



Eric Vendel

Final Analysis
Legislative Service Commission

Sub. S.B. 386
127th General Assembly
(As Passed by the General Assembly)

Sens. Grendell, Wilson, Carey, Cafaro, Padgett, Schaffer, Seitz, Niehaus, Austria, Harris, Patton, Schuler

Reps. Aslanides, Batchelder, Bolon, Coley, Combs, Domenick, Dyer, Flowers, Gardner, Gibbs, Grady, Hite, Hughes, Mandel, J. McGregor, Mecklenborg, Nero, Sayre, Schlichter, Wachtmann

Effective date: *

ACT SUMMARY

- Generally declares that a coal mining and reclamation permit must be issued or denied by the Chief of the Division of Mineral Resources Management in the Department of Natural Resources not later than 240 days after a complete application for a permit is submitted.
- Declares that an application for a coal mining and reclamation permit is deemed complete as submitted to the Chief unless the Chief, within 14 days of the submission, identifies deficiencies in the application in writing and submits them to the applicant.
- Revises several ongoing requirements and establishes several new procedures governing the issuance or denial of coal mining and reclamation permits.
- Requires the Director of Environmental Protection and the Director of Natural Resources to jointly establish procedures regarding the coordination of the issuance of coal mining and reclamation permits under the Coal Mining and Reclamation Law and the issuance of certain environmental permits and certifications under the Water Pollution

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

Control Law, and requires the procedures to include the creation of a Joint Agency Coal Task Force.

- Requires the Director of Environmental Protection and the Director of Natural Resources to jointly determine if the State of Ohio may administer the section 404 program under the Federal Water Pollution Control Act in lieu of the United States Army Corps of Engineers.

CONTENT AND OPERATION

Coal mining and reclamation permits

Ongoing law establishes requirements and procedures for the issuance of coal mining and reclamation permits. Those requirements and procedures include the process by which the Chief of the Division of Mineral Resources Management in the Department of Natural Resources must approve or deny a permit. Under law retained in part by the act, the time frame for approving or disapproving a coal mining and reclamation permit applies only when the Chief receives a complete application. At that point the Chief must grant, require modification of, or deny the permit application in a reasonable time set by the Chief. The act provides that a submitted application is deemed complete as submitted to the Chief unless the Chief, within 14 days of the submission, identifies deficiencies in the application in writing and subsequently submits a copy of a written list of deficiencies to the applicant. It also requires the Chief to grant or deny the permit application in accordance with the time frames established by the act (see below). Under the act, a decision of the Chief denying a permit must state in writing the specific reasons for the denial. (R.C. 1513.07(E)(1).)

Continuing law authorizes certain persons that may be affected by the issuance of a coal mining and reclamation permit or certain government officials to request an informal conference concerning the permit (R.C. 1513.071, not in the act). Under law retained by the act, if an informal conference has been held, the Chief must issue and furnish the permit applicant, persons who participated in the informal conference, and persons who filed written objections to the permit application with the Chief's written finding granting or denying the permit in whole or in part and stating the Chief's reasons within 60 days of the conference. The act also requires the Chief to grant or deny the permit within the time frames established by the act (see below). (R.C. 1513.07(I)(1).)

Former law provided that if no informal conference was held, the Chief had to notify the applicant for a permit whether the permit would be issued or denied within a reasonable time as provided by rules adopted by the Chief. In determining what was a reasonable time, the Chief was required to take into

account the time needed for proper investigation of the site, the complexity of the permit application, whether or not a written objection to the application had been filed, and whether the application had been approved or disapproved in whole or in part. The act instead provides that if there is no informal conference, the Chief must submit to the applicant for a permit the Chief's written finding granting or denying the permit in whole or in part and stating the reasons therefore within the time frames established by the act. (R.C. 1513.07(I)(2).)

The act requires the Chief to grant or deny a permit not later than 240 days after the submission of a complete application for the permit. Any time during which the applicant is making revisions to an application or providing additional information requested by the Chief regarding an application is not to be included in the 240-day time frame. If the Chief determines that a permit cannot be granted or denied within the 240-day time frame, the Chief, not later than 210 days after the submission of a complete application for the permit, must provide the applicant with written notice of the expected delay. (R.C. 1513.07(I)(3).)

Joint procedures of Environmental Protection Agency and Department of Natural Resources

The act requires the Director of Environmental Protection and the Director of Natural Resources to jointly establish procedures that do all of the following:

(1) Provide for the coordination of the issuance of coal mining and reclamation permits under the Coal Mining and Reclamation Law and permits and certifications under the Water Pollution Control Law for coal mining and reclamation operations;

(2) Provide for the direct cooperation of the staff of the Environmental Protection Agency and the staff of the Division of Mineral Resources Management in the review and approval or denial of coal mining and reclamation permits issued under the Coal Mining and Reclamation Law and permits and certifications issued under the Water Pollution Control Law;

(3) Provide for direct and effective communication between the staff of the Environmental Protection Agency and the staff of the Division of Mineral Resources Management regarding the review and approval or denial of coal mining and reclamation permits issued under the Coal Mining and Reclamation Law and permits and certifications issued under the Water Pollution Control Law; and

(4) Provide for the creation of a Joint Agency Coal Task Force consisting of employees of the Environmental Protection Agency and the Division of Mineral

Resources Management for the purpose of ensuring that the joint procedures established under the act are properly implemented. (R.C. 1513.076.)

State administration of section 404 program

Under the act, the Director of Environmental Protection and the Director of Natural Resources must jointly determine if the State of Ohio may administer the section 404 program under the Federal Water Pollution Control Act in lieu of the United States Army Corps of Engineers. The Directors must contact and work with the United States Army Corps of Engineers in order to make that determination. The act then requires them to report their findings to the General Assembly not later than one year after the effective date of the act. (Section 3.)

HISTORY

ACTION	DATE
Introduced	11-26-08
Reported, S. Environment & Natural Resources	12-10-08
Passed Senate (22-9)	12-10-08
Reported, H. Agriculture & Natural Resources	12-17-08
Passed House (96-0)	12-17-08
Senate concurred in House amendments (33-0)	12-18-08

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