

TITLE 62: MINING
CHAPTER II: DEPARTMENT OF NATURAL RESOURCES

PART 2501
ABANDONED MINED LANDS RECLAMATION

Section	
2501.1	Scope
2501.4	Definitions
2501.7	Objectives and Priorities
2501.8	Utilities and Other Facilities
2501.10	Eligible Coal Lands and Water
2501.11	Eligible Non-coal Lands and Water
2501.13	Preliminary Project Selection
2501.16	Final Selection and Project Deferment
2501.19	Annual Grant Process
2501.22	Reclamation Activities
2501.25	Reclamation on Private Lands
2501.28	Rights of Entry
2501.31	Land Acquisition, Management and Disposal
2501.34	Emergency Abatement Activities
2501.37	Notice of Reclamation
2501.40	Public Participation

AUTHORITY: Implementing and authorized by the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920].

SOURCE: Adopted and codified at 5 Ill. Reg. 9740, effective October 1, 1981; recodified at 8 Ill. Reg. 7212; amended at 9 Ill. Reg. 6641, effective May 1, 1985; emergency amendment at 10 Ill. Reg. 1254, effective January 1, 1986, for a maximum of 150 days; emergency expired May 30, 1986; amended at 10 Ill. Reg. 14271, effective August 14, 1986; amended at 15 Ill. Reg. 6513, effective May 3, 1991; emergency amendment at 16 Ill. Reg. 2897, effective February 4, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 8345, effective May 26, 1992; amended at 22 Ill. Reg. 11382, effective June 23, 1998; amended at 37 Ill. Reg. 16524, effective October 3, 2013.

Section 2501.1 **Scope**

This Part implements the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920], which provides that the Department of Natural Resources shall administer a program for the reclamation of Abandoned Mined Lands ("AML"). This Act is complementary to Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq., P.L. 95-87, as amended).

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.4 Definitions

As used in this Part –

"Department" means the Illinois Department of Natural Resources, Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation of the State of Illinois, with principal offices of business at Springfield.

"Federal Act" means the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 USC 1201 et seq.) [20 ILCS 1920/1.02].

"Federal Office" or "OSM" means the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

"Inventory" means the contents of the supplement to the "Illinois State Plan for Abandoned Mined Lands" (Resource Document). The Resource Document identifies all known acreage in Illinois which has been impacted by past coal mining and is an extreme danger or creates adverse effects. The inventory is updated as new data becomes available.

"Reclamation" or "reclamation activities" means the restoration of abandoned lands and waters to constructive uses, including, but not limited to forests, grasses and legumes, row crops, wildlife and aquatic reserves and recreational, residential, and industrial sites, and abatement, control or prevention of adverse effects of mining. [20 ILCS 1920/1.03(5)]

"Section" means a Section of this Part, unless otherwise clearly identified.

"State Act" means the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920].

"State Reclamation Plan" or "SRP" means the document required under regulations promulgated by the Federal Office (30 CFR 884.13) in order for Illinois to be eligible to receive funds under the Federal Act. Any statements of Departmental policy contained in or added to the SRP which are "rules" as that term is defined in the Illinois Administrative Procedure Act [5 ILCS 100] shall be included as rules in this Part.

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.7 Objectives and Priorities

- a) *It is the policy of this State to provide for the conservation and reclamation of*

lands and water affected by mining which have been abandoned, in order to restore these abandoned lands and waters to such productive use, in accordance with this State's conservation and land reclamation policies, as will aid in maintaining or improving the property tax base, protect the health, safety and general welfare of the people, promote the natural beauty and aesthetic values of this State and enhance the environment, and correct and prevent soil erosion, stream pollution, water, air and land pollution, and other injurious effects to persons, property, wildlife and natural resources. [20 ILCS 1920/1.02] The goal of the State reclamation program described in this Part is to alleviate adverse environmental effects of abandoned mines and, whenever possible, to improve those abandoned lands to support a suitable land use.

- b) It is the expressed intent of the General Assembly that the Department, in implementing these policies, administer the reclamation program in a way which satisfies the requirements of the Federal Act. Accordingly, the provisions of this Part shall be construed, if possible, in a manner which is consistent with the requirements of the Federal Act and the regulations promulgated thereunder.
- c) *Expenditures of money on abandoned coal mined lands for the purposes of the reclamation program shall reflect the following priorities in the order stated:*
 - 1) *The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;*
 - 2) *The protection of public health, safety, and general welfare from adverse effects of coal mining practices;*
 - 3) *The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;*
 - 4) *The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices;*
 - 5) *The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in the Federal Act for recreation and historic purposes, conservation, and reclamation purposes and open space benefits. [20 ILCS 1920/2.03(a)]*
- d) Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the

process of being reclaimed, or have been approved for funding by OSM, except in those instances where such lower priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (61 FR 68777-68785, December 30, 1996).

- e) When the Department finds in writing that the adverse effects of coal mining practices have an adverse economic impact upon a community, a project shall be designated as a priority 1 or 2 threat to the general welfare, regardless of the nature of the problem conditions.
- f) The Department may make expenditures on lands mined for substances other than coal for the protection of the public health and safety; provided, however, that annual expenditures for non-coal reclamation shall not exceed 2% of the Department's annual budget for mined land reclamation.

(Source: Amended at 37 Ill. Reg. 16524, effective October 3, 2013)

Section 2501.8 Utilities and Other Facilities

- a) The Department may expend up to 30 percent of the AML funds granted annually to the State for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.
- b) If the adverse effect on water supplies referred to in this Section occurred both prior to and after August 3, 1977, the project shall remain eligible notwithstanding the criteria specified in Section 2501.10(b), if the Department finds in writing, as part of its eligibility opinion, that such adverse effects are due predominantly to effects of mining processes undertaken and abandoned prior to August 3, 1977.
- c) If the adverse effect on water supplies referred to in this Section occurred both prior to and after the dates (and under the criteria) set forth under Section 2501.10(d), the project shall remain eligible, notwithstanding the criteria specified in Section 2501.10(b), if the Department finds in writing, as part of its eligibility opinion, that such adverse effects are due predominantly to the effects of mining processes undertaken and abandoned prior to those dates.
- d) Enhancement of facilities or utilities under this Section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mined land problem.

(Source: Added at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.10 Eligible Coal Lands and Water

Coal lands and water are eligible for reclamation activities with federal funds provided pursuant to the Federal Act if:

- a) They were mined for coal or affected by coal mining processes;
- b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
- c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation additional federal funding may be sought.
- d) Notwithstanding subsections (a), (b) and (c) of this Section, coal lands and waters damaged and abandoned after August 3, 1977 by coal mining processes are also eligible if the Department, with the concurrence of OSM, finds in writing that:
 - 1) They were mined for coal or affected by coal mining processes and:
 - A) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and June 1, 1982, and any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or
 - B) The mining occurred between August 4, 1977 and November 5, 1990 and the surety of the mining operator became insolvent during that period, and as of November 5, 1990, funds immediately available from proceedings relating to insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site; and
 - 2) The site qualifies as a priority 1 or 2 site under Section 2501.7(c) and (e) of this Part.
- e) The Department may expend funds available under paragraphs 402(g)(1) and (5) of the Surface Mining Control and Reclamation Act for reclamation and

abatement of any site eligible under subsection (d) above, if the Department, with concurrence of OSM, makes the findings required in subsection (d) above and the Department determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to subsection (a), (b) or (c) above that qualify as a priority 1 or 2 site under Section 403(a) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1233(a)).

- f) With respect to lands and waters eligible pursuant to subsection (d) or (e) above, monies available from sources outside the Abandoned Mined Lands Reclamation Federal Trust Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mined Lands Reclamation Federal Trust Fund if not required for further reclamation activities at the permitted site.
- g) If reclamation of a site covered by an interim or permanent program permit is carried out under the AML program, the permittee of the site shall reimburse the AML Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. The Department, when performing reclamation under subsection (d) above shall not be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act, or in the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720], nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in those Acts.
- h) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, AML funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that, if emergency conditions warrant, the Department shall immediately exercise its authority under the Emergency program.

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.11 Eligible Non-coal Lands and Water

Non-coal lands and water are eligible for reclamation activities if:

- a) They were mined or affected by mining processes;
- b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

- c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government as a result of bond forfeiture, which will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation or, in cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional federal funding may be sought;
- d) The Governor concurs that reclamation is necessary and submits a letter of request to the Federal Office;
- e) The reclamation is necessary for the protection of the public health and safety, general welfare and property from extreme danger of adverse effects of non-coal mining practices; and
- f) They are not designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.) or have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(Source: Added at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.13 Preliminary Project Selection

- a) The Department shall select projects for reclamation from an abandoned mine site database which contains all known abandoned mine sites in the State which are eligible under Sections 2501.10 and 2501.11. This database includes sites reported in the Resource Document of the original State Plan, all high priority sites included in the Phase II National Abandoned Mined Land Inventory, and additional sites which may periodically be brought to the attention of the Department by landowners or other concerned citizens.
- b) The Department shall review the AML database each year to identify the unreclaimed or inadequately reclaimed sites containing the most significant remaining problem conditions. Problem conditions include in order of relative significance:
 - 1) Surface openings resulting from improperly sealed mine portals or caused by underground mine subsidence;
 - 2) Escaping mine gases;
 - 3) Surface or underground mine fires;

- 4) Hazardous equipment or facilities left behind by the mining operation;
 - 5) Dangerous impoundments constructed by the mine;
 - 6) Dangerous, unprotected highwalls in close proximity to populated areas or public use;
 - 7) Polluted water used for consumption;
 - 8) Dangerous refuse piles or embankments;
 - 9) Flooding of roads or improved property caused by sedimentation from AML sites;
 - 10) Hazardous recreational water bodies;
 - 11) Coal refuse material or spoilbanks contributing to off-site pollution;
 - 12) Acid water impoundments;
 - 13) Coal refuse material or spoilbanks adversely affecting land or water resources.
- c) Sites identified as containing significant problem conditions shall be further prioritized based upon an evaluation of the following criteria to determine the probable benefits to be derived from reclamation:
- 1) Relative degree of continued impacts if left unreclaimed;
 - 2) Proximity of site to populated areas or public use areas;
 - 3) Additional site benefits including improvements in land use and development of public lands, protection of public facilities, and evaluation of new techniques;
 - 4) Technology available to assume reasonable probability of success; and
 - 5) Cost-effectiveness of the necessary action.

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.16 Final Selection and Project Deferment

- a) From the most significant abandoned mine sites identified in accordance with Section 2501.13, the Department will select projects for reclamation based upon the following criteria and considerations:
- 1) Satisfactory funding levels to complete reclamation;
 - 2) A completed application from the owner(s) of property that contains the significant portion of problem conditions on a site;
 - 3) Evidence that a timely Consent for Entry can be obtained from the owner(s) of the project site.
- b) Significant sites exhibiting one or more of the following conditions shall be eliminated from consideration for funding for a particular year when:
- 1) There exists ongoing use and responsibility for reclamation to alleviate problem conditions, associated with active landfill sites, salvage yards, material storage yards, or other uses of mined lands;
 - 2) There is an ongoing or planned remining operation for the site;
 - 3) There is a planned or currently operating secondary coal recovery operation; provided, however, that only the areas within the site which will be affected by such operation shall be eliminated from consideration;
 - 4) There is ongoing or planned reclamation or development of a site by any federal office, the Natural Resource Conservation Service, or other public or private agencies or individuals; or
 - 5) There is ongoing or anticipated successful stabilization by natural processes so that natural reclamation will be effective and efficient considering such factors as cost and potential or existing hazards to human life, the environment, or public or private property.

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.19 Annual Grant Process

The Department shall submit an annual grant application to OSM in accordance with the requirements of 30 CFR 886 to cover allowable costs of the AML program including the actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs, and up to 90 percent of the costs of acquisition of land. Copies of the annual AML grant application will be provided to the public upon written request to the Department, 524 S. Second Street, Springfield, Illinois 62701. Notice of annual

AML grant applications will be circulated through the Illinois State Library System and the Illinois State Clearinghouse.

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.22 Reclamation Activities

The Department will enter into cooperative agreements as necessary and appropriate with any person or governmental entity in relation to the reclamation of abandoned land, including but not limited to the furnishing of services, plans, lay outs, materials, or any matters of service incidental to the reclamation of such land [20 ILCS 1920/3.05]. All parties to any such contract or cooperative agreement must agree to comply with all applicable requirements of State and Federal law.

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.25 Reclamation on Private Lands

Reclamation may be carried out on private land if consent is obtained as provided in Section 2501.28(a), or if the requisite findings are made and notice given pursuant to Section 2501.28(b). When reclamation is to be carried out on private land, the Department shall adhere to the following procedures concerning appraisals, liens, and satisfaction of liens:

- a) Appraisals
 - 1) A notarized appraisal of private land to be reclaimed which may be subject to a lien under subsection (b) shall be obtained from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in Regulation 10 of the American Institute of Real Estate Appraisers of the National Association of Realtors, Code of Professional Ethics, as amended November 4, 1989. The appraisal shall state:
 - A) The estimated market value of the property in its unreclaimed condition; and
 - B) The estimated market value of the property as reclaimed.
 - 2) This appraisal shall be made prior to the start of reclamation activities, except as provided in subsection (a)(3). The Department shall furnish to the appraiser information of sufficient detail in the form of plans, factual data, specifications, etc., to make such appraisals. When reclamation requires more than six months to complete, an updated appraisal of the estimated market value of the property as reclaimed shall be made to determine if the increase in value as originally appraised has actually

occurred. Such updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraisal value results in lower increase in value, such lower increase shall be used as the basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien.

- 3) When any abandoned mine condition presents a high probability of substantial physical harm to the health, safety, or general welfare of people, as set forth in Section 2501.34, before the danger can be abated under normal program operations procedures, reclamation activities or abatement procedures shall not be delayed in order to obtain any necessary appraisal. In such instances, the appraisal shall be obtained at the earliest practical time after reclamation activities or abatement procedures have been commenced.

b) Liens

- 1) The Department shall place a lien against land reclaimed if the reclamation results in a significant increase in fair market value, except that:
 - A) *A lien shall not be placed against the property of a surface owner who owned the property prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work [20 ILCS 1920/2.09];*
 - B) A lien shall be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and
 - C) The Department shall waive the lien if the cost of filing it, including indirect costs to the State, exceeds the increase in fair market value as a result of the reclamation activities.
- 2) The determination of what constitutes a significant increase in market value of land subject to a potential lien, or what factual situation justifies a waiver of lien, will be made to assure that AML program funds are used to benefit the health, safety, or environmental values of the greater

community and avoid windfall profits to owners of reclaimed land. The manner in which the subject property was acquired shall be considered. An increase in total fair market value of less than \$8,000, or less than 20 percent of total fair market value before reclamation, shall not be considered significant.

- 3) A lien shall be waived if findings made prior to construction demonstrate that the reclamation work is being undertaken solely to seal, fill, or mark an open or settled mine shaft, drift or slope entry, adit or other mine opening or a subsidence pit.
- 4) If a lien is to be filed, the Department shall, within six months after the completion of the reclamation work, file a statement in the Office of the Recorder of Deeds in the County wherein the reclaimed land is located. Such statement shall consist of notarized copies of the appraisal obtained under subsection (a) and shall include an account of moneys expended for the reclamation work. The statement shall state the priority claimed for the lien. The amount reported to be the increase in value of the property shall constitute the lien to be recorded. Provided, however, that prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to repay that amount instead of allowing the lien to be filed against the property involved.
- 5) Within 60 days after the lien is filed, the landowner may petition the Department, through the Director of the Office of Mines and Minerals, for a hearing to determine the increase in market value of the land as a result of reclamation work. Any party aggrieved by the decision of the Department may seek appropriate judicial relief at the Circuit Court.

c) Satisfaction of Liens

- 1) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.
- 2) A reclamation lien created pursuant to Section 2.09 of the State Act shall continue in existence until satisfied, subject only to the 40 year limitation period and requirements of Sections 13-118 through 13-121 of the Code of Civil Procedure [735 ILCS 5/13-118 through 13-121].
- 3) If reclaimed property subject to a reclamation lien is transferred for an actual consideration in excess of the appraised fair market value of the property after reclamation, and the lien is not satisfied at the time of

transfer, the Department shall request the Attorney General to bring an appropriate foreclosure action to satisfy the lien.

- 4) Monies derived from the satisfaction of liens established under this Section shall be deposited in the State fund currently entitled "Abandoned Mined Lands Reclamation Federal Trust Fund."

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.28 Rights of Entry

- a) Prior to entry onto private lands for any purpose other than the visual inspection of the property under the State Act or this Part, the Department shall obtain advance written consent from the owners of record of the property to be entered, when the owners can be located and contacted and the owners agree to reclamation on their property. The consent shall be in the form of a signed statement by the owner of record or his or her authorized agent which sufficiently identifies the land to be entered, the projected nature of the studies, exploration, or work to be performed on the land, and any special conditions for entry. The statement shall not include any commitment to perform reclamation work or to compensate the owner for entry. If entry is for purposes of visual inspection only, it shall be sufficient if verbal consent is obtained prior to entry from the owner or one authorized to consent to such entry.
- b) If the owner cannot be found, or will not consent to the proposed reclamation activities, the Department may enter the land to perform reclamation activities. However, no such action shall be taken unless the Department first:
 - 1) Finds, in writing with supporting reasons, that:
 - A) The land has been adversely affected by past mining practices; and
 - B) The adverse effects are at a state where, in the interest of the public health or safety, reclamation activities should be carried out;
 - 2) Gives written notice of its intent to enter for purposes of conducting reclamation activities at least 30 days prior to entry. The notice shall be by certified mail, return receipt requested, and shall include a copy of the findings required by subsection (b)(1) of this Section. If the owner is not known, or cannot be found, the notice shall be posted in a conspicuous place on the property to be entered, and advertised once in a newspaper of general circulation in the county or municipality in which the property is located. The posted and published notice shall include a statement indicating where a copy of the findings required by subsection (b)(1) of

this Section may be obtained. Posting and publication shall take place at least 30 days prior to entry.

- c) If the Department finds that any lands may have been adversely affected by past mining practices, the Department may, if necessary, *enter the property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.*
 - 1) If the owner of such land will not consent to entry and the Department determines that a study or exploration is in the public interest, the Department shall give notice, in writing, to the owner at least 30 days prior to entry. The notice shall be by certified mail, return receipt requested, and shall include a statement of the reasons why entry is believed necessary.
 - 2) If the owner is not known, or cannot be found, the notice shall be posted in a conspicuous place on the property to be entered, and advertised once in a newspaper of general circulation in the county or municipality in which the property is located. Posting and publication shall take place at least 30 days prior to entry.
- d) *Entry under this Section shall be construed as an exercise of the police power for the protection of the public health, safety, and general welfare, and shall not be construed as an act of condemnation of property or trespass thereon [20 ILCS 1920/2.05(d)].*

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.31 Land Acquisition, Management and Disposal

- a) The Department shall acquire eligible land as necessary for reclamation when long term monitoring will be necessary, or when the benefits to the general public to be derived from reclamation activities on State owned lands would exceed the benefits from reclamation activities if the land were privately owned.
 - 1) The Department will acquire only such interest or conservation rights in land which are necessary for successful reclamation.
 - 2) Prior to acquisition the Department shall obtain from an independent professional appraiser an appraisal of the fair market value of the land or interest in land to be acquired. The appraisal shall state the fair market value of the land as adversely affected by past mining, and shall otherwise meet the quality of appraisal practices found in Regulation 10 of the

American Institute of Real Estate Appraisers of the National Association of Realtors, Code of Professional Ethics, as amended November 4, 1984.

- 3) The Department shall obtain the prior written approval of the Federal Office before acquiring any land or interest in land with federal funds.
- b) The Department shall make every reasonable effort to acquire land by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining. If such efforts are not successful, land or interests in land may be acquired by condemnation.
- c) The Department may accept donations of title to land or interest in land that are necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of this part. If a donation is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. If reclamation activities are to be carried out with federal funds, the deed shall state that it is made "as a gift under the Federal Surface Mining Control and Reclamation Act of 1977." Offers to make a gift of land or interest in land shall include:
 - 1) A statement of the interest which is being offered;
 - 2) A legal description of the land and a description of any improvements on it;
 - 3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor;
 - 4) A statement that:
 - A) The offeror is the record owner of the interest being offered;
 - B) The interest offered is free and clear of all encumbrances except as clearly stated in the offer;
 - C) There are no adverse claims against the interest offered;
 - D) There are no unredeemed tax deeds outstanding against the interest offered;
 - E) No person has a continuing responsibility under State or Federal Law for reclamation.

- 5) An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.
- d) The Department shall be responsible for the management of lands acquired pursuant to this Section. The lands shall be used only for purposes which are consistent with the reclamation activities and are in accordance with the State Property Control Act [30 ILCS 605]. Any user of land acquired under this Section shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the Department of providing the benefit, whichever is appropriate depending upon the particular circumstances of each case. If the Department finds, in writing, that a waiver of the use fee is in the public interest in a particular case, and states its reasons for such finding, the Department may so waive the fee. Unless otherwise provided by law, all fees collected shall be transmitted to the State Treasurer for deposit in the State fund currently entitled "Abandoned Mined Lands Reclamation Federal Trust Fund."
- e) If the Department determines that it would be in the best interest of the State, *the Department shall transfer administrative responsibility for land acquired under this Section to an agency or political subdivision of the State* without cost to such agency or political subdivision. For land acquired with federal funds, such transfer must have the prior approval of the Federal Office. *The agreement under which a transfer is made shall specify:*
 - 1) *The purposes for which the land may be used, which purposes shall be consistent with the authorization under which the land was acquired;*
 - 2) *That the administrative responsibility for the land will revert to the Department if, at any time, the land is not used for the purposes specified in the agreement.*
- f) When ownership of any lands acquired pursuant to this Section is no longer necessary to further the goals of the Department, the Department shall notify the corporate authorities of the municipality in which such reclaimed lands are located and the county clerk of the respective county that the lands may be transferred for public use to one or more of such local governments who have complied with Section 2.07 of the State Act.
 - 1) Upon receipt of plans for use of reclaimed lands from a unit or units of local government, the Department shall:
 - A) Publish a notice in the official newspaper and in a paper of general circulation in the area where the land is located for four successive weeks indicating that a plan has been submitted, and where a copy

- of the plan may be obtained. The notice shall provide at least 30 days for public comment;
- B) Make copies of the disposition plan available in the locality of the property and the Department's offices;
 - C) If requested by any person, or if deemed advisable by the Department, conduct a public hearing to discuss the disposition plan. At least 30 days notice of any such hearing will be published in a newspaper of general circulation in the area in which the land is located.
- 2) If the Department finds that the proposed disposition is appropriate considering all comments received and is consistent with any applicable local, State, or federal laws or rules, the Department shall transfer title for the affected lands to the unit or units of local government submitting the plan.
- g) If disposal of lands under subsection (f) of this Section is determined by the Department not to be in the public interest, and if the reclaimed lands are suitable for industrial, commercial, residential, or recreational development consistent with local, State, or federal land use plans for the area in which the land is located, then the land may be sold for not less than fair market value under a system of competitive bidding which includes:
- 1) Publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale;
 - 2) Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public;
 - 3) All moneys received from disposal of land under this Section shall be transmitted to the State Treasurer for deposit in the State fund currently entitled "Abandoned Mined Lands Reclamation Federal Trust Fund."

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.34 Emergency Abatement Activities

Notwithstanding any other Section of this Part, the Department will identify and immediately address sites which present an immediate threat to public health and safety, such as hazardous

mine openings, methane gas leaks, deteriorating tipple structures, hazardous highwalls, mine fires, and mine subsidence. The finding by the Department that an immediate threat exists shall be in writing. The Department shall notify the owner and request consent prior to entry and abatement work. However, if the Department is unable to notify or secure a written consent prior to conducting abatement work, a written notice shall be given to the owner within two working days after entry. The appraisal required by Section 2501.25 shall be completed at the earliest practical time, but in any case before related nonemergency work is commenced. If federal funds are to be utilized for emergency reclamation activities on non-coal mined lands, the Department shall seek to have the Governor request such authorization from the Federal Office, as required by 30 CFR 875 (1983).

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.37 Notice of Reclamation

- a) *Following reclamation, the Department shall file a Notice of Reclamation in the office of the recorder in the county in which the reclaimed land lies. The Notice of Reclamation shall identify the land reclaimed, the adverse effects of past mining on the land, and briefly describe the reclamation. The Notice of Reclamation shall serve as perpetual notice to all concerned that the land has been mined and reclaimed, and provide that further information may be obtained by contacting the Department [20 ILCS 1920/2.12].*
- b) A Notice of Reclamation shall be filed only with respect to land that has been adversely affected with the physical impacts of mining, and will continue after reclamation to contain such physical effects even though reclaimed, including:
 - 1) mine shafts, slope entries, or other mine openings
 - 2) coal refuse and tailings
 - 3) mine gas escape points
 - 4) hazardous equipment or facilities
 - 5) dangerous highwalls or embankments
 - 6) spoil
 - 7) acid water impoundments
 - 8) dangerous impoundments or dam structures
 - 9) subsidence pits or troughs.
- c) A Notice of Reclamation shall not be filed in connection with land that is affected by reclamation activities only to provide ingress and egress, mobilization or staging areas, borrow or cover material, or other support activities.
- d) A Notice of Reclamation shall not be filed where all adverse effects, physical impacts, or remnants thereof are removed from the property by the reclamation.

(Source: Amended at 22 Ill. Reg. 11382, effective June 23, 1998)

Section 2501.40 Public Participation

- a) Any interested person may submit information and comments regarding the AML program and projects at any time. Information and comments should be directed to the Director of the Department, the Director of the Office of Mines and Minerals, or the Manager of the AML Division.

- b) Verbal requests for information and written requests for information regarding the AML program shall be handled as expeditiously as possible. Requests made specifically pursuant to the Freedom of Information Act [5 ILCS 140] shall be made and handled in accordance with the generally applicable procedures of the Department of Natural Resources.

- c) Copies of the following publications shall be available upon request at the Department's Office at 300 W. Jefferson Street, Springfield, Illinois 62702.
 - 1) The Illinois State Reclamation Plan for Abandoned Mined Lands.
 - 2) Office of Mines and Minerals Annual and Bi-Annual Reports.
 - 3) Specific project reports which may be published for free distribution.
 - 4) Brochures and program materials which may be published for free distribution.
 - 5) The availability of such reports, brochures and program materials as may be prepared especially for free distribution shall not be deemed a waiver of the Department's right to charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records requested pursuant to the Freedom of Information Act. The Department may charge fees reasonably calculated to reimburse its actual cost for providing multiple copies of free publications when multiple copies are requested.

- d) The Department shall hold such public meetings as it determines necessary and appropriate to advise the public of planned or ongoing AML projects, and to solicit input and participation in the AML program. Any interested person may request, in writing, that the Department hold a public meeting in connection with any AML project or program activity. Upon receipt of a written request to hold a public meeting, the Department shall contact the landowners directly involved in the project, as well as the local government bodies that may be interested. The Department shall schedule a public meeting if it determines that sufficient public interest exists to warrant the public meeting.

(Source: Added at 22 Ill. Reg. 11382, effective June 23, 1998)