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Pat Quinn, Governor
Marc Miller, Director

LAND RECLAMATION DIVISION
Memorandum No. 2015-01

To: All Coal Mine Operators/Consultants

From: Scott K. Fowler, Supervisor
Land Reclamation Division

Date: January 20, 2015

Re: Fish and Wildlife Habitat Land Use Designation

The regulations at 62 Ill. Adm. Code 1780.23 and 1784.15 require land use designations of all acreage within the permit area both pre- and post-mining. The importance of land use designation is that it becomes the basis for determining how land will be reclaimed and the criteria that will be used for determining if the reclaimed land meets regulatory qualification standards for the release of reclamation liability and bond obligation. In addition, how land is used prior to mining is the primary basis for determining what post-mining land use designations can be approved for the permit acreage affected by coal mining operations.

Land use designations are specified in Section 1701 General Definitions under "Land Use" and are the only land use terms which can be used to categorize pre- and post-mining permit acreage conditions. The ten land use designations listed under "Land Use" are: cropland, pasture land, grazing land, forestry, residential, industrial/commercial, recreation, fish and wildlife, developed water resources and undeveloped. Of the ten listed land use designations, the category "grazing land" does not fit our state land use practices either as an existing land use either pre- or post-mining and should not be used. In addition, although undeveloped can be used as a premining land use, in post-mining the "undeveloped" land use designation as defined can only be used to categorize lands that are not affected by mining activities.

Fish, wildlife and related environmental values are protected by the performance standards outlined in Section 1816.97/1817.97. Revegetation is to be compatible with the approved wildlife land use and endangered and threatened species and their critical habitats as determined by the US Endangered Species Act of 1973 are to be protected.

The fish and wildlife habitat land use designation as defined encompasses the use of both land and water by fish and wildlife and the management of land and water specifically for wildlife ("...land dedicated wholly or partially to the production, protection or management of fish or wildlife."). Similar to the US Fish and Wildlife Coordination Act of 1934's use of the terms "wildlife and "wildlife resources" to include "birds, fish, mammals and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent," both SMCRA and the Illinois Surface Coal Mining Land Conservation and Reclamation Act of 1980 use the term "fish and wildlife habitat" to encompass both aquatic and terrestrial types.

To provide for any one of several of a wide variety of both aquatic and terrestrial fish and wildlife habitat conditions that might be targeted under a fish and wildlife habitat pre- and post-mining land use designation, the Department recognizes the need for the "fish and wildlife habitat" land use designation to be broken down into one of four subcategories: 1) fish and wildlife-woody; 2) fish and wildlife-herbaceous; 3) fish and wildlife-wetland; and 4) fish and wildlife-water.

The use of the term "fish and wildlife habitat" for both pre- and post-mining land use conditions will now require characterizing that acreage into one of the four designated "fish and wildlife habitat" subcategories. The bond release criteria for the four subcategories is specified under portions of Section 1816.116/1817.116; 1816.117/1817.117; and 1816.49(b)/1817.49(b). It is to be noted that any bodies of water that are to be left as permanent under the "fish and wildlife-water" subcategory must meet the requirements of Section 1816.49(b)/1817.49(b).

Changes of acreage from one "fish and wildlife habitat" subcategory into another "fish and wildlife habitat" subcategory will not be considered a different land use subject to the limitations of land use changes under Section 1774.13(b)(2)(E).