

PROPONENT TESTIMONY

Senate Bill 181

Senate Agriculture and Natural Resources Committee

Chairman Schaffer, Vice Chair Koehler, Ranking Member Hicks-Hudson and members of the Senate Agriculture and Natural Resources Committee, my name is Brian Barger, and for the past thirty years I have been the legal counsel for the Ohio Aggregates & Industrial Minerals Association. Thank you for allowing me the opportunity to present proponent testimony on Senate Bill 181. As Senator Wilkin stated in his sponsor testimony, this bill represents several years' worth of collaboration with officials from ODNR's Division of Mineral Resources Management on both how best to develop a regulatory program for the underground mining of limestone and how to eliminate unneeded paperwork and otherwise increase the efficiency across the non-coal mining regulatory program.

Limestone is a member of the industrial minerals family which also includes sand and gravel. Limestone, sand, and gravel are commonly called construction aggregates because these minerals are the most basic building blocks for nearly all infrastructure materials, whether base material for roads or incorporation into asphalt and concrete.

Industry Background

There are currently four operating underground limestone mines in Ohio. The industry projects that the underground mining of limestone will become more prevalent in the future despite the high initial capital requirement (\$100 million) and increased operating costs. So, why then will underground mines be more prevalent? The answer lies in the difficulty of permitting a new surface mine and the difficulty in obtaining suitable land and zoning to keep an existing operation viable. Using industry jargon, future land to be mined is referred to as "mineral reserves" or just "reserves."

Given the high capital cost and increased operating cost associated with underground limestone mining, the industry preference will always be to conduct surface mining. That said, there are numerous factors that determine where a surface mine may be located: (1) the site must be close enough to a market area so that aggregate products can be economically transported to the end user; (2) the

geologic formation of limestone must meet ODOT's stringent specifications—much of the limestone in Ohio will not meet ODOT quality specs; (3) the reserve profile must contain a sufficient amount of limestone to justify the capital cost of starting or expanding a mine; (4) the reserves must be close enough to the surface to economically remove the soils, clay and other material overlying the minerals, known as “overburden”; and (5) land use approvals must be obtained. Clearly, given these considerations, unlike a gas station, the location of a mine cannot be moved to another street corner if the proposed location is unpopular with members of the public.

This is a good place to point out that because more than 50% of aggregates are purchased with tax dollars, it behooves the industry and those that regulate it, including political subdivisions, to work together to make the tax dollar go farther. The greater the distance a source of aggregate is from the end user, the more the tax dollars are just paying for trucking and not the actual construction materials.

Even with the problems posed by the above criteria for a mine, surface mining of limestone is by far the preferred method of extracting these minerals from the earth as it is the most cost-efficient method of doing so. However, times are changing.

Historically, mineral reserves for surface mining of limestone were reasonably priced, and zoning was not overly difficult to obtain. Consequently, almost all existing mines are surface mines and the most efficient means of obtaining additional reserves for an established operation was to purchase property abutting the mine and expand laterally.

Given this, the underground mining of limestone will generally not be considered unless one of three situations exist. First, the reserves abutting the established operation are not available due to the encroachment of residential development or zoning is simply not feasible to obtain (these tend to run hand in hand). Second, the minerals are located so far below the surface that it renders surface mining uneconomical. And finally, an existing surface mining operation cannot simply mine deeper due to a thick layer of material that has no economic value (typically shale or some other unusable material), even though there are plentiful, quality reserves below the deleterious material.

With all of this in mind, mine operators are now exploring the option of mining under the existing surface mine or starting a new, greenfield underground mine not associated with an existing mine. As a result, the industry wishes to provide for reasonable, common-sense regulation of the underground mining of limestone to

ensure uniformity and predictability across all levels of state and local government. Currently, underground mining of limestone is regulated only for purposes of mine safety, primarily through the U.S. Dept. of Labor's Mine Safety and Health Administration (MSHA).

While maybe not common for many industries, the OAIMA has a history of being pro-active when it comes to the regulation of the mining industry. The Aggregates Association was the impetus for the legislation in the early 2000s to bring the blasting regulation up-to-date and to require the replacement of water wells impacted by mining operations, to name just a couple of the areas of updated regulation. Once again, the OAIMA seeks to be pro-active with what will likely be a much more common method of mineral extraction in the future.

Bill Summary

Underground Limestone Mining

S.B 181:

- Creates a framework for the regulation of the underground mining of limestone minerals to be administered by ODNR.
- Provides oversight by ODNR of permitting, blasting, subsidence, groundwater withdrawals and mine closure.
- Incorporates mine safety regulations at the state and federal level.
- "Grandfathers" existing underground minerals mines by issuing such mines a permit and thereafter these mines will be subject to the regulatory program.
- Aligns the regulation of underground minerals mining with surface mining regulations.
- Provides ODNR with the sole authority to regulate all aspects of underground minerals mining when such mining takes place at an existing surface mine.
- Directs the chief of ODNR's division of mineral resources management to adopt rules to address these activities. Actually, this will mostly entail amending existing rules that cover the same subject matter, such as blasting or dewatering and add language that pertains to underground mining.

Updates to Surface Mining Laws To Improve Efficiency

In addition to creating the regulatory program for the underground mining of minerals, the bill updates provisions of Chapter 1514 of the Revised Code for surface mining operations in an effort to reduce the regulatory burden on both industry and the division of mineral resources management. Key among these provisions is the elimination of the requirement to renew a surface mining permit every fifteen years. The current renewal process involves the mine operator engaging a consultant to, in effect, apply for a new permit for the existing operation. The permit renewal application package is then reviewed by the mine inspector assigned to that area. Further processing and review is required by division staff and ultimately, the chief of the division must issue an order approving the renewal. This process takes months to complete for each surface mine permit. There are hundreds of active permits that each must be renewed with all renewals being done in a four-year cycle. This bill makes the permit good for the life of the mine and creates a process whereby every five years the permit will be reviewed at the inspector level to ensure the permit requirements are being met. Current law already authorizes the chief of the division to issue orders for noncompliance with a permit, including civil penalties and, if needed, shutting down the mine.

Also in an effort to reduce the regulatory burden on the industry and the division of mineral resources management, the bill expands the ability of a mine operator to add land to an existing surface mine permit when that land is located in the same township as the existing surface mining operation. Under current law, the mine operator would need to apply for an entirely new permit for that land unless the land was contiguous to the existing mining operation. Allowing amendments to a permit reduces the paperwork, staff time and resources necessary to permit a new site when merely adding more mineral reserves to an existing operation. Importantly, if zoning applies, the land to be amended must still obtain zoning approval.

The bill also expands the authority of local governments to enter into agreements with mine operators for the improvement of roads to include activities often located on mine property which are engaged in activities related to making finished aggregate products and creates a definition of such activities.

Updates Reclamation Commission Process and Procedures

S.B. 181 also updates the process and procedures for the Reclamation Commission. The Reclamation Commission is a lay body that hears appeals of decisions made by the chief of the division of mineral resources management. Currently, the statutory authority for the Reclamation Commission is found in Chapter 1513 of the Revised Code, which is the coal regulatory chapter. Federal approval is necessary to make any change whatsoever to this program. However, the majority of appeals to the Reclamation Commission now involve industrial minerals such as limestone, sand, and gravel, rather than coal. Consequently, rather than having to obtain federal approval for changes that do not even affect the coal industry, it was suggested that the process and procedures for appeals involving limestone, sand and gravel could be put in Chapter 1514, and thus come under the control of the General Assembly. Accordingly, updates to the Commission are included in this bill. These updates include requiring service upon the permit holder if its permit is being appealed (current law does not even require notice to the permit holder), clarifying the role of the hearing officer to hear appeals, directing that an appeal of a decision of the Reclamation Commission be taken to the court of appeals for the county in which the permit is located or to the Franklin County Court of Appeals, which mirrors how appeals are handled by other state commissions.

Severance Tax Increase

ODNR approached the OAIMA regarding a small increase in the severance tax to buttress current funding. The industry agreed to the ½ cent per ton increase requested by ODNR. In consideration for the increase, ODNR committed to improving the efficiency of the review process for hydrology permitting. Currently, required hydrology modeling and investigations linger due to lack of manpower. Increased funding will allow ODNR to contract for these services. (There is uncodified language to this effect in section 4 of the bill.)

Underground Severance Tax Kicker

At ODNR's suggestion, S.B. 181 creates a new fund to be used if a problem arises in the future at an underground mine that is no longer in operation. A nominal ¼ cent per ton will be added to the severance tax when minerals are mined underground and will be placed in a fund for that purpose.

Conclusion

I am also including for your review a more detailed analysis and explanation of the bill's provisions. I will gladly go through this analysis in detail at your convenience.

Finally, I thank you for the opportunity to testify today on this important matter. The bill creates the regulatory framework for an increasingly important part of the mining industry's ability to provide basic construction materials to the state and our local communities. I urge your support for S.B. 181 and I will gladly answer any questions you may have. Again, thank you.

Senate Bill 181
Ohio Senate
Agriculture and Natural Resources Committee

CONTENT AND OPERATION of S.B. 181

Introduction

Since 1974, Chapter 1514 of the Revised Code provides a comprehensive regulatory program governing the surface mining of industrial minerals, primarily limestone, dolomite, sand and gravel. However, the underground mining of those minerals has never been regulated by the state of Ohio, other than certain, limited safety functions. Currently, four underground mineral mines are in operation in Ohio. The industry predicts that due to development pressure and encroachment around established surface mines, thereby making horizontal expansion difficult or prohibitory, more mine operators will explore developing underground mines to supply the construction aggregates necessary to support infrastructure development in Ohio.

The Underground Minerals Mining Regulatory Structure

The bill creates a regulatory program for the underground mining of limestone and dolomite minerals that, in many respects, mirrors and compliments the program for surface mining.

The bill:

- Defines all relevant terms for use in this Chapter.
- Provides the chief of the division of mineral resources management with authority over the permitting and operation of an underground minerals mine.
- Requires the chief to adopt or amend rules governing underground minerals mining that establish all of the following:
 - The permit application process includes:
 - Application fees;
 - Performance standards for underground mineral mines that includes a periodic compliance review;

- Standards and requirements governing the detonation of explosives used in a manner to prevent damage to adjoining property and injury to persons;
 - Information to be included in an annual and final report;
 - Procedures for investigating complaints regarding dewatering and water replacements;
 - Any other requirements that the chief determines are necessary for the administration of the underground minerals mining program consistent with the requirements of sections 1514.60 to 1514.69 of the Revised Code.
- The application shall include:
 - The name and address of the proposed underground minerals mine operator;
 - The name of the owner or lessor of the mineral rights in the land upon which the applicant proposes to engage in underground minerals mining, if different from the mine operator;
 - The method and design of the underground mining operation that is to be employed by the mine operator to extract minerals;
 - The depth of the deposit to be mined;
 - A certificate of public liability insurance affording bodily injury and property damage protection in the amount of \$1Million;
 - A statement that the applicant has corresponded with the county engineer of the county in which the underground mineral mine will be located regarding any streets or roads under the county engineer's jurisdiction under which mining will take place;
 - A complete plan for underground minerals mining showing the sequence in which mining measures will occur and the measures the operator will perform to prevent damage to adjoining property and to achieve the performance standards established by the chief. These standards shall be consistent with any federal standards governing underground mining.
- Permit Issuance:
 - In accordance with the rules to be adopted under this Chapter, the chief shall issue an order granting a permit unless either of the following apply:
 - The chief determines the measures set forth in the mining plan are likely to be inadequate to prevent damage to adjoining

property or to achieve one or more of the performance standards required by the chief.

- The land on or under which the underground minerals mining is to take place is closer than fifty feet of horizontal distance to any adjacent lands in which the operator does not own, lease or control the mineral rights, unless the owner of such lands consents in writing that the underground mining may occur closer than fifty feet and such consent shall run with the land.
- The underground minerals mining permit shall not expire. However, the chief may suspend or revoke an underground minerals mining permit for a violation of applicable provisions of this chapter, a rule adopted under it, a term or condition of a permit, or an order of the chief. Prior to such suspension or revocation, the chief shall conduct an investigation and hearing in accordance with Chapter 119. of the Revised Code.
- For operations in existence prior to and on the effective date of section 1514.63 of the Revised Code or a person who has begun to undertake development of an underground minerals mining operation prior to the effective date of such section, the chief, shall issue an order granting an underground minerals mining permit or an amendment to a surface mine permit upon request by the operator or person.
 - Such underground minerals mining permit shall include all of the land owned, leased or under the control of the operator or person requesting the permit.
 - The operator or person shall have twenty-four months after the effective date of section 1514.63 to request such an order. The order granting the permit or amendment is not appealable by any person other than the operator or person requesting the permit or amendment.

Prohibitions:

No person shall do any of the following:

- Engage in underground minerals mining without a permit.
- Exceed the limits of an underground minerals mining permit or amendment to a permit by mining on land that is not authorized under the permit.

- Purposely misrepresent or omit any material fact in an application for an underground minerals mining permit or an amendment, an annual or final report, or any hearing or investigation conducted by the chief or the reclamation commission.
- Fail to perform any measure set forth in an approved plan of mining that is necessary to prevent damage to adjoining property or to achieve a performance standard set forth in rules.
- Violate any applicable requirement of this chapter, a rule adopted under it, a term or condition of a permit, or an order of the chief.

Requirements:

An underground minerals mining operator shall do all of the following:

- Prior to mining under a public street, road or highway, comply with division B of section 1563.11 of the Revised Code.
- Ensure that the use of explosives for the production of underground minerals is in compliance with the requirements of this chapter.
- Ensure that the detonation of explosives is conducted in such a manner so as to prevent damage to adjoining property and injury to person and is in compliance with the rules adopted under section 1615.61 of the Revised Code.

Complaints of Subsidence:

- In the event of a complaint of subsidence, the operator shall immediately investigate the complaint and provide the chief with the results of the investigation.
- The chief has the authority to issue orders when the subsidence threatens public safety.

Mapping and annual reporting of underground minerals mine.

- At the time of completion of the mine entry, the operator shall cause a map to be made of the underground workings of the mine and provide the chief with such map. The map shall be consistent with the federal requirements governing underground minerals mining.
- The operator shall have a survey made whenever the workings of the mine have extended four hundred feet in any direction from the point shown on

the map by the last survey, but not more frequently than once every twelve months.

- A copy of the survey shall be kept at the mine property and filed with the chief.
- Requires the operator to file with the chief an annual report and filing fee.

Closure

- At least twelve months prior to closure, the operator shall notify the chief of its intent to cease operating the mine.
- The operator shall notify the chief of the steps the operator intends to take to ensure protection of public safety upon closure.

Roof Control

- Requires the operator to carry out on a continuing basis a program to improve the roof control system of the underground minerals mine and the means and measures to accomplish the system.
 - The operator shall adopt a roof control plan suitable to the roof conditions and mining system of each underground minerals mine in a manner determined by the chief.
 - No person may proceed beyond the last permanent roof support unless adequate temporary support has been provided.