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Rod R. Blagojevich, Governor
Joel Brunsvold, Director

LAND RECLAMATION DIVISION
Memorandum No. 2004-03

To: All Coal Mine Operators/Consultants

July 28, 2004

Scott K. Fowler, Supervisor
Land Reclamation Division

Rule Changes

On March 24, 2003 the Department sent Memorandum 03-01 to all recipients of Permanent Program regulations containing rule changes that had become effective February 26, 2003. These changes had been required by the federal Office of Surface Mining and dealt primarily with valid existing rights.

While these changes deal with regulations that are not often encountered by most operators, we feel it necessary to bring two of the changes to your attention. 62 Ill. Adm. Code 1761.15(b) has been added concerning mining operations within 300 feet of an occupied dwelling and states as follows: "Where the proposed operation would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. **The waiver must clarify that the owner and signator had the legal right to deny mining and knowingly waived that right.** The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling, as specified." Please note the highlighted language.

Section 1761.15(d) then states: "If a valid waiver was obtained from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. **A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records** pursuant to State laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase." While the applicant is not required to file the waiver in the public property records, if the area in question has not been disturbed and the waiver is to apply to subsequent property owners, the waiver must have been filed.

If you have any questions concerning these changes please contact your field representative or this office at (217) 782-4970.

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