

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1764
STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE
FOR SURFACE COAL MINING OPERATIONS

Section

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AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 8510; amended at 11 Ill. Reg. 8567, effective July 1, 1987; amended at 17 Ill. Reg. 11031, effective July 1, 1993; amended at 22 Ill. Reg. 20137, effective November 5, 1998

Section 1764.11 General Process Requirements

The State shall establish a process enabling objective decisions to be made on which, if any, land areas of the State are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data, and other relevant information. This process shall include the requirements listed in this Part.

(Source: Amended at 11 Ill. Reg. 8567, effective July 1, 1987)

Section 1764.13 Petitions

- a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the Illinois Department of Natural Resources (Department) to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

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- b) Designation. The Department shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.
- 1) At a minimum, a complete petition for designation shall include:
 - A) The petitioner's name, address, telephone number, and notarized signature;
 - B) Identification of the petitioned area, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;
 - C) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of subsection (a);
 - D) A description of how mining of the area has affected or may adversely affect people, land, air, water or other resources, including the petitioner's interests; and
 - E) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, pursuant to specific criteria of Sections 7.02(a) and (b) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/7.02(a) and (b)] (State Act), assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.
 - 2) The Department may request that the petitioner provide other supplementary information which is readily available.
- c) Termination. The Department shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.
- 1) At a minimum, a complete petition for termination shall include:

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- A) The petitioner's name, address, telephone number, and notarized signature;
- B) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;
- C) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfied the requirements of subsection (a);
- D) Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases.
- i) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in 62 Ill. Adm. Code 1762.11(b);
 - ii) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in 62 Ill. Adm. Code 1762.11(a); or
 - iii) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in 62 Ill. Adm. Code 1762.11(b).

- 2) The Department may request that the petitioner provide other supplementary information which is readily available.

(Source: Amended at 22 Ill. Reg. 20137, effective November 5, 1998)

Section 1764.15 Initial Processing, Recordkeeping, and Notification Requirements

- a) Processing of Petitions
 - 1) Within 60 days after receipt of a petition, the Department shall notify the petitioner by certified mail whether or not the petition is complete under Section 1764.13(b) or (c). Complete, for a designation or termination petition, means that the information required under Section 1764.13(b) or (c) has been provided.
 - 2) The Department shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the Department finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.
 - 3) If the Department determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of Section 1764.13(a), it shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.
 - 4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Department shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the petition does not contain such material, the Department shall not consider the petition and shall return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.
 - 5) The Department shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.
 - 6) The Department shall not process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been

published. Based on such a determination, the Department may issue a decision on a complete and accurate permit application and shall inform the petitioner why the Department cannot consider the part of the petition pertaining to the proposed permit area.

- b) Promptly after a petition is received, the Department shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The Department shall make copies of the petition available to the public and shall provide copies of the petition to other interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the Department to have an interest in the property.
- c) Land Report and Public Comment
 - 1) After the petition is determined to be complete the Department shall prepare a Land Report. Each Land Report shall evaluate whether mining operations on the land which is subject to the petition would have any or all of the effects described in 62 Ill. Adm. Code 1762.11. Each Land Report shall contain a detailed statement on:
 - A) The potential resources of the area,
 - B) The demand for coal resources, and
 - C) The impact of a designation of such lands as unsuitable for mining on the environment, the economy, and the supply of coal.
 - 2) The Land Report shall state objectively the information which the Department has, but shall not contain a recommendation with respect to whether the petition should be granted or denied. Each Land Report shall be completed not later than eight months after the petitioner has been notified the petition is complete under subsection (a)(1).
 - 3) The Department shall print 100 copies of each Land Report, which shall be distributed as follows: One copy to each petitioner; one copy to the operator or operators; two copies to the County Clerks of the counties included in the petition, one of which is to be forwarded to the county commission or board of supervisors; one copy to the Office of Surface Mining Reclamation and Enforcement, and one copy to each office of the Land Reclamation Division for public use. Remaining copies may be

provided to persons who have filed requests in the proceeding for a copy of the report.

- 4) Within three weeks after the determination that a petition is complete, the Department shall request submissions from the general public of relevant information, by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State register of public notices.
- d) Until three days before the Department holds a hearing under Section 1764.17, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.
- e) Beginning immediately after a complete petition is filed, the Department shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Department. The Department shall make the record available for public inspection, free of charge, during all normal business hours at a central location of the county or multi-county area in which the land petitioned is located, and make available for copying at reasonable cost at the Department's main and regional offices.

(Source: Amended at 22 Ill. Reg. 20137, effective November 5, 1998)

Section 1764.17 Hearing Requirements

- a)
 - 1) Within ten (10) months after receipt of a complete petition, the Department shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. Any party to a hearing may be represented by counsel, make oral or written arguments, offer testimony and cross-examine witnesses, cause the issuance of subpoenas, or take any combination of such actions. The rules of evidence and privilege as applied in civil cases in the circuit courts of Illinois shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. However, evidence not admissible under such rules of evidence, including, without limitation, citizen opinion on whether lands fall within the criteria for unsuitability and should be designated unsuitable, may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited, and the parties

will not be prejudiced, any part of the evidence may be received in written form. The Department shall make a verbatim transcript of the hearing. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by the Department in its decision on the petition.

- 2) The Department's decision shall be made based on substantial evidence in the record, which shall, insofar as practicable, include competent and scientifically sound data and information or other relevant evidence supporting the decision. If any party desires to rely upon information specified in Section 1764.19(a), then by the close of the record or such other convenient time set by the hearing officer, it shall so notify the Department and other parties, specifying clearly the particular information relied on, the reasons for reliance and the alleged relevance, validity and effect on such information. Other parties shall have opportunity to comment thereon. If in the course of preparing its decision the Department uses information specified in Section 1764.19(a), and not noted by a party, notice of such use and opportunity for comment thereon shall be given the parties prior to the Department's final decision.

b)

- 1) The Department shall give notice of the date, time, and location of the hearing to:
 - A) Local, State, and Federal agencies which may have an interest in the decision on the petition;
 - B) The petitioner and the intervenors; and
 - C) Any person with an ownership or other interest known to the Department in the area covered by the petition. Proper notice to persons with an ownership interest of record shall comply with the requirements of applicable State law.
- 2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors and by regular mail to government agencies and property owners involved in the proceeding, and postmarked not less than thirty (30) days before the scheduled date of the hearing.
- 3) Such notice shall state that a Land Report is available for public inspection and the locations at which it may be inspected. The Land Report must be available to the public at least thirty (30) days before the hearing required

under this Section. Written comments on the Land Report may be submitted to the Department until three (3) days before the Department holds the hearing required by this Part.

- c) The Department shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once (1) a week for two (2) consecutive weeks in the locale of the area covered by the petition and once (1) during the week prior to the public hearing. The consecutive weekly advertisement must begin between four (4) and five (5) weeks before the scheduled date of the public hearing.
- d) The Department may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.
- e) Prior to designating any land areas as unsuitable for surface coal mining operations, the Department shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.
- f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

(Source: Amended at 11 Ill. Reg. 8567, effective July 1, 1987)

Section 1764.19 Decision

- a) In reaching its decision, the Department shall use:
 - 1) The information contained in the data base and inventory system;
 - 2) Information provided by other governmental agencies;
 - 3) The Land Report prepared under Section 1764.15(c); and
 - 4) Any other relevant information submitted during the comment period.
- b) The Department may decide to designate the petitioned land areas in whole or in part, not to designate the petitioned land areas, or to place conditions on future operations in all or part of the petitioned area which would successfully mitigate the impacts of such operations.
- c) A final written decision shall be issued by the Department, including a statement of reasons, within sixty (60) days of completion of the public hearing, or, if no

public hearing is held, then within twelve (12) months after receipt of the complete petition. The Department shall simultaneously send this final administrative decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

- d) The final administrative decision of the Department with respect to a petition, or the failure of the Department to act within the time limits set forth in this Section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under Section 8.10 of the State Act and 62 Ill. Adm. Code 1847.3. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the Department shall be considered and included in the record of the administrative proceeding.

(Source: Amended at 17 Ill. Reg. 11031, effective July 1, 1993)

Section 1764.21 Data Base and Inventory System Requirements

- a) The Department shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.
- b) The Department shall include in the system information relevant to the criteria in 62 Ill. Adm. Code 1762.11, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer, and the agency administering Section 127 of the Clean Air Act, as amended (42 U.S.C. 7470 et seq.).
- c) The Department shall add to the data base and inventory system information:
 - 1) On potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the Department to prepare the statements required by Section 1764.17(e); and
 - 2) That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

(Source: Amended at 11 Ill. Reg. 8567, effective July 1, 1987)

Section 1764.23 Public Information

The Department shall:

- a) Make the information from the data base and inventory system developed under Section 1764.21 available to the public for inspection free of charge and for copying at reasonable cost except that specific information relating to location of

properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the Department determines that the disclosure of such information would create a risk of destruction or harm to such properties;

- b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

(Source: Amended at 11 Ill. Reg. 8567, effective July 1, 1987)

Section 1764.25 Regulatory Authority Responsibility for Implementation

- a) The Department shall not issue permits which are inconsistent with designations made pursuant to 62 Ill. Adm. Code 1761, 1762, or 1764.
- b) The Department shall maintain a map or other unified and cumulative record of areas designated as unsuitable for all or certain types of surface coal mining operations.
- c) The Department shall make available to any person any information within the Department's control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

(Source: Amended at 11 Ill. Reg. 8567, effective July 1, 1987)