

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1761
AREAS DESIGNATED BY ACT OF CONGRESS

Section

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Section 1761.1 Scope

This Part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be permitted in light of the prohibitions and limitations in Section 7.01 of The Surface Coal Mining Land Conservation and Reclamation Act (The State Act) for those types of operations on certain Federal, public and private lands.

Section 1761.5 Definition of Valid Existing Rights

Valid existing rights (VER) means a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where Section 1761.11 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of Section 1761.11 and 30 USC 1272(e). A person

seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and the applicable regulatory program.

- a) Property rights demonstration. Except as provided in subsection (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of Section 1761.11. Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.
- b) Except as provided in subsection (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:
 - 1) Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of Section 1761.11. At a minimum, an application must have been submitted for any permit required under 62 Ill. Adm. Code 1772 through 1785.
 - 2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of Section 1761.11. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 1761.11. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of Section 1761.11 when the regulatory authority approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:

- A) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of Section 1761.11 depend upon use of that land for surface coal mining operations.
 - B) The extent to which plans used to obtain financing for the operation before the land came under the protection of Section 1761.11 rely upon use of that land for surface coal mining operations.
 - C) The extent to which investments in the operation before the land came under the protection of Section 1761.11 rely upon use of that land for surface coal mining operations.
 - D) Whether the land lies within the area identified on the life-of-mine map submitted under 62 Ill. Adm. Code 1779.24(c) or 1783.24(c) before the land came under the protection of Section 1761.11.
- c) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by Section 1761.11 must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in 62 Ill. Adm. Code 1701.Appendix A:
- 1) The road existed when the land upon which it is located came under the protection of Section 1761.11, and the person has a legal right to use the road for surface coal mining operations.
 - 2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 1761.11 and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.
 - 3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 1761.11.
 - 4) Valid existing rights exist under subsections (a) and (b) of this definition.

(Source: Added at 27 Ill. Reg. 4625, effective February 26, 2003)

Section 1761.11 Areas Where Mining is Prohibited or Limited

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

- a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 USC1276(a)) or study rivers or study river corridors as established in guidelines pursuant to that Act published at 47 FR 39454 (September 7, 1982), and National Recreation Areas designated by Act of Congress. The guidelines at 47 FR 39454 do not include any subsequent editions or amendments;
- b) On any Federal lands within the boundaries of any national forest; provided, however, that surface coal mining operations may be permitted on such lands, if the Secretary of the United States Department of the Interior (Secretary) finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and surface operations and impacts are incident to an underground coal mine;
- c) On any lands which will adversely affect any publicly owned park or any places included on the National Register of Historic Places, unless approved jointly by the Department and the Federal, State or local agency with jurisdiction over the park or places;
- d) Within 100 feet measured horizontally of the outside right-of-way line of any public road, except:
 - 1) Where mine access roads or haulage roads join such right of way lines; or
 - 2) Where the Illinois Department of Natural Resources, Office of Mines and Minerals (Department) and the public road authority with jurisdiction over the road under Illinois law allows the public road to be relocated, closed, or where the Department allows the area affected to be within 100 feet of such road, after:
 - A) Public notice and opportunity for a public hearing in accordance with Section 1761.14; and
 - B) Making a written finding that the interests of the affected public and landowners will be protected;

- e) Within 300 feet measured horizontally, from any occupied dwelling in existence, under construction, or contracted for at the time of public notice, except when:
 - 1) The owner thereof has provided a written waiver, pursuant to Section 1761.15, consenting to surface coal mining operations closer than 300 feet; or
 - 2) The part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;
- f) Within 300 feet measured horizontally of any public building, school, church, community or institutional building, or public park; or
- g) Within 100 feet measured horizontally of a cemetery. Cemeteries may be relocated if authorized by applicable State law or regulations.

(Source: Amended at 29 Ill. Reg. 8330, effective May 27, 2005)

Section 1761.12 Exceptions to Existing Operations

The prohibitions and limitations of Section 1761.11 do not apply to:

- a) Surface coal mining operations for which a valid permit, issued under Illinois' approved regulatory program, exists when the land comes under the protection of Section 1761.11. This exception applies only to lands within the permit area as it exists when the land comes under the protection of Section 1761.11.
- b) With respect to operations subject to the interim program rules at 62 Ill. Adm. Code 300, lands upon which validly authorized surface coal mining operations exist when the land comes under the protection of Section 1761.11.

(Source: Amended at 27 Ill. Reg. 4625, effective February 26, 2003)

Section 1761.14 Procedures for Relocation or Closing of a Public Road or Waiving the Prohibition on Surface Coal Mining Operations within the Buffer Zone of a Public Road

- a) This Section does not apply to:
 - 1) Lands for which a person has valid existing rights, as determined under Section 1761.16.
 - 2) Lands within the scope of the exception for existing operations in Section

1761.12.

- 3) Access or haul roads that join a public road, as described in Section 1761.11(d)(1).
- b) Subject to subsection (a), where the proposed mining operation is proposed to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except as provided in Section 1761.11(d)(2)) and the applicant does not have VER, or where the applicant proposes to relocate or close any public road, the Department shall:
- 1) Require the applicant to submit the request with an application for a new permit, a significant revision of a permit, an insignificant revision of a permit, or an incidental boundary revision, as applicable;
 - 2) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road for relocation or closure of a public road;
 - 3) Provide public notice in a newspaper of general circulation of the affected locale of an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected. Any person with an interest that is or may be adversely affected by the proposed mining operation may request in writing that the Department hold a public hearing. The request shall be submitted to the Department within 14 days after the newspaper notice required by this subsection (b)(3);
 - 4) If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two weeks prior to the hearing; and
 - 5) Make a written finding based upon information received at the public hearing, or submitted in writing, as to whether the interests of the affected public and landowners will be protected from the proposed mining operations. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed unless the Department determines that the interests of the affected public and landowners will be protected.
 - i) If the proposal to conduct mining operations within 100 feet measured horizontally of the outside right-of-way line of any public road or to relocate or close any public road is contained in an application for a new permit pursuant to 62 Ill. Adm. Code

1773.13, or a significant revision pursuant to 62 Ill. Adm. Code 1774.13(b)(3), the written findings shall be issued concurrently with the permit decision pursuant to 62 Ill. Adm. Code 1773.15(a); or

- ii) If the proposal to conduct mining operations with 100 feet measured horizontally of the outside right-of-way line of any public road or to relocate or close any public road is contained in an application for an insignificant revision pursuant to 62 Ill. Adm. Code 1774.13(b), or an incidental boundary revision pursuant to 62 Ill. Adm. Code 1774.13(d), the written findings shall be issued concurrently with the decision to issue or deny the revision.

(Source: Amended at 29 Ill. Reg. 8330, effective May 27, 2005)

Section 1761.15 Procedures for Waiving the Prohibition on Surface Coal Mining Operations within the Buffer Zone of an Occupied Dwelling

- a) This Section does not apply to:
 - 1) Lands for which a person has valid existing rights, as determined under Section 1761.16.
 - 2) Lands within the scope of the exception for existing operations in Section 1761.12.
 - 3) Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in Section 1761.11(e)(2).
- b) Where the proposed operation would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. The waiver must clarify that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling, as specified.
- c) If a valid waiver was obtained before August 3, 1977 from the owner of an occupied dwelling to conduct operations within 300 feet of the dwelling, a new waiver need not be submitted.
- d) If a valid waiver was obtained from the owner of an occupied dwelling, that

waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

(Source: Added at 27 Ill. Reg. 4625, effective February 26, 2003)

Section 1761.16 Submission and Processing of Requests for Valid Existing Rights Determinations

- a) Basic framework for valid existing rights determinations. The following table identifies the agency responsible for making a valid existing rights determination and the definition that it must use, based upon which subsection of Section 1761.11 applies and whether the request includes Federal lands.

Subsection of 62 Ill. Adm. Code 1761.11 that provides protection	Protected feature	Type of land to which request pertains	Agency responsible for determination	Applicable definition of valid existing rights
(a)	National parks, wildlife refuges, etc.	Federal	OSM	Federal ¹
(a)	National parks, wildlife refuges, etc.	Non-Federal	Department	Federal ¹
(b)	Federal lands in national forest ³	Federal	OSM	Federal ¹
(c)	Public parks and historic places	Does not matter	Department	Regulatory program ²
(d)	Public roads	Does not matter	Department	Regulatory program ²
(e)	Occupied dwellings	Does not matter	Department	Regulatory program ²
(f)	Schools, churches, parks, etc.	Does not matter	Department	Regulatory program ²
(g)	Cemeteries	Does not matter	Department	Regulatory program ²

- ¹ Definition in 30 CFR 761.5.
² Definition in Section 1761.5.
³ Neither 30 USC 1272(e) nor 30 CFR 761.11 provides special protection for non-Federal lands within national forests. Therefore, this table does not include a category for those lands.

When the Department is the agency responsible for valid existing rights determinations, the procedures under subsections (b) through (g) of this Section apply.

- b) The applicant or permittee must submit a request for a valid existing rights determination to the Department if it intends to conduct surface coal mining operations on the basis of valid existing rights under Section 1761.11 or wishes to confirm the right to do so. Such request may be submitted before preparing and submitting an application for a permit or boundary revision for the land.
- 1) Requirements for property rights demonstration. The applicant or permittee must provide a property rights demonstration under Section 1761.5(a) if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in Section 1761.5(b). This demonstration must include the following items:
- A) A legal description of the land to which the request pertains.
 - B) Complete documentation of the character and extent of the current interests in the surface and mineral estates of the land to which the request pertains.
 - C) A complete chain of title for the surface and mineral estates of the land to which the request pertains.
 - D) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.
 - E) A description of the type and extent of surface coal mining operations that the applicant or permittee claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with State property law.
 - F) Complete documentation of the nature and ownership, as of the

- date that the land came under the protection of Section 1761.11, of all property rights for the surface and mineral estates of the land to which the request pertains.
- G) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
 - H) If the coal interests have been severed from other property interests, documentation that the owners of other property interests in the land to which the request pertains have been notified and provided reasonable opportunity to comment on the validity of the applicant's or permittee's property rights claims.
 - I) Any comments received in response to the notification provided under subsection (b)(1)(H) of this Section.
- 2) Requirements for good faith/all permits standard. If the request relies upon the good faith/all permits standard in Section 1761.5(b)(1) of the definition of valid existing rights, the information required under subsection (b)(1) of this Section must be submitted. The following information about permits, licenses and authorizations for surface coal mining operations on the land to which the request pertains must also be submitted:
- A) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant, permittee or predecessor in interest obtained before the land came under the protection of Section 1761.11.
 - B) Application dates and identification numbers for any permits, licenses, and authorizations for which the applicant, permittee or a predecessor in interest submitted an application before the land came under the protection of Section 1761.11.
 - C) An explanation of any other good faith effort that the applicant, permittee or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of Section 1761.11.
- 3) Requirements for needed for and adjacent standard. If the request relies upon the needed for and adjacent standard in subsection (b)(2) of the definition of valid existing rights in Section 1761.5, the applicant or permittee must submit the information required under subsection (b)(1) of

this Section. In addition, the applicant or permittee must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 1761.11.

- 4) Requirements for standards for mine roads. If the request relies upon one of the standards for roads in subsections (c)(1) through (c)(3) of the definition of valid existing rights in Section 1761.5, satisfactory documentation must be submitted that:
 - A) The road existed when the land upon which it is located came under the protection of Section 1761.11 and the applicant or permittee has a legal right to use the road for surface coal mining operations;
 - B) A properly recorded right of way or easement for a road in the location existed when the land came under the protection of Section 1761.11, and, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant or permittee has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or
 - C) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 1761.11.
- c) Initial review of request.
 - 1) The Department must conduct an initial review to determine whether the request includes all applicable components of the submission requirements of subsection (b) of this Section. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.
 - 2) If the request does not include all applicable components of the submission requirements of subsection (b) of this Section, the Department must give notice of such and establish a reasonable time for submission of the missing information.
 - 3) When the request includes all applicable components of the submission

requirements of subsection (b) of this Section, the Department must implement the notice and comment requirements of subsection (d) of this Section.

- 4) If information that the Department requests under subsection (c)(2) of this Section is not provided within the time specified or as subsequently extended, the Department must issue a determination that the applicant or permittee has not demonstrated valid existing rights, as provided in subsection (e)(4) of this Section.
- d) Notice and comment requirements and procedures.
- 1) When the request satisfies the completeness requirements of subsection (c) of this Section, the applicant or permittee must publish a notice in a newspaper of general circulation in the county in which the land is located and provide the Department with a copy of the published notice. This notice must invite comment on the merits of the request. The Federal Office of Surface Mining will publish a similar notice in the Federal Register if the request involves Federal lands within an area listed in Section 1761.11(a) or (b). Each notice must include:
 - A) The location of the land to which the request pertains.
 - B) A description of the type of surface coal mining operations planned.
 - C) A reference to and brief description of the applicable standards under the definition of valid existing rights in Section 1761.5.
 - i) If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in subsection (b) of the definition of valid existing rights in Section 1761.5, the notice also must include a description of the property rights that are claimed and the basis for such claim.
 - ii) If the request relies upon the standard in subsection (c)(1) of the definition of valid existing rights in Section 1761.5, the notice also must include a description of the basis for the applicant's or permittee's claim that the road existed when the land came under the protection of Section 1761.11. In addition, the notice must include a description of the basis for the applicant's or permittee's claim that it has a legal right to use that road for surface coal mining

operations.

- iii) If the request relies upon the standard in subsection (c)(2) of the definition of valid existing rights in Section 1761.5, the notice also must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 1761.11. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant or permittee has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.
 - D) If the request relies upon one or more of the standards in subsections (b), (c)(1) and (c)(2) of the definition of valid existing rights in Section 1761.5, a statement that the Department will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by subsection (d)(3) of this Section, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement or other documents that form the basis of the applicant or permittee's claim.
 - E) A description of the procedures that the Department will follow in processing the request.
 - F) The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.
 - G) A statement that interested persons may obtain a 30 day extension of the comment period upon request.
 - H) The name and address of the Department's office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.
- 2) The Department must promptly provide a copy of the notice required under subsection (d)(1) of this Section to:

- A) All reasonably locatable owners of surface and mineral estates in the land included in the request.
 - B) The owner of the feature causing the land to come under the protection of Section 1761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of Section 1761.11. For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.
- 3) The letter transmitting the notice required under subsection (d)(2) of this Section must provide a 30 day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the Department may grant additional time for good cause upon request. The Department need not consider comments received after the closing date of that comment period.
- e) How a decision will be made.
- 1) The Department must review the materials submitted under subsection (b) of this Section, comments received under subsection (d) of this Section and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the Department must notify the applicant or permittee in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the Department deems necessary to remedy the inadequacy.
 - 2) Once the record is complete and adequate, the Department must determine whether the applicant or permittee has demonstrated valid existing rights. The decision document must explain how all applicable elements of the definition of valid existing rights in Section 1761.5 have or have not been satisfied. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.
 - 3) Impact of property rights disagreements. This subsection (e)(3) applies only when the request relies upon one or more of the standards in

subsections (b), (c)(1) and (c)(2) of the definition of valid existing rights in Section 1761.5.

- A) The Department must issue a determination that the applicant or permittee has not demonstrated valid existing rights if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The Department will make this determination without prejudice, meaning that the applicant or permittee may refile the request once the property rights dispute is finally adjudicated. This subsection (e)(3)(A) applies only to situations in which legal action has been initiated as of the closing date of the comment period under subsection (d)(1) or (d)(3) of this Section.
 - B) If the record indicates disagreement as to the accuracy of the property rights claims, but such disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the Department must evaluate the merits of the information in the record and determine whether the applicant or permittee has demonstrated that the requisite property rights exist under subsection (a), (c)(1) or (c)(2) of the definition of valid existing rights in Section 1761.5, as appropriate. The Department must then proceed with the decision process under subsection (e)(2) of this Section.
- 4) The Department must issue a determination that valid existing rights has not been demonstrated if information that the Department requests under subsection (c)(2) or (e)(1) of this Section is not submitted within the time specified or as subsequently extended. The Department will make this determination without prejudice, meaning that a revised request may be refiled at any time.
- 5) After making a determination, the Department must:
- A) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant or permittee, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of Section 1761.11, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 1761.11.

- B) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. The applicant or permittee must publish this notice and provide a copy of the published notice to the Department. The Federal Office of Surface Mining will publish the determination, together with an explanation of appeal rights and procedures, in the Federal Register if the request includes Federal lands within an area listed in Section 1761.11(a) or (b).
- f) Administrative and judicial review. A determination that an applicant or permittee has or does not have valid existing rights is subject to administrative and judicial review under 62 Ill. Adm. Code 1847.3.
- g) Availability of records. The Department must make a copy of a request subject to notice and comment under subsection (d) of this Section available to the public in the same manner as the Department must make permit applications available to the public under 62 Ill. Adm. Code 1773.13(d). In addition, the Department must make records associated with that request, and any subsequent determination under subsection (e) of this Section, available to the public in accordance with the requirements and procedures of 62 Ill. Adm. Code 1840.14.

(Source: Amended at 29 Ill. Reg. 8330, effective May 27, 2005)

Section 1761.17 Department Obligations at Time of Permit Application Review

- a) Upon receipt of an administratively complete application for a permit for a surface coal mining operation, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit, the Department must review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under Section 1761.11.
- b) The Department must reject any portion of the application that would locate surface coal mining operations on land protected under Section 1761.11 unless:
 - 1) The site qualifies for the exception for existing operations under Section 1761.12;
 - 2) A person has valid existing rights for the land, as determined under Section 1761.16;
 - 3) The applicant obtains a waiver or exception from the prohibitions of Section 1761.11 in accordance with Sections 1761.14 and 1761.15; or

- 4) For lands protected by Section 1761.11(c), both the regulatory authority and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with subsection (d) of this Section.
- c) Location verification. If the Department has difficulty determining whether an application includes land within an area specified in Section 1761.11(a) or within the specified distance from a structure or feature listed in Section 1761.11(f) or (g), the Department must request that the Federal, State or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location.
- 1) The request for location verification must:
 - A) Include relevant portions of the permit application.
 - B) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.
 - C) Specify that the Department will not necessarily consider a response received after the comment period provided under subsection (c)(1)(B) of this Section.
 - 2) If the agency does not respond in a timely manner, the Department may make the necessary determination based on available information.
- d) Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.
- 1) If the Department determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place currently included in the National Register of Historic Places, the Department must request that the Federal, State or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request must:
 - A) Include a copy of applicable parts of the permit application.
 - B) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.
 - C) State that failure to interpose an objection within the time specified under subsection (d)(1)(B) of this Section will constitute approval of the proposed operation.

- 2) The Department may not issue a permit for a proposed operation subject to subsection (d)(1) of this Section unless all affected agencies jointly approve.
- 3) Subsections (d)(1) and (d)(2) of this Section do not apply to:
 - A) Lands for which a person has valid existing rights, as determined under Section 1761.16.
 - B) Lands within the scope of the exception for existing operations in Section 1761.12.

(Source: Added at 27 Ill. Reg. 4625, effective February 26, 2003)