

AN ACT

To amend sections 1509.08, 1513.13, 1561.10, 1561.35, 1561.51, 1563.13, 1565.15, 5727.391, and 6111.044, to amend section 4909.15 as amended by Am. Sub. S.B. 3 of the 123rd General Assembly to enact new section 5733.39 and sections 1561.351, 1561.53, 1561.54, and 1561.55, and to repeal sections 1561.41, 1561.42, 1561.43, 1561.44, 1565.17, 1565.18, 1565.19, 1565.20, 1565.21, 1565.22, 1565.23, 1567.28, 1567.29, 1567.37, 1567.56, 1567.64, and 5733.39 of the Revised Code to revise qualifications for membership on the Mine Examining Board, to add two members to the Board, to clarify provisions governing appeals involving the board, to revise qualifications for first aid providers who must be on duty at surface coal mines, to require all surface coal miners to receive first aid training, to make other changes governing mine safety and operation, including the elimination of certain provisions involving weighing and measuring and explosions at coal mines, to increase the Ohio coal tax credit for electric companies burning Ohio coal from \$1 per ton to \$3 per ton, to eliminate certain restrictions on companies claiming the credit, to allow those companies to retain the credit rather than pass it through to consumers, and to terminate the credit for Ohio coal burned after 2004.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1509.08, 1513.13, 1561.10, 1561.35, 1561.51, 1563.13, 1565.15, 5727.391, and 6111.044 be amended, section 4909.15 as

amended by Am. Sub. S.B. 3 of the 123rd General Assembly be amended, and new section 5733.39 and sections 1561.351, 1561.53, 1561.54, and 1561.55 of the Revised Code be enacted to read as follows:

Sec. 1509.08. Upon receipt of an application for a permit required by section 1509.05 of the Revised Code, or upon receipt of an application for a permit to plug and abandon under section 1509.13 of the Revised Code, the chief of the division of oil and gas shall determine whether the well is or is to be located in a coal bearing township.

Whether or not the well is or is to be located in a coal bearing township, the chief, by order, may refuse to issue a permit required by section 1509.05 of the Revised Code to any applicant who at the time of applying for the permit is in material or substantial violation of this chapter or rules adopted or orders issued ~~thereunder~~ under it. The chief shall refuse to issue a permit to any applicant who at the time of applying for the permit has been found liable by a final nonappealable order of a court of competent jurisdiction for damage to streets, roads, highways, bridges, culverts, or drainways pursuant to section 4513.34 or 5577.12 of the Revised Code until the applicant provides the chief with evidence of compliance with the order. No applicant shall attempt to circumvent this provision by applying for a permit under a different name or business organization name, by transferring responsibility to another person or entity, by abandoning the well or lease, or by any other similar act.

If the well is not or is not to be located in a coal bearing township, or if it is to be located in a coal bearing township, but the landowner submits an affidavit ~~that he owns~~ attesting to ownership of the property in fee simple, including the coal, and has no objection to the well, the chief shall issue the permit.

If the application to drill, reopen, or convert concerns a well ~~which that~~ that is or is to be located in a coal bearing township, the chief of the division of oil and gas shall transmit to the chief of the division of mines and reclamation two copies of the application and three copies of the map required in section 1509.06 of the Revised Code; ~~except that, when the affidavit with the waiver of objection described in the preceding paragraph is submitted, the chief of the division of oil and gas shall not transmit such~~ the copies.

The chief of the division of mines and reclamation ~~shall~~ shall immediately notify the owner or lessee of any affected mine that the application has been filed and send to the owner or lessee two copies of the map accompanying the application setting forth the location of the well.

If the owner or lessee objects to the location of the well or objects to any

location within fifty feet of the original location as a possible site for relocation of the well, ~~he~~ the owner or lessee shall notify the chief of the division of mines and reclamation of the objection, giving the reasons ~~therefor~~ for the objection and, if applicable, indicating on a copy of the map the particular location or locations within fifty feet of the original location to which ~~he~~ the owner or lessee objects as a site for possible relocation of the well, within six days after the receipt of the notice. If the chief of the division of mines and reclamation receives no objections from the owner or lessee of the mine within ten days after the receipt of the notice by the owner or lessee, or if in the opinion of the chief of the division of mines and reclamation the objections offered by the owner or lessee are not sufficiently well founded, ~~he shall~~ the chief immediately ~~shall~~ notify the owner or lessee of ~~his~~ those findings. The owner or lessee may appeal the decision of the chief of the division of mines and reclamation to the mine examining board created under section 1561.10 of the Revised Code. The appeal shall be filed within fifteen days from the date on which the owner or lessee receives the notice. If the appeal is not filed within that time, the chief of the division of mines and reclamation ~~shall~~ immediately shall approve the application, retain a copy of the application and map, and return a copy of the application to the chief of the division of oil and gas with ~~his~~ the approval noted ~~thereon~~ on it. ~~Thereupon the~~ the chief of the division of oil and gas then shall issue the permit if the provisions of this chapter pertaining to the issuance of such a permit have been complied with.

If the chief of the division of mines and reclamation receives an objection from the owner or lessee of the mine as to the location of the well within ten days after receipt of the notice by the owner or lessee, and if in the opinion of the chief the objection is well founded, ~~he~~ the chief shall disapprove the application and immediately return it to the chief of the division of oil and gas together with ~~his~~ the reasons for disapproval and a suggestion for a new location for the well, provided that the suggested new location shall not be a location within fifty feet of the original location to which the owner or lessee has objected as a site for possible relocation of the well if the chief has determined that the objection is well founded. The chief of the division of oil and gas ~~shall~~ immediately shall notify the applicant for the permit of the disapproval and any suggestion made by the chief of the division of mines and reclamation as to a new location for the well. The applicant may withdraw ~~his~~ the application or amend ~~his~~ the application to drill the well at the location suggested by the chief of the division of mines and reclamation, or ~~he~~ the applicant may appeal the disapproval of the application by the chief of the division of mines and

reclamation to the mine examining board ~~created under section 1561.10 of the Revised Code.~~

If the chief of the division of mines and reclamation receives no objection from the owner or lessee of a mine as to the location of the well, but does receive an objection from the owner or lessee as to one or more locations within fifty feet of the original location as possible sites for relocation of the well within ten days after receipt of the notice by the owner or lessee, and if in the opinion of the chief the objection is well founded, ~~he shall~~ the chief nevertheless shall approve the application and shall ~~immediately~~ return it immediately to the chief of the division of oil and gas together with ~~his~~ the reasons for disapproving any of the locations to which the owner or lessee objects as possible sites for relocation of the well. ~~Thereupon the~~ The chief of the division of oil and gas then shall issue a permit; if the provisions of this chapter pertaining to the issuance of such a permit have been complied with, incorporating as a term or condition of the permit that the applicant is prohibited from commencing drilling at any location within fifty feet of the original location that has been disapproved by the chief of the division of mines and reclamation. The applicant may appeal to the mine examining board the terms and conditions of the permit prohibiting the commencement of drilling at any such location disapproved by the chief of the division of mines and reclamation.

Any such appeal shall be filed within fifteen days from the date the applicant receives notice of the disapproval of ~~his~~ the application, any other location within fifty feet of the original location, or terms or conditions of the permit, or the owner or lessee receives notice of the chief's decision. No approval or disapproval of an application shall be delayed by the chief of the division of mines and reclamation for more than fifteen days from the date of sending the notice of the application to the mine owner or lessee as required by this section.

All appeals provided for in this section shall be treated as expedited appeals. The mine examining board shall hear any such appeal in accordance with section 1561.53 of the Revised Code and render a decision within thirty days of the filing of the appeal.

The chief of the division of oil and gas shall not issue a permit to drill a new well or reopen a well ~~which~~ that is or is to be located within three hundred feet of any opening of any mine used as a means of ingress, egress, or ventilation for persons employed ~~therein~~ in the mine, nor within one hundred feet of any building or inflammable structure connected ~~therewith~~ with the mine and actually used as a part of the operating equipment of the mine, unless the chief of the division of mines and reclamation determines

that life or property will not be endangered by drilling and operating the well in that location.

The chief of the division of mines and reclamation may suspend the drilling or reopening of a well in a coal bearing township ~~if he determines~~ after determining that the drilling or reopening activities present an imminent and substantial threat to public health or safety or to miners' health or safety and ~~he has~~ having been unable to contact the chief of the division of oil and gas to request an order of suspension under section 1509.06 of the Revised Code. Before issuing a suspension order for this purpose, the chief of the division of mines and reclamation shall notify the owner in ~~such a~~ such a manner ~~as that~~ as that in the chief's judgment would provide reasonable notification that ~~he~~ the chief intends to issue a suspension order. The chief may issue such an order without prior notification if reasonable attempts to notify the owner have failed, but in that event notification shall be given as soon thereafter as practical. Within five calendar days after the issuance of the order, the chief shall provide the owner an opportunity to be heard and to present evidence that the activities do not present an imminent and substantial threat to public health or safety or to miners' health or safety. If, after considering the evidence presented by the owner, the chief determines that the activities do not present such a threat, ~~he~~ the chief shall revoke the suspension order. An owner may appeal a suspension order issued by the chief of the division of mines and reclamation under this section to the mine examining board or may appeal the order directly to the court of common pleas of the county in which the well is located.

Sec. 1513.13. (A)(1) A person having an interest that is or may be adversely affected by a finding or determination of the chief of the division of mines and reclamation made under section 1509.08, 1561.35, 1561.351, 1563.13, or 6111.044 of the Revised Code or an investigation made by the chief under section 1561.51 of the Revised Code may appeal to the mine examining board in accordance with those sections. Any ~~other~~ other person having an interest that is or may be adversely affected by a notice of violation, order, or decision of the chief ~~of the division of mines and reclamation~~, ~~except other than~~ a show cause order or an order that adopts a rule, or by any modification, vacation, or termination of such a notice, order, or decision, may appeal by filing a notice of appeal with the reclamation commission for review of the notice, order, or decision within thirty days after the notice, order, or decision is served upon the person or within thirty days after its modification, vacation, or termination and by filing a copy of the notice of appeal with the chief within three days after filing the notice of appeal with the commission. The notice of appeal shall contain a copy of the

notice of violation, order, or decision complained of and the grounds upon which the appeal is based. The commission has exclusive original jurisdiction to hear and decide such appeals. The filing of a notice of appeal under ~~this~~ division (A)(1) of this section does not operate as a stay of any order, notice of violation, or decision of the chief.

(2) The permittee, the chief, and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. The hearing shall be of record.

(3) Any person authorized under this section to appeal to the commission may request an informal review by the chief or the chief's designee by filing a written request with the chief within thirty days after a notice, order, decision, modification, vacation, or termination is served upon the person. Filing of the written request shall toll the time for appeal before the commission, but shall not operate as a stay of any order, notice of violation, or decision of the chief. The chief's determination of an informal review is appealable to the commission under this section.

(B) The commission shall affirm the notice of violation, order, or decision of the chief unless the commission determines that it is arbitrary, capricious, or otherwise inconsistent with law; in that case the commission may modify the notice of violation, order, or decision or vacate it and remand it to the chief for ~~such~~ further proceedings as that the commission may direct.

The commission shall conduct hearings and render decisions in a timely fashion, except that all of the following apply:

(1) When the appeal concerns an order for the cessation of coal mining and reclamation operations issued pursuant to division (D)(1) or (2) of section 1513.02 of the Revised Code, the commission shall issue its written decision within thirty days after the receipt of the appeal unless temporary relief has been granted by the chairperson pursuant to division (C) of this section;

(2) When the appeal concerns an application for a permit under division (I) of section 1513.07 of the Revised Code, the commission shall hold a hearing within thirty days after receipt of the notice of appeal and issue its decision within thirty days after the hearing;

(3) When the appeal concerns a decision of the chief regarding release of bond under division (F) of section 1513.16 of the Revised Code, the commission shall hold a hearing within thirty days after receipt of the notice of appeal and issue its decision within sixty days after the hearing.

(C) The chairperson of the commission, under conditions the chairperson prescribes, may grant temporary relief the chairperson considers

appropriate pending final determination of an appeal if all of the following conditions are met:

(1) All parties to the appeal have been notified and given an opportunity for a hearing to be held in the locality of the subject site on the request for temporary relief and the opportunity to be heard on the request;

(2) The person requesting relief shows that there is a substantial likelihood that the person will prevail on the merits;

(3) The relief will not adversely affect public health or safety or cause significant imminent environmental harm to land, air, or water resources.

The chairperson shall issue a decision expeditiously, except that when the applicant requests relief from an order for the cessation of coal mining and reclamation operations issued pursuant to division (D)(1) or (2) of section 1513.02 of the Revised Code, the decision shall be issued within five days after its receipt.

Any party to an appeal filed with the commission who is aggrieved or adversely affected by a decision of the chairperson to grant or deny temporary relief under this section may appeal that decision to the commission. The commission may confine its review to the record developed at the hearing before the chairperson.

The appeal shall be filed with the commission within thirty days after the chairperson issues the decision on the request for temporary relief. The commission shall issue a decision as expeditiously as possible, except that when the appellant requests relief from an order for the cessation of coal mining and reclamation operations issued pursuant to division (D)(1) or (2) of section 1513.02 of the Revised Code, the decision of the commission shall be issued within five days after receipt of the notice of appeal.

The commission shall affirm the decision of the chairperson granting or denying temporary relief unless it determines that the decision is arbitrary, capricious, or otherwise inconsistent with law.

(D) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to division (D)(3) of section 1513.02 of the Revised Code, the chief or a representative of the chief shall hold a public adjudicatory hearing after giving written notice of the time, place, and date thereof. The hearing shall be of record.

Within sixty days following the public hearing, the chief shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the chief revokes the permit, the permittee immediately shall cease coal mining operations on the permit area and shall complete reclamation within a period specified by the chief, or the chief shall declare

as forfeited the performance bonds for the operation.

(E)(1) Whenever an enforcement order or permit decision is appealed under this section or any action is filed under division (B) of section 1513.15 or 1513.39 of the Revised Code, at the request of a prevailing party, a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, as determined to have been necessary and reasonably incurred by the prevailing party for or in connection with participation in the enforcement proceedings before the commission, the court under section 1513.15 of the Revised Code, or the chief under section 1513.39 of the Revised Code, may be awarded, as considered proper, in accordance with divisions (E)(1)(a) to (c) of this section. In no event shall attorney's fees awarded under this section exceed, for the kind and quality of services, the prevailing market rates at the time the services were furnished under division (A) of this section. A party may be entitled to costs and expenses related solely to the preparation, defense, and appeal of a petition for costs and expenses, provided the costs and expenses are limited and proportionate to costs and expenses otherwise allowed under division (E) of this section.

(a) A party, other than the permittee or the division of mines and reclamation, shall file a petition, if any, for an award of costs and expenses, including attorney's fees, with the chief, who shall review the petition. If the chief finds that the party, other than the permittee or the division of mines and reclamation, prevailed in whole or in part, made a substantial contribution to a full and fair determination of the issues, and made a contribution separate and distinct from the contribution made by any other party, the chief may award to that party the party's costs and expenses, including attorney's fees that were necessary and reasonably incurred by the party for, or in connection with, participation in the proceeding before the commission.

(b) If a permittee who made a request under ~~this~~ division (E)(1) of this section demonstrates that a party other than a permittee who initiated an appeal under this section or participated in such an appeal initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the permittee, the permittee may file a petition with the chief. The chief may award to the permittee the costs and expenses reasonably incurred by the permittee in connection with participation in the appeal and assess those costs and expenses against the party who initiated the appeal.

(c) ~~The division of mines and reclamation~~ may file, with the commission, a request for an award to the division of the costs and expenses reasonably incurred by the division in connection with an appeal initiated under this section. The commission may assess those costs and expenses

against the party who initiated the appeal if the division demonstrates that the party initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the division.

(2) Whenever an order issued under this section or as a result of any administrative proceeding under this chapter is the subject of judicial review, at the request of any party, a sum equal to the aggregate amount of all costs and expenses, including ~~attorney~~ attorney's fees, as determined by the court to have been necessary and reasonably incurred by the party for or in connection with participation in the proceedings, may be awarded to either party, in accordance with division (E)(1) of this section, as the court, on the basis of judicial review, considers proper.

Sec. 1561.10. (A) There is hereby created in the division of mines and reclamation a "the mine examining board" consisting of ~~three~~ five members to be appointed by the governor with the advice and consent of the senate. Terms of office shall be for three years, commencing on the eleventh day of September, and ending on the tenth day of September. Each member shall hold office from the date of ~~his~~ appointment until the end of the term for which ~~he~~ the member was appointed. Vacancies shall be filled by appointment by the governor. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which ~~his~~ the member's predecessor was appointed shall hold office for the remainder of ~~such~~ that term. Any member shall continue in office subsequent to the expiration date of ~~his~~ the member's term until ~~his~~ the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first. The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or ~~for~~ any other sufficient cause.

~~Not more than one~~ One of the appointees to ~~such~~ the board shall be a person who, because of ~~his~~ previous vocation, employment, or affiliation, can be classed as a representative of the owner, operator, or lessee of a coal mine, ~~and not more than one~~. Prior to making the appointment, the governor shall request the major trade association in this state that represents owners, operators, or lessees of coal mines to submit to the governor the names and qualifications of three nominees. The governor shall appoint one of the nominees to the Board. Except as otherwise provided in this division, the nominees shall have not less than five years of practical experience in the coal mining industry in positions in which they developed competence in the topics of mine health and safety. The major trade association shall represent a membership that produced a larger quantity of coal mined in this state than the membership of any other trade association in the year prior to the year in which the appointment is made.

ONE OF THE APPOINTEES SHALL BE A PERSON WHO, BECAUSE OF PREVIOUS VOCATION, EMPLOYMENT, OR AFFILIATION, CAN BE CLASSED AS A REPRESENTATIVE OF THE OWNER, OPERATOR, OR LESSEE OF AN AGGREGATES MINE. PRIOR TO MAKING THE APPOINTMENT, THE GOVERNOR SHALL REQUEST THE MAJOR TRADE ASSOCIATION IN THIS STATE THAT REPRESENTS OWNERS, OPERATORS, OR LESSEES OF AGGREGATES MINES TO SUBMIT TO THE GOVERNOR THE NAMES AND QUALIFICATIONS OF THREE NOMINEES. THE GOVERNOR SHALL APPOINT ONE OF THE NOMINEES TO THE BOARD. EXCEPT AS OTHERWISE PROVIDED IN THIS DIVISION, THE NOMINEES SHALL HAVE NOT LESS THAN FIVE YEARS OF PRACTICAL EXPERIENCE IN THE AGGREGATES MINING INDUSTRY IN POSITIONS IN WHICH THEY DEVELOPED COMPETENCE IN THE TOPICS OF MINE HEALTH AND SAFETY. THE MAJOR TRADE ASSOCIATION SHALL REPRESENT A MEMBERSHIP THAT PRODUCED A LARGER QUANTITY OF AGGREGATES MINED IN THIS STATE THAN THE MEMBERSHIP OF ANY OTHER TRADE ASSOCIATION IN THE YEAR PRIOR TO THE YEAR IN WHICH THE APPOINTMENT IS MADE.

One of ~~such~~ the appointees shall be a person who, because of his previous vocation, employment, or affiliation, can be classed as a representative of employees ~~presently~~ currently engaged in coal mining operations. Not Prior to making the appointment, the governor shall request the highest ranking officer in the major employee organization representing coal miners in this state to submit to the governor the names and qualifications of three nominees. The Governor shall appoint one of the nominees to the Board. Except as otherwise provided in this division, the nominees shall have not less than five years of practical experience in dealing with mine health and safety issues and at the time of the nomination shall be employed in positions that involve the protection of the health and safety of miners. The major employee organization representing coal miners shall represent a membership consisting of the largest number of coal miners in this state compared to other employee organizations in the year prior to the year in which the appointment is made.

One of the appointees shall be a person who, because of previous vocation, employment, or affiliation, can be classed as a representative of employees currently engaged in aggregates mining operations. Prior to making the appointment, the governor shall request the highest ranking officer in the major employee organization representing aggregates miners

in this state to submit to the governor the names and qualifications of three nominees. The governor shall appoint one of the nominees to the board. Except as otherwise provided in this division, the nominees shall have not less than five years of practical experience in dealing with mine health and safety issues and at the time of the nomination shall be employed in positions that involve the protection of the health and safety of miners. The major employee organization representing aggregates miners shall represent a membership consisting of the largest number of aggregates miners in this state compared to other employee organizations in the year prior to the year in which the appointment is made.

One of the appointees shall be a person who can be classed as a representative of the public. Except as otherwise provided in this division, the appointee shall have not less than five years of technical, practical experience in either the field of mine health and safety or occupational health and safety, or both. For a period of three years prior to the appointment, the appointee shall not have been employed in the mining industry.

An appointee who has received a bachelor's degree in mining engineering or technology need not have at least five years of practical experience as otherwise provided in this division, but shall have a total of not less than three years of practical experience in the mining industry in a position that provided the person with practical knowledge of mine health and safety.

Not more than ~~two~~ three of the members of ~~said the~~ board shall belong to the same political party. The chief of the division of mines and reclamation or the chief's designee shall be ex officio secretary to the board.

(B) The board shall have full power to do both of the following:

(A) ~~To adopt~~ (1) Adopt and enforce reasonable rules relative to the exercise of its powers and proper rules to govern its proceedings and to regulate the manner of appeals;

(B) ~~To employ~~ (2) Employ experts, advisors, and secretarial, clerical, stenographic, and other employees.

(C) Each member of the board shall receive a salary fixed pursuant to division (J) of section 124.15 of the Revised Code when actually performing the official duties of his office, and, in addition thereto to a salary, he each member shall be reimbursed for all actual and necessary travel and incidental expenses incurred in carrying out the official duties of his office.

(D) The board shall elect from its members a ~~chairman~~ chairperson and ~~vice-chairman~~ vice-chairperson. A quorum of the board shall consist of not less than ~~two~~ three members, and no action at any meeting shall be taken

unless at least ~~two~~ three votes are in accord. The secretary of the board shall keep a true and complete record of all the proceedings of the board. With the approval of the board, the secretary may employ clerical assistants. The board shall adopt all necessary rules, ~~regulations~~, and bylaws to govern its times and places of meetings, for organization and reorganization, for holding all examinations, and for governing all other matters requisite to the exercise of its powers, the performance of its duties, and the transaction of its business under this chapter and Chapters 1509., 1563., 1565., and 1567. of the Revised Code. The board shall adopt and have an official seal.

(E) Each member of the board shall complete the annual refresher training required for miners under 30 C.F.R. 48.8 (1997). In addition to the annual refresher training, each member shall complete twenty-four hours of continuing education during each member's three-year term of office on the topics of mining technology and laws governing mining health and safety.

Sec. 1561.35. If the deputy mine inspector finds that any matter, thing, or practice connected with any mine and not prohibited specifically by law; is dangerous or hazardous, or that from a rigid enforcement of this chapter and Chapters 1509., 1563., 1565., and 1567. of the Revised Code, ~~such the~~ matter, thing, or practice would become dangerous and hazardous so as to tend to the bodily injury of any person, ~~such the~~ deputy mine inspector ~~shall~~ forthwith shall give notice in writing to the owner, lessee, or agent of the mine; of the particulars in which ~~he the deputy mine inspector~~ considers ~~such the~~ mine or any matter, thing, or practice connected therewith is dangerous or hazardous and recommend ~~such~~ changes as that the conditions require, and ~~shall~~ forthwith shall mail a copy of ~~such the~~ report and ~~his the deputy mine inspector's~~ recommendations to the chief of the division of mines and reclamation. Upon receipt of ~~such the~~ report and recommendations, the chief ~~shall~~ forthwith shall make a finding thereon and mail a copy to the owner, operator, lessee, or agent of ~~such the~~ mine, and to the deputy mine inspector; a copy of ~~such the~~ finding of the chief shall be posted upon the bulletin board of the mine. Where the miners have a mine safety committee, one additional copy shall be posted on ~~said the~~ bulletin board for the use and possession of the committee.

The owner, operator, lessee, or agent of ~~such the~~ mine, or the authorized representative of the workers of ~~such the~~ mine, ~~may~~ within ten days may appeal to the mine examining board for a review and redetermination of the finding of the chief in ~~such the~~ matter in accordance with section 1561.53 of the Revised Code. A copy of the findings decision of the board shall be mailed as required by this section for the mailing of the finding by the chief on the deputy mine inspector's report.

Sec. 1561.351. A deputy mine inspector who makes a finding concerning a violation of this chapter or Chapter 1563., 1565., or 1567. or section 1509.09, 1509.12, 1509.13, 1509.14, 1509.15, 1509.17, or 1509.18 of the Revised Code that involves mining safety shall notify the chief of the division of mines and reclamation of the finding. The chief shall review the inspector's finding, make a written determination regarding it, and provide a copy of the written determination to the owner, operator, lessee, or agent of the mine involved. The chief shall provide a copy of the written determination to any other interested party upon request.

A person, such as an owner, operator, lessee, or agent of the mine or the authorized representative of the workers of the mine, who has an interest that is or may be adversely affected by the chief's determination may appeal the determination, not later than ten days after receiving notice of the determination, to the mine examining board by filing a copy of the chief's written determination with the board. The board shall hear the appeal in accordance with section 1561.53 of the Revised Code.

Sec. 1561.51. When written charges of neglect of duty, incompetency, or malfeasance in office against the deputy mine inspector are filed with the chief of the division of mines and reclamation, signed by not less than fifteen employees, or otherwise as provided in section 1561.50 of the Revised Code, or the owner, lessee, or agent of a mine, and the signers of ~~such~~ the charges are dissatisfied with the result of the investigation made by the chief, they may appeal to the mine examining board by filing the same charges against ~~such~~ the deputy mine inspector and a copy of the report of the investigation made by the chief in the matter with the board, and the board shall ~~make an investigation of such charges, or may hold an open hearing thereon~~ hear the appeal in accordance with section 1561.53 of the Revised Code. The board shall mail a ~~written report copy of the result of such investigation or hearing, addressed~~ its decision to the complainant whose name appears first in the charges.

Sec. 1561.53. (A) As used in this section, "decision of the chief" includes a decision, disapproval of an application to drill a well, terms and conditions of a permit, or a suspension order issued by the chief of the division of mines and reclamation under section 1509.08 of the Revised Code; a finding of the chief made under section 1561.35 or 1563.13 of the Revised Code; a determination made by the chief under section 1561.351 of the Revised Code; a report of an investigation made by the chief under section 1561.51 of the Revised Code; or disapproval of an application for a permit, renewal permit, or modification issued under section 6111.044 of the Revised Code.

(B)(1) Except as otherwise provided in division (B)(2) of this section, the mine examining board has exclusive original jurisdiction to hear and decide appeals made to the board under sections 1509.08, 1561.35, 1561.351, 1561.51, 1563.13, and 6111.044 of the Revised Code. An appeal made under those sections does not operate as a stay of any decision of the chief.

(2) Notwithstanding any other provision of law to the contrary, From the effective date of this section until the date on which all members of the Mine Examining Board have been appointed in accordance with the qualifications established in section 1561.10 of the Revised Code, as amended, both of the following apply:

(a) A person, such as an owner, operator, lessee, or agent of a mine or the authorized representative of the workers of a mine, who has an interest that is or may be adversely affected by a decision of the chief that involves mine health and safety may appeal it, not later than ten days after receiving notice of the decision, to the Reclamation Commission in accordance with section 1513.13 of the Revised Code by filing a copy of the Chief's written decision with the Commission.

(b) An owner, operator, lessee, or agent of a mine who appeals a decision of the Chief that involves mine health and safety to the Reclamation commission in accordance with division (b)(2)(a) of this section, upon filing the appeal, shall provide written notification of the appeal to the authorized representative of the affected workers of the mine involved. The authorized representative of the mine workers may intervene and participate as a party to the appeal by filing a written notice of intervention with the commission not later than ten days following receipt of notification of the appeal.

(C) The board shall provide written notice of the time and place of a hearing not less than five days prior to the hearing. The hearing shall be of record.

(D) The board shall conduct hearings and render decisions in a timely fashion and shall hear expedited appeals as required under section 1509.08 of the Revised Code.

Whenever the Board conducts a hearing, it shall prepare a report setting forth its findings of fact and conclusions of law and shall mail a copy of the report by certified mail to the parties. A party, not later than fourteen days after receipt of the report, may serve and file written objections to the board's report with the secretary of the board. Objections shall be specific and state with particularity the grounds for them. Upon consideration of the objections, the board may adopt, reject, or modify the report or hear

additional evidence.

(E) The board shall affirm a decision of the chief unless the board determines that it is arbitrary, capricious, or otherwise inconsistent with law; in that case the board shall vacate the decision of the chief and may remand it to the chief for further proceedings that the board may direct.

(F) The chairperson of the board, under conditions that the chairperson prescribes, may grant temporary relief that the chairperson considers appropriate pending final determination of an appeal if all of the following conditions are met:

(1) All parties to the appeal have been notified and given an opportunity for a hearing to be held on the request for temporary relief.

(2) The person requesting relief shows that there is a substantial likelihood that the person will prevail on the merits.

(3) The relief will not adversely affect the health or safety of miners.

The chairperson shall issue a decision expeditiously and promptly provide written notification of the decision to all parties to the appeal.

Any party to an appeal filed with the board who is aggrieved or adversely affected by a decision of the chairperson to grant or deny temporary relief under this section may appeal that decision to the board. The board may confine its review to the record developed at the hearing before the chairperson.

The appeal shall be filed with the board not later than thirty days after the chairperson issues the decision on the request for temporary relief. The board shall issue a decision as expeditiously as possible.

The board shall affirm the decision of the chairperson granting or denying temporary relief unless it determines that the decision is arbitrary, capricious, or otherwise inconsistent with law.

Sec. 1561.54. For the purpose of participation in an adjudicatory hearing conducted under section 1561.53 of the Revised Code, the chief of the division of mines and reclamation or the mine examining board may require the attendance of witnesses and the production of books, records, and papers and may, and at the request of any party shall, issue subpoenas for witnesses or subpoenas duces tecum to compel the production of any books, records, papers, or other material relevant to the inquiry, directed to the sheriff of each county where the witnesses or materials are found, which subpoenas shall be served and returned in the same manner that subpoenas issued by courts of common pleas are served and returned. The fees and mileage of sheriffs and witnesses shall be the same as those allowed by the court of common pleas in criminal cases.

In cases of disobedience or neglect of a subpoena served on a person or

the refusal of a witness to testify on any matter regarding which the witness lawfully may be interrogated, the court of common pleas of the county in which the disobedience, neglect, or refusal occurs, or any judge of that court, on application of the chief or the board or any member of the board, shall compel obedience by attachment procedures for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in it.

A witness at any hearing shall testify under oath or affirmation, which the chief or any member of the board shall administer.

Sec. 1561.55. Any party aggrieved or adversely affected by a decision of the mine examining board may appeal to the court of appeals of Franklin county or the court of appeals of the county in which the activity addressed by the decision of the board occurred, is occurring, or will occur. The appeal shall be filed not later than thirty days after issuance of the decision of the board. The court, upon motion, may grant any temporary relief that it considers appropriate pending final disposition of the appeal if all of the following conditions are met:

(A) All parties to the appeal have been notified and given an opportunity to be heard on the request for temporary relief.

(B) The person requesting the relief shows that there is substantial likelihood that the person will prevail on the merits.

(C) The relief will not adversely affect the health or safety of miners.

The court shall affirm the decision of the board unless the court determines that it is arbitrary, capricious, or otherwise inconsistent with law, in which case the court shall vacate the decision and remand it to the board for any further proceedings that it directs.

Sec. 1563.13. When a deputy mine inspector considers that the ways and means of egress in any underground mine from the interior working places to the surface are inadequate as a safe and ready means of escape in case of emergency, from danger of fire at any point, or any other cause that may result in the entombment of persons working therein in the mine, he the deputy mine inspector shall give notice in writing to the owner, lessee, or agent of such the mine of the particular in which he the deputy mine inspector considers such the conditions dangerous, recommending such any changes as that the conditions require, and shall forthwith shall mail a copy of his the deputy mine inspector's recommendations to the chief of the division of mines and reclamation. Upon receipt of such the recommendations, the chief shall forthwith shall make a finding thereon concerning them and mail a copy to the operator of such the mine, and to the deputy mine inspector. A copy of such the finding of the chief shall be

posted upon the bulletin board at the time.

The operator of ~~such the~~ mine, or the authorized representative of the workers of ~~such the~~ mine, ~~may~~ within ten days may appeal to the mine examining board for a review and redetermination of the finding of the chief in ~~such the~~ matter in accordance with section 1561.53 of the Revised Code. A copy of the ~~findings~~ decision of the board shall be mailed as required by this section for the mailing of the finding by the chief on the deputy mine inspector's report.

No operator of a mine shall refuse or neglect to comply with this section.

Sec. 1565.15. (A) As used in this section;

(1) "EMT-basic," "EMT-I," "paramedic," and "emergency medical service organization" have the same meanings as in section 4765.01 of the Revised Code.

(2) "First aid provider" includes an EMT-basic, an EMT-I, a paramedic, or a supervisory employee at a surface coal mine who has satisfied the training requirements established in division (D)(1) of this section.

(B) The operator of an underground coal mine where twenty or more persons are employed on a shift, including all persons working at different locations at the mine within a ten-mile radius, shall provide at least one EMT-basic or EMT-I on duty at the underground coal mine whenever employees at the mine are actively engaged in the extraction, production, or preparation of coal. The operator shall provide EMTs-basic or EMTs-I on duty at the underground coal mine at ~~such~~ times and in numbers sufficient to ensure that no miner works in a mine location that cannot be reached within a reasonable time by an EMT-basic or an EMT-I. EMTs-basic and EMTs-I shall be employed on their regular coal mining duties at locations convenient for quick response to emergencies; in order to provide emergency medical services inside the underground coal mine and transportation of injured or sick employees to the entrance of the mine. The operator shall provide for the services of at least one emergency medical service organization to be available on call to reach the entrance of the underground coal mine within thirty minutes; at any time that employees are engaged in the extraction, production, or preparation of coal in order to provide emergency medical services and transportation to a hospital.

The operator shall make available to EMTs-basic and EMTs-I all of the equipment for first aid and emergency medical services that is necessary for ~~such those~~ personnel to function and to comply with the ~~rules~~ regulations pertaining to first aid and emergency medical services that are ~~promulgated~~ adopted under the "Federal Coal Mine Safety and Health ~~and Safety~~ Act of

~~1969 1977," 83 91 Stat. 742 1290, 30 U.S.C.A. 801, and amendments thereto, or the "Metal and Nonmetallic Mine Safety Act," 80 Stat. 772, 30 U.S.C.A. 721, and amendments thereto to it~~ The operator of the underground coal mine shall install telephone service or equivalent facilities that enable two-way voice communication between the EMTs-basic or EMTs-I in the mine and the emergency medical service organization outside the mine that provides emergency medical services on a regular basis.

(C) The operator of a ~~strip surface coal mine where twenty-five or more persons are employed on a shift, including all persons working at different locations of the mine within a ten-mile radius,~~ shall provide at least one ~~EMT-basic or EMT-I~~ first aid provider on duty at the mine whenever employees at the mine are actively engaged in the extraction, production, or preparation of coal ~~or minerals~~. The operator shall provide ~~EMTs-basic or EMTs-I~~ first aid providers on duty at the surface coal mine at ~~such~~ and in numbers sufficient to ensure that no miner works in a mine location that cannot be reached within a reasonable time by ~~an EMT-basic or an EMT-I~~. ~~EMTs-basic and EMTs-I~~ a first aid provider. First aid providers shall be employed on their regular coal mining duties at locations convenient for quick response to emergencies; in order to provide emergency medical services and transportation of injured or sick employees to the entrance of the surface coal mine. The operator shall provide for the services of at least one emergency medical service organization to be available on call to reach the entrance of the surface coal mine within thirty minutes; at any time that employees are engaged in the extraction, production, or preparation of coal; in order to provide emergency medical services and transportation to a hospital.

The operator shall make available to first aid providers all of the equipment for first aid and emergency medical services that is necessary for those personnel to function and to comply with the regulations pertaining to first aid and emergency medical services that are adopted under the "Federal Mine Safety and Health Act of 1977," 91 Stat. 1290, 30 U.S.C.A. 801, and amendments to it, including, without limitation, a portable oxygen cylinder with a medical regulator and oxygen delivery system.

(D) ~~The operator of a strip mine where fewer than twenty-five persons are employed on a shift, including all persons working at different locations of the mine within a ten-mile radius, or where twenty-five or more persons are employed on a shift at different locations of the mine that are dispersed by distances greater than ten miles, shall provide for the services of emergency medical service organizations to be available on call to reach the mine where any employees are working within thirty minutes to provide~~

~~emergency medical services and transportation to a hospital. The chief of the division of mines and reclamation may grant a variance from this requirement, if upon application, the operator shows that such emergency medical service organizations are not available and that he provides for the services of three EMTs basic, EMTs I, or paramedics who are located, when on call, within ten miles of the locations where employees are mining, or such other reasonable distance as the chief may approve.~~

~~(E)~~(1) A supervisory employee at a surface coal mine shall be considered to be a first aid provider for the purposes of this section if the employee has received from an instructor approved by the Chief of the Division of Mines and Reclamation ten hours of initial first aid training as a selected supervisory employee under 30 C.F.R. 77.1703 and receives five hours of refresher first aid training as a selected supervisory employee under 30 C.F.R. 77.1705 in each subsequent calendar year.

(2) Each miner employed at a surface coal mine who is not a first aid provider shall receive from an instructor approved by the Chief three hours of initial first aid training and two hours of refresher first aid training in each subsequent calendar year.

(3) The training received in accordance with division (D) of this section shall consist of a course of instruction established in the manual issued by the Mine Safety and Health Administration in the United States department of labor entitled "First Aid, A Bureau of Mines Instruction Manual" or its successor or any other curriculum approved by the Chief. The training shall be included in the hours of instruction provided to miners in accordance with training requirements established under 30 C.F.R. Part 48, Subpart (B), as amended, and 30 C.F.R. Part 77, as amended.

(E) Each operator of a surface coal mine shall establish, keep current, and make available for inspection an emergency medical plan that includes the telephone numbers of the Division of Mines and Reclamation and of an emergency medical services organization the services of which are required to be retained under division (C) of this section. The Chief shall adopt rules in accordance with Chapter 119. of the Revised Code that establish any additional information required to be included in an emergency medical plan.

(F) Each operator of an underground coal mine or strip surface coal mine shall provide or contract to obtain emergency medical services training or first aid training, as applicable, at the operator's expense, that is sufficient to train and maintain the certification of the number of employees necessary to comply with division (B) of this section and that is sufficient to train employees as required under division (D) of this section and to comply with

division (C) of this section.

~~(F)(G)~~ The division of ~~mines and reclamation~~ may provide emergency medical services training for coal mine employees by operating an emergency medical services training program accredited under section 4765.17 of the Revised Code or by contracting with the operator of an emergency medical services training program accredited under that section to provide ~~such~~ that training. The division of ~~mines and reclamation~~ may charge coal mine operators a uniform part of the unit cost per trainee.

~~(G)(H)~~ No coal mine operator shall violate or fail to comply with this section.

Sec. 4909.15. (A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:

(1) The valuation as of the date certain of the property of the public utility used and useful in rendering the public utility service for which rates are to be fixed and determined. The valuation so determined shall be the total value as set forth in division (J) of section 4909.05 of the Revised Code, and a reasonable allowance for materials and supplies and cash working capital, as determined by the commission.

The commission, in its discretion, may include in the valuation a reasonable allowance for construction work in progress but, in no event, may such an allowance be made by the commission until it has determined that the particular construction project is at least seventy-five per cent complete.

In determining the percentage completion of a particular construction project, the commission shall consider, among other relevant criteria, the per cent of time elapsed in construction; the per cent of construction funds, excluding allowance for funds used during construction, expended, or obligated to such construction funds budgeted where all such funds are adjusted to reflect current purchasing power; and any physical inspection performed by or on behalf of any party, including the commission's staff.

A reasonable allowance for construction work in progress shall not exceed ten per cent of the total valuation as stated in this division, not including such allowance for construction work in progress.

Where the commission permits an allowance for construction work in progress, the dollar value of the project or portion thereof included in the valuation as construction work in progress shall not be included in the valuation as plant in service until such time as the total revenue effect of the construction work in progress allowance is offset by the total revenue effect of the plant in service exclusion. Carrying charges calculated in a manner

similar to allowance for funds used during construction shall accrue on that portion of the project in service but not reflected in rates as plant in service, and such accrued carrying charges shall be included in the valuation of the property at the conclusion of the offset period for purposes of division (J) of section 4909.05 of the Revised Code.

From and after April 10, 1985, no allowance for construction work in progress as it relates to a particular construction project shall be reflected in rates for a period exceeding forty-eight consecutive months commencing on the date the initial rates reflecting such allowance become effective, except as otherwise provided in this division.

The applicable maximum period in rates for an allowance for construction work in progress as it relates to a particular construction project shall be tolled if, and to the extent, a delay in the in-service date of the project is caused by the action or inaction of any federal, state, county, or municipal agency having jurisdiction, where such action or inaction relates to a change in a rule, standard, or approval of such agency, and where such action or inaction is not the result of the failure of the utility to reasonably endeavor to comply with any rule, standard, or approval prior to such change.

In the event that such period expires before the project goes into service, the commission shall exclude, from the date of expiration, the allowance for the project as construction work in progress from rates, except that the commission may extend the expiration date up to twelve months for good cause shown.

In the event that a utility has permanently canceled, abandoned, or terminated construction of a project for which it was previously permitted a construction work in progress allowance, the commission immediately shall exclude the allowance for the project from the valuation.

In the event that a construction work in progress project previously included in the valuation is removed from the valuation pursuant to this division, any revenues collected by the utility from its customers after April 10, 1985, that resulted from such prior inclusion shall be offset against future revenues over the same period of time as the project was included in the valuation as construction work in progress. The total revenue effect of such offset shall not exceed the total revenues previously collected.

In no event shall the total revenue effect of any offset or offsets provided under division (A)(1) of this section exceed the total revenue effect of any construction work in progress allowance.

(2) A fair and reasonable rate of return to the utility on the valuation as determined in division (A)(1) of this section;

(3) The dollar annual return to which the utility is entitled by applying the fair and reasonable rate of return as determined under division (A)(2) of this section to the valuation of the utility determined under division (A)(1) of this section;

(4) The cost to the utility of rendering the public utility service for the test period less the total of any interest on cash or credit refunds paid, pursuant to section 4909.42 of the Revised Code, by the utility during the test period.

(a) Federal, state, and local taxes imposed on or measured by net income may, in the discretion of the commission, be computed by the normalization method of accounting, provided the utility maintains accounting reserves that reflect differences between taxes actually payable and taxes on a normalized basis, provided that no determination as to the treatment in the rate-making process of such taxes shall be made that will result in loss of any tax depreciation or other tax benefit to which the utility would otherwise be entitled, and further provided that such tax benefit as redounds to the utility as a result of such a computation may not be retained by the company, used to fund any dividend or distribution, or utilized for any purpose other than the defrayal of the operating expenses of the utility and the defrayal of the expenses of the utility in connection with construction work.

(b) The amount of any tax credits granted to an electric light company under section ~~5733.39~~ 5727.391 of the Revised Code for Ohio coal burned prior to January 1, 2000, shall not be retained by the company, used to fund any dividend or distribution, or utilized for any purposes other than the defrayal of the allowable operating expenses of the company and the defrayal of the allowable expenses of the company in connection with the installation, acquisition, construction, or use of a compliance facility. The amount of the tax credits granted to an electric light company under that section for Ohio coal burned prior to January 1, 2000, shall be returned to its customers within three years after initially claiming the credit through an offset to the company's rates or fuel component, as determined by the commission, as set forth in schedules filed by the company under section 4905.30 of the Revised Code. As used in division (A)(4)(c) of this section, "compliance facility" has the same meaning as in section ~~5733.39~~ 5727.391 of the Revised Code.

(B) The commission shall compute the gross annual revenues to which the utility is entitled by adding the dollar amount of return under division (A)(3) of this section to the cost of rendering the public utility service for the test period under division (A)(4) of this section.

(C) The test period, unless otherwise ordered by the commission, shall be the twelve-month period beginning six months prior to the date the application is filed and ending six months subsequent to that date. In no event shall the test period end more than nine months subsequent to the date the application is filed. The revenues and expenses of the utility shall be determined during the test period. The date certain shall be not later than the date of filing.

(D) When the commission is of the opinion, after hearing and after making the determinations under divisions (A) and (B) of this section, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is, or will be, unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, that the service is, or will be, inadequate, or that the maximum rates, charges, tolls, or rentals chargeable by any such public utility are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commission shall:

(1) With due regard among other things to the value of all property of the public utility actually used and useful for the convenience of the public as determined under division (A)(1) of this section, excluding from such value the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state or county, as the consideration for the grant of such franchise or right, and excluding any value added to such property by reason of a monopoly or merger, with due regard in determining the dollar annual return under division (A)(3) of this section to the necessity of making reservation out of the income for surplus, depreciation, and contingencies, and;

(2) With due regard to all such other matters as are proper, according to the facts in each case,

(a) Including a fair and reasonable rate of return determined by the commission with reference to a cost of debt equal to the actual embedded cost of debt of such public utility,

(b) But not including the portion of any periodic rental or use payments representing that cost of property that is included in the valuation report under divisions (F) and (G) of section 4909.05 of the Revised Code, fix and determine the just and reasonable rate, fare, charge, toll, rental, or service to be rendered, charged, demanded, exacted, or collected for the performance or rendition of the service that will provide the public utility the allowable

gross annual revenues under division (B) of this section, and order such just and reasonable rate, fare, charge, toll, rental, or service to be substituted for the existing one. After such determination and order no change in the rate, fare, toll, charge, rental, schedule, classification, or service shall be made, rendered, charged, demanded, exacted, or changed by such public utility without the order of the commission, and any other rate, fare, toll, charge, rental, classification, or service is prohibited.

(E) Upon application of any person or any public utility, and after notice to the parties in interest and opportunity to be heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code for other hearings, has been given, the commission may rescind, alter, or amend an order fixing any rate, fare, toll, charge, rental, classification, or service, or any other order made by the commission. Certified copies of such orders shall be served and take effect as provided for original orders.

Sec. 5727.391. (A) As used in this section:

(1) "Compliance facility" has the same meaning as in section 4905.01 of the Revised Code. "Compliance facility" also includes both of the following:

(a) A flue gas desulfurization system that is connected to a coal-fired electric generating unit and that either was placed in service prior to ~~the effective date of this section~~ July 10, 1991, or construction of which was commenced prior to ~~the effective that date of this section~~;

(b) Facilities or equipment that is acquired, constructed, or installed, and used, at a coal-fired electric generating unit primarily for the purpose of handling the byproducts produced by a compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected.

(2) "Ohio coal" has the same meaning as in section 4913.01 of the Revised Code.

(B) An electric company shall be allowed a credit against the tax computed under section 5727.38 of the Revised Code for using Ohio coal in any of its coal-fired electric generating units. The credit shall be claimed in the company's annual statement required under division (A) of section 5727.31 of the Revised Code at the rate of ~~one dollar~~ three dollars per ton of Ohio coal burned, during the same twelve-month period used in determining gross receipts and on or after January 1, 2000, in a coal-fired electric generating unit under ~~all~~ both of the following conditions:

(1) The coal-fired electric generating unit is owned by the company claiming the credit or leased by that company under a sale and leaseback transaction;

(2) A compliance facility is attached to, incorporated in, or used in

conjunction with the coal-fired generating unit;

~~(3) Either of the following applies:~~

~~(a) In the case of a coal-fired electric generating unit that burns coal in combination with another fuel for the purpose of complying with Phase I acid rain control requirements under Title IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 7651, at least eighty per cent of the heat input during the period is from Ohio coal;~~

~~(b) In the case of any other coal-fired electric generating unit, at least ninety per cent of the heat input during the period is from Ohio coal.~~

(C) If the credit allowed under this section exceeds the total taxes due for the current year, the tax commissioner shall credit the excess against the taxes due for succeeding years until the full amount of the credit is granted.

~~The sum of the credits allowed for coal burned in each coal-fired electric generating unit shall not exceed twenty per cent of the cost of the compliance facility attached to, incorporated in, or used in conjunction with the unit. If a compliance facility is used in conjunction with more than one generating unit, the tax commissioner shall prorate its cost among the units.~~

(D) The director of environmental protection, upon the request of the tax commissioner, shall certify whether a facility is a compliance facility. In the case of a compliance facility owned by an electric company, the public utilities commission shall certify to the tax commissioner the cost of the facility as of the date it was placed in service. In the case of a compliance facility owned by a person other than an electric company, the tax commissioner shall determine the cost of the facility as of the date it was placed in service; if the owner of such a facility fails to furnish the information necessary to make that determination, no credit shall be allowed.

Sec. 5733.39. (A) As used in this section:

(1) "Compliance facility" means property that is designed, constructed, or installed, and used, at a coal-fired electric generating facility for the primary purpose of complying with Phase I acid rain control requirements under Title IV of the "Clean Air Act Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 7651, and that controls or limits emissions of sulfur or nitrogen compounds resulting from the combustion of coal through the removal or reduction of those compounds before, during, or after the combustion of the coal, but before the combustion products are emitted into the atmosphere. "Compliance facility" also includes any of the following:

(a) A facility that removes sulfur compounds from coal before the combustion of the coal and that is located off the premises of the electric generating facility where the coal processed by the compliance facility is

urned:

(b) Modifications to the electric generating facility where the compliance facility is constructed or installed that are necessary to accommodate the construction or installation, and operation, of the compliance facility;

(c) A byproduct disposal facility, as defined in section 3734.051 of the Revised Code, that exclusively disposes of wastes produced by the compliance facility and other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected regardless of whether the byproduct disposal facility is located on the same premises as the compliance facility or generating unit that produces the wastes disposed of at the facility;

(d) Facilities or equipment that is acquired, constructed, or installed, and used, at a coal-fired electric generating facility exclusively for the purpose of handling the byproducts produced by the compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected;

(e) A flue gas desulfurization system that is connected to a coal-fired electric generating unit and that either was placed in service prior to July 10, 1991, or construction of which was commenced prior to that date;

(f) Facilities or equipment acquired, constructed, or installed, and used, at a coal-fired electric generating unit primarily for the purpose of handling the byproducts produced by a compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected.

(2) "Ohio coal" has the same meaning as in section 4913.01 of the Revised Code.

(3) "Sale and leaseback transaction" has the same meaning as in section 5727.01 of the Revised Code.

(B) An electric company shall be allowed a nonrefundable credit against the tax imposed by section 5733.06 of the Revised Code for Ohio coal used in any of its coal-fired electric generating units after April 30, 2001, but before January 1, 2005. Section 5733.057 of the Revised Code shall apply when calculating the credit allowed by this section. The credit shall be claimed at the rate of three dollars per ton of Ohio coal burned in a coal-fired electric generating unit during the taxable year ending immediately preceding the tax year. The credit is allowed only if both of the following conditions are met during such taxable year:

(1) The coal-fired electric generating unit is owned and used by the company claiming the credit or leased and used by that company under a

ale and leaseback transaction.

(2) A compliance facility is attached to, incorporated in, or used in conjunction with the coal-fired generating unit.

(C) The credit shall be claimed in the order required under section 5733.98 of the Revised Code. The taxpayer may carry forward any credit amount in excess of its tax due after allowing for any other credits that precede the credit allowed under this section in the order required under section 5733.98 of the Revised Code. The excess credit may be carried forward for three years following the tax year for which it is claimed under this section.

(D) The director of environmental protection, upon the request of the tax commissioner, shall certify whether a facility is a compliance facility. In the case of a compliance facility owned by an electric company, the public utilities commission shall certify to the tax commissioner the cost of the facility as of the date it was placed in service. In the case of a compliance facility owned by a person other than an electric company, the tax commissioner shall determine the cost of the facility as of the date it was placed in service. If the owner of such a facility fails to furnish the information necessary to make that determination, no credit shall be allowed.

Sec. 6111.044. Upon receipt of an application for an injection well drilling permit, an injection well operating permit, a renewal of an injection well operating permit, or a modification of an injection well drilling permit, operating permit, or renewal of an operating permit, the director of environmental protection shall determine whether the application is complete and demonstrates that the activities for which the permit, renewal permit, or modification is requested will comply with the "Federal Water Pollution Control Act" and regulations adopted under it; the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended, and regulations adopted under it; and this chapter and the rules adopted under it. If the application demonstrates that the proposed activities will not comply or will pose an unreasonable risk of inducing seismic activity, inducing geologic fracturing, or contamination of an underground source of drinking water, ~~he~~ the director shall deny the application. If the application does not make the required demonstrations, ~~he~~ the director shall return it to the applicant with an indication of those matters about which a required demonstration was not made. If ~~he~~ the director determines that the application makes the required demonstrations, ~~he~~ the director shall transmit copies of the application and all of the accompanying maps, data, samples, and information to the chief of the division of oil and gas, the chief of the

division of geological survey, the chief of the division of water, and, if the well is or is to be located in a coal-bearing township, the chief of the division of mines and reclamation in the department of natural resources.

The chief of the division of geological survey shall comment upon the application if ~~he~~ the chief determines that the proposed well or injection will present an unreasonable risk of loss or damage to valuable mineral resources. If the chief submits comments on the application, those comments shall be accompanied by an evaluation of the geological factors upon which the comments are based, including fractures, faults, earthquake potential, and the porosity and permeability of the injection zone and confining zone, and by the documentation supporting the evaluation. The director shall take into consideration the chief's comments, and the accompanying evaluation of geologic factors and supporting documentation, when considering the application. The director shall provide written notice to the chief of ~~his~~ the director's decision on the application and, if the chief's comments are not included in the permit, renewal permit, or modification, of the director's rationale for not including them.

The chief of the division of oil and gas shall comment upon the application if ~~he~~ the chief determines that the proposed well or injection will present an unreasonable risk that waste or contamination of recoverable oil or gas in the earth will occur. If the chief submits comments on the application, those comments shall be accompanied by an evaluation of the oil or gas reserves that, in the best professional judgment of the chief, are recoverable and will be adversely affected by the proposed well or injection, and by the documentation supporting the evaluation. The director shall take into consideration the chief's comments, and the accompanying evaluation and supporting documentation, when considering the application. The director shall provide written notice to the chief of ~~his~~ the director's decision on the application and, if the chief's comments are not included in the permit, renewal permit, or modification, of the director's rationale for not including them.

The chief of the division of water shall assist the director in determining whether all underground sources of drinking water in the area of review of the proposed well or injection have been identified and correctly delineated in the application. If the application fails to identify or correctly delineate ~~any such~~ an underground source of drinking water, the chief shall provide written notice of that fact to the director.

The chief of the division of mines and reclamation shall review the application as follows:

If the application concerns the drilling or conversion of a well or the

injection into a well ~~which~~ that is not or is not to be located within five thousand feet of the excavation and workings of a mine, the chief of the division of mines and reclamation shall note upon the application that it has been examined by the division of mines and reclamation, retain a copy of the application and map, and immediately return a copy of the application to the director.

If the application concerns the drilling or conversion of a well or the injection into a well ~~which~~ that is or is to be located within five thousand feet, but more than five hundred feet from the surface excavations and workings of a mine, the chief of the division of mines and reclamation ~~shall~~ immediately shall notify the owner or lessee of the mine that the application has been filed and send to the owner or lessee a copy of the map accompanying the application setting forth the location of the well. The chief of the division of mines and reclamation shall note on the application that the notice has been sent to the owner or lessee of the mine, retain a copy of the application and map, and immediately return a copy of the application to the director with ~~his~~ the chief's notation ~~thereon~~ on it.

If the application concerns the drilling or conversion of a well or the injection into a well ~~which~~ that is or is to be located within five thousand feet of the underground excavations and workings of a mine or within five hundred feet of the surface excavations and workings of a mine, the chief of the division of mines and reclamation ~~shall~~ immediately shall notify the owner or lessee of the mine that the application has been filed and send to the owner or lessee a copy of the map accompanying the application setting forth the location of the well. If the owner or lessee objects to the application, ~~he~~ the owner or lessee shall notify the chief of the division of mines and reclamation of the objection, giving the reasons ~~therefor~~, within six days after the receipt of the notice. If the chief of the division of mines and reclamation receives no objections from the owner or lessee of the mine within ten days after the receipt of the notice by the owner or lessee, or if in the opinion of the chief of the division of mines and reclamation the objections offered by the owner or lessee are not sufficiently well-founded, ~~he~~ the chief shall retain a copy of the application and map and return a copy of the application to the director with any applicable notes concerning it.

If the chief of the division of mines and reclamation receives an objection from the owner or lessee of the mine as to the application, within ten days after receipt of the notice by the owner or lessee, and if in the opinion of the chief the objection is well-founded, ~~he~~ the chief shall disapprove the application and immediately return it to the director together with ~~his~~ the chief's reasons for the disapproval. The director ~~shall~~ promptly

shall notify the applicant for the permit, renewal permit, or modification, of the disapproval. The applicant may appeal the disapproval of the application by the chief of the division of mines and reclamation to the mine examining board created under section 1561.10 of the Revised Code, and the board shall hear the appeal in accordance with section 1561.53 of the Revised Code. The appeal shall be filed within thirty days from the date the applicant receives notice of the disapproval. No comments concerning or disapproval of an application shall be delayed by the chief of the division of mines and reclamation for more than fifteen days from the date of sending of notice to the mine owner or lessee as required by this section.

The director shall not approve an application for an injection well drilling permit, an injection well operating permit, a renewal of an injection well operating permit, or a modification of an injection well drilling permit, operating permit, or renewal of an operating permit for a well ~~which~~ that is or is to be located within three hundred feet of any opening of any mine used as a means of ingress, egress, or ventilation for persons employed ~~therein in the mine,~~ nor within one hundred feet of any building or flammable structure connected ~~therewith~~ with the mine and actually used as a part of the operating equipment of the mine, unless the chief of the division of mines and reclamation determines that life or property will not be endangered by drilling and operating the well in that location.

Upon review by the chief of the division of oil and gas, the chief of the division of geological survey, and the chief of the division of water, and if the chief of the division of mines and reclamation has not disapproved the application, the director shall issue a permit, renewal permit, or modification with ~~such~~ any terms and conditions as that may be necessary to comply with the "Federal Water Pollution Control Act" and regulations adopted under it; the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f) as amended, and regulations adopted under it; and this chapter and the rules adopted under it. The director shall not issue a permit, renewal permit, or modification to an applicant if the applicant or persons associated with the applicant have engaged in or are engaging in a substantial violation of this chapter that is endangering or may endanger human health or the environment or if, in the case of an applicant for an injection well drilling permit, the applicant, at the time of applying for the permit, did not hold an injection well operating permit or renewal of an injection well drilling permit and failed to demonstrate sufficient expertise and competency to operate the well in compliance with the applicable provisions of this chapter.

If the director receives a disapproval from the chief of the division of

mines and reclamation regarding an application for an injection well drilling or operating permit, renewal permit, or modification, if required, ~~he~~ the director shall issue an order denying the application.

The director need not issue a proposed action under section 3745.07 of the Revised Code or hold an adjudication hearing under that section and Chapter 119. of the Revised Code before issuing or denying a permit, renewal permit, or modification of a permit or renewal permit. Before issuing or renewing a permit to drill or operate a class I injection well or a modification ~~thereof~~ of it, the director shall propose the permit, renewal permit, or modification in draft form and shall hold a public hearing to receive public comment on the draft permit, renewal permit, or modification. At least fifteen days before the public hearing on a draft permit, renewal permit, or modification, the director shall publish notice of the date, time, and location of the public hearing in at least one newspaper of general circulation serving the area where the well is or is to be located. The proposing of such a draft permit, renewal permit, or modification does not constitute the issuance of a proposed action under section 3745.07 of the Revised Code, and the holding of the public hearing on such a draft permit, renewal permit, or modification does not constitute the holding of an adjudication hearing under that section and Chapter 119. of the Revised Code. Appeals of orders other than orders of the chief of the division of mines and reclamation shall be taken under sections 3745.04 to 3745.08 of the Revised Code.

The director may order that an injection well drilling permit or an injection well operating permit or renewal permit be suspended and that activities ~~thereunder~~ under it cease ~~if he determines~~ after determining that those activities are occurring in violation of law, rule, order, or term or condition of the permit. Upon service of a copy of the order upon the permit holder, ~~his or the permit holder's~~ the permit holder's authorized agent, or assignee, the permit and activities ~~thereunder~~ under it shall be ~~immediately~~ immediately suspended without prior hearing and shall remain suspended until the violation is corrected and the order of suspension is lifted. If a violation is the second within a one-year period, the director, after a hearing, may revoke the permit.

The director may order that an injection well drilling permit or an injection well operating permit or renewal permit be suspended and that activities ~~thereunder~~ under it cease ~~if he~~ the director has reasonable cause to believe that the permit would not have been issued if the information available at the time of suspension had been available at the time a determination was made by one of the agencies acting under authority of

this section. Upon service of a copy of the order upon the permit holder, ~~his~~ or the permit holder's authorized agent, or assignee, the permit and activities ~~thereunder~~ under it shall be ~~immediately~~ immediately suspended without prior hearing, but a permit may not be suspended for that reason without prior hearing unless immediate suspension is necessary to prevent waste or contamination of oil or gas, comply with the "Federal Water Pollution Control Act" and regulations adopted under it; the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended, and regulations adopted under it; and this chapter and the rules adopted under it, or prevent damage to valuable mineral resources, prevent contamination of an underground source of drinking water, or prevent danger to human life or health. If after a hearing the director determines that the permit would not have been issued if the information available at the time of the hearing had been available at the time a determination was made by one of the agencies acting under authority of this section, ~~he~~ the director shall revoke the permit.

When a permit has been revoked, the permit holder or other person responsible ~~therefor shall~~ for it immediately shall plug the well in the manner required by the director.

The director may issue orders to prevent or require cessation of violations of this section, section 6111.043, 6111.045, 6111.046, or 6111.047 of the Revised Code, rules adopted ~~thereunder~~ under any of those sections, and terms or conditions of permits issued ~~thereunder~~ under any of them. ~~Such~~ The orders may require the elimination of conditions caused by the violation.

SECTION 2. That existing sections 1509.08, 1513.13, 1561.10, 1561.35, 1561.51, 1563.13, 1565.15, 5727.391, and 6111.044 and sections 1561.41, 1561.42, 1561.43, 1561.44, 1565.17, 1565.18, 1565.19, 1565.20, 1565.21, 1565.22, 1565.23, 1567.28, 1567.29, 1567.37, 1567.56, 1567.64, and 5733.39, and section 4909.15 of the Revised Code as amended by Am. Sub. S.B. 3 of the 123rd General Assembly are hereby repealed.

SECTION 3. The enactment by this act of amendments to section 1561.10 of the Revised Code regarding the qualifications of members of the Mine Examining Board is not intended to require the replacement of members of the board on the effective date of this act, but to establish requirements for filling vacancies occurring in the board's membership on and after the effective date of this act.

SECTION 4. (A) The amendment by this act of section 5727.391 of the Revised Code increasing the per-ton credit for burning Ohio coal applies to Ohio coal burned on or after January 1, 2000, and on or before April 30, 2001. The tax credit claimed for the twelve-month period ending April 30, 2000, shall be adjusted so that the credit equals one dollar per ton for Ohio coal burned on or before December 31, 1999, of that twelve-month period, and three dollars per ton for Ohio coal burned on or after January 1, 2000.

(B) The amendment of section 5727.391 of the Revised Code and the repeal of the existing version of that section by this act does not affect the delayed repeal of that section by Section 8 of Am. Sub. S.B. 3 of the 123rd General Assembly. Section 5727.391 of the Revised Code, as amended by this act, shall be repealed as provided in Section 8 of Am. Sub. S.B. 3 of the 123rd General Assembly.

SECTION 5. The repeal and reenactment by this act of section 5733.39 of the Revised Code takes effect January 1, 2002, and applies to Ohio coal burned after April 30, 2001, but before January 1, 2005, notwithstanding Section 12 of Am. Sub. S.B. 3 of the 123rd General Assembly.

SECTION 6. The amendment by this act of section 4909.15 of the Revised Code, as amended by Am. Sub. S.B. 3 of the 123rd General Assembly, is contingent on Am. Sub. S.B. 3 of the 123rd General Assembly becoming law.

SECTION 7. Section 1565.15 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 150 and Am. Sub. S.B. 162 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____