

OPINION NO. 91-052**Syllabus:**

The Chief of the Division of Reclamation of the Ohio Department of Natural Resources has the authority, pursuant to R.C. 1513.02(A)(2), R.C. 1513.162, and 2 Ohio Admin. Code 1501:13-9-04(P)(1)(a), to order the operator of a coal mining operation to reimburse the owner of an interest in real property for the cost of replacing a water supply that has been contaminated, diminished, or interrupted as a proximate result of the coal mining operation where the owner has replaced the supply on his own initiative, and prior to any action by the operator of the coal mining operation to replace the water supply.

To: Frances S. Buchholzer, Director, Ohio Department of Natural Resources, Columbus, Ohio

By: Lee Fisher, Attorney General, December 31, 1991

I have before me your request for my opinion regarding the authority of the Chief of the Division of Reclamation of the Ohio Department of Natural Resources with respect to R.C. 1513.162. R.C. 1513.162 provides, in relevant part, as follows:

(A) The operator¹ of a coal mining operation shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the coal mining operation and shall reimburse the owner for the reasonable cost of obtaining a water supply from the time of the contamination, diminution, or interruption by the operation until the water supply is replaced. (Footnote added.)

Specifically, you have asked whether R.C. 1513.162 authorizes the Chief of the Division of Reclamation (hereinafter "the Chief") to order the operator of a coal mining operation to reimburse the owner of an interest in real property for the cost of obtaining a replacement water supply where the owner has obtained such supply on his own initiative, prior to any action by the operator of the coal mining operation to replace the water supply.²

¹ "Operator" is defined for purposes of R.C. Chapter 1513 as "any person conducting a coal mining operation." R.C. 1513.01(H).

² I assume, for purposes of this opinion, that the operator of the coal mining operation is in violation of the requirement of R.C. 1513.162 to replace the water supply of certain persons whose water supply has been contaminated, diminished, or interrupted as a proximate result of the coal mining operation. Your question does not concern the obligation of the operator of a coal mining operation to reimburse an owner for the reasonable cost of obtaining a water supply from the time of contamination, diminution, or interruption until the water supply is replaced, and I therefore have not addressed that issue in this opinion.

I. The Authority Of The Chief To Issue An Order To Enforce R.C. 1513.162

The authority of the Chief with respect to R.C. Chapter 1513 (coal surface mining) is set forth in R.C. 1513.02, which provides, in part, that "[t]he division of reclamation shall administer, enforce, and implement this chapter. The chief of the division of reclamation shall: (1) Adopt, amend, and rescind rules: (a) To administer and enforce this chapter." R.C. 1513.02(A). Pursuant to R.C. 1513.02(A)(1), the Chief has adopted 2 Ohio Admin. Code 1501:13-9-04(P), which essentially restates R.C. 1513.162, and reads as follows:

(1) Any person who conducts coal mining operations shall:

(a) Replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the coal mining operations; and

(b) Reimburse the owner for the reasonable cost of obtaining a water supply from the time of the contamination, diminution or interruption by the operation until the water supply is replaced.

Additionally, R.C. 1513.02(A)(2) authorizes the Chief to "[i]ssue orders to enforce this chapter and rules adopted thereunder." Thus, the Chief has the authority under R.C. 1513.02(A)(2) to issue an order to enforce R.C. 1513.162 and rule 1501:13-9-04(P).

R.C. 1513.02 sets forth a comprehensive scheme for the issuance of orders by the Chief. R.C. 1513.02(C)(2) provides that "[t]he issuance of orders under division (A)(2) of this section and appeals therefrom are not governed by or subject to Chapter 119. [administrative procedure] of the Revised Code but are governed by this chapter." In particular, R.C. 1513.02(D)(4) requires that "orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and *the remedial action required*, the period of time established for abatement, and a reasonable description of the portion of the coal mining and reclamation operation to which the...order applies.... [O]rders shall be in writing and shall be signed by the chief or the authorized representatives and may be modified, vacated, or terminated by the chief or his authorized representative." (Emphasis added.) Thus, the Chief has the authority to determine whether a violation of R.C. Chapter 1513 has occurred and the action necessary to remedy the violation, and also has the authority to order the violator to take such action.

II. The Authority Of The Chief To Order An Operator To Reimburse An Owner For The Cost Of Replacing A Water Supply

Clearly, the discretion to determine the remedial action that must be taken with respect to a violation of R.C. 1513.162 or rule 1501:13-9-04(P) lies squarely with the Chief pursuant to R.C. 1513.02(D)(4). Thus, if the operator's reimbursement of the cost to the owner of replacing the water supply will remedy the operator's violation of R.C. 1513.162, then the Chief may order the reimbursement. A violation of R.C. 1513.162 occurs whenever an operator fails to replace the water supply of an owner as required by that section. "Replace" is not defined for purposes of R.C. 1513.162, and therefore it must be accorded its natural, literal, common, or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). The dictionary defines "replace" as "[t]o put back in a former position or place.... To take or fill the place of.... To be or provide a substitute for.... To pay back or return; refund." *The American Heritage Dictionary* 1048 (2nd college ed. 1985) (emphasis added). "Reimburse" is defined, in part, as "[t]o repay.... To pay back or compensate (a person) for money spent." *Id.* at 1042. To the extent that "replace" can connote the repayment of money, it is synonymous with "reimburse." Thus, as it is used in the first sentence of R.C. 1513.162, "replace" may be understood to include "reimburse." Accordingly, the Chief has the

authority pursuant to R.C. 1513.02(A)(2) and rule 1501:13-9-04(P)(1)(a) to order an operator in violation of R.C. 1513.162 to reimburse an owner for the cost of replacing a water supply where the owner has replaced the water supply on his own initiative. The precise amount of the reimbursement is a question of fact for the Chief, who must determine which costs were actually incurred by the owner to replace the water supply that was affected by contamination, diminution, or interruption proximately resulting from the coal mining operation.

Finally, although pursuant to R.C. 1513.02(A)(2) and R.C. 1513.162 the Chief has the authority to order an operator to reimburse an owner for the cost of obtaining a replacement water supply, the Chief is not required to order reimbursement. The determination of what action is required to remedy a violation of R.C. 1513.162 remains within the discretion of the Chief.

III. Conclusion

Accordingly, it is my opinion and you are hereby advised that the Chief of the Division of Reclamation of the Ohio Department of Natural Resources has the authority, pursuant to R.C. 1513.02(A)(2), R.C. 1513.162, and 2 Ohio Admin. Code 1501:13-9-04(P)(1)(a), to order the operator of a coal mining operation to reimburse the owner of an interest in real property for the cost of replacing a water supply that has been contaminated, diminished, or interrupted as a proximate result of the coal mining operation where the owner has replaced the supply on his own initiative, and prior to any action by the operator of the coal mining operation to replace the water supply.