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DEPT. OF MINES AND MINERALS
LAND RECLAMATION DIV.

STATE OF ILLINOIS
DEPARTMENT OF MINES AND MINERALS
LAND RECLAMATION DIVISION

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LAND RECLAMATION DIVISION MEMORANDUM NO. 83-4

TO: Recipients of Illinois Rules and Regulations
The Surface Coal Mining Land Conservation and Reclamation Act

FROM: Douglas Downing, Supervisor
Land Reclamation Division

DATE: May 20, 1983

RE: Proposed Amendments to Illinois State Program Rules and Regulations

Enclosed is a copy of proposed amendments to the rules and regulations adopted pursuant to the Surface Coal Mining Land Conservation and Reclamation Act. These proposed amendments will appear in the May 20, 1983, Illinois Register.

Amendments are proposed to Rules 1785.17(a) Prime Farmland; 1816.190 Affected Area Maps; 1843.12(f)(4) and (i) Notices of Violation; 1817.65 Use of Explosives: Surface blasting requirements; and a new rule 1817.190 Affected Area Maps.

All comments regarding this proposal must be submitted by 5:00 p.m. on July 7, 1983. A public hearing will be held in Springfield on June 22, 1983, at 11:00 a.m. in Room 304 of the Stratton Office Building (Capital Development Board board room), 401 South Spring Street, for the purpose of receiving oral and/or written comments.

ILLINOIS DEPARTMENT OF MINES AND MINERALS

NOTICE OF PROPOSED RULEMAKING

Agency: Illinois Department of Mines and Minerals

Title or Name of Rule(s) and Action Taken By Agency: Applicability of Special Prime Farmland Permit and Reclamation Rules - "Grandfather" Exemption - Amendments to Rule 1785.17(a); Affected Acres, Amendment to Rule 1816.190, New Rule 1817.190; Notices of Violation, Amendment to Rules 1843.12(f) and (i).

Statutory Authority: The Surface Coal Mining Land Conservation and Reclamation Act. Ill. Rev. Stat. 1981, ch. 96 1/2, par. 7901.02, 7901.03, 7902.02, 7902.03, 7902.08, 7903.07, 7909.01, 7909.02.

Summary and Purpose of Proposed Rulemaking: 1785.17(a). The Illinois Department of Mines and Minerals proposes to revise Rule 1785.17(a) prescribing the scope of the exemption from certain prime farmland mining permit requirements, to expressly conform the language to pertinent federal rules and state policy.

The Department is proposing adoption of amended rules concerning "grandfathering", which is the process prescribing the eligibility of certain surface coal mining operations for exemption from certain prime farmland permit requirements of state and federal law. The proposed amendment would alter Illinois' present rules, which are in statutory language, by introduction of the language of federal rules on the subject that have been found to have been validly adopted by the courts, together with express provisions implementing the policy announced last year by the Department, in light of judicial developments which have since declared the use of a termination date (e.g. August 3, 1982, or April 3, 1983) arbitrary and contrary to federal law.

The special prime farmland permit requirements, and the "grandfather" exemption are contained in Section 510(d)(1) and (2), respectively, of the Federal Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. §1201 et seq.; 30 U.S.C. §1260(d)(1) and (2) ("Federal Act").. In Illinois, these requirements are reiterated and imposed by the Surface Coal Mining Land Conservation and Reclamation Act (P.A. 81-1015), S.H.A. Ch. 96 1/2, §7901.01 et seq (the "Illinois Act"). Section 2.08 of the Illinois Act states that:

* * * * * *

> Except for operations subject to exemption by Section 510(d)(2) of the Federal Act (P.L. 95-87), a permit or revised permit for mining operations on prime farmland may be issued only if the Department finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as

non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the reconstruction standards in Section 3.07 [of the Illinois Act]. Such findings shall be made in accordance with standards and procedures adopted by the Department by Rule.

The program submitted to the Office of Surface Mining in the Department of Interior ("OSM") includes Department rules that describe the grandfather exemption in the terms of the federal statute. Department rule §1785.17(a) provides:

§1785.17 Prime Farmlands.

(a) Scope

This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation on prime farmlands historically used for cropland. Nothing in this subsection shall apply to any permit issued prior to the date of enactment of the Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of the Act.

The above underscored language is virtually identical to Section 510(d)(2) of the Federal Act. The Department here proposes to amend this language to make express provision in its rules for developments since the Program was adopted in final form and submitted to OSM in 1981. These developments include: 1) the adoption on September 29, 1981 by the Secretary of Interior of an amendment to the OSM rules on grandfathering (30 CFR §785), 46 F.R. 47720; 2) the adoption on July 30, 1982 of an OSM rule amendment imposing an April 3, 1983 cutoff date nationwide, 47 F.R. 32929; and 3) announcement to all coal operators by the Department on July 8, 1982 of state policy concerning the reclamation of surface mined prime farmland and future procedures on grandfathering exemptions, in the context of then ongoing judicial challenge, and a history of public concern over the appropriate handling of prime farmlands disturbed by surface mining and "grandfathering", and 4) the final results of judicial review of the September 29, 1981 and July 30, 1982 OSM promulgations, Peabody Coal Co. v. Watt, 18 ERC 1585 (USDC, D.C., Dec. 3, 1982). The Department believes its proposed rule contains all requirements of federal law and reasonably applied state policy consistent with Section 2.08 of the State Act, and the results of the judicial review litigations.

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The format of the proposed rule generally follows the OSM rules of September 29, 1981, with additions to expressly incorporate the state policy to limit grandfathering since July, 1982 to 13,000 acres, additional to those grandfathered, and to assure productivity of such lands meets prime farmland standards. This policy is implemented for all new applications for grandfather exemptions initiated since July 31, 1982. The rule also makes clear that the OSM rules of September 29, 1981 are applicable from and after September 29, 1981. This is in keeping with the Department's actions since September 29, 1981, in reviewing exemption applications. As federal rules, they clarify the scope of exemption under Section 510(d)(2), as a matter of federal law. Pursuant to Section 2.08(a) and 1.01(b) of the State Act, and the statutory language in the Department's existing rule, they have been followed by the Department since September 29, 1981. The state policy announced July 8, 1982, to all coal operators, will be implemented retroactive to all applications initially made since July 31, 1982. This is believed appropriate and fair, because the operative terms of the policy are directed to future requirements (e.g. productivity results after reclamation), or circumscribe the exemption in other ways having no material impact since July 8, 1982 (e.g. the statewide acreage limitations has not yet been exceeded by applications made since the policy was announced.) Moreover all operators have been on notice of this policy since last July, and representatives of operators, as well as other interest groups, participated in discussions in which the policy was developed.

The Department seeks comment on its proposal. Among the issues on which comment is particularly encouraged on the proposed rule are 1) do the proposed rules adequately contain all requirements of the federal law, to the extent required and allowed by state law? 2) is the proposal clear and fair in its implementation of the July 8, 1982 policy announcement? 3) is the adoption by rule of the July 8, 1982 policy a good idea, consistent with the State Act? 4) is the proposed timing of effectiveness of the requirements appropriate? 5) is the allocation of the available 13,000 acres proposed to be accomplished in an appropriate manner? 6) what considerations involving terrain, climate or other conditions of this state are relevant to this proposal? and 7) does the proposal adequately account for the distinct differences between surface and underground mining? There may be other issues of concern, and the Department, in making the above listing, is not limiting comment in any way.

§1816.190, 1817.190. The Department is proposing to amend its regulations concerning affected areas to clarify ambiguities in the current regulations. As the regulations now stand, it is unclear as to whether or not maps and reports must be submitted for underground mining operations, and the words "affected areas" and "disturbed ares" are used interchangeably. Maps and reports must be submitted for the affected area for both surface and underground mining operations.

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§1817.65(a). The words " ... in which blasts that use more than 25 pounds of explosive or blasting agent are detonated" should have been deleted from this section in the Notice of Adopted Rules filed with the Secretary of State on November 30, 1982. Deletion of this language would fulfill the requirement of the Interior Secretary's June 1, 1982 conditional approval of the Illinois program.

§1843.12(f)(4) and (i) are being amended to correct typographical errors appearing in the Notice of Adopted Rules filed with the Secretary of State on November 30, 1982.

Will this Proposed Rulemaking Replace an Emergency Rule Currently in Effect?
No.

Statement of Statewide Policy Objectives (if applicable): To provide appropriate permit requirements for coal mining operations affecting prime farmland.

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Submission of Comments: All comments must indicate the identity and address of the commenter. A brief description of the commenter's interest is helpful. Comments must specify the regulatory paragraph to which they are directed. If possible, please submit two copies of your comments, and begin comments on each specific regulatory paragraph on a separate sheet of 8 1/2 x 11 inch paper. (This will ease the job of record assembly and review.) Comments should be sent to:

Permanent Program Regulation Comment Docket
Land Reclamation Division
Illinois Department of Mines and Minerals
Room 204
227 South Seventh Street
Springfield, Illinois 62706

Submittals may include data, views, arguments and other comments relevant to the proposal and issues noted in the summary and purpose discussion thereof. All comments are due in Springfield at the above address no later than 5:00 p.m., on July 7, 1983. Comments received thereafter may not be considered in this rulemaking. Persons desiring the opportunity to present oral testimony and data, views, arguments or other comments may do so at a public hearing on June 22, 1983. Comments in written form may also be presented at these hearings. A public hearing will be held in Springfield on June 22, 1983 at 11:00 a.m. in Room 304 of the Stratton Office Building, (Capitol Development Board boardroom) 401 South Spring Street, Springfield, Illinois. Persons wishing to comment at the hearings should register in advance, by notifying the Department by mail received before the day of the hearing at the above mailing address in Springfield, or by telephone (217-782-4970: Mary Jo Murray). Commenters may also register at the hearing. The hearing is subject to adjournment when no person is present who has not commented or had the opportunity to do so. Questions about the hearing may be telephoned to the Department. Everyone is encouraged to submit his comments in advance of the June 22, 1983 hearing, to better enable questioning and understanding by the Department.

Rule 1785.17(a) may have an impact on small businesses. In accordance with Sections 3.01 and 4.03 of the Administrative Procedure Act, any small business may present their comments in writing to the above address. Any small business (as defined in Section 3.10 of the Administrative Procedures Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

Initial Regulatory Flexibility Analysis:

1) Type of business affected:

Surface and Underground Coal Mines.

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2) Brief description of the proposed reporting, bookkeeping, and other procedures:

The rules are incorporated into the existing permit application process in the state program. As amendments to existing rules, little additional paperwork is required of mine operators. The Department must keep track of limited acreage availability, the operators are responsible for reclamation and records as provided.

3) Professional skills necessary:

Mine Management, Engineering, Surveying

The full text of the Proposed Amendments is as follows:

ILLINOIS DEPARTMENT OF MINES AND MINERALS

TEXT OF PROPOSED RULEMAKING

Part 1785 -- Requirements for Permits for Special Categories of Mining

§1785.17 Prime Farmland.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. Nothing in this subsection shall apply to any permit issued prior to the date of enactment of the Act, or to any revisions or renewals thereof, or to any existing surface mining operation which a permit was issued prior to the date of enactment of the Act as determined by the Department prior to September 29, 1981. For lands for which application for exemption was initially made or pending on or after September 29, 1981, this section does not apply to:

(1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(3) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract or lease but not including an option to buy, lease, or contract; and

(iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(4) For purposes of this section:

(i) "Renewal" of a permit shall mean a decision by the Department to extend the time by which the permittee may complete mining within the boundaries of the original

mining within the boundaries of the original permit and "revision" of the permit shall mean a decision by the Department to allow changes in the method of mining operations within the original permit area, or the decision of the Department to allow amendment pursuant to state law prior to June 1, 1982, or other incidental boundary changes to the original permit;

(ii) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii)A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(5) The exceptions granted by Paragraphs (a)(1)-(3) of this section shall apply fully only to lands permitted and exempted by a Departmental decision on applications made prior to August 1, 1982. Persons initially applying for exemption under subparagraphs (a)(1)-(3) after July 31, 1982 may obtain such exemption, but lands subject to such applications shall comply with the prime farmland productivity standards of Section 1823.15. Applications first made after July 31, 1982 shall be further subject to an acreage limitation of 13,000 acres statewide, as set out in subsection (6) below.

(6) The acreage limitation referred to in subsection (5) shall be implemented as follows:

Applications for lands first made after July 31, 1982 and pending before the Department on the effective date of this rule shall be collectively totalled for acreage. If the acreage applied for is less than 13, 000 acres, the applications may be granted (subject to determination of their merits). On a monthly basis thereafter, applications shall be cumulatively totalled. In month that the cumulative total exempted acreage applied for since July 31, 1982 exceeds 13,000 acres, the exemptions shall be granted for that month on a pro-rata basis, so that the cumulative total including that month's total, equals 13,000 acres. Once 13,000 total cumulative

acres are grandfathered pursuant to this exemption, the exemption shall become unavailable to future applicants. Any permittee may relinquish exempted acreage to the Department in writing, identifying the acreage released. In the event available exempt acreage shall ever be so relinquished, the availability of the total number of acres shall be announced by the Department to all existing permittees and applications made within 30 days of the announcement may be granted on a pro-rata basis to the extent of available acres.

(7) All applicants for an exemption shall supply the Department with a scale map of the area proposed to be exempted, delineating all prime farmland soils and accurately noting the total number of acres proposed for exemption to the nearest acre, and the numbers of acres of each prime farmland soil type in the area proposed to be exempted.

§1817.65. Use of explosives: Surface blasting requirements.

(a) A resident or owner of a dwelling or structure that is located within one-half mile of any area affected by any surface blasting event shall be notified in writing at least 30 days, but not more than 60 days, before beginning a blasting program ~~in which blasts that use more than 25 pounds of explosives or blasting agent are detonated~~. Such notice shall be accompanied by information advising the owner or resident how to request a pre-blast or condition survey.

§1816.190. Affected Area Map.

(a) On or before September 1 of each year, every permit holder shall submit to the Department and to the county clerk, reports and maps of ~~disturbed acreage~~ affected area.

(b) The forms shall be duly executed and duplicate maps shall be attached showing the ~~land~~ area affected during the state fiscal year just ended. The Department shall require the map to be executed by an engineer registered in the State of Illinois.

(c) The map shall be planned as a continuous map, as far as possible, so that the ~~land~~ area affected each year may be added and indicated on the map by the dates it was affected. Report forms and map scales shall be as required by the Department.

(d) All maps shall show sections, township, range and county lines coming within the scope of the map; access to the area from the nearest public road and all weather roads within the mined area; a title containing name of the operator, address, scale of the map, by whom the map was drawn, name of the surveyor or engineer.

§1817.190 Affected Area Map.

(a) On or before September 1 of each year, every permit holder shall submit to the Department and to the county clerk, reports and maps of affected areas.

(b) The forms shall be duly executed and duplicate maps shall be attached showing the area affected during the fiscal year just added. The Department shall require the map to be executed by an engineer registered in the State of Illinois.

(c) The map shall be planned as a continuous map, as far as possible, so that the area affected each year may be added and indicated on the map by the dates it was affected. Report forms and map scales shall be as required by the Department.

(d) All maps shall show sections, township, range and county lines coming within the scope of the map; access to the area from the nearest public road and all weather roads within the mined area; a title containing name of the operator, address, scale of the map, by whom the map was drawn, name of the surveyor or engineer.

§1843.12 Notices of violation.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

* * *

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly:

* * *

(i) No extension granted under paragraph (h) may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the provisions of paragraph (h).