contour, strip, auger, 56
mountaintop removal, box cut, open pit, and area mining; the use 57
of explosives and blasting; in situ distillation or retorting; 58
leaching or other chemical or physical processing; and the 59
cleaning, concentrating, or other processing or preparation of 60
coal. Such activities also include the loading of coal at or near 61
the mine site. Such activities do not include any of the 62
following: 63

(a) The extraction of coal incidental to the extraction of 64
other minerals if the weight of coal extracted is less than 65
one-sixth the total weight of minerals removed, including coal; 66

(b) The extraction of coal as an incidental part of federal, 67
state, or local highway or other government-financed construction 68
when approved by the chief; 69

(c) Coal exploration subject to section 1513.072 of the 70
Revised Code. 71

(2) The areas upon which such activities occur or where such 72
activities disturb the natural land surface. Such areas include 73
any adjacent land the use of which is incidental to any such 74
activities, all lands affected by the construction of new roads or 75
the improvement or use of existing roads to gain access to the 76
site of such activities, and for hauling, and excavation, 77
workings, impoundments, dams, ventilation shafts, entryways, 78
refuse banks, dumps, stockpiles, overburden piles, spoil banks, 79
culm banks, holes or depressions, repair areas, storage areas, 80

processing areas, shipping areas, and other areas upon which are 81
sited structures, facilities, or other property or materials on 82
the surface, resulting from or incident to such activities. 83
Separation by a stream, roadway, or utility easement does not 84
preclude two or more contiguous tracts of land from being 85
considered contiguous. 86

(I) "Operator" means any person conducting a coal mining 87
operation. 88

(J) "Overburden" means all of the earth and other materials, 89
except topsoil, covering a natural deposit of coal, and also means 90
such earth and other materials after removal from their natural 91
state in the process of coal mining. 92

(K) "Permit" means a permit to conduct coal mining and 93
reclamation operations issued by the chief pursuant to section 94
1513.07 or 1513.074 of the Revised Code. 95

(L) "Permit area" means the area of land to be affected 96
indicated on the approved map submitted by the operator with the 97
application required by section 1513.07 or 1513.074 of the Revised 98
Code. 99

(M) "Person" has the same meaning as in section 1.59 of the 100
Revised Code and also includes any political subdivision, 101
instrumentality, or agency of this state or the United States. 102

(N) "Pollution" means placing any sediments, solids, or 103
waterborne mining-related wastes, including, but not limited to, 104
acids, metallic cations, or their salts, in excess of amounts 105
prescribed by the chief into any waters of the state or affecting 106
the properties of any waters of the state in a manner that renders 107
those waters harmful or inimical to the public health, or to 108
animal or aquatic life, or to the use of the waters for domestic 109
water supply, industrial or agricultural purposes, or recreation. 110

(O) "Prime farmland" has the same meaning as that previously 111

prescribed by the secretary of the United States department of 112
agriculture as published in the federal register on August 23, 113
1977, or subsequent revisions thereof, on the basis of such 114
factors as moisture availability, temperature regime, chemical 115
balance, permeability, surface layer composition, susceptibility 116
to flooding, and erosion characteristics and that historically has 117
been used for intensive agricultural purposes, and as published in 118
the rules adopted pursuant to this chapter. 119

(P) "Reclamation" means backfilling, grading, resoiling, 120
planting, and other work that has the effect of restoring an area 121
of land affected by coal mining so that it may be used for forest 122
growth, grazing, agricultural, recreational, and wildlife purpose, 123
or some other useful purpose of equal or greater value than 124
existed prior to any mining. 125

(Q) "Spoil bank" means a deposit of removed overburden. 126

(R) "Steep slope" means any slope above twenty degrees or 127
such lesser slope as may be defined by the chief after considering 128
soil, climate, and other characteristics of a region. 129

(S) "Strip mining" means those coal mining and reclamation 130
operations incident to the extraction of coal from the earth by 131
removing the materials over a coal seam, before recovering the 132
coal, by auger coal mining, or by recovery of coal from a deposit 133
that is not in its original geologic location. 134

(T) "Unwarranted failure to comply" means the failure of a 135
permittee to prevent the occurrence of any violation of any 136
requirement of this chapter due to indifference, lack of 137
diligence, or lack of reasonable care, or the failure to abate any 138
violation of the permit or this chapter due to indifference, lack 139
of diligence, or lack of reasonable care. 140

(U) "Waters of the state" means all streams, lakes, ponds, 141
marshes, watercourses, waterways, wells, springs, irrigation 142

systems, drainage systems, and other bodies or accumulations of 143
water, surface or underground, natural or artificial, regardless 144
of the depth of the strata in which underground water is located, 145
that are situated wholly or partly within, or border upon, this 146
state, or are within its jurisdiction. 147

(V) "Public roadway" means a road that is all of the 148
following: 149

(1) Designated as a public road in the jurisdiction within 150
which it is located; 151

(2) Constructed in a manner consistent with other public 152
roads within the jurisdiction within which it is located; 153

(3) Regularly maintained with public funds; 154

(4) Subject to and available for substantial use by the 155
public. 156

(W) "Performance security" means a form of financial 157
assurance, including, without limitation, a surety bond issued by 158
a surety licensed to do business in this state; ~~an annuity~~; cash; 159
a negotiable certificate of deposit; an irrevocable letter of 160
credit that automatically renews; a negotiable bond of the United 161
States, this state, or a municipal corporation in this state; a 162
trust fund of which the state is ~~named a conditional~~ the primary 163
beneficiary; or other form of financial guarantee or financial 164
assurance that is acceptable to the chief. 165

Sec. 1513.07. (A)(1) No operator shall conduct a coal mining 166
operation without a permit for the operation issued by the chief 167
of the division of mineral resources management. 168

(2) All permits issued pursuant to this chapter shall be 169
issued for a term not to exceed five years, except that, if the 170
applicant demonstrates that a specified longer term is reasonably 171
needed to allow the applicant to obtain necessary financing for 172

equipment and the opening of the operation and if the application 173
is full and complete for the specified longer term, the chief may 174
grant a permit for the longer term. A successor in interest to a 175
permittee who applies for a new permit within thirty days after 176
succeeding to the interest and who is able to obtain the 177
performance security of the original permittee may continue coal 178
mining and reclamation operations according to the approved mining 179
and reclamation plan of the original permittee until the 180
successor's application is granted or denied. 181

(3) A permit shall terminate if the permittee has not 182
commenced the coal mining operations covered by the permit within 183
three years after the issuance of the permit, except that the 184
chief may grant reasonable extensions of the time upon a showing 185
that the extensions are necessary by reason of litigation 186
precluding the commencement or threatening substantial economic 187
loss to the permittee or by reason of conditions beyond the 188
control and without the fault or negligence of the permittee, and 189
except that with respect to coal to be mined for use in a 190
synthetic fuel facility or specified major electric generating 191
facility, the permittee shall be deemed to have commenced coal 192
mining operations at the time construction of the synthetic fuel 193
or generating facility is initiated. 194

(4)(a) Any permit issued pursuant to this chapter shall carry 195
with it the right of successive renewal upon expiration with 196
respect to areas within the boundaries of the permit. The holders 197
of the permit may apply for renewal and the renewal shall be 198
issued unless the chief determines by written findings, subsequent 199
to fulfillment of the public notice requirements of this section 200
and section 1513.071 of the Revised Code through demonstrations by 201
opponents of renewal or otherwise, that one or more of the 202
following circumstances exists: 203

(i) The terms and conditions of the existing permit are not 204

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| being satisfactorily met. | 205 |
| (ii) The present coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter. | 206 207 208 |
| (iii) The renewal requested substantially jeopardizes the operator's continuing responsibilities on existing permit areas. | 209 210 |
| (iv) The applicant has not provided evidence that the performance security in effect for the operation will continue in effect for any renewal requested in the application. | 211 212 213 |
| (v) Any additional, revised, or updated information required by the chief has not been provided. Prior to the approval of any renewal of a permit, the chief shall provide notice to the appropriate public authorities as prescribed by rule of the chief. | 214 215 216 217 |
| (b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit that addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter. | 218 219 220 221 222 223 |
| (c) A permit renewal shall be for a term not to exceed the period of the original permit established by this chapter. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit. | 224 225 226 227 |
| (5) A permit issued pursuant to this chapter does not eliminate the requirements for obtaining a permit to install or modify a disposal system or any part thereof or to discharge sewage, industrial waste, or other wastes into the waters of the state in accordance with Chapter 6111. of the Revised Code. | 228 229 230 231 232 |
| (B)(1) The permit application shall be submitted in a manner satisfactory to the chief and shall contain, among other things, | 233 234 |

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| all of the following: | 235 |
| (a) The names and addresses of all of the following: | 236 |
| (i) The permit applicant; | 237 |
| (ii) Every legal owner of record of the property, surface and mineral, to be mined; | 238 239 |
| (iii) The holders of record of any leasehold interest in the property; | 240 241 |
| (iv) Any purchaser of record of the property under a real estate contract; | 242 243 |
| (v) The operator if different from the applicant; | 244 |
| (vi) If any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and statutory agent for service of process. | 245 246 247 |
| (b) The names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area; | 248 249 250 |
| (c) A statement of any current or previous coal mining permits in the United States held by the applicant, the permit identification, and any pending applications; | 251 252 253 |
| (d) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, the name and address of any person owning, of record, ten per cent or more of any class of voting stock of the applicant, a list of all names under which the applicant, partner, or principal shareholder previously operated a coal mining operation within the United States within the five-year period preceding the date of submission of the application, and a list of the person or persons primarily responsible for ensuring that the | 254 255 256 257 258 259 260 261 262 263 264 |

applicant complies with the requirements of this chapter and rules 265
adopted pursuant thereto while mining and reclaiming under the 266
permit; 267

(e) A statement of whether the applicant, any subsidiary, 268
affiliate, or persons controlled by or under common control with 269
the applicant, any partner if the applicant is a partnership, any 270
officer, principal shareholder, or director if the applicant is a 271
corporation, or any other person who has a right to control or in 272
fact controls the management of the applicant or the selection of 273
officers, directors, or managers of the applicant: 274

(i) Has ever held a federal or state coal mining permit that 275
in the five-year period prior to the date of submission of the 276
application has been suspended or revoked or has had a coal mining 277
bond, performance security, or similar security deposited in lieu 278
of bond forfeited and, if so, a brief explanation of the facts 279
involved; 280

(ii) Has been an officer, partner, director, principal 281
shareholder, or person having the right to control or has in fact 282
controlled the management of or the selection of officers, 283
directors, or managers of a business entity that has had a coal 284
mining or surface mining permit that in the five-year period prior 285
to the date of submission of the application has been suspended or 286
revoked or has had a coal mining or surface mining bond, 287
performance security, or similar security deposited in lieu of 288
bond forfeited and, if so, a brief explanation of the facts 289
involved. 290

(f) A copy of the applicant's advertisement to be published 291
in a newspaper of general circulation in the locality of the 292
proposed site at least once a week for four successive weeks, 293
which shall include the ownership of the proposed mine, a 294
description of the exact location and boundaries of the proposed 295
site sufficient to make the proposed operation readily 296

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| identifiable by local residents, and the location where the | 297 |
| application is available for public inspection; | 298 |
| (g) A description of the type and method of coal mining | 299 |
| operation that exists or is proposed, the engineering techniques | 300 |
| proposed or used, and the equipment used or proposed to be used; | 301 |
| (h) The anticipated or actual starting and termination dates | 302 |
| of each phase of the mining operation and number of acres of land | 303 |
| to be affected; | 304 |
| (i) An accurate map or plan, to an appropriate scale, clearly | 305 |
| showing the land to be affected and the land upon which the | 306 |
| applicant has the legal right to enter and commence coal mining | 307 |
| operations, copies of those documents upon which is based the | 308 |
| applicant's legal right to enter and commence coal mining | 309 |
| operations, and a statement whether that right is the subject of | 310 |
| pending litigation. This chapter does not authorize the chief to | 311 |
| adjudicate property title disputes. | 312 |
| (j) The name of the watershed and location of the surface | 313 |
| stream or tributary into which drainage from the operation will be | 314 |
| discharged; | 315 |
| (k) A determination of the probable hydrologic consequences | 316 |
| of the mining and reclamation operations, both on and off the mine | 317 |
| site, with respect to the hydrologic regime, providing information | 318 |
| on the quantity and quality of water in surface and ground water | 319 |
| systems including the dissolved and suspended solids under | 320 |
| seasonal flow conditions and the collection of sufficient data for | 321 |
| the mine site and surrounding areas so that an assessment can be | 322 |
| made by the chief of the probable cumulative impacts of all | 323 |
| anticipated mining in the area upon the hydrology of the area and | 324 |
| particularly upon water availability, but this determination shall | 325 |
| not be required until hydrologic information of the general area | 326 |
| prior to mining is made available from an appropriate federal or | 327 |

state agency; however, the permit shall not be approved until the 328
information is available and is incorporated into the application; 329

(l) When requested by the chief, the climatological factors 330
that are peculiar to the locality of the land to be affected, 331
including the average seasonal precipitation, the average 332
direction and velocity of prevailing winds, and the seasonal 333
temperature ranges; 334

(m) Accurate maps prepared by or under the direction of and 335
certified by a qualified registered professional engineer, 336
registered surveyor, or licensed landscape architect to an 337
appropriate scale clearly showing all types of information set 338
forth on topographical maps of the United States geological survey 339
of a scale of not more than four hundred feet to the inch, 340
including all artificial features and significant known 341
archeological sites. The map, among other things specified by the 342
chief, shall show all boundaries of the land to be affected, the 343
boundary lines and names of present owners of record of all 344
surface areas abutting the permit area, and the location of all 345
buildings within one thousand feet of the permit area. 346

(n)(i) Cross-section maps or plans of the land to be affected 347
including the actual area to be mined, prepared by or under the 348
direction of and certified by a qualified registered professional 349
engineer or certified professional geologist with assistance from 350
experts in related fields such as hydrology, hydrogeology, 351
geology, and landscape architecture, showing pertinent elevations 352
and locations of test borings or core samplings and depicting the 353
following information: the nature and depth of the various strata 354
of overburden; the nature and thickness of any coal or rider seam 355
above the coal seam to be mined; the nature of the stratum 356
immediately beneath the coal seam to be mined; all mineral crop 357
lines and the strike and dip of the coal to be mined within the 358
area to be affected; existing or previous coal mining limits; the 359

location and extent of known workings of any underground mines, 360
including mine openings to the surface; the location of spoil, 361
waste, or refuse areas and topsoil preservation areas; the 362
location of all impoundments for waste or erosion control; any 363
settling or water treatment facility; constructed or natural 364
drainways and the location of any discharges to any surface body 365
of water on the land to be affected or adjacent thereto; profiles 366
at appropriate cross sections of the anticipated final surface 367
configuration that will be achieved pursuant to the operator's 368
proposed reclamation plan; the location of subsurface water, if 369
encountered; the location and quality of aquifers; and the 370
estimated elevation of the water table. Registered surveyors shall 371
be allowed to perform all plans, maps, and certifications under 372
this chapter as they are authorized under Chapter 4733. of the 373
Revised Code. 374

(ii) A statement of the quality and locations of subsurface 375
water. The chief shall provide by rule the number of locations to 376
be sampled, frequency of collection, and parameters to be analyzed 377
to obtain the statement required. 378

(o) A statement of the results of test borings or core 379
samplings from the permit area, including logs of the drill holes, 380
the thickness of the coal seam found, an analysis of the chemical 381
properties of the coal, the sulfur content of any coal seam, 382
chemical analysis of potentially acid or toxic forming sections of 383
the overburden, and chemical analysis of the stratum lying 384
immediately underneath the coal to be mined, except that this 385
division may be waived by the chief with respect to the specific 386
application by a written determination that its requirements are 387
unnecessary. If the test borings or core samplings from the permit 388
area indicate the existence of potentially acid forming or toxic 389
forming quantities of sulfur in the coal or overburden to be 390
disturbed by mining, the application also shall include a 391

statement of the acid generating potential and the acid 392
neutralizing potential of the rock strata to be disturbed as 393
calculated in accordance with the calculation method established 394
under section 1513.075 of the Revised Code or with another 395
calculation method. 396

(p) For those lands in the permit application that a 397
reconnaissance inspection suggests may be prime farmlands, a soil 398
survey shall be made or obtained according to standards 399
established by the secretary of the United States department of 400
agriculture in order to confirm the exact location of the prime 401
farmlands, if any; 402

(q) A certificate issued by an insurance company authorized 403
to do business in this state certifying that the applicant has a 404
public liability insurance policy in force for the coal mining and 405
reclamation operations for which the permit is sought or evidence 406
that the applicant has satisfied other state self-insurance 407
requirements. The policy shall provide for personal injury and 408
property damage protection in an amount adequate to compensate any 409
persons damaged as a result of coal mining and reclamation 410
operations, including the use of explosives, and entitled to 411
compensation under the applicable provisions of state law. The 412
policy shall be maintained in effect during the term of the permit 413
or any renewal, including the length of all reclamation 414
operations. The insurance company shall give prompt notice to the 415
permittee and the chief if the public liability insurance policy 416
lapses for any reason including the nonpayment of insurance 417
premiums. Upon the lapse of the policy, the chief may suspend the 418
permit and all other outstanding permits until proper insurance 419
coverage is obtained. 420

(r) The business telephone number of the applicant; 421

(s) If the applicant seeks an authorization under division 422
(E)(7) of this section to conduct coal mining and reclamation 423

operations on areas to be covered by the permit that were affected 424
by coal mining operations before August 3, 1977, that have 425
resulted in continuing water pollution from or on the previously 426
mined areas, such additional information pertaining to those 427
previously mined areas as may be required by the chief, including, 428
without limitation, maps, plans, cross sections, data necessary to 429
determine existing water quality from or on those areas with 430
respect to pH, iron, and manganese, and a pollution abatement plan 431
that may improve water quality from or on those areas with respect 432
to pH, iron, and manganese. 433

(2) Information pertaining to coal seams, test borings, core 434
samplings, or soil samples as required by this section shall be 435
made available by the chief to any person with an interest that is 436
or may be adversely affected, except that information that 437
pertains only to the analysis of the chemical and physical 438
properties of the coal, excluding information regarding mineral or 439
elemental content that is potentially toxic in the environment, 440
shall be kept confidential and not made a matter of public record. 441

(3)(a) If the chief finds that the probable total annual 442
production at all locations of any operator will not exceed three 443
hundred thousand tons, the following activities, upon the written 444
request of the operator in connection with a permit application, 445
shall be performed by a qualified public or private laboratory or 446
another public or private qualified entity designated by the 447
chief, and the cost of the activities shall be assumed by the 448
chief, provided that sufficient moneys for such assistance are 449
available: 450

(i) The determination of probable hydrologic consequences 451
required under division (B)(1)(k) of this section; 452

(ii) The development of cross-section maps and plans required 453
under division (B)(1)(n)(i) of this section; 454

(iii) The geologic drilling and statement of results of test borings and core samplings required under division (B)(1)(o) of this section;

(iv) The collection of archaeological information required under division (B)(1)(m) of this section and any other archaeological and historical information required by the chief, and the preparation of plans necessitated thereby;

(v) Pre-blast surveys required under division (E) of section 1513.161 of the Revised Code;

(vi) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the chief under this chapter.

(b) A coal operator that has received assistance under division (B)(3)(a) of this section shall reimburse the chief for the cost of the services rendered if the chief finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand tons during the twelve months immediately following the date on which the operator was issued a coal mining and reclamation permit.

(4) Each applicant for a permit shall submit to the chief as part of the permit application a reclamation plan that meets the requirements of this chapter.

(5) Each applicant for a coal mining and reclamation permit shall file a copy of the application for a permit, excluding that information pertaining to the coal seam itself, for public inspection with the county recorder or an appropriate public office approved by the chief in the county where the mining is proposed to occur.

(6) Each applicant for a coal mining and reclamation permit shall submit to the chief as part of the permit application a

blasting plan that describes the procedures and standards by which 486
the operator will comply with section 1513.161 of the Revised 487
Code. 488

(C) Each reclamation plan submitted as part of a permit 489
application shall include, in the detail necessary to demonstrate 490
that reclamation required by this chapter can be accomplished and 491
in the detail necessary for the chief to determine the estimated 492
cost of reclamation if the reclamation has to be performed by the 493
division of mineral resources management in the event of 494
forfeiture of the performance security by the applicant, a 495
statement of: 496

(1) The identification of the lands subject to coal mining 497
operations over the estimated life of those operations and the 498
size, sequence, and timing of the subareas for which it is 499
anticipated that individual permits for mining will be sought; 500

(2) The condition of the land to be covered by the permit 501
prior to any mining, including all of the following: 502

(a) The uses existing at the time of the application and, if 503
the land has a history of previous mining, the uses that preceded 504
any mining; 505

(b) The capability of the land prior to any mining to support 506
a variety of uses, giving consideration to soil and foundation 507
characteristics, topography, and vegetative cover and, if 508
applicable, a soil survey prepared pursuant to division (B)(1)(p) 509
of this section; 510

(c) The productivity of the land prior to mining, including 511
appropriate classification as prime farmlands as well as the 512
average yield of food, fiber, forage, or wood products obtained 513
from the land under high levels of management. 514

(3) The use that is proposed to be made of the land following 515
reclamation, including information regarding the utility and 516

capacity of the reclaimed land to support a variety of alternative 517
uses, the relationship of the proposed use to existing land use 518
policies and plans, and the comments of any owner of the land and 519
state and local governments or agencies thereof that would have to 520
initiate, implement, approve, or authorize the proposed use of the 521
land following reclamation; 522

(4) A detailed description of how the proposed postmining 523
land use is to be achieved and the necessary support activities 524
that may be needed to achieve the proposed land use; 525

(5) The engineering techniques proposed to be used in mining 526
and reclamation and a description of the major equipment; a plan 527
for the control of surface water drainage and of water 528
accumulation; a plan, where appropriate, for backfilling, soil 529
stabilization, and compacting, grading, and appropriate 530
revegetation; a plan for soil reconstruction, replacement, and 531
stabilization, pursuant to the performance standards in section 532
1513.16 of the Revised Code, for those food, forage, and forest 533
lands identified in that section; and ~~an estimate of the cost per~~ 534
~~acre of the reclamation, including~~ a statement as to how the 535
permittee plans to comply with each of the requirements set out in 536
section 1513.16 of the Revised Code; 537

(6) A description of the means by which the utilization and 538
conservation of the solid fuel resource being recovered will be 539
maximized so that re-affecting the land in the future can be 540
minimized; 541

(7) A detailed estimated timetable for the accomplishment of 542
each major step in the reclamation plan; 543

(8) A description of the degree to which the coal mining and 544
reclamation operations are consistent with surface owner plans and 545
applicable state and local land use plans and programs; 546

(9) The steps to be taken to comply with applicable air and 547

water quality laws and regulations and any applicable health and safety standards;

(10) A description of the degree to which the reclamation plan is consistent with local physical, environmental, and climatological conditions;

(11) A description of all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) The results of test borings that the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the chief, including the location of subsurface water, and an analysis of the chemical properties, including acid forming properties of the mineral and overburden; except that information that pertains only to the analysis of the chemical and physical properties of the coal, excluding information regarding mineral or elemental contents that are potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(13) A detailed description of the measures to be taken during the mining and reclamation process to ensure the protection of all of the following:

(a) The quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(b) The rights of present users to such water;

(c) The quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or, where such protection of quantity cannot be assured, provision of alternative sources of water.

(14) Any other requirements the chief prescribes by rule. 578

(D)(1) Any information required by division (C) of this 579
section that is not on public file pursuant to this chapter shall 580
be held in confidence by the chief. 581

(2) With regard to requests for an exemption from the 582
requirements of this chapter for coal extraction incidental to the 583
extraction of other minerals, as described in division (H)(1)(a) 584
of section 1513.01 of the Revised Code, confidential information 585
includes and is limited to information concerning trade secrets or 586
privileged commercial or financial information relating to the 587
competitive rights of the persons intending to conduct the 588
extraction of minerals. 589

(E)(1) Upon the basis of a complete mining application and 590
reclamation plan or a revision or renewal thereof, as required by 591
this chapter, and information obtained as a result of public 592
notification and public hearing, if any, as provided by section 593
1513.071 of the Revised Code, the chief shall grant, require 594
modification of, or deny the application for a permit and notify 595
the applicant in writing in accordance with division (I)(3) of 596
this section. An application is deemed to be complete as submitted 597
to the chief unless the chief, within fourteen days of the 598
submission, identifies deficiencies in the application in writing 599
and subsequently submits a copy of a written list of deficiencies 600
to the applicant. 601

A decision of the chief denying a permit shall state in 602
writing the specific reasons for the denial. 603

The applicant for a permit or revision of a permit has the 604
burden of establishing that the application is in compliance with 605
all the requirements of this chapter. Within ten days after the 606
granting of a permit, the chief shall notify the boards of 607
township trustees and county commissioners, the mayor, and the 608

legislative authority in the township, county, and municipal 609
corporation in which the area of land to be affected is located 610
that a permit has been issued and shall describe the location of 611
the land. However, failure of the chief to notify the local 612
officials shall not affect the status of the permit. 613

(2) No permit application or application for revision of an 614
existing permit shall be approved unless the application 615
affirmatively demonstrates and the chief finds in writing on the 616
basis of the information set forth in the application or from 617
information otherwise available, which shall be documented in the 618
approval and made available to the applicant, all of the 619
following: 620

(a) The application is accurate and complete and all the 621
requirements of this chapter have been complied with. 622

(b) The applicant has demonstrated that the reclamation 623
required by this chapter can be accomplished under the reclamation 624
plan contained in the application. 625

(c)(i) Assessment of the probable cumulative impact of all 626
anticipated mining in the general and adjacent area on the 627
hydrologic balance specified in division (B)(1)(k) of this section 628
has been made by the chief, and the proposed operation has been 629
designed to prevent material damage to hydrologic balance outside 630
the permit area. 631

(ii) There shall be an ongoing process conducted by the chief 632
in cooperation with other state and federal agencies to review all 633
assessments of probable cumulative impact of coal mining in light 634
of post-mining data and any other hydrologic information as it 635
becomes available to determine if the assessments were realistic. 636
The chief shall take appropriate action as indicated in the review 637
process. 638

(d) The area proposed to be mined is not included within an 639

area designated unsuitable for coal mining pursuant to section 640
1513.073 of the Revised Code or is not within an area under study 641
for such designation in an administrative proceeding commenced 642
pursuant to division (A)(3)(c) or (B) of section 1513.073 of the 643
Revised Code unless in an area as to which an administrative 644
proceeding has commenced pursuant to division (A)(3)(c) or (B) of 645
section 1513.073 of the Revised Code, the operator making the 646
permit application demonstrates that, prior to January 1, 1977, 647
the operator made substantial legal and financial commitments in 648
relation to the operation for which a permit is sought. 649

(e) In cases where the private mineral estate has been 650
severed from the private surface estate, the applicant has 651
submitted to the chief one of the following: 652

(i) The written consent of the surface owner to the 653
extraction of coal by strip mining methods; 654

(ii) A conveyance that expressly grants or reserves the right 655
to extract the coal by strip mining methods; 656

(iii) If the conveyance does not expressly grant the right to 657
extract coal by strip mining methods, the surface-subsurface legal 658
relationship shall be determined under the law of this state. This 659
chapter does not authorize the chief to adjudicate property rights 660
disputes. 661

(3)(a) The applicant shall file with the permit application a 662
schedule listing all notices of violations of any law, rule, or 663
regulation of the United States or of any department or agency 664
thereof or of any state pertaining to air or water environmental 665
protection incurred by the applicant in connection with any coal 666
mining operation during the three-year period prior to the date of 667
application. The schedule also shall indicate the final resolution 668
of such a notice of violation. Upon receipt of an application, the 669
chief shall provide a schedule listing all notices of violations 670

of this chapter pertaining to air or water environmental 671
protection incurred by the applicant during the three-year period 672
prior to receipt of the application and the final resolution of 673
all such notices of violation. The chief shall provide this 674
schedule to the applicant for filing by the applicant with the 675
application filed for public review, as required by division 676
(B)(5) of this section. When the schedule or other information 677
available to the chief indicates that any coal mining operation 678
owned or controlled by the applicant is currently in violation of 679
such laws, the permit shall not be issued until the applicant 680
submits proof that the violation has been corrected or is in the 681
process of being corrected to the satisfaction of the regulatory 682
authority, department, or agency that has jurisdiction over the 683
violation and that any civil penalties owed to the state for a 684
violation and not the subject of an appeal have been paid. No 685
permit shall be issued to an applicant after a finding by the 686
chief that the applicant or the operator specified in the 687
application controls or has controlled mining operations with a 688
demonstrated pattern of willful violations of this chapter of a 689
nature and duration to result in irreparable damage to the 690
environment as to indicate an intent not to comply with or a 691
disregard of this chapter. 692

(b) For the purposes of division (E)(3)(a) of this section, 693
any violation resulting from an unanticipated event or condition 694
at a surface coal mining operation on lands eligible for remining 695
under a permit held by the person submitting an application for a 696
coal mining permit under this section shall not prevent issuance 697
of that permit. As used in this division, "unanticipated event or 698
condition" means an event or condition encountered in a remining 699
operation that was not contemplated by the applicable surface coal 700
mining and reclamation permit. 701

(4)(a) In addition to finding the application in compliance 702

with division (E)(2) of this section, if the area proposed to be 703
mined contains prime farmland as determined pursuant to division 704
(B)(1)(p) of this section, the chief, after consultation with the 705
secretary of the United States department of agriculture and 706
pursuant to regulations issued by the secretary of the interior 707
with the concurrence of the secretary of agriculture, may grant a 708
permit to mine on prime farmland if the chief finds in writing 709
that the operator has the technological capability to restore the 710
mined area, within a reasonable time, to equivalent or higher 711
levels of yield as nonmined prime farmland in the surrounding area 712
under equivalent levels of management and can meet the soil 713
reconstruction standards in section 1513.16 of the Revised Code. 714

(b) Division (E)(4)(a) of this section does not apply to a 715
permit issued prior to August 3, 1977, or revisions or renewals 716
thereof. 717

(5) The chief shall issue an order denying a permit after 718
finding that the applicant has misrepresented or omitted any 719
material fact in the application for the permit. 720

(6) The chief may issue an order denying a permit after 721
finding that the applicant, any partner, if the applicant is a 722
partnership, any officer, principal shareholder, or director, if 723
the applicant is a corporation, or any other person who has a 724
right to control or in fact controls the management of the 725
applicant or the selection of officers, directors, or managers of 726
the applicant has been a sole proprietor or partner, officer, 727
director, principal shareholder, or person having the right to 728
control or has in fact controlled the management of or the 729
selection of officers, directors, or managers of a business entity 730
that ever has had a coal mining license or permit issued by this 731
or any other state or the United States suspended or revoked, ever 732
has forfeited a coal or surface mining bond, performance security, 733
or similar security deposited in lieu of bond in this or any other 734

state or with the United States, or ever has substantially or 735
materially failed to comply with this chapter. 736

(7) When issuing a permit under this section, the chief may 737
authorize an applicant to conduct coal mining and reclamation 738
operations on areas to be covered by the permit that were affected 739
by coal mining operations before August 3, 1977, that have 740
resulted in continuing water pollution from or on the previously 741
mined areas for the purpose of potentially reducing the pollution 742
loadings of pH, iron, and manganese from discharges from or on the 743
previously mined areas. Following the chief's authorization to 744
conduct such operations on those areas, the areas shall be 745
designated as pollution abatement areas for the purposes of this 746
chapter. 747

The chief shall not grant an authorization under division 748
(E)(7) of this section to conduct coal mining and reclamation 749
operations on any such previously mined areas unless the applicant 750
demonstrates to the chief's satisfaction that all of the following 751
conditions are met: 752

(a) The applicant's pollution abatement plan for mining and 753
reclaiming the previously mined areas represents the best 754
available technology economically achievable. 755

(b) Implementation of the plan will potentially reduce 756
pollutant loadings of pH, iron, and manganese resulting from 757
discharges of surface waters or ground water from or on the 758
previously mined areas within the permit area. 759

(c) Implementation of the plan will not cause any additional 760
degradation of surface water quality off the permit area with 761
respect to pH, iron, and manganese. 762

(d) Implementation of the plan will not cause any additional 763
degradation of ground water. 764

(e) The plan meets the requirements governing mining and 765

reclamation of such previously mined pollution abatement areas 766
established by the chief in rules adopted under section 1513.02 of 767
the Revised Code. 768

(f) Neither the applicant; any partner, if the applicant is a 769
partnership; any officer, principal shareholder, or director, if 770
the applicant is a corporation; any other person who has a right 771
to control or in fact controls the management of the applicant or 772
the selection of officers, directors, or managers of the 773
applicant; nor any contractor or subcontractor of the applicant, 774
has any of the following: 775

(i) Responsibility or liability under this chapter or rules 776
adopted under it as an operator for treating the discharges of 777
water pollutants from or on the previously mined areas for which 778
the authorization is sought; 779

(ii) Any responsibility or liability under this chapter or 780
rules adopted under it for reclaiming the previously mined areas 781
for which the authorization is sought; 782

(iii) During the eighteen months prior to submitting the 783
permit application requesting an authorization under division 784
(E)(7) of this section, had a coal mining and reclamation permit 785
suspended or revoked under division (D)(3) of section 1513.02 of 786
the Revised Code for violating this chapter or Chapter 6111. of 787
the Revised Code or rules adopted under them with respect to water 788
quality, effluent limitations, or surface or ground water 789
monitoring; 790

(iv) Ever forfeited a coal or surface mining bond, 791
performance security, or similar security deposited in lieu of a 792
bond in this or any other state or with the United States. 793

(8) In the case of the issuance of a permit that involves a 794
conflict of results between various methods of calculating 795
potential acidity and neutralization potential for purposes of 796

assessing the potential for acid mine drainage to occur at a mine 797
site, the permit shall include provisions for monitoring and 798
record keeping to identify the creation of unanticipated acid 799
water at the mine site. If the monitoring detects the creation of 800
acid water at the site, the permit shall impose on the permittee 801
additional requirements regarding mining practices and site 802
reclamation to prevent the discharge of acid mine drainage from 803
the mine site. As used in division (E)(8) of this section, 804
"potential acidity" and "neutralization potential" have the same 805
meanings as in section 1513.075 of the Revised Code. 806

(F)(1) During the term of the permit, the permittee may 807
submit an application for a revision of the permit, together with 808
a revised reclamation plan, to the chief. 809

(2) An application for a revision of a permit shall not be 810
approved unless the chief finds that reclamation required by this 811
chapter can be accomplished under the revised reclamation plan. 812
The revision shall be approved or disapproved within ninety days 813
after receipt of a complete revision application. The chief shall 814
establish, by rule, criteria for determining the extent to which 815
all permit application information requirements and procedures, 816
including notice and hearings, shall apply to the revision 817
request, except that any revisions that propose significant 818
alterations in the reclamation plan, at a minimum, shall be 819
subject to notice and hearing requirements. 820

(3) Any extensions to the area covered by the permit except 821
incidental boundary revisions shall be made by application for a 822
permit. 823

(G) No transfer, assignment, or sale of the rights granted 824
under a permit issued pursuant to this chapter shall be made 825
without the written approval of the chief. 826

(H) The chief, within a time limit prescribed in the chief's 827

rules, shall review outstanding permits and may require reasonable 828
revision or modification of a permit. A revision or modification 829
shall be based upon a written finding and subject to notice and 830
hearing requirements established by rule of the chief. 831

(I)(1) If an informal conference has been held pursuant to 832
section 1513.071 of the Revised Code, the chief shall issue and 833
furnish the applicant for a permit, persons who participated in 834
the informal conference, and persons who filed written objections 835
pursuant to division (B) of section 1513.071 of the Revised Code, 836
with the written finding of the chief granting or denying the 837
permit in whole or in part and stating the reasons therefor within 838
sixty days of the conference, provided that the chief shall comply 839
with the time frames established in division (I)(3) of this 840
section. 841

(2) If there has been no informal conference held pursuant to 842
section 1513.071 of the Revised Code, the chief shall submit to 843
the applicant for a permit the written finding of the chief 844
granting or denying the permit in whole or in part and stating the 845
reasons therefor within the time frames established in division 846
(I)(3) of this section. 847

(3) The chief shall grant or deny a permit not later than two 848
hundred forty days after the submission of a complete application 849
for the permit. Any time during which the applicant is making 850
revisions to an application or providing additional information 851
requested by the chief regarding an application shall not be 852
included in the two hundred forty days. If the chief determines 853
that a permit cannot be granted or denied within the 854
two-hundred-forty-day time frame, the chief, not later than two 855
hundred ten days after the submission of a complete application 856
for the permit, shall provide the applicant with written notice of 857
the expected delay. 858

(4) If the application is approved, the permit shall be 859

issued. If the application is disapproved, specific reasons 860
therefor shall be set forth in the notification. Within thirty 861
days after the applicant is notified of the final decision of the 862
chief on the permit application, the applicant or any person with 863
an interest that is or may be adversely affected may appeal the 864
decision to the reclamation commission pursuant to section 1513.13 865
of the Revised Code. 866

(5) Any applicant or any person with an interest that is or 867
may be adversely affected who has participated in the 868
administrative proceedings as an objector and is aggrieved by the 869
decision of the reclamation commission, or if the commission fails 870
to act within the time limits specified in this chapter, may 871
appeal in accordance with section 1513.14 of the Revised Code. 872

Sec. 1513.08. (A) After a coal mining and reclamation permit 873
application has been approved, the applicant shall file with the 874
chief of the division of mineral resources management, on a form 875
prescribed and furnished by the chief, the performance security 876
required under this section that shall be payable to the state and 877
conditioned on the faithful performance of all the requirements of 878
this chapter and rules adopted under it and the terms and 879
conditions of the permit. 880

(B) Using the information contained in the permit 881
application; the requirements contained in the approved permit and 882
reclamation plan; and, after considering the topography, geology, 883
hydrology, and revegetation potential of the area of the approved 884
permit, the probable difficulty of reclamation; the chief shall 885
determine the estimated cost of reclamation under the initial term 886
of the permit if the reclamation has to be performed by the 887
division of mineral resources management in the event of 888
forfeiture of the performance security by the applicant. The chief 889
shall send written notice of the amount of the estimated cost of 890

reclamation by certified mail to the applicant. The applicant 891
shall send written notice to the chief indicating the method by 892
which the applicant will provide the performance security pursuant 893
to division (C) of this section. 894

(C) The applicant shall provide the performance security in 895
an amount using one of the following: 896

(1) If the applicant elects to provide performance security 897
without reliance on the reclamation forfeiture fund created in 898
section 1513.18 of the Revised Code, the amount of the estimated 899
cost of reclamation as determined by the chief under division (B) 900
of this section for the increments of land on which the operator 901
will conduct a coal mining and reclamation operation under the 902
initial term of the permit as indicated in the application; 903

(2) If the applicant elects to provide performance security 904
together with reliance on the reclamation forfeiture fund through 905
payment of the additional tax on the severance of coal that is 906
levied under division (A)(8) of section 5749.02 of the Revised 907
Code, an amount of twenty-five hundred dollars per acre of land on 908
which the operator will conduct coal mining and reclamation under 909
the initial term of the permit as indicated in the application. 910
However, in order for an applicant to be eligible to provide 911
performance security in accordance with division (C)(2) of this 912
section, the applicant, an owner and controller of the applicant, 913
or an affiliate of the applicant shall have held a permit issued 914
under this chapter for any coal mining and reclamation operation 915
for a period of not less than five years. In the event of 916
forfeiture of performance security that was provided in accordance 917
with division (C)(2) of this section, the difference between the 918
amount of that performance security and the estimated cost of 919
reclamation as determined by the chief under division (B) of this 920
section shall be obtained from money in the reclamation forfeiture 921
fund as needed to complete the reclamation. 922

The performance security provided under division (C) of this section for the entire area to be mined under one permit issued under this chapter shall not be less than ten thousand dollars.

The performance security shall cover areas of land affected by mining within or immediately adjacent to the permitted area, so long as the total number of acres does not exceed the number of acres for which the performance security is provided. However, the authority for the performance security to cover areas of land immediately adjacent to the permitted area does not authorize a permittee to mine areas outside an approved permit area. As succeeding increments of coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the chief additional performance security to cover the increments in accordance with this section. If a permittee intends to mine areas outside the approved permit area, the permittee shall provide additional performance security in accordance with this section to cover the areas to be mined.

~~An~~ If an applicant or permittee has not held a permit issued under this chapter for any coal mining and reclamation operation for a period of five years or more, the applicant or permittee shall provide performance security in accordance with division (C)(1) of this section in the full amount of the estimated cost of reclamation as determined by the chief for a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine. A permittee shall provide the performance security not later than one year after April 6, 2007, for a permitted coal preparation plant or coal refuse disposal area that is in existence on April 6, 2007, and that is not located within a permitted area of a mine If an applicant for a permit for a coal preparation plant or coal refuse disposal area or a permittee of a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area

of a mine has held a permit issued under this chapter for any coal 955
mining and reclamation operation for a period of five years or 956
more, the applicant or permittee may provide performance security 957
for the coal preparation plant or coal refuse disposal area either 958
in accordance with division (C)(1) of this section in the full 959
amount of the estimated cost of reclamation as determined by the 960
chief or in accordance with division (C)(2) of this section in an 961
amount of twenty-five hundred dollars per acre of land with 962
reliance on the reclamation forfeiture fund. If a permittee has 963
previously provided performance security under division (C)(1) of 964
this section for a coal preparation plant or coal refuse disposal 965
area that is not located within a permitted area of a mine and 966
elects to provide performance security in accordance with division 967
(C)(2) of this section, the permittee shall submit written notice 968
to the chief indicating that the permittee elects to provide 969
performance security in accordance with division (C)(2) of this 970
section. Upon receipt of such a written notice, the chief shall 971
release to the permittee the amount of the performance security 972
previously provided under division (C)(1) of this section that 973
exceeds the amount of performance security that is required to be 974
provided under division (C)(2) of this section. 975

(D) A permittee's liability under the performance security 977
shall be limited to the obligations established under the permit, 978
which include completion of the reclamation plan in order to make 979
the land capable of supporting the postmining land use that was 980
approved in the permit. The period of liability under the 981
performance security shall be for the duration of the coal mining 982
and reclamation operation and for a period coincident with the 983
operator's responsibility for revegetation requirements under 984
section 1513.16 of the Revised Code. 985

(E) The amount of the estimated cost of reclamation 986

determined under division (B) of this section and the amount of a 987
permittee's performance security provided in accordance with 988
division (C)(1) of this section ~~may~~ shall be adjusted by the chief 989
as the land that is affected by mining increases or decreases or 990
if the cost of reclamation increases or decreases. If the 991
performance security was provided in accordance with division 992
(C)(2) of this section and the chief has issued a cessation order 993
under division (D)(2) of section 1513.02 of the Revised Code for 994
failure to abate a violation of the contemporaneous reclamation 995
requirement under division (A)(15) of section 1513.16 of the 996
Revised Code, the chief may require the permittee to increase the 997
amount of performance security from twenty-five hundred dollars 998
per acre of land to five thousand dollars per acre of land. 999

The chief shall notify the permittee, each surety, and any 1000
person who has a property interest in the performance security and 1001
who has requested to be notified of any proposed adjustment to the 1002
performance security. The permittee may request an informal 1003
conference with the chief concerning the proposed adjustment, and 1004
the chief shall provide such an informal conference. 1005

If the chief increases the amount of performance security 1006
under this division, the permittee shall provide additional 1007
performance security in an amount determined by the chief. If the 1008
chief decreases the amount of performance security under this 1009
division, the chief shall determine the amount of the reduction of 1010
the performance security and send written notice of the amount of 1011
reduction to the permittee. The permittee may reduce the amount of 1012
the performance security in the amount determined by the chief. 1013

(F) A permittee may request a reduction in the amount of the 1014
performance security by submitting to the chief documentation 1015
proving that the amount of the performance security provided by 1016
the permittee exceeds the estimated cost of reclamation if the 1017
reclamation would have to be performed by the division in the 1018

event of forfeiture of the performance security. The chief shall 1019
examine the documentation and determine whether the permittee's 1020
performance security exceeds the estimated cost of reclamation. If 1021
the chief determines that the performance security exceeds that 1022
estimated cost, the chief shall determine the amount of the 1023
reduction of the performance security and send written notice of 1024
the amount to the permittee. The permittee may reduce the amount 1025
of the performance security in the amount determined by the chief. 1026
Adjustments in the amount of performance security under this 1027
division shall not be considered release of performance security 1028
and are not subject to section 1513.16 of the Revised Code. 1029

(G) If the performance security is a bond, it shall be 1030
executed by the operator and a corporate surety licensed to do 1031
business in this state. If the performance security is a cash 1032
deposit or negotiable certificates of deposit of a bank or savings 1033
and loan association, the bank or savings and loan association 1034
shall be licensed and operating in this state. The cash deposit or 1035
market value of the securities shall be equal to or greater than 1036
the amount of the performance security required under this 1037
section. The chief shall review any documents pertaining to the 1038
performance security and approve or disapprove the documents. The 1039
chief shall notify the applicant of the chief's determination. 1040

(H) If the performance security is a bond, the chief may 1041
accept the bond of the applicant itself without separate surety 1042
when the applicant demonstrates to the satisfaction of the chief 1043
the existence of a suitable agent to receive service of process 1044
and a history of financial solvency and continuous operation 1045
sufficient for authorization to self-insure or bond the amount. 1046

(I) Performance security provided under this section may be 1047
held in trust, provided that the state is the ~~conditional~~ primary 1048
beneficiary of the trust and the custodian of the performance 1049
security held in trust is a bank, trust company, or other 1050

financial institution that is licensed and operating in this 1051
state. The chief shall review the trust document and approve or 1052
disapprove the document. The chief shall notify the applicant of 1053
the chief's determination. 1054

(J) If a surety, bank, savings and loan association, trust 1055
company, or other financial institution that holds the performance 1056
security required under this section becomes insolvent, the 1057
permittee shall notify the chief of the insolvency, and the chief 1058
shall order the permittee to submit a plan for replacement 1059
performance security within thirty days after receipt of notice 1060
from the chief. If the permittee provided performance security in 1061
accordance with division (C)(1) of this section, the permittee 1062
shall provide the replacement performance security within ninety 1063
days after receipt of notice from the chief. If the permittee 1064
provided performance security in accordance with division (C)(2) 1065
of this section, the permittee shall provide the replacement 1066
performance security within one year after receipt of notice from 1067
the chief, and, for a period of one year after the permittee's 1068
receipt of notice from the chief or until the permittee provides 1069
the replacement performance security, whichever occurs first, 1070
money in the reclamation forfeiture fund shall be the permittee's 1071
replacement performance security in an amount not to exceed the 1072
estimated cost of reclamation as determined by the chief. 1073

(K) A If a permittee provided performance security in 1074
accordance with division (C)(1) of this section, the permittee's 1075
responsibility for repairing material damage and replacement of 1076
water supply resulting from subsidence ~~may~~ shall be satisfied by 1077
either of the following: 1078

(1) The purchase prior to mining of a noncancelable 1079
premium-prepaid liability insurance ~~required under this chapter~~ 1080
policy in lieu of the permittee's performance security ~~if the~~ 1081
~~liability~~ for subsidence damage. The insurance policy contains 1082

shall contain terms and conditions that specifically provide 1083
coverage for repairing material damage and replacement of water 1084
supply resulting from subsidence. 1085

(2) The provision of additional performance security in the 1086
amount of the estimated cost to the division of mineral resources 1087
management to repair material damage and replace water supplies 1088
resulting from subsidence until the repair or replacement is 1089
completed. However, if such repair or replacement is completed, or 1090
compensation for structures that have been damaged by subsidence 1091
is provided, by the permittee within ninety days of the occurrence 1092
of the subsidence, additional performance security is not 1093
required. In addition, the chief may extend the ninety-day period 1094
for a period not to exceed one year if the chief determines that 1095
the permittee has demonstrated in writing that subsidence is not 1096
complete and that probable subsidence-related damage likely will 1097
occur and, as a result, the completion of repairs of 1098
subsidence-related material damage to lands or protected 1099
structures or the replacement of water supply within ninety days 1100
of the occurrence of the subsidence would be unreasonable. 1101

(L) If the performance security provided in accordance with 1103
this section exceeds the estimated cost of reclamation, the chief 1104
may authorize the amount of the performance security that exceeds 1105
the estimated cost of reclamation together with any interest or 1106
other earnings on the performance security to be paid to the 1107
permittee. 1108

(M) A permittee that held a valid coal mining and reclamation 1109
permit immediately prior to April 6, 2007, shall provide, not 1110
later than a date established by the chief, performance security 1111
in accordance with division (C)(1) or (2) of this section, rather 1112
than in accordance with the law as it existed prior to that date, 1113
by filing it with the chief on a form that the chief prescribes 1114

and furnishes. Accordingly, for purposes of this section, 1115
"applicant" is deemed to include such a permittee. 1116

(N) As used in this section: 1117

(1) "Affiliate of the applicant" means an entity that has a 1118
parent entity in common with the applicant. 1119

(2) "Owner and controller of the applicant" means a person 1120
that has any relationship with the applicant that gives the person 1121
authority to determine directly or indirectly the manner in which 1122
the applicant conducts coal mining operations. 1123

Sec. 1513.18. (A) All money that becomes the property of the 1124
state under division (G) of section 1513.16 of the Revised Code 1125
shall be deposited in the reclamation forfeiture fund, which is 1126
hereby created in the state treasury. Disbursements from the fund 1127
shall be made by the chief of the division of mineral resources 1128
management for the purpose of reclaiming areas of land affected by 1129
coal mining under a coal mining and reclamation permit issued on 1130
or after September 1, 1981, on which an operator has defaulted. 1131

(B) The fund also shall consist of all money from the 1132
collection of liens under section 1513.081 of the Revised Code, 1133
any moneys transferred to it under section 1513.181 of the Revised 1134
Code from the coal mining and reclamation reserve fund created in 1135
that section, fines collected under division (E) of section 1136
1513.02 and section 1513.99 of the Revised Code, fines collected 1137
for a violation of section 2921.31 of the Revised Code that, prior 1138
to July 1, 1996, would have been a violation of division (G) of 1139
section 1513.17 of the Revised Code as it existed prior to that 1140
date, and moneys collected and credited to it pursuant to section 1141
5749.02 of the Revised Code. Disbursements from the fund shall be 1142
made by the chief in accordance with division (D) of this section 1143
for the purpose of reclaiming areas that an operator has affected 1144
by mining and failed to reclaim under a coal mining and 1145

reclamation permit issued under this chapter ~~or under a surface~~ 1146
~~mining permit issued under Chapter 1514. of the Revised Code.~~ 1147

The chief may expend moneys from the fund to pay necessary 1148
administrative costs, including engineering and design services, 1149
incurred by the division of mineral resources management in 1150
reclaiming these areas. The chief also may expend moneys from the 1151
fund to pay necessary administrative costs of the reclamation 1152
forfeiture fund advisory board created in section 1513.182 of the 1153
Revised Code as authorized by the board under that section. 1154
Expenditures from the fund to pay such administrative costs need 1155
not be made under contract. 1156

(C) Except when paying necessary administrative costs 1157
authorized by division (B) of this section, expenditures from the 1158
fund shall be made under contracts entered into by the chief, with 1159
the approval of the director of natural resources, in accordance 1160
with procedures established by the chief, by rules adopted in 1161
accordance with section 1513.02 of the Revised Code. The chief may 1162
reclaim the land in the same manner as set forth in sections 1163
1513.21 to 1513.24 of the Revised Code. Each contract awarded by 1164
the chief shall be awarded to the lowest responsive and 1165
responsible bidder, in accordance with section 9.312 of the 1166
Revised Code, after sealed bids are received, opened, and 1167
published at the time and place fixed by the chief. The chief 1168
shall publish notice of the time and place at which bids will be 1169
received, opened, and published, at least once and at least ten 1170
days before the date of the opening of the bids, in a newspaper of 1171
general circulation in the county in which the area of land to be 1172
reclaimed under the contract is located. If, after advertising, no 1173
bids are received at the time and place fixed for receiving them, 1174
the chief may advertise again for bids, or, if the chief considers 1175
the public interest will best be served, the chief may enter into 1176
a contract for the reclamation of the area of land without further 1177

advertisement for bids. The chief may reject any or all bids 1178
received and again publish notice of the time and place at which 1179
bids for contracts will be received, opened, and published. The 1180
chief, with the approval of the director, may enter into a 1181
contract with the landowner, a coal mine operator or surface mine 1182
operator mining under a current, valid permit issued under this 1183
chapter or Chapter 1514. of the Revised Code, or a contractor 1184
hired by the surety or trustee, if the performance security is 1185
held in trust, to complete reclamation to carry out reclamation on 1186
land affected by coal mining on which an operator has defaulted 1187
without advertising for bids. 1188

(D)(1) The chief shall expend money credited to the 1189
reclamation forfeiture fund from the forfeiture of the performance 1190
security applicable to an area of land to pay for the cost of the 1191
reclamation of the land. 1192

(2) If the performance security for the area of land was 1193
provided under division (C)(1) of section 1513.08 of the Revised 1194
Code, the chief shall use the money from the forfeited performance 1195
security to complete the reclamation that the operator failed to 1196
do under the operator's applicable coal mining and reclamation 1197
permit issued under this chapter. 1198

(3) If the performance security for the area of land was 1199
provided under division (C)(2) of section 1513.08 of the Revised 1200
Code, the chief shall use the money from the forfeited performance 1201
security to complete the reclamation that the operator failed to 1202
do under the operator's applicable coal mining and reclamation 1203
permit issued under this chapter. If the money credited to the 1204
reclamation forfeiture fund from the forfeiture of the performance 1205
security provided under division (C)(2) of section 1513.08 of the 1206
Revised Code is not sufficient to complete the reclamation, the 1207
chief shall notify the reclamation forfeiture fund advisory board 1208
of the amount of the insufficiency. The chief may expend money 1209

credited to the reclamation forfeiture fund under section 5749.02 1210
of the Revised Code or transferred to the fund under section 1211
1513.181 of the Revised Code to complete the reclamation. The 1212
chief shall not expend money from the fund in an amount that 1213
exceeds the difference between the amount of the performance 1214
security provided under division (C)(2) of section 1513.08 of the 1215
Revised Code and the estimated cost of reclamation as determined 1216
by the chief under divisions (B) and (E) of that section. 1217

(4) Money from the reclamation forfeiture fund shall not be 1218
used for reclamation of land or water resources affected by 1219
~~material damage from subsidence or~~ mine drainage that requires 1220
extended water treatment after reclamation is completed under the 1221
terms of the permit. In addition, money from the reclamation 1222
forfeiture fund shall not be used to supplement the performance 1223
security of an applicant or permittee that has provided 1224
performance security in accordance with division (C)(1) of section 1225
1513.08 of the Revised Code. 1226

(E) The chief shall keep a detailed accounting of the 1227
expenditures from the reclamation forfeiture fund to complete 1228
reclamation of the land and, upon completion of the reclamation, 1229
shall certify the expenditures to the attorney general. Upon the 1230
chief's certification of the expenditures from the reclamation 1231
forfeiture fund, the attorney general shall bring an action for 1232
that amount of money. The operator is liable for that expense in 1233
addition to any other liabilities imposed by law. Moneys so 1234
recovered shall be credited to the reclamation forfeiture fund. 1235
The chief shall not postpone the reclamation because of any action 1236
brought by the attorney general under this division. Prior to 1237
completing reclamation, the chief may collect through the attorney 1238
general any additional amount that the chief believes will be 1239
necessary for reclamation in excess of the forfeited performance 1240
security amount applicable to the land that the operator should 1241

have, but failed to, reclaim. 1242

(F) Except as otherwise provided in division (H) of this 1243
section, if any part of the moneys in the reclamation forfeiture 1244
fund remains in the fund after the chief has caused the area of 1245
land to be reclaimed and has paid all the reclamation costs and 1246
expenses, the chief may expend those moneys to complete other 1247
reclamation work performed under this section on forfeiture areas 1248
affected under a coal mining and reclamation permit issued on or 1249
after September 1, 1981. 1250

(G) The chief shall require every contractor performing 1251
reclamation work pursuant to this section to pay workers at the 1252
greater of their regular rate of pay, as established by contract, 1253
agreement, or prior custom or practice, or the average wage rate 1254
paid in this state for the same or similar work as determined by 1255
the chief under section 1513.02 of the Revised Code. 1256

(H) All investment earnings of the fund shall be credited to 1257
the fund and shall be used only for the reclamation of land for 1258
which performance security was provided under division (C)(2) of 1259
section 1513.08 of the Revised Code. 1260

Sec. 5749.02. (A) For the purpose of providing revenue to 1261
administer the state's coal mining and reclamation regulatory 1262
program, to meet the environmental and resource management needs 1263
of this state, and to reclaim land affected by mining, an excise 1264
tax is hereby levied on the privilege of engaging in the severance 1265
of natural resources from the soil or water of this state. The tax 1266
shall be imposed upon the severer and shall be: 1267

(1) Ten cents per ton of coal; 1268

(2) Four cents per ton of salt; 1269

(3) Two cents per ton of limestone or dolomite; 1270

(4) Two cents per ton of sand and gravel; 1271

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|---|--|
| (5) Ten cents per barrel of oil; | 1272 |
| (6) Two and one-half cents per thousand cubic feet of natural gas; | 1273 1274 |
| (7) One cent per ton of clay, sandstone or conglomerate, shale, gypsum, or quartzite; | 1275 1276 |
| (8) Except as otherwise provided in this division or in rules adopted by the reclamation forfeiture fund advisory board under section 1513.182 of the Revised Code, an additional fourteen cents per ton of coal produced from an area under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code for which the performance security is provided under division (C)(2) of section 1513.08 of the Revised Code. Beginning July 1, 2007, if at the end of a fiscal biennium the balance of the reclamation forfeiture fund created in section 1513.18 of the Revised Code is equal to or greater than ten million dollars, the rate levied shall be twelve cents per ton. Beginning July 1, 2007, if at the end of a fiscal biennium the balance of the fund is at least five million dollars, but less than ten million dollars, the rate levied shall be fourteen cents per ton. Beginning July 1, 2007, if at the end of a fiscal biennium the balance of the fund is less than five million dollars, the rate levied shall be sixteen cents per ton. Beginning July 1, 2009, not later than thirty days after the close of a fiscal biennium, the chief of the division of mineral resources management shall certify to the tax commissioner the amount of the balance of the reclamation forfeiture fund as of the close of the fiscal biennium. Any necessary adjustment of the rate levied shall take effect on the first day of the following January and shall remain in effect during the calendar biennium that begins on that date. | 1277 1278 1279 1280 1281 1282 1283 1284 1285 1286 1287 1288 1289 1290 1291 1292 1293 1294 1295 1296 1297 1298 1299 1300 |
| (9) An additional one and two-tenths cents per ton of coal mined by surface mining methods. | 1301 1302 |

(B) Of the moneys received by the treasurer of state from the tax levied in division (A)(1) of this section, four and seventy-six-hundredths per cent shall be credited to the geological mapping fund created in section 1505.09 of the Revised Code, eighty and ninety-five-hundredths per cent shall be credited to the coal mining administration and reclamation reserve fund created in section 1513.181 of the Revised Code, and fourteen and twenty-nine-hundredths per cent shall be credited to the unreclaimed lands fund created in section 1513.30 of the Revised Code.

Fifteen per cent of the moneys received by the treasurer of state from the tax levied in division (A)(2) of this section shall be credited to the geological mapping fund and the remainder shall be credited to the unreclaimed lands fund.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(3) and (4) of this section, seven and five-tenths per cent shall be credited to the geological mapping fund, forty-two and five-tenths per cent shall be credited to the unreclaimed lands fund, and the remainder shall be credited to the surface mining fund created in section 1514.06 of the Revised Code.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(5) and (6) of this section, ninety per cent shall be credited to the oil and gas well fund created in section 1509.02 of the Revised Code and ten per cent shall be credited to the geological mapping fund. All of the moneys received by the treasurer of state from the tax levied in division (A)(7) of this section shall be credited to the surface mining fund.

All of the moneys received by the treasurer of state from the tax levied in division (A)(8) of this section shall be credited to the reclamation forfeiture fund.

All of the moneys received by the treasurer of state from the tax levied in division (A)(9) of this section shall be credited to the unreclaimed lands fund.

(C) When, at the close of any fiscal year, the chief finds that the balance of the reclamation forfeiture fund, plus estimated transfers to it from the coal mining administration and reclamation reserve fund under section 1513.181 of the Revised Code, plus the estimated revenues from the tax levied by division (A)(8) of this section for the remainder of the calendar year that includes the close of the fiscal year, are sufficient to complete the reclamation of all lands for which the performance security has been provided under division (C)(2) of section 1513.08 of the Revised Code, the purposes for which the tax under division (A)(8) of this section is levied shall be deemed accomplished at the end of that calendar year. The chief, within thirty days after the close of the fiscal year, shall certify those findings to the tax commissioner, and the tax levied under division (A)(8) of this section shall cease to be imposed for the subsequent calendar year after the last day of that calendar year on coal produced under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code if the permittee has made tax payments under division (A)(8) of this section during each of the preceding five full calendar years. Not later than thirty days after the close of a fiscal year, the chief shall certify to the tax commissioner the identity of any permittees who accordingly no longer are required to pay the tax levied under division (A)(8) of this section for the subsequent calendar year.

Section 2. That existing sections 1513.01, 1513.07, 1513.08, 1513.18, and 5749.02 of the Revised Code are hereby repealed.

Section 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public

peace, health, and safety. The reason for such necessity is the 1366
need to establish alternate financial security requirements for 1367
repairing damage to or restoration of land or water resources due 1368
to coal mining-related activities and subsidence, thus protecting 1369
the public from damage to such land or water resources by 1370
providing the necessary funding mechanism to repair or restore 1371
those resources. Therefore, this act shall go into immediate 1372
effect. 1373