

ODNR, DIVISION OF MINES & RECLAMATION

GUIDELINES

TO: ALL INSPECTION AND PERMITTING STAFF DATE: April 16, 1997
FROM: LISA J. MORRIS, CHIEF *LM*
SUBJECT: BUILDING CONSTRUCTION EXEMPTION FROM REQUIREMENTS OF
CHAPTER 1514. OF THE OHIO REVISED CODE

BACKGROUND

The Ohio Surface Mining Law (Chapter 1514. O.R.C.) contains an exemption from the definition of "surface mining" in relation to building construction activities. The extraction, handling, processing, or storing of minerals from any building construction excavation on the site of the construction where the minerals removed are incidental to the building construction excavation, regardless of the commercial value of the minerals, is exempted from the definition of "surface mining."

Only a small percentage of building construction sites will be removing industrial minerals from the site. It is far less expensive to regrade excavated materials on-site than it is to haul them to another site. Therefore, in most cases, the excavated materials remain on site unless there is no room to regrade them on site or if there is a market for the materials.

Although building construction activities will not require a permit under Chapter 1514., they will usually be required to have a building permit.

GUIDELINE

A. General Considerations.

The vast majority of building construction sites do not have industrial minerals removed from the site and marketed and are therefore of no concern to the Division in regard to mining. The sites that concern the Division are those sites where industrial minerals are being removed from the site and sold or bartered. The Division may refuse to confirm a site as operating under an exemption to "surface mining" if the Division has reason to believe that the excavation of the industrial minerals is not incidental to a valid purpose for the excavation or that such excavation is being used merely to avoid obtaining a surface mining permit and bond for a site on which the major purpose for the excavation is to obtain industrial minerals.

To determine that an excavation is intended for building construction, a building permit issued by the political subdivision (city, village, township or county) having jurisdiction over the building activity (or other proof of construction) should be available at the site. Many cities and townships require a building permit to build any structure. The development of a housing subdivision or an industrial site will normally require building permits and zoning approval by the township or city.

Some political jurisdictions (usually in rural areas) may not require such permits or approvals. In such cases, the Division can ask to see the plans which should show the type and extent of the building and building related facilities, such as driveways, parking lots, erosion controls, etc.. Erosion control plans approved by the Ohio Environmental Protection Agency or County Soil & Water Conservation District can be useful to determine the extent of building related excavation.

Additional evidence of a legitimate building construction project is the documentation of financing for the project.

B. Specific Considerations.

The key word in the Chapter 1514. building construction exemption is incidental. The excavation must be incidental (secondary or minor) to the building construction in order to qualify for the exemption. Incidental also means that the mineral excavation is essential to accomplish the building construction.

In the absence of a "building permit" required by Chapter 1514.01 (A) and in order to qualify for the building construction exemption, an excavator they must demonstrate that:

- (1) Extraction, handling, processing or storing are conducted concurrently with construction.

Concurrent is defined as "running together; acting in conjunction; contemporaneous; or accompanying." The building construction activity should take place soon after the excavation which is necessary for the construction. On most building construction sites, the pouring of footers and construction of the foundation walls begin very soon after the excavation and usually within a month, unless delayed by weather.

In some cases, due to the topographic setting of the site, extensive excavation and regrading may be required before the actual construction can begin. In these cases, there will be a longer period between initial excavation and the actual start of building construction. The time period should be reasonably related to the proposed construction plan on a case-by-case basis. If the noncoal material is removed from the site and the construction project is not completed, the Division may

consider the site to have been mined without a permit and be subject to penalties prescribed in Chapter 1514. unless a satisfactory demonstration is provided as to why the construction was not completed.

- (2) The area mined is limited to the area necessary to construction.

Excavation and marketing of materials from areas where the excavation of the materials is not necessary to the building construction or related facilities would not qualify for an exemption.

A restaurant which seats 150 people would not, for example, need an area excavated large enough to park 500 cars. In most cases, when a construction plan is approved by a municipality, the construction plan will show the extent or limit of the project. Excavation outside of the construction area may be considered mining.

- (3) The construction is reasonably related to the use proposed for the site.

This is similar to (2) above, but focuses upon the nature of the building construction in relation to the overall extent (area, depth, dimensions) of the excavation. For example, taking away a substantial portion of a hilly area and then building a small shed in one corner of the excavated area would not represent a building construction exemption situation.

C. Activities not Considered to be Mining.

Irrespective of the above discussion, the Division does not consider the following activities, which often involve demolition or maintenance of existing facilities, to fall under the scope of noncoal surface mining.

- (1) The demolition and removal of stone walls will not be considered extraction of industrial minerals and will not require a noncoal permit.
- (2) The removal and marketing of sediment from sediment ponds and drainage swales, in order to maintain such facilities, will not be considered extraction of industrial minerals.
- (3) Regrading of land (cut and fill operations) as long as the industrial minerals are not removed from the site nor stockpiled for purposes of future sale.
- (4) The extraction of minerals, other than coal, by a landowner for his own noncommercial use where such material is extracted and used in an unprocessed form on the same tract of land. (This is a specific statutory exemption found in O.R.C. 1514.01 (A)).

D. Examples of Situations Regarding Possible Building Construction Exemption.

The following are examples of several types of situations that have or may occur regarding a potential "building construction exemption". Some situations may qualify for an exemption.

SITUATION	QUALIFIED FOR BUILDING CONSTRUCTION EXEMPTION?
(1) Industrial minerals are excavated and marketed in order to dig a basement, septic system, and driveway for a house. A building permit or equivalent is available.	Yes
(2) Industrial minerals are excavated and marketed in order to dig foundations, septic system, and parking lot (consistent with the seating capacity of the restaurant) for a restaurant. A building permit is available.	Yes
(3) Industrial minerals are excavated and marketed at a site with no evidence of building construction and no building permit or equivalent documentation available.	No
(4) Industrial minerals are excavated and marketed in excess of that necessary for the construction of the buildings and necessary support facilities. A building permit is available.	No
<p>(5) Industrial minerals are excavated and marketed in order to construct a golf course with township and county approval of the plans:</p> <p>(a) Industrial minerals are excavated and marketed from the area for a clubhouse or restaurant having a building permit or equivalent.</p> <p>(b) No industrial minerals are removed from the golf course but the area was regraded in order to develop the golf course.</p> <p>(c) During golf course construction, substantial amounts of industrial minerals are excavated, stockpiled and removed/marketed off-site.</p>	<p>Yes</p> <p>No (But not surface mining by definition) No</p>
(6) Industrial minerals are excavated and marketed in order to build a car dealership along a highway. A building permit, plans, financing, etc. is available for the site. The area for the buildings and the car lot is lowered 15 to 20 feet to the approximate level of the highway in order to provide a reasonable access to the site.	Yes

E. Permit Requirements.

If an excavation site does not qualify for a waiver under the building construction exemption or other exemption (i.e., noncommercial use) the person doing the excavation (whether landowner or lessee) must obtain a permit and post bond as appropriate to the site. Those sites requiring a surface mine permit must comply with the permitting requirements of Chapter 1514.

Those sites not requiring a permit under Chapter 1514. may fall under the jurisdiction of the County Soil and Water Conservation District or the Ohio Environmental Protection Agency. Any complaints received regarding site excavation that the Division has determined does not require a surface mining permit should be referred to the appropriate County Soil & Water Conservation District or the Ohio Environmental Protection Agency.

PROCEDURE

Staff Action.

1. When the District Office staff receives a complaint or notice that someone without a surface mining permit is excavating industrial minerals and the minerals are being moved off-site, the appropriate inspection staff member will conduct a field investigation of the site.
2. District Office staff will make an inquiry at the site to determine if the excavation qualifies for an exemption for building construction or other exemption.
3. If no surface mining permit is required, an inspection report will be filed with the District Office. No further action is required unless site actions would change their eligibility for the exemption. If a permit is required, proceed to step 4.
4. District Office staff will, in cases where a surface mining permit is required, request a Chief's Order, ordering the removal of industrial minerals from the site to be ceased and requiring the excavator to apply for the appropriate surface mining permit or commence and continue reclamation of the site.
5. District Office staff will take appropriate action, as necessary, to insure compliance with the Chief's Order requirements.
6. If a building construction site qualifies for an exemption from a noncoal permit and the contractor then fails to follow through with the construction project, the excavation of the minerals would not be considered incidental to building construction. In such a case, the Division will have the option to consider the site to have been mined without a permit and the site would be subject to penalties prescribed in Chapter 1514.