

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1772
REQUIREMENTS FOR COAL EXPLORATION

Section

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AUTHORITY: Implementing and authorized by Sections 5.01, 5.02, 5.03 and 9.01 of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/5.01, 5.02, 5.03 and 9.01].

SOURCE: Adopted at 11 Ill. Reg. 8385, effective July 1, 1987; amended at 14 Ill. Reg. 11880, effective January 1, 1991; amended at 15 Ill. Reg. 17269, effective January 1, 1992; amended at 17 Ill. Reg. 11058, effective July 1, 1993; amended at 20 Ill. Reg. 2084, effective January 19, 1996; amended at 27 Ill. Reg. 4650, effective March 26, 2003; amended at 29 Ill. Reg. 8348, effective May 27, 2005.

Section 1772.1 Scope and Purpose

This part establishes the requirements and procedures applicable to coal exploration operations on all lands except for Federal lands subject to the requirements of 43 CFR 3480-3487 (1986).

Section 1772.11 Notice Requirements for Exploration Removing 250 Tons of Coal or Less

- a) Any person who intends to conduct coal exploration operations outside the permit area during which less than 250 tons of coal will be removed shall prior to conducting the exploration, file with the Illinois Department of Natural Resources, Office of Mines and Minerals (Department) a written notice of intention to explore.
- b) The notice shall include:
 - 1) The name, address, and telephone number of the person seeking to explore;
 - 2) The name, address, and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;
 - 3) A statement of the period of intended exploration, and a precise narrative

or other specific description of the location of the intended exploration which identifies which Sections will be affected;

- 4) A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of 62 Ill. Adm. Code 1815;
- 5) In addition, the notice shall include a copy of a fully executed "Application for Test Hole Permit" (Form OG-7) or "Test Hole Record and Plugging Affidavit" (Form OG-8) if required by the Oil and Gas Division of the Department for the proposed activities. Forms are available from the Oil and Gas Division of the Department which will supervise closure in accordance with 62 Ill. Adm. Code 240.

c) A notice of intention to explore is not an application for a permit.

(Source: Amended at 20 Ill. Reg. 2084, effective January 19, 1996)

Section 1772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal

- a) Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under 62 Ill. Adm. Code 1761 through 1764 shall before conducting the exploration submit an application and obtain written approval from the Department in an exploration permit.
- b) Each application for an exploration permit shall contain, at a minimum, the following information:
 - 1) The name, address, and telephone number of the applicant;
 - 2) The name, address, and telephone number of the applicant's representative who will be present at, and be responsible for, conducting the exploration;
 - 3) A narrative and map describing the proposed exploration area;
 - 4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation;
 - 5) An estimated time table for conducting and completing each phase of the exploration and reclamation;
 - 6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amounts;
 - 7) A statement of why extraction of more than 250 tons of coal is necessary for exploration;

- 8) A description of:
 - A) Cultural or historical resources listed on the National Register of Historic Places,
 - B) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places,
 - C) Known archeological resources located within the proposed exploration area, and
 - D) Any other information which the Department may require regarding known or unknown historic or archeological resources, based upon consultation with the Illinois State Historic Preservation Agency;
- 9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC 1531 et seq.) identified within the proposed exploration area;
- 10) A description of the measures to be used to comply with the applicable requirements of 62 Ill. Adm. Code 1815;
- 11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;
- 12) A map or maps at a scale of 1:24,000 or larger, showing the areas of the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC 1531 et seq.);
- 13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation; and
- 14) For any lands listed in 62 Ill. Adm. Code 1761.11, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of 62 Ill. Adm. Code 1761.11, and, when applicable, with

the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 62 Ill. Adm. Code 1761.11.

- c) Public notice of the application and opportunity to comment shall be provided as follows:
 - 1) Within 5 days, the applicant shall provide public notice of the filing of an administratively complete application with the Department in a newspaper of general circulation which is on the Department's list of approved newspapers in the county of the proposed exploration area;
 - 2) The public notice shall state the name and address of the person seeking approval, the date of filing of the application, the address of the Department where written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration. In no case shall the public comment period be less than 30 days;
 - 3) Any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within the specified public comment period.

- d) Decision on an application for exploration removing more than 250 tons of coal.
 - 1) The Department shall act upon an administratively complete application for a coal exploration permit and any written comments within 60 days after the close of the public comment period. The approval of a coal exploration permit may be based only on a complete and accurate application.
 - 2) The Department shall approve a complete and accurate application for a coal exploration permit filed in accordance with this Part, if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will:
 - A) Be conducted in accordance with the Surface Mining Control and Reclamation Act of 1977 (30 USC 1201 et seq.) (Act), 62 Ill. Adm. Code 1815, this Part and the regulatory program;
 - B) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 USC 1533) or result in the destruction or adverse modification of critical habitat of those species as defined in Section 3 of the Endangered Species Act of 1973 (16 USC 1532);
 - C) Not adversely affect any cultural or historic resources listed on the National Register of Historic Places, pursuant to the National

Historic Preservation Act, as amended (16 USC 470 et seq., 1976, Supp. V), unless the proposed exploration has been approved by the Department and the Illinois Historic Preservation Agency; and

- D) With respect to exploration activities on any lands protected under 62 Ill. Adm. Code 1761.11, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the Department must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 62 Ill. Adm. Code 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 62 Ill. Adm. Code 1761.11, to comment on whether the finding is appropriate.
- 3) Terms of approval. Each approval issued by the Department shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the Act, this Part, 62 Ill. Adm. Code 1815, and the regulatory program.
- e) Notice and review.
 - 1) The Department shall notify the applicant, the appropriate local government officials, and other commentors on the application in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the Department at a public office in the vicinity of the exploration operations.
 - 2) Any person with an interest which is or may be adversely affected by a decision of the Department pursuant to subsection (e)(1), shall have the opportunity for administrative and judicial review as set forth in 62 Ill. Adm. Code 1847.3.

(Source: Amended at 29 Ill. Reg. 8348, effective May 27, 2005)

Section 1772.13 Coal Exploration Compliance Duties

- a) All coal exploration and reclamation activities which substantially disturb the land surface shall be conducted in accordance with the coal exploration requirements of the Act, this Part, 62 Ill. Adm. Code 1815, and the regulatory program, and any conditions on approval for exploration and reclamation imposed by the Department.
- b) Any person who conducts any coal exploration in violation of the provisions of this Part, 62 Ill. Adm. Code 1815, or the regulatory program, or any exploration permit term or condition imposed by the Department shall be subject to the

provisions of Section 518 of the Act, 62 Ill. Adm. Code 1840 through 1845 and the applicable inspection and enforcement provisions of the regulatory program.

Section 1772.14 Requirements for Commercial Use or Sale

- a) Except as provided under 62 Ill. Adm. Code 1772.14(b) and 1700.11(a)(3), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the Department under 62 Ill. Adm. Code 1773 through 1785.
- b) With the prior written approval of the Department, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the Department. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing coal. The application shall contain the following:
 - 1) The name of the testing firm and the locations at which the coal will be tested.
 - 2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:
 - A) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;
 - B) the amount of coal necessary for the test and why a lesser amount is not sufficient; and
 - C) a description of the specific tests that will be conducted.
 - 3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.
 - 4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

(Source: Amended at 15 Ill. Reg. 17269, effective January 1, 1992)

Section 1772.15 Public Availability of Information

- a) Except as provided in subsection (b) all information submitted to the Department under this Part shall be made available for public inspection and copying at the local offices of the Department closest to the exploration area.

- b)
 - 1) The Department shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the Department determines that the information is confidential.

 - 2) The Department shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

 - 3) Information requested to be held as confidential under this Section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.