

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1773
REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Section

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Section 1773.1 Scope and Purpose

This Part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits; coordinating with other laws; public participation; permit decision and notification; permit conditions; and permit term and right of renewal.

Section 1773.5 Definitions

For purposes of this Part, owned or controlled and owns or controls means any one or a combination of the relationships specified in subsections (a) and (b) below:

- a) Ownership or control is evidenced by:
 - 1) Being a permittee of a surface coal mining operation;
 - 2) Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or
 - 3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

- b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted.
 - 1) Being an officer or director of an entity;
 - 2) Being the operator of a surface coal mining operation;
 - 3) Having the ability to commit the financial or real property assets or working resources of an entity;
 - 4) Being a general partner in a partnership;
 - 5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or
 - 6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(Source: Amended at 15 Ill. Reg. 17274, effective January 1, 1992)

Section 1773.11 Requirements to Obtain Permits

- a) All operations.

On and after February 1, 1983, no person shall engage in or carry out any surface coal mining operations on non-Federal or non-Indian Lands within the State, unless such person has first been issued a permanent regulatory program permit by the Illinois Department of Natural Resources (Department), except as provided for in subsection (b). A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

- b) Continuation of interim regulatory program operations.
 - 1) A person authorized to conduct surface coal mining and reclamation operations under a permit issued or amended by the Department in accordance with the requirements of the interim regulatory program may conduct such operations beyond February 1, 1983, if:
 - A) Not later than August 3, 1982, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after February 1, 1983, in accordance with the provisions of the permanent program;
 - B) The Department has not yet rendered an initial administrative decision approving or disapproving the permit; and
 - C) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) (Federal Act), the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720] (State Act), 62 Ill. Adm. Code 1800 through 1850 and all terms and conditions of the interim program permit.
 - 2) No new interim program permits shall be issued.

(Source: Amended at 22 Ill. Reg. 20265, effective November 5, 1998)

Section 1773.12 Regulatory Coordination with Requirements under Other Laws

The Department shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of State laws and regulations and the requirements of the Endangered Species Act of 1973, as

amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); the Bald Eagle Protection Act, as amended (16 USC 668a); and federal Executive Order 11593.

(Source: Amended at 26 Ill. Reg. 4271, effective March 6, 2002)

Section 1773.13 Public Participation in Permit Processing

- a) Filing and public notice.
 - 1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under 62 Ill. Adm. Code 1774.13, or renewal of a permit under 62 Ill. Adm. Code 1774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for 4 consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the Department. The advertisement shall contain, at a minimum, the following:
 - A) The name and business address of the applicant.
 - B) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and shadow area, if applicable, and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction. If the application includes a shadow area, the map or description shall differentiate between the two.
 - C) The location where a copy of the application is available for public inspection.
 - D) The address of the office of the Department where written comments, objections or requests for informal conferences and public hearings on the application may be submitted under subsections (b) and (c).
 - E) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with 62 Ill. Adm. Code 1761.14, a

concise statement describing the public road, the activities proposed within 100 feet of the road, the particular part to be relocated or closed, if applicable, and the approximate timing and duration of the relocation or closing.

- F) If the application includes a request for an experimental practice under 62 Ill. Adm. Code 1785.13, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.
- 2) The applicant shall make an application for a permit, significant revision under 62 Ill. Adm. Code 1774.13, or renewal of a permit under 62 Ill. Adm. Code 1774.15 available for the public to inspect and copy by filing a full copy of the application with the clerk at the courthouse of the county where the mining is proposed to occur. This copy of the application need not include confidential information exempt from disclosure under subsection (d). The application required by this subsection shall be filed in accordance with Section 2.04(a) of the State Act. The applicant shall file an additional copy of any changes to the application with the Department. The Department will then forward this copy to the county clerk.
 - 3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under 62 Ill. Adm. Code 1774.13, or a renewal of a permit under 62 Ill. Adm. Code 1774.15, the Department shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to:
 - A) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and
 - B) All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with Section 503(a)(6) of the Federal Act or Section 1773.12; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture, Natural Resources Conservation

Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

- b) Comments and objections on permit applications.
 - 1) Written comments or objections to an application for a permit, significant revision to a permit under 62 Ill. Adm. Code 1774.13, or renewal of a permit under 62 Ill. Adm. Code 1774.15 may be submitted to the Department by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority notified under subsection (a)(3), within 30 days after the last publication of the newspaper notice required by subsection (a). Any person not a public officer, as designated in this subsection, who submits written comments or objections to an application and claims to have an interest which is or may be adversely affected by the Department's decision shall identify the interests claimed and shall state how the Department's decision may or will adversely affect the interests specified.
 - 2) The Department shall upon receipt of such written comments or objections:
 - A) Transmit a copy of the comments or objections to the applicant; and
 - B) File a copy for public inspection at the same public office where the application is filed.
- c) Informal conferences.
 - 1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or head of a Federal, State, or local government agency, may request in writing that the Department hold an informal conference on the application for a permit, significant revision to a permit under 62 Ill. Adm. Code 1774.13, or renewal of a permit under 62 Ill. Adm. Code 1774.15. Any person not a public officer, as designated in this subsection, who requests the Department to hold an informal conference with respect to an application based on a claim of an interest which is or may be adversely affected by the Department's decision, shall in the request for an informal conference identify the interests claimed and shall state how the Department's decision may or will adversely affect the interests specified. The request shall:

- A) Briefly summarize the issues to be raised by the requester at the conference;
 - B) State whether the requester desires to have the conference conducted in the locality of the proposed operation; and
 - C) Be filed with the Department no later than 30 days after the last publication of the newspaper advertisement required under subsection (a).
- 2) Except as provided in subsection (c)(3), if an informal conference is requested in accordance with subsection (c)(1), the Department shall hold an informal conference within 75 days after the first newspaper notice required by subsection (a). The informal conference shall be conducted as follows:
- A) If requested under subsection (c)(1)(B), it shall be held in the locality of the proposed surface coal mining and reclamation operation.
 - B) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the Department in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.
 - C) If requested in writing by a conference requester at least 7 days before the conference, the Department may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the shadow area and adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.
 - D) The conference shall be conducted by a representative of the Department, who shall accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 62 Ill. Adm. Code 1800.40.

- 3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference shall be canceled.
 - 4) Informal conferences held in accordance with this subsection may be used by the Department as the public hearing required under 62 Ill. Adm. Code 1761.12(c) on proposed relocation or closing of public roads.
- d) Public availability of permit applications.
- 1) General availability.

Except as provided in subsection (d)(2) or (d)(3), all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the Department shall be available, at reasonable times, for public inspection and copying.
 - 2) Limited availability.

Except as provided for in subsection (d)(3)(A), information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest that is or may be adversely affected. Information subject to this subsection (d)(2) shall be made available to the public when such information is required to be on public file pursuant to the Freedom of Information Act [5 ILCS 140].
 - 3) Confidentiality.

In accordance with the Freedom of Information Act, the Department provides procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to:
 - A) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;
 - B) Information required under Section 508 of the Federal Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;

- C) Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979 (16 USC 470).

(Source: Amended at 27 Ill. Reg. 4656, effective February 26, 2003)

Section 1773.14 Opportunity for Public Hearing

- a) If no informal conference is requested, or if the issues in question are not resolved by the informal conference, any interested person or county board may request a public hearing within eighty (80) days after the first newspaper notice required by Section 1773.13(a). Any person who requests the Department to hold a public hearing with respect to an application must claim, in the request for a public hearing, an interest which is or may be adversely affected by the Department's decision, and shall identify the interest(s) claimed and shall state how the Department's decision may or will adversely affect the interest(s) specified. If a hearing is requested, the Department shall hold at least one (1) hearing in the locality affected by the permit, and shall hold a hearing in each county to be affected under the proposed permit in which a county board has requested a hearing. Nothing in this Section shall bar any interested person from requesting a public hearing if that person did not request an informal conference.
- b) If a public hearing is held pursuant to this Section, the Department shall send notice of any hearing to be held to the applicant, the county board, all interested persons who have requested, in writing, notice with respect to a particular parcel of land to be affected by the proposed surface coal mining and reclamation operation, and to the principal newspaper, television, and radio stations serving the area. The Department shall publish notice of the hearing in a newspaper of general circulation within the county. Such notice shall be published by the Department at least two (2) weeks prior to the scheduled hearing date.
- c) The Department shall appoint a hearing officer to conduct the hearing. The hearing officer shall be a licensed attorney or an employee of the Department. The hearing officer shall conduct a fair hearing and shall take all necessary action to avoid delay, to maintain order, and to develop a clear and complete record. He or she shall have all powers necessary to these ends, including but not limited to the power to change the time and place of the hearing and adjourn the hearing from time to time or from place to place within the county of the proposed surface coal mining and reclamation operation and to give due notice of such action consistent with the notice requirement of subsection (a).
- d) The hearing shall be informal. The applicant shall appear at any hearing held

pursuant to Section 1773.14.

- 1) All participants in the public hearing shall have the right to be represented by counsel, or by some other authorized representative.
 - 2) The hearing officer shall allow the county board, the applicant, and any interested persons to present data, views, or arguments.
 - 3) Where necessary in order to prevent undue prolongation of the hearing, the hearing officer shall establish a time period during which the participants shall be heard. Every effort will be made to allow all persons who wish to make a statement to do so.
 - 4) A verbatim transcript of the hearing shall be maintained by a court reporter appointed by the Department, and shall constitute a part of the record. Copies of the transcript shall be furnished, at cost, upon request to the court reporter. Such record shall be maintained by the Department and shall be accessible to the public at the Department's Springfield Office until final release of the applicant's reclamation performance bond.
 - 5) The record shall remain open for additional written statements responsive to statements or other documents for ten (10) days following the close of the hearing, or for such other reasonable time as the hearing officer may direct. A time for responsive oral statements may be set by the hearing officer.
- e) If the hearing request is withdrawn, the hearing need not be held.
- f) Public hearings held in accordance with Section 1773.14 may be used by the Department as the public hearing required under 62 Ill. Adm. Code 1761.12(c) on proposed use or relocation of public roads.

Section 1773.15 Review of Permit Applications

- a) General.
- 1) The Department shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application, and either:
 - A) Issue a written decision, in accordance with Section 1773.19, either granting or denying the application. If a public hearing is held under Section 1773.14, the decision shall be made within 60 days

after the close of the public hearing, unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(3); or

- B) Issue a written decision requiring modification of the application. If a public hearing is held under Section 1773.14, the decision to require modifications shall be made within 60 days after the close of the public hearing.
 - i) If the applicant does not submit the required modifications to the Department within one year after the date of receipt of notification of the need for modifications, the Department shall issue a written finding in accordance with Section 1773.19 denying the application. The Department may issue an extension to this time limit if the applicant can demonstrate just cause (e.g., extended periods of illness, extreme inclement weather, acts of civil unrest, or other emergency situations) for doing so.
 - ii) Upon receipt of the applicant's responses to the required modifications, the Department shall review the responses and issue a written decision, in accordance with Section 1773.19, either granting or denying the application.
 - 2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.
- b) Review of violations.
- 1) Based on a review of all reasonably available information concerning violation notices and ownership or control links involving the applicant, including information obtained pursuant to Sections 1773.22, 1773.23, 1778.13 and 1778.14, the Department shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the State Act, Federal Act, any State or federal regulation promulgated pursuant thereto, a State program, or any federal or State law or regulation pertaining to air or water environmental protection. In the absence of a failure-to-abate cessation order, the Department may presume that a notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under a Federal or State program is being corrected to the satisfaction of the agency with jurisdiction over the violation where the abatement period for such notice of violation has not

yet expired and when, as part of the violation information provided pursuant to 62 Ill. Adm. Code 1778.14, the applicant has provided certification that such violation is in the process of being so corrected. Such presumption shall not apply where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine land reclamation fees or civil penalties. If a current violation exists, the Department shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

- A) Submit to the Department proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or
 - B) Establish for the Department that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the circuit or district court reviewing the violation, pursuant to 62 Ill. Adm. Code 1847.4(p), 30 CFR 775.13 or in accordance with the procedures established by other state regulatory authorities, either denies a stay applied for in the appeal or affirms the violation, then the applicant shall submit the proof required under subsection (b)(1)(A) within 30 days after the court's decision.
- 2) Any permit that is issued on the basis of a presumption supported by certification under 62 Ill. Adm. Code 1778.14 that a violation is in the process of being corrected, on the basis of proof submitted under subsection (b)(1)(A) of this Section that a violation is in the process of being corrected, or pending the outcome of an appeal described in subsection (b)(1)(B) of this Section, shall be conditionally issued.
 - 3) If the Department makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Federal or State Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Federal or State Act, the application shall be denied. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 62 Ill. Adm. Code 1847.3.

- c) Written findings for permit application approval.

No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

- 1) The application is complete and accurate and the applicant has complied with all requirements of the Federal Act, State Act and the regulatory program.
- 2) The applicant has demonstrated that reclamation as required by the Federal Act, State Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.
- 3) The proposed permit area is:
 - A) Not within an area under study or administrative proceedings under a petition, filed pursuant to 62 Ill. Adm. Code 1764, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or
 - B) Not within an area designated as unsuitable for mining pursuant to 62 Ill. Adm. Code 1762 and 1764 or within an area subject to the prohibitions of 62 Ill. Adm. Code 1761.11.
- 4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Department the documentation required under 62 Ill. Adm. Code 1778.15(b).
- 5) The Department has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area, in accordance with 62 Ill. Adm. Code 1780 and 1784 and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
- 6) The applicant has demonstrated that any existing structure will comply with 62 Ill. Adm. Code 1700.11(d).

- 7) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870.
 - 8) The applicant has satisfied the applicable requirements of 62 Ill. Adm. Code 1785.
 - 9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural post-mining land use, in accordance with the requirements of 62 Ill. Adm. Code 1816.111(d) and 1817.111(d).
 - 10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 USC 1531 et seq.).
 - 11) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.106 or 1817.106, the site of the operation is a previously mined area as defined in 62 Ill. Adm. Code 1701.Appendix A.
 - 12) The Department has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Department has determined that no additional measures are necessary.
 - 13) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.116(a)(2)(B) or 1817.116(a)(2)(B), the site of the operation is land eligible for remining as defined in 62 Ill. Adm. Code 1701.Appendix A.
- d) Expiration of findings.

Written findings issued by the Department approving a permit application shall expire within one year from the date of issuance if the permit has not been issued based upon the applicant's failure to submit permit fees in accordance with 62 Ill. Adm. Code 1777.17 or a performance bond in accordance with 62 Ill. Adm. Code 1800.11. When written findings expire, the Department will take no further action on the permit application. Should the applicant choose to resume permitting activity for the area in question, a new permit application must be submitted in accordance with the requirements of this Part.

- e) Final compliance review.

After an application is approved, but before the permit is issued, the Department shall reconsider its decision to approve the application, based on the compliance review required by subsection (b)(1), in light of any new information submitted under 62 Ill. Adm. Code 1778.13(i) and 1778.14(e).

(Source: Amended at 29 Ill. Reg. 8355, effective May 27, 2005)

Section 1773.17 Permit Conditions

Each permit issued by the Department shall be subject to the following conditions:

- a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to 62 Ill. Adm. Code 1800.
- b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the Department otherwise directs in the permit.
- c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Federal and State Acts, and the requirements of the regulatory program.
- d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Department and Secretary of the United States Department of the Interior to:
 - 1) Have the right of entry provided for in 62 Ill. Adm. Code 1840.12; and
 - 2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with 62 Ill. Adm. Code 1840, when the inspection is in response to an alleged violation reported to the Department by the private person.
- e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:
 - 1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

- 2) Immediate implementation of measures necessary to comply; and
 - 3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
- f) As applicable, the permittee shall comply with 62 Ill. Adm. Code 1700.11(d) for compliance, modification, or abandonment of existing structures.
- g) The operator shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer or use.
- h) Within thirty (30) days after a cessation order is issued under 62 Ill. Adm. Code 1843.11 or 30 CFR 843.11, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the Department the following information, current to the date the cessation order was issued, or notify the Department in writing that there has been no change since the immediately preceding submittal of such information:
- 1) Any new information needed to correct or update the information previously submitted to the Department by the permittee under 62 Ill. Adm. Code 1778.13(c); or
 - 2) If not previously submitted, the information required from a permit applicant by 62 Ill. Adm. Code 1778.13(c).

(Source: Amended at 15 Ill. Reg. 17274, effective January 1, 1992)

Section 1773.19 Permit Issuance and Right of Renewal

- a) Final permit decision.
- 1) The Department shall make its final decision to approve, deny or modify the permit application on the basis of:
 - A) Complete applications for permits and revisions or renewals thereof;
 - B) Public participation, as provided by Sections 1773.13 and 1773.14; and
 - C) Compliance with all applicable provisions of 62 Ill. Adm. Code

1785.

- 2) The Department shall make its final permit decision within the following time limits:
 - A) Within sixty (60) days of an informal conference held pursuant to Section 1773.13(c), unless a public hearing has been requested pursuant to Section 1773.14;
 - B) Within sixty (60) days of a public hearing held pursuant to Section 1773.14; or
 - C) If no informal conference or public hearing is requested, within one hundred and twenty (120) days of filing of the application.
 - D) If final action on an application does not occur within the times prescribed in subsections (a)(2)(A), (B), or (C) above, whichever applies, the applicant may deem the application denied, and such denial shall constitute a final permit decision. The applicant may waive these time limits.
 - 3) Notification.

The Department shall mail written notification of its final permit decision to the following persons and entities:

 - A) The applicant, each person who files comments or objections to the permit application, and each party to an informal conference or public hearing.
 - B) The local governmental officials in the local political subdivision in which the land to be affected is located within ten (10) days after the issuance of a permit, including a description of the location of the land.
 - C) The local OSMRE office.
- b) The permit shall be deemed to be issued when:
- 1) The permit application, as originally submitted or as modified, is approved by the Department; and
 - 2) Permit fees and reclamation bond, in the form and amounts set by 62 Ill. Adm. Code 1777.17 and 1800, have been received and accepted by the

Department.

c) Permit term.

Each permit shall be issued for a fixed term of five (5) years or less, unless the requirements of 62 Ill. Adm. Code 1778.17 are met.

d) Right of renewal.

Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with subsection (b) shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with 62 Ill. Adm. Code 1774.15.

e) Initiation of operations.

- 1) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.
- 2) The Department shall grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if:
 - A) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or
 - B) There are conditions beyond the control and without the fault or negligence of the permittee.
- 3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.
- 4) Extensions of time granted by the Department under this subsection (e) shall be specifically set forth in the permit, and notice of the extension shall be made public by the Department.

(Source: Amended at 15 Ill. Reg. 17998, effective January 1, 1992)

Section 1773.20 Improvidently Issued Permits: General Procedures

- a) Permit review.

If the Department receives information indicating that it improvidently issued a surface coal mining and reclamation permit, the Department shall review the circumstances under which the permit was issued using a criteria in subsection (b) below. Where the Department finds that the permit was improvidently issued, it shall undertake the remedial measures set forth in subsection (c) below.

- b) Review criteria.

The Department shall find that a surface coal mining and reclamation permit was improvidently issued if:

- 1) Under the violations review criteria of the regulatory program at the time the permit was issued:
 - A) The Department should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or
 - B) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and
- 2) The violation, penalty or fee:
 - A) Remains unabated or delinquent; and
 - B) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and
 - C) Where the permittee was linked to the violation, penalty or fee through ownership or control under the violations review criteria of the regulatory program at the time the permit was issued, an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link has been severed, the permittee continues to be responsible for the violation, penalty or fee.

- 3) The provisions of Section 1773.25 shall apply when the Department determines:
 - A) Whether a violation, penalty or fee existed at the time that it was cited, remains unabated or delinquent, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal; and
 - B) Whether any ownership or control link between the permittee and the person responsible for the violation, penalty or fee existed, still exists, or has been severed.
- c) Remedial measures.

If the Department finds, under subsection (b) above, that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the Department shall undertake one or more of the following remedial measures:

- 1) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;
- 2) Impose on the permit a condition requiring that in the specified period of time the permittee or other person responsible abate the violation or pay the penalty or fee;
- 3) Suspend the permit until the violation is abated or the penalty or fee is paid; or
- 4) Rescind the permit. If the Department decides to suspend the permit, it shall give at least 30 days written notice to the permittee. If the Department decides to rescind the permit, it shall issue a notice in accordance with Section 1773.21. In either case, the permittee shall be given the opportunity to request review of the notice under 62 Ill. Adm. Code 1847.3. The Department's decision shall remain in effect during the pendency of the review, unless temporary relief is granted under 62 Ill. Adm. Code 1847.3(k).

(Source: Amended at 20 Ill. Reg. 2090, effective January 19, 1996)

Section 1773.21 Improvidently Issued Permits: Rescission Procedures

If the Department, under Section 1773.20(c)(4), elects to rescind an improvidently issued permit,

the Department shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the Department under Section 1773.20(b) and states that:

a) Automatic suspension and rescission.

After a specified period of time not to exceed ninety (90) days the permit automatically will become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the Department finds, consistent with the provisions of Section 1773.25, that:

- 1) The Department's finding under Section 1773.20(b) was erroneous;
- 2) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;
- 3) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or
- 4) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee.

b) Cessation of operations.

After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures including, but not limited to, maintenance and monitoring as required by the Department.

(Source: Amended at 20 Ill. Reg. 2090, effective January 19, 1996)

Section 1773.22 Verification of Ownership or Control Application Information

- a) In accordance with Section 1773.15(c)(1), prior to the issuance of a permit, the Department shall review the information in the application provided pursuant to 62 Ill. Adm. Code 1778.13 to determine that such information, including the identification of the operator and all owners and controllers of the operator, is complete and accurate. In making such determination, the Department shall

compare the information provided in the application with information from other reasonably available sources, including:

- 1) Manual data sources within the State, including:
 - A) The Department's inspection and enforcement records; and
 - B) The Secretary of State's corporate or tax records, to the extent they contain information concerning ownership or control links; and
 - 2) Automated data sources, including:
 - A) The Department's own computer system; and
 - B) the Applicant Violator System.
- b) If it appears from the information provided in the application pursuant to 62 Ill. Adm. Code 1778.13(c) through (d) that none of the person identified in the application has had any previous mining experience, the Department shall inquire of the applicant and investigate whether any person other than those identified in the application will own or control the operations as either an operator or other owner or controller.
- c) If, as a result of the review conducted under subsections (a) and (b) above, the Department identifies any potential omission, inaccuracy, or inconsistency in the ownership or control information provided in the application, it shall, prior to making a final determination with regard to the application, contact the applicant and require that the matter be resolved through submission of an amendment to the application or a satisfactory explanation which includes credible information sufficient to demonstrate that no actual omission, inaccuracy, or inconsistency exists. The Department shall also take action in accordance with the provisions of 62 Ill. Adm. Code 1843.23 where appropriate.
- d) Upon completion of the review conducted under this Section, the Department shall promptly enter into or update all ownership or control information on the Applicant Violator System.

(Source: Added at 20 Ill. Reg. 2090, effective January 19, 1996)

Section 1773.23 Review of Ownership or Control and Violation Information

- a) Following the verification of ownership or control information pursuant to Section 1773.22, the Department shall review all reasonably available information

concerning violation notices and ownership or control links involving the applicant to determine whether the application can be approved under Section 1773.15(b) above. Such information shall include:

- 1) With respect to ownership or control links involving the applicant, all information obtained under 62 Ill. Adm. Code 1773.22 and 1778.13; and
 - 2) With respect to violation notices, all information obtained under 62 Ill. Adm. Code 1778.14, information obtained from OSM, including information shown in the AVS, and information from the Department's own records concerning violation notices.
- b) If the review conducted under subsection (a) above discloses any ownership or control link between the applicant and any person cited in a violation notice.
- 1) The Department shall notify the applicant and shall refer the applicant to the agency with jurisdiction over such violation notice; and
 - 2) The Department shall not approve the application unless and until it determines, in accordance with the provisions of Sections 1773.24 and 1773.25:
 - A) that all ownership or control links between the applicant and any person cited in a violation notice are erroneous or have been rebutted; or
 - B) that the violation has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Section 1773.15(b)(1).
- c) Following the Department's decision on the application, including unconditional issuance, conditional issuance, or denial of the permit, or following the applicant's withdrawal of the application, the Department shall promptly enter all relevant information related to such decision or withdrawal into the Applicant Violator System.

(Source: Added at 20 Ill. Reg. 2090, effective January 19, 1996)

Section 1773.24 Procedures for Challenging Ownership or Control Links Shown in the Applicant Violator System

- a) Who may challenge.

- 1) Any applicant or other person shown in the Applicant Violator System (AVS) in an ownership or control link to any person may challenge such link in accordance with the provisions of 30 CFR 773.24(b) through (d) and 30 CFR 773.25, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the link.
 - 2) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a federal violation notice may challenge the status of the violation covered by such notice in accordance with the provisions of 30 CFR 773.24(b) through (d) and 30 CFR 773.25, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the status of the violation.
 - 3) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a state violation notice may challenge the status of the violation covered by such notice in accordance with subsections (b) through (d) below and Section 1773.25, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the status of the violation covered by such notice in accordance with subsections (b) through (d) below and Section 1773.25, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the status of the violation.
- b) Any applicant or other person who wishes to challenge an ownership or control link shown in AVS or the status of a State Violation, and how is eligible to do so under the provisions of subsection (a)(3) above, shall submit a written explanation of the basis for the challenge, along with any relevant evidentiary materials and supporting documents.
 - c) The Department shall review any information submitted under subsection (b) above and shall make a written decision whether or not the ownership or control link has been shown to be erroneous or has been rebutted and/or whether the violation covered by the notice remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of Section 1773.15(b)(1).
 - d) Notice to applicant.
 - 1) If, as a result of the decision reached under subsection (c) above, the Department determines that the ownership or control link has been shown to be erroneous or has been rebutted and/or that the violation covered by the notice has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, the Department shall so notify the

applicant or other person and, if an application is pending, OSM, and shall correct the information in AVS.

- 2) If, as a result of the decision reached under subsection (c) above, the Department determines that the ownership or control link has not been shown to be erroneous and has not been rebutted and that the violation covered by the notice remains outstanding, the Department shall so notify the applicant or other person and, of an application is pending, OSM, and shall update the information in AVS, if necessary.
- 3) The Department shall serve a copy of the decision on the applicant or other person by certified mail, or by any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or of the mail and shall not be deemed incomplete because of a refusal to accept.
- 4) The applicant or other person may appeal the Department's decision within 30 days of service of the decision in accordance with 62 Ill. Adm. Code 1847.3. The Department's decision shall remain in effect during the pendency of the appeal, unless temporary relief is granted in accordance with 62 Ill. Adm. Code 1847.3(k).

(Source: Added at 20 Ill. Reg. 2090, effective January 19, 1996)

Section 1773.25 Standards for Challenging Ownership or Control Links and the Status Violations

- a) The provisions of this Section shall apply whenever a person has and exercises a right, under the provisions of Sections 1773.20, 1773.21, 1773.23 or 1773.24, to challenge an ownership or control link to any person and/or the status of any violation covered by a notice.
- b) Agencies responsible.
 - 1) Except as provided in subsection (b)(3) below:
 - A) The regulatory authority before which an application is pending shall have responsibility for making decisions with respect to ownership or control relationships of the application.

- B) The regulatory authority that issued a permit shall have responsibility for making decisions with respect to the ownership or control relationships of the permit.
 - C) The regulatory authority for the State that issued a State violation notice shall have responsibility for making decisions with respect to the ownership or control relationship of the violation.
 - D) The regulatory agency that issued a violation notice, whether State or federal, shall have responsibility for making decisions concerning the status of the violation covered by such notice, i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Section 1773.15(b)(1).
- 2) OSM shall have responsibility for making decisions with respect to the ownership or control relationships of a federal violation notice.
 - 3) With respect to information shown on AVS, the responsibilities referred to in subsection 9b(1) above shall be subject to the plenary authority of OSM to review any State regulatory authority decision regarding an ownership or control link.
 - 4) With respect to ownership or control information which has not been entered into AVS by a State and with respect to information shown on AVS relating to the status of a violation, State regulatory authorities' determinations are subject to OSM's program authority oversight under 30 CFR 733, 842 and 843.
- c) Evidentiary standards.
 - 1) In any formal or informal review of an ownership or control link or of the status of a violation covered by a violation notice, the responsible agency shall make a prima facie determination or showing that such link exists, existed during the relevant period, and/or that the violation covered by such notice remains outstanding. Once such a prima facie determination or showing has been made, the person challenging such link or the status of the violation shall have the burden of proving by a preponderance of the evidence, with respect to any relevant time period, that:
 - A) The facts relied upon by the responsible agency to establish ownership or control or a presumption of ownership or control

under the definition of "owned or controlled" or "owns or controls" in Section 1773.5, do not or did not exist;

- B) A person subject to a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Section 1773.5 does not or did not in fact have the authority directly or indirectly to determine the manner in which surface coal mining operations are or were conducted; or
 - C) The violation covered by the violation notice did not exist, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of Section 1773.15(b)(1), provided that the existence of the violation at the time it was cited may not be challenged, under the provisions of Section 1773.24, by the following persons:
 - i) By a permittee, unless such challenge is made by the permittee within the context of Section 1773.20 through 1773.21;
 - ii) By any person who had a prior opportunity to challenge the violation notice and failed to do so in a timely manner; or
 - iii) By any person who is bound by a prior administrative or judicial determination concerning the existence of the violation.
- 2) In meeting the burden of proof set forth in subsection (c)(1) above, the persons challenging the ownership or control link or the status of the violation shall present probative, reliable and substantial evidence and any supporting explanatory materials, which may, if before the responsible agency, include:
- A) Affidavits setting forth specific facts concerning the scope of responsibility of the various owners or controllers of an applicant, permittee, or any person cited in a violation notice; the duties actually performed by such owners or controllers; the beginning and ending dates of such owners' or controllers' affiliation with the applicant, permittee, or person cited in a violation notice; and the nature and details of any transaction creating or severing an ownership or control link; or specific facts concerning the status of the violation.

- B) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence or other relevant company records;
 - C) Certified copies of documents filed with or issued by any State, municipal or federal governmental agency;
 - D) An opinion of counsel, when supportive by:
 - i) Evidentiary materials;
 - ii) A statement by counsel that he or she is qualified to render the opinion; and
 - iii) A statement that counsel has personally and diligently investigated the facts of the matter or, where counsel has not so investigated the facts, a statement that such opinion is based upon information which has been supplied to counsel and which is assumed to be true;
 - E) If before any administrative or judicial tribunal reviewing the decision of the responsible agency, any evidence admissible under the rules of such tribunal.
- d) Following any determination by a State regulatory authority or other State agency, or any decision by an administrative or judicial tribunal reviewing such determination, the State regulatory authority shall review the information in AVS to determine if it is consistent with the determination or decision. If it is not, the State regulatory authority shall promptly inform OSM and request that the AVS information be revised to reflect the determination or decision.

(Source: Added at 20 Ill. Reg. 2090, effective January 19, 1996)